

CITY OF DALY CITY

SPECIAL MEETING – CITY COUNCIL

AGENDA

Monday, November 17, 2014 - 7:00 PM
City Hall Council Chambers – 2nd Floor
333 – 90th Street, Daly City, CA 94015

Live Telecast: Comcast Channel 27, Astound 26, AT&T U-Verse 99

Webcast: www.dalycity.org/meetings

DRAFT

For those wishing to address the City Council on any Item on the Agenda or under Public Appearances/Oral Communications, please complete a Speaker Card located at the entrance to the Council Chambers and submit to a Staff Member as early in the meeting as possible.

Persons with disabilities who require auxiliary aids or services in attending or participating in this meeting should call the office of the City Clerk at 991-8078 as soon as possible.

CALL TO ORDER:

PLEDGE TO THE FLAG:

ROLL CALL:

APPROVAL OF AGENDA:

CONSENT AGENDA

All items listed on the Consent Agenda are considered to be routine and may be approved by one roll call vote of the City Council. There shall be no separate discussion of the matters on the Consent Agenda unless requested by a member of the City Council. If discussion is required, that item will be removed from the Consent Agenda and will be considered separately at the end of the Agenda.

Resolutions:

1. Commending Carol L. Klatt on the Occasion of Her Retirement

END OF CONSENT AGENDA

AVAILABILITY OF PUBLIC RECORDS:

All public record to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the City Clerk's Office, City Hall located at 333 90th Street, Daly City, CA during normal business hours, at the same time that the public records are distributed or made available to the legislative body.

PUBLIC HEARINGS:

2. Selection of Franchisee and Sub-Contractors for Solid Waste, Recyclable and Organic Materials Collection and Post-Collection Services

Staff:

Martel

Recommended Action:

Open/Close Hearing

Adopt Resolution

Roll Call

PUBLIC APPEARANCES/ORAL COMMUNICATIONS:

NOTE: Speakers are limited to two minutes, unless modified by the Mayor. The Council cannot take action on any matter raised under this item

APPOINTMENTS: Board/Commission Membership Committee Appointments

REPORTS:

3. Council Committee
4. City Council
5. Staff

ADJOURNMENT:

RESOLUTION NO: _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DALY CITY
COMMENDING CAROL L. KLATT ON THE OCCASION OF HER RETIREMENT**

WHEREAS, the City Council appointed CAROL L. KLATT to fill the unexpired term of former Councilmember Jane Powell on Tuesday, September 7, 1993, launching her career on the City Council which would ultimately span more than 21 years; and

WHEREAS, Carol Klatt was first elected to the City Council on June 7, 1994, and in a quirk of state election law, was elected again on November 1 of the same year, cementing her position on the City Council and bolstering her quests for successful re-election bids in 1998, 2002, 2006, and 2010; and

WHEREAS, Carol's service to the Daly City community can be traced back to July 8, 1991, when she was appointed to the Parks and Recreation Commission, a position she retained until ascending to the City Council; and

WHEREAS, prior to her formal involvement with the City, Carol earned a reputation for her grassroots community involvement as far back as 1965 when she served as a Girl Scout Leader, fostering good citizenship among Daly City's next generation of young women; and

WHEREAS, her calling as a neighborhood activist was evident by 1980 when she was elected as the President and Secretary of the Serramonte Homeowners Association, the same year she developed a keen interest in City Council proceedings, fueled in part by her activist friend and neighbor Roseann Emerson; and

WHEREAS, Carol's community involvement continued to grow as she became a fixture at meetings of the Clean Community Committee, Anti-Graffiti Committee, Airport Community Roundtable, Daly City Host Lions Club, and the Mission Street Merchants Association, to name but a few; and

WHEREAS, during her 21 years on the City Council, Carol served as Mayor 5 times, and earned the reputation as one of the hardest working elected officials in San Mateo County, rarely missing a meeting or community event and always finding time to respond to constituent enquiries; and

WHEREAS, Carol's tenure on the City Council will come to an end on December 2, 2014, when she answers her final roll call, but her achievements will serve as her lasting legacy in a community that is eternally grateful for her unwavering dedication and commitment to improving the quality of life in Daly City for all generations.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Daly City that it does hereby commend Carol L. Klatt for her more than 21 years as a City Councilmember.

BE IT FURTHER RESOLVED that, the City Council extends its best wishes to Carol and her husband John as they pursue a well-deserved retirement in their new home in Las Vegas, Nevada.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DALY CITY
COMMENDING CAROL L. KLATT ON THE OCCASION OF HER RETIREMENT

I hereby certify the foregoing to be a true copy of a Resolution adopted by the City Council of Daly City, California, at a regular meeting thereof held on the _____ day of _____, 2014, by the following vote of the members thereof:

AYES, and in favor thereof, Councilmembers:_____

NOES, Councilmembers:_____

ABSENT, Councilmembers:_____

CITY CLERK OF THE CITY OF DALY CITY

APPROVED:

MAYOR OF THE CITY OF DALY CITY



City Council Meeting Agenda Report

Item # _____

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Subject: Selection of Franchisee and Sub-Contractors for Solid Waste, Recyclable and Organic Materials Collection and Post-Collection Services

RECOMMENDED ACTION

It is recommended that the City Council select and authorize the City Manager to execute a final Franchise Agreement with Recology to provide Solid Waste, Recyclable and Organic Materials Collection and Post-Collection Services, including its subcontractors South San Francisco Scavenger Co. (SSFSC) for transfer and construction and demolition (C&D) debris processing services; South Bay Recycling (SBR) for source separated recyclables materials processing; and Waste Connections for disposal services.

BACKGROUND

Daly City Scavenger Company, a small locally owned company, provided solid waste services to the City for decades before it was acquired by Browning Ferris Industries in 1994 and the Daly City Franchise Agreement was assigned to BFI on December 12, 1994.

Allied Waste Services (Allied) acquired BFI in the early 1990's and has provided solid waste, recycling and yard waste collection, processing and disposal services to residents and businesses in the City since the contract was assigned to it. Thereafter, Allied was acquired by Republic Services in 2008. The current Agreement expires on July 1, 2015.

Allied's provision of diversion services has been less than satisfactory. On May 17, 2007, the California Integrated Waste Management Board (CIWMB) issued a compliance order (Order IWMA BR07-06) to the City with possible penalties of up to \$10,000 per day for failing to perform in accordance with its Source Reduction and Recycling Element (SRRE). The City acknowledged responsibility and ordered its Franchisee, Allied to immediately address the compliance order or face potential monetary penalties for defaulting on its solid waste diversion and recycling responsibilities. Subsequently, the City negotiated an amendment to the existing Franchise Agreement in December 2007 to include expanded diversion services. As result of the expanded services, the City underwent a garbage rate increase of nearly 40% for the average residential customer, from \$16.40 per month for a 32-gallon container, to \$22.91 per month. While the City is no longer under a compliance order and diversion levels greatly improved, overall the City remains short of attaining its target disposal rate.

The City provided Allied with three Notices of Default during 2006 and Allied responded by resolving a number of the deficiencies:

- On January 18, 2006, Allied received a Notice of Default for its failure to collect residential curbside recyclable materials and yard waste on the same day as each resident's regular garbage collection day.

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- On August 22, 2006, the City issued to Allied second Notice of Default for: 1) refusal or inability to perform residential service pick-up in a thorough and professional manner, including an unacceptable number of missed pick-ups; 2) failure to provide an adequate labor force to provide service and Allied's failure to maintain collection equipment in good repair at all times; 3) failure to provide adequate collection vehicles and major equipment inventory including yard waste containers; 4) failure to collect missed pick-ups within contractual time commitments; 5) failure to obtain a Management Letter from its independent auditor; 6) failure to provide monthly reports on time; and 7) failure to respond to City direction to provide additional and improved recycling services.
- On October 27, 2006 the City issued Allied a third Notice of Default related to: 1) Contractor's failure to adequately respond to the City's direction to provide additional and improved recycling services; 2) Contractor's refusal or inability to perform residential service pick-up in a thorough and professional manner, including an unacceptable number of missed pick-ups; 3) Contractor's failure to maintain collection equipment in good repair at all times; and, 4) Contractor's failure to obtain a Management Letter from its independent auditor.

In 2007 the City conducted a performance audit of Allied and found that the quality and performance of collection and customer service needed to be brought into alignment with industry standards. Specifically, the City found Allied:

- Non-compliant with certain contractual reporting requirements.
- Failed to provide on-line access to the Allied's data base, in accordance with the Franchise Agreement.
- Maintained continued deficiencies in its Waste Oil Program as identified in the State's audit.
- Responsible for an unacceptable number of missed pick-up complaints.

In 2007, the City and BFI amended the agreement to assign it to Allied and further directed Allied to: provide residential customers with solid waste containers; revise collection services; revise recyclable material collection; require two full time recycling coordinators; add yard waste collection services; add food and organic waste collection for commercial customers; change the rate adjustment process; modify the quarterly reporting requirements; add performance standards and associated liquidated damages.

Today, the list of services offered residential and commercial customers is generally consistent with industry practice, with the exception of the collection of food waste. However, Allied remains ineffective in achieving broad-based residential recycling participation and the City's diversion levels are substantially less than those of neighboring cities. As shown in the following table from

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the Evaluation Report, Daly City is one of the only cities listed that is barely in compliance with State law. As the largest city in San Mateo County, this casts Daly City in an unacceptable environmental position.

Diversion Comparisons

	Daly City	Pacifica	Millbrae	Burlingame	San Mateo	San Francisco
Pounds Per Capita Disposal Goal	2.6	3.5	5.3	8.3	5.8	6.6
Actual Disposed	2.8	2.9	3.5	6.1	3.9	3.0
Pounds Per Employee Disposal Goal	16.8	33.2	22.8	6.9	13.3	10.6
Actual Disposed	18.4	28.9	16.8	5.4	10.0	5.0

As a matter of City policy (as expressed in our Climate Action Plan) and compliance with current and future State mandates, it is clear that the effective implementation and management of waste diversion services is essential to the needs of the City. We must not only add to our list of materials accepted for recycling, add food waste diversion services, optimize the effectiveness (broad-based participation and level of participation) of current programs, but we must also enhance technical assistance and outreach activities. However, simply adding programs is insufficient; those activities must be implemented effectively to achieve the broad participation of the City's residents and businesses.

Attempt at Sole Source Negotiations

In late 2012 (prior to initiating a competitive procurement process), the City initiated negotiations with Allied in an attempt to obtain a new agreement for disposal of the City's waste at Ox Mountain Landfill. Allied's unwillingness to negotiate a competitive price for disposal unless the City agreed to a substantial multi-year extension of the existing collection agreement was unacceptable to the City.

DISCUSSION/ANALYSIS

Request for Proposals Process and Results

In July 2012, the City Council authorized staff to engage HF&H Consultants to assist in conducting a competitive selection process. The principal reasons for proceeding in this manner are detailed as follows:

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- Solid waste services are commonly provided by one contractor under an exclusive franchise to a city because such services provide the customer with financial benefits stemming from economies of scale and environmentally through efficient routing of collection vehicles.
- Such contracts grant an exclusive right to collect materials from residents and businesses worth more than \$14 million annually and prohibit soliciting competing proposals for such services. It is only at contract expiration that competition can be introduced.

Increasing diversion levels as mandated by the State will require not only offering new programs in the future, but also generating increased participation by residents and business in these programs. It is essential to obtain the most cost effective approaches and creative ideas for achieving diversion goals.

The Request for Proposal (RFP) process involved identifying both the current and future needs of the City for services, including food waste diversion, increased outreach and technical support, and the replacement of the City's Mussel Rock Transfer Station, which is in need of demolition. Additionally, contract terms under which such services would be provided to the City incorporated specified language regarding labor policies and labor peace, as well as ensuring worker retention. To stimulate the greatest amount of competition, the City's specified needs and business terms were documented in the RFPs for collection and post-collection services that were issued in December 2012 and June 2013, respectively. Three proposals from well-qualified companies with experience in San Mateo County were received for collection services. The following table profiles the three proposers and provides their initial proposed pricing.

Collection Proposal Summary

Proposer	Headquarters	Corporate Organization	Sample of Bay Area Communities Served
Allied Waste Services	Phoenix, Arizona	Subsidiary of Republic Services, publicly traded	Alameda County (Fremont), West Contra Costa County (Richmond, 4 other public agencies) Central Contra Costa (Walnut Creek and 5 other public agencies), Santa Clara County (Milpitas, San Jose)
Recology, Inc.	San Francisco	Privately held, Employee Stock Ownership Plan (ESOP)	San Francisco, Pacifica, Half Moon Bay, San Bruno, South Bayside Waste Management Authority (SBWMA, 12 San Mateo County jurisdictions), Mountain View
South San Francisco Scavenger	South San Francisco	Privately held	Brisbane, Millbrae, South San Francisco, San Francisco Airport

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Collection Cost Comparison

	Allied Waste	Recology	South San Francisco Scavenger
Annual Cost of Operations			
Labor-Related Costs	\$4,152,752	\$3,822,135	\$5,157,341
Equipment Costs	\$1,115,981	\$1,537,300	\$2,294,043
Fuel Costs	\$693,242	\$627,380	\$702,000
Other Costs	\$117,642	\$286,354	\$96,816
Total Allocated Costs - Labor, Vehicle, Fuel & Other	\$3,408,225	\$3,436,311	\$3,222,955
Total Allocated Costs - Depreciation & Start-Up	\$49,626	\$136,064	\$256,739
Total Annual Cost of Operations	\$9,537,468	\$9,845,543	\$11,729,894
Profit	\$1,455,338	\$1,737,449	\$1,599,531
Pass-Through Costs - Interest Expense	\$379,952	\$513,611	\$622,109
Contractor's Total Collection Costs	\$11,372,758	\$12,096,603	\$13,951,534

Four equally well-qualified companies submitted proposals to provide post-collection services.

Post-Collection Proposal Summary

Proposer	Facilities, Locations	Services
Allied Waste Services	- Newby Island Recyclery, Milpitas (Allied) - West Contra Costa Landfill, Richmond (Allied) - Ox Mountain Landfill, Half Moon Bay (Allied)	- Recycling, Mixed Waste Processing - Composting of Organics - Disposal (Allied)
Blue Line Transfer, Inc. (South San Francisco Scavenger)	- Blue Line Transfer Station, South San Francisco (Blue Line) - Blue line, and Alameda County Industries, San Leandro (A Blue Line affiliate) - Potrero Hills Landfill, Fairfield (Waste Connections)	- Transfer - Recycling - Disposal
Recology, Inc.	- San Bruno Transfer Station, San Bruno (Recology) - South Bay Recycling*, Shoreway Environmental Center, San Carlos (South Bayside Waste Management Authority) - South Valley Organics, Gilroy (Recology) - SMaRT Station, owned by City of Sunnyvale - Hay Road Landfill, Vacaville (Recology)	- Transfer - Recycling - Composting of Organics - Mixed Waste Processing - Disposal
South Bay Recycling, Inc.*	Shoreway Environmental Center, San Carlos	Recycling

*South Bay Recycling proposed both as a subcontractor to Recology and as a prime contractor.

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Pricing for Selected Transfer Facilities

Transfer	Solid Waste	Recycling	Organics	Mixed Waste
Blue Line Transfer Station	\$ 12.39	\$ 12.39	\$ 19.00	\$ 12.39
Recology - San Bruno Transfer	n/a	n/a	\$ 12.49	n/a

Pricing for Selected Recyclables Processing Facilities

Facility	Single-Stream Recycling	Source Separated Recycling	Mixed Waste Processing	C&D Materials
Blue Line Transfer Station	n/a	n/a	n/a	\$100.00
Newby Island Recyclery	n/a	n/a	\$110.00	n/a
South Bay Recycling - Allied	(\$25.08)	(\$74.24)	n/a	n/a
South Bay Recycling - Recology	(\$35.30)	(\$86.06)	n/a	n/a

Pricing for Selected Organics Processing Facilities

Organics Processing	Food Scraps	Food Scraps w/ Yard Trimmings
South Valley Organics	\$52.95	\$52.95
WCCC Landfill	\$62.00	\$62.00

Pricing for Selected Disposal Facilities

Disposal	MSW
Ox Mountain Landfill	\$45.00
Potrero Hills Landfill	\$21.50

Review of Proposals

The proposals received were reviewed for: 1) compliance with the RFP procedures; 2) mathematical accuracy; 3) logical consistency of program offerings and costs; 4) reasonableness of program productivity; 5) performance; and 6) cost assumptions.

Having evaluated the initial proposals, HF&H assisted the City staff in interviewing the three companies submitting proposals, selecting Allied and Recology for their collection services and proceeding to the second phase of the process. In the second review and evaluation phase, proposers were given suggestions on how their proposals could be refined to better meet the needs of the City (Best and Final Offer or “BAFO”). The final post-collection services providers were selected based on their original cost proposals and the cost of delivering material to their facilities and no BAFO process was used for those proposers.

It is worth noting that Allied’s cost proposal for disposal services at Ox Mountain Landfill resulted in a less than open and competitive process. Allied proposed an unreasonable price to be offered

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companies (other than Allied) to dispose of City generated materials at Ox Mountain Landfill. Currently, Allied's agreement with the County obligates it to accept material for disposal from cities in the County but does not regulate rates. Allied proposed a rate that is more than 60% higher than the current disposal rate Allied charges the City and other agencies in the County.

Thereafter, the collection and post-collection services proposals were combined to provide the most cost-effective services for the City. This resulted in the following two arrangements:

1. A prime contract with Allied, including SSFS Co for transfer of recyclables and C&D debris processing; and SBR for recyclables processing.
2. A prime contract with Recology including subcontracts with SSFS Co for transfer of solid waste and recyclables and C&D debris processing; SBR for recyclables processing; and, Waste Connections for disposal at Potrero Hills Landfill in Solano County for disposal.

Both arrangements offer the City additional diversion services including collection and processing of food waste from residential, multi-family residential complexes under 50 units, condominiums with centralized collection, and commercial customers. Based on its extensive audits of routes, the composition of containers and its extensive experience in neighboring San Francisco under similar conditions, Recology is offering to provide 96-gallon recycling containers as a default and additional assistance to large generator accounts that utilize compactors for food waste and organics. This will result in helping customers "right-size" their refuse, recycling and organics containers, which Recology is confident will optimize the City's existing diversion programs. Each of the proposers offers a comparable list of outreach and public education materials and activities.

During the BAFO process, both companies were offered an opportunity to propose additional benefits in exchange for extending the initial term of the agreement from 10 years to 15 years, by a specific deadline. Allied submitted an incomplete proposal for 15 years, subsequent to the requested deadline for the proposals, resulting in the City's inability to conduct a credible analysis for consideration of the extended contract.

Recology provided a timely proposal for a 15-year term to phase out the use of diesel vehicles contained in its base proposal and phase in CNG vehicles in exchange for an increase to rates of .5% during the second contract period (years three and four of the contract) and 2.2% in the third contract period (years five and six of the contract), and small incremental increases in subsequent rate periods. While these contract terms are slightly different, Recology's offer represents the best value to the City that could be obtained from each respective company and allow for the phase-in of CNG vehicles by Recology.

Based on these best and final proposals, Recology's collection cost was more than 10% less than Allied in the first rate period of the contract. A portion of the difference indicated would be reduced by the 1-2% increase for phasing in CNG vehicles as reflected in Recology's costs from the second rate period until the end of the contract. Primarily because of the substantial discount

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Allied was able to offer exclusively for disposal at Ox Mountain Landfill, post-collection services costs for Allied are less than for Recology. However, Allied's total cost remains approximately 4% higher than Recology.

In addition to the Contractor's costs, staff is proposing an increase in the City's franchise fee and implementing a new fee to cover the decommissioning of the Mussel Rock Transfer Station. When the Contractor's compensation and the City fees are combined, the compensation to Recology would be approximately 6% less than the current compensation to Allied. Alternatively, Allied's compensation would be approximately 2% higher.

Rationale for Recommendation

The City is committed to environmental sustainability and requires a solid waste collection partner on whom it can confidently rely, not just to propose new services, but to actually implement them in a successful and cost effective manner. Based on a detailed evaluation and analysis performed by HF&H Consultants, LLC (HF&H) which is attached as part of this report, in conjunction with input from city staff who worked with the consultants, it is staff's conclusion that Recology is the company most capable of delivering the required results, for the following reasons:

- Recology is committed to waste diversion services and is recognized nationally for its commitment.
- Recology has demonstrated long term success in the City of San Francisco by providing diversion services to residents, multi-family residential units and businesses in an environment very similar to Daly City. They applied their San Francisco experience to Daly City's current operating environment. Having taken the time to extensively audit collection activities and the composition of materials placed for collection in the City, Recology proposed such approaches that offered the greatest potential for success in Daly City. They are backing up their research with a guarantee to divert 48% of the material they collect, which will move the City from wavering in its achievement of the state mandated 50% diversion goal to levels well-above that which is required.
- Staff is confident that Recology will come forward with continuing improvements to waste management services in the City, rather than waiting for State agencies to incentivize them to take action or the threat of competition forces them to come forward with diversion improvements and cost-saving ideas.
- Finally, Recology accomplishes these improvements while reducing current costs initially by 6%, despite the proposed increase to City fees, which will increase slightly in future years as the Company transitions its diesel fleet to CNG fueled vehicles.

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County Fees

In an effort to determine additional county fees for disposal, the City engaged in repeated discussions with Allied to confirm fees charged at the Ox Mountain landfill. During the BAFO process, HF&H and City staff met with Allied's representative to request consideration of a reduction in their disposal rate proposal to a reasonable disposal rate. Despite the City's efforts, Allied was unwilling to provide competitive landfill rates that results in the City's waste being delivered to Ox Mountain. This would ultimately result in a revenue loss to the County of approximately \$500,000, which is used to fund environmental programs.

Recology's proposal is guaranteed to increase the diversion of recyclable and organic materials in Daly City by nearly 50% through enhanced public education and outreach, thereby reducing the need for the County to expend funds related to these activities on behalf of Daly City. Pursuant to discussions with County representatives, should the County attempt in the future to recover an additional fee from Daly City to support environmental programs countywide, this would occur at a negotiated rate coinciding with the expiration of the pending Franchise Agreement.

FISCAL IMPACT

Activities associated with contract negotiations and the drafting of a new Solid Waste Franchise Agreement have no impact on the General Fund. The Franchisee will reimburse the cost of the City's consultant, HF&H LLC, for assisting with the RFP process and related negotiations.

Subsequent to the Post Collection Services Agreement taking effect, the Mussel Rock Transfer Station will be taken out of service and closed to public due to slope instability that affects both the transfer building and adjacent property. The Mussel Rock Transfer Station Decommissioning fee, including the removal of existing structures, is estimated at \$500,000.

The existing Franchise Fee of 12% has been in effect and unchanged for more than 25 years, despite increases in the CPI and the City's operating costs for management and oversight of the Franchise operations over multiple decades. For Fiscal Year 2014, the Franchise fee on solid waste collection is \$2,117,000. A proposed increase of 1.5% to the current 12% Franchise fee is necessary to insure that the City's General Fund cost of doing business remains revenue neutral. The modest fee adjustment proposed will replace the revenue stream from the lease of the Mussel Rock Transfer Station and public dumping fees with sufficient operating funds to adequately cover the costs of managing the Solid Waste Franchise going forward.

PROJECTED RATE IMPACT

The City establishes Maximum Rates for waste collection and disposal that are designed to provide sufficient revenues to fund all activities and cover all fees provided for under the Agreement. The rate adjustment process is based primarily on changes in the Consumer Price Index (CPI), thus

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ensuring that contractor compensation and associated rate increases remain equitable over the term of the Agreement.

Projected rate impacts for Recology and Allied assume (1) CPI for the San Francisco/Oakland Metropolitan Area of 3% per year; and (2) a City adjustment to current rates for January 1, 2015 equaling 4% equivalent to CPI increases for the period covering mid-2012 to mid-2014.

(A) Recology

The proposed 15-year Solid Waste Agreement with Recology represents a significant improvement over the current recycling services provided to customers in Daly City. The current residential rate for a 32 gallon container is \$25.58. With Recology's projected rate increases over the first six years of the agreement, the rate at the end of the sixth year will be \$29.10 for an average annual increase over that time of about 2.3%. The contract with Recology further reflects the phasing in of CNG collection equipment.

Rate Period 1 (Years 1 and 2)

Recology will receive a projected CPI adjustment of 6%. The labor and equipment costs portion of the CPI adjustment will reflect the then-actual labor cost increases contained in the agreement.

Rate Period 2 (Years 3 and 4)

Recology will receive a projected 6.5% adjustment based on an estimated total of 6% CPI increase and 0.5% for the first increment of phased-in of costs for the CNG vehicles.

Rate Period 3 (Years 5 and 6)

Recology will receive an adjustment of up to 10% based on review of allowable costs. In addition to any adjustment covered by the 10% cap, Recology will receive an increase of 2.2% for the second increment of phased-in of costs for the CNG vehicle purchases. Any adjustment due to changes in City fees or demonstrated costs increases due to change in law will be made in addition to the 10%.

(B) Allied

Rate Period 1 (Years 1 and 2)

Allied will receive a projected CPI adjustment of 6%. The labor and equipment costs portion of the CPI adjustment will reflect the then-actual labor cost increased contained in the agreement.

Rate Period 2 (Years 3 and 4)

Allied will receive an adjustment of up to 10% based on review of allowable costs. Any adjustment due to changes in City fees or demonstrated costs increases due to change in law will be made in addition to the 10%.

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Rate Period 3 (Years 5 and 6)

Allied will receive a projected 6% adjustment based on CPI.

ENVIRONMENTAL ASSESSMENT

ESA, an environmental consulting firm, reviewed the three proposals to determine the potential impacts of each, particularly related to the services provided, the proposed vehicles used for garbage conveyance, and the proposed hauling routes. Based on their extensive review, ESA found that the three alternatives involve the continuation of solid waste collection, transport, processing, and disposal services to Daly City residents and businesses for recyclables, organic materials, and refuse. The three alternatives would entail only minor changes to the existing services currently provided by Allied Waste Services of Daly City. Changes may include the type of truck used and changes to truck routes and the final destinations for the collected materials. No construction activities are proposed and no expansions of existing services or facilities are proposed. Therefore, ESA concludes that all three of the proposals meet the exemption statute pursuant to CEQA Guidelines Section 15301 Class b) related to Existing Facilities.

CONCLUSION/SUMMARY

An executed Memorandum of Understanding with the attached draft Franchise Agreement for collection and post-collection services from both Recology and Allied is attached to this report. City staff and all proposed contractors for collection and post-collection services have agreed to each of the business terms as outlined in the attached MOUs.

Based on the foregoing, it is recommended that the City Council select Recology as the new Franchisee and authorize the City Manager to execute a final Franchise Agreement, as outlined in the attached MOU to provide Solid Waste, Recyclable and Organic Materials Collection and Post-Collection Services, including its subcontractors South San Francisco Scavenger Co. (SSFSC) for transfer and construction and demolition (C&D) debris processing services; South Bay Recycling (SBR) for source separated recyclables materials processing; and Waste Connections for disposal services.

Alternative to the Recommendation:

The staff and HF&H have provided an alternative for consideration by the Council (See Attached Exhibit "A"), that allows for a contract with Allied including its subcontractors SSFS Co for transfer and C&D debris processing services; and SBR for source separated recyclables materials processing. Allied is the current franchisee, is familiar with the City and has proposed a comprehensive list of services that are responsive to the RFP. Selecting them would allow the County to continue to collect the fees paid for material generated in Daly City and disposed at the Ox Mountain Landfill.

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This alternative recommendation is offered reluctantly in light of the history of performance issues outlined previously, but with respect for the Council's prerogative to not accept the City Manager's recommendation.

Next Steps:

Following the City Council's selection of a franchisee and subcontractors, several steps will occur over the coming months.

- Staff will recommend to Council an adjustment to current rates, effective January 1, 2015, in accordance with our existing agreement with allied.
- Not later than March 1, 2015 staff will return with a notice to Allied with an extension of the current agreement to February 1, 2016, to allow sufficient time for the selected franchisee and subcontractors to order necessary equipment and perform necessary start-up activities prior to the commencement of services.
- Staff will return to Council early next year to finalize the City fees, in accordance with the discussion above.
- Staff will return later in 2015 with recommended rates for the new agreement with the new franchisee.

Staff is available to provide any additional information desired by the Mayor or Councilmembers.

Respectfully submitted,



Patricia E. Martel
City Manager

Attachments:

1. Hilton Final Evaluation Report
2. Memorandum of Understanding and Draft Franchise Agreement – Recology Daly City
3. Memorandum of Understanding and Draft Franchise Agreement – Allied Waste Services
4. Memorandum of Understanding Post Collection Services – Recology/SBR
5. Memorandum of Understanding Post Collection Services – Recology/Blueline Transfer Station
6. Memorandum of Understanding Post Collection Services – Allied Waste Services/SBR
7. Memorandum of Understanding Post Collection Services – Allied Waste Services/Blueline Transfer Station

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November 13, 2014

Ms. Patricia Martel
City Manager
City of Daly City
333 90th Street
Daly City, CA 94015

Subject: Solid Waste Competitive Procurement – Evaluation Report

Conclusion and Findings

Conclusion

The City has two clear choices for the provision of collection and post-collection services.

- If the City wishes to receive diversion programs designed to achieve higher diversion levels, provided by a firm which has successfully performed in a comparable urban environment (i.e., San Francisco), at lower cost, and is willing to change contractors and disposal sites; Recology is the logical selection.
- If the City is satisfied with Allied's past performance (supplemented by an added Municipal Services Manager with a dual role of contract management and contract compliance), wishes to avoid changing contractors, and is willing to accept lower levels of diversion and higher costs; it would want to approve Allied's contract.

Despite which contractor is selected:

- The diversion levels will increase, but by different amounts.
- Each company will have to effectively manage their transition plans to minimize the increase to customer complaints during the implementation stage, as new services are provided, customer containers are changed, and service days are changed.
- Rate impacts will be relatively minimal, despite the increases in service.

Findings

The RFP process has met the City's goals as described on page one of this Evaluation Report, as follows:

- The competitive process has been managed to ensure process integrity.
- The use of two RFPs maximized competition and provided a range of strong proposals for both collection and post-collection services.

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- The RFP process afforded the opportunity to consider and select enhanced, but affordable services. In particular, this was achieved by through receipt of distinct collection proposals for base services and alternative services.
- The RFP process has resulted in new programs that will dramatically increase diversion and reduce the use of landfills, a significant step towards achieving the City's Green Vision goals.
- The process assures the City that labor protections will remain in place.

With regard to the proposal evaluation:

- Allied's and Recology's proposals provide for a significant reduction from the current number of routes, trucks and collection crews, at a correspondingly lower cost. These reductions are consistent with their operating assumptions. South San Francisco Scavenger proposed a similar number of the number of routes, trucks and collection crews to current conditions, at a correspondingly higher cost. All three companies proposed diversion rates in excess of the RFP minimum requirements, and their proposed diversion levels appear reasonable. Recology offered the greatest amount of diversion for both base and alternative services.
- The City's separate RFP for post-collection services resulted in a wide range of viable options for transfer, processing and disposal. It is unlikely that all of these options would have been made available had the City issued a single RFP for collection and post-collection services. With the exception of Allied's proposed pricing for third party use of the Ox Mountain Landfill, the selected facilities offer economically competitive options for each service.
- The final collection and post-collection teams offer comprehensive service packages at below current costs.

Background

Daly City conducted a competitive process that resulted in two agreements for provision of recycling, organics (yard trimmings and food scraps), and solid waste management services.

The City's agreement with Allied Waste Services (Allied), the current service provider ends June 30, 2015, with a City option to extend to January 31st, 2016. Allied, and its predecessors Browning Ferris Inc (BFI) and Daly City Scavengers have provided solid waste services under agreements dating to at least 1959. The current process is probably the City's first competitive procurement for these services. The Council's Solid Waste Committee, the City Manager, the City Attorney, and the Finance Director and Finance Department staff oversaw HF&H's work in developing and conducting the process described below.

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This Evaluation Report (Report) summarizes the City's key goals for the process, describes key issues shaping the two requests for proposals (RFPs) issued by the City, summarizes the proposal evaluation, provides highlights of the selected proposals, describes key features of the two agreements, and summarizes final pricing and rate impacts. Referenced figures are included at the end of the report.

The City's Key Goals

The City established key goals for the competitive process:

- Provide for "good governance" through conduct of a transparent, competitive process.
- Maximize competition.
- Provide opportunities for enhanced, but affordable services including expanded diversion programs.
- Continue progress towards recycling and Green Vision goals through significant increases in diversion, with more material recycled and less disposed at the landfill.
- Labor policy and peace, including retention of workers.

Key Issues

The following key issues have shaped the City process:

1. Closure of the Mussel Rock Transfer Station.
2. Cost-effective disposal capacity.
3. Meeting State diversion requirements.
4. Recognition of the key role multi-family residents will play in achieving higher levels of diversion.

Mussel Rock Transfer Station

The City's Mussel Rock Transfer Station must close to public use due to slope instability that affects both the transfer building and the land. Having a local transfer option is a valuable resource because it reduces costs with consolidation of individual collected loads of material into large transfer vehicles, and provides a local option for "self-haul" by residents and businesses. Fortunately, there are several private sector transfer stations nearby to help address both of these needs, and one or both will play a key role in the City's future management of waste.

Disposal Capacity

The Council Committee directed staff to try to reserve disposal capacity at a reasonable price prior to the competitive process. Allied currently uses the Ox Mountain Landfill near Half Moon Bay, which is owned by its parent, Republic Services. Ox Mountain is the only solid waste landfill in San Mateo County. While the County at one time regulated the maximum rate that can be charged at Ox Mountain, that is

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no longer the case. City staff and HF&H conducted an unsuccessful sole source negotiation with Allied regarding commitment of disposal capacity and pricing at Ox Mountain. Allied was unwilling to provide a competitive disposal price without a significant sole source extension of the current collection agreement.

Meeting and Exceeding State Diversion Requirements

As shown in Figure 1, Daly City has not been in full compliance with State diversion requirements under AB 939. As shown in Figure 1, the State has recently switched from a simple percentage diversion goal to per-capita and per-employee measures of material disposed, based on pounds-per-person. These two measures equate to the 50% diversion goal of AB 939. In comparing Daly City to the other agencies in Figure 1 for the year 2010, the actual disposal rates for the other communities were all less than the per-capita disposal goal (i.e., they are achieving in excess of 50% diversion), while Daly City is not. In addition, recent State legislation has set specific diversion program requirements for businesses and multi-family customers, as well as for specific types of material such as organics (yard trimmings and food scraps); and set a statewide goal of 75 percent diversion. The City must meet the 50 percent goal on a consistent basis, and prepare to meet potentially higher State goals.

The collection contractor's programs are the key factor in determining the City-wide diversion rate. Allied currently diverts about 25 percent of the material it collects. The collection RFP required a minimum initial goal of diverting 30 percent of collected material, increasing to 40 percent over time as a means for ensuring compliance with State goals. In order to understand the impacts of adding new diversion programs, the collection RFP requested proposals for "base services" which are nearly the same as the current services, and "alternative services" to provide options for enhanced diversion.

The Role of Multi-Family Residences

Multi-family residences are a key component of the residential profile of the City, and will be a key factor in the future success of diversion programs. Multi-family recycling and organics programs are challenging in most communities for a variety of factors such as tenant turnover, and adequacy of space for containers. The term, "multi-family" covers a wide range of types of residences from three and four unit apartment buildings, to large apartment complexes with several thousand units at different locations. Multi-family residences also vary from condominium complexes that are primarily owner-occupied to tenant-occupied apartments.

A key goal for the RFP process was to solicit proposals to respond to this wide range of multi-family housing. The collection RFP required that proposers develop programs for smaller apartment complexes (below 50 units), large apartment complexes (50 units and above), and condominiums, town homes and mobile home parks. City and HF&H staff met with multi-family residents and property management staff to update them on the process, and to receive input for the RFP. Staff from the City Manager's Office facilitated tours of many of the larger complexes during proposal development to ensure proposers would develop programs through direct observation.

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Request for Proposal (RFP) Design

Two RFPS

Prior to release of the RFPs, City and consultant staff identified, and met with potential proposers with the goal of maximizing the number of high quality proposals. As an additional step in encouraging competition and strong proposals, the Council Committee approved the release of two separate RFPs – one for collection and one for post-collection services. The collection RFP covered all activities related to collection from residents and businesses, and hauling of the material to a transfer, processing or disposal facility. The post-collection RFP provided for the operation of transfer, processing and disposal facilities. Processing services include processing of recyclables, organic materials, and construction and demolition material. Issuing two RFPs helped ensure receipt of proposals from post-collection companies that might not have proposed were collection services also required, including from alternative disposal sites. The two RFPs provided for 10 year agreements, with proposers encouraged to offer additional benefits for award of a 15 year agreement.

Receipt of Proposals

Collection Proposals

The City received three proposals to provide collection services from Allied, Recology, and South San Francisco Scavenger, Inc., all of which are active in the immediate area. Figure 2 provides summary information for the three proposers. With three high-quality proposals, the City achieved its goal of maximizing the availability of good collection options.

Post-Collection Proposals

The City received four proposals for a wide range of transfer, processing, and disposal services at eleven facilities. The four proposers included Allied, Recology, and South San Francisco Scavenger, Inc. (doing business as Blue Line Transfer Inc.), as well as South Bay Recycling, the operator of the Shoreway Environmental Center in San Carlos. Figure 3 provides summary information for the four primary proposers and their affiliates and subcontractors.

Proposal Evaluation and Selection

Initial Review

Upon receipt of each set of proposals, HF&H began a structured review and evaluation process following the guidelines established in Section 6 of the collection RFP. Key steps in the initial review included:

- Conducting an initial review for completeness to ensure all required elements of the RFP were addressed.
- Reviewing cost proposals for compliance with RFP requirements, reasonableness, and mathematical accuracy.

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- Reviewing each proposer's qualifications for the firm and for the key proposed staff.
- Contacting proposers as necessary to clarify submitted information.

In addition, HF&H reviewed the proposer exceptions to the RFP and draft agreement in consultation with the City Attorney, and provided the City Attorney proposal information related to litigation and regulatory compliance, and compliance with labor issues. Finance Department staff reviewed collection proposer language regarding City-Contractor coordination for the City's customer billing process as part of the later, technical evaluation.

Findings

All of the proposers are well established service providers active in the Bay Area, with service to many local and regional communities. Thus, it was decided that reference checks would be unnecessary. Based on the initial review, all proposals were deemed to have met the initial review requirements for further evaluation.

Evaluation of Collection Proposals

The collection evaluation focused on comparing the proposals to each other, and to current practice with the goal of identifying key service and cost differences between the proposals. HF&H staff reviewed the "base services" and "alternative services" proposed by the three companies. The "base services" programs reflect the same services as residents and businesses currently receive, and the evaluation focused on each company's approach to collection:

- Allied proposed to use single-body trucks for cart collection, with separate trucks for recyclables, organic materials, and solid waste. Allied proposed to "direct haul" material to the Ox Mountain Landfill on Highway 92 near Half Moon Bay, rather than to deliver the material to a closer transfer station. This issue is discussed further below.
- Recology proposed to use split body trucks for residential collection, with one compartment for recyclables and another for solid waste. Split body collection has the advantage of reducing the number of trucks driving by each home from three to two. If the equipment for loading the two compartments is not operated properly, split body collection can lead to "cross-contamination", with recyclables falling into the solid waste compartment and vice versa, however Recology has extensive successful experience in use of split body trucks, including in San Francisco.
- South San Francisco Scavenger proposed to use single-body trucks for cart collection with separate trucks for recyclables, organic materials and solid waste, with transport to Blue Line Transfer Station.

HF&H compared the proposals based on total cost, and key operational data for number of routes, the number of trucks, and collection staff positions. Labor and equipment are generally the areas of highest cost in providing collection services, and understanding these costs is key to understanding operational assumptions made by each proposer. Figure 4 provides a summary of total base services costs for the

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three companies. Figure 5 compares the number of proposed routes, trucks and collection personnel, compared with data for current service.

Viewed together, Figures 4 and 5 tells us that:

- Allied, Recology and South San Francisco Scavenger rank from lowest to highest in cost, respectively.
- Allied and Recology both proposed significantly lower numbers of routes, trucks, and reduced crew sizes compared to what Allied currently provides in Daly City, and this is reflected in the costs. South San Francisco Scavenger proposed a level of effort generally comparable to that Allied currently provides in Daly City.
- Allied and Recology both cited the ability to reconfigure routes to reduce the total number needed, and Allied cited efficiencies from the use of automated collection. Recology also cited the efficiencies of using split body trucks in support of its ability to reduce routes, noting that the efficiencies of the semi-automated, split body collection vehicles would allow them to eliminate one collection route compared to using single body trucks.
- Allied and Recology would rely on a longer average workday of about 9 hours, while South San Francisco Scavenger assumed an 8 hour workday.

As noted above, Allied intends to rely on the use of direct haul to transport residential and commercial solid waste to the Ox Mountain Landfill. A later section of the Report addresses protections for ratepayers should either Allied or Recology be unable to achieve their planned routing efficiencies within their proposed costs.

The RFP requirement for “alternative services” provided for company submittal of approaches and costs for increasing diversion with new or modified collection and processing programs, such as:

- Addition of food scraps for collection in the single family yard trimmings cart.
- Processing of multi-family material that is currently disposed, to recover both recyclables and organic material for composting.
- Expansion of commercial food scraps program to reach many more businesses.
- Expansion of processing for construction and demolition materials to recover more recyclable and reusable materials.

Figure 6 provides a summary of each company's proposed diversion levels for base and alternative services, compared to the minimum levels contained in the RFP. Recology proposed the highest level of diversion for both base services and alternative services. The difference in Allied's and Recology's proposed diversion levels is discussed further below with regard to their respective approaches to diversion programs.

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Findings

Allied's and Recology's proposals provide for a significant reduction from the current number of routes, trucks and collection crews, at a correspondingly lower cost. These reductions are consistent with their operating assumptions. South San Francisco Scavenger proposed a similar number of the number of routes, trucks and collection crews to current conditions, at a correspondingly higher cost. All three companies proposed diversion rates in excess of the RFP minimum requirements, and their proposed diversion levels appear reasonable. Recology offered the greatest amount of diversion for both base and alternative services.

Evaluation of Post-Collection Proposals

Similar to the collection proposals, HF&H conducted an initial evaluation of the post-collection proposals. Like the collection proposers, the post-collection proposers (and their subcontractors) offered established, well-known and proven services at a range of Bay Area facilities. Thus the evaluation focused primarily on pricing, matching collected materials with processing options, and the ability of each proposed facility to commit to accept materials from Daly City for a minimum of ten years. Transfer station proposers also provided costs for transport to specific facilities to factor in actual required transport time, tolls, etc. The result was selection of post-collection facilities based primarily on lowest combined cost for tip fees and transport. Figures 7A through 7D provide facility tip fees only, for the selected transfer, processing and disposal services, respectively.

Post-collection proposers had the option to propose different facility pricing depending on whether they collected the material themselves, or if another proposer was selected to collect. There were several instances of this type of pricing, but in all but one case the differential was relatively small and did not significantly affect final facility selection or pricing. The one exception was Allied's disposal pricing for use of Ox Mountain. As shown in Figure 7D, Allied's pricing for Ox Mountain with Allied collecting, is \$45.00 per ton. However, Allied's proposed pricing for Ox Mountain with a third party collecting was \$79.90 per ton. Allied has not provided a cost-related reason for this large pricing differential. Thus we can only interpret it at face value - as an exercise of Allied's unilateral control over pricing at San Mateo County's only landfill. As a result, it is far less expensive for Recology to use the Potrero Hills Landfill with a combined transfer and facility tip fee of \$73.83 per ton, than to use Ox Mountain for a combined cost of \$106.51 per ton.

Findings

The City's separate RFP for post-collection services resulted in a wide range of viable options for transfer, processing and disposal. It is unlikely that all of these options would have been made available had the City issued a single RFP for collection and post-collection services. With the exception of Allied's proposed pricing for third party use of the Ox Mountain Landfill, the selected facilities offer economically competitive options for each service.

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Interviews

Following evaluation of the proposals and completion of additional clarifications, City and consultant staff conducted interviews with collection and post-collection proposers. Prior to the interviews HF&H distributed detailed questions to proposers to assist the evaluation panel in comparing the proposals based on the verbal and written responses.

Following the interviews, the evaluation panel narrowed its focus to completing evaluation of the collection proposals submitted by Allied and Recology. This decision was made based on price. South San Francisco Scavenger is well qualified, submitted a technically strong proposal with many fine features including its diversion programs, and conducted a very effective interview. However, as shown in Figure 4, South San Francisco Scavenger's proposed collection costs were significantly higher than for the other two companies. (However, Blue Line Transfer Station, the facility owned and operated by South San Francisco Scavenger is recommended for provision of a range of post-collection services, as discussed below.)

At this time, the evaluation panel also decided to proceed with the addition of the package of alternative services proposed by Allied and Recology. The added collection cost for these alternative programs was relatively small, with final additional annual costs above base services of about \$93,000 for Allied, and \$256,000 for Recology.

Best and Final Offers

The evaluation panel developed requests to Allied and Recology for submittal of "Best and Final Offers" (BAFOs). Each company was provided the opportunity to provide further value for the base 10 year term, as well as a 15 year term, and was asked to integrate its alternative services into its final proposed pricing. For Allied, the evaluation panel noted concern that:

1. Allied's proposed costs might not be sufficient to cover the proposed services, due to the direct haul to Ox Mountain Landfill.
2. Allied's proposed diversion efforts appeared to focus on developing specific plans once a new agreement was awarded, rather than incorporating them in its proposal.
3. Allied appeared to be overly reliant on use of a consultant rather than Allied staff to ensure the success of outreach and technical assistance efforts.
4. Allied emphasis, counter to the City's RFP process, on "bundling" collection and post-collection services, making it difficult for the City to select them only for collection services, or for post-collection services.
5. Allied should reduce its proposed tip fee for third party use of Ox Mountain Landfill to a reasonable level.

In response, Allied restated its commitment to its diversion programs, proposed an additional \$200,000 for a management position to oversee its diversion efforts, and stated an interest in developing a higher

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diversion plan over the term of the agreement focused on increased processing of mixed waste at its Newby Island Facility. Allied declined to provide a lower price for third party use of Ox Mountain Landfill.

Allied and Recology were each provided the opportunity to make a final proposal for a term in excess of 10 years. Allied's five bullet point response requesting a 15 year term was incomplete and simply proposed to defer two future rate increases, making up half that savings in the following rate increase, and would require directing of recyclables to the Newby Island Recyclery. No other information, cost forms or changes to the draft agreement were provided or referred to. It is therefore incomplete with regard to how this proposal relates to: Allied's technical and cost proposal; the current rate setting process (which has a two year rate period vs. the annual adjustments proposed by Allied); and the proposed rate setting process contained in the new agreement.

For Recology, the selection panel requested the company consider means for reducing cost without adversely affecting its proposed recycling services. Recology responded with a complete proposal providing a significant reduction in cost based on proposing a 15 year term with initial use of used diesel trucks and phasing-in of CNG trucks. With the proposal, half the fleet will be converted to CNG by the sixth year of the contract, and the entire fleet will be CNG-based by the ninth year.

Summary of Selected Collection Programs

Figures 8, 9, and 10 summarize the key differences between the: collection services; outreach and public education services; and, diversion programs offered by Allied and Recology.

With regard to Figure 8, both companies proposed a similar array of programs focused on increasing diversion from all customers through enhanced recycling and organics collection efforts. The proposals and the detailed service exhibits to the draft agreements provide additional, differentiating detail in how programs will be provided.

Allied and Recology both proposed comprehensive, logical public education and outreach strategies, as shown in Figure 9. Both companies' plans state a commitment to targeted technical assistance, community engagement (including involvement with Daly City schools), and participation in community events; however, Recology's interview conveyed a clear sense of an approach that is integrated into the company structure, while Allied was appeared more reliant on third party, consultant assistance.

With regard to the diversion programs summarized in Figure 10, Recology's proposal was notable for its proactive approach, identifying "low hanging fruit" based in part on a detailed analysis of current collection service at Daly City businesses and multi-family complexes. Recology identified a City-wide shortage of recycling capacity that leads to recyclables being disposed in the trash container. For example, a business may have a 2 yard recycling bin collected once per week, but needs a 3 yard recycling bin or needs the bin collected twice-per-week. Recology's recommended solution is "right-sizing" – ensuring all customers have adequate capacity for maximize their recycling. For single-family residents this would mean a default size 96 gallon cart for recycling, with smaller sizes available as requested. Recology also identified a small number of businesses that use compactors and generate

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large amount of foods scraps and other organic materials. Recology believes that processing this material instead of dumping it will provide a significant boost in diversion.

Selected Teams

Figure 11 summarizes the two selected teams. The Allied option is for a ten year term, use of CNG trucks with direct haul of solid waste to the Ox Mountain Landfill, and the additional management position to oversee diversion efforts. The Recology option is for a 15 year term, with phasing-in of CNG trucks.

For post-collection, the Blue Line Transfer Station and the Shoreway Environmental Center play key roles for transfer and recyclables processing, whether Allied or Recology is selected. Since the total costs for transport and tip fees are similar, Allied and Recology will each use their preferred affiliate for organics processing - West Contra Costa Landfill for Allied and South Valley Organics for Recology. Allied will use Ox Mountain Landfill for disposal of solid waste while Recology will use the Potrero Hills Landfill.

The Shoreway Environmental Center, located in San Carlos is owned by the South Bayside Waste Management Authority (SBWMA) which represents twelve cities and other public agencies in central and southern San Mateo County. South Bay Recycling (SBR), Inc., is Shoreway's current operator with a contract term ending December 31, 2020. SBR and the SBWMA have an agreement governing acceptance of material from non-members such as Daly City. The intent, as discussed with SBR and SBWMA staff is that the Shoreway facility would be available to process Daly City recyclables through SBR's contract term and that the SBWMA's Board of Directors would need to consider the approval of processing arrangements beyond this date (the SBWMA provided a letter of support on October 16th 2014 to this effect).

City and consultant staff also examined several other options for Allied and Recology:

- Allied use of the Blue Line facility for transfer of solid waste in lieu of direct hauling the material to Ox Mountain would add over \$500,000 per year in cost.
- If the City were to pay San Mateo County disposal fees, currently \$9.83 ton in addition to paying Solano County disposal fees for Recology use of Potrero Hills Landfill, it would add about \$260,000 per year in cost.
- Were Recology to use Ox Mountain Landfill at Allied's third party rate it would add about \$900,000 per year in cost.
- Were Recology to begin the agreement with a full fleet of CNG vehicles, and use Potrero Hills Landfill, it would add about \$2.1 million per year in cost.

The evaluation panel would also like to thank the City of Sunnyvale for submission of a proposal to provide mixed waste processing at the SMaRT Station. There is likely the future opportunity for Daly City to use the SMaRT Station should it wish to add mixed waste processing to achieve higher future diversion.

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Final Pricing and Rate Impacts

Figure 12 provides first year costs and rate impacts for the two options under consideration. Figure 12 provides the total annual contractor costs for collection and post-collection services for the two companies, of about \$14.2 million for Allied and \$13.6 million for Recology (see Row 3). Figure 12 shows the addition of City fees, including a new Mussel Rock Transfer Station Decommissioning Fee, (see Row 6, set at \$0 and to be levied at a later date), and a proposed increase to the current 12% franchise fee of 1.5% (see Row 8). Combining contractor compensation and City fees results in a total annual cost in current dollars of about \$16,971,644 and \$16,306,133 for Allied and Recology, respectively (see Row 10).

With relation to rate revenue, the "Current" column of Figure 12 provides current annual rate revenue of about \$16,694,000. Under the City's current agreement with Allied, the current rates will be increased effective January 1, 2015. City staff have received a rate application from Allied and it is under review. For purposes of this Report, the rate adjustment is assumed to be 4%, the 2012-2014 change in the CPI. Total projected required revenues are shown on the row entitled "Total Revenue Requirement, 2015\$", with percentage impacts shown on the following row. Thus, at this time, there will be a projected decrease of about 2.1% in rates if Allied is selected, and a projected decrease of about 6.0% if Recology is selected.

Figure 13 provides a projection of rates over the first six years of an agreement with either Allied or Recology.

Findings

The RFP process described in this Report has met the City's goals as described on page one of the Report, as follows:

- The competitive process has been managed to ensure process integrity.
- The use of two RFPs maximized competition and provided a wide range of strong proposals for both collection and post-collection services.
- The RFP process afforded the opportunity to consider and select enhanced, but affordable services. In particular, this was achieved by through receipt of distinct collection proposals for base services and alternative services.
- The RFP process has resulted in new programs that will dramatically increase diversion and reduce the use of landfills, a significant step towards achieving the City's Green Vision goals.
- The process assures the City that labor protections will remain in place.

The City has two clear choices for provision of collection and post-collection services. If the City wishes to receive high quality diversion services provided by a firm with a proven track record, Recology is the logical selection. Recology's proposal offers the benefit of a longer term at lower cost, with greater diversion. If the City wishes to continue with Allied, the current service provider, the additional

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Municipal Services Manager may help ensure improved future performance. In either case, the rate impacts will be relatively minimal.

Key Features of the Agreements

Figure 14 summarizes the key features of the two agreements, including performance standards and penalties for noncompliance, diversion guarantees by year with associated penalties, and cost controls.

Completing the Process

The final steps prior to the Council meeting were to finalize draft agreements with Allied and Recology, and to provide Allied and Recology, and the selected post-collection facility operators with general direction for developing subcontracts for post-collection services.

Very truly yours,
HF&H CONSULTANTS, LLC



Robert D. Hilton, CMC
President



Peter M. Deibler
Senior Project Manager

Attachment: Evaluation Report Figures

EVALUATION REPORT FIGURES

Figure 1 Diversion Comparisons

	Daly City	Pacifica	Millbrae	Burlingame	San Mateo	San Francisco
Pounds Per Capita Disposal Goal	2.6	3.5	5.3	8.3	5.8	6.6
Actual Disposed	2.8	2.9	3.5	6.1	3.9	3.0
Pounds Per Employee Disposal Goal	16.8	33.2	22.8	6.9	13.3	10.6
Actual Disposed	18.4	28.9	16.8	5.4	10.0	5.0

Figure 2 Collection Proposal Summary

Proposer	Headquarters	Corporate Organization	Sample of Bay Area Communities Served
Allied Waste Services	Phoenix, Arizona	Subsidiary of Republic Services, publicly traded	Alameda County (Fremont), West Contra Costa County (Richmond, 4 other public agencies) Central Contra Costa (Walnut Creek and 5 other public agencies), Santa Clara County (Milpitas, San Jose)
Recology, Inc.	San Francisco	Privately held, Employee Stock Ownership Plan (ESOP)	San Francisco, Pacifica, Half Moon Bay, San Bruno, South Bayside Waste Management Authority (SBWMA, 12 San Mateo County jurisdictions), Mountain View
South San Francisco Scavenger	South San Francisco	Privately held	Brisbane, Millbrae, South San Francisco, San Francisco Airport

EVALUATION REPORT FIGURES

Figure 3 Post-Collection Proposal Summary

Proposer	Facilities, Locations	Services	Sample of Bay Area Communities Served
Allied Waste Services	- Newby Island Recyclery, Milpitas (Allied) - West Contra Costa Landfill, Richmond (Allied) - Ox Mountain Landfill, Half Moon Bay (Allied)	- Recycling, Mixed Waste Processing - Composting of Organics - Disposal (Allied)	- San Jose, Milpitas, Fremont - Cities in western Contra Costa County - San Mateo County communities
Blue Line Transfer, Inc. (South San Francisco Scavenger)	- Blue Line Transfer Station, South San Francisco (Blue Line) - Blue line, and Alameda County Industries, San Leandro (A Blue Line affiliate) - Potrero Hills Landfill, Fairfield (Waste Connections)	- Transfer - Recycling - Disposal	- Brisbane, South San Francisco, San Francisco Airport - Various East Bay cities - Wide range of Northern California jurisdictions
Recology, Inc.	- San Bruno Transfer Station, San Bruno (Recology) - South Bay Recycling*, Shoreway Environmental Center, San Carlos (South Bayside Waste Management Authority) - South Valley Organics, Gilroy (Recology) - SMaRT Station, owned by City of Sunnyvale - Hay Road Landfill, Vacaville (Recology)	- Transfer - Recycling - Composting of Organics - Mixed Waste Processing - Disposal	- San Bruno - South Bayside Waste Management Authority – 12 San Mateo County jurisdictions - Range of Bay Area communities - Sunnyvale, Mountain View and Palo Alto - Wide range of Northern California jurisdictions
South Bay Recycling, Inc.*	Shoreway Environmental Center, San Carlos	Recycling	South Bayside Waste Management Authority, (12 San Mateo County jurisdictions)

*South Bay Recycling proposed both as a subcontractor to Recology and as a prime contractor.

EVALUATION REPORT FIGURES

Figure 4 Collection Cost Comparison - Base Services

	Allied Waste	Recology	South San Francisco Scavenger
Annual Cost of Operations			
Labor-Related Costs	\$4,152,752	\$3,822,135	\$5,157,341
Equipment Costs	\$1,115,981	\$1,537,300	\$2,294,043
Fuel Costs	\$693,242	\$627,380	\$702,000
Other Costs	\$117,642	\$286,354	\$96,816
Total Allocated Costs - Labor, Vehicle, Fuel & Other	\$3,408,225	\$3,436,311	\$3,222,955
Total Allocated Costs - Depreciation & Start-Up	\$49,626	\$136,064	\$256,739
Total Annual Cost of Operations	\$9,537,468	\$9,845,543	\$11,729,894
Profit	\$1,455,338	\$1,737,449	\$1,599,531
Pass-Through Costs - Interest Expense	\$379,952	\$513,611	\$622,109
Contractor's Total Collection Costs	\$11,372,758	\$12,096,603	\$13,951,534

Figure 5 Collection Proposals - Technical Comparison for Base Services

	Current	Allied	Recology	South San Francisco Scavenger
Routes	26	21	20	23
Trucks	35	24	23	34
Crew	31	26	24.5	34
Average Scheduled Work Days	N/A	9	9	8

Figure 6 Comparison of Proposed Diversion

Annual Tons	Allied	Recology	South San Francisco Scavenger	RFP Minimum Level
Base Services Diversion Rate	35%	45%	35%	30%
Alternative Services Added Diversion	9%	6%	14%	10%
Total Diversion Rate	44%	51%	49%	40%

EVALUATION REPORT FIGURES

Figure 7A Pricing for Selected Transfer Facilities

Transfer	Solid Waste	Recycling	Organics	Mixed Waste
Blue Line Transfer Station	\$ 12.39	\$ 12.39	\$ 19.00	\$ 12.39
Recology - San Bruno Trans	n/a	n/a	\$ 12.49	n/a

Figure 7B Pricing for Selected Recyclables Processing Facilities

Facility	Single-Stream Recycling	Source Separated Recycling	Mixed Waste Processing	C&D Materials
Blue Line Transfer Station	n/a	n/a	n/a	\$100.00
Newby Island Recyclery	n/a	n/a	\$110.00	n/a
South Bay Recycling - Allie	(\$25.08)	(\$74.24)	n/a	n/a
South Bay Recycling - Reco	(\$35.30)	(\$86.06)	n/a	n/a

Figure 7C Pricing for Selected Organics Processing Facilities

Organics Processing	Food Scraps	Food Scraps w/ Yard Trimmings
South Valley Organics	\$52.95	\$52.95
WCCC Landfill	\$62.00	\$62.00

Figure 7D Pricing for Selected Disposal Facilities

Disposal	MSW
Ox Mountain Landfill	\$45.00
Potrero Hills Landfill	\$21.50

EVALUATION REPORT FIGURES

Figure 8 Summary of Key Collection Services

	Allied Waste Services	Recology
Single Family*	- Weekly, curbside solid waste, recyclables, and organics (including food scraps) collection - Expanded single-stream recyclables accepted - Curbside holiday tree collection - One on-call bulky item collection annually - Curbside used motor oil and cooking oil collection - Curbside household battery and CFL collection	- Weekly, curbside solid waste, recyclables, and organics (including food scraps) collection - Expanded single-stream recyclables accepted - Curbside holiday tree collection - One on-call bulky item collection annually - Curbside used motor oil and cooking oil collection - Curbside household battery and CFL collection - Drop-off locations for household batteries, TVs, and e-waste at no charge
Multi-Family**	- At least weekly solid waste and recyclables collection - Organics (including food scraps) collection to apartment complexes (under 50 units) - Two-stream collection for large apartment complexes (over 50 units) - Valet service available for fee - Holiday tree collection - One on-call bulky item collection event per <u>unit</u> per year	- At least weekly solid waste and recyclables collection - Organics (including food scraps) collection to apartment complexes (under 50 units) - Valet service available for fee - Holiday tree collection and optional on-site mulching of trees to use for landscaping - One on-call bulky item collection event per <u>unit</u> per year
Commercial	- At least weekly solid waste and recyclables collection - Organics (including food scraps) collection upon request and expanded to targeted organics-generating businesses	- At least weekly solid waste and recyclables collection - Organics (including food scraps) collection upon request and expanded to targeted organics-generating businesses
Other	- Kitchen pails provided for residential food scraps “Good Job” notices to reward proper materials handling - Cooking Oil Drop-Off - Community Reuse Event - On-call HHW collection available to be added later	- Kitchen pails provided for residential food scraps - Split-body trucks for residential solid waste and recyclables collection - On-call HHW collection available to be added later - Recycling “buddies”

*Includes multi-family properties with individual, per-unit service.

**Includes larger apartments and other multi-family complexes with centralized collection.

EVALUATION REPORT FIGURES

Figure 9 Summary of Key Outreach and Education Programs

	Allied Waste Services	Recology
Start-Up	<u>Advertising and Print Materials</u> - Announcement of New Services and Subscription Mailer - Notices for Change in Collection Days - Press Releases and Advertisements - Service Brochures, All Sectors <u>Delivery of Special Containers</u> - MFD Recycling Totes - MFD "Green Your Kitchen" Kits - MFD Battery Buckets	<u>Advertising and Print Materials</u> - Announcement of New Services and Subscription Mailer - Notices for Change in Collection Days - Press Releases and Advertisements - Public Access Video - Recycling Blitz <u>Kick-Off Event</u> - Community Picnic
Ongoing	<u>Scheduled Customer Correspondence</u> - Quarterly SFD Newsletters - Annual MFD Newsletter - Annual Commercial Newsletter <u>As-Needed Customer Correspondence</u> - Rate Change Notification - Courtesy/Non-Collection Notices <u>Sector-Specific Visual Aids and Educational Materials</u> - Tenant Move-in/Move-out Guide - AB 341 Compliance Outreach - Recycling Representatives - Commercial Waste Audits and Technical Assistance - Commercial Recycling Workshop - Janitorial and Food Service Employee Training Program <u>Online Presence</u> - Website	<u>Scheduled Customer Correspondence</u> - Annual Service Brochures - Bi-Annual Newsletters <u>As-Needed Customer Correspondence</u> - Courtesy/Non-Collection Notices - Topic-Specific Brochures/Flyers <u>Sector-Specific Visual Aids and Educational Materials</u> - Tenant Move-in/Move-out Guide - AB 341 Compliance Outreach - MFD and Commercial Posters - MFD and Commercial Mandatory Recycling Notices - Commercial "How To" Guide to Food Scrap Collection - Commercial Desk-side Recycling Containers <u>Online Presence</u> - Website - Social Media
Other	<u>Community Engagement</u> - Outreach to Community Groups - Green Business Program - Community Events - Seal of Sustainability Awards <u>School Programs</u> - Education in Daly City Schools - School Recycling Champions - School District Recycling Committee - Annual School Recycling Contest	<u>Community Engagement</u> - Outreach to Business Groups - Recology Volunteer Events - Compost Giveaways - Environmental Days - Coats for Kids Collection Drive - Special Event Boxes <u>School Programs</u> - Education in Daly City Schools - High School Internship Program - Junior Recologist Program

EVALUATION REPORT FIGURES

Figure 10 Summary of Key Diversion Services

Allied Waste Services	Recology Daly City
<u>Residential</u> - Initial and ongoing targeted outreach (see Figure 9). <u>Commercial</u> - Initial and ongoing targeted outreach (see Figure 9). - Dedicated “Recycling Representatives” to be responsible for AB 341 education and enforcement with multi-family and commercial customers. - Outreach to businesses with less than 4-cubic yards of service to ensure recycling containers are onsite and being utilized. - Targeted assistance to the top 50 volume-generating businesses to increase recycling and reduce and prevent waste. - Identification of and outreach to all restaurants to encourage participation in food scraps recycling. - Coordination with schools to ensure proper recycling practices and encourage implementation of food scraps recycling. <u>General</u> - Promotion of an interactive diversion calculator that allows businesses to calculate diversion rate, associated greenhouse gas reductions and cost savings.	<u>Residential</u> - Default 96-gallon residential recyclables cart delivered at roll out along with new outreach material to increase recycling. - Food scraps added to organics, and highlighted in new outreach material. <u>Commercial</u> - Expansion of the existing commercial food scraps pilot program. - Organics processing for pre-identified large generator food waste/organic accounts with compactors. <u>General</u> - Targeted “right sizing” of recycling containers in general, and increased levels of service will lead to additional recyclables capture. - Recycling of materials not previously recycled: batteries, mattresses, Curbside Motor Oil, Bulky Goods, Oil Filters, Environmental Day Material, Cooking Oil, CFL Light Bulbs, Cell Phones, Reusable Items-SVPD Trailers for large MFD’s.

EVALUATION REPORT FIGURES

Figure 11 Final Selected Teams

Collection Contractor	Post-Collection Services
Allied Waste Services	- Blue Line Transfer Station (transfer and recycling) - South Bay Recycling (recycling) - West Contra Costa County Landfill (composting) - Ox Mountain Landfill (disposal)
Recology, Inc.	- Blue Line Transfer Station (transfer and recycling) - South Bay Recycling (recycling) - South Valley Organics (composting) - Potrero Hills Landfill (disposal)

Figure 12 Complete Pricing - Allied and Recology

	Allied	Recology	Current
1 Total Collection Cost	\$ 11,594,268	\$ 10,287,936	N/A
2 Post Collection Cost	\$ 2,591,884	\$ 3,322,549	N/A
3 Total Contractor Compensation	\$ 14,186,152	\$ 13,610,485	N/A
4 Preliminary Revised City Fees			N/A
5 Mussel Rock LF Fee	\$ 400,000	\$ 400,000	N/A
6 Mussel Rock Transfer Decommissioning Fee	\$ -	\$ -	N/A
7 Accounting Clerk	\$ 94,320	\$ 94,320	N/A
8 Franchise Fee (13.5%)	\$ 2,291,172	\$ 2,201,328	N/A
9 Total Fees	\$ 2,785,492	\$ 2,695,648	N/A
10 Total Revenue Requirement, 2014 \$	\$ 16,971,644	\$ 16,306,133	\$ 16,694,278
11 *Total Revenue Requirement, 2015 \$	\$ 16,971,644	\$ 16,306,133	\$ 17,339,197
12 Variance (\$2015) Proposals to Revenues at Current Rates	-2.1%	-6.0%	N/A

EVALUATION REPORT FIGURES

Figure 13 Projected Rate Impacts*

Company	Rate Period 1 (Years 1 and 2)**	Rate Period 2 (Years 3 and 4)	Rate Period 3 (Years 5 and 6)
Allied	6.0%	Review of <u>allowable</u> costs, and up to 10% adjustment for the two years, plus changes in City fees or changes in law.	6.0%
Recology	6.0%	6.5%	Review of <u>allowable</u> costs, and up to 10% adjustment for the two years, plus 2.2% for CNG phase-in, and changes in City fees or changes in law.

Notes

Assumes CPI equals 3 percent.

* Rate periods equal two years and, in general, adjustments will be made on a two-year basis. However, at City discretion, two year adjustments can be applied as individual one year adjustments. For example a six percent CPI adjustment over two years can be applied as 3 percent in the 1st year and 3 percent in the 2nd year.

** Rate Period 1 also reflect actual labor increase per labor agreements and any change in depreciation from proposed.

*** See Figure 12 and related discussion regarding how the two company's revenue requirements (with City fees, and as adjusted for 2015 dollars) relate to projected revenues for 2015 under the current agreement.

EVALUATION REPORT FIGURES

Figure14 Key Features of the Agreements

Issue	Allied	Recology
Start Date	February 1, 2016	February 1, 2016
Base Term	10 years	15 years
Extensions	3 years	3 years
Vehicles	CNG	Diesel, phasing to CNG
Performance Standards/Penalties	Quality of service for collection and customer service	Quality of service for collection and customer service
Diversion Guarantees	44% of collected material. Dates for reaching diversion goal, with penalties: 2017 - 30% 2018 - 33% 2019 - 36% 2020 - 40% 2021 - 43%	49% of collected material. Dates for reaching diversion goal, with penalties: 2017 - 33% 2020 - 42% 2023 - 45% 2025 - 48%
Labor Requirements	Compliant	Compliant
Compensation	See Figure 12	See Figure 12
Cost Controls	Defined "allowable costs". Protection against significant cost increases due to faulty assumptions.	Defined "allowable costs". Protection against significant cost increases due to faulty assumptions.

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FRANCHISE AGREEMENT

FOR

INTEGRATED SOLID WASTE MANAGEMENT SERVICES

BETWEEN

CITY OF DALY CITY

AND

RECOLOGY DALY CITY

FINAL DRAFT

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387 **FRANCHISE AGREEMENT**
388 **FOR INTEGRATED SOLID WASTE MANAGEMENT SERVICES**
389 **BETWEEN THE CITY OF DALY CITY**
390 **AND**
391 **RECOLOGY DALY CITY**
392
393

394 THIS AGREEMENT is made and entered into this ___ day of _____, 2014 by and between
395 the CITY OF DALY CITY ("City") a municipal corporation of the State of California, and Recology Daly City
396 ("Contractor").

397 **RECITALS**

398 Services to be provided under this Agreement shall consist of Collection and disposition of Solid Waste,
399 Recyclables, Compostables, Bulky Goods, Used Motor Oil and Oil Filters, Compostable Waste, and other
400 Discarded Materials, but does not include Collection or Disposal or reuse of Biosolids.

401 This Agreement is entered into for the purpose of providing an exclusive franchise for the provision of
402 Collection Services within Daly City as authorized under California Public Resources Code section 40059
403 and Daly City Municipal Code Chapter 8.12, including acting as the City's Recycling Agent, and to
404 contract for certain other Discarded Materials services and operations as set forth herein.

405 This Franchise Agreement for Integrated Solid Waste Management Services replaces, consolidates, and
406 supersedes all previous agreements and amendments for the provision of services and the operation of
407 transfer and landfill facilities, including those dated April 28, 1959; March 13, 1972; January 3, 1977;
408 February 13, 1978; June 5, 1978; January 8, 1979; November 26, 1979, December 18, 1979; July 26,
409 1982, August 5, 1983; and July 25, 1989, December 14, 1990, and December 12, 1994 (and six
410 amendments) for the provision of Solid Waste, Recyclables, and Compostables Collection, Processing
411 and Disposal services.

ARTICLE 1: DEFINITIONS

The definitions set forth in this Article 1 shall govern the interpretation of this Agreement.

1.1 AB 341

“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

“AB 939” means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), also commonly referred to as “AB 939,” as amended, supplemented, superseded, and replaced from time to time.

1.3 AB 1594

“AB 1594” means the 2014 act to amend Sections 40507 and 41781.3 of the Public Resources Code, relating to solid waste (Chapter 719, Statutes of 2014 [Williams, AB 1594]), also commonly referred to as “AB 1594”, as amended, supplemented, superseded, and replaced from time to time.

1.4 AB 1826

“AB 1826” means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 [Chesbro, AB 1826]), also commonly referred to as “AB 1826”, as amended, supplemented, superseded, and replaced from time to time.

1.5 Affiliate

"Affiliate" means all businesses (including corporations, limited and general partnerships and sole proprietorships) that are directly or indirectly related to Contractor by virtue of direct or indirect ownership interest or common management. They shall be deemed to be "Affiliated with" Contractor and included within the term "Affiliates" as used herein. An Affiliate shall include: (i) a business in which Contractor has a direct or indirect ownership interest, (ii) a business that has a direct or indirect ownership interest in Contractor and/or (iii) a business that 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, as in effect on the date here, 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 that the ownership interest represents.

1.6 Agreement

“Agreement” means this Agreement between City and Contractor, including all exhibits, and any future amendments hereto.

1.7 Alternative Daily Cover (ADC)

“Alternative Daily Cover” means CalRecycle-approved materials other than soil used as a temporary overlay on an exposed landfill face. 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.

1.8 Alternative Intermediate Cover (AIC)

“Alternative Intermediate Cover (AIC)” means CalRecycle-approved 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. 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

“Applicable Law” means all Federal, State, County, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, transportation, Processing or Disposal of Discarded Materials that are in force on the Effective Date and as may be enacted, issued or amended during the term of this Agreement.

1.10 Approved C&D Facility Processing Operator(s), or C&D Processing Operator(s)

“Approved C&D Processing Facility Operator(s),” or “C&D Processing Operator(s)” means the entity(ies) identified in Exhibit K, selected by Contractor, approved by the City, and relied upon by Contractor to provide daily operation of the Approved C&D Processing Facility(ies).

1.11 Approved C&D Processing Facility(ies)

“Approved C&D Processing Facility(ies)” means the facility(ies) identified in Exhibit K to provide C&D Processing services.

1.12 Approved Compostables Facility Processing Operator(s), or Compostables Processing Operator(s)

“Approved Compostables Processing Facility Operator(s),” or “Compostables Processing Operator(s)” means the entity(ies) identified in Exhibit K, selected by Contractor, approved by the City, and relied upon by Contractor to provide daily operation of the Approved Compostables Processing Facility(ies).

1.13 Approved Compostables Processing Facility(ies)

“Approved Compostables Processing Facility(ies)” means the facility(ies) identified in Exhibit K to provide Compostables Processing services.

1.14 Approved Disposal Facility(ies)

“Approved Disposal Facility(ies)” means the facility(ies) identified in Exhibit K to provide Disposal services.

1.15 Approved Disposal Facility Operator(s), or Disposal Operator(s)

“Approved Disposal Facility Operator(s),” or “Disposal Operator(s)” means the entity(ies) identified in Exhibit K, selected by Contractor, approved by the City, and relied upon by Contractor to provide daily operation of the Approved Disposal Facility(ies).

1.16 Approved Facility(ies)

“Approved Facility(ies)” means any one of or any combination of the: Approved C&D Processing Facility(ies); Approved Compostables Processing Facility(ies); Approved Disposal Facility(ies); Approved Recyclables Processing Facility(ies); and/or Approved Transfer Facility(ies).

1.17 Approved Facility Operators

“Approved Facility Operators” means any one of or any combination of the: Approved C&D Processing Facility Operator(s); Approved Compostables Processing Facility Operator(s); Approved Disposal Facility Operator(s); Approved Recyclables Processing Facility Operator(s); and/or Approved Transfer Facility Operator(s).

1.18 Approved Recyclables Processing Facility(ies)

“Approved Recyclables Processing Facility(ies)” means the facility(ies) identified in Exhibit K to provide Recyclables Processing services.

1.19 Approved Recyclables Processing Facility Operator(s), or Recyclables Processing Operator(s)

“Approved Recyclables Processing Facility Operator(s),” or “Recyclables Processing Operator(s)” means the entity(ies) identified in Exhibit K, selected by Contractor, approved by the City, and relied upon by Contractor to provide daily operation of the Approved Recyclables Processing Facility(ies).

1.20 Approved Transfer Facility(ies)

“Approved Transfer Facility(ies)” means the facility(ies) identified in Exhibit K to provide Transfer services.

1.21 Approved Transfer Facility Operator, or Transfer Facility Operator

“Approved Transfer Facility Operator(s),” or “Transfer Facility Operator(s)” means the entity(ies) identified in Exhibit K, selected by Contractor, approved by the City, and relied upon by Contractor to provide daily operation of the Approved Transfer Facility(ies).

1.22 Bin

“Bin” means a Container with capacity of approximately one (1) to seven (7) cubic yards, with a hinged lid, and with wheels (where appropriate), that is serviced by a front end-loading Collection vehicle.

1.23 Biomedical Waste

“Biomedical Waste” means Discarded Materials which are likely to be infectious, pathological or biohazardous, originating from residences, hospitals, public or private medical clinics, departments of research laboratories, pharmaceutical industries, blood banks, forensic medical departments,

mortuaries, veterinary facilities and other similar facilities and includes (without limitations) equipment, instruments, utensils, fomites, laboratory wastes (including pathological specimens and fomites attendant thereto), surgical facilities, equipment, bedding and utensils (including pathological specimens and disposal fomites attendant thereto), sharps (hypodermic needles, syringes, etc.), dialysis unit waste, chemotherapeutic waste, animal carcasses, offal and body parts, biological materials (vaccines, medicines, etc.), and other similar materials, but excluding any such Discarded Materials which are reasonably determined by Contractor to be noninfectious, non-pathological and non-biohazardous.

1.24 Biosolids

“Biosolids” means solid, semisolid, or liquid residues generated during primary, secondary, or advanced treatment of domestic sanitary sewage.

1.25 Bulky Goods

“Bulky Goods” means items whose large size precludes or complicates their handling by normal Collection, processing or Disposal methods. Bulky Goods includes, but is not limited to major appliances, carpets; mattresses; clothing; tires; and oversized Yard Trimmings such as tree trunks and branches not exceeding two (2) feet in diameter and four (4) feet in length. Bulky Goods does not include any motor vehicle or any subassembly, major component except tires, and does not include Hazardous Waste.

1.26 Cart

“Cart” means a plastic Container with a hinged lid and wheels that is serviced by an automated or semi-automated Collection vehicle. A Cart has capacity of 20, 35, 64 or 96 gallons (or similar volumes).

1.27 Change in Law

“Change in Law” means any of the following events or conditions:

- a. The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation of any Applicable Law on or after the Effective Date; or,
- b. The order or judgment of any governmental body, on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of City, or of the Contractor or of Approved Facility Operator (or Contingent Facility Operator), 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.

Maximum Rate adjustments for Changes in Law are subject to Contractor (or Approved Facility Operator or Contingent Facility Operator, as the case may be) providing City with substantial evidence as to the amount and reasonableness of their increased costs resulting from the Change in Law, and under certain circumstances may be deferred until the next biennial rate adjustment period, all as provided in Section 6.2.6.

1.28 City

"City" means the City of Daly City, a municipal corporation organized under the laws of the State of California.

1.29 Collect, Collected, Collection

"Collect," "Collected" or "Collection" means the Contractor taking physical possession of, and removing Discarded Materials, whether by manual, semi-automated or automated means, and transporting such materials, pursuant to this Agreement.

1.30 Collection Services

"Collection Services" means the combined activities and obligations of Contractor under this Agreement as related to Collection.

1.31 Commencement Date

"Commencement Date" means the date specified in Section 2.2 when the Contractor is to begin providing Collection and related services required by this Agreement.

1.32 Commercial, Commercial Property

"Commercial" or "Commercial Property" means property used for conducting business thereon, including, but not limited to, retail sales, services, wholesale operations, manufacturing and industrial operations, school facilities (both public and private), other institutions, and governmental agencies, but excluding businesses conducted upon Single-Family Property (as defined herein).

1.33 Compactor, Compaction

"Compactor", "Compaction" means a mechanical apparatus that compresses materials, the Container that holds the compressed materials, and/or the process. Compactors include Bin Compactors of any size serviced by front-loading Collection vehicles and Debris Box Compactors of any size serviced by Debris Box or roll-off Collection vehicles.

1.34 Compostables

"Compostables" means Discarded Materials that have been source-separated with the intent to be processed through Composting, including but not limited to Yard Trimmings, Food Scraps, paper contaminated by Food Scraps, waxed paper, and compostable food service ware, pieces of unpainted and untreated wood or sawdust, and small pieces of unpainted gypsum wallboard that the City permits, directs or requires Service Recipients to place separately for Collection by Contractor.

1.35 Composting

"Composting" means the controlled or uncontrolled biological decomposition of organic constituents such that the resulting material meets the maximum acceptable metal concentration limits specified in Section 17868.2 and pathogen reduction requirements specified in Section 17868.3 of Title 14, California Code of Regulations Chapter 3.1.

1.36 Construction and Demolition Debris (C&D)

"Construction and Demolition Debris" and "C&D" means materials resulting from construction, renovation, remodeling, repair, or demolition operations relating to or resulting from a building, structure, pavement or other improvement, including concrete, brick, bituminous concrete, rubble, wood and masonry, composition roofing and roofing paper, steel, and other metals such as copper, but excluding liquid wastes and Hazardous Wastes.

1.37 Containers

"Containers" means any and all types of receptacles including, but not limited to, Bins, Carts cylindrical or square Containers commonly available at retail for residential use, and any and all other kinds of City-approved receptacles, irrespective of size or shape.

1.38 Contamination

"Contamination" means there is no more than ten (10) percent by volume of the "wrong" materials placed in a Container. Thus, for instance a Solid Waste Container is Contaminated if it contains a total by volume of more than ten (10) percent Recyclables and Compostables, and a Recyclables Container is Contaminated if it contains a total by volume of more than ten (10) percent Solid Waste and Compostables.

1.39 Contingent Facility

"Contingent Facility" means any facility approved by the City to provide Post-Collection Services in lieu of an Approved Facility, as provided in Sections 3.9 through 3.14 and as identified in Exhibit K Approved Post-Collection Facilities.

1.40 Contingent Facility Operator

"Contingent Facility Operator" means any the owner and/or operator of a Contingent Facility.

1.41 Contract Year

"Contract Year" means the twelve (12) month period from July 1 to June 30.

1.42 Contractor

"Contractor" means Recology Daly City.

1.43 Contractor's Proposal

"Contractor's Proposal" means the proposal submitted to City by Recology Inc. on behalf of Contractor on March 21, 2014 for "Collection Services for Recyclables, Organics and Refuse", and certain supplemental written materials which are included as Exhibit F to this Agreement and are incorporated by reference.

1.44 Cooking Oil

"Cooking Oil" means oils resulting from cooking food at Residential Properties.

1.45 County

“County” means San Mateo County, California.

1.46 County Pockets

“County Pockets” means the unincorporated areas of San Mateo County which are surrounded by, or immediately adjacent to, areas within the jurisdiction of the City of Daly City. Said areas include the unincorporated areas known as unincorporated Broadmoor and unincorporated Colma.

1.47 Day

“Day” means calendar day unless otherwise specified in this Agreement.

1.48 Debris Box

“Debris Box” means open-top Containers with a typical capacity of eight (8) to forty (40) cubic yards that are serviced by a roll-off Collection vehicle. Debris Boxes that contain putrescible materials require a lid.

1.49 Discarded Materials

“Discarded Materials” means Solid Waste, Recyclables, Compostables, C&D Debris, Bulky Goods, and any combination of these material types properly placed for Collection by a Service Recipient or Generator for the purposes of Collection by Contractor. “Discarded Materials” does not include Excluded Waste.

1.50 Disposal

“Disposal” or “Disposed” mean the ultimate disposition of unprocessed Solid Waste intended for Disposal, and Residue.

1.51 Divert, Diversion

“Divert or Diversion (or any variation thereof)” means to prevent Disposal of Recyclables and Compostables other than Residue at landfill or transformation facilities, (including facilities using incineration, pyrolysis, distillation, gasification, or biological conversion methods, except for facilities using anaerobic digestion, or as otherwise approved by City) through Source Reduction, Reuse, Recycling, and Composting, as provided in Section 41780-41786 of AB 939, as AB 939 may be hereafter amended or superseded. Diversion includes use of Yard Trimmings for ADC or AIC, as permitted by State law, and approved by City.

Diversion is a broad concept that is to be inclusive of material handling and Processing changes that may occur over the Term including, but not limited to, changes in standard industry practice or implementation of innovative (but not necessarily fully proven) techniques or technology as may be used in the provision of Collection Services or Post-Collection Services, that reduce Disposal risk, decrease costs and/or are for other reasons deemed desirable by the City.

“Diversion rate” is calculated by (i) summing the total tons of Discarded Materials Collected by Contractor hereunder as Recyclables, Compostables, C&D Debris and Bulky Goods, (ii) subtracting from such amount the total tons of Residue from the Processing of such Discarded Materials, calculated using

the facility Residue levels for the Approved Facilities and Contingent Facilities utilized, and (iii) dividing the result by the total tons of Discarded Materials Collected by Contractor hereunder.

1.52 Dry Materials

"Dry Materials" mean Discarded Materials containing less than ten percent (10%) by volume of Wet Materials.

1.53 Effective Date

"Effective Date" means the date on which the latter of the two Parties signs this Agreement.

1.54 Eligible Expenses

"Eligible Expenses" means all expenses, both direct and indirect, which are determined by City to be reasonable, necessary for, and attributable to, the provision of services under this Agreement, provided however, that Eligible Expenses shall not include: Pass-Through Expenses; ESOP Expenses; travel and entertainment expenses; political contributions; income taxes; state franchise taxes; depreciation or amortization costs related to a write-up of the net book value of assets beyond the value at the time of acquisition and any other expenses arising out of additional services rendered by Contractor in the future pursuant to any agreement or arrangement which does not expressly provide that such expenses shall be considered to be Eligible Expenses.

1.55 Eligible Revenues

"Eligible Revenues" means all revenues derived directly or indirectly from the provision of services under this Agreement. Eligible Revenues include: revenue from Maximum Rates; grant monies received by Contractor; and, any other revenues derived from other, or additional, services rendered by Contractor in the Service Area in the future pursuant to any agreement or arrangement which does not expressly provide that such revenues shall not be considered to be Eligible Revenues.

1.56 Emergency Condition

"Emergency Condition" means the existence of a condition or conditions which threaten or threatens the public health, safety and welfare resulting from Contractor's failure or inability to perform its duties and obligations hereunder due to the effect upon Contractor of fire, flood, storm, earthquake, or other natural calamity, riot, insurrection, public disobedience, labor controversy, labor strike, insolvency of Contractor or similar condition. "Emergency Condition" does not include the results of failure of Contractor to comply with basic standards and procedures of Collection or other substandard performance by Contractor.

1.57 Environmental Laws

"Environmental Laws" means all federal and State statutes, and county and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, AB 341, AB 939, AB 1594, AB 1826, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6902 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §1601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the California Toxic Substances Control Act,

California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

1.58 E-Waste

"E-Waste" means discarded electronic equipment including, but not limited to, televisions, computer monitors, central processing units (CPUs), laptop computers, computer peripherals (including external hard drives, keyboards, scanners, and mice), printers, copiers, facsimile machines, radios, stereos, stereo speakers, VCRs, DVDs, camcorders, microwaves, telephones, cellular telephones, and other electronic devices. Some E-Waste or components thereof may be Hazardous Waste or include Hazardous Substances and thus require special handling, Processing, or Disposal.

1.59 Excluded Waste

"Excluded Waste" means Hazardous Substances, Hazardous Waste, Biomedical Waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that Contractor reasonably believes would, as a result of or upon Disposal, be a violation of local, State or Federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be Disposed of in Class III landfills, waste that in Contractor's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.

1.60 Food Scraps

"Food Scraps" means a subset of Compostables originating from Residential Properties or Commercial Properties, including: (i) all kitchen and table food waste scraps, and animal, or vegetable, fruit, grain, dairy or fish waste that attends or results from the storage, preparation, cooking or handling of foodstuffs, with the exception of animal excrement, (ii) paper waste contaminated with putrescible material, and (iii) biodegradable food service ware designed to disintegrate and biodegrade quickly.

1.61 Generator

"Generator" means any Person whose act or process produces Discarded Materials as defined in the Public Resources Code, or whose act first causes any of these items to become subject to regulation.

1.62 Gross Revenues

"Gross Revenues" means the total of (i) all City and Contractor revenues derived from provision of Debris Box services under this Agreement, and (ii) all Rate revenues under this Agreement, in each case prior to City retention of City fees and remittance of approved compensation to Contractor as provided in Article 6. Gross Revenues excludes any revenue paid to Contractor by a Recyclables Processor from the sale of Recyclables.]

1.63 Hazardous Substance

"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.

1.64 Hazardous Waste

"Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the U.S. Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

1.65 Holidays

"Holidays" shall mean the observed holiday for Thanksgiving Day, Christmas Day and New Year's Day.

1.66 Household Batteries

"Household Batteries" means disposable or rechargeable dry cells such as those referred to as A, AA, AAA, B, C, D, 9-volt, button type or those from laptop computers or cell phones, and commonly used as power sources for consumer electronics devices, including but not limited to zinc oxide, nickel metal hydride, alkaline, mercury, silver oxide, lithium, lithium ion and carbon zinc, but excluding automotive lead acid batteries.

1.67 Household Hazardous Waste (HHW)

"Household Hazardous Waste" or "HHW" means Hazardous Waste generated at Residential Properties within the City. HHW includes, but is not limited to: paint, stain, varnish, thinner, adhesives, auto products such as old fuel, batteries, household batteries, fluorescent bulbs, tubes, cleaners and sprays, pesticides, fertilizers and other garden products, needles, syringes, and lancets.

1.68 Junk Removal Service

"Junk Removal Service" means a person who lawfully, in full accordance with all City ordinances, and on a nonexclusive and irregular basis provides clean-up services such as shoveling, sweeping, bagging and boxing of items, other than Construction and Demolition Debris, from yards and buildings, and

incidental to these services loads discarded items into a van or truck and hauls the discarded items from the site in lieu of the resident performing such tasks.

1.69 Large Apartment Complexes

“Large Apartment Complexes” have fifty (50) or more apartment units and are primarily tenant occupied. Large Apartment Complexes do not include condominiums, town homes and mobile home parks.

1.70 Major Equipment

“Major Equipment” means any equipment, whether new or used and whether owned or leased, that has a new value of more than Ten Thousand Dollars (\$10,000).

1.71 Mandatory Service Recipients

“Mandatory Service Recipients” means occupants and/or owners of all Single-Family Property, Multi-Family Property and Commercial Property within the City boundaries, and all such premises that may be added from time to time by means of annexation, new construction, or otherwise during the term of this Agreement. Any question as to whether premises fall within the category of Mandatory Service Recipient shall be determined by City.

1.72 Marketing

“Market” or “Marketing” (or other variations thereof) means all obligations of Contractor, and Approved Facilities providing Processing services, with respect to selling or giving away Recyclables and Compostables, including promotion, storage, insurance, packaging, transportation, sales, weighing, and maintaining records with respect thereto.

1.73 Maximum Rate

“Maximum Rate” means the maximum amount, expressed as a dollar unit that the Contractor or City may bill a Service Recipient for providing services under this Agreement, as approved by the City.

1.74 Multi-Family, Multi-Family Property, Multi-Family Complex

“Multi-Family” or “Multi-Family Property(ies)” or “Multi-Family Complex” means the parcel, and the building(s) on it containing four (4) or more individual Residential dwellings. Multi-Family Properties may have shared, centralized Collection service for all dwellings and/or individual Cart service, and are billed to one address (typically the Owner or property manager).

1.75 Non-Collection Notice

“Non-Collection Notice” means a form, as approved in advance by City, used to notify Service Recipient(s) of the reason for the no collection of materials set out by the Service Recipient(s) for Collection by Contractor pursuant to this Agreement.

1.76 Operating Ratio

“Operating Ratio” Except as otherwise provided for in this Agreement, an Operating Ratio approach shall be used for determining Contractor’s profit margin for any services or increased costs to be

compensated under the Agreement. An Operating Ratio is calculated by dividing total Eligible Expenses by total Eligible Revenues during a given Contract Year. The approved Operating Ratio is that as proposed in Contractor's Proposal and as approved by the City, and as specified in Article 6.

1.77 Other Service Recipients

"Other Service Recipients" means occupants and/or owners of all Single-Family Property, Multi-Family Property and Commercial Property in the Service Area not within the City boundaries, where the owner, owner's representative, or a representative of the affected property requests Solid Waste services.

1.78 Party, Parties

"Party", "Parties" refers to the City and Contractor, individually or together.

1.79 Pass Through Expenses

"Pass-Through Expenses" are not subject to the Operating Ratio and include, but may not necessarily be limited to City or other governmental fees and per-ton compensation for use of Approved Facilities and Contingent Facilities.

1.80 Permits

"Permits" means all federal, State, County, City, and any other governmental unit permits, orders, licenses, approvals, authorizations, consents and entitlements that are required under Applicable Law to be obtained or maintained by any Person with respect to Collection and Post-Collection Services performed under this Agreement, as renewed or amended from time to time.

1.81 Plastic Trash Bags

"Plastic Trash Bags" means plastic bags expressly made for the purpose of Collection of Solid Waste, and other Discarded Materials as may be provided in the Agreement.

1.82 Post-Collection

"Post-Collection" means all obligations and activities that occur following Collection and delivery of Discarded Materials to Approved Facilities and Contingent Facilities, including all obligations and activities related to Transfer, Processing and Disposal.

1.83 Post-Collection Arrangements

"Post-Collection Arrangements" refers to all contracts or other arrangements, verbal or written Contractor enters into with Approved Facility Operators and Contingent Facility Operators for provision of Post-Collection Services as provided in Section 3.9.

1.84 Post-Collection Services

"Post-Collection Services" means collectively the obligations of Contractor under this Agreement to manage provision of Post-Collection, and the related obligations and activities of the Approved Facility Operators and the Contingent Facility Operators in providing Post-Collection.

1.85 Processing

"Processing" means to sort, separate, prepare, treat, bale or otherwise package, compost, cure, or to take other steps necessary to re-use materials at the Approved Facilities, or to remanufacture, reconstitute, and or create new products from Discarded Materials. Processing includes Reuse, Recycling and Composting, and excludes energy conversion processes except by prior approval of City.

1.86 Public Containers

"Public Containers" means City-owned Containers maintained by the City for use by the public located on or in the vicinity of streets and public rights-of-way and other public places in the Service Area as specified by the City for placement of Discarded Materials generated by the public.

1.87 Rate

"Rate" means the amount, expressed as a dollar unit, that the City or Contractor bills a Service Recipient for providing services under this Agreement. City may, with Contractor's prior written consent, or Contractor may, in its sole discretion, charge any amount up to and including the Maximum Rate approved by the City Council, but in no case exceeding the Maximum Rate.

1.88 Rate Adjustment Review Period

"Rate Adjustment Review Period" means that period during which an evaluation of financial position and Maximum Rates occurs covering the prior contract years and future projections and a rate determination is made.

1.89 Rate Period

"Rate Period" means a twenty four (24) month period, commencing July 1 and concluding June 30 (except for Rate Period One which means the period from February 1, 2016 through June 30, 2017) during which Maximum Rates shall be constant, except as provided under Section 6.2.6.

1.90 Recyclables

"Recyclables" means newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons, telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes); chipboard; corrugated cardboard; glass containers, all colors; aluminum (including beverage containers, foil, food containers, small pieces of scrap metal); scrap metal weighing less than 10 pounds (without cords or chains and fitting into the container); steel, tin or bi-metal cans; plastic containers, Numbers 1 to 7; plastic bags and plastic film (no. 4); aseptic beverage boxes.

1.91 Recycle, Recycling

"Recycle" or "Recycling" means the process of collecting, sorting, cleansing, treating and reconstituting materials that would otherwise be disposed of in a landfill, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. Recycling does not include Transformation.

1.92 Residential, Residential Property

“Residential”, “Residential Property” means on, of or pertaining to property used for residential purposes, irrespective of whether such dwelling units are rental units or owner-occupied, or whether commercial activities are conducted thereon or therefrom, provided that such commercial activities are permitted under applicable zoning regulations and do not consist of the primary use of the property.

1.93 Residue

“Residue” means unrecoverable materials remaining after Processing Discarded Materials for which there are no other options for viable use and which therefore must be disposed of in a landfill.

1.94 Reuse, Reusable

“Reuse” or “Reusable” means to place back into use an object or material that would otherwise be Recycled or Disposed.

1.95 Service Area

“Service Area” means the City of Daly City and the unincorporated areas of San Mateo County (“County Pockets”) which are surrounded by, or immediately adjacent to, areas within the jurisdiction of the City of Daly City, and over which City exercises franchise and billing authority as provided in this Agreement. Said areas comprise the unincorporated areas known as unincorporated Broadmoor and unincorporated Colma.

1.96 Service Recipient

“Service Recipient” means the person whom City submits a billing invoice to and collects payment from for Collection services provided to a property. The Service Recipient may be either the occupant or owner of the property provided that the owner of the property shall be responsible for payment of Collection services if an occupant of a property, which is identified as the Service Recipient of owner’s property, fails to make such payment.

1.97 Single-Family, Single-Family Property

“Single-Family,” or “Single-Family Property,” means a premise used as a Residential dwelling and includes single-family dwellings and each unit of a duplex, triplex, townhouse, condominium, or mobile home park dwelling unit where individual Collection services are provided separately to each dwelling unit.

1.98 Solid Waste

“Solid Waste” means solid waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated thereunder as may be amended from time to time, and Residue from Recycling, Processing, and similar processes. Excluded from the definition of Solid Waste are Source-Separated Recyclables, Source-Separated Compostables, Source-Separated C&D, Biosolids and Excluded Waste, in addition to those items specifically excluded under California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated thereunder as may be amended from time to time. 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.

1.99 Source Reduction

“Source Reduction” means any action which causes a net reduction in the generation of Solid Waste. It includes, but is not limited to, reducing the use of non-recyclable materials, replacing Disposal materials and products with Reusable materials and products, reducing packaging, reducing the amount of Yard Trimmings generated, and increasing the efficiency of the use of paper, cardboard, glass, metal, plastic, and other materials. Source Reduction does not include steps taken after the material becomes Solid Waste or actions which would impact air or water resources in lieu of land, including, but not limited to, Transformation.

1.100 Source-Separated

“Source-Separated” means materials which have been segregated for separate Collection by the Generator or Service Recipient, and placed in specific Containers for Collection as Recyclables or Compostables. Source-Separated Compostables include Compostables such as Yard Trimmings that may be Collected separately as well as Compostables Collected in a commingled manner, such as combined Yard Trimmings and Food Scraps. Source-Separated Recyclables include materials that may be individually placed for Collection such as cardboard, and those that may be Collected on a commingled or “single-stream” basis.

1.101 Term

“Term” means the Term of this Agreement, including extension periods if granted, as provided for in Article 2.

1.102 Transfer

“Transfer”, “Transfer(ring)” (or variations thereof) means receipt of Discarded Materials delivered by Contractor to an Approved Transfer Facility, loading of such materials into vehicles commonly used for Transfer for transport to other Approved Facilities for Processing or Disposal.

1.103 Transformation

“Transformation” means incineration, pyrolysis, distillation, gasification, or biological conversion other than Composting or anaerobic digestion.

1.104 Universal Waste

“Universal Waste” means all wastes defined by Title 22, Subsections 66273.1 through 66273.9 of the California Code of Regulations or successor regulations. These include, but are not limited to, Household Batteries, fluorescent light bulbs, mercury switches, and E-Waste.

1.105 Used Motor Oil

“Used Motor Oil” means used motor oil from automobiles and other light duty vehicles intended for personal use which is removed from vehicles at Single-Family Properties and not as a part of a for-profit or other business activity. Used Motor Oil does not include transmission fluid.

946 **1.106 Used Oil Filter**

947 “Used Oil Filter” means a used motor oil filter from automobiles and other light duty vehicles intended
948 for personal use which is removed from vehicles at Single-Family Properties and not as a part of a for-
949 profit or other business activity.

950 **1.107 Wet Materials**

951 “Wet Materials” mean putrescible materials and mixed Compostables with no more than ten percent
952 (10%) Dry Material by volume.

953 **1.108 Yard Trimmings**

954 “Yard Trimmings” means those Discarded Materials that will decompose and/or putrefy, including, but
955 not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree
956 trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of organic waste.
957 Yard Trimmings is a subset of Compostables. Yard Trimmings placed for Collection may not exceed six (6)
958 inches in diameter and three (3) feet in length and must fit within the Contractor-provided Container.

ARTICLE 2: GRANT AND ACCEPTANCE OF FRANCHISE

2.1 Grant and Acceptance of Franchise

City hereby grants to Contractor, and Contractor hereby accepts and agrees to perform, the exclusive franchise to Collect all Discarded Materials placed for Collection at any Residential Property, Multifamily Residential Property, and on any Commercial Property located within the Service Area, and to handle and to transport such Discarded Materials to Approved Facility(ies) designated by City, except as herein otherwise provided, all in accordance with the Solid Waste Management Plan of the County of San Mateo, California, and subject to the terms and conditions thereof.

2.2 Term

The Term of this Agreement shall be from 12:01 AM, February 1, 2016 through January 31, 2031, inclusive, subject to evidence of compliance with Article 7 - Indemnification, Insurance and Bond, unless earlier terminated pursuant to Article 9 of this Agreement. The Term may be extended at City discretion for a single extension term of three (3) years, and with 120 days notice to Contractor.

2.3 Obligations of the Parties

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

- A. Provide timely notice to one another of a perceived failure to perform any obligations under this Agreement and access to information demonstrating the Party's failure to perform.
- B. Provide timely access to the City's and the Contractor's designated representative(s) and complete and timely responses to requests of the other Party.
- C. Provide timely notice of matters which may affect either Party's ability to perform under the Agreement.

2.4 Enforcement of Contractor's Exclusive Rights

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. Reasonable and necessary documented costs expended by Contractor in protecting its rights and privileges, and with prior approval of City, shall constitute an Eligible Expense.

2.5 Conditions to Effectiveness of Agreement

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

A. **Accuracy of Representations.** The Contractor's representations and warranties made in Contractor's Proposal (Exhibit F) and Article 10 of this Agreement are true and correct on and as of the Effective Date.

B. **Furnishings of Insurance and Performance Bond.** Contractor has furnished evidence of the insurance and performance bond required by Section 7.3 and Exhibit G that is satisfactory to the City.

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

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

2.6 Responsibility for Materials

Once Discarded Materials are placed in the Contractor's or other approved Containers and at the Collection location, or is otherwise set-out for Collection in an approved manner, the responsibility for their proper handling shall transfer directly from the generator to Contractor, with the exception of Hazardous Waste if the Contractor can identify the generator. Once Discarded Materials are deposited by Contractor at an Approved Facility, such materials shall become the responsibility of the owner or operator of the Approved Facility. Responsibility for Hazardous Waste that has been inadvertently collected by the Contractor shall remain with the Contractor if it cannot identify the generator, and Contractor shall assume all responsibility for its proper disposal.

2.7 Exceptions

The exclusive franchise granted to Contractor to perform Collection services does not extend to any of the following and City expressly reserves the right to allow other service providers, by contract or otherwise, to perform any or all of the following in Service Area:

- A. Collection and processing of any recyclable materials not specifically included in the definition of Recyclables
- B. Collection of Discarded Materials from City facilities, should City decide to provide for collection outside of the Agreement
- C. Removal of Discarded Materials incidental to Junk Removal Service
- D. Collection of grease wastes from grease traps or grease interceptors
- E. Collection of used cooking oil
- F. Collection of Household Hazardous Wastes
- G. Collection of waste material that is greater than fifty percent (50%) liquid (excluding Used Motor Oil)

H. Collection and transportation of Discarded Materials within a Multifamily Residential premises to a central location located within or adjacent to the premises for the purpose of consolidation and/or Compaction prior to Collection by Contractor, and as permitted by City Code.

I. C&D Debris generated at a property located within the Service Area by a construction, remodeling or demolition services business and hauled from the Premise by the construction, remodeling or demolition business (not a subcontractor to that business) as an incidental part of a total service provided by that business. Such materials shall be transported in vehicles and Containers owned or leased by the business providing the full service, using its own employees and not a subcontractor, affiliated company, or third party.

2.8 Service Recipients Options for Recyclables and Bulky Goods

Nothing in this Agreement shall be construed as requiring Service Recipients to set out Recyclables or Bulky Goods for Collection by Contractor. Service Recipients may dispose of Recyclables and Bulky Goods through other appropriate means including, but not limited to, taking Recyclables or Bulky Goods to drop-off facilities and donating or selling Recyclables or Bulky Goods to private or public entities.

2.9 Labor Policy and Labor Peace

2.9.1 Labor Policy

A. Competitive Wages and Benefits. Contractor, Approved Facility Operators, and Contingent Facility Operators will provide employees with initial wages and benefits equaling no less than the wages and benefits included in the collective bargaining agreements in place in 2013, attached hereto as Exhibit H.

B. Employee Retention Policy. Contractor will retain workers who have been employed by the previous contractor for at least 120 calendar days prior to the expiration of the contracts. These retained workers will fill open positions, provided that the future contractor(s) shall not be required to create additional positions that the contractor(s) does not need, Contractor is prohibited from discharging any retained workers for at least 90 calendar days after the contract startup (e.g., Commencement Date) except for cause. Additionally, the contractor(s) shall maintain a list of the predecessor contractor's employees who were not offered employment after twelve months from the start of the new Agreement (e.g., Commencement Date). If any positions become available during the nine months following the initial three-month contract period, from May 1, 2016 through January 31, 2017, Contractor shall offer employment to qualified persons on the list by seniority within the collective bargaining unit (if it exists). Contractor shall be required to include this language in the collective bargaining agreements, if any such agreement exists or is negotiated with relation to providing service under this Agreement.

C. Contractor Demonstration of Compliance. Contractor has anticipated the aforementioned labor requirements in its cost proposal, as provided in Exhibit J.

2.9.2 Labor Peace

The City has determined that the level of vulnerability of the proposed Agreement to service or labor disputes is sufficient to warrant that labor peace is essential to the propriety interests of the City. The determination was based on considerations including, but not limited to the following factors:

- 1071 A. The service or labor will be provided on City site or a site which is important to the propriety
1072 interests of the City;
- 1073 B. The service provider relies on a significant amount of public patronage;
- 1074 C. The economic effect of any disruption of City expenditures or revenues is significant;
- 1075 D. The effect of any disruption on the citizens, tourists and businesses in the community is
1076 significant.
- 1077 Contractor acknowledges the importance of labor peace, and the steps it shall take to maintain labor
1078 peace during the Term.

1079 **2.10 Diversion Requirements**

1080 **2.10.1 Contractor Obligation**

1081 In awarding this Agreement, the City relied on Contractor representation that Contractor will provide a
1082 level of Diversion that complies with the Diversion requirements set forth in Section 2.10.2 and will
1083 assume a lead role in helping ensure the City will be in full compliance with its State Diversion
1084 obligations, as defined as of the Effective Date by AB 939 and AB 341. City grant of exclusive services as
1085 defined in this Article 2 is based in part on providing Contractor the means necessary to comply with the
1086 Diversion requirements set forth in Section 2.10.2 and assist the City in implementing a plan towards
1087 ensuring the City meets its State Diversion obligations. However, the Parties acknowledge that
1088 measuring compliance with the City's State requirements, as measured by CalRecycle is at best difficult.
1089 The Parties agree that the following Diversion requirements (set forth in Section 2.10.2) are intended to
1090 ensure the City will be in full compliance with its State Diversion obligations, and Contractor's
1091 compliance with its Diversion requirements will be measured for a given time period in terms of total
1092 tonnage Diverted by the Contractor and by processors, as a percentage of the total tonnage Collected by
1093 Contractor under the terms of this Agreement.

1094 **2.10.2 Diversion Requirements**

1095 The City's intent is for Contractor to improve the performance of its programs over time in order to
1096 meet the following Diversion requirements, subject to the penalties specified in Section 9.8.J. Contractor
1097 shall:

- 1098 A. Maintain a minimum Diversion rate of 33 percent from February 1, 2017 through June 30, 2020.
- 1099 B. Maintain a minimum Diversion rate of 42 percent from July 1, 2020 through June 30, 2023.
- 1100 C. Maintain a minimum Diversion rate of 45 percent from July 1, 2023 through June 30, 2025;
- 1101 D. Maintain a minimum Diversion rate of 48 percent from July 1, 2025 through the end of the Term
1102 and any extension of the Term.

1103 The applicable Diversion rates set forth above are referred to herein as the "Minimum Diversion Rates."

1104 **2.10.3 Compliance with Diversion Requirements**

1105 **A. City Determination of Compliance**

Contractor shall provide the Diversion-related data and information defined in Section 4.3 as part of its scheduled reporting. City may in its sole discretion, and at any time determine compliance with each of the above Diversion requirements, as well as ascertaining Contractor progress towards achieving the next scheduled Diversion requirement. Contractor acknowledges that City may request, and Contractor shall provide in a timely manner such additional information as may reasonably be needed to ascertain Contractor's compliance with its Diversion requirements as defined in Section 2.10.2. Should City determine that Contractor is not in compliance with its Diversion requirements, City may invoke the indemnification provisions of Section 7.1.1, the penalties of Section 9.8, and such remedies as are provided in Article 9. Contractor shall proactively seek to increase the Diversion rate to or above 50% from and after July 1, 2025, using its reasonable best efforts on an ongoing basis, consistent with its practices in other high diversion communities, including proactive engagement of City staff in discussing means for achieving higher levels of Diversion. Failure to achieve a Diversion level in excess of 48% will not by itself be a breach of this Agreement or expose Contractor to withholding, charges or liquidated damages.

B. CalRecycle Notice

If at any point during the Term, CalRecycle notifies the City that it is not in compliance with its Diversion obligations under State law, the Parties will meet within 14 Days of City request regarding Contractor's compliance with Contractor's Diversion requirements. City may determine if Contractor is in compliance as provided in Section 2.10.3.A, and if it finds Contractor to not be in compliance, City may seek the remedies specified in Sections 7.1.1, Section 9.8, and Article 9. Should Contractor be found to be in compliance with the above Diversion requirements, but there is the need to modify Contractor obligations to meet the City's Diversion obligations such modification will be considered a change in Contractor obligations as provided in Section 2.11.

C. Diversion Monitoring

(1) Contractor shall monitor the Diversion rate on a monthly basis. If the Diversion rate is less than the Minimum Diversion Rate in any quarter, Contractor shall notify City and offer to meet and confer with City staff within 15 days after Contractor submits its monthly report for the last month of the quarter. At the meeting, Contractor will present on current and projected Diversion rates, progress to date in achieving Diversion rate goals including specific detail by customer type and stream or City area or location as applicable, factors enhancing or inhibiting progress, and steps that can be taken to keep the Diversion rate at or above the Minimum Diversion Rate and to increase it beyond that level. Such steps may include, but not be limited to, increased public education beyond that included in this Agreement, new or expanded programs, revision or enhanced enforcement of the City code, alternative processing arrangements, revisions to the rate structure, etc. In preparing such proposals, Contractor shall draw upon its experience achieving high diversion rates in other communities. Contractor shall work collaboratively with City staff to prepare and implement an action plan to maintain or increase the Diversion rate, including implementation plans and cost proposals, which shall also give due regard to opportunities for cost savings. Contractor shall continue to meet with City staff on a quarterly basis (or more or less frequently, as requested by City staff) to monitor the Diversion rate and implementation of any mutually agreed action plan.

(2) Notwithstanding any other provision of this Agreement, the following provisions shall apply: So long as Contractor (i) complies with the foregoing provisions of this Section 2.10.3.C, and (ii)

demonstrates good faith efforts to meet all the requirements of this Agreement for implementation of diversion programs, no amounts shall be withheld from or charged to Contractor under Section 9.8.J (and Contractor will not be in breach of Section 2.10.2). In addition, if the Diversion rate drops below the Minimum Diversion Rate in any quarter, but equals or exceeds the Minimum Diversion Rate in the subsequent quarter, then no amounts shall be withheld from or charged to Contractor under Section 9.8.J (and Contractor will not be in breach of Section 2.10.2) with respect to the first quarter.

2.11 City's Right to Direct Changes

The City may direct the Contractor to perform additional Collection Services or to modify the manner in which it performs existing services, including developing and implementing pilot programs as provided in the Agreement. The Contractor shall promptly take direction from the City to provide additional or modified services under this Agreement, and shall be entitled to a Maximum Rate adjustment sufficient to compensate it for its reasonable increased costs of providing such additional or modified services, it being understood that under certain circumstances such adjustment may be deferred until the next biennial rate adjustment period, as provided in Section 6.2.6. Contractor acknowledges and agrees that the City may permit other persons besides the Contractor to perform additional Collection or related services if the Contractor and the City cannot agree in four (4) weeks, as extended by mutual agreement of City and Contractor, from the date when the City first requests a proposal from Contractor to perform such services or terms and conditions of such services. Should Contractor fail to provide such services as City directs, the provisions of Article 9 of this Agreement shall apply. Both Parties shall negotiate in good faith for the purpose of reaching agreement under this section.

ARTICLE 3: COLLECTION AND POST-COLLECTION SERVICES

3.1 General

Throughout the term of this Agreement, Contractor shall perform Collection Services and Post-Collection Services as provided in this Article, and as provided in further detail in Exhibit B – Final Approved Plans and Exhibit C – Contractor’s Proposal. All such services shall be performed in a thorough and professional manner regardless of weather conditions or difficulty of Collection. Contractor shall offer Collection services comparable to that provided to City in the County Pockets and shall provide such services for a rate which shall not exceed the Maximum Rates provided to City Service Recipients of similar services.

3.2 Labor, Collection Equipment, and Containers**3.2.1 General**

Contractor shall provide and maintain all labor, equipment, tools, facilities, and personnel supervision required for the performance of Contractor’s obligations under this Agreement. Contractor shall at all times have sufficient back-up equipment, equipment maintenance capabilities, and labor to fulfill Contractor's obligations under this Agreement. No compensation for Contractor's services or for Contractor's supply of labor, equipment, tools, facilities or supervision shall be provided or paid to Contractor by City or by any Service Recipient except as expressly provided by this Agreement.

Contractor shall at all times maintain an inventory of Collection Containers such that it can deliver new Containers within seven (7) calendar Days of customer request or be subject to the provisions of Exhibit C Performance Standards and Liquidated Damages.

3.2.2 Collection Frequency and Location

Contractor shall Collect Solid Waste, Recyclables, and Compostables from each Residential Service Recipient in Service Area on a once-per-week basis, Monday through Friday, and on the same day each week. Contractor shall Collect all Discarded Materials from Multifamily Residential and Commercial Service Recipients on such frequency as is desired by Service Recipient or necessary to provide adequate service to meet health and safety requirements. Collection shall be made from Containers placed at curbside by Residential Service Recipients or such other locations as necessary and as arranged for other Service Recipients. Collection from Public Containers and other City facilities shall occur on a schedule determined by City and as amended from time to time. Contractor is not required to perform Collection services on Holidays but shall reschedule Holiday Collection services in accordance with Section 3.8.2 of this Agreement.

Contractor has represented that there will be little or no change in Residential Collection days with implementation of Collection Services on and following the Commencement Date, and Contractor shall take such reasonable steps as are necessary to ensure such changes do not occur or are minimal. Contractor shall make efforts to minimize changes in Residential Collection days during the Term , and shall notify the City in advance of any changes in route days that affect more than five (5) percent of the Service Recipients on a Residential route.

1207 **3.2.3 Containers**

1208 Contractor shall provide Service Recipients with City approved Containers for Solid Waste, Recyclable
 1209 Materials, and Compostables as specified in this Section 3.2.3. Carts utilized for Solid Waste shall be
 1210 black in color, carts utilized for Recyclables shall be blue in color and carts utilized for Compostables
 1211 (including Yard Trimmings) shall be green in color. All Carts provided shall be new and un-used as of the
 1212 Commencement Date. Contractor shall provide:

1213 A. Semi-automated Collection of Solid Waste from Single-Family Residential Service Recipients
 1214 from 32-, 64- or 96-gallon Carts.

1215 B. Semi-automated Collection of single-stream Recyclables from Single-Family Residential Service
 1216 Recipients from 96-gallon carts (or 64-gallon or 32-gallon Carts upon Customer request, at no
 1217 additional or reduced charge).

1218 C. Semi-automated Collection of Compostables from Single-Family Residential Service Recipients
 1219 from 32-gallon Carts, or 64-gallon Carts as approved by City. Contractor shall also provide one
 1220 kitchen pail Container for indoor storage of Compostables for each Single-Family Residence,
 1221 which shall reasonably fit on a counter top or underneath a Residential sink, be clearly labeled,
 1222 and include graphics to aid customers in proper Compostables Diversion.

1223 D. Collection of Solid Waste from Multi-Family Residential and Commercial Service Recipients from
 1224 32-, 64-, or 96-gallon Carts; 1, 1.5, 2, 3, 4, or 6 cubic yard Bins; or Debris Boxes, as requested. As
 1225 further detailed in Section 4.6 and Exhibit B, Contractor shall work with Multi-Family and
 1226 Commercial customers to identify the best Container size(s) to accommodate each customer's
 1227 generation levels and space constraints..

1228 E. Collection of Recyclables from Multi-Family Residential and Commercial Service Recipients from
 1229 64-gallon, or 96-gallon Carts; 1, 1.5, 2, 3, 4, or 6 cubic yard Bins; or Debris Boxes. As further
 1230 detailed in Section 4.6 and Exhibit B, Contractor shall work with Multi-Family and Commercial
 1231 customers to identify the best Container size(s) to accommodate each customer's generation
 1232 levels and space constraints, and shall provide "Recycling Buddies" to each individual customer.

1233 F. Collection of Compostables from Multi-Family Residential and Commercial Service Recipients
 1234 from 64-gallon, and 96 gallon Carts, and Bins up to 3 cubic yards. Contractor shall also provide
 1235 one kitchen pail Container for indoor storage of Compostables to each individual dwelling unit
 1236 of Multi-Family Complexes (other than Large Apartment Complexes, unless they subscribe to
 1237 Compostables Collection service), which shall reasonably fit on a counter top or underneath a
 1238 Residential sink, be clearly labeled, and include graphics to aid customers in proper
 1239 Compostables Diversion.

1240 All the above Collection Services shall be by subscription only, and Service Recipients shall be charged
 1241 for such services (at Rates not exceeding the Maximum Rates) based upon the type of service, the
 1242 frequency of collection, and the number and volume of containers subscribed for, except that
 1243 Contractor shall provide Collection of Recyclables and Compostables to Single-Family Service Recipients
 1244 at no additional charge above the Solid Waste Rate.

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3.2.4 Maintenance of Containers

For those Collection Containers owned by Contractor, such Containers shall be maintained in a clean, serviceable, and sanitary condition. Said Containers shall be kept continuously closed by either a tight fitting cover or lid. Contractor shall repair Contractor-owned Containers within five (5) calendar days of a request to do so by Service Recipient or from the City, or if repair cannot be performed within five (5) days, Contractor shall provide a replacement Container to Service Recipient, all without cost to either Service Recipient or City.

Contractor is solely responsible for repairing and/or replacing any Contractor-purchased Containers due to manufacturer defects, and for all related costs.

3.3 Transition Plan

Contractor shall at all times be in compliance with the provisions of Exhibit B.5 Implementation Plan that govern start-up of Collection Services and Post-Collection Services. Contractor shall revise, modify and otherwise update such Plan prior to the Commencement Date as it deems necessary, or as reasonably requested by the City. Contractor is solely responsible for determining the need for such revisions or updates, and shall promptly provide all such revisions or updates to City.

3.4 Solid Waste Collection Services**3.4.1 Solid Waste Collection****A. Tailoring of Collection**

Contractor shall tailor Collection of Solid Waste to Single-Family, Multi-Family other than Large Apartment Complexes, Large Apartment Complexes, Commercial, and all other Service Recipients, as provided in Exhibit B-1 Scope of Service and Exhibit F Contractor's Proposal.

B. 24-Hour Advance Solid Waste Overage Collection

Contractor shall Collect Solid Waste in excess of the normal billed-for amount if the Service Recipient has made arrangements at least 24 hours in advance with Contractor for overage pickup, or such other procedure as approved by City. Contractor shall Collect Solid Waste in excess of the Solid Waste placed in Containers when the set-out meets all of the requirements established by City. Contractor shall deliver to City Solid Waste overage tags each Monday for overages Collected the prior week. Tags shall be in a format as approved by City. Maximum fees for overages shall be as approved by City.

3.4.2 Debris Box Services

Contractor shall offer and provide Debris Box services within the Service Area. Rates for said services shall be established and billed by Contractor, but shall not exceed the Maximum Rates for such services set forth on Exhibit A, as adjusted pursuant to this Agreement. Debris Box services provided shall be considered services provided under this Agreement and all revenues and expenses shall be a portion of the total Eligible Revenues and Eligible Expenses reflected under this Agreement. Contractor shall report all revenues from Debris Box services to City pursuant to Section 4.3.2. Contractor shall inform the Daly City Public Works Department in a manner and within time limits specified by City of the location and duration of placement of Debris Boxes placed in the public right-of-way, and shall conform to all City requirements for such placement.

3.4.3 Compactor Collection

Collection of Solid Waste from Multifamily Residential and Commercial Service Recipients from Compactors which are owned and maintained by third party operators, and used for the purpose of material consolidation prior to Collection by Contractor, as not otherwise restricted by City Code.

3.4.4 Non-Collection of Solid Waste

Contractor shall not be required to Collect any Solid Waste that is not placed either in a Solid Waste Container or, for overages Collections pursuant to Section 3.4.1 only, in a Plastic Trash Bag meeting the requirements established by City. Contractor shall not be required to Collect Solid Waste from a Solid Waste Container where the contents exceed the volume capacity of the Container when its lid is closed.

In the event of a non-collection, Contractor shall act in accordance with the following procedures, subject to the provisions of the City Code:

- A. Upon the first and second occurrences of non-collection per Service Recipient, Contractor shall leave a Non-Collection Notice at the premises where the non-collection occurs and shall mark the Non-Collection Notice to show the date and time the notice is given, the complete address of the premises, the reason for the non-collection, the manner in which materials should be prepared for Collection, and the steps Service Recipient must take to recommence Collection service.
- B. Upon the third occurrence of non-collection per Service Recipient, Contractor shall:
 - i. In the event of non-collection as a result of Container overflow, leave a Non-Collection Notice stating that the Service Recipient's service level and Rate will be increased to reflect the required level of service, and deliver any required additional or larger Containers within 48 hours; or,
 - ii. In the event of non-collection as a result of Contamination, leave a Non-Collection Notice stating that the Service Recipient may be subject to penalties related to Municipal Code violation; and,
 - iii. In both cases, provide notice to City staff or code enforcement, as applicable, identifying any billing changes or penalties to be assessed as a result of the non-collection.

In all event of non-collection, Contractor shall leave the hard (card stock) copy of the Non-Collection Notice at the premises by affixing it to the Solid Waste Container, and shall retain one copy. Contractor shall also document the event(s) of non-collection on the Customer's electronic account record. Contractor shall report all events of non-collection to City on a weekly basis.

3.5 Recyclables Collection Program**3.5.1 Recyclables Collection****A. Materials Collected; Set-Out Requirements**

Contractor shall Collect in a single-stream (commingled) manner, at a minimum the following recyclable materials: newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons, telephone books, grocery bags, colored paper, construction paper,

envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes); chipboard; corrugated cardboard; glass containers of any color (including brown, clear, and green glass bottles and jars); aluminum (including beverage containers, foil, food containers, small pieces of scrap metal); small pieces of scrap metal weighing less than 10 pounds without cords or chains and fitting into the Recyclable Materials Collection Container; steel, tin or bi-metal cans; plastic containers (no. 1 to 7); plastic bags and plastic film; mixed rigid plastics (including toys, utensils, cups, tubing, pipes, siding, and shelving units); and aseptic beverage boxes. Contractor shall Collect used oil filters, cell phones, household batteries and compact fluorescent lamps when placed in sealed plastic bags on top of the Recycling Container. Styrofoam and E-Waste are not collected as part of the single-stream Collection operations. Styrofoam can be dropped off at the Recology San Francisco transfer station. E-Waste can be collected curbside through on-call service or may be dropped off by residents at the Recology San Bruno transfer station or the Recology of the Coast (Pacifica) recycling drop off yard.

B. Tailoring of Collection

Contractor shall tailor Collection of Recyclables to Single-Family, Multi-Family other than Large Apartment Complexes, Large Apartment Complexes, Commercial, and all other Service Recipients, as provided in Exhibit B-1 Scope of Service and Exhibit F Contractor's Proposal.

3.5.2 Recyclables Overages

In the event a Service Recipient has a greater quantity of Recyclables than can be set out in the appropriate Recyclables Container, the Service Recipient may set out such Recyclables overages in other appropriate containers, including clean brown paper bags or cardboard boxes which are marked for recycling and set out with, or next to, the Recyclables Containers. Contractor shall with added charge or compensation Collect such Recyclables overages on the same day Contractor collects Recyclables from the Service Recipient. Contractor shall have no obligation to Collect such Recyclables overages where the overage container weighs in excess of sixty (60) pounds.

3.5.3 Non-Collection of Recyclable Materials

Contractor shall not be required to Collect any Recyclables that are not placed either in a Recyclables Container or, for overages Collections pursuant to Section 3.5.2 only, a receptacle meeting the requirements established by City. Contractor shall not be required to Collect Recyclables from a Recyclables Container where the contents exceed the volume capacity of the Container when its lid is closed.

In the event of a non-collection, Contractor shall act in accordance with the following procedures, subject to the provisions of the Municipal Code:

A. Upon the first and second occurrences of non-collection per Service Recipient, Contractor shall leave a Non-Collection Notice at the premises where the non-collection occurs and shall mark the Non-Collection Notice to show the date and time the notice is given, the complete address of the premises, the reason for the non-collection, the manner in which materials should be prepared for Collection, and the steps Service Recipient must take to recommence Collection service.

B. Upon the third occurrence of non-collection per Service Recipient, Contractor shall:

- i. In the event of non-collection as a result of Container overflow, leave a Non-Collection Notice stating that the Service Recipient's service level and Rate, if applicable, will be increased to reflect the required level of service, and deliver any required additional or larger Containers within 48 hours; or,
- ii. In the event of non-collection as a result of Contamination, leave a Non-Collection Notice stating that the Service Recipient may be subject to penalties related to Municipal Code violation; and,
- iii. In both cases, provide notice to City staff or code enforcement, as applicable, identifying any billing changes or penalties to be assessed as a result of the non-collection.

In all events of non-collection, Contractor shall leave the hard (card stock) copy of the Non-Collection Notice at the premises by affixing it to the Recyclables Container, and shall retain one copy. Contractor shall also document the event(s) of non-collection on the Customer's electronic account record. Contractor shall report all events of non-collection to City on a weekly basis.

3.5.4 Waste Motor Oil and Cooking Oil Recycling

Contractor shall provide Single-Family Residential customers up to five 1-gallon, clearly labeled, sealable plastic jugs to store Waste Motor Oil and five sealable plastic bags to collect Waste Oil Filters per year. Contractor shall also provide Single-Family Residential customers up to five 1-gallon, clearly labeled, sealable plastic jugs to store used cooking oil per year. Contractor shall deliver the jugs and bags on the next regular Collection day, following the customer's request. Contractor shall Collect full jugs and bags placed next to customer's Recyclables Container, on the customer's regularly scheduled Collection day, and transport the oil and filters to an Approved Facility for Recycling.

Contractor shall provide clear Recycling instructions for Waste Motor Oil, Waste Oil Filters and used cooking oil Collection, printed in English, Spanish, and Mandarin.

3.5.5 Additional Recyclable Materials

In the event City or Contractor proposes to add other materials to the list of Recyclables to be Collected, processed and/or marketed by Contractor, such additional materials shall be included under this Agreement as follows. If City proposes such addition, the Parties shall proceed in accordance with Section 2.11 rather than this section. If Contractor proposes such addition, Contractor shall notify the City of the extent to which the addition of the proposed material would require a modification of the Recyclables Collection vehicles, the use of an additional Recyclables Container, and the use of additional Collection vehicles, and shall notify City of the estimated costs of adding the proposed material. Such notification shall be in writing and shall be provided at the time Contractor proposes the addition of the material. City shall respond in writing to Contractor's description of changes and costs of implementation within thirty (30) calendar days of Contractor's notification to City. Both Parties shall negotiate in good faith for the purpose of reaching an agreement for the addition of the proposed material and a schedule for the implementation of the Collection of such material. The City may negotiate and approve the additional material and implementation schedule, but any agreement which would result in additional compensation to Contractor, including any compensation for tons recycled pursuant to this Agreement, shall not become effective unless approved by the City Council.

3.6 Compostables Collection Program**3.6.1 Compostables Collection**

Contractor shall tailor Collection of Compostables to Single-Family, Multi-Family other than Large Apartment Complexes, Large Apartment Complexes, Commercial, and all other Service Recipients, as provided in this Section 3.6, and in Exhibit B-1 Scope of Service and Exhibit F Contractor's Proposal.

3.6.2 Non-Collection of Compostable Materials

Contractor shall not be required to Collect any Compostables that are not placed either in a Compostables Container. Contractor shall not be required to Collect Compostables from a Compostables Container where the contents exceed the volume capacity of the Container when its lid is closed.

In the event of a non-collection, Contractor shall act in accordance with the following procedures, subject to the provisions of the Municipal Code:

- A. Upon the first and second occurrences of non-collection per Service Recipient, Contractor shall leave a Non-Collection Notice at the premises where the non-collection occurs and shall mark the Non-Collection Notice to show the date and time the notice is given, the complete address of the premises, the reason for the non-collection, the manner in which materials should be prepared for Collection, and the steps Service Recipient must take to recommence Collection service.
- B. Upon the third occurrence of non-collection per Service Recipient, Contractor shall:
 - i. In the event of non-collection as a result of Container overflow, leave a Non-Collection Notice stating that the Service Recipient's service level and Rate, if applicable, will be increased to reflect the required level of service, and deliver any required additional or larger Containers within 48 hours; or,
 - ii. In the event of non-collection as a result of Contamination, leave a Non-Collection Notice stating that the Service Recipient may be subject to penalties related to Municipal Code violation; and,
 - iii. In both cases, provide notice to City staff or code enforcement, as applicable, identifying any billing changes or penalties to be assessed as a result of the non-collection.

In all events of non-collection, Contractor shall leave the hard (card stock) copy of the Non-Collection Notice at the premises by affixing it to the Compostables Container, and shall retain one copy. Contractor shall also document the event(s) of non-collection on the Customer's electronic account record. Contractor shall report all events of non-collection to City on a weekly basis.

3.6.3 Single-Family Compostables Program

On the same day of the week that Contractor performs Solid Waste Collection, Contractor shall Collect Compostables from each Single-Family Service Recipient in the Service Area. Single-Family Compostables include Yard Trimmings and Food Scraps including food-soiled paper. Customers will receive indoor pails, and may use types of bags that Contractor determines to be feasible for Processing. Contractor shall distribute at no charge an additional Container to Single-Family Service Recipients who demonstrate a consistent need for an additional Cart; provided that Single-Family customers will not be

allowed an additional free container for Compostables that are not produced at the Single-Family Service Recipient's premises.

3.6.4 Multi-Family Compostables Program

A. Multi-Family Complexes, excluding Large Apartment Complexes

Contractor shall Collect Compostables from each Multi-Family Complex, excluding Large Apartment Complexes, in the Service Area. Multi-Family Compostables include Yard Trimmings and Food Scraps including food-soiled paper. Customers will receive indoor pails, and may use types of bags that Contractor determines to be feasible for Processing. Contractor shall determine the correct type and number of Containers to provide in consultation with the Service Recipient.

B. Large Apartment Complexes

City and Contractor shall annually report to City as provided in Section 4.3.4 regarding the option of implementing a "wet/dry" Collection system for Large Apartment Complexes, with the purpose of increasing Diversion of Compostables. This program option is described in Exhibit F Contractor's Proposal, beginning on page 178. Should the City choose to implement the program, Contractor will be compensated at the costs shown provided on Forms 12 and 13 of Exhibit J Operating Assumptions and Cost Basis, as adjusted pursuant to Article 6.

3.6.5 Commercial Compostables Program

Contractor shall Collect and Process, through Composting or other appropriate use as approved by City, Compostables, including Yard Trimmings and Food Scraps, from Commercial customers as further provided in Exhibit B-1 Scope of Services. Collection frequency shall be such that it encourages Diversion of but need not occur on the same day as Solid Waste or Recyclables Collection.

3.6.6 Christmas Tree Collection Program

Contractor shall Collect and Recycle, without additional fees, all flocked or other Christmas trees which are set out at curbside through the fourth Friday in January of each year of the term of this Agreement. Contractor shall not be required to Collect and Compost trees or sections of trees which are in excess of six (6) feet in length. Contractor shall leave a Non-Collection Notice on all trees that are not Collected. Contractor shall not be required to Collect any Christmas tree which is set out for Collection after the fourth Friday in January.

3.7 Special Services

3.7.1 On-Premises Solid Waste Collection

At the request of a Residential Service Recipient, the City shall determine whether the Service Recipient is eligible for on-premises Collection and shall provide written notification to the Service Recipient and to Contractor as to whether Contractor shall provide on-premises Collection to the Service Recipient. If the City determines the Service Recipient is eligible for on-premises Collection service, the notification to Contractor shall specify a start date for such service and Contractor shall begin on-premises Collection as of the start date in the notification. Contractor shall perform on-premises Collection on the same day of the week that curbside Collection would otherwise be performed for the Service Recipient. Contractor shall stop on-premises Collection upon written notification by the City. If Contractor desires to cease on-premises Collection at any premises, Contractor shall provide written notice to the City of

the Service Recipient address. The City will review the request and, if the request is approved, shall notify Contractor of the stop date.

3.7.2 On-Demand Bulky Goods

Contractor shall provide on-demand Collection of Bulky Goods in the same manner as Solid Waste overages in Section 3.4.1 of this Agreement. Monthly reports submitted pursuant to Section 4.3 shall include a statement of the on-demand Bulky Goods Collections made by account number, Service Recipient address, and route number. Contractor shall provide one on-demand Bulky Goods Collections per year to each Residential Property Service Recipient or Multifamily Residential Property unit at no additional charge, and may charge up to the Maximum Rate approved by City for Bulky Goods Collection for each on-demand Collection event thereafter.

3.7.3 Illegally Dumped Bulky Goods

Contractor shall provide Collection of illegally dumped Bulky Goods as provided in this Section. Within two (2) calendar days of notification to Contractor by City, Contractor shall pick up and dispose of Bulky Goods which have been illegally dumped on public streets or other public right-of-ways located within the City.

3.7.4 Bulky Goods Containing Hazardous Material

In the event Contractor collects Bulky Goods that contain polychlorinated biphenyls, chlorofluorocarbons injected in air-conditioning/refrigeration units, or other Hazardous Materials Contractor shall handle such Bulky Goods in such a manner as required to comply with Applicable Law.

3.7.5 Maximum Reuse and Recycling

Contractor shall dispose of Bulky Goods Collected in accordance with the following hierarchy:

- A. Reuse as is (where energy efficiencies are not compromised).
- B. Disassemble for reuse or recycling.
- C. Recycle.
- D. Disposal.

Contractor shall not landfill Bulky Goods unless the Bulky Goods cannot be economically reused or recycled.

3.7.6 Special Collections

A. Residential Scheduled Collection

Contractor shall Collect from Residential Properties Discarded Materials, including Bulky Goods in Service Recipient-provided Containers or Plastic Trash Bags, once each Contract Year as scheduled by the Service Recipient and the Contractor. On-call set-outs shall not exceed a total of two (2) cubic yards in volume and no one object shall exceed 200 pounds in weight. City shall require owners or occupants of Residential Properties who wish to dispose of such Discarded Materials to place such Discarded Materials at curbside for Collection. Such once-per-year Collection shall be provided as a free service to said Service Recipients, and shall be deemed compensated by Contractor's charges for weekly service. Contractor's costs of Collection under this section shall be deemed Eligible Expenses.

B. Multi-Family On-Call Collection

Contractor shall Collect from all Multi-Family Properties, Discarded Materials including Bulky Goods in Service Recipient-provided Containers or Plastic Trash Bags once each Contract Year per each Multi-Family Property living unit on an on-call basis. On-call set-outs shall not exceed a total of two (2) cubic yards in volume and no one object shall exceed 200 pounds in weight. Contractor shall work with Multi-Family Property managers and owners to coordinate distribution of move-in guides, and on-call services with move-ins and move-outs, as provided in Section 4.6. City shall require owners or occupants of Multi-Family Properties who wish to dispose of such Discarded Materials to place such Discarded Materials at curbside for Collection. Such once-per-year Collection shall be provided as a free service to said Service Recipients, and shall be deemed compensated by Contractor's charges for weekly service. Contractor's costs of Collection under this section shall be deemed Eligible Expenses.

3.7.7 Public Containers

Contractor shall Collect wastes deposited in Public Solid Waste, Recycling and Compostables Containers which are located in the City, and are listed in Exhibit D City Facilities and Public Containers. Collection shall be performed on a schedule provided by City. Collection shall include clean-up of the area within a radius of fifteen (15) feet of each Public Container. City shall provide Contractor a service schedule and a map showing the locations of the Public Containers to be serviced by Contractor. City may, under Section 2.11, change the service schedule at any time during the term of this Agreement upon not less than thirty (30) calendar days written notice to Contractor, and may add Public Containers as it deems necessary. Contractor's costs of Collection under this section shall be deemed an Eligible Expense.

3.7.8 City Property

Unless otherwise directed by City under Section 2.11, Contractor shall Collect, not less than weekly, Solid Waste, Recyclables and Compostables from Containers located at the City-owned facilities including, but not necessarily limited to, parks, City offices, corporation yards, parking lots, fire stations, and other City-owned properties as are specified in Exhibit D City Facilities and Public Containers, including changes or modifications to the list that do not increase total lifts by more than 10 percent. Contractor's costs of Collection under this section shall be deemed Eligible Expenses, and Contractor's cost of Disposal or Processing (as applicable and provided by Contractor) shall be deemed a Pass-Through Expense. Contractor shall provide a sufficient number of suitably-sized Containers at or in the vicinity of such properties for the deposit of Discarded Materials in said Containers for Collection by Contractor. Notwithstanding the foregoing, City may, at City's sole discretion, Collect and transport Solid Waste and other Discarded Materials which may accumulate on City's properties, or by reason of any of City's operations, to the Approved Facilities, and the Disposal or Processing thereof shall be at no direct cost to City.

3.7.9 Construction and Demolition Debris**A. Small Construction Projects**

Contractor shall Collect C&D in Contractor-provided Bins from small construction projects (e.g., remodeling at a Residential premises) at the frequency requested by C&D customers. Contractor shall Transport all C&D to an Approved Facility for Processing and Diversion.

B. Large Construction Projects

Contractor shall Collect Recyclables, Compostables, Solid Waste and C&D in Contractor-provided Debris Boxes from large construction projects (e.g., Commercial building reconstruction) at the frequency requested by C&D customers, and shall Transport Collected materials to the appropriate Approved Facility .

Contractor shall consult with prospective builders of large construction projects before the commencement of new work to determine the types of waste materials that will be generated during the project, and offer training to job site employees. Contractor shall identify proper and strategic placement and size of Debris Boxes, Carts, Bins and/or Compactors at the construction site, and shall utilize color-coded placards on all four sides of the boxes to identify the material to be contained in each Debris Box.

Upon City or customer request, Contractor shall provide weekly reporting of Diverted tonnage for large construction projects, in addition to the reporting requirements stated in Section 4.3.

3.7.10 Multi-Family Valet Service

Upon Service Recipient request, Contractor shall arrange for Solid Waste, Recyclables and Compostables valet service to be provided to Large Apartment Complexes and large condominium complexes with central collection. Valet service shall be provided by the third party service provider identified in Exhibit I Approved Collection Subcontractors. The valet service provider shall be directly compensated by Service Recipient at the per-unit rate specified in Exhibit A Maximum Rates Approved by City as adjusted annually as provided in Article 6.

No fewer than two days per week, the valet service provider shall Collect Recyclables and Compostables placed outside each individual dwelling unit within the subscribing Large Apartment Complex, and transport Collected materials to the appropriate, centrally located Container within the Large Apartment Complex. Contractor shall Collect materials from the centrally located Containers pursuant to Sections 3.5 and 3.6.

3.7.11. Public Events

A. Environmental Days

Contractor shall host three “Environmental Day” events per year, at which residents may drop-off the following materials: documents for shredding; yard waste; untreated wood; C&D; children’s toys and play structures; reusable clothing; scrap metal no heavier than 40 pounds and no larger than three feet in length; white goods such as refrigerators that do not contain Freon; E-Waste; and U-Waste. Contractor shall hold such events for no less than four hours per event, at a location designated by City to minimize traffic impacts. Contractor shall use reasonable business efforts to maximize Diversion of materials received at the events.

B. Community Service Events

Contractor shall work with City staff to identify one volunteer event or project to be completed by Contractor for each year of the Agreement. Such events or projects may include, but not be limited to, beautifying outdoor spaces or aiding in construction or renovation of community buildings. Additionally, each year Contractor shall organize and conduct the “Coats for Kids” and graffiti removal programs as described in more detail in Exhibit B.

3.7.12 Mussel Rock Transfer Station

Prior to, or following the Commencement Date City and/or Contractor may request that the Parties meet and confer regarding possible Contractor use of the Mussel Rock Transfer Station for incidental uses related to provision of Collection Services, such as storage of Containers. The Parties acknowledge it is City intent to decommission the Mussel Rock Transfer Station and understand that it is unlikely to be available for Contractor use throughout the Term.

3.7.13 On-Call HHW Collection

Upon at least 120 days prior written notice by City, and at the initial rates provided in Exhibit A, as adjusted using the methodology set forth in Exhibit A (such rates as so adjusted, the "HHW Rates"), Contractor shall arrange for WM Curbside, LLC (the "HHW Contractor") to implement the on-call HHW collection service as described in Section 7 of Exhibit B-1. As a condition to Contractor arranging for and HHW Contractor providing such service, City shall collect the HHW Rates monthly from each Single-Family Residential Service Recipient and each Multi-Family Residential Service Recipient within the Service Area (irrespective of whether any such Service Recipient requests or declines such service), and remit to Contractor the full amount so collected, without deduction, so that Contractor may remit the same to HHW Contractor as its entire compensation for providing the service. HHW Contractor shall be solely responsible for implementing the on-call HHW collection service. Under no circumstances shall Contractor be required to collect HHW, except as expressly provided elsewhere in this Agreement.

3.8 Collection Standards**3.8.1 Hours of Collection**

Collection shall begin no earlier than 4:00 a.m., and end no later than 6:00 p.m. for all Service Recipients.

3.8.2 Holiday Service

Contractor shall not be required to perform any services under this Agreement on Holidays. Collection services that would be performed under Article 3 but for the Holiday shall be rescheduled to the business day immediately following the Holiday unless otherwise specifically approved in advance in writing by the City. Contractor shall provide written notice of the Holiday rescheduling and the rescheduling of any other services affected by Holiday rescheduling to each affected Service Recipient at least thirty (30) days in advance of the rescheduled service.

3.8.3 Care of Private Property

The following general requirements must be met for all operations performed by Contractor, its subcontractors, agents and Collection crews. All Containers shall be replaced where they were found, or at the Collection point in a manner so as not to obstruct the path of travel. Lids shall be securely replaced on all Containers after emptying. Contractor shall re-lock any lockable on-site enclosures, if applicable. In the event of damage or breakage to enclosure-locking mechanisms, Contractor shall replace or repair the lock within 24 hours, and supply property owner with a reasonable number of new keys, if necessary. Damage to property shall be avoided. Should damage to property occur, Contractor agrees to repair or reimburse resident/property owner/City for the cost of damages, and such costs shall not be an Eligible Expense.

3.8.4 Clean-Up and Noise

Collection personnel shall carry cleanup equipment and shall clean up any spilled or dropped material and any litter within fifteen (15) feet of the Container location or route to the Collection equipment. Collection personnel shall avoid unnecessary and excessive noise while collecting or dumping the Service Recipient's Containers.

3.8.5 Collection Equipment

A. **General Provisions.** All Collection equipment used by Contractor in the performance of services under this Agreement shall be in good and serviceable condition. The vehicles shall be designed and operated so as to prevent commingling Solid Waste, Recyclables, Compostables, and Bulky Goods and prevent Discarded Materials from escaping from the vehicles. Hoppers shall be enclosed on top and on all sides to prevent material from leaking, blowing or falling from the vehicles. Each Collection vehicle shall be equipped with a shovel and broom for clean-up of spillage.

B. **Vehicles and Fueling Station.** All vehicles used by Contractor in providing services under this Agreement, except those vehicles used solely on Contractor's premises, shall be licensed by the California Department of Motor Vehicles. Upon the Commencement Date, Collection vehicles will use diesel fuel. Diesel Collection vehicles will be replaced over the Term by Collection vehicles fueled by compressed natural gas or "CNG", as provided in the schedule contained in Exhibit J Operating Assumptions and Cost Basis. Contractor shall develop a CNG fueling station as provided in Exhibit F Contractor's Proposal, beginning on page 187. Contractor shall over the Term modify the capability of the CNG fueling station as necessary to ensure adequacy to meet all fueling needs for the CNG vehicles in its Collection fleet.

C. **Safety Markings.** All Collection equipment used by Contractor shall have appropriate safety markings including, but not limited to, highway lighting, flashing and warning lights, clearance lights, and warning flags. All such safety markings shall be in accordance with the requirements of the California Vehicle Code, as from time to time amended, and shall be subject to approval by City.

D. **Vehicle Signage.** Contractor's name, telephone number and vehicle number shall be visibly displayed on both sides of all Collection vehicles in letters and figures not less than eight (8) inches high.

E. **Collection Vehicle Noise Level.** The noise level generated by Collection vehicles using compaction mechanisms during the stationary compaction process shall not exceed seventy-five (75) decibels at a distance of twenty-five (25) feet from the Collection vehicle measured at an elevation of five (5) feet above ground level using the "A" scale of a standard sound level meter at slow response.

F. **Equipment Maintenance.** Contractor shall maintain Collection equipment in a clean condition and in good repair at all times. All parts and systems of the Collection equipment shall operate properly and be maintained in a condition satisfactory to City. Contractor shall repaint all Collection vehicles (including vehicle striping) during the term of this Agreement on a frequency necessary to maintain a positive public image as reasonably determined by the City. Contractor shall wash all Collection vehicles at least once a week using reclaimed water, if available.

G. **Equipment Inventory.** On or before the Effective Date of this Agreement, Contractor shall

provide to City an inventory of Collection vehicles and Major Equipment used by Contractor for Collection or transportation in performance of services under this Agreement. The inventory shall indicate each Collection vehicle by identification number, DMV license number, the age of the chassis and body, type of fuel used, the type and capacity of each vehicle, the number of vehicles, the date of acquisition, the decibel rating and the maintenance and rebuilt status. Contractor shall submit to City an updated inventory annually, or more often at the request of the City. Each vehicle inventory shall be accompanied by a certification signed by Contractor that all Collection vehicles meet the requirements of this Section.

- H. **Back-up Equipment.** Contractor shall maintain sufficient back-up Collection equipment to ensure uninterrupted Collection service during the term of this Agreement.

3.8.6 Personnel

- A. General Contractor shall insure that Collection personnel conduct themselves in a safe, courteous and professional manner while performing their services. Contractor shall regularly train its employees in customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection personnel to perform the work as quietly as possible. Contractor shall ensure Collection personnel are adequately trained to handle routine questions on services from the public and provide such information while performing their Collection services. Information brochures approved by the City shall be available on each piece of Contractor's Collection equipment and shall be offered to members of the public who request additional information.

B. Key Role of Management.

- i. City Right to Review and Comment. Contractor recognizes the importance of establishing a successful relationship between its management and City. Before extending an offer of employment for the position of general manager, both initially and throughout the Term, Contractor shall provide City with the description of the proposed position, an opportunity to review and comment upon the position description before it is released, the background, experience and qualifications of each candidate being considered for the position, and an opportunity to meet with each candidate. Contractor shall give thoughtful consideration to City's comments on the descriptions of the proposed position and on each candidate, but shall have the ultimate right and unrestricted discretion to make employment decisions in its best business judgment.
- ii. Addressing City Concerns. If City is dissatisfied with the performance of any of Contractor's management personnel, City shall contact the general manager to discuss the employee's performance. If City is dissatisfied with the general manager, City shall contact the group manager to discuss the general manager's performance. Contractor shall advise the affected management employee of any complaints made by City regarding the employee's performance. The Parties shall meet and confer in good faith to address City's concerns, and shall endeavor in good faith to agree on a corrective course of action to be implemented immediately. Contractor agrees to consider in good faith any requests by City to transfer or re-assign a management employee should City maintain in good faith that it can no longer work constructively with said employee; however, Contractor retains the ultimate right and unrestricted discretion to make employment decisions in its best business judgment.

- C. **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
- D. **Identification and Uniforms Contractor** shall require its drivers and all other employees who routinely come in contact with the public to wear clean standardized uniforms bearing the Contractor's name and the employee's name, all as approved by City.
- E. **Safety Training** Contractor shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment. Contractor shall train its Collection employees in identifying and dealing with Hazardous Material.
- F. **No Gratuities** Contractor shall not permit its employees to demand or solicit, directly or indirectly, any additional compensation or gratuity from members of the public for the Collection of Discarded Materials under this Agreement.
- G. **Employee Conduct and Courtesy Complaints** regarding courtesy, spillage, excessive noise and other standards established shall be considered as complaints for purposes set forth in Section 4.5.5. If any employee is found not to be performing services in the manner required by this Agreement, Contractor shall take all appropriate corrective measures.

3.8.7 Removal of Hazardous Waste

Contractor shall not collect Hazardous Waste unless performed under a specific City-approved Hazardous Waste collection program. Collection personnel shall have proper training in identifying and dealing with Hazardous Waste which may be encountered during the normal course of Discarded Materials Collection. Contractor shall have a plan, approved in advance by City, for identification, recording, notification and disposal of such Hazardous Waste improperly placed for disposal by Service Recipients. Contractor shall insure that no Hazardous Materials or other prohibited waste is knowingly disposed of in the landfill, it being understood that this sentence shall not limit the obligation of Contractor to ensure that Approved Facility Operators use standard industry practice to detect and reject Hazardous Substances in a uniform manner, as required under Section 3.9.8.A.

3.8.8 Transport of Discarded Materials

Contractor shall transport all Discarded Materials to Approved Facility(ies). Documented expenses related to transportation are Eligible Expenses and Contractor is compensated for such expenses through the Maximum Rates based on Exhibit J Operating Assumptions and Cost Basis for Rate Period One Rates.

Except when material is being loaded or unloaded or the vehicle is on route in the process of Collection, Contractor shall at all times keep loads completely covered so as to prevent leakage or spillage from the Collection vehicle. Contractor shall immediately clean up any spillage which occurs during Collection.

3.9 Post-Collection Facility Responsibilities

[DRAFTING NOTE: All post-collection provisions in this agreement are subject to Recology entering into mutually acceptable agreements with 3rd party post-collection facilities]

3.9.1 General Apportionment of Responsibilities

- A. **Contractor.** Contractor is solely responsible for the conduct of all Post-Collection Services in

accordance with the requirements of this Agreement, including but not limited to:

1. Entering into, maintaining, and revising Post-Collection Arrangements as provided in Section 3.9.2. Contractor shall enter into such Post-Collection Arrangements as are necessary to ensure Approved Facilities are fully available to provide Post-Collection Services on the Commencement Date and throughout the Term in compliance with the requirements of this Agreement, whether such Approved Facilities are owned by Contractor, Affiliates, or third party subcontractors. Post-Collection Arrangements also apply to Contingent Facility Operators.
2. Ongoing management of all Approved Facility and Contingent Facility responsibilities consistent with the Post-Collection Arrangements.
3. Delivery of all Discarded Materials Collected by Contractor only to Approved Facilities, or to Contingent Facilities with City approval. Exhibit K Approved Post-Collection Facilities identifies Approved Facilities and Contingent Facilities as of the Effective Date.
4. Compensating Approved Facility Operators and Contingency Facility Operators on a per-ton basis for all delivered Discarded Materials at the applicable per-ton rates for each Rate Period, as provided in Exhibit A Maximum Rates.
5. Ensuring adequacy of Approved Facility capacity, and ability and commitment of Approved Facility Operators to accept all Discarded Materials delivered throughout the Term.
6. Informing City of the need for, and arranging for the use of Contingent Facilities due to short-term inability of an Approved Facility Operator to accept Delivered Materials for factors outside of the reasonable control of Contractor.
7. Anticipating, and in consultation with City taking the necessary steps to arrange for Post-Collection facility capacity as necessary to replace lost or reduced capacity provided by an Approved Facility that is no longer able to accept Discarded Material.
8. Avoiding, and if necessary resolving any disputes with an Approved Facility Operator regarding the quality or composition of delivered Discarded Materials successfully, and in a timely manner.
9. Ensuring that Post-Collection Services and all of Contractor's related responsibilities are discharged in a manner that is consistent with widely accepted industry practices, whether or not such practices are enumerated in this Agreement.

Contractor shall as requested by City demonstrate compliance with the requirements of this Section 3.9.1.A as to Approved Facility on or before the Effective Date of this Agreement and as to Contingent Facility Operators on or before the Commencement Date.

B. City. City is solely responsible for:

1. Approving Contractor use of Approved Facilities and Contingent Facilities.
2. Setting customer Rates for each Rate Period as provided in Article 6.

C. Parties. The Parties agree to meet and confer in good faith as necessary to resolve any issue related to Post-Collection Services, to the extent that the responsibility or requirements for resolution of the issue are not otherwise specified in this Agreement.

3.9.2. Contractor's Post-Collection Arrangements.

Contractor shall enter into such Post-Collection Arrangements as required in this Section 3.9.2, or as Contractor otherwise deems necessary to ensure compliance with the requirements of this Section 3.9, and with the requirements of Sections 3.10 through 3.14 as applicable to each Approved Facility.

A. Minimum Requirements. Post-Collection Arrangements shall include, but are not limited to compliance with, or inclusion of the following:

1. To provide Post-Collection Services through the Term as specified in Section 2.2, and any extensions.
2. The labor requirements of Section 2.9.
3. The transition, maximum capacity availability, vehicle turnaround, maximum residue specifications and any other specifications contained in Exhibit K Approved Post-Collection Facilities.
4. The weight ticket, tonnage, rejection, Diversion and Residue information required from Approved Facility Operators under Section 4.3.
5. The insurance requirements of Section 7.2 and the indemnifications of Article 7.1.1 and 7.1.3, with provisions consistent with this Agreement and enforceable by the City as an additional insured or third party beneficiary thereof in the same manner as provided in such provisions and in a form reasonably satisfactory to City.
6. Coordination and cooperation with City and Contractor in the event the City provides Collection Services or causes Collection Services to be provided under the terms of Article 8. Facility Operators and Contingent Facility Operators will accept delivered Discarded Materials up to their maximum tonnage commitments, and under the same terms accorded the Contractor.
7. To continue to provide Post-Collection Services in the event of a Contractor default, termination, or other event triggering the provisions of Article 9. In addition, in the event of Contractor termination prior to the end of the Term, City shall have the right, but not the obligation to directly contract with any or all Approved Facility Operators and Contingent Facility Operators to continue to provide Post-Collection Services on the same terms.

B. Post-Collection Services Provided by Contractor or Affiliates. To the extent Contractor or an Affiliate provides Post-Collection Services as an Approved Facility Operator, Contractor shall enter into such Post-Collection Arrangements as it deems necessary to ensure such services are provided as required. The absence of such verbal or written arrangements in no way excuses Contractor from its obligations related to provision of Post-Collection Services.

C. Post-Collection Services Provided by Third Parties. For Post-Collection Services to be provided by third parties as identified in Exhibit K Approved Post-Collection Facilities, Contractor shall enter into subcontracts with Approved Facility Operators prior to the Effective Date and with Contingent Facility Operators prior to the Commencement Date, subject to City review and comment.

D. Coordination Between Parties Providing Post-Collection Services. Post-Collection Arrangements must address coordination between Approved Facility Operators, as necessary to ensure uninterrupted provision of quality Post-Collection Services. Examples of such

coordination include, but are not limited to Transfer of Recyclables from an Approved Transfer Facility to an Approved Recyclables Processing Facility, or Transfer of Solid Waste from an Approved Transfer Facility to an Approved Disposal Facility.

F. Contingent Facilities. Contractor shall enter into Post-Collection Arrangements with Contingent Facility Operators prior to the Commencement Date, subject to review by the City. Post-Collection Arrangements with Contingent Facility Operators must ensure that Discarded Materials can be delivered to a Contingent Facility within two (2) business Days of Contractor or City notice in substantial compliance with the provisions of this Section 3.9. Should Contractor use of the Contingent Facility exceed thirty (30) Days, City may require Contractor provide additional reasonable assurances of the Contingent Facility's ability to accept Discarded Materials under the terms of this Agreement.

G. Facility Limitations. Post-Collection Arrangements shall not contain provisions that are more stringent than those provided in Exhibit K Approved Post-Collection Facilities without prior consent of the City.

3.9.3 Maintenance of Facility Capacity.

A. Approved Facilities. Contractor shall ensure each Approved Facility Operator maintains the ability to accept delivery of Discarded Materials up to the maximum tonnage commitments specified in Exhibit K Approved Post-Collection Facilities, and shall provide the City, upon request, with documentation demonstrating the availability of such capacity.

Contractor shall notify the City should tons of delivered Discarded Materials reach ninety (90) percent of the maximum tonnage commitment for any Approved Facility. Approved Facility Operators shall make a reasonable effort to accept materials in excess of the maximum tonnage commitments for short periods of time. Approved Facility Operators shall assist Contractor and City in identifying a resolution should an Approved Facility's maximum tonnage commitment be regularly exceeded, or it appears likely that it will be regularly exceeded.

Contractor shall immediately notify City should it become aware that an Approved Facility Operator has become, or may become unable to accept Discarded Materials up to its maximum tonnage commitment. City may assess Contractor liquidated damages in accordance with Section 9.8 and Exhibit C should an Approved Facility Operator fail to accept some or all delivered Discarded Materials due to failure to maintain capacity up to the maximum tonnage commitments provided in Exhibit K Approved Post-Collection Facilities.

B. Contingent Facilities. Contractor shall ensure that Contingent Facilities are able to accept Discarded Materials on a continuous basis for no less than thirty (30) Days, subject to any daily limits on delivered tonnages agreed to by Contractor and Contingent Facility Operator.

3.9.4 Tonnage Commitments and Compensation.

A. Delivery of All Collected Discarded Materials. Contractor shall deliver all Discarded Materials it Collects to the applicable Approved Facility, or to a Contingent Facility as approved by the City as provided in Exhibit K Approved Post-Collection Facilities.

B. Compensation for Post-Collection Services. Contractor is solely responsible for compensating each Approved Facility Operator or Contingent Facilities Operator in accordance with Article 6 and Exhibit A Maximum Rates Approved by City, for actual tons of each type of Discarded

Material delivered at the then-current per-ton rate for the applicable Approved Facility or Contingent Facilities. Contractor shall have the right to retain any net revenues it receives from an Approved Recyclables Processing Facility Operator.

C. Only Compensation. The then-current per-ton compensation, as adjusted by CPI and as otherwise provided in this Agreement, shall be the only form of compensation due to Approved Facility Operators or Contingent Facilities Operators, including for Disposal of Residue.

D. No Put or Pay. Neither this Agreement, nor any Post-Collection Arrangement shall express or imply Contractor or City commitment to delivery of any minimum tonnage of Discarded Materials to Approved Facilities or Contingent Facilities, or corresponding compensation for undelivered minimum tonnages in the form of “put-or-pay” payments.

E. Timely Payment. Contractor shall ensure payment of third party Approved Facility Operators and Contingent within 30 calendar days of receipt of invoices.

3.9.5 Rate Setting

City shall be responsible for setting rates and for compensating Contractor accordingly as provided in Article 6. Contractor shall at all times fully compensate Approved Facility Operators and Contingency Facility Operators for services provided. The rate adjustment procedures defined in Article 6 are Contractor’s only redress for any Contractor-perceived inadequacy in compensation to meet its expenses, including payment for Post-Collection Services.

3.9.6 Vehicle Weighing

Contractor is solely responsible for ensuring that Approved Facility Operators at all times provide accurate weighing of all materials entering and leaving Approved Facilities.

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

B. Tare Weights. Within thirty (30) Days prior to the Commencement Date, Contractor shall coordinate with Approved Facility Operators to ensure that all Contractor vehicles used to deliver Discarded Materials to Approved Facilities are weighed to determine unloaded (“tare”) weights. Contractor and Approved Facility Operators shall electronically record the tare weight, Contractor or Approved Facility Operator name, and vehicle identification number for each vehicle. Contractor shall provide City with a report listing the vehicle tare weight information upon request. Contractor shall promptly coordinate with Approved Facility Operators to weigh

1919 additional or replacement vehicles prior to placing them into service. Approved Facility
1920 Operators shall check tare weights at least annually, or within fourteen (14) Days of a City
1921 request.

1922 **3.9.7 Contractor Compliance with Facility Rules**

1923 Contractor shall observe and comply with all regulations in effect at Approved Facilities and cooperate
1924 with Approved Facility Operators with respect to delivery of Discarded Materials, including but not
1925 limited to delivery during approved days and hours, directions to unload Discarded Materials in
1926 designated areas, operating in a safe manner, accommodating operations and maintenance activities,
1927 and complying with Hazardous Substance exclusion programs.

1928 **3.9.8 Load Checking**

1929 **A. Inspection.** Contractor shall ensure that Approved Facility Operators use standard industry
1930 practice to detect and reject Hazardous Substances in a uniform manner and shall not knowingly
1931 accept Hazardous Substances at the Approved Facilities. Approved Facility Operators shall
1932 comply with the inspection procedures contained in the applicable Permit requirements, and
1933 shall promptly modify inspection procedures to reflect any changes in Permits or Applicable
1934 Law.

1935 **B. Hazardous Substances Handling and Costs.** Contractor shall arrange for or provide handling,
1936 Transportation, and delivery to a Recycling facility, incinerator, or landfill permitted in
1937 accordance with Applicable Law of all Hazardous Substances delivered by Contractor to the
1938 Approved Facilities, provided that the Approved Facility Operator notifies Contractor of the
1939 same within twenty-four (24) hours of delivery of the load, and in any event before the load is
1940 commingled with other material. Contractor is solely responsible for making those
1941 arrangements or provisions and for all costs thereof.

1942 **C. Remedies for Rejected Materials.** If a Hazardous Substance is delivered to an Approved Facility
1943 by Contractor, the Approved Facility Operator shall promptly inform Contractor to coordinate
1944 efforts to determine the source of the Hazardous Substance. Contractor and Approved Facility
1945 Operator shall be entitled to pursue whatever remedies, if any, they may have against the
1946 Generator of the Hazardous Substance.

1947 **3.9.9 Compliance with Applicable Law and Facility Permits**

1948 **A. General.** Contractor shall ensure that each Approved Facility Operator is at all times in full
1949 compliance with all Permits and regulatory approvals necessary for use of each Approved
1950 Facility. Contractor shall, upon City request, provide copies of Permits, notices of violation of
1951 Permits, or other regulatory documentation or communications to the City within ten (10) days
1952 of the request. Approved Facility Operator is solely responsible for ensuring payment of any
1953 fines or penalties imposed for noncompliance with, or violation of Permits or failure to obtain
1954 Permits.

1955 **B. Third Party Facilities.** Contractor shall: (1) verify compliance for Approved Facilities owned
1956 and/or operated by third parties by contacting the local enforcement agency and other
1957 regulatory agencies having jurisdiction over the Approved Facilities at least annually; and (2)
1958 upon City direction, shall promptly provide City with copies of the Approved Facilities' Permits
1959 or notice of violations to City.

3.9.10 Data Management

Contractor shall require that all Approved Facility Operator(s) collect and provide Contractor data regarding tonnages delivered to the Approved Facilities. Contractor shall verify such information, and shall include it in Contractor's reports to City as provided in Section 4.3.

3.9.11 City Right to Enter Facilities and Observe Operations

The City and its designated representative(s) reserve the right to enter, observe, and inspect any Approved Facility during operations; meet with the Approved Facility manager(s) or his or her representatives at any time, provided that the City and its representatives comply with Approved Facility Operators' reasonable safety and security rules and do not interfere with the work of the Approved Facility Operators. Approved Facility Operators are obligated to allow entry of City staff or their designated representative(s) to Approved Facilities, and to allow for representatives to conduct observations, inspections, studies, or surveys.

Upon City direction, Approved Facility Operators and Contractor shall make personnel available to accompany City employees or representatives on inspections. Contractor shall ensure that its employees cooperate with the City and respond to the City's reasonable inquiries. Contractor shall facilitate similar observation and inspection at Approved Facilities owned by it or an Approved Facility Operator upon City request and within three (3) business days of receiving such request.

If the Approved Facility manager is not at the Approved Facility when the City or its designated representative(s) visit without prior announcement, Approved Facility Operator(s) may limit the visit of the City or its designated representative to a portion of the Approved Facility including, but not limited to, offices, container and vehicle storage areas, or maintenance yard. In that event, Contractor shall arrange for City or its designated representative(s) to return for a visit of the complete facility within 24 hours of the City's visit.

3.9.12 Contractor-Initiated Change in Approved Facility

A. Written Request. Contractor or City may request a change in an Approved Facility(ies) or a Contingent Facility(ies) owned and operated by Contractor or an Affiliate, or owned and/or operated by a third party. Should either Party request a change in an Approved Facility(ies) or a Contingent Facility(ies) owned and operated by a third party, such request must either 1) be for cause due to demonstrated nonperformance by the Approved Facility Operator or Contingent Facility Operator, or 2) be with the Approved Facility Operator's or Contingent Facility Operator's prior written consent. Contractor shall submit a written request to the City no less than sixty (60) Days prior to the date for proposed use of the new facility, and shall obtain the City's written approval no later than ten (10) Days prior to use of new proposed facility. Contractor's request must demonstrate that requested new facility will, at a minimum provide the same type and level of Post-Collection Service as the current Approved Facility(ies).

B. No Additional Compensation. Contractor will bear any increased costs associated with a Contractor-initiated change in the Approved Facility(ies), and shall not be compensated for any increase in costs for changes in Collection or Post-Collection activities related to use of the new Approved Facility. Upon City approval, Contractor shall revise or enter into Post-Collection Arrangements as provided in Section 3.9.2, and as may be necessary for use of the new Approved Facility. Exhibit K shall be revised as necessary to reflect performance specifications for new Approved Facility.

3.9.13 Use of Contingent Facilities

If Contractor is unable to use an Approved Facility due to an emergency or sudden unforeseen closure of the Approved Facility, Contractor may use a Contingent Facility provided that the Contractor provides immediate verbal notice of the need to use a Contingent Facility to the City, and receives verbal approval from the City at least twenty-four (24) hours prior to the use of such Contingent Facility. Contractor shall within one (1) Day provide City a written notice specifying the reasons the Approved Facility is not available and the period of time Contractor proposes to use the Contingent Facility. Upon City review and comment regarding the written notice, City shall compensate Contractor may be compensated for any increase change in the increased transport or Post-Collection Services costs.

3.9.14 Delivery to Non-Approved Facilities Prohibited.

Should Contractor deliver Discarded Materials to a facility other than an Approved Facility, and Contractor knew, or should reasonably have known, that the designated Approved Facility was able and willing to accept the Discarded Material for delivery, Contractor shall be subject to the penalty identified in Exhibit C Performance Standards and Liquidated Damages for "Delivery to a Non-Approved Facility".

3.9.15 Disposal of Recyclables and Compostables, Use as ADC or AIC Prohibited

With the exception of Solid Waste and Residue, during the provision of Collection Services or Post-Collection Services Discarded Materials may not be Disposed of, or used for ADC or AIC in lieu of Processing for Diversion, without the expressed prior written approval of the City. Failure of Contractor, Approved Facility Operators, or Contingent Facility Operators to comply with this requirement may subject Contractor to the applicable penalties specified in Exhibit C Performance Standards and Liquidated Damages.

3.9.16 Materials Marketing

Upon request, Contractor shall provide:

A. Proof to the City that all Recyclables, Compostables and C&D intended for Processing as provided in Exhibit K Approved Post-Collection Facilities are Processed and recovered, or reused in such a manner that materials shall be considered as Diverted in accordance with the State law.

B. Information from Approved Facility Operators regarding end markets for Processed materials, including type and location of sale or end-use and general pricing.

Approved Facility Operators shall take reasonable steps to monitor brokers and buyers of Processed materials to ensure such material has not been disposed of or otherwise handled illegally. Should this occur, Approved Facility Operators shall immediately inform the Contractor and the City, and terminate such contracts or working relationships.

3.9.17 Other Provisions

Either Party may request, and Contractor and Approved Facility Operators shall reasonably accommodate or facilitate, non-routine vehicle or material weighing needs during Approved Facility operating hours, including but not limited to those related to conducting waste characterizations.

2039 **3.10 Transfer**

2040 [DRAFTING NOTE: Contract language to be updated if necessary to reflect that Recology will be
 2041 delivering residential recyclables collected in split-body trucks to Blue Line, and other residential
 2042 recyclables directly to SBR]

2043 **3.10.1 Delivery of Discarded Materials**

2044 Contractor shall deliver Discarded Materials Collected from the Service Area to Approved Transfer
 2045 Facilities as specified in Exhibit K Approved Post-Collection Facilities. In addition to, and in elaboration of
 2046 the requirements of Section 3.9 Contractor shall ensure that Approved Transfer Facility Operator(s) are
 2047 in compliance with the provisions of this Section 3.10.

2048 **3.10.2 Approved Transfer Facility Operations**

2049 Approved Transfer Facility Operator(s) shall provide Transfer services in accordance with Applicable
 2050 Laws and regulations, standard industry practice, due diligence and specification, and other
 2051 requirements of this Agreement. In addition, Approved Transfer Facility Operator(s) shall comply with
 2052 the following service specifications:

- 2053 A. Operating, managing, and maintaining the Approved Transfer Facility including all buildings,
 2054 scales, roads, utilities, equipment, and other facility requirements.
- 2055 B. Accepting all Discarded Materials delivered by Contractor according to the facility schedule and
 2056 up to the maximum capacity commitment provided in Exhibit K Approved Post-Collection
 2057 Facilities.
- 2058 C. Managing Recyclables and Compostables in a manner compliant with AB 939, AB 341, AB 1594,
 2059 and AB 1826, and related State law, to ensure that the City shall benefit from the full Diversion
 2060 credit for that material.
- 2061 D. Loading materials into Transfer vehicles powered by CNG or similar non-diesel alternative fuels.
- 2062 E. Using reasonable efforts to ensure that Transfer vehicles do not exceed legal road weight limits.
- 2063 F. Transferring Solid Waste delivered by Contractor to the Approved Disposal Facility.
- 2064 G. Transferring Recyclables delivered by Contractor to the Approved Recyclables Processing
 2065 Facility, as applicable.
- 2066 H. Transferring Compostables delivered by Contractor to the Approved Compostables Processing
 2067 Facility.
- 2068 I. Maintaining the maximum average vehicle turnaround time specified in Exhibit K for Contractor
 2069 delivery of Discarded Materials.
- 2070 J. Providing for delivery of Discarded Materials by self-haul from City residents and businesses,
 2071 including: verifying City origin for parties delivering Discarded Materials on a self-haul basis;
 2072 weighing, or estimating the weight of such delivered Discarded Materials, and reporting
 2073 tonnages of such Discarded Materials to Contractor.

3.11 Recyclables Processing and Marketing**3.11.1 Delivery of Recyclables**

Contractor, and Approved Transfer Station Operators, as applicable, shall deliver Recyclables Collected from the Service Area to Approved Recyclables Processing Facilities as specified in Exhibit K Approved Post-Collection Facilities. In addition to, and in elaboration of the requirements of Section 3.9 Contractor shall ensure that Approved Recyclables Processing Facility Operator(s) are in compliance with the provisions of this Section 3.11.

3.11.2 Approved Recyclables Processing Facility Operations

Approved Recyclables Processing Facility Operator(s) shall provide Processing services in accordance with Applicable Laws and regulations, standard industry practice, due diligence and specification, and other requirements of this Agreement. In addition, Approved Recyclables Processing Facility Operator(s) shall comply with the following service specifications:

- A. Operating, managing, and maintaining the Approved Recyclables Processing Facility including all buildings, scales, roads, utilities, equipment, and other facility requirements.
- B. Accepting all Recyclables delivered by Contractor or by an Approved Transfer Facility Operator according to the facility schedule, within the specifications, and up to the maximum capacity commitment provided in Exhibit K Approved Post-Collection Facilities.
- C. Processing Recyclable and preparing recovered materials for Marketing in a manner compliant with AB 939, AB 341, AB 1594, and AB 1826, and related State law, to ensure that the City shall benefit from the full Diversion credit for that material.
- D. Marketing materials resulting from Recyclables Processing and arranging for or providing transport of the recovered materials to end-users or Markets. The Approved Facility Operator shall ensure it is compensated by the purchasers of such materials at no less than fair market value.
- E. Maintaining as a maximum the Residue level(s) specified in Exhibit K Approved Post-Collection Facilities throughout the Term. All Residues shall be accounted for as Disposal tonnage and reported as such to Contractor.
- F. Loading into vehicles, and transporting Processing Residue for Disposal.
- G. Maintaining the maximum average vehicle turnaround time specified in Exhibit K Approved Post-Collection Facilities for Contractor and Approved Transfer Facility Operator delivery of Recyclables.

3.12 Compostables Processing and Marketing**3.12.1 Delivery of Compostables**

Contractor, and Approved Transfer Station Operators, as applicable, shall deliver Compostables Collected from the Service Area to Approved Compostables Processing Facilities as specified in Exhibit K Approved Post-Collection Facilities. In addition to, and in elaboration of the requirements of Section 3.9 Contractor shall ensure that Approved Compostables Processing Facility Operator(s) are in compliance with the provisions of this Section 3.12.

2112 3.12.2 Approved Compostables Processing Facility Operations

2113 Approved Compostables Processing Facility Operator(s) shall provide Processing services in accordance
 2114 with Applicable Laws and regulations, standard industry practice, due diligence and specification, and
 2115 other requirements of this Agreement. In addition, Approved Compostables Processing Facility
 2116 Operator(s) shall comply with the following service specifications:

- 2117 A. Operating, managing, and maintaining the Approved Compostables Processing Facility including
 2118 all buildings, scales, roads, utilities, equipment, and other facility requirements.
- 2119 B. Accepting all Compostables delivered by Contractor or by an Approved Transfer Facility
 2120 Operator according to the facility schedule, within the specifications, and up to the maximum
 2121 capacity commitment provided in Exhibit K Approved Post-Collection Facilities.
- 2122 C. Processing Compostables and preparing recovered materials for Marketing in a manner
 2123 compliant with AB 939, AB 341, AB 1594, and AB 1826, and related State law, to ensure that the
 2124 City shall benefit from the full Diversion credit for that material. Compost should be tested
 2125 through the Seal of Testing Assurance Program ("STA") or other program with comparable
 2126 requirements.
- 2127 D. Marketing materials resulting from Compostables Processing and arranging for or providing
 2128 transport of the recovered materials to end-users or Markets. The Approved Facility Operator
 2129 shall ensure it is compensated by purchasers of such materials at no less than fair market value.
- 2130 E. Maintaining as a maximum the Residue level(s) specified in Exhibit K Approved Post-Collection
 2131 Facilities throughout the Term. All Residues shall be accounted for as Disposal tonnage and
 2132 reported as such to Contractor.
- 2133 F. Loading into vehicles, and transporting Processing Residue for Disposal.
- 2134 G. Maintaining the maximum average vehicle turnaround time specified in Exhibit K Approved
 2135 Post-Collection Facilities for Contractor and Approved Transfer Facility Operator delivery of
 2136 Compostables.

2137 3.13 Construction and Demolition Debris Processing and Marketing**2138 3.13.1 Delivery of Construction and Demolition Debris**

2139 Contractor, and Approved Transfer Station Operators, as applicable, shall deliver C&D Collected from
 2140 the Service Area to Approved C&D Processing Facilities as specified in Exhibit K Approved Post-Collection
 2141 Facilities. In addition to, and in elaboration of the requirements of Section 3.9 Contractor shall ensure
 2142 that Approved C&D Processing Facility Operator(s) are in compliance with the provisions of this Section
 2143 3.13.

2144 3.13.2 Approved C&D Processing Facility Operations

2145 Approved C&D Processing Facility Operator(s) shall provide Processing services in accordance with
 2146 Applicable Laws and regulations, standard industry practice, due diligence and specification, and other
 2147 requirements of this Agreement. In addition, Approved C&D Processing Facility Operator(s) shall comply
 2148 with the following service specifications:

- 2149 A. Operating, managing, and maintaining the Approved C&D Processing Facility including all

- 2150 buildings, scales, roads, utilities, equipment, and other facility requirements.
- 2151 B. Accepting all C&D delivered by Contractor or by an Approved Transfer Facility Operator
2152 according to the facility schedule, within the specifications, and up to the maximum capacity
2153 commitment provided in Exhibit K Approved Post-Collection Facilities.
- 2154 C. Processing C&D and preparing recovered materials for Marketing in a manner compliant with AB
2155 939, AB 341, AB 1594, and AB 1826, and related State law, to ensure that the City shall benefit
2156 from the full Diversion credit for that material.
- 2157 D. Marketing materials resulting from C&D Processing and arranging for or providing transport of
2158 the recovered materials to end-users or Markets. The Approved Facility Operator shall ensure it
2159 is compensated by the purchasers of such materials at no less than fair market value.
- 2160 E. Maintaining as a maximum the Residue level(s) specified in Exhibit K throughout the Term. All
2161 Residues shall be accounted for as Disposal tonnage and reported as such to Contractor.
- 2162 F. Loading into vehicles, and transporting Processing Residue for Disposal.
- 2163 G. Maintaining the maximum average vehicle turnaround time specified in Exhibit K for Contractor
2164 and Approved Transfer Facility Operator delivery of C&D.

2165 **3.14 Disposal**

2166 **3.14.1 Delivery of Solid Waste**

2167 Contractor, and Approved Transfer Facility Operators or other Approved Facility Operators, as
2168 applicable, shall deliver Solid Waste Collected from the Service Area to the Approved Disposal Facility
2169 specified in Exhibit K Approved Post-Collection Facilities. In addition to, and in elaboration of the
2170 requirements of Section 3.9 Contractor shall ensure that Approved Disposal Facility Operator is in
2171 compliance with the provisions of this Section 3.14.

2172 Nothing in this Agreement shall limit the ability of the Approved Facility Operator or the Approved
2173 Disposal Facility Operator to enter into a bilateral arrangement for delivery and Disposal of Residues.

2174 **3.14.2 Approved Disposal Facility Operations**

2175 Approved Disposal Facility Operator(s) shall provide Disposal services in accordance with Applicable
2176 Laws and regulations, standard industry practice, due diligence and specification, and other
2177 requirements of this Agreement. In addition, Approved Disposal Facility Operator shall comply with the
2178 following service specifications:

- 2179 A. Operating, managing, and maintaining the Approved Disposal Facility including all buildings,
2180 scales, roads, utilities, equipment, and other facility requirements.
- 2181 B. Accepting all Solid Waste delivered an Approved Transfer Facility Operator or the Contractor,
2182 according to the facility schedule and up to the maximum capacity commitment provided in
2183 Exhibit K Approved Post-Collection Facilities.
- 2184 C. Operating, managing and maintaining the Solid Waste fill areas, including the placement,
2185 burying, and compaction of Solid Waste in the refuse fill areas; stockpiling, placement and
2186 compaction of daily cover, intermediate cover, and final cover; management of fill operations
2187 with regard to fill sequencing, side slopes configuration, and working face location and

- 2188 configuration.
- 2189 D. Providing, operating, and maintaining all equipment, rolling stock, and supplies necessary for
2190 operations, closure, post-closure, and environmental monitoring.
- 2191 E. Funding all closure and post-closure needs and commitments related to Disposal of Solid Waste
2192 or Residue originating from the City that may occur or be required during or following the Term
2193 solely through the per-ton compensation provided in Exhibit A Maximum Rates Approved by
2194 City, as they may be escalated through the Term.
- 2195 F. Operating, maintaining, and managing leachate and landfill gas management systems,
2196 groundwater monitoring and management systems, storm water drainage and control systems,
2197 treatment facilities, buildings, on-site roadways, utilities, and any other required facility
2198 elements.
- 2199 G. Maintaining the maximum average vehicle turnaround time specified in Exhibit K Approved
2200 Post-Collection Facilities for Contractor and Approved Transfer Facility Operator delivery of
2201 Solid Waste.

ARTICLE 4: OTHER COLLECTION-RELATED SERVICES, STANDARDS, AND AGREEMENTS

Throughout the term of this Agreement, Contractor shall perform Collection Services as provided in this Article 4, and as provided in further detail in Exhibit B – Final Approved Plans and Exhibit F – Contractor’s Proposal, and in compliance with the requirements of Exhibit C Performance Standards and Liquidated Damages.

4.1 Service Recipients

4.1.1 Mandatory Service Recipients

Mandatory Service Recipients shall include all Residential Property, Multifamily Residential Property and Commercial Property within the City boundaries, and all such premises which may be added from time to time by means of annexation, new construction, or otherwise during the term of this Agreement, unless as otherwise provided by Applicable Law. Any question as to whether premises fall within the category of Mandatory Service Recipient shall be determined by City. Contractor shall immediately initiate Collection services described in Article 3 of this Agreement to all Mandatory Service Recipients which are added to Service Area by means of annexation or development. City shall notify Contractor of such Service Recipients in a timely manner. Mandatory Service Recipients may be deleted from the list of Service Recipients if the premises are demolished, or otherwise rendered inappropriate for Collection services under this Agreement. Contractor or City shall immediately notify the other Party in writing of any circumstances which would make it appropriate for the deletion of a Mandatory Service Recipient and, upon the written approval of City, Contractor shall cease providing Collection services to such premises.

4.1.2 Other Service Recipients

Contractor shall provide Collection services described in Article 3 of this Agreement to Other Service Recipients in Service Area within fourteen (14) calendar days of request by the Service Recipient. Contractor shall cease providing Collection services to Other Service Recipients within fourteen (14) calendar days of notice from the Service Recipient or City to stop service, or within such shorter time as the City may direct. If Contractor receives a request to begin or terminate service directly from the Service Recipient, Contractor shall notify City of such change within 24 hours of the request.

4.1.3 Service Recipient Changes

City and Contractor acknowledge that during the term of this Agreement it may be necessary or desirable to add or delete Service Recipients for which Contractor will provide Collection services.

4.2 Billing Services

City shall provide billing services to Contractor for all Service Recipients in the Service Area, including all Residential Properties, Multi-Family Properties and Commercial Properties. Billing of Service Recipients shall normally be performed bimonthly by City, or in a manner deemed most appropriate by City. Contractor shall bill and collect for temporary or periodic Debris Box service.

4.2.1 Reimbursement of Costs

Within (5) Business Days of the Effective Date of this Agreement, Contractor shall reimburse City for the costs of providing billing services in the amount of ninety-four thousand, three hundred and twenty dollars \$94,320 for the annual cost of one Account Clerk II position, including all benefits and other costs associated with such position, such amount to be prorated for partial years. City shall adjust such amount annually by CPI as provided in Section 6.2.2. City shall reduce its monthly remittance to Contractor for each June following the Commencement Date by the above dollar amount, if and as adjusted by CPI. The Contractor may recover the actual annual amount of this payment as an Eligible Expense.

4.2.2 Remittances to Contractor

City shall remit to Contractor all actual City-billed cash receipts in respect of services performed by Contractor hereunder, net of amounts permitted to be retained by City pursuant to this Agreement, including but not limited to, franchise fees as provided in Section 5.1.1, the Mussel Rock Landfill maintenance fee, withholding of monthly payments and nonrefundable charges for failure to perform as provided under this Agreement, billing service charges as described in Section 4.2.1, and other such amounts due City which from time to time may accrue, and; fifty (50%) of City ratepayer bad debt that is recovered over time. Such remittance shall be made to Contractor on a monthly basis within 15 working days after the last day of the preceding month. The remittance shall be accompanied by a statement of account showing a sufficient amount of detail to allow Contractor to prepare financial reports as required elsewhere in this Agreement and to allow Contractor to adequately manage its operations. The format shall be that mutually agreed to by Contractor and City.

4.2.3 New Accounts and Changes to Accounts

All new Service Recipient accounts shall be processed by City. Contractor shall refer all requests for changes to accounts by Service Recipients to City for processing immediately upon receipt by Contractor. City shall notify Contractor of all changes in service within 48 hours of the change.

4.2.4 Collection Route/Service Billing Database

City and Contractor agree to maintain compatible databases both for Collection routes as maintained by Contractor and service billings performed by City in order to provide increased control over services provided and services billed during the term of this Agreement. Contractor shall make available all information required to insure that accounts are properly billed for service actually provided. Contractor shall perform field reconciliations at least twice annually to insure that all services provided are actually billed. Transmission of data to City may be through such method as approved by City, such as magnetic media or on-line file transfer. In addition, Contractor shall provide City with real-time, read-only access to Contractor's account-related data. All costs incurred by Contractor for maintaining its database and providing access to City shall be borne by Contractor and considered Eligible Expenses under this Agreement.

4.2.5 Billing for Solid Waste Overages

City will bill for Solid Waste overages along with the normal billings of accounts for those Service Recipients where Contractor has submitted a Solid Waste overage tag to City in a timely manner. City shall not be responsible for billing for Solid Waste overages where Contractor failed to submit to City a

2278 tag for Solid Waste overage Collection or where the tag has not been completed by Contractor in a
2279 proper manner.

2280 **4.3 Records, Reports, and Information Requirements**

2281 **4.3.1 General Reporting Requirements**

2282 Contractor shall maintain at all times a computerized database, as more fully set forth elsewhere in this
2283 Article 4. The database shall contain sufficient fields to allow input of information for City and
2284 Contractor to reconcile Contractor's compensation payable under this Agreement, to ascertain
2285 compliance with performance standards including those of Section 9.8 and Exhibit C Performance
2286 Standards and Liquidated Damages, to allow City to monitor provision of Post-Collection Services, and to
2287 meet any and all other reasonable City data requirements. City may at its discretion, but is not obligated
2288 to monitor provision of Post-Collection Services. Contractor shall cooperate with City with respect to
2289 providing information relevant to this Agreement which is not specified in this Article 4. The reports
2290 submitted as required by Sections 4.3.2, 4.3.3 and 4.3.4 are public information, and Contractor may not
2291 claim confidentiality for any report or any portion of a report. City may require reasonable modifications
2292 in reporting formats.

2293 All data collection, management and reporting requirements of Section 4.3 of the Agreement apply to
2294 the entire Service Area, including the County Pockets. All reports required in Sections 4.3.2, 4.3.3, and
2295 4.3.4 must clearly distinguish the two unincorporated County areas from the City for, at a minimum the
2296 purposes of reporting tonnages Collected and Diverted, Diversion rates, and Service Recipient issues
2297 including complaints and missed pickups. All such data shall be provided in the same reports as for the
2298 City in a format that reasonably allows the County to monitor provision of service in the unincorporated
2299 areas. Reported tonnages Collected and Diverted delivered to Approved Post Collection Facilities will be
2300 allocated between the City and the County Pockets based on each route's subscribed service levels.

2301 Contractor may recommend, and City may in its discretion approve allocation and/or sampling methods
2302 to distinguish operational data for the Service Area versus outside the Service Area, for Commercial
2303 accounts and Multi-Family accounts, and for Large Apartment Complexes separate from other Multi-
2304 Family Complexes.

2305 With respect to allocation of Contractor's costs between the Service Area and outside the Service Area
2306 (for purposes of calculating Contractor's Eligible Expenses in connection with rate applications),
2307 Contractor's initial allocation methods are as follows:

2308 A. **Labor Related Costs** Labor Related costs shall be allocated based on proportional share of
2309 subscribed service lifts. Each Line of Business (Residential MSW, Residential Recycling,
2310 Residential Organics, Commercial MSW, etc.) will be allocated separately.

2311 B. **Vehicle Related Costs** Vehicle Related costs shall be allocated based on proportional share of
2312 subscribed service lifts. Each Line of Business (Residential MSW, Residential Recycling,
2313 Residential Organics, Commercial MSW, etc.) will be allocated separately.

2314 C. **Fuel Costs** Fuel costs shall be allocated based on proportional share of subscribed service lifts.
2315 Each Line of Business (Residential MSW, Residential Recycling, Residential Organics, Commercial
2316 MSW, etc.) will be allocated separately.

2317 D. **Other Costs** Other costs shall be allocated based on proportional share of subscribed service
2318 lifts. Each Line of Business (Residential MSW, Residential Recycling, Residential Organics,
2319 Commercial MSW, etc.) will be allocated separately.

2320 E. **Direct Depreciation, Containers** Container Depreciation shall be allocated based on
2321 proportional share of Containers in service. Each Line of Business (Residential MSW, Residential
2322 Recycling, Residential Organics, Commercial MSW, etc.) will be allocated separately.

2323 F. **Allocated Costs** Labor, Vehicle, Fuel and other – Allocated Costs - Labor, Vehicle, Fuel and other
2324 shall be allocated based on proportional share of customers. Each Line of Business (Residential
2325 MSW, Residential Recycling, Residential Organics, Commercial MSW, etc.) will be allocated
2326 separately.

2327 G. **Allocated Costs** Depreciation and start-up – Allocated Costs – Depreciation and start-up related
2328 to the services provided under this Agreement shall be allocated 100% to the Service Area.

2329 H. **Interest Expense** Interest Expense shall be allocated based on proportional share of subscribed
2330 service lifts. Each Line of Business (Residential MSW, Residential Recycling, Residential Organics,
2331 Commercial MSW, etc.) will be allocated separately.

2332 **4.3.2 Monthly Reports**

2333 Contractor shall transmit monthly reports to City within 10 working days following the reporting period.
2334 Each monthly report shall include all the information required by this Article.

2335 A. **Solid Waste Collected.** The monthly report shall specify the number of tons of Solid Waste
2336 Collected by service type, with separate data for Large Apartment Complexes, including:

2337 i. Route number(s) for each load.

2338 ii. Tons per load and per route, with separate data for Large Apartment Complexes.

2339 iii. Number of the certified weight tickets provided by the Approved Facility(ies) for delivered
2340 materials.

2341 iv. Total number of hours on route per crew.

2342 v. Downtime per truck.

2343 B. **Recyclables Tonnages.** The monthly report shall specify the number of tons of Recyclables
2344 Collected for each type of material and shall include all of the following information:

2345 i. Route number(s) for each load.

2346

2347 ii. Tons per load and per route, with separate data for Large Apartment Complexes.

- 2348 iii. Number of the certified weight tickets provided by the Approved Facility(ies) for delivered
2349 materials.
- 2350 iv. Date, time, route number, truck number, and reason for rejection for any delivered loads
2351 rejected by an Approved Facility Operator(s).
- 2352 iv. Summary of tonnages of loads Collected by material, as determined by a sampling method
2353 approved by the City.
- 2354 v. Total number of hours on route per crew.
- 2355 vi. Downtime per truck.
- 2356 vii Diversion and Residue figures reported by the Approved Facility(ies) for that month.
- 2357 C. **Yard Trimming and Compostables Tonnages.** The monthly report shall separately specify the
2358 number of tons of Source-Separated Yard Trimmings, and of other Compostables Collected from
2359 all Service Recipients, and Compostables Collected from Commercial customers, including:
- 2360 i. Route number(s) for each load.
- 2361 ii. Tons per load and per route, with separate data for Large Apartment Complexes.
- 2362 iii. Number of the certified weight tickets provided by the Approved Facility(ies) for delivered
2363 materials.
- 2364 iv. Date, time, route number, truck number, and reason for rejection for any delivered loads
2365 rejected by an Approved Facility Operator(s).
- 2366 v. Total number of hours on route per crew.
- 2367 vi. Downtime per truck.
- 2368 vii Diversion and Residue figures reported by the Approved Facility(ies) for that month.
- 2369 D. **Complaint Log.** The monthly report shall contain a copy of Contractor's complaint log, with initial
2370 date of complaint, a description of how each complaint was resolved, and the date of resolution.
- 2371 E. **Missed Pickups.** The monthly report shall contain a written record of all contacts (via phone,
2372 email, etc) related to missed pickups, and a description of the response to each call.
- 2373 F. **Vacation Holds.** The number of vacation holds and the planned duration of each.
- 2374 G. **Non-Collection Notices.** Monthly data for Non-Collection Notices as compiled from the weekly
2375 reports required in Section 4.5.8.
- 2376 H. **Debris Box Services and Fees.** Contractor shall report to City by the 10th working day after the
2377 end of the prior month the total tonnages Collected and total dollar amounts billed by Contractor
2378 for temporary and periodic Debris Box service (including C&D Collection services) for the prior

2379 month in order that the City may include this amount in the monthly calculation of Franchise Fees
2380 and amounts due Contractor.

2381 I. **Post-Collection Services Compensation.** Copies of all invoices submitted by Approved Facilities
2382 and Contingent Facilities, with proof of Contractor payment within thirty (30) Days.

2383 **4.3.3 Quarterly Reports**

2384 Contractor shall submit quarterly reports on Solid Waste Collection and Disposal, Recyclables Collection,
2385 Processing and marketing, and Compostables Collection, Processing and marketing that meet the
2386 reporting requirements of AB 939, and of other state law. For the purposes of the quarterly reports,
2387 quarters shall be defined as: First Quarter consisting of July, August and September; Second Quarter
2388 consisting of October, November and December; Third Quarter consisting of January, February and
2389 March; Fourth Quarter consisting of April, May and June. Contractor shall submit quarterly reports
2390 within thirty (30) calendar days after the end of each quarter.

2391 In addition to the information required by the California Integrated Waste Management Act, each
2392 quarterly report shall include the information described in this Article. The quarterly report shall contain
2393 a summary of the information reported pursuant to Section 4.3.2 of this Agreement. The quarterly
2394 report shall include quarterly and year-to-date data for Solid Waste, Recyclables, Compostables and
2395 Commercial Compostables Collected, Disposed, and Processed by customer type, with a Diversion rate
2396 for the quarter. Quarterly Diversion data shall be provided in such detail as is sufficient to allow the City
2397 to determine compliance with the requirements of Section 2.10.2, with reporting of tonnage, by service
2398 type (i.e., single-family residential, multi-family residential (and separately for Large Apartment
2399 Complexes), commercial retail, commercial industrial/institutional, debris box, and compactor), Diverted
2400 by Contractor divided by the tonnage Collected by Contractor multiplied by 100.

2401 The quarterly report shall also identify, and include a description of readily available information
2402 regarding how changes in state statutes and regulations or judicial determinations are affecting or will
2403 affect provision of Commercial Services or Post-Collection Services, including but not limited to AB 341,
2404 AB 1594, and AB 1826.

2405 The quarterly report shall also include a description of the public education/community relations
2406 activities performed by Contractor during the quarter, and Contractor's evaluation of the success of such
2407 activities in promoting Diversion, and in addressing problems encountered by Contractor, and; public
2408 education/community relations activities Contractor plans to conduct the next quarter. All public
2409 education/community relations activities shall be discussed and evaluated in relation to the applicable
2410 provisions of Exhibit B.3 Outreach and Education Plan, and the other plans contained in Exhibit B Final
2411 Plans. The quarterly report shall include identification of any Multi-Family or Commercial Properties that
2412 appear to be covered by but not in compliance with AB 341, and shall identify any Multi-Family Property
2413 owners/managers that have declined to meet at least once per year with Diversion Coordinators as
2414 provided in Section 4.6. A Multi-Family or Commercial Premises shall be considered to appear non-
2415 compliant with AB 341 only if it (i) is either a Commercial Service Recipient that subscribes for four (4)
2416 cubic yards or more of weekly Solid Waste collection service volume from Contractor, or a Multi-Family
2417 Service Recipient with five (5) or more units, and (ii) it does not subscribe for Recyclables Collection
2418 Service from Contractor. The quarterly reports shall identify Multi-Family Complexes that are
2419 subscribing to the valet service, and provide contact information for an individual at each complex that
2420 is familiar with the service. The quarterly reports should provide detailed information on progress with

the Commercial Compostables program, including participants added to the program and tonnages Collected from each program participant; and with the Large Apartment Complexes including descriptions of outreach and education at each specific complex.

The quarterly reports shall identify specific steps Contractor has taken to remedy any areas of noncompliance identified by the City during the previous quarter, including but not limited to those that result in a determination of noncompliance with Section 9.8 or Exhibit C Performance Standards and Liquidated Damages. The quarterly reports shall continue to report on such progress until Contractor performance in any area of noncompliance has been fully corrected.

4.3.4 Annual Reports

A. Annual Performance Report Submitted By Contractor. Within 90 days after the end of each contract year, Contractor shall submit to City an annual performance report covering the immediately preceding contract year and the report shall include all of the following information:

- i. Summary of Monthly and Quarterly Reports. A collated summary of the information contained in the monthly and quarterly reports, including the reconciliation of any adjustments from prior quarterly reports.
- ii. Operational Information by “Service Type” (i.e., Residential Solid Waste, Residential Recyclables, Residential Compostables, Commercial Solid Waste, Commercial Recyclables, Commercial Compostables, etc.).
 - a. Number of routes per day
 - b. Number of actual labor hours per route per day and per year
 - c. Type of vehicle on each route
 - d. Crew size on each route
 - e. Number of accounts per route per day
 - f. Number of set-outs per route per day
 - g. Tons per route per day
 - h. Average cost per route
 - i. Route maps
- iii. Educational Activities.
 - a. Public education materials produced and total number of each distributed
 - b. Dates, times, and group names of meetings attended
 - c. Dates, times, and names of school where presentations were performed
- iv. Account Summary. In table format, the number of customers for each rate category.
- v. Inventory. A complete inventory of Collection vehicles and other major equipment.

vi. Highlights and Other Noteworthy Experiences. A discussion of highlights and other noteworthy experiences, along with measures taken to resolve problems, increase efficiency, and increase participation.

Vii Plans for Following Year. A discussion of key areas of activity, and pending challenges for the following year to improve Collection Services, increase Diversion, enhance outreach and education, etc.

4.3.5 Annual Audited Financial Reports

Within 90 days after the end of each Contract Year of this Agreement, Contractor shall cause to be prepared annual financial statements for the preceding Contract Year. Such statements shall be prepared according to Generally Accepted Accounting Principles, and reflect all operations of Contractor in connection with this Agreement, including all required footnote disclosures.

4.3.6 Independent Audit

Contractor shall engage a Certified Public Accountant licensed to practice in the State of California and approved by the City to perform an independent audit on the Contractor's annual financial statements prepared as required by Section 4.3.5 and render an opinion thereon. The audited financial statements shall be submitted directly to the City by the independent auditor within 90 days after the end of each Contract Year of this Agreement.

4.3.7 Format of Annual Financial Statements

Contractor shall prepare its annual financial statements in a format as approved in advance by City containing a sufficient level of detail so that City may verify compliance with all provisions of this Agreement.

4.3.8 Management Letter

In conjunction with the independent audit of Contractor's annual financial statements, the independent auditor shall prepare a management letter. The management letter shall cover material and nonmaterial weaknesses in internal control as well as general suggestions for improvement in operations, both financial and nonfinancial in nature. The management letter shall be submitted directly to the City by the independent auditor within 90 days after the end of each Contract Year of this Agreement.

4.3.9 Related Parties

Included in the notes to the Annual Financial Statements shall be a listing of all related party transactions and a description of the relationship between Contractor and the related party. For purposes of disclosure required by this section, related party is any entity which either has a five percent (5%) or more ownership interest in Contractor, or in which Contractor has a five percent (5%) or more ownership interest, or any entity which has either a twenty percent (20%) interest or more in Contractor's parent Company, or in which Contractor's parent Company has a twenty percent (20%) or more ownership interest.

4.3.10 Auditors' Work Papers

Contractor shall include in its agreement for professional services with its independent auditor a clause which allows inspection by City, or City's designated representative, of all independent auditor's work

papers, reports and notes prepared in conjunction with auditor's examination of the Contractor's financial statements required under of this Agreement.

4.3.11 Submittal of Reports

Contractor shall submit all reports required by this Agreement to:

City Manager
City of Daly City
333 - 90th Street
Daly City, CA 94015

or to such other address as the City may designate in writing.

4.3.12 Waste Generation/Characterization Studies

At City's direction, Contractor shall perform or assist City in performing waste generation/characterization studies as considered necessary by City and/ or as required by Applicable Law.

4.4 Inspection by City

4.4.1 General

City reserves the right to inspect any and all of Contractor's facilities at any time during normal business hours, without notice, and at any other time with reasonable notice. Contractor shall ensure that Approved Facilities and Contingent Facilities are available for City inspection upon three (3) Days notice.

4.4.2 Performance Audits

Performance and service quality audits and evaluations may be conducted or caused to be conducted by the City at its discretion throughout the Term and any extensions. Such audits may be conducted from time to time during the term of this Agreement by a qualified independent consultant selected by City. The reports required by this Agreement and the Contractor's ability or inability to achieve Diversion goals may be utilized as a basis of review. Such audits may include, but shall not be limited to analyses of both financial and qualitative performance of Contractor and Contractor's operations. If any noncompliance with the Agreement is found, the City may direct the Contractor to correct the inadequacies in accordance with the terms of this Agreement. If the Contractor fails to correct the noncompliance items, said failure will be considered a default under this Agreement. Contractor shall cooperate fully with City in conducting such evaluations and audits. The cost of such audits shall be borne by Contractor, and shall be considered to be Eligible Expenses under this Agreement.

4.4.3 Route Audits

City may conduct or require that Contractor shall conduct a route audit for each of Contractor's Collection routes by type of material Collected. The period in which the audit is conducted shall be set by City. City reserves the right to determine which routes will be audited in a particular week and, if City exercises this right, shall notify Contractor of the routes not less than seventy-two (72) hours in advance. The route audits shall include the following information for each Collection route:

- A. The route number, the date of the audit, and the starting and ending times of Collection during the audit.

- 2532 B. A description of the route location, including the names of the streets covered.
- 2533 C. The number of Service Recipients by category on the route.
- 2534 D. The number of Service Recipients by category participating on the date of the audit and the
2535 number and type (e.g., Solid Waste, Recyclables, Compostables, Used Motor Oil, Cooking Oil) of
2536 pickups in each Service Recipient category.
- 2537 E. For Collection routes, the number of Service Recipients by category which set out overages and
2538 the total number of overages Collected.
- 2539 F. For the Recyclables and Compostables Collection routes, the number of Containers distributed
2540 by Service Recipient category.
- 2541 G. For routes with Used Motor Oil Collection, the number of Used Motor Oil Containers Collected
2542 and the number of Used Motor Oil Containers distributed by Service Recipient category.
- 2543 H. For routes with Cooking Oil Collection, the number of Cooking Oil Containers Collected and the
2544 number of Cooking Oil Containers distributed by Service Recipient category.
- 2545 I. The number of Collection vehicles used on the route by vehicle type (e.g., rear loader Solid
2546 Waste truck, compartmentalized Recyclables truck), the weight of each vehicle, the capacity of
2547 each vehicle by weight and volume, and the number of trips made by each vehicle to Approved
2548 Facilities).
- 2549 J. The tonnages or volumes by type of material Collected per vehicle trip.
- 2550 K. A description of any changes in the route occurring since the immediately preceding route audit,
2551 including changes in the location of the route, the number of Service Recipients, equipment
2552 used, and Collection methods employed.
- 2553 L. The name(s), telephone number(s) and signature(s) of the persons performing each route
2554 audit.
- 2555 The City reserves the right to request any additional data it, in its sole discretion, deems necessary to
2556 evaluate the effectiveness of Contractor's operations. Costs of special route audits, if any, shall be
2557 borne by Contractor and shall be considered Eligible Expenses under this Agreement.

2558 **4.5 Customer Services**

2559 Contractor shall at all times be in compliance with this Section 4.5 and with the provisions of the
2560 Customer Service Plan contained in Exhibit B. Contractor shall revise, modify and otherwise update such
2561 Plan throughout the Term as it deems necessary, or as reasonably requested by the City.

2562 **4.5.1 Office Location and Hours**

2563 Contractor shall maintain a principal office in or near the City (i.e. within 2 miles of the City limits) that
2564 shall be open at a minimum from 7:00 a.m. to 5:00 p.m. daily except Saturdays, Sundays and Holidays. A
2565 representative of Contractor shall be available during office hours at Contractor's office for
2566 communication with City and the public.

2567 **4.5.2 Local Telephone Number**

2568 Contractor's principal office shall be accessible by a local (toll-free to Service Recipients) telephone
2569 number at least during the office hours specified in Section 4.5.1 and from 8:00 a.m. to noon on

2570 Saturdays. The telephone number shall be listed under Contractor's name in the local telephone
2571 directory.

2572 **4.5.3 Emergency Telephone Number**

2573 Contractor shall maintain an emergency telephone number for use outside Contractor's office hours.
2574 The emergency telephone number shall be listed as an emergency number under Contractor's name and
2575 under the City in the local telephone directory. Contractor shall have a representative, or an answering
2576 service to contact such representative, available at Contractor's emergency telephone number during all
2577 hours other than Contractor's office hours.

2578 **4.5.4 Multilingual/TDD Service**

2579 Contractor shall at all times maintain the capability of responding to telephone calls in English, Spanish,
2580 Mandarin, and such other languages as City may direct, employing a service such as ATT Language Line.
2581 Contractor shall at all times maintain the capability of responding to telephone calls through
2582 Telecommunications Device for the Deaf (TDD) Services. These capabilities shall be maintained for both
2583 the local telephone number and the emergency telephone number.

2584 **4.5.5 Service Recipient Complaints and Inquiries**

2585 During office hours, Contractor shall maintain a complaint service and a telephone answering system
2586 capable of accepting at least three (3) incoming calls at one time. Contractor shall record in a
2587 computerized daily log all complaints, including date, time, complainant's name and address if the
2588 complainant is willing to give this information, and nature and date and manner of resolution of
2589 complaint. Any such calls received via Contractor's answering service shall be recorded in the log no
2590 later than the following work day. This log shall be available for inspection by City during Contractor's
2591 office hours and shall be accessible to City at all times. The computer log shall be in a format approved
2592 by City. Contractor shall provide a copy of this log to City with Contractor's monthly report. All
2593 incoming calls shall be answered within a maximum of four (4) rings. Any call "on-hold" in excess of 1.5
2594 minutes shall be switched to a message center where Contractor shall maintain information in a daily
2595 log to enable a customer service representative to return customer calls. All "call backs" shall be
2596 attempted a minimum of one time prior to 6:00 p.m. on the day of the call. If the caller is not contacted
2597 on the first attempt, Contractor shall make subsequent attempts on the next working day after the
2598 original call. Contractor shall make a minimum of three (3) attempts within twenty-four (24) hours of
2599 the receipt of the call. If Contractor is unable to reach the caller on the next working day, Contractor
2600 shall send a postcard to the caller on the second working day after the call was received, indicating that
2601 the Contractor has attempted to return the call. All attempts to contact the caller shall be recorded in
2602 the log kept by Contractor.

2603 **4.5.6 Missed Pick-Ups**

2604 The failure of Contractor to pick up Discarded Materials which has been set out in an approved manner
2605 as described in Article 3 by a Service Recipient shall be considered a missed pick-up. Contractor shall
2606 Collect the material from the Service Recipient within twenty-four (24) hours of Contractor's receipt of
2607 notification of the missed pick-up except where Collection on a Sunday would be required, in which case
2608 Contractor may perform the Collection of a missed pick-up on the Monday immediately following the
2609 date of notification. If Contractor is notified of a missed pick-up on the business day following the
2610 scheduled Collection day for the Service Recipient and such notification is made by 9:00 a.m., Contractor
2611 shall Collect the missed pick-up on the day of notification. Contractor shall maintain a written record of

all calls related to missed pick-ups and the response provided by Contractor. The record shall be maintained in accordance with the reporting and monitoring requirements of this Agreement. In the event Contractor fails to Collect a missed pick-up within the times set forth in this Section, City or its agents may Collect and transport the material. City shall notify Contractor in writing whenever City or its agent collects a missed pick-up. Contractor shall reimburse City for all costs so incurred by City as provided in this Agreement, and such costs are not an Eligible Expense.

4.5.7 Vacation Holds

Upon customer request, Contractor shall place a “vacation hold” on existing Service Recipient accounts for periods of no less than one (1) week in length. Contractor shall allow each Service Recipient to utilize the “vacation hold” service for a combined period of up to four (4) weeks each Contract Year. City and Contractor shall coordinate as necessary regarding provision of this service.

4.5.8 Non-Collection Notices

Contractor shall report to City on a weekly basis regarding Contractor issuance of non-Collection notices, in such format and with a timing as City may require.

4.6 Community Relations Program

Contractor shall at all times be in compliance with this Section 4.6 and with the provisions of the Transition and Diversion Plans contained in Exhibit B. Contractor shall revise, modify and otherwise update such Plans throughout the Term as it deems necessary, or as reasonably requested by the City.

4.6.1 Initial Start-Up Public Education

A. Door Hangers. On or before the Commencement Date Contractor shall deliver City-approved written materials announcing applicable changes to Collection services. These materials will be in the form of door hangers, or other format approved by the City, to be placed at the premises of each Service Recipient. These materials shall specify Service Recipient’s scheduled Collection day(s) as well as summary information regarding Holiday schedule and Bulky Goods Collection.

B. Initial Mailing. On or before the Commencement Date Contractor shall prepare and release a City-approved initial mailing (via Bulk Mail – Postal Customer Local) to residents and businesses explaining any changes to existing Collection programs and any new programs.

C. Community Picnic. No less than two months prior to the Commencement Date, Contractor shall organize and host a community picnic at a location within the City, to be mutually agreed upon by City and Contractor. Contractor shall utilize the picnic as an opportunity to meet members of the community and to introduce new service options.

4.6.2 Ongoing Public Education

A. General. The public education and outreach activities referenced herein are further described in the Diversion Plan contained in Exhibit B (Final Approved Plans). Contractor’s public education and outreach strategy shall focus on improving Service Recipients’ understanding of the benefits of and opportunities for Source Reduction, Reuse, Recycling and Composting. Contractor shall prepare and distribute public education materials to Service Recipients in Service Area four times during each year of this Agreement on a schedule approved by the City. The materials

shall be designed to address specific Collection needs or problems. The materials shall be printed in English, Spanish, and other languages specified by City. The materials shall be professionally printed on paper stock with not less than fifty percent (50%) recycled paper content including at least ten percent (10%) post-consumer recycled paper content. Contractor shall provide camera-ready copy to City for City's review and approval prior to printing and distribution. Any promotional materials or news releases developed for Contractor's own use shall be developed at Contractor's sole cost and expense. Contractor shall obtain City's written approval of the materials prior to printing or distributing the materials.

B. Website. Contractor shall develop a comprehensive website specific to City which fully explains and effectively promotes the Diversion options offered to its Service Recipients. The website shall contain the full approved Maximum Rates schedule as well as any other information that may be helpful to City and Service Recipients in meeting City's Diversion goals.

C. HHW Education. Contractor shall develop and implement a public education program designed to educate Generators regarding proper methods of recognizing, handling and disposing of HHW.

D. Multi-Family Residential and Commercial Technical Assistance. Contractor shall develop and implement a comprehensive technical assistance program designed to provide targeted education and Diversion assistance to Multi-Family Residential and Commercial customers. Such program shall include at a minimum, dedicated Contractor employee time, program promotion and outreach, customer service level audits, customer site assessments and reporting.

E. School Programs. Contractor shall develop a program to educate and engage students at schools located within the City. The program shall include, at a minimum, assembly presentations, classroom projects, field trip opportunities, a high school internship program, and educational resources (e.g., lesson plans regarding sustainability, online resources) for educators.

4.6.3 Non-Collection Notice

On or before the Commencement Date of this Agreement Contractor shall have developed and begun utilizing City-approved Non-Collection Notices as provided in Article 3. The notices shall be a least two inches by six inches in size and shall have the capability of making instant copies from the original at the spot of non-collection (e.g. carbonless copy paper).

4.6.4 Diversion Coordinators

Contractor shall employ a minimum of two full-time employees designated as Diversion Coordinators to assist Service Recipients in Diverting the maximum amount of Solid Waste from the landfill. Diversion Coordinators shall serve as the Contractor's exclusive technical assistance representatives to assist Multi-Family and Commercial Service Recipients with selecting service levels to meet their Solid Waste, Recyclables, and Compostables (including Yard Trimmings) Collection needs.

Diversion Coordinators will, at a minimum conduct the following activities: 1) perform waste and route audits; 2) assist Multi-Family and Commercial customers in determining the number and size of each such customer's Containers, frequency of Collection; 3) assist Multi-Family Property owners and managers in becoming aware of, and in scheduling on-call per-unit Bulky Goods Collections; 4) conduct

at least one (1) annual meeting with each property manager/owner; 5) conduct annual on-site assessments of the Multi-Family and Commercial premises to improve Recyclables and Compostables Collection program participation, and improve set-outs including reducing Contamination; 6) educate Multi-Family and Commercial Customers regarding the mandatory Recycling requirements of AB 341 and City ordinance; 7) notifying noncompliant Multi-Family and Commercial Customers at least semi-annually; 8) perform other outreach activities such as conducting training workshops, visiting business association meetings and performing school outreach upon reasonable prior request by City; and 9) report on the above activities as required in Section 4.3.

City shall have the right to hire, and deduct from the monthly payment to Contractor, the costs of one or both of the Diversion Coordinators should either position be vacant for 30 calendar days or should the City determine, in its sole discretion, that Contractor's Diversion efforts are not adequate or effective; provided, however, that the amount of this deduction shall not exceed Contractor's actual costs associated with each such position as established by the position's salary and benefits during the most recent three month period. Any such costs shall be deemed an Eligible Expense.

4.6.5 Analysis of Discarded Material Composition

Contractor shall cooperate in activities requested by the City to measure Diversion of Solid Waste from landfills including, but not limited to, providing a location for conducting Discard Material sorting, and re-routing trucks on a temporary basis to facilitate composition analysis. Such reports shall include, but not necessarily be limited to, throughput, recovery rates per material type, Residue rates by material type, costs, Recyclable Material commodity values, and final disposition of Source Separated Recyclables and Source Separated Compostables. Contractor shall also supply any other information reasonably requested by the City to meet State, Federal, County, or City regulatory requirements as those requirements may be amended from time to time. Reasonable and necessary documented costs expended by Contractor with relation to the services described in this Section 4.6.5, and with prior approval of City, shall constitute an Eligible Expense.

4.7 Affirmative Action

4.7.1 Nondiscrimination

In the performance of all work and services under this Agreement, Contractor shall not discriminate against any person on the basis of such person's race, sex, color, national origin, religion, marital status or sexual orientation. Contractor shall comply with Applicable Law regarding nondiscrimination, including those prohibiting discrimination in employment.

ARTICLE 5: CITY FEES

5.1 Franchise Fee**5.1.1 Franchise Fee Amount**

City shall assess during the term of this Agreement a franchise fee (the "Franchise Fee") of twelve percent (12%) of Gross Revenues collected by City or Contractor from others arising out of the services to be performed by Contractor under this Agreement. For purposes of calculating the Franchise Fee, Gross Revenues from all activities conducted under this Agreement arising from services provided within the Service Area shall be used. If in any month Contractor shall receive revenues from sources other than City from Collection activities conducted under this Agreement, such revenues are to be included in the amount of Gross Revenues subject to the Franchise Fee. Contractor shall notify City of the amount and source of such revenues no later than the tenth (10th) calendar day of the following month. Pursuant to Section 6.2.1, City will deduct applicable Franchise Fees from those billings processed by the City before remitting funds to Contractor.

5.1.2 Time and Method of Payment

For those billings, if any, processed by Contractor, where a Franchise Fee has not been withheld by City, Contractor shall remit all applicable franchise fees to the City on a monthly basis, by the 10th calendar day of the following month.

5.1.3 Adjustment to Franchise Fee

City reserves the right to adjust the Franchise Fee, the Mussel Rock Landfill Maintenance Fee, and the Mussel Rock Transfer Station Decommissioning Fee as it deems appropriate at any time during the Term of this Agreement. Any increase in such fees above the levels in effect on the Effective Date shall be deemed an Eligible Expense, and City shall concurrently implement a Maximum Rate increase such that Contractor is not financially disadvantaged by any such increase.

5.2 Mussel Rock Fees**5.2.1 Mussel Rock Landfill Maintenance Fee**

Responsibility for maintenance of the closure requirements established by various state agencies has been assumed by City and City will continue its responsibility for maintenance of the closed landfill site known as the Mussel Rock Landfill. City shall assess a fee during the term of this Agreement as follows. City shall Collect \$33,333 on a monthly basis for a total of \$400,000 for Contract Year One, and \$34,667 on a monthly basis for a total of \$416,000 for Contract Year Two. City shall continue to collect the fee through the Term, as escalated annually by 4% for each Contract Year, for the continued maintenance of the site. In the event that additional maintenance requirements or other actions are required by responsible State or federal agencies which require additional maintenance funds, Contractor shall increase the monthly fee amount by that amount determined by City necessary to meet these obligations, provided that a concurrent Maximum Rate increase is implemented by City to compensate Contractor for the increased cost. Pursuant to Section 6.2.1, City will deduct the Mussel Rock Landfill Maintenance Fee from billings processed by the City before remitting funds to Contractor. Said amounts deducted by the City are considered part of the Eligible Expenses for Contractor. Contractor shall bear no other obligations for the closed landfill site except as agreed to by City and Contractor.

5.2.2 Mussel Rock Transfer Station Decommissioning Fee

City has the responsibility decommissioning the Mussel Rock Transfer Station, including but not limited to removal of structures, and restoration and maintenance of the property. City has established a Mussel Rock Transfer Station Decommissioning Fee to be assessed during the Term of this Agreement on a temporary (one or more years) or on an ongoing basis. The Fee is set at \$0.00 as of the Effective Date. City may collect the fee from Contractor on a monthly basis in the similar manner as provided in Section 5.2.1, and with or without an annual escalation factor. Pursuant to Section 6.2.1, City will deduct the Mussel Rock Landfill Maintenance Fee from billings processed by the City before remitting funds to Contractor. Said amounts deducted by the City are considered part of the Eligible Expenses for Contractor. Contractor shall bear no other obligations for the transfer station site except as agreed to by City and Contractor.

5.3 One-Time Procurement Cost Payment

Within (5) Business Days of the Effective Date of this Agreement, Contractor shall pay the City three hundred fifty five thousand dollars (\$355,000). The Contractor may recover this payment as an Eligible Expense if the expense is amortized over fifteen (15) years.

5.4 Other Fees

City reserves right to establish (and thereafter modify) other fees during the Term at its sole discretion. In this event, Maximum Rates shall be concurrently adjusted as necessary to reflect the new or modified fee(s), and City will deduct such fee(s) from billings processed by the City before remitting funds to Contractor pursuant to Section 6.2.1. Said amounts deducted by the City are considered part of Eligible Expenses.

ARTICLE 6: CONTRACTOR'S COMPENSATION AND RATES**6.1 Rate Periods**

Rate Periods "1" through "10" are identified as follows:

Rate Period	Dates	Applicable Rate Adjustment Methodology**
Rate Period 1	February 1, 2016 – June 30, 2017	Adjusted CPI (Section 6.2.2.1)
Rate Period 2	July 1, 2017 – June 30, 2019	CPI (Section 6.2.2.2)
Rate Period 3	July 1, 2019 – June 30, 2021	Cost-Based (Section 6.2.3)
Rate Period 4	July 1, 2021 – June 30, 2023	CPI (Section 6.2.2.2)
Rate Period 5	July 1, 2023 – June 30, 2025	CPI (Section 6.2.2.2)
Rate Period 6	July 1, 2025 – June 30, 2027	CPI with OR Band (Section 6.2.4)
Rate Period 7	July 1, 2027 – June 30, 2029	CPI (Section 6.2.2.2)
Rate Period 8	July 1, 2029 – January 31, 2031 (or June 30, 2031, if Term is extended)	CPI with OR Band (Section 6.2.4)
Rate Period 9*	July 1, 2031 – June 30, 2033	CPI (Section 6.2.2.2)
Rate Period 10*	July 1, 2033 – January 31, 2034	CPI (Section 6.2.2.2)
* If Term is extended. ** Not including adjustments relating to CNG vehicles (Section 6.2.9) and extraordinary items (Section 6.2.6).		

Rate Periods shall be the periods for which Maximum Rates are set, with the exception of adjustments resulting from extraordinary expenses as provided under Section 6.2.6.

6.2 Rates for Solid Waste Collection**6.2.1 Establishing and Collecting Rates; Compensation of Contractor**

City shall, from time to time, establish Maximum Rates in accordance with this Agreement for various categories of Service Recipients which are designed to provide revenues to fund all activities and pay all fees provided for under this Agreement. City shall be responsible for billing and collecting such Maximum Rate revenues except as specifically provided for herein. From Maximum Rate revenues collected by City, City shall first deduct all amounts owed or otherwise due to City, together with all amounts to be otherwise withheld, pursuant to this Agreement, and the balance shall be remitted to Contractor, on a monthly basis. Contractor's sole compensation for rendering services pursuant to this Agreement shall consist of the amounts to be paid to, or retained by, Contractor under this Agreement, which shall include any revenue paid to Contractor by a Recyclables Processor from the sale of Recyclables.

6.2.2 Rate Setting for Rate Periods 1, 2, 4, 5, 7, 9, 10**6.2.2.1 Rate Setting for Rate Period 1**

Contractor's initial proposed Maximum Rates, set forth in Exhibit [J], shall be adjusted prior to the Commencement Date, as described below and as provided under Section 6.2.6. Maximum Rates in effect as of the Commencement Date shall remain in effect until June 30, 2017, without adjustment, except as provided under Section 6.2.6. Such rates set forth in Exhibit [J] are as proposed by Contractor and approved by the City.

First, the portion of Contractor's initial proposed Maximum Rates attributable to wages and salaries of Contractor's employees governed by collective bargaining agreements (CBAs) shall be increased by the percentage increases in such wages and salaries required by the applicable CBAs for FY 2015-16 and FY 2016-17 (it being understood that Contractor's proposal was based on FY 2014-15 numbers).

Second, the remaining portion (the "non-CBA portion") of Contractor's proposed Maximum Rates shall be adjusted upward or downward to reflect actual capital costs for vehicles and equipment included on Form 4 of the Contractor's proposal. How each Maximum Rate is adjusted upward or downward to reflect actual capital costs shall be determined by mutual agreement between the Parties prior to setting Rate Period 1 Maximum Rates.

Third, the adjusted non-CBA portion of Maximum Rates from the second step, shall be adjusted upward or downward on the basis of one hundred percent (100%) of the percentage change in the Consumer Price Index, All Urban Consumers (All Items), for the San Francisco/Oakland Metropolitan Area as published by the U.S. Department of Labor, Bureau of Labor Statistics ("CPI"), Series ID: CUURA422SA0.

The net percentage change shall be calculated by the following formula:

$$\text{Net Percentage Change (NPC)} = \frac{X(i) - X(i-2)}{X(i-2)}$$

Where,

X(i) = Index value for December 2014;

2823 X(i-2) = Index value for December 2012

2824 Changes in the net percentage change of less than one tenth of one point (0.1) shall be rounded to the
2825 nearest one-tenth of a point, i.e., 1.50 to 1.54 shall be treated as 1.5; 1.55 to 1.59 shall be treated as 1.6.

2826 Should the CPI not be published in December of the year required for calculation of rate adjustments,
2827 the CPI values of the month most immediately preceding that December shall be used. If said CPI is
2828 discontinued, it shall be replaced by the CPI which most closely approximates the original category as
2829 determined by the U.S. Bureau of Labor Statistics.

2830 **6.2.2.2 Rate Setting for Rate Periods 2, 4, 5, 7, 9 and 10**

2831 A. **Application Submittal.** On March 1, prior to the commencement of the Rate Period for which
2832 Maximum Rates are to be determined (coming Rate Period), Contractor shall submit to the City
2833 an application requesting the adjustment of Maximum Rates for the coming Rate Period via mail
2834 and an electronic copy via email. For example, on March 1, 2017, the Contractor shall submit its
2835 application for the adjustment of Maximum Rates to be effective July 1, 2017 (i.e., Rate Period
2836 Two).

2837 Such Application shall include (i) the rate adjustment Index calculation in accordance with
2838 Section 6.2.2.2.B; and (ii) a copy of the Maximum Rate schedule currently in effect, and a pro
2839 forma schedule showing the Maximum Rates that Contractor proposes for the coming Rate
2840 Period after giving effect to the adjustment under Section 6.2.2.2.B.

2841 B. **Rate Adjustment Methodology.** Each Maximum Rate shall be adjusted upward or downward
2842 on the basis of the sum of (i) the CNG adjustment required under Section 6.2.9, plus (ii) any
2843 adjustments pursuant to Section 6.2.6, plus (iii) one hundred percent (100%) of the net
2844 percentage change in the Consumer Price Index, All Urban Consumers (All Items), for the San
2845 Francisco/Oakland Metropolitan Area as published by the U.S. Department of Labor, Bureau of
2846 Labor Statistics ("Index"). Series ID: CUURA422SA0.

2847 The net percentage change shall be calculated by the following formula:

$$2848 \quad \text{Net percentage change (NPC)} = \frac{X(i)-X(i-2)}{X(i-2)}$$

2849

2850 Where,

2851 X(i) = Index value for December of the year preceding the coming Rate Period;

2852 X(i-2) = Index value for December 24 months preceding the December referred to in X(i) above

2853 Changes in the net percentage change of less than one tenth of one point (0.1) shall be rounded
2854 to the nearest one-tenth of a point, i.e., 1.50 to 1.54 shall be treated as 1.5; 1.55 to 1.59 shall be
2855 treated as 1.6.

2856 Should the Index not be published in December of the year required for calculation of rate
2857 adjustments, the Index values of the month most immediately preceding that December shall be

used. If said Index is discontinued, it shall be replaced by the index which most closely approximates the original category as determined by the U.S. Bureau of Labor Statistics.

C. The Maximum Rate adjustment under 6.2.2.2.B shall take effect on the first day (July 1) of the Rate Period for which Maximum Rates are being established.

D. If a Maximum Rate adjustment under this Section 6.2.2.2 would result in an increase in the aggregate amount billed by City to Service Recipients in respect of services provided hereunder of ten percent (10%) or more in the first year of such Rate Period, then City and Contractor shall meet and confer regarding (i) whether and how Contractor's obligations under this Agreement (including purchase of CNG vehicles) can be suspended, delayed or otherwise modified to reduce Eligible Expenses and the resulting Maximum Rate adjustment, and (ii) whether the Rate adjustment can be divided over multiple Rate Periods, with a view to ensuring that no biennial Maximum Rate adjustment exceeds ten percent (10%).

6.2.3 Rate Adjustment Process for Rate Period 3

A. **Summary.** The Rate adjustment process for Rate Period 3 involves: review of Contractor's actual, allowable, and Eligible Expenses from Contractor's most recently completed Fiscal Year; review of Contractor's projected Eligible Expenses for Rate Period 3; the calculation of allowable profit for Rate Period 3; and, the calculation of City Fees and other Pass-through Expenses for Rate Period 3.

The difference (measured as a percentage) between total Contractor costs for Rate Period 3 (calculated in accordance with 6.2.3.C through G) and total projected Eligible Revenues for Rate Period 3 (calculated at current rates) is the Rate Adjustment Factor. One (1) plus the Rate Adjustment Factor is applied to the current Rates to determine the Maximum Rates for Rate Period 3, and such Maximum Rate adjustment shall take effect on July 1, 2019, except as provided in the following paragraphs.

The Rate Adjustment Factor as calculated in the previous paragraph, excluding the portions thereof attributable to (i) changes in costs related to Change in Law, City fees, or other items covered by Section 6.2.6, and (ii) interest, depreciation and fuel costs associated with the introduction of CNG vehicles, is referred to as the "Core Rate Adjustment Factor" (and the costs described in clauses (i) and (ii), the "Excluded Amounts").

For the avoidance of doubt, if the Core Rate Adjustment Factor is equal to or less than ten percent (10%), then Maximum Rates shall be adjusted by the Rate Adjustment Factor.

If the Core Rate Adjustment Factor exceeds ten percent (10%):

(a) City and Contractor shall meet and confer to determine whether and how Contractor's obligations under the Agreement can be suspended, delayed or otherwise modified to reduce Eligible Expenses and the resulting Core Rate Adjustment Factor.

(b) City may cap the Maximum Rate adjustment attributable to the Core Rate Adjustment Factor at ten percent (10%), in which case Maximum Rates shall be adjusted by ten percent (10%) plus a percentage sufficient to compensate Contractor for the Excluded Amounts.

(c) City in its sole discretion may decide to grant Contractor a Maximum Rate adjustment attributable to the Core Rate Adjustment Factor in excess of ten percent (10%), in which event City may divide the excess portion over multiple Rate Periods, with ten percent (10%) (or such greater portion as City elects) occurring in Rate Period 3 (plus a percentage sufficient to compensate Contractor for the Excluded Amounts), and the remainder being carried over to Rate Period 4 and added to the Rate Adjustment that would otherwise take effect in Rate Period 4 and, if necessary, carried over to Rate Period 5 and added to the Rate Adjustment that would otherwise take effect in Rate Period 5.

B. **Application Submittal.** On March 1, 2019, Contractor shall submit to the City an application requesting the adjustment of Maximum Rates for Rate Period 3 via mail and an electronic copy via email. Such Application shall include (i) a copy of the Contractor's audited financial statements for the Contractor's most-recently completed fiscal year; (ii) Rate Period 3 projected total Contractor costs, presented in a format substantially similar to that included in Exhibit F (Contractor's Proposal); (iii) a copy of the Rate schedule currently in effect, and a pro forma Rate schedule showing the Rates that Contractor proposes for the Rate Period 3; (iv) projected Eligible Revenue at current rates (with supporting documentation); and, (v) all other information that Contractor deems necessary to support its projected total contractor costs and proposed Maximum Rates.

C. **Determination of Total Contractor Costs.** Total allowable Contractor costs for Rate Period 3 shall be the sum of: 1) Contractor's projected Eligible Expenses; 2) Contractor's allowable profit; and 3) Contractor's projected Pass-through Expenses, including City Fees.

Contractor's projected Eligible Expenses for Rate Period 3 shall be calculated by: multiplying one plus the NPC calculation described in Section 6.2.2.1 (using the change in CPI from December 2016 to December 2018) by Contractor's allowable Eligible Expenses (other than those relating to the introduction of CNG vehicles).

Contractor's allowable Eligible Expenses (other than those relating to the introduction of CNG vehicles) shall be derived from Contractor's actual expenses shown in the audited financial statements for their most-recently completed fiscal year and limited to those cost categories identified in Exhibit F (Contractor's Proposal). Allowable Eligible Expenses shall include all expenses, both direct and indirect, which are attributable to the provision of all of the services delineated in this Agreement, approved as appropriate and necessary by City. Non-allowable costs, in addition to those discussed in detail in Sections 6.2.3.E and 6.2.3.F, include: on-call HHW services, MFD valet services, entertainment expenses, political and charitable contributions, land and goodwill acquisition (including interest thereon), increase in the value of assets above their book value prior to purchase except as agreed to by City, payments to or for the benefit of previous owners, labor and equipment for personnel and vehicles not specified in Exhibit F (Contractor's Proposal), or other expenses determined by City as unnecessary for the provision of services under this Agreement.

Contractor's allowable profit shall equal projected Eligible Expenses divided by an Operating Ratio of 87%, and subtracting from the result projected Eligible Expenses.

Contractor's projected Pass-through Expenses (other than City Fees) for Rate Period 3 shall consist of:

(i) projected interest on capital assets (other than CNG vehicles) reflected in Exhibit J, calculated by taking Contractor's actual expenses shown in the audited financial statements for their most-

- 2940 recently completed fiscal year, and multiplying them by one plus the NPC calculation described
2941 in Section 6.2.2.1 (using the change in CPI from December 2016 to December 2018); and
- 2942 (ii) projected Post-Collection Services expenses, calculated based on projected tonnages for Rate
2943 Period 3 and then-current per-ton rates for such services multiplied by one plus the NPC
2944 calculation described in (i) above, and as adjusted for any known future extraordinary changes
2945 in such per-ton rates, such as a Change in Law or a change in governmental fees affecting an
2946 Approved Facility. For the avoidance of doubt, if actual tons delivered to Post-Collection
2947 Facilities differ from Contractor's projected tons, Contractor's compensation shall not be
2948 adjusted as a result; and
- 2949 (iii) the projected amount of any governmental fees (other than City Fees) imposed on
2950 Contractor after the Effective Date.
- 2951 City Fees shall be calculated for Rate Period 3 in accordance with Article 5, taking into account
2952 any known future changes in such City Fees.
- 2953 Notwithstanding the foregoing, Contractor shall be entitled to adjust the portion of its Eligible
2954 Expenses and Pass-Through Expenses relating to interest, depreciation and fuel costs associated
2955 with the introduction of CNG vehicles by the projected actual increase in such costs, rather than
2956 by escalating such costs by the NPC calculation as contemplated above.
- 2957 D. **Expenses – Capital.** Without limiting the generality of the foregoing, Contractor's allowable
2958 Pass-through costs shall include interest on Contractor's capital used in performing services for
2959 the City under the Agreement, whether equipment is purchased or leased. For purposes of
2960 calculating Contractor's interest expense, the rate on California Municipal Financing Authority
2961 ("CMFA") bonds as of the Effective Date and as it may be modified during the Term, shall be
2962 used to calculate Contractor's interest expense associated with Contractor's capital assets being
2963 used to perform services under the Agreement and shall be multiplied by the total value of
2964 Contractor's capital assets reflected in Exhibit J, if Contractor has obtained CMFA financing for
2965 such capital assets. If Contractor has not obtained CMFA financing for its capital assets, the
2966 interest rate used to calculate Contractor's interest expenses shall be the rate for Treasury
2967 bonds of constant maturity having the same term as the purchased equipment's depreciation
2968 term (e.g., 10-year bonds for equipment depreciated over 10-years), as such rate appears on the
2969 web site of the Federal Reserve Board (<http://www.federalreserve.gov/releases/H15/data.htm>)
2970 as of the lease start date. If the Treasury bond of constant maturity having the same term as the
2971 lease term is discontinued, the successor bond (identified by the Federal Reserve) with which it
2972 is replaced will be used for subsequent calculations. If no successor bond is identified by the
2973 Federal Reserve, the Parties agree to meet and confer to determine the successor bond which is
2974 most comparable.
- 2975 E. **Regional and Corporate Overhead.** Indirect expenses from Contractor's regional and/or
2976 corporate headquarters allocated to the local operation shall be limited to 3.8% of Eligible
2977 Revenues. Such expenses up to this threshold shall be Eligible Expenses, but any excess shall be
2978 a non-allowable cost.
- 2979 F. **Employee Stock Ownership Plan (ESOP).** The establishment of an Employee Stock Ownership
2980 Plan (ESOP) is neither encouraged nor prohibited by this Agreement; however, the formation or
2981 support of an ESOP, or the creation or support of a trust whose assets are composed of the
2982 stock of the Contractor, or of the stock of any holding company, subsidiary corporation or

related corporation to Contractor, where the trust assets are either allocated to employee accounts or to a pension or retirement fund for the benefit of Contractor's employees or retirees, such ESOP or trust costs or contributions, to and including acquisition of stock costs and financing costs, shall not constitute a chargeable or operating cost or expense (Eligible Expense) of the Contractor.

G. Notwithstanding the provisions of Section 6.2.3.C (Determination of Total Allowable Contractor Costs), the following costs shall be excluded from consideration as Eligible Expenses during Rate Period 3:

1. Increased capital, labor or any other costs associated with off-route time incurred by Collection crews beyond that assumed by Contractor in Exhibit F Contractor's Proposal and Exhibit J Operating Assumptions and Cost Basis.
2. The addition of routes, trucks, containers, and associated capital, labor, interest and all other directly or indirectly related costs beyond those assumed by Contractor in Exhibit F Contractor's Proposal, and in Exhibit J Operating Assumptions and Cost Basis including the net costs for CNG phase-in documented in Form ___ of Exhibit J, except as follows. Eligible Expenses may include increases in containers, trucks, labor, and/or routes to the extent that the Contractor fully documents the need to City's reasonable satisfaction based on: 1) increases in specific types of Service Recipients, and; 2) demonstration that the need cannot be accommodated by shifts in use of existing containers, trucks, labor, and/or routes.

6.2.4 Rate Adjustment Process for Rate Periods 6 and 8

A. Application Submittal. On March 1, prior to the commencement of the Rate Period for which Maximum Rates are to be determined (coming Rate Period), Contractor shall submit to the City an application requesting the adjustment of Maximum Rates for the coming Rate Period via mail and an electronic copy via email. For example, on March 1, 2025, the Contractor shall submit its application for the adjustment of Maximum Rates to be effective July 1, 2025 (i.e., Rate Period Six).

Such Application shall include (i) a copy of the Contractor's audited financial statements for the Contractor's most-recently completed fiscal year; (ii) projected Eligible Expenses, profit, projected Pass-through Costs (including projected City fees) for the coming Rate Period, presented in a format substantially similar to that included in Exhibit F (Contractor's Proposal), including the basis for projections; (iii) projected Eligible Revenue for the coming Rate Period, both at current rates and after giving effect to the Index adjustment under Section 6.2.4.B; (iv) the rate adjustment Index calculation in accordance with Section 6.2.4.B; (v) the Operating Ratio that would result from the Index adjustment under Section 6.2.4.B; (vi) calculations explaining any rate adjustment under Section 6.2.4.C, if applicable; and, (vii) a copy of the Maximum Rate schedule currently in effect, and a pro forma schedule showing the Maximum Rates that Contractor proposes for the coming Rate Period. Contractor's projected Eligible Expenses and Pass-through Costs shall be calculated as set forth in Section 6.2.3.C through G above.

B. Rate Adjustment Methodology. Subject to Section 6.2.4.C below, each Maximum Rate shall be adjusted upward or downward on the basis of one hundred percent (100%) of the net percentage change in the Consumer Price Index, All Urban Consumers (All Items), for the San

3025 Francisco/Oakland Metropolitan Area as published by the U.S. Department of Labor, Bureau of
3026 Labor Statistics ("Index"). Series ID: CUURA422SA0.

3027 The net percentage change shall be calculated by the following formula:

$$\begin{array}{l} 3028 \quad \text{Net percentage change (NPC)} = \frac{X(i)-X(i-2)}{X(i-2)} \\ 3029 \end{array}$$

3030 Where,

3031 $X(i)$ = Index value for December of the year preceding the coming Rate Period;

3032 $X(i-2)$ = Index value for December 24 months preceding the December referred to in $X(i)$ above

3033 Changes in the net percentage change of less than one tenth of one point (0.1) shall be rounded
3034 to the nearest one-tenth of a point, i.e., 1.50 to 1.54 shall be treated as 1.5; 1.55 to 1.59 shall be
3035 treated as 1.6.

3036 Should the Index not be published in December of the year required for calculation of rate
3037 adjustments, the Index values of the month most immediately preceding that December shall be
3038 used. If said Index is discontinued, it shall be replaced by the index which most closely
3039 approximates the original category as determined by the U.S. Bureau of Labor Statistics.

3040 C. If, after giving effect to such adjustment, projected Eligible Revenue and Eligible Expenses would
3041 result in a projected Operating Ratio to Contractor lower than 84% or higher than 90% on an
3042 annual basis, then, in lieu of the Index-based adjustment, Maximum Rates shall be adjusted to a
3043 level that will result in a projected Operating Ratio to Contractor of 87% on an annual basis.

3044 D. The Maximum Rate adjustment under 6.2.4.B or 6.2.4.C, whichever is applicable, shall take
3045 effect on the first day (July 1) of the Rate Period for which Maximum Rates are being
3046 established.

3047 E. If a Maximum Rate adjustment under this Section 6.2.4 would result in an increase in the
3048 aggregate amount billed by City to Service Recipients in respect of services provided hereunder
3049 of ten percent (10%) or more in the first year of such Rate Period, then City and Contractor shall
3050 meet and confer regarding (i) whether and how Contractor's obligations under this Agreement
3051 (including purchase of CNG vehicles) can be suspended, delayed or otherwise modified to
3052 reduce Eligible Expenses and the resulting Maximum Rate adjustment, and (ii) whether the Rate
3053 adjustment can be divided over multiple Rate Periods, with a view to ensuring that no biennial
3054 Maximum Rate adjustment exceeds ten percent (10%).

3055 **6.2.5 Approved Facility and Contingent Facility Fee**

3056 Initial Approved Facility and Contingent Facility Fees, subject to adjustment for Rate Period One and
3057 subsequent Rate Periods are included in Exhibit A Maximum Rates Approved by City.

6.2.6 Extraordinary Expenses

Notwithstanding (and in addition to) the biennial rate adjustments contemplated above, Maximum Rate adjustments under the following sections of this Agreement may occur at any time after the Effective Date, in accordance with the provisions of such sections: 2.11, 3.5.5, 5.1.3, 5.2, 5.4 and Exhibit A.

Further, if a Change in Law occurs that increases Contractor's costs of performing this Agreement, then, upon Contractor providing City with substantial evidence as to the amount and reasonableness of Contractor's increased costs resulting from the Change in Law, Maximum Rates shall be increased by an amount sufficient to compensate Contractor for all such increased costs.

All the above Maximum Rate adjustments shall be deemed extraordinary adjustments under this Section 6.2.6 and shall include a profit margin (calculated using an 87% Operating Ratio) on any of Contractor's increased costs that are Eligible Expenses.

Notwithstanding the foregoing, City may defer granting any extraordinary Maximum Rate adjustment until the next biennial rate adjustment is implemented, provided that the Maximum Rate adjustments so deferred, taken in the aggregate, do not exceed 2% of Contractor's Eligible Expenses in any year, and provided further that, when implemented, the extraordinary Maximum Rate adjustments are sufficient to fully compensate Contractor for all Eligible Expenses (and profit thereon) associated with the extraordinary event, regardless of when incurred.

An additional exception to the biennial rate adjustment schedule shall be the consideration of interim adjustments when extraordinary and unforeseen expenses occur, beyond those provided for above, which were not contained within the estimates provided during the rate review process. The City shall consider requests for such interim Maximum Rate adjustments on a case-by-case basis and shall make the sole determination as to the appropriateness of an interim adjustment.

Should the City in its sole discretion decide to engage a third party for the purpose of reviewing changes in costs to the Contractor attributable to the extraordinary Rate adjustment, the Contractor shall bear the cost of the review, and such cost shall be considered an Eligible Expense.

6.2.7 Cost Savings Programs

In addition to the above, Contractor is encouraged and expected to improve operational efficiency while maintaining a high level of service. In order to provide an incentive to decrease cost to the ultimate benefit of the Service Recipients and provide incentive to the Contractor, Contractor shall be authorized to retain savings generated between rate adjustment review periods except as limited by the Rate adjustment formula. As part of the rate setting process, Contractor shall provide separate estimates regarding anticipated cost reduction measures.

6.2.8 Rate Structure

The City shall have the right to change the relationship of individual Maximum Rates in comparison with other Maximum Rates subject to the prior consent of Contractor (not to be unreasonably withheld). Any such changes would occur in conjunction with the Maximum Rate adjustment process described in Sections 6.2.2, 6.2.3, 6.2.4, and/or 6.2.6. Such changes to the rate structure must be revenue neutral, which means the total anticipated revenue generated by the existing Maximum Rates and the total anticipated revenue generated by the adjusted Maximum Rates must equal. In addition, if Maximum

Rate revenue decreases (or increases by less than the percentage increase in Maximum Rates called for by this Agreement) for any reason including migration, and the result is to increase Contractor's operating ratio to over 90%, the parties shall meet and confer to determine the cause and shall implement steps (which may include modifying the rate structure, decreasing Contractor's costs, or other measures) to remedy the shortfall as soon as practicable.

6.2.9 CNG Adjustment

The parties have agreed that Contractor will purchase CNG vehicles and introduce them into service under this Agreement in accordance with the schedule set forth in Form [XXX] of Exhibit J. To fund the cost of full implementation of CNG vehicles as so contemplated, the parties have agreed that Maximum Rates shall be adjusted by the percentages set forth below (the "CNG Rate Adjustment"), over and above any other Maximum Rate adjustments contemplated by this Agreement.

Rate Period 1	N/A
Rate Period 2	0.5%
Rate Period 3	2.2%
Rate Period 4	3.5%
Rate Period 5	3.8%
Rate Period 6	3.2%
Rate Period 7	2.1%
Rate Period 8	-0.4%
Rate Period 9*	-2.0%
Rate Period 10*	0.0%

* If Term is extended.

6.3 Adjustments to Contractor's Payments

6.3.1 Deductions from Contractor's Payment

If City makes any payments or incurs any costs for which City is entitled to reimbursement from Contractor pursuant to this Agreement, City may deduct such reimbursement from any payment otherwise due to Contractor from City. City shall submit to Contractor written documentation in support of such deduction upon the request of Contractor. In the event City does not deduct such reimbursement from Contractor's payment but submits to Contractor an invoice for reimbursement, Contractor shall reimburse City within thirty (30) days of receipt of such invoice.

6.3.2 Records Reimbursement

In the event Contractor fails to maintain adequate and accurate records, or fails to maintain records for services performed under this Agreement separate from records for other services, and City makes any payment or incurs any cost for the creation, recreation, correction or maintenance of such records, Contractor shall reimburse City for any and all payments so made or costs so incurred by City plus an administrative fee in the amount of twenty-five percent (25%) of such payments or costs.

3122 **6.4 Grant Funding**

3123 Contractor shall use good faith efforts to monitor, and shall apply for applicable grant funding programs
3124 awarding in excess of \$10,000 as they come available throughout the term of this Agreement, including
3125 but not limited to Diversion program assistance and alternative fuels and equipment purchase
3126 programs. Contractor shall take such steps as are necessary to ensure that grant applications are
3127 completed and submitted in a professional manner. Prior to submitting applications for such grants,
3128 Contractor shall notify City of its intent to apply, and Contractor shall not submit any applications
3129 relating to the City without prior City approval, which shall not be unreasonably withheld. Contractor
3130 shall take direction from City regarding applying for specific grants, and shall do so in a timely manner.

3131

ARTICLE 7: INDEMNIFICATION, INSURANCE AND BOND**7.1 Indemnification****7.1.1 Indemnification and Hold Harmless - Contractor**

Contractor, for and on behalf of itself and its agents, subcontractors, directors, officers, employees and representatives shall indemnify and hold harmless City, its officers and employees from and against any and all losses, liabilities, penalties, claims, demands, judgments, damages, actions or suits, of any and every kind and description, arising or resulting from any work or services performed by Contractor or its agents, subcontractors, directors, officers, employees or representatives pursuant to this Agreement, or which results from their noncompliance with any Applicable Law. Such indemnification and hold harmless shall include, but not be limited to any allegation that Contractor, or its agents, subcontractors, directors, officers, employees, or representatives has breached an express or implied warranty of merchantability or fitness for particular use or any other warranty relating to the Recyclables Collected pursuant to this Agreement and to any allegation that any of them has violated any license, copyright or other limitation on Contractor's use of any computer software in connection with Contractor's performance of services under this Agreement. The acceptance by City of any work or services under this Agreement shall not operate as a waiver of such indemnification or hold harmless.

Contractor's duty to defend and indemnify herein includes all fines and/or penalties imposed by CalRecycle if the requirements of AB 939, AB 341, AB 1594 or AB 1826 are not met by the Contractor with respect to the materials Collected under this Agreement and/or Contractor's other obligations under this Agreement, and such failure is: (i) due to the failure of Contractor to meet its obligations under this Agreement; or, (ii) due to Contractor delays in response to City requests to provide information in addition to the information normally provided with Contractor reports, and that prevent Contractor or the City from submitting reports to regulators in a timely manner.

7.1.2 AB 939, AB 341, AB 1594, AB 1826 and Local Ordinance Compliance

Contractor shall perform all education, outreach, monitoring, and reporting for all Commercial and Multi-Family properties as required by this Agreement, to assist City with compliance with AB 939, AB 341, AB 1594 and AB 1826, and any City ordinance, all as more fully set out in Section 4.6, and in Exhibit B. Contractor has developed, and shall implement and update as necessary a Diversion Plan as provided in Exhibit B that, among other things supports and educates Multi-Family and Commercial Customers on both State and City requirements. Contractor shall provide City all necessary reporting relating to Contractor's activities to assist in fulfilling the City's compliance requirements pertaining to AB 939 and AB 341, and as it affects the County's Integrated Waste Management Plan, as required by Section 4.3.

7.1.3 Hazardous Substance Indemnification

To the extent allowed by Applicable Law, Contractor shall indemnify, defend with counsel acceptable to City (provided that such acceptance shall not be unreasonably withheld), and hold harmless City and its employees, volunteers, and agents (collectively, "Indemnitees") from and against any and all claims, damages (including but not limited to special, consequential, natural resources, and punitive damages), injuries, costs (including but not limited to all response, remediation, and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including attorneys' and expert witness fees incurred in connection with defending against any of the foregoing or in enforcing this indemnity (collectively,

“damages”)) of any nature whatsoever paid, incurred, suffered by, or asserted against Indemnitees, arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure, or other plan concerning any Hazardous Substances or Hazardous Waste released, spilled, or disposed of by Contractor pursuant to this Agreement. Notwithstanding the foregoing, however, Contractor is not required to indemnify the Indemnitees against claims arising from Contractor’s delivery of Discarded Materials to a facility owned or operated by a third party, unless such claims are a direct result of Contractor’s negligence or willful misconduct. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. Section 9607(e), California Health and Safety Code Section 25364, and the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. to defend, protect, hold harmless, and indemnify Indemnitees from liability, and shall survive the expiration or earlier termination of this Agreement.

7.1.4 Indemnification and Hold Harmless - City

City, for and on behalf of itself and its agents, subcontractors, directors, officers, employees and representatives shall indemnify and hold harmless Contractor and Contractor’s officers and employees from and against any and all losses, liabilities penalties, claims, demands, judgments, damages, actions or suits resulting from the City’s sole negligence, City’s active negligence, City’s comparative negligence or willful misconduct, excluding any third party claims or actions arising out of or asserted based upon the theory of negligent entrustment of services to Contractor or otherwise arising or asserted solely based upon the theory of the City’s passive negligence. City shall have no obligation to defend the Contractor, or contractor’s officers, directors, employees or representatives from any claims or actions found to be caused by the negligence or willful misconduct of the Contractor, its directors, officers, agents or employees.

7.1.5 Defense

Upon the demand of the City Attorney, Contractor shall defend City, its officers and/or employees against any matter described in Section 7.1.1 and 7.1.2 of this Agreement.

7.1.6 Exception

Notwithstanding Sections 7.1.1 and 7.1.2, Contractor's obligation to indemnify, hold harmless and defend City, its officers and employees shall not extend to any loss, liability, penalty, claim, demand, action or suit arising or resulting from acts or omissions constituting sole negligence, active negligence, comparative negligence, or willful misconduct on the part of City, its officers or employees.

7.1.7 Damage by Contractor

If Contractor's employees or subcontractors cause any injury, damage or loss to City property, including but not limited to City streets or curbs, Contractor shall either repair the same or reimburse City for City's costs of repairing such injury, damage or loss. Such reimbursement is not in derogation of any right of City to be indemnified by Contractor for any such injury, damage or loss. With the prior written approval of City’s Director of Public Works, Contractor may repair the damage at Contractor's sole cost and expense.

3211 **7.2 Insurance**3212 **7.2.1 Insurance Policies**

3213 Contractor shall procure and maintain throughout the Term and any extension of this Agreement
 3214 insurance against claims for injuries to persons or damages to Property which may arise from or in
 3215 connection with Contractor's performance of work or services under this Agreement. Contractor's
 3216 insurance shall include full coverage of Contractor's employees, agents, representatives and
 3217 subcontractors. Contractor warrants that employees and subcontractors are properly licensed, including
 3218 any required commercial vehicle licenses, to drive Contractor's vehicles. All provisions for insurance shall
 3219 be deemed an eligible expense.

3220 **7.2.2 Minimum Scope and Limits of Insurance**

3221 Insurance Coverage shall be at least as broad as the following:

3222 A. **Workers' Compensation.** Statutory Workers' Compensation Insurance and Employer's Liability
 3223 Insurance with limits of not less than five million dollars (\$5,000,000) for any and all persons
 3224 employed directly or indirectly by Contractor. In the alternative, Contractor may rely on a self-
 3225 insurance program to meet these requirements so long as the program of self-insurance
 3226 complies fully with the provisions of the California Labor Code. In such case, excess Worker's
 3227 Compensation Insurance with limits of not less than ten million dollars (\$10,000,000) shall be
 3228 maintained. The insurer, if insurance is provided, and the Contractor, if a program of self-
 3229 insurance is provided, shall waive all rights of subrogation against the City of Daly City for loss
 3230 arising from worker injuries sustained under this Agreement. Said limits can be achieved
 3231 through the placement of primary and umbrella or excess policies.

3232 B. **Commercial General and Automobile Liability.** Contractor, at Contractor's own cost and
 3233 expense, shall maintain Commercial General Liability insurance for the period covered by this
 3234 Agreement, and any extension of this Agreement in an amount not less than ten million dollars
 3235 (\$10,000,000) combined single limit coverage for risks associated with the work contemplated
 3236 by this Agreement. If a Commercial General Liability Insurance form or other form with a
 3237 general aggregate limit is used, either the general aggregate limit shall apply separately to the
 3238 work to be performed under this Agreement or the general aggregate limit shall be at least
 3239 twenty million dollars (\$20,000,000.00). Such coverage shall include but shall not be limited to,
 3240 protection against claims arising from bodily and personal injury, including death resulting
 3241 therefrom, and damage to property resulting from activities contemplated under this
 3242 Agreement, including the use of owned and non-owned automobiles, as well as waste hauling,
 3243 transfer vehicles or other commercial transport. Said limits can be achieved through the
 3244 placement of primary and umbrella or excess policies.

3245 C. **General Requirements.** Each of the following shall be included in the insurance coverage or
 3246 added as an endorsement to the policy:

3247 i. The City of Daly City, its officers, employees, agents and volunteers are to be covered as
 3248 additional insureds as respects each of the following: liability arising out of activities
 3249 performed by or on behalf of Contractor; products and completed operations of
 3250 Contractor; premises owned, occupied or used by Contractor; or automobiles owned,
 3251 leased, hired, or borrowed by Contractor. The coverage shall contain no special limitations
 3252 on the scope of protection afforded to Daly City, its officers, employees, agents, or

- 3253 volunteers; except that such coverage shall not apply to the extent of the sole negligence,
3254 active negligence, comparative negligence, or willful misconduct of Daly City, its officers,
3255 employees, agents, or volunteers.
- 3256 ii. The insurance policy form shall provide coverage on an occurrence basis, or on the basis of
3257 claims made. If claims made coverage is provided, an extended supplemental reporting
3258 period of at least 84 months shall be provided.
- 3259 iii. The insurance must cover contractual liability. This may be provided by amending the
3260 definition of "incidental contract" to include any written agreement.
- 3261 iv. Any explosion, collapse, and underground property damage exclusion must be deleted.
- 3262 v. An endorsement must state that coverage is primary insurance and that no other insurance
3263 or self-insured retention carried by the City of Daly City will be called upon to contribute to
3264 a loss under the coverage.
- 3265 vi. The policy must contain a cross liability or severability of interests clause.
- 3266 vii. Any failure of Contractor to comply with reporting provisions of the policy shall not affect
3267 coverage provided to City of Daly City and its officers, employees, agents, and volunteers.
- 3268 viii. Broad form property damage liability must be afforded.
- 3269 ix. Insurance is to be placed with California-authorized insurers, and carrier(s) must be rated
3270 "A" or above in the Best's Rating Guide. The City reserves the right to accept or deny use of
3271 any particular carrier.
- 3272 x. Notice of cancellation or nonrenewal must be received by the Daly City City Clerk's Office at
3273 least thirty (30) days prior to such change.

3274 **7.2.3 Endorsements**

3275 The policies are to contain, or be endorsed to contain, the following provisions:

3276 A. General Liability and Automobile Liability Coverage

- 3277 i. The City of Daly City, its officers, employees, agents and Contractors are to be covered as
3278 additional insureds as respects: Liability arising out of activities performed by, or on behalf
3279 of, Contractor; products and completed operations of Contractor; premises owned, leased
3280 or used by Contractor; and automobiles owned, leased, hired or borrowed by Contractor.
3281 The coverage shall contain no special limitations on the scope of protection afforded to
3282 City, its officers, employees, agents and Contractors; except that such coverage shall not
3283 apply to the extent of the sole negligence, active negligence, comparative negligence, or
3284 willful misconduct of Daly City, its officers, employees, agents, or volunteers.
- 3285 ii. Contractor's insurance coverage shall be primary insurance as respects City, and its officers,
3286 employees, agents and Contractors. Any insurance or self-insurance maintained by City, its
3287 officers, employees, agents or Contractors shall be in excess of Contractor's insurance and
3288 shall not contribute with it.
- 3289 iii. Any failure to comply with reporting provisions of the policies shall not affect coverage
3290 provided to City, and its officers, employees, agents, or Contractors.

- iv. Except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, this insurance applies:

- a. As if each named insured were the only named insured; and
b. Each insured against whom claim is made or suit is brought.

7.2.4 Hazardous Material, Environmental Impairment Liability Insurance

Contractor shall provide, and thereafter maintain throughout the term of this Agreement, and any extension of this Agreement, Hazardous Material and Environmental Impairment Liability Insurance covering all reasonably expected potential losses related to pollution, Hazardous Material, contamination, spills, accidents or migration of toxics, pollutants, Hazardous Material or materials, or unknown materials. Such coverage shall be at a minimum of ten million dollars (\$10,000,000.00) per occurrence. Should aggregate limits be depleted by more than twenty-five percent (25%) during any one policy term, Contractor shall provide notice to City, and may be required at City's reasonable discretion to purchase separate insurance.

Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- A. The insurance coverage, if provided on a claims made form, then a Twelve (12) month Extended Reporting Period shall be provided in the event such coverage or this Agreement is terminated.
- B. An endorsement must state that coverage is primary insurance and that no other insurance or self-insured retention carried by the City of Daly City will be called upon to contribute to a loss under the coverage; unless and to the extent of the sole negligence, active negligence, comparative negligence, or willful misconduct of the City, its officers, employees, agents, or volunteers, excluding any third party claims or actions arising out of or asserted based upon the theory of negligent instrument of services to Contractor.
- C. Any failure of Contractor to comply with reporting provisions of the policy shall not affect coverage provided to City of Daly City and its officers, employees, agents, and volunteers.
- D. Notice of cancellation or nonrenewal must be received by the Daly City City Clerk's Office at least thirty (30) days prior to such change.

7.2.5 Acceptability of Insurers

Insurance is to be placed with insurers with an A.M. Best rating of no less than A-VIII or Standard & Poors (S&P) rating of A-.

7.2.6 Verification of Coverage

Contractor shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Contractor shall furnish City with a new certificate of insurance and endorsements upon each renewal or change of coverage or change of insurers. Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the City:

CITY OF DALY CITY
Risk Manager
333 - 90th Street
Daly City, CA 94015

7.2.7 Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor with terms, conditions and amounts of insurance at least equal to those set forth herein for Contractor.

7.2.8 Modification of Insurance Requirements

The insurance requirements provided in this Agreement may be modified or waived by City's Risk Manager, in writing, upon the request of Contractor if the Risk Manager determines such modification or waiver is in the best interests of City considering all relevant factors, including exposure to City.

7.3 Performance Bond**7.3.1 Performance Bond Requirement**

Within ten (10) calendar days from the date the City Council approves this Agreement and upon the commencement of each Contract Year thereafter, Contractor shall procure and provide the City with a fully prepaid surety bond, for at least the duration of such Contract Year, to guarantee and assure the prompt and faithful performance of Contractor's obligations under this Agreement. Such bond shall be executed by a surety licensed to transact business in the State of California, shall name the City of Daly City as obligee, shall provide at least thirty (30) calendar days prior notice of any cancellation, and shall be in the amount of Five Hundred Thousand Dollars (\$500,000.00). The form of the bond and the surety are subject to the approval of City's Risk Manager and the City Attorney. All provisions for performance bonds shall be deemed an eligible expense.

7.3.2 Alternative to Performance Bond

As an alternative to the performance bond required by Section 7.3.1, at City's option, Contractor may deposit with City a fully prepaid irrevocable letter of credit for at least the duration of the Contract Year for which the letter of credit is deposited. Such letter of credit shall be in the amount of Five Hundred Thousand Dollars (\$500,000.00). The form of the letter of credit and the issuer of the letter of credit are subject to the approval of City's Risk Manager and the City Attorney. Nothing in this Section 7.3.2 shall in any way obligate City to accept a letter of credit in lieu of the performance bond.

3358 **7.3.3 City's Rights**

3359 City shall have the right to draw against the faithful performance bond or the letter of credit in the event
3360 of a breach or default of Contractor or the failure of Contractor to perform fully any obligation under
3361 this Agreement. Within five (5) calendar days of receipt of notice from City, Contractor shall renew or
3362 replace such sums of money as needed to bring the faithful performance bond or letter of credit
3363 current.

3364 **7.3.4 Guaranty**

3365 Concurrently with execution of this Agreement, Contractor shall furnish a guaranty of its performance
3366 under this Agreement, in the form of Exhibit E, properly executed by Recology Inc., a California
3367 corporation, which owns all of the issued and outstanding common stock of Contractor.

ARTICLE 8: CITY'S RIGHT TO PERFORM SERVICE**8.1 Emergency Conditions**

The City Manager may declare the existence of an Emergency Condition and shall provide notice as soon as practicable to Contractor of said declaration. Within 72 hours an emergency meeting of the City Council shall be scheduled and consideration of the continuation of an Emergency Condition shall be heard by the City Council. The City Council shall, by resolution, declare the continued existence of the emergency condition, if appropriate, and transmit a certified copy of the resolution to Contractor.

8.1.1 Emergency Operations

The Parties acknowledge that either temporary cessation or cessation of indeterminate duration of the services to be provided by Contractor hereunder may result in conditions detrimental to the public health, safety and welfare and that, in order to protect the public, invoking the extraordinary provisions of this section may be necessary. From and after the declaration of the existence of an Emergency Condition, City or the designee of City (irrespective of whether such designee is another public agency or privately-owned entity) may assume and carry out, as the "Emergency Operator", any or all Collection operations of Contractor hereunder. During the period of the Emergency Condition exists all revenues which, but for the Emergency Condition, would accrue hereunder to Contractor, shall instead accrue and be payable to the Emergency Operator.

8.1.2 Use of Contractor's Facilities

Upon the declaration of the existence of an Emergency Condition pursuant to this Section, Contractor shall make available and relinquish to the Emergency Operator all of Contractor's operable vehicles, equipment, and other facilities necessary or convenient for providing Collection in the Service Area. Further, Contractor shall provide the Emergency Operator access, and/or rights of access, to such transfer station facilities and/or Disposal or Processing facilities available to, or under the control of, Contractor for the transferring and disposal of Discarded Materials, and Contractor shall, to the extent it possesses rights to use such transfer, Disposal, or Processing facilities, assign such rights to the Emergency Operator for use during the existence of the Emergency Condition. Notwithstanding the foregoing provisions of this section, the use of Contractor's vehicles, equipment, and other facilities and the assignment of rights to Contractor shall, in the case of Contractor's insolvency, bankruptcy or other adverse financial condition, be subject to the provisions of the United States Bankruptcy Act (11 U.S.C. §§101 et seq.) to the extent applicable. During the existence of an Emergency Condition the Emergency Operator shall operate, maintain and repair, and adequately insure, without cost to Contractor, Contractor's vehicles, equipment and other facilities used by it. Upon the cessation of the Emergency Condition the right to use such vehicles, equipment and facilities shall expire and the Emergency Operator shall return said vehicles, equipment and facilities to Contractor in a condition substantially the same as that which existed upon acquiring said vehicles, equipment and facilities, ordinary wear and tear excepted.

8.1.3 Indemnification

In the event that an Emergency Operator appointed by City utilizes any facilities and/or equipment of Contractor, City shall defend, indemnify and hold harmless Contractor and its affiliates from and against any and all losses, expenses, liens, claims, demands and causes of action of every kind and character (excluding those based upon the sole active or passive negligence or willful misconduct of Contractor, its officers, employees and agents) for death, personal injury, property damage or any other liability or

3410 damages, including costs, attorneys fees, and settlements arising out of, or in connection with, the use
3411 of Contractor's facilities and/or equipment.

3412 **8.1.4 Cessation of Emergency**

3413 At any time after the Emergency Operator has commenced the Collection of Discarded Materials, City
3414 may hold a hearing on the question of the cessation of the Emergency Condition upon giving not less
3415 than forth-eight (48) hours' prior written notice to Contractor and the Emergency Operator. At the
3416 hearing Contractor, the Emergency Operator, and any and all interested persons shall be given the
3417 opportunity to be heard on the question aforesaid. Upon the conclusion of the hearing, City shall
3418 determine if the Emergency Condition has ceased. If it is determined that the Emergency Condition has
3419 ceased, the City Council shall, by resolution, declare the cessation of the Emergency Condition, and
3420 transmit a certified copy of the resolution to Contractor.

3421 **8.1.5 Resumption of Service**

3422 Upon the declaration of cessation of the Emergency Condition, the Emergency Operator shall return to
3423 Contractor its vehicles, equipment, and other facilities acquired and used by it. Further, upon the
3424 declaration of cessation of the Emergency Condition, and unless City has terminated this Agreement
3425 pursuant to Article 9, Contractor shall recommence its operations hereunder and shall perform all of its
3426 duties and obligations in accordance with the provisions hereof, and shall be entitled to all of its rights
3427 hereunder, including accrual of revenues for its benefit, from and after the date upon which the
3428 Emergency Condition shall be deemed to have ceased.

3429 **8.1.6 Limitation**

3430 Notwithstanding anything herein contained to the contrary, no Emergency Condition shall exist for more
3431 than 180 consecutive days. Upon the expiration of said 180 days, and unless the Emergency Condition
3432 has ceased prior thereto, this Agreement shall terminate. In the event of such termination no rights
3433 shall accrue to Contractor under this Agreement from and after the date of termination.

3434 **8.1.7 City Termination of Agreement**

3435 Notwithstanding the provisions of Section 8.1.5., if, upon the cessation of the Emergency Condition, the
3436 City Council determines that Contractor is not substantially able to perform its duties and obligations
3437 hereunder due to the effects of the Emergency Condition, the City Council may declare this Agreement
3438 terminated effective upon the date of the cessation of the Emergency Condition. In the event of such
3439 termination no rights shall accrue to Contractor under this Agreement from and after the date of
3440 termination.

3441 **8.2 Disaster Operations**

3442 **8.2.1 Availability of Contractor's Personnel and Equipment**

3443 In event of wartime, natural, physical or other disaster in or proximate to the City Limits resulting in the
3444 declaration of a State of Emergency by the City Manager or City Council, Contractor shall make available
3445 to City, at no cost to City, all equipment, vehicles, and/or personnel normally performing services under
3446 this Agreement, for emergency operations conducted or directed by the City.

8.2.2 Temporary Possession and Employment

City shall have the right to take temporary possession of all such vehicles and equipment made available by Contractor, and to temporarily employ all such Contractor personnel as emergency operations forces of City, under the direction and control of the City.

8.2.3 Use of Additional Equipment

Contractor may make available, in addition to the vehicles, equipment, and personnel provided in Section 8.2.1 above, equipment, vehicles, and personnel from those Contractor operations and resources not otherwise serving City pursuant to this Agreement, to the extent necessary to conduct effective Discarded Materials Collection and removal services during any declared State of Emergency, subject to the direction and control of the City.

8.2.4 Reimbursement

City shall not be required to compensate Contractor in any manner or form for Contractor's provision of Equipment, vehicles, or personnel normally performing services under this Agreement within the City Limits, when made available during a declared State of Emergency. When additional equipment, vehicles, or personnel are provided during such an emergency, pursuant to Section 8.2.3 above, City shall compensate Contractor for actual expenses incurred by Contractor in providing such equipment, vehicles, and/or personnel upon submission by Contractor to City of detailed records of costs and expenses actually borne by Contractor, and upon approval by the appropriate Federal agency of City's reimbursement of expenses incurred by Contractor during such State of Emergency.

8.2.5 Indemnity

In the event of a declared State of Emergency during which City takes possession of and utilizes the equipment, vehicles and/or personnel of Contractor pursuant to this Section 8.2, City agrees to indemnify and defend Contractor and its officers, directors, agents, and employees, and hold such parties harmless against all actions, suits, liabilities, costs, and expenses (including reasonable attorneys' fees and costs of defense) arising out of or related to City's possession and operation of all Contractor's equipment, vehicles, and facilities utilized by City to render services during any such State of Emergency.

ARTICLE 9: DEFAULT, REMEDIES, AND LIQUIDATED DAMAGES

9.1 Right to Demand Assurances of Performance

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

If Contractor: (i) is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing or other concerted job action; (ii) appears in the reasonable judgment of City to be unable to regularly pay its bills as they become due; or, (iii) is the subject of a civil or criminal judgment or order entered by a Federal, State, regional or local agency for violation of an Applicable Law, and City believes in good faith that Contractor's ability to perform under this Agreement has thereby been placed in substantial jeopardy, City may, at its sole option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance as City believes in good faith is reasonably necessary in the circumstances to evidence continued ability to perform under this Agreement. If Contractor fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by City, such failure or refusal shall be an event of default for purposes of Section 9.2.

9.2 Right to Terminate Upon Default

City may terminate this Agreement upon Contractor's default of any material duty or obligation of Contractor under this Agreement and Contractor's failure to cure such default within thirty (30) calendar days of City's written notice to Contractor of such default. If the default is not capable of cure within said thirty (30) calendar days, Contractor shall provide written notice to City together with a schedule of cure within fifteen (15) calendar days of City's notice of default, shall begin action to cure the default within said thirty (30) calendar days, and shall diligently proceed to cure the default. City may accept Contractor's schedule of cure, may make a written demand that Contractor cure the default within a time period set by City, or may terminate this Agreement at the end of the thirty-day default period.

9.3 Immediate Termination

City may terminate this Agreement immediately upon written notice to Contractor in the event Contractor fails to provide and maintain the performance bond as required by this Agreement, Contractor fails to obtain or maintain the insurance policies and endorsements as required by this Agreement or Contractor fails to provide the proof of insurance as required by this Agreement.

9.4 Bankruptcy or Insolvency of Contractor

City may terminate this Agreement immediately upon written notice to Contractor upon the occurrence of any of the following and Contractor's failure to provide adequate assurance that any of the following can be removed within thirty (30) calendar days of City's demand for such assurance: (1) the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Contractor; (2) Contractor's general assignment of its assets for the benefit of Contractor's creditors; (3) a court entry of any decree or order adjudging Contractor to be insolvent or bankrupt; (4) a court entry of any decree or order approving as properly filed a petition seeking reorganization of Contractor or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the

United States or any State; or (5) a determination by the City Manager, based upon a statement prepared by an independent certified public accountant mutually agreed upon by Contractor and the City, that there is a reasonable probability that Contractor's financial capability to perform this Agreement is materially impaired.

9.5 Authority to Terminate

The City Manager of the City of Daly City is authorized to terminate this Agreement on behalf of City. Any termination of this Agreement under this Article 9 shall not relieve Contractor of the obligation to pay any fees, taxes or other charges then due to City nor relieve Contractor of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve Contractor from any claim for damages previously accrued or then accruing against Contractor, nor shall any termination relieve the Contractor from performing Contractor's obligations under Section 11.11 or to perform any other action expressed or implied to be required after termination of this Agreement. City shall pay to Contractor any amounts due to Contractor for the performance of services under this Agreement through the effective date of termination even though those services may be billed and collected by City following termination of this Agreement.

9.6 Termination Cumulative

City's right to terminate this Agreement is cumulative to any other rights and remedies provided by Applicable Law or by this Agreement.

9.7 Service Complaint and Penalties

In the event Contractor fails to provide Collection services as required under this Agreement, or where multiple complaints from a location or locations occur within a 30 day period, City may (but shall have no obligation to), and without waiving or relieving Contractor of its obligation to provide such services, make such payment or perform such other act as City deems appropriate to effectuate such services. Contractor shall reimburse City for any payments made or costs incurred by City in effectuating such services plus a fifteen percent (15%) penalty during any period Contractor fails to perform such services. City may deduct the amount of such reimbursement from sums otherwise due to Contractor under this Agreement. Further, in response to multiple complaints of non-collection, or failing to provide service to individual addresses, City may withhold two (2) months of the appropriate Discarded Materials billing Rate charged to the Service Recipient from revenue due to Contractor for each and every complaint during that period. Such penalty shall occur when in the opinion of the City complaints of non-collection are valid and their frequency and nature are such as to result in a degradation of performance under this Agreement. Notwithstanding the foregoing, City shall not make any payments, perform any acts or withhold any payments under this Section 9.7 without first notifying Contractor of the problem and providing Contractor a reasonable opportunity to restore performance (and Contractor fails to do so), and, in the case of complaints, verifying that such complaints are bona fide and actually represent non-compliance by Contractor with this Agreement.

9.8 Withholding of Monthly Payment and Nonrefundable Charges

If Contractor fails to perform any of the following in accordance with the terms of this Agreement, City may, in addition to any other remedies provided by Applicable Law or this Agreement, 1) withhold the following amounts from payment(s) otherwise due from City to Contractor until such time as Contractor performs in accordance with this Agreement; and 2) impose the following nonrefundable charges on

3554 Contractor. Except for items A., G., and J. below, the notice and cure provisions of Section 9.2 shall
3555 apply to this Section 9.8, i.e., no amounts shall be withheld from or charged to Contractor (except under
3556 items G and J below) unless City has provided Contractor with written notice of the non-performance
3557 and Contractor fails to cure within 30 days thereafter (unless Section 9.2 permits a longer cure period).

3558 A. Maintenance of Contractor's workplace for customer relations as required under Section 4.5:
3559 Withholding of ten thousand dollars (\$10,000) per month and a nonrefundable charge of one
3560 hundred dollars (\$100) per day.

3561 B. Distribution of start-up materials as required under Section 4.6: Withholding of ten thousand
3562 dollars (\$10,000) per month and a nonrefundable charge of one hundred dollars (\$100) per day.

3563 C. Submission of complete and accurate reports (monthly, quarterly, and annual) as required
3564 under Article 4.3: Withholding of ten thousand dollars (\$10,000) per month and a
3565 nonrefundable charge of two hundred (\$200) per day.

3566 D. Delivery of Recyclables bins as required under Section 3.5.2: Withholding of ten thousand
3567 dollars (\$10,000) per month and a nonrefundable charge of one hundred dollars (\$100) per day.

3568 E. Submission of data/documentation for the transition to the next Contractor as required under
3569 Section 11.11 within 60 days of City's request: Withholding of ten thousand dollars (\$10,000)
3570 per month and a nonrefundable charge of two hundred dollars (\$200) per day.

3571 F. Use of Collection vehicles meeting the noise limitations and other requirements required under
3572 Section 3.8.5: Withholding of ten thousand dollars (\$10,000) per month and a nonrefundable
3573 charge of two hundred dollars (\$200) per day.

3574 G. Use of Collection vehicles not meeting the State of California vehicle emission standards:
3575 Withholding of ten thousand dollars (\$10,000) per month and a nonrefundable charge of two
3576 hundred dollars (\$200) per day.

3577 H. Submission of Contractor's final annual report by the deadline set forth in Section 4.3.4:
3578 Withholding of twenty-five thousand dollars (\$25,000) per month and a nonrefundable charge
3579 of two hundred dollars (\$200) per day.

3580 I. Reserved.

3581 J. Failure to meet Diversion requirements of Section 2.10.2:

3582 i. Failure to maintain a minimum Diversion rate of 33 percent in any quarter between
3583 February 1, 2017 and June 30, 2018:

3584 a. For the partial quarter February 2017 through March 2017 and the quarters April 2017
3585 through June 2017 and July 2017 through September 2017: Withholding of one
3586 thousand dollars (\$1,000) per month and a nonrefundable charge of fifty dollars (\$50)
3587 per day.

3588 b. For the quarter October 2017 through December 2017: Withholding of two thousand
3589 five hundred dollars (\$2,500) per month and a nonrefundable charge of two hundred
3590 dollars (\$200) per day.

3591 c. For the quarters January 2017 through March 2017 and April 2017 through June 2018:
3592 Withholding of five thousand dollars (\$5,000) per month and a nonrefundable charge
3593 of five hundred dollars (\$500) per day.

- 3594 ii. Failure to maintain a minimum Diversion rate of 33 percent in any quarter between July 1,
3595 2018 and June 30, 2020:
- 3596 a. Withholding of ten thousand dollars (\$10,000) per month and a nonrefundable charge
3597 of one thousand dollars (\$1,000) per day.
- 3598 iii. Failure to maintain a minimum Diversion rate of 42 percent in any quarter between July 1,
3599 2020 and June 30, 2021:
- 3600 a. For the quarter July 2020 through September 2020: Withholding of one thousand
3601 dollars (\$1,000) per month and a nonrefundable charge of fifty dollars (\$50) per day.
- 3602 b. For the quarter October 2020 through December 2020: Withholding of two thousand
3603 five hundred dollars (\$2,500) per month and a nonrefundable charge of two hundred
3604 dollars (\$200) per day.
- 3605 c. For the quarters January 2020 through March 2020 and April 2020 through June 2021:
3606 Withholding of five thousand dollars (\$5,000) per month and a nonrefundable charge
3607 of five hundred dollars (\$500) per day.
- 3608 iv. Failure to maintain a minimum Diversion rate of 42 percent in any quarter between July 1,
3609 2021 and June 30, 2023:
- 3610 a. Withholding of ten thousand dollars (\$10,000) per month and a nonrefundable charge
3611 of one thousand dollars (\$1,000) per day.
- 3612 v. Failure to maintain a minimum Diversion rate of 45 percent in any quarter between July 1,
3613 2023 and June 30, 2024:
- 3614 a. For the quarter July 2023 through September 2023: Withholding of one thousand
3615 dollars (\$1,000) per month and a nonrefundable charge of fifty dollars (\$50) per day.
- 3616 b. For the quarter October 2023 through December 2023: Withholding of two thousand
3617 five hundred dollars (\$2,500) per month and a nonrefundable charge of two hundred
3618 dollars (\$200) per day.
- 3619 c. For the quarters January 2024 through March 2024 and April 2024 through June 2024:
3620 Withholding of five thousand dollars (\$5,000) per month and a nonrefundable charge
3621 of five hundred dollars (\$500) per day.
- 3622 vi. Failure to maintain a minimum Diversion rate of 45 percent in any quarter between July 1,
3623 2024 and June 30, 2025:
- 3624 a. Withholding of ten thousand dollars (\$10,000) per month and a nonrefundable charge
3625 of one thousand dollars (\$1,000) per day.
- 3626 vii. Failure to maintain a minimum Diversion rate of 48 percent in any quarter from and after
3627 July 1, 2025:
- 3628 a. For the quarter July 2025 through September 2025: Withholding of one thousand
3629 dollars (\$1,000) per month and a nonrefundable charge of fifty dollars (\$50) per day.
- 3630 b. For the quarter October 2025 through December 2025: Withholding of two thousand
3631 five hundred dollars (\$2,500) per month and a nonrefundable charge of two hundred
3632 dollars (\$200) per day.

- c. For the quarters January 2025 through March 2025 and April 2025 through June 2026: Withholding of five thousand dollars (\$5,000) per month and a nonrefundable charge of five hundred dollars (\$500) per day.

- viii. Failure to maintain a minimum Diversion rate of 48 percent in any quarter between July 1, 2026 and the end of the Term and any extension of the Term:

- a. Withholding of ten thousand dollars (\$10,000) per month and a nonrefundable charge of one thousand dollars (\$1,000) per day.

Additional performance standards and liquidated damages are as delineated in Exhibit C, provided that Contractor shall not be assessed both liquidated damages under Exhibit C, and withholdings and/or nonrefundable charges under this Section 9.8, with respect to the same event of non-performance. Contractor and City agree that such withholdings and nonrefundable charges are a reasonable estimate of the damages suffered by City as a result of the Contractor's failure to perform and that such withholdings and charges shall not be considered a penalty. City shall make payment to Contractor of any withheld amounts (other than nonrefundable charges) within thirty (30) days following City's receipt of evidence satisfactory to City that Contractor has performed the services for which payment was withheld (without regard to the timeliness of such performance). No interest shall be paid on withheld amounts.

9.9 Excuse from Performance

- A. **Force Majeure.** Neither Party shall be in default of its obligations under this Agreement in the event, and for so long as, it is impossible or extremely impracticable for it to perform its obligations due to an "act of God" (including, but not limited to, flood, earthquake or other catastrophic events), war, insurrection, riot, labor unrest of other than the Party's employees (including strike, work stoppage, slowdown, sick out, picketing, or other concerted job action), or other similar cause not the fault of, and beyond the reasonable control of, the Party claiming excuse (each, an event of "Force Majeure"). A Party claiming excuse under this section must (i) have taken reasonable precautions, if possible, to avoid being affected by the cause, and (ii) notify the other party in writing as provided in subsection C.

- B. **Obligation to Restore Ability to Perform.** Any suspension of performance by a Party pursuant to this section shall be only to the extent, and for a period of no longer duration than, required by the nature of the event, and the Party claiming excuse shall use its best efforts to remedy its inability to perform as quickly as possible and to mitigate damages that may occur as result of the event.

- C. **Notice.** The Party claiming excuse shall deliver to the other Party a written notice of intent to claim excuse from performance under this Agreement by reason of an event of Force Majeure. Notice required by this section shall be given promptly in light of the circumstances, but in any event not later than five (5) days after the occurrence of the event of Force Majeure. Such notice shall describe in detail the event of Force Majeure claimed, the services impacted by the claimed event of Force Majeure, the expected length of time that the party expects to be prevented from performing, the steps which the party intends to take to restore its ability to perform, and such other information as the other party reasonably requests.

3673 D. **Post-Collection Facilities.** The above provisions shall apply to Contractor's subcontracts with
3674 Approved and Contingent Facility Operators to the same extent as set forth above (with the
3675 "Parties," in such case, being Contractor, on the one hand, and the respective Approved or
3676 Contingent Facility Operator, on the other hand).

ARTICLE 10: REPRESENTATIONS AND WARRANTIES

The Parties, by acceptance of this Agreement, represent and warrant the conditions presented in this Article.

10.1 Contractor's Corporate Status

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

10.2 Contractor's Corporate Authorization

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

10.3 Agreement Will Not Cause Breach

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

10.4 No Litigation

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

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

10.5 No Adverse Judicial Decisions

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

3710 **10.6 No Legal Prohibition**

3711 To the best of each Party's knowledge, after reasonable investigation, there is no Applicable Law in
3712 effect on the date that Party signed this Agreement that would prohibit the performance of either their
3713 obligations under this Agreement and the transactions contemplated hereby.

3714 **10.7 Contractor's Ability to Perform**

3715 Contractor possesses the business, professional, and technical expertise to perform all services,
3716 obligations, and duties as described in and required by this Agreement including all exhibits thereto.
3717 Contractor possesses the ability to secure equipment, facility, and employee resources required to
3718 perform its obligations under this Agreement.

ARTICLE 11: OTHER AGREEMENTS OF THE PARTIES

11.1 Independent Contractor

In the performance of services pursuant to this Agreement, Contractor shall be an independent Contractor and not an officer, agent, servant or employee of City. Contractor shall have exclusive control over the details of the services and work performed and over all persons performing such services and work. Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Neither Contractor nor its officers, employees, agents, contractors or subcontractors shall obtain any right to retirement benefits, Workers' Compensation benefits, or any other benefits which accrue to City employees and Contractor expressly waives any claim it may have or acquire to such benefits.

11.2 Compliance with Law

In the performance of this Agreement, Contractor shall comply with all Applicable Laws, regulations, ordinances and codes of federal, state and local governments, including without limitation the Municipal Code of the City of Daly City.

11.3 Law to Govern and Interpretation

The laws of the State of California shall govern the rights, obligations, duties and liabilities of City and Contractor under this Agreement and shall govern the interpretation of this Agreement.

11.4 Venue

Any litigation between City and Contractor concerning or arising out of this Agreement shall be filed and maintained exclusively in the Municipal or Superior Courts of San Mateo County, State of California, or in the United States District Court for the Northern District of California to the fullest extent permissible by Applicable Law. Each Party consents to service of process in any manner authorized by California law.

11.5 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.

11.6 Assignment

The experience and expertise of Contractor are material considerations for this Agreement. Contractor shall not assign, transfer, or sell any of Contractor's rights nor delegate any of Contractor's duties under this Agreement without the express prior written consent of City. Any attempt to so assign Contractor's franchise rights or delegate Contractor's duties shall be void and of no force or effect.

The use of a subcontractor to perform services under this Agreement shall not constitute delegation of Contractor's duties. The use of a subcontractor other than those parties initially listed in Exhibit I Approved Collection Subcontractors and Exhibit K Approved Post-Collection Facilities is allowed provided that, in the case of a non-affiliate, Contractor has received the prior written authorization of City to subcontract such services, and the City has approved the subcontractor who will perform such services as provided in Section 3.9.12. Contractor shall be responsible for directing the work of

Contractor's subcontractors and any compensation due or payable to Contractor's subcontractors shall be the sole responsibility of Contractor. The City shall have the right to require the removal of any approved subcontractor, Approved Facility, or Contingent Facility for reasonable cause.

11.7 No Third Party Beneficiaries

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

11.8 Permits and Licenses

Contractor shall obtain, and shall maintain throughout the term of this Agreement, all necessary permits, licenses and approvals required for Contractor to perform the work and services agreed to be performed by Contractor pursuant to this Agreement, including a Daly City business license. Contractor shall show proof of such permits, licenses or approvals and shall demonstrate compliance with the terms and conditions of such permits, licenses and approvals upon request by the City.

11.9 Ownership of Written Materials

All reports, documents, brochures, public education materials, and other written, printed or photographic materials developed by City or Contractor in connection with the services to be performed under this Agreement, whether developed directly or indirectly by City or Contractor, shall be and shall remain the property of City without limitation or restriction on the use of such materials by City. Contractor shall not use such materials in connection with any project not connected with this Agreement without the prior written consent of the City.

11.10 Contractor's Records

Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, tonnages, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City and the Collection and disposition of Discarded Materials for a minimum period of three (3) years, or for any longer period required by Applicable Law, from the date of final payment to Contractor pursuant to this Agreement. Contractor shall maintain all documents and records that demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by Applicable Law, from the date of termination or completion of this Agreement. Any records or documents required to be maintained pursuant to this Agreement shall be maintained in a clear and organized manner, and made available for inspection or audit, at any time during regular business hours, upon written request by the City. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in this Agreement. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Contractor's business, City may, by written request or demand, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest

11.11 Transition to Next Contractor

In the event Contractor is not awarded an agreement to continue to provide services following the expiration or earlier termination of this Agreement, Contractor shall cooperate fully with City and any subsequent Contractor(s) to assure a smooth transition of services described in this Agreement. Such cooperation shall include but not be limited to transfer of computer data, files and tapes; providing routing information, route maps, vehicle fleet information, and lists of Service Recipients; providing a complete inventory of Solid Waste Containers; providing adequate labor and equipment to complete performance of all services required under this Agreement; taking all actions necessary to transfer possession and ownership of Containers to City at City's option, including transporting such Containers to a location designated by City; coordinating Collection of materials set out in new Collection Containers if new Containers are provided for in a subsequent agreement; and providing other reports and data required by this Agreement.

11.12 Reserved**11.13 City Ownership of Containers at End of Term**

Upon expiration or early termination of Agreement, all Carts and Bins except temporary Debris Boxes purchased and put into service at Service Recipient's Premises during the Term of the Agreement shall become property of the City at no cost to the City if such Containers are fully depreciated. All Carts and Bins except temporary Debris Boxes purchased and put into service at Customers' Premises during the Term of the Agreement that have not been fully depreciated shall be available to the City, at the City's option, at a cost reflecting the net book value.

At its sole discretion, the City may elect not to exercise its rights with regards to this section and, in such case the Containers shall remain the property of the Contractor upon the expiration date of this Agreement or date of its earlier termination of this Agreement. In such case, Contractor shall be responsible for outstanding depreciation and for removing all Containers in service from premises within fourteen (14) Business Days of the expiration date or early termination date of this Agreement.

11.14 Waiver

The waiver by City or Contractor of any breach or violation of any term, covenant or condition of this Agreement shall not be deemed to be a waiver of any other term, covenant or condition or of any subsequent breach or violation of the same or of any other term, covenant or condition. The subsequent acceptance by City of any fee, tax, or any other moneys which may become due from Contractor to City shall not be deemed to be a waiver by City of any breach or violation of any term, covenant or condition of this Agreement.

11.15 Notices

Except as provided in Article 7 - Indemnification, Insurance and Bond, all notices and other communications required or which may be given under this Agreement shall be deemed given when properly addressed and deposited in the United States mail or when personally delivered to the Parties as specified in this Section. All notices or other communications sent by mail shall be sent postage prepaid and return receipt requested to the address specified below:

To City: City Manager
City of Daly City
333-90th Street
Daly City, CA 94015

To Contractor: _____

Either Party may designate a different mailing address by providing notice to the other Party as provided in this Section. Notice by City to Contractor of a missed pick-up or a service recipient problem or complaint may be given to Contractor orally by telephone at Contractor's local office with written confirmation sent by mail or email to Contractor within forty-eight (48) hours of the oral notification.

11.16 Representatives of the Parties

References in this Agreement to the "City" shall mean the City's elected body and all actions to be taken by City except as provided below. The City may delegate, in writing, authority to a designated contract manager and/or to other City officials and may permit such officials, in turn, to delegate in writing some or all of such authority to subordinate officers. The Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

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

ARTICLE 12: MISCELLANEOUS

12.1 Entirety

This Agreement and the exhibits attached hereto represent the entire agreement of City and Contractor with respect to the services to be provided under this Agreement. No prior written or oral statement or proposal shall alter any term or provision of this Agreement.

12.2 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.

12.3 References to Laws

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

12.4 Amendment

This Agreement may be amended or modified only by written agreement duly authorized by Contractor and the City and executed by their authorized representatives.

12.5 Severability

Should one or more of the provisions of this Agreement be held by any court to be invalid, void or unenforceable, the remaining provisions shall nevertheless remain and continue in full force and effect, provided that the continuation of such remaining provisions does not materially change the duties or obligations of either Party from those duties or obligations originally contemplated by this Agreement.

12.6 Counterparts

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

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12.7 Exhibits

Each of the Exhibits identified as Exhibit "A" through "K" is attached hereto and incorporated herein and made a part hereof by this reference. In the event of a conflict between the terms of this Agreement and the terms of an Exhibit, the terms of this Agreement shall control, and in the event of a conflict between Exhibit F (Contractor's Proposal) and any other exhibit of this Agreement, such other exhibit shall control.

WITNESS the execution of this Agreement on the dates set forth below.

APPROVED AS TO FORM:

CITY OF DALY CITY,
a Municipal corporation

Rose Zimmerman
CITY ATTORNEY

Patricia E. Martel
CITY MANAGER

Date: _____

RECOLOGY DALY CITY

By:

Date: _____

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FRANCHISE AGREEMENT

FOR

INTEGRATED SOLID WASTE MANAGEMENT SERVICES

BETWEEN

CITY OF DALY CITY

AND

ALLIED WASTE SERVICES OF NORTH AMERICA LLC

FINAL DRAFT

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385 **FRANCHISE AGREEMENT**
386 **FOR INTEGRATED SOLID WASTE MANAGEMENT SERVICES**
387 **BETWEEN THE CITY OF DALY CITY**
388 **AND**
389 **ALLIED WASTE SERVICES OF NORTH AMERICA, LLC**
390

391
392 THIS AGREEMENT is made and entered into this ___ day of _____, 2014 by and between
393 the CITY OF DALY CITY ("City") a municipal corporation of the State of California, and Allied Waste
394 Services of North America LLC ("Contractor").

395 **RECITALS**

396 Services to be provided under this Agreement shall consist of Collection and disposition of Solid Waste,
397 Recyclables, Compostables, Bulky Goods, Use Motor Oil and Oil Filters, Compostable Waste, and other
398 Discarded Materials, but does not include Collection or Disposal or reuse of Biosolids.

399 This Agreement is entered into for the purpose of providing an exclusive franchise for the provision of
400 Collection Services within Daly City as authorized under California Public Resources Code section 40059
401 and Daly City Municipal Code Chapter 8.12, including acting as the City's Recycling Agent, and to
402 contract for certain other Discarded Materials services and operations as set forth herein.

403 This Franchise Agreement for Integrated Solid Waste Management Services replaces, consolidates, and
404 supersedes all previous agreements and amendments for the provision of services and the operation of
405 transfer and landfill facilities, including those dated April 28, 1959; March 13, 1972; January 3, 1977;
406 February 13, 1978; June 5, 1978; January 8, 1979; November 26, 1979, December 18, 1979; July 26,
407 1982, August 5, 1983; and July 25, 1989, December 14, 1990, and December 12, 1994 (and six
408 amendments) for the provision of Solid Waste, Recyclables, and Compostables Collection, Processing
409 and Disposal services.

ARTICLE 1: DEFINITIONS

The definitions set forth in this Article 1 shall govern the interpretation of this Agreement.

1.1 AB 341

“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

“AB 939” means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), also commonly referred to as “AB 939,” as amended, supplemented, superseded, and replaced from time to time.

1.3 AB 1594

“AB 1594” means the 2014 act to amend Sections 40507 and 41781.3 of the Public Resources Code, relating to solid waste (Chapter 719, Statutes of 2014 [Williams, AB 1594]), also commonly referred to as “AB 1594”, as amended, supplemented, superseded, and replaced from time to time.

1.4 AB 1826

“AB 1826” means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 [Chesbro, AB 1826]), also commonly referred to as “AB 1826”, as amended, supplemented, superseded, and replaced from time to time.

1.5 Affiliate

"Affiliate" means all businesses (including corporations, limited and general partnerships and sole proprietorships) that are directly or indirectly related to Contractor by virtue of direct or indirect ownership interest or common management. They shall be deemed to be "Affiliated with" Contractor and included within the term "Affiliates" as used herein. An Affiliate shall include: (i) a business in which Contractor has a direct or indirect ownership interest, (ii) a business that has a direct or indirect ownership interest in Contractor and/or (iii) a business that 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, as in effect on the date here, 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 that the ownership interest represents.

1.6 Agreement

“Agreement” means this Agreement between City and Contractor, including all exhibits, and any future amendments hereto.

1.7 Alternative Daily Cover (ADC)

“Alternative Daily Cover” means CalRecycle-approved materials other than soil used as a temporary overlay on an exposed landfill face. 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.

1.8 Alternative Intermediate Cover (AIC)

“Alternative Intermediate Cover (AIC)” means CalRecycle-approved 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. 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

“Applicable Law” means all Federal, State, County, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, transportation, Processing or Disposal of Discarded Materials that are in force on the Effective Date and as may be enacted, issued or amended during the term of this Agreement.

1.10 Approved C&D Facility Processing Operator(s), or C&D Processing Operator(s)

“Approved C&D Processing Facility Operator(s),” or “C&D Processing Operator(s)” means the entity(ies) identified in Exhibit K, selected by Contractor, approved by the City, and relied upon by Contractor to provide daily operation of the Approved C&D Processing Facility(ies).

1.11 Approved C&D Processing Facility(ies)

“Approved C&D Processing Facility(ies)” means the facility(ies) identified in Exhibit K to provide C&D Processing services.

1.12 Approved Compostables Facility Processing Operator(s), or Compostables Processing Operator(s)

“Approved Compostables Processing Facility Operator(s),” or “Compostables Processing Operator(s)” means the entity(ies) identified in Exhibit K, selected by Contractor, approved by the City, and relied upon by Contractor to provide daily operation of the Approved Compostables Processing Facility(ies).

1.13 Approved Compostables Processing Facility(ies)

“Approved Compostables Processing Facility(ies)” means the facility(ies) identified in Exhibit K to provide Compostables Processing services.

1.14 Approved Disposal Facility(ies)

“Approved Disposal Facility(ies)” means the facility(ies) identified in Exhibit K to provide Disposal services.

1.15 Approved Disposal Facility Operator(s), or Disposal Operator(s)

“Approved Disposal Facility Operator(s),” or “Disposal Operator(s)” means the entity(ies) identified in Exhibit K, selected by Contractor, approved by the City, and relied upon by Contractor to provide daily operation of the Approved Disposal Facility(ies).

1.16 Approved Facility(ies)

“Approved Facility(ies)” means any one of or any combination of the: Approved C&D Processing Facility(ies); Approved Compostables Processing Facility(ies); Approved Disposal Facility(ies); Approved Recyclables Processing Facility(ies); and/or Approved Transfer Facility(ies).

1.17 Approved Facility Operators

“Approved Facility Operators” means any one of or any combination of the: Approved C&D Processing Facility Operator(s); Approved Compostables Processing Facility Operator(s); Approved Disposal Facility Operator(s); Approved Recyclables Processing Facility Operator(s); and/or Approved Transfer Facility Operator(s).

1.18 Approved Recyclables Processing Facility(ies)

“Approved Recyclables Processing Facility(ies)” means the facility(ies) identified in Exhibit K to provide Recyclables Processing services.

1.19 Approved Recyclables Processing Facility Operator(s), or Recyclables Processing Operator(s)

“Approved Recyclables Processing Facility Operator(s),” or “Recyclables Processing Operator(s)” means the entity(ies) identified in Exhibit K, selected by Contractor, approved by the City, and relied upon by Contractor to provide daily operation of the Approved Recyclables Processing Facility(ies).

1.20 Approved Transfer Facility(ies)

“Approved Transfer Facility(ies)” means the facility(ies) identified in Exhibit K to provide Transfer services.

1.21 Approved Transfer Facility Operator, or Transfer Facility Operator

“Approved Transfer Facility Operator(s),” or “Transfer Facility Operator(s)” means the entity(ies) identified in Exhibit K, selected by Contractor, approved by the City, and relied upon by Contractor to provide daily operation of the Approved Transfer Facility(ies).

1.22 Bin

“Bin” means a Container with capacity of approximately one (1) to seven (7) cubic yards, with a hinged lid, and with wheels (where appropriate), that is serviced by a front end-loading Collection vehicle.

1.23 Biomedical Waste

“Biomedical Waste” means Discarded Materials which are likely to be infectious, pathological or biohazardous, originating from residences, hospitals, public or private medical clinics, departments of research laboratories, pharmaceutical industries, blood banks, forensic medical departments,

mortuaries, veterinary facilities and other similar facilities and includes (without limitations) equipment, instruments, utensils, fomites, laboratory wastes (including pathological specimens and fomites attendant thereto), surgical facilities, equipment, bedding and utensils (including pathological specimens and disposal fomites attendant thereto), sharps (hypodermic needles, syringes, etc.), dialysis unit waste, chemotherapeutic waste, animal carcasses, offal and body parts, biological materials (vaccines, medicines, etc.), and other similar materials, but excluding any such Discarded Materials which are reasonably determined by Contractor to be noninfectious, non-pathological and non-biohazardous.

1.24 Biosolids

"Biosolids" means solid, semisolid, or liquid residues generated during primary, secondary, or advanced treatment of domestic sanitary sewage.

1.25 Bulky Goods

"Bulky Goods" means items whose large size precludes or complicates their handling by normal Collection, processing or Disposal methods. Bulky Goods includes, but is not limited to major appliances, carpets; mattresses; clothing; tires; and oversized Yard Trimmings such as tree trunks and branches not exceeding two (2) feet in diameter and four (4) feet in length. Bulky Goods does not include any motor vehicle or any subassembly, major component except tires, and does not include Hazardous Waste.

1.26 Cart

"Cart" means a plastic Container with a hinged lid and wheels that is serviced by an automated or semi-automated Collection vehicle. A Cart has capacity of 20, 35, 64 or 96 gallons (or similar volumes).

1.27 Change in Law

"Change in Law" means any of the following events or conditions that have a material and adverse effect on the performance by the Parties of their respective obligations under this Agreement (except for payment obligations):

- a. The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation of any Applicable Law on or after the Effective Date; or,
- b. The order or judgment of any governmental body, on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of City or of the Contractor, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

1.28 City

"City" means the City of Daly City, a municipal corporation organized under the laws of the State of California.

1.29 Collect, Collected, Collection

"Collect," "Collected" or "Collection" means the Contractor taking physical possession of, and removing Discarded Materials, whether by manual, semi-automated or automated means, and transporting such materials, pursuant to this Agreement.

1.30 Collection Services

"Collection Services" means the combined activities and obligations of Contractor under this Agreement as related to Collection.

1.31 Commencement Date

"Commencement Date" means the date specified in Section 2.2 when the Contractor is to begin providing Collection and related services required by this Agreement.

1.32 Commercial, Commercial Property

"Commercial" or "Commercial Property" means property used for conducting business thereon, including, but not limited to, retail sales, services, wholesale operations, manufacturing and industrial operations, school facilities (both public and private), other institutions, and governmental agencies, but excluding businesses conducted upon Single-Family Property (as defined herein).

1.33 Compactor, Compaction

"Compactor", "Compaction" means a mechanical apparatus that compresses materials, the Container that holds the compressed materials, and/or the process. Compactors include Bin Compactors of any size serviced by front-loading Collection vehicles and Debris Box Compactors of any size serviced by Debris Box or roll-off Collection vehicles.

1.34 Compostables

"Compostables" means Discarded Materials that have been source-separated with the intent to be processed through Composting, including but not limited to Yard Trimmings, Food Scraps, paper contaminated by Food Scraps, waxed paper, and compostable food service ware, pieces of unpainted and untreated wood or sawdust, and small pieces of unpainted gypsum wallboard that the City permits, directs or requires Service Recipients to place separately for Collection by Contractor.

1.35 Composting

"Composting" means the controlled or uncontrolled biological decomposition of organic constituents such that the resulting material meets the maximum acceptable metal concentration limits specified in Section 17868.2 and pathogen reduction requirements specified in Section 17868.3 of Title 14, California Code of Regulations Chapter 3.1.

1.36 Construction and Demolition Debris (C&D)

"Construction and Demolition Debris" and "C&D" means materials resulting from construction, renovation, remodeling, repair, or demolition operations relating to or resulting from a building, structure, pavement or other improvement, including concrete, brick, bituminous concrete, rubble,

wood and masonry, composition roofing and roofing paper, steel, and other metals such as copper, but excluding liquid wastes and Hazardous Wastes.

1.37 Containers

“Containers” means any and all types of receptacles including, but not limited to, Bins, Carts cylindrical or square Containers commonly available at retail for residential use, and any and all other kinds of City-approved receptacles, irrespective of size or shape.

1.38 Contamination

“Contamination” means there is no more than ten (10) percent by volume of the “wrong” materials placed in a Container. Thus, for instance a Solid Waste Container is Contaminated if it contains a total by volume of more than ten (10) percent Recyclables and Compostables, and a Recyclables Container is Contaminated if it contains a total by volume of more than ten (10) percent Solid Waste and Compostables.

1.39 Contingent Facility

“Contingent Facility” means any facility approved by the City to provide Post-Collection Services in lieu of an Approved Facility, as provided in Sections 3.9 through 3.14 and as identified in Exhibit K Approved Post-Collection Facilities.

1.40 Contingent Facility Operator

“Contingent Facility Operator” means any the owner and/or operator of a Contingent Facility.

1.41 Contract Year

"Contract Year" means the twelve (12) month period from July 1 to June 30.

1.42 Contractor

"Contractor" means Allied Waste Services, Inc.

1.43 Contractor's Proposal

“Contractor's Proposal” means the proposal submitted to City by Contractor on March 21, 2014 for “City of Daly City Collection Services”, and certain supplemental written materials which are included as Exhibit F to this Agreement and are incorporated by reference.

1.44 Cooking Oil

“Cooking Oil” means oils resulting from cooking food at Residential Properties.

1.45 County

“County” means San Mateo County, California.

1.46 County Pockets

“County Pockets” means the unincorporated areas of San Mateo County which are surrounded by, or immediately adjacent to, areas within the jurisdiction of the City of Daly City. Said areas include the unincorporated areas known as unincorporated Broadmoor and unincorporated Colma.

1.47 Day

“Day” means calendar day unless otherwise specified in this Agreement.

1.48 Debris Box

“Debris Box” means open-top Containers with a typical capacity of eight (8) to forty (40) cubic yards that are serviced by a roll-off Collection vehicle. Debris Boxes that contain putrescible materials require a lid.

1.49 Discarded Materials

“Discarded Materials” means Solid Waste, Recyclables, Mixed Waste, Wet Materials, Dry Materials, Compostables, C&D Debris, Bulky Goods, and any combination of these material types properly placed for Collection by a Service Recipient or Generator for the purposes of Collection by Contractor. “Discarded Materials” does not include Excluded Waste.

1.50 Disposal

“Disposal” or “Disposed” mean the ultimate disposition of unprocessed Solid Waste intended for Disposal, and Residue.

1.51 Divert, Diversion

“Divert or Diversion (or any variation thereof)” means to prevent Disposal of Recyclables and Compostables other than Residue at landfill or transformation facilities, (including facilities using incineration, pyrolysis, distillation, gasification, or biological conversion methods, except for facilities using anaerobic digestion, or as otherwise approved by City) through Source Reduction, Reuse, Recycling, and Composting, as provided in Section 41780-41786 of AB 939, as AB 939 may be hereafter amended or superseded. Diversion includes use of Yard Trimmings for ADC or AIC, as permitted by State law, and approved by City.

Diversion is a broad concept that is to be inclusive of material handling and Processing changes that may occur over the Term including, but not limited to, changes in standard industry practice or implementation of innovative (but not necessarily fully proven) techniques or technology as may be used in the provision of Collection Services or Post-Collection Services, that reduce Disposal risk, decrease costs and/or are for other reasons deemed desirable by the City.

1.52 Dry Materials

“Dry Materials” mean Discarded Materials containing less than ten percent (10%) by volume of Wet Materials.

1.53 Effective Date

“Effective Date” means the date on which the latter of the two Parties signs this Agreement.

1.54 Eligible Expenses

"Eligible Expenses" means all expenses, both direct and indirect, which are determined by City to be reasonable, necessary for, and attributable to, the provision of services under this Agreement, provided however, that Eligible Expenses shall not include: Pass-Through Expenses; ESOP Expenses; travel and entertainment expenses; political contributions; income taxes; state franchise taxes; depreciation or amortization costs related to a write-up of the net book value of assets beyond the value at the time of acquisition and any other expenses arising out of additional services rendered by Contractor in the future pursuant to any agreement or arrangement which does not expressly provide that such expenses shall be considered to be Eligible Expenses.

1.55 Eligible Revenues

"Eligible Revenues" means all revenues derived directly or indirectly from the provision of services under this Agreement. Eligible Revenues include: revenue from Maximum Rates; interest earned on cash balances or investments, whether those cash balances are held by the Contractor or by a parent or related party on behalf of the Contractor; grant monies received by Contractor; and, any other revenues derived from other, or additional services rendered by Contractor in the future pursuant to any agreement or arrangement which does not expressly provide that such revenues shall not be considered to be Eligible Revenues.

1.56 Emergency Condition

"Emergency Condition" means the existence of a condition or conditions which threaten or threatens the public health, safety and welfare resulting from Contractor's failure or inability to perform its duties and obligations hereunder due to the effect upon Contractor of fire, flood, storm, earthquake, or other natural calamity, riot, insurrection, public disobedience, labor controversy, labor strike, insolvency of Contractor or similar condition. "Emergency Condition" does not include the results of failure of Contractor to comply with basic standards and procedures of Collection or other substandard performance by Contractor.

1.57 Environmental Laws

"Environmental Laws" means all federal and State statutes, and county and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, AB 341, AB 939, AB 1594, AB 1826, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6902 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §1601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the California Toxic Substances Control Act, California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

1.58 E-Waste

"E-Waste" means discarded electronic equipment including, but not limited to, televisions, computer monitors, central processing units (CPUs), laptop computers, computer peripherals (including external

hard drives, keyboards, scanners, and mice), printers, copiers, facsimile machines, radios, stereos, stereo speakers, VCRs, DVDs, camcorders, microwaves, telephones, cellular telephones, and other electronic devices. Some E-Waste or components thereof may be Hazardous Waste or include Hazardous Substances and thus require special handling, Processing, or Disposal.

1.59 Excluded Waste

"Excluded Waste" means Hazardous Substances, Hazardous Waste, Biomedical Waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that Contractor reasonably believes would, as a result of or upon Disposal, be a violation of local, State or Federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be Disposed of in Class III landfills, waste that in Contractor's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.

1.60 Food Scraps

"Food Scraps" means a subset of Compostables originating from Residential Properties or Commercial Properties, including: (i) all kitchen and table food waste scraps, and animal, or vegetable, fruit, grain, dairy or fish waste that attends or results from the storage, preparation, cooking or handling of foodstuffs, with the exception of animal excrement, (ii) paper waste contaminated with putrescible material, and (iii) biodegradable food service ware designed to disintegrate and biodegrade quickly.

1.61 Generator

"Generator" means any Person whose act or process produces Discarded Materials as defined in the Public Resources Code, or whose act first causes any of these items to become subject to regulation.

1.62 Gross Revenues

"Gross Revenues" means the total of Rate Revenues and all City and Contractor revenues derived from provision of Debris Box services, prior to City retention of City fees and remittance of approved compensation to Contractor as provided in Article 6.

1.63 Hazardous Substance

"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.

1.64 Hazardous Waste

"Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the U.S. Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

1.65 Holidays

"Holidays" shall mean the observed holiday for Thanksgiving Day, Christmas Day and New Year's Day.

1.66 Household Batteries

"Household Batteries" means disposable or rechargeable dry cells such as those referred to as A, AA, AAA, B, C, D, 9-volt, button type or those from laptop computers or cell phones, and commonly used as power sources for consumer electronics devices, including but not limited to zinc oxide, nickel metal hydride, alkaline, mercury, silver oxide, lithium, lithium ion and carbon zinc, but excluding automotive lead acid batteries.

1.67 Household Hazardous Waste (HHW)

"Household Hazardous Waste" or "HHW" means Hazardous Waste generated at Residential Properties within the City. HHW includes, but is not limited to: paint, stain, varnish, thinner, adhesives, auto products such as old fuel, batteries, household batteries, fluorescent bulbs, tubes, cleaners and sprays, pesticides, fertilizers and other garden products, needles, syringes, and lancets.

1.68 Junk Removal Service

"Junk Removal Service" means a person who lawfully, in full accordance with all City ordinances, and on a nonexclusive and irregular basis provides clean-up services such as shoveling, sweeping, bagging and boxing of items, other than Construction and Demolition Debris, from yards and buildings, and incidental to these services loads discarded items into a van or truck and hauls the discarded items from the site in lieu of the resident performing such tasks.

1.69 Large Apartment Complexes

"Large Apartment Complexes" have fifty (50) or more apartment units and are primarily tenant occupied. Large Apartment Complexes do not include condominiums, town homes and mobile home parks.

1.70 Major Equipment

"Major Equipment" means any equipment, whether new or used and whether owned or leased, that has a new value of more than Ten Thousand Dollars (\$10,000).

1.71 Mandatory Service Recipients

“Mandatory Service Recipients” means occupants and/or owners of all Single-Family Property, Multi-Family Property and Commercial Property within the City boundaries, and all such premises that may be added from time to time by means of annexation, new construction, or otherwise during the term of this Agreement. Any question as to whether premises fall within the category of Mandatory Service Recipient shall be determined by City.

1.72 Marketing

“Market” or “Marketing” (or other variations thereof) means all obligations of Contractor, and Approved Facilities providing Processing services, with respect to selling or giving away Recyclables and Compostables, including promotion, storage, insurance, packaging, transportation, sales, weighing, and maintaining records with respect thereto.

1.73 Maximum Rate

“Maximum Rate” means the maximum amount, expressed as a dollar unit that the Contractor or City may bill a Service Recipient for providing services under this Agreement, as approved by the City.

1.74 Mixed Waste

“Mixed Waste” means materials placed in Containers that combine Recyclable and non-Recyclable materials.

1.75 Multi-Family, Multi-Family Property

“Multi-Family” or “Multi-Family Property(ies)” means the parcel, and the building(s) on it containing four (4) or more individual Residential dwellings. Multi-Family Properties may have shared, centralized Collection service for all dwellings and/or individual Cart service, and are billed to one address (typically the Owner or property manager).

1.76 Non-Collection Notice

“Non-Collection Notice” means a form, as approved in advance by City, used to notify Service Recipient(s) of the reason for the no collection of materials set out by the Service Recipient(s) for Collection by Contractor pursuant to this Agreement.

1.77 Operating Ratio

“Operating Ratio” Except as otherwise provided for in this Agreement, an Operating Ratio approach shall be used for determining Contractor’s profit margin for any services or increased costs to be compensated under the Agreement. An Operating Ratio is calculated by dividing total Eligible Expenses by total Eligible Revenues during a given Contract Year. The approved Operating Ratio is that as proposed in Contractor’s Proposal and as approved by the City, and as specified in Article 6.

1.78 Other Service Recipients

“Other Service Recipients” means occupants and/or owners of all Single-Family Property, Multi-Family Property and Commercial Property in the Service Area not within the City boundaries, where the owner, owner’s representative, or a representative of the affected property requests Solid Waste services.

1.79 Party, Parties

“Party”, “Parties” refers to the City and Contractor, individually or together.

1.80 Pass Through Expenses

“Pass-Through Expenses” are not subject to the Operating Ratio and include, but may not necessarily be limited to City or other governmental fees and per-ton compensation for use of Approved Facilities and Contingent Facilities.

1.81 Permits

“Permits” means all federal, State, County, City, and any other governmental unit permits, orders, licenses, approvals, authorizations, consents and entitlements that are required under Applicable Law to be obtained or maintained by any Person with respect to Collection and Post-Collection Services performed under this Agreement, as renewed or amended from time to time.

1.82 Plastic Trash Bags

“Plastic Trash Bags” means plastic bags expressly made for the purpose of Collection of Solid Waste, and other Discarded Materials as may be provided in the Agreement.

1.83 Post-Collection

“Post-Collection” means all obligations and activities that occur following Collection and delivery of Discarded Materials to Approved Facilities and Contingent Facilities, including all obligations and activities related to Transfer, Processing and Disposal.

1.84 Post-Collection Arrangements

“Post-Collection Arrangements” refers to all contracts or other arrangements, verbal or written Contractor enters into with Approved Facility Operators and Contingent Facility Operators for provision of Post-Collection Services as provided in Section 3.9.

1.85 Post-Collection Services

“Post-Collection Services” means collectively the obligations of Contractor under this Agreement to manage provision of Post-Collection, and the related obligations and activities of the Approved Facility Operators and the Contingent Facility Operators in providing Post-Collection.

1.86 Processing

“Processing” means to sort, separate, prepare, treat, bale or otherwise package, compost, cure, or to take other steps necessary to re-use materials at the Approved Facilities, or to remanufacture, reconstitute, and or create new products from Discarded Materials. Processing includes Reuse, Recycling and Composting, and excludes energy conversion processes except by prior approval of City.

1.87 Public Containers

“Public Containers” means City-owned Containers maintained by the City for use by the public located on or in the vicinity of streets and public rights-of-way and other public places in the Service Area as specified by the City for placement of Discarded Materials generated by the public.

1.88 Rate

“Rate” means the amount, expressed as a dollar unit, that the City or Contractor bills a Service Recipient for providing services under this Agreement. City or Contractor may, in its sole discretion, charge any amount up to and including the Maximum Rate approved by the City Council, but in no case exceeding the Maximum Rate.

1.89 Rate Adjustment Review Period

“Rate Adjustment Review Period” means that period during which an evaluation of financial position and rates occurs covering the prior contract years and future projections and a rate determination is made.

1.90 Rate Period

“Rate Period” means a twenty four (24) month period, commencing July 1 and concluding June 30 except for Rate Period One which means the period from February 1, 2016 through June 30, 2017, during which Maximum Rates shall be constant.

1.91 Recyclables

“Recyclables” means newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons, telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes); chipboard; corrugated cardboard; glass containers, all colors; aluminum (including beverage containers, foil, food containers, small pieces of scrap metal); scrap metal weighing less than 10 pounds (without cords or chains and fitting into the container); steel, tin or bi-metal cans; plastic containers, Numbers 1 to 7; plastic bags and plastic film (no. 4); aseptic beverage boxes. Recyclables include Source Separated Recyclables.

1.92 Recycle, Recycling

“Recycle” or “Recycling” means the process of collecting, sorting, cleansing, treating and reconstituting materials that would otherwise be disposed of in a landfill, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. Recycling does not include Transformation.

1.93 Residential, Residential Property

“Residential”, “Residential Property” means on, of or pertaining to property used for residential purposes, irrespective of whether such dwelling units are rental units or owner-occupied, or whether commercial activities are conducted thereon or therefrom, provided that such commercial activities are permitted under applicable zoning regulations and do not consist of the primary use of the property.

1.94 Residue

“Residue” means unrecoverable materials remaining after Processing Discarded Materials for which there are no other options for viable use and which therefore must be disposed of in a landfill. Diversion is measured as net of Residue.

1.95 Reuse, Reusable

“Reuse” or “Reusable” means to place back into use an object or material that would otherwise be Recycled or Disposed.

1.96 Service Area

“Service Area” means the City of Daly City and the unincorporated areas of San Mateo County (“County Pockets”) which are surrounded by, or immediately adjacent to, areas within the jurisdiction of the City of Daly City. Said areas include the unincorporated areas known as unincorporated Broadmoor and unincorporated Colma.

1.97 Service Recipient

“Service Recipient” means the person whom City submits a billing invoice to and collects payment from for Collection services provided to a property. The Service Recipient may be either the occupant or owner of the property provided that the owner of the property shall be responsible for payment of Collection services if an occupant of a property, which is identified as the Service Recipient of owner’s property, fails to make such payment.

1.98 Single-Family, Single-Family Property

“Single-Family,” or “Single-Family Property,” means a premise used as a Residential dwelling and includes single-family dwellings and each unit of a duplex, triplex, townhouse, condominium, or mobile home park dwelling unit where individual Collection services are provided separately to each dwelling unit.

1.99 Solid Waste

“Solid Waste” means solid waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated thereunder as may be amended from time to time, and Residue from Recycling, Processing, and similar processes. Excluded from the definition of Solid Waste are Source-Separated Recyclables, Source-Separated Compostables, Source-Separated C&D, Biosolids and Excluded Waste, in addition to those items specifically excluded under California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated thereunder as may be amended from time to time. 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.

1.100 Source Reduction

“Source Reduction” means any action which causes a net reduction in the generation of Solid Waste. It includes, but is not limited to, reducing the use of non-recyclable materials, replacing Disposal materials and products with Reusable materials and products, reducing packaging, reducing the amount of Yard Trimmings generated, and increasing the efficiency of the use of paper, cardboard, glass, metal, plastic, and other materials. Source Reduction does not include steps taken after the material becomes Solid Waste or actions which would impact air or water resources in lieu of land, including, but not limited to, Transformation.

1.101 Source-Separated

"Source-Separated" means materials which have been segregated for separate Collection by the Generator or Service Recipient, and placed in specific Containers for Collection as Recyclables or Compostables. Source-Separated Compostables include Compostables such as Yard Trimmings that may be Collected separately as well as Compostables Collected in a commingled manner, such as combined Yard Trimmings and Food Scraps. Source-Separated Recyclables include materials that may be individually placed for Collection such as cardboard, and those that may be Collected on a commingled or "single-stream" basis.

1.102 Term

"Term" means the Term of this Agreement, including extension periods if granted, as provided for in Article 2.

1.103 Transfer

"Transfer", "Transfer(ring)" (or variations thereof) means receipt of Discarded Materials delivered by Contractor to an Approved Transfer Facility, loading of such materials into vehicles commonly used for Transfer for transport to other Approved Facilities for Processing or Disposal.

1.104 Transformation

"Transformation" means incineration, pyrolysis, distillation, gasification, or biological conversion other than Composting or anaerobic digestion.

1.105 Universal Waste

"Universal Waste" means all wastes defined by Title 22, Subsections 66273.1 through 66273.9 of the California Code of Regulations or successor regulations. These include, but are not limited to, Household Batteries, fluorescent light bulbs, mercury switches, and E-Waste.

1.106 Used Motor Oil

"Used Motor Oil" means used motor oil from automobiles and other light duty vehicles intended for personal use which is removed from vehicles at Single-Family Properties and not as a part of a for-profit or other business activity. Used Motor Oil does not include transmission fluid.

1.107 Used Oil Filter

"Used Oil Filter" means a used motor oil filter from automobiles and other light duty vehicles intended for personal use which is removed from vehicles at Single-Family Properties and not as a part of a for-profit or other business activity.

1.108 Wet Materials

"Wet Materials" mean putrescible materials and mixed Compostables with no more than ten percent (10%) Dry Material by volume.

945 **1.109 Yard Trimmings**

946 “Yard Trimmings” means those Discarded Materials that will decompose and/or putrefy, including, but
947 not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree
948 trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of organic waste.
949 Yard Trimmings is a subset of Compostables. Yard Trimmings placed for Collection may not exceed six (6)
950 inches in diameter and three (3) feet in length and must fit within the Contractor-provided Container.

ARTICLE 2: GRANT AND ACCEPTANCE OF FRANCHISE

2.1 Grant and Acceptance of Franchise

City hereby grants to Contractor, and Contractor hereby accepts and agrees to perform, the exclusive franchise to Collect all Discarded Materials placed for Collection at any Residential Property, Multifamily Residential Property, and on any Commercial Property located within the Service Area, and to handle and to transport such Discarded Materials to Approved Facility(ies) designated by City, except as herein otherwise provided, all in accordance with the Solid Waste Management Plan of the County of San Mateo, California, and subject to the terms and conditions thereof.

2.2 Term

The Term of this Agreement shall be from 12:01 AM, February 1, 2016 through January 31st, 2026, inclusive, subject to approval of City Council and evidence of compliance with Article 7 - Indemnification, Insurance and Bond, unless earlier terminated pursuant to Article 9 of this Agreement. The Term may be extended at City discretion for up to a total of three years in periods of no less than one (1) year, and with 120 day notice to Contractor.

2.3 Obligations of the Parties

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

- A. Provide timely notice to one another of a perceived failure to perform any obligations under this Agreement and access to information demonstrating the Party's failure to perform.
- B. Provide timely access to the City's and the Contractor's designated representative(s) and complete and timely responses to requests of the other Party.
- C. Provide timely notice of matters which may affect either Party's ability to perform under the Agreement.

2.4 Enforcement of Contractor's Exclusive Rights

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. Reasonable and necessary documented costs expended by Contractor in protecting its rights and privileges, and with prior approval of City, shall constitute an Eligible Expense.

2.5 Conditions to Effectiveness of Agreement

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

A. **Accuracy of Representations.** The Contractor's representations and warranties made in Contractor's Proposal (Exhibit F) and Article 10 of this Agreement are true and correct on and as of the Effective Date.

B. **Furnishings of Insurance and Performance Bond.** Contractor has furnished evidence of the insurance and performance bond required by Section 7.3 and Exhibit G that is satisfactory to the City.

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

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

2.6 Responsibility for Materials

Once Discarded Materials are placed in the Contractor's or other approved Containers and at the Collection location, or is otherwise set-out for Collection in an approved manner, the responsibility for their proper handling shall transfer directly from the generator to Contractor, with the exception of Hazardous Waste if the Contractor can identify the generator. Once Discarded Materials are deposited by Contractor at an Approved Facility, such materials shall become the responsibility of the owner or operator of the Approved Facility. Responsibility for Hazardous Waste that has been inadvertently collected by the Contractor shall remain with the Contractor if it cannot identify the generator, and Contractor shall assume all responsibility for its proper disposal.

2.7 Exceptions

The exclusive franchise granted to Contractor to perform Collection services does not extend to any of the following and City expressly reserves the right to allow other service providers, by contract or otherwise, to perform any or all of the following in Service Area:

- A. Collection and processing of any recyclable materials not specifically included in the definition of Recyclables
- B. Collection of Discarded Materials from City facilities, should City decide to provide for collection outside of the Agreement
- C. Removal of Discarded Materials incidental to Junk Removal Service
- D. Collection of grease wastes from grease traps or grease interceptors
- E. Collection of used cooking oil
- F. Collection of Household Hazardous Wastes
- G. Collection of waste material that is greater than fifty percent (50%) liquid (excluding Used Motor Oil)

H. Collection and transportation of Discarded Materials within a Multifamily Residential premises to a central location located within or adjacent to the premises for the purpose of consolidation and/or Compaction prior to Collection by Contractor, and as permitted by City Code.

I. C&D Debris generated at a property located within the Service Area by a construction, remodeling or demolition services business and hauled from the Premise by the construction, remodeling or demolition business (not a third party or subcontractor to that business) as an incidental part of a total service provided by that business. Such materials shall be transported in vehicles and Containers owned or leased by the business providing the full service, using its own employees and not a subcontractor, affiliated company, or third party.

2.8 Service Recipients Options for Recyclables and Bulky Goods

Nothing in this Agreement shall be construed as requiring Service Recipients to set out Recyclables or Bulky Goods for Collection by Contractor. Service Recipients may dispose of Recyclables and Bulky Goods through other appropriate means including, but not limited to, taking Recyclables or Bulky Goods to drop-off facilities and donating or selling Recyclables or Bulky Goods to private or public entities.

2.9 Labor Policy and Labor Peace

2.9.1 Labor Policy

A. Competitive Wages and Benefits. Contractor, Approved Facility Operators, and Contingent Facility Operators will provide employees with initial wages and benefits equaling no less than the wages and benefits included in the collective bargaining agreements in place in 2013.

B. Employee Retention Policy. Contractor will retain workers who have been employed by the previous contractor for at least 120 calendar days prior to the expiration of the contracts. These retained workers will fill open positions, provided that the future contractor(s) shall not be required to create additional positions that the contractor(s) does not need, Contractor is prohibited from discharging any retained workers for at least 90 calendar days after the contract startup (e.g., Commencement Date) except for cause. Additionally, the contractor(s) shall maintain a list of the predecessor contractor's employees who were not offered employment after twelve months from the start of the new Agreement (e.g., Commencement Date). If any positions become available during the nine months following the initial three-month contract period, from May 1, 2016 through January 31, 2017, Contractor shall offer employment to qualified persons on the list by seniority within the collective bargaining unit (if it exists). Contractor shall be required to include this language in the collective bargaining agreements, if any such agreement exists or is negotiated with relation to providing service under this Agreement.

C. Contractor Demonstration of Compliance. Contractor has anticipated the aforementioned labor requirements in its cost proposal, as provided in Exhibit J.

2.9.2 Labor Peace

The City has determined that the level of vulnerability of the proposed Agreement to service or labor disputes is sufficient to warrant that labor peace is essential to the propriety interests of the City. The determination was based on considerations including, but not limited to the following factors:

A. The service or labor will be provided on City site or a site which is important to the propriety

1064 interests of the City;

1065 B. The service provider relies on a significant amount of public patronage;

1066 C. The economic effect of any disruption of City expenditures or revenues is significant;

1067 D. The effect of any disruption on the citizens, tourists and businesses in the community is
1068 significant.

1069 Contractor acknowledges the importance of labor peace, and the steps it shall take to maintain labor
1070 peace during the Term.

1071 **2.10 Diversion Requirements**

1072 **2.10.1 Contractor Obligation**

1073 In awarding this Agreement, the City relied on Contractor representation that Contractor will provide a
1074 level of Diversion that ensures the City will be in full compliance with its State Diversion obligations, as
1075 defined as of the Effective Date by AB 939 and AB 341. City grant of exclusive services as defined in this
1076 Article 2 is based in part on providing Contractor the means necessary to ensure the City meets its
1077 Diversion obligations. However, the Parties acknowledge that measuring compliance with the City's
1078 State requirements, as measured by CalRecycle is at best difficult. The Parties agree that the following
1079 Diversion requirements are intended to ensure the City will be in full compliance with its State Diversion
1080 obligations, and Contractor's compliance with its Diversion requirements will be measured for a given
1081 time period in terms of total tonnage Diverted by the Contractor and by processors, as a percentage of
1082 the total tonnage Collected by Contractor under the terms of this Agreement.

1083 **2.10.2 Diversion Requirements**

1084 The City's intent is for Contractor to improve the performance of its programs over time in order to
1085 meet the following Diversion requirements, subject to the penalties specified in Section 9.8.J. Contractor
1086 shall:

1087 A. Achieve and maintain a Diversion rate of 30 percent by no later than July 1, 2017.

1088 B. Achieve and maintain a Diversion rate of 33 percent by July 1, 2018.

1089 C. Achieve and maintain a Diversion rate of 36 percent by July 1, 2019.

1090 D. Achieve and maintain a Diversion rate of 40 percent by July 1, 2020.

1091 E. Achieve and maintain a Diversion rate of 43 percent by July 1, 2021.

1092 **2.10.3 Compliance with Diversion Requirements**

1093 **A. City Determination of Compliance**

1094 Contractor shall provide the Diversion-related data and information defined in Section 4.3 as part of its
1095 scheduled reporting. City may in its sole discretion, and at any time determine compliance with each of
1096 the above Diversion requirements, as well as ascertaining Contractor progress towards achieving the
1097 next scheduled Diversion requirement. Contractor acknowledges that City may request, and Contractor
1098 shall provide in a timely manner such additional information as may reasonably be needed to ascertain
1099 Contractor's compliance with its Diversion requirements as defined in Section 2.10.2. Should City
1100 determine that Contractor is not in compliance with Contractor's Diversion requirements as specified in

1101 this Agreement, City may invoke the indemnification provisions of Section 7.1.1, the penalties of Section
1102 9.8, and such remedies as are provided in Article 9.

1103 **B. CalRecycle Notice**

1104 If at any point during the Term, CalRecycle notifies the City that it is not in compliance with its Diversion
1105 obligations under State law, the Parties will meet within 14 Days of City request regarding Contractor's
1106 compliance with Contractor's Diversion requirements. City may determine if Contractor is in compliance
1107 as provided in Section 2.10.3.A, and if it finds Contractor to not be in compliance, City may seek the
1108 remedies specified in Sections 7.1.1, Section 9.8, and Article 9. Should Contractor be found to be in
1109 compliance with the above Diversion requirements, but there is the need to modify Contractor
1110 obligations to meet the City's Diversion obligations such modification will be considered a change in
1111 Contactor obligations as provided in Section 2.11.

1112 **2.11 City's Right to Direct Changes**

1113 The City may direct the Contractor to perform additional Collection Services or to modify the manner in
1114 which it performs existing services including developing and implementing pilot programs, as provided
1115 in the Agreement. The Contractor shall promptly take direction from the City to provide additional
1116 services under this Agreement. Contractor acknowledges and agrees that the City may permit other
1117 persons besides the Contractor to perform additional Collection or related services if the Contractor and
1118 the City cannot agree in four (4) weeks, or as extended by mutual agreement of City and Contractor,
1119 from the date when the City first requests a complete proposal from Contractor to perform such
1120 services including terms and conditions of such services. Should Contractor fail to provide such services
1121 as City directs, the provisions of Article 9 of this Agreement shall apply. Both Parties shall negotiate in
1122 good faith for the purpose of reaching agreement under this section.

ARTICLE 3: COLLECTION AND POST-COLLECTION SERVICES

3.1 General

Throughout the term of this Agreement, Contractor shall perform Collection Services and Post-Collection Services as provided in this Article, and as provided in further detail in Exhibit B – Final Approved Plans and Exhibit C – Contractor’s Proposal. All such services shall be performed in a thorough and professional manner regardless of weather conditions or difficulty of Collection. Contractor shall offer Collection services comparable to that provided to City in the County Pockets and shall provide such services for a rate which shall not exceed the Maximum Rates provided to City Service Recipients of similar services.

3.2 Labor, Collection Equipment, and Containers**3.2.1 General**

Contractor shall provide and maintain all labor, equipment, tools, facilities, and personnel supervision required for the performance of Contractor’s obligations under this Agreement. Contractor shall at all times have sufficient back-up equipment, equipment maintenance capabilities, and labor to fulfill Contractor's obligations under this Agreement. No compensation for Contractor's services or for Contractor's supply of labor, equipment, tools, facilities or supervision shall be provided or paid to Contractor by City or by any Service Recipient except as expressly provided by this Agreement.

Contractor shall at all times maintain an inventory of Collection Containers such that it can deliver new Containers within seven (7) calendar Days of customer request or be subject to the provisions of Exhibit C Performance Standards and Liquidated Damages.

3.2.2 Collection Frequency and Location

Contractor shall Collect Solid Waste, Recyclables, and Compostables from each Residential Service Recipient in Service Area on a once-per-week basis, Monday through Friday, and on the same day each week. Contractor shall Collect all Discarded Materials from Multifamily Residential and Commercial Service Recipients on such frequency as is desired by Service Recipient or necessary to provide adequate service to meet health and safety requirements. Collection shall be made from Containers placed at curbside by Residential Service Recipients or such other locations as necessary and as arranged for other Service Recipients. Collection from Public Containers and other City facilities shall occur on a schedule determined by City and as amended from time to time. Contractor is not required to perform Collection services on Holidays but shall reschedule Holiday Collection services in accordance with Section 3.8.2 of this Agreement.

Contractor has represented that approximately 750-1,000 Residential accounts will experience a change in Residential Collection days with implementation of Collection Services on and following the Commencement Date, and Contractor shall take such reasonable steps as are necessary to ensure that the number of such accounts does not exceed this number. Contractor shall make efforts to minimize changes in Residential Collection days during the Term, and shall notify the City in advance of any changes in route days that affect more than five (5) percent of the Service Recipients on a Residential route.

3.2.3 Containers

Contractor shall provide Service Recipients with City approved new Containers for Solid Waste, Recyclable Materials, and Compostables as specified in this Section 3.2.3. Carts utilized for Solid Waste shall be black in color, carts utilized for Recyclables shall be blue in color and carts utilized for Compostables (including Yard Trimmings) shall be green in color. Unless otherwise approved by the City, all Carts shall be new and un-used as of the Commencement Date. Contractor shall provide:

- A. Automated Collection of Solid Waste from Single-Family Residential Service Recipients from 32-, 64- or 96-gallon carts.
- B. Automated Collection of single-stream Recyclables from Single-Family Residential Service Recipients from 64-gallon Carts (or 32-gallon Carts upon customer request and City approval).
- C. Automated Collection of Compostables from Single-Family Residential Service Recipients from 32-gallon Carts(or 64-gallon and 96-gallon Carts upon customer request). Contractor shall also provide one kitchen pail Container for indoor storage of Compostables for each Single-Family Residence, which shall reasonably fit on a counter top or underneath a Residential sink, be clearly labeled, and include graphics to aid customers in proper Compostables Diversion.
- D. Collection of Solid Waste from Multi-Family Residential and Commercial Service Recipients from 32-, 64-, or 96-gallon Carts; 1, 1.5, 2, 3, 4, or 6 cubic yard Bins; or Debris Boxes. As further detailed in Section 4.6 and Exhibit B, Contractor shall work with Multi-Family and Commercial customers to identify the best Container size(s) to accommodate each customer's generation level and space constraints.
- E. Collection of Recyclables from Multi-Family Residential and Commercial Service Recipients from 64-, or 96-gallon Carts; 1, 1.5, 2, 3, 4, 6, or 8 cubic yard Bins. As further detailed in Section 4.6 and Exhibit B, Contractor shall work with Multi-Family and Commercial customers to identify the best Container size(s) to accommodate each customer's generation levels and space constraints. Contractor shall provide Recycling totes for customer's personal use. Upon Service Recipient request, Contractor shall also provide one "battery bucket" for centralized storage of Household Batteries, cell phones and compact fluorescent light bulbs (CFLs), to Multi-Family Residential customers. Contractor shall Collect materials from such "battery buckets" on the Service Recipient's regular Collection day.
- F. Collection of Compostables from Multi-Family Residential Service Recipients from 64-gallon Carts. Upon Service Recipient request, Contractor shall also provide one kitchen pail Container for indoor storage of Compostables to each individual dwelling unit of Multi-Family Residential buildings (excluding Large Apartment Complexes), which shall be of a size to reasonably fit on a counter top or underneath a Residential sink, be clearly labeled, and include graphics to aid customers in proper Compostables Diversion.
- G. Collection of Compostables from Commercial Service Recipients from 64-, and 96 gallon Carts, and Bins up to 3 cubic yards.

3.2.4 Maintenance of Containers

For those Collection Containers owned by Contractor, such Containers shall be maintained in a clean, serviceable, and sanitary condition. Said Containers shall be kept continuously closed by either a tight fitting cover or lid. Contractor shall repair Contractor-owned Containers within five (5) calendar days of a request to do so by Service Recipient or from the City, or if repair cannot be performed within five (5)

1203 days, Contractor shall provide a replacement Container to Service Recipient, all without cost to either
1204 Service Recipient or City.

1205 Contractor is solely responsible for repairing and/or replacing any Contractor-purchased Containers due
1206 to manufacturer defects, and for all related costs.

1207 **3.3 Transition Plan**

1208 Contractor shall at all times be in compliance with the provisions of Exhibit B.5 Implementation Plan that
1209 govern start-up of Collection Services and Post-Collection Services. Contractor shall revise, modify and
1210 otherwise update such Plan prior to the Commencement Date as it deems necessary, or as reasonably
1211 requested by the City. Contractor is solely responsible for determining the need for such revisions or
1212 updates, and shall promptly provide all such revisions or updates to City.

1213 **3.4 Solid Waste Collection Services**

1214 **3.4.1 24-Hour Advance Solid Waste Overage Collection**

1215 Contractor shall Collect Solid Waste in excess of the normal billed-for amount if the Service Recipient
1216 has made arrangements at least 24 hours in advance with Contractor for overage pickup, or such other
1217 procedure as approved by City. Contractor shall Collect Solid Waste in excess of the Solid Waste placed
1218 in Containers when the set-out meets all of the requirements established by City. Contractor shall
1219 deliver to City Solid Waste overage tags each Monday for overages Collected the prior week. Tags shall
1220 be in a format as approved by City. Maximum fees for overages shall be as approved by City.

1221 **3.4.2 Debris Box Services**

1222 Contractor shall offer and provide Debris Box services within the Service Area. Rates for said services
1223 shall be established and billed by Contractor at an appropriate and competitive level, and Maximum
1224 Rates shall be as approved by City. Debris Box services provided shall be considered services provided
1225 under this Agreement and all revenues and expenses shall be a portion of the total Eligible Revenues
1226 and Eligible Expenses reflected under this Agreement. Contractor shall report all revenues from Debris
1227 Box services to City pursuant to Section 4.3.2. Contractor shall inform the Daly City Public Works
1228 Department in a manner and within time limits specified by City of the location and duration of
1229 placement of Debris Boxes placed in the public right-of-way, and shall conform to all City requirements
1230 for such placement.

1231 **3.4.3 Compactor Collection**

1232 Collection of Solid Waste from Multifamily Residential and Commercial Service Recipients from
1233 Compactors which are owned and maintained by third party operators, and used for the purpose of
1234 material consolidation prior to Collection by Contractor, as not otherwise restricted by City Code.

1235 **3.4.4 Non-Collection of Solid Waste**

1236 Contractor shall not be required to Collect any Solid Waste that is not placed either in a Solid Waste
1237 Container or, for overages Collections pursuant to Section 3.4.1 only, in a Plastic Trash Bag meeting the
1238 requirements established by City. Contractor shall not be required to Collect Solid Waste from a Solid
1239 Waste Container where the contents exceed the volume capacity of the Container when its lid is closed.

1240 In the event of a non-collection, Contractor shall act in accordance with the following procedures,
1241 subject to the provisions of the City Code:

1242 A. Upon the first and second occurrences of non-collection per Service Recipient, Contractor shall
1243 leave a Non-Collection Notice at the premises where the non-collection occurs and shall mark
1244 the Non-Collection Notice to show the date and time the notice is given, the complete address
1245 of the premises, the reason for the non-collection, the manner in which materials should be
1246 prepared for Collection, and the steps Service Recipient must take to recommence Collection
1247 service.

1248 B. Upon the third occurrence of non-collection per Service Recipient, Contractor shall:

1249 i. In the event of non-collection as a result of Container overflow, leave a Non-Collection
1250 Notice stating that the Service Recipient's service level and Rate will be increased to reflect
1251 the required level of service, and deliver any required additional or larger Containers within
1252 48 hours; or,

1253 ii. In the event of non-collection as a result of Contamination, leave a Non-Collection Notice
1254 stating that the Service Recipient may be subject to penalties related to Municipal Code
1255 violation; and,

1256 iii. In both cases, provide notice to City staff or code enforcement, as applicable, identifying
1257 any billing changes or penalties to be assessed as a result of the non-collection.

1258 In all events of non-collection, Contractor shall leave the hard (card stock) copy of the Non-Collection
1259 Notice at the premises by affixing it to the Solid Waste Container, and shall retain one copy. Contractor
1260 shall also document the event(s) of non-collection in a database (i.e., via InfoPro customer notes, Excel
1261 worksheet or similar software) which shall be maintained and monitored by Contractor in order to track
1262 and detect behavior patterns or trends. Contractor shall incorporate findings from such database in its
1263 public education program. Contractor shall report all events of non-collection to City on a weekly basis.

1264 **3.5 Recyclables Collection Program**

1265 **3.5.1 Recyclables Collection**

1266 Contractor shall Collect in a single-stream (commingled) manner, at a minimum the following recyclable
1267 materials: newspaper (including inserts, coupons, and store advertisements); mixed paper (including
1268 office paper, computer paper, magazines, junk mail, catalogs, brown paper bags, brown paper,
1269 paperboard, paper egg cartons, telephone books, grocery bags, colored paper, construction paper,
1270 envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes); chipboard; corrugated
1271 cardboard; glass containers of any color (including brown, clear, and green glass bottles and jars);
1272 aluminum (including non-container foil and extruded, beverage containers, food containers, small pieces
1273 of scrap metal); small pieces of scrap metal weighing less than 10 pounds without cords or chains and
1274 fitting into the Recyclable Materials Collection Container; steel, tin or bi-metal cans; plastic containers
1275 (no. 1 to 7); plastic bags and plastic film; mixed plastics; mixed rigid plastics; clean wood; clean expanded
1276 polystyrene block packing materials; PLA bioplastic bottles; aseptic beverage boxes; and all other
1277 materials for which a viable market can be found. Contractor shall Collect used oil filters, household
1278 batteries and compact fluorescent lamps when placed in sealed plastic bags on top of the recycling
1279 container. Reusable Items, and carpet and carpet padding may be placed for collection as part of the
1280 Bulky item collection.

3.5.2 Recyclables Overages

In the event a Service Recipient has a greater quantity of Recyclables than can be set out in the appropriate Recyclables Container, the Service Recipient may set out such Recyclables overages in other appropriate containers, including clean brown paper bags or cardboard boxes which are marked for recycling and set out with, or next to, the Recyclables Containers. Contractor shall with added charge or compensation Collect such Recyclables overages on the same day Contractor collects Recyclables from the Service Recipient. Contractor shall have no obligation to Collect such Recyclables overages where the overage container weighs in excess of sixty (60) pounds.

3.5.3 Non-Collection of Recyclable Materials

Contractor shall not be required to Collect any Recyclables that are not placed either in a Recyclables Container or, for overages Collections pursuant to Section 3.5.2 only, a receptacle meeting the requirements established by City. Contractor shall not be required to Collect Recyclables from a Recyclables Container where the contents exceed the volume capacity of the Container when its lid is closed.

In the event of a non-collection, Contractor shall act in accordance with the following procedures, subject to the provisions of the Municipal Code:

A. Upon the first and second occurrences of non-collection per Service Recipient, Contractor shall leave a Non-Collection Notice ('Oops Tag') at the premises where the non-collection occurs and shall mark the Non-Collection Notice to show the date and time the notice is given, the complete address of the premises, the reason for the non-collection, the manner in which materials should be prepared for Collection, and the steps Service Recipient must take to recommence Collection service.

B. Upon the third occurrence of non-collection per Service Recipient, Contractor shall:

- i. In the event of non-collection as a result of Container overflow, leave a Non-Collection Notice stating that the Service Recipient's service level and Rate, if applicable, will be increased to reflect the required level of service, and deliver any required additional or larger Containers within 48 hours; or,
- ii. In the event of non-collection as a result of Contamination, leave a Non-Collection Notice stating that the Service Recipient may be subject to penalties related to Municipal Code violation; and,
- iii. In both cases, provide notice to City staff or code enforcement, as applicable, identifying any billing changes or penalties to be assessed as a result of the non-collection.

In all events of non-collection, Contractor shall leave the hard (card stock) copy of the Non-Collection Notice at the premises by affixing it to the Recyclables Container, and shall retain one copy. Contractor shall also document the event(s) of non-collection in a database(i.e., via InfoPro customer notes, Excel worksheet or similar software) to be maintained by Contractor and used to inform the public education and outreach program. Contractor shall report all events of non-collection to City on a weekly basis.

Conversely, Contractor will make every effort to recognize exemplary Recycling behavior by placing 'Good Job' notices at premises identified by Contractor's staff as consistently leaving an abundance of clean, non-contaminated Recyclables out for Collection. Such notices will show the date and time the notice is given, the complete address of the premises, will list acceptable Recyclables and will

congratulate the premises on the volume and consistency of their recycling efforts.

3.5.4 Waste Oil Recycling

A. **Motor Oil** - Contractor shall Collect up to two 1-gallon, sealed plastic jugs containing Used Motor Oil and up to two 1-gallon sealable plastic bags containing Used Oil Filters, from Single-Family Residential customers each week. Contractor shall Collect full jugs and bags placed next to customer's Recyclables Container, on the customer's regularly scheduled Collection day, and transport the oil and filters to an Approved Facility for Recycling. Contractor shall provide clear Recycling instructions for Used Motor Oil and Used Oil Filter Collection to all Single-Family customers.

B. **Cooking Oil** - Contractor shall pick up used cooking oil that is properly placed in approved, sealed containers. Customers may place up to two 1-gallon plastic jugs with screw-cap lids for used cooking oil at the curb on their Collection day. Contractor will provide specific directions for proper containment of used cooking oil to all Single-Family customers. Contractor will also maintain a stationary container to collect home generated used cooking oil where used cooking oil collected at curbside will be deposited. This same container will also serve as a drop-off location for residents at no additional charge. Residents will be limited to dropping off five gallons of home generated cooking oil per month and will be asked to demonstrate proof of residency

3.5.5 Additional Recyclable Materials

In the event City or Contractor proposes to add other materials to the list of Recyclables to be Collected, processed and/or marketed by Contractor, such additional materials shall be included under this Agreement. Contractor shall notify the City of the extent to which the addition of the proposed material would require a modification of the Recyclables Collection vehicles, the use of an additional Recyclables Container, and the use of additional Collection vehicles, and shall notify City of the estimated costs of adding the proposed material. Such notification shall be in writing and shall be provided at the time Contractor proposes the addition of the material or, if City proposes such addition, the Parties shall proceed in accordance with Section 2.11. City shall respond in writing to Contractor's description of changes and costs of implementation within thirty (30) calendar days of Contractor's notification to City. Both Parties shall negotiate in good faith for the purpose of reaching an agreement for the addition of the proposed material and a schedule for the implementation of the Collection of such material. The City may negotiate and approve the additional material and implementation schedule, but any agreement which would result in additional compensation to Contractor, including any compensation for tons recycled pursuant to this Agreement, shall not become effective unless approved by the City Council.

3.6 Compostables Collection Program

3.6.1 Residential Compostables Program

On the same day of the week that Contractor performs Solid Waste Collection, Contractor shall Collect Compostables from each Service Recipient in the Service Area. Contractor shall distribute at no charge an additional Container to Residential Service Recipients who demonstrate a consistent need for an additional Cart; provided that Residential customers will not be allowed an additional free container for Compostables that are not produced at the residential Service Recipient's premises.

3.6.2 Commercial Compostables Program

Contractor shall Collect and Process, through Composting or other appropriate use as approved by City, Compostables, including Yard Trimmings and Food Scraps, from Commercial customers as further provided in Exhibit B-1 Scope of Services. Collection frequency shall be such that it encourages Diversion of Compostables but need not occur on the same day as Solid Waste or Recyclables Collection.

Contractor shall target Commercial Service Recipients that generate a high volume of compostable material and will work with those Commercial Service Recipients to maximize participation and Recycling performance. Contractor will focus on Commercial Service Recipients by business sector and in accordance with the Commercial Compostables Implementation Schedule shown below.

Commercial Compostables Program Implementation Schedule

Commercial Compostables Program Implementation					
Phase	Categories	Number of Businesses	Estimated Weekly Cubic Yards	Potential Annual Diversion	Implementation Timeline
1	Sit-Down Restaurants	89	370	203	February 2016-December 2016
2	Stores (Safeway, Costco)	31	111	44	July 2016 – December 2016
3	Schools	49	194	32	January 2017 – December 2017
4	Fast Food / Quick-Serve Restaurants	49	237	124	January 2017–July 2017
5	Health Care Facilities	24	119	21	January 2017 – December 2017
6	Hotels / Lodging	5	15	5	January 2017 – December 2017

3.6.3 Christmas Tree Collection Program

Contractor shall Collect and Recycle, without additional fees, all flocked or other Christmas trees which are set out at curbside through the fourth Friday in January of each year of the term of this Agreement. Contractor shall not be required to Collect and Compost trees or sections of trees which are in excess of six (6) feet in length. Contractor shall leave a Non-Collection Notice on all trees that are not Collected. Contractor shall not be required to Collect any Christmas tree which is set out for Collection after the fourth Friday in January.

3.7 Special Services**3.7.1 On-Premises Solid Waste Collection**

At the request of a Residential Service Recipient, the City shall determine whether the Service Recipient is eligible for on-premises Collection and shall provide written notification to the Service Recipient and to Contractor as to whether Contractor shall provide on-premises Collection to the Service Recipient. If the City determines the Service Recipient is eligible for on-premises Collection service, the notification to Contractor shall specify a start date for such service and Contractor shall begin on-premises Collection as of the start date in the notification. Contractor shall perform on-premises Collection on the same day of the week that curbside Collection would otherwise be performed for the Service Recipient. Contractor shall stop on-premises Collection upon written notification by the City. If Contractor desires to cease on-premises Collection at any premises, Contractor shall provide written notice to the City of the Service Recipient address. The City will review the request and, if the request is approved, shall notify Contractor of the stop date.

3.7.2 On-Demand Bulky Goods

Contractor shall provide on-demand Collection of Bulky Goods in the same manner as Solid Waste overages in Section 3.4.1 of this Agreement. Monthly reports submitted pursuant to Section 4.3 shall include a statement of the on-demand Bulky Goods Collections made by account number, Service Recipient address, and route number. Contractor shall provide one on-demand Bulky Goods Collections per year to each Residential Property Service Recipient or Multifamily Residential Property unit at no additional charge, and may charge up to the Maximum Rate approved by City for Bulky Goods Collection for each on-demand Collection event thereafter.

3.7.3 Illegally Dumped Bulky Goods

Contractor shall provide Collection of illegally dumped Bulky Goods as provided in this Section. Within two (2) calendar days of notification to Contractor by City, Contractor shall pick up and dispose of Bulky Goods which have been illegally dumped on public streets or other public right-of-ways located within the City.

3.7.4 Bulky Goods Containing Hazardous Material

In the event Contractor collects Bulky Goods that contain polychlorinated biphenyls, chlorofluorocarbons injected in air-conditioning/refrigeration units, or other Hazardous Materials Contractor shall handle such Bulky Goods in such a manner as required to comply with Applicable Law.

3.7.5 Maximum Reuse and Recycling

Contractor shall dispose of Bulky Goods Collected in accordance with the following hierarchy:

- A. Reuse as is (where energy efficiencies are not compromised).
- B. Disassemble for reuse or recycling.
- C. Recycle.
- D. Disposal.

Contractor shall not landfill Bulky Goods unless the Bulky Goods cannot be economically reused or recycled.

3.7.6 Special Collections**A. Residential Scheduled Collection**

Contractor shall Collect from Residential Properties Discarded Materials, including Bulky Goods in Service Recipient-provided Containers or Plastic Trash Bags, and other objects not larger than 3 feet by 6 feet or heavier than 200 pounds, not less than once each Contract Year as scheduled by the Service Recipient and the Contractor. On-call set-outs shall not exceed a total of two (2) cubic yards in volume and no one object shall exceed 200 pounds in weight. City shall require owners or occupants of Residential Properties who wish to dispose of such Discarded Materials to place such Discarded Materials at curbside for Collection. Such Collection shall be provided as a free service to said Service Recipients, and shall be deemed compensated by Contractor's charges for weekly service. Contractor's costs of Collection under this section shall be deemed Eligible Expenses.

B. Multi-Family On-Call Collection

Contractor shall Collect from all Multi-Family Properties, Discarded Materials including Bulky Goods in Service Recipient-provided Containers or Plastic Trash Bags once each Contract Year per each Multi-Family Property living unit on an on-call basis. On-call set-outs shall not exceed a total of two (2) cubic yards in volume and no one object shall exceed 200 pounds in weight. Contractor shall work with Multi-Family Property managers and owners to coordinate distribution of Contractor's "move-in move-out" guide, and on-call services with move-ins and move-outs, as provided in Section 4.6. City shall require owners or occupants of Multi-Family Properties who wish to dispose of such Discarded Materials to place such Discarded Materials at curbside for Collection. Such once-per-year Collection shall be provided as a free service to said Service Recipients, and shall be deemed compensated by Contractor's charges for weekly service. Contractor's costs of Collection under this section shall be deemed Eligible Expenses.

3.7.7 Public Containers

Contractor shall Collect wastes deposited in Public Solid Waste, Recycling and Compostables Containers which are located in the City, and are listed in Exhibit D City Facilities and Public Containers. Collection shall be performed on a schedule provided by City. Collection shall include clean-up of the area within a radius of fifteen (15) feet of each Public Container. City shall provide Contractor a service schedule and a map showing the locations of the Public Containers to be serviced by Contractor. City reserves the right to change the service schedule at any time during the term of this Agreement upon not less than thirty (30) calendar days written notice to Contractor, and may add Public Containers as it deems necessary. Contractor's costs of Collection under this section shall be deemed an Eligible Expense.

3.7.8 City Property

Contractor shall Collect, not less than weekly and more frequently as the City shall determine, Solid Waste, Recyclables and Compostables from Containers located at City-owned facilities including, but not necessarily limited to, parks, City offices, corporation yards, parking lots, fire stations, and such other City-owned properties as City shall specify and as provided in Exhibit D City Facilities and Public Containers. Contractor's costs of Collection under this section shall be deemed Eligible Expenses, and Contractor's cost of Disposal or Processing (as applicable and provided by Contractor) shall be deemed a Pass-Through Expense. Contractor shall provide a sufficient number of suitably-sized Containers at or in the vicinity of such properties for the deposit of Discarded Materials in said Containers for Collection by Contractor. Notwithstanding the foregoing, City may, at City's sole discretion, Collect and transport

Solid Waste and other Discarded Materials which may accumulate on City's properties, or by reason of any of City's operations, to the Approved Facilities, at no direct cost to City.

3.7.9 Construction and Demolition Debris

Contractor shall Collect Recyclables, Compostables, Solid Waste and C&D in Contractor-provided Debris Boxes from large construction projects (e.g., Commercial building reconstruction) at the frequency requested by C&D customers, and shall transport Collected materials to the appropriate Approved Facility.

Contractor shall assign a "construction representative" to consult with each prospective construction project before the commencement of new work to determine the types of waste materials that will be generated during the project, and offer training to job site employees. Contractor shall conduct construction site visits and work directly with the construction companies to identify proper and strategic placement and size of Debris Boxes, Carts, Bins and/or Compactors at the construction site. Upon City, Contractor or Service Recipient request, Contractor's construction representative shall visit individual construction sites up to five times per week if determined necessary in order to train construction staff and/or monitor signage and behavior.

Contractor's construction representative shall maintain, and provide to City upon request, reports of Diverted tonnage for each construction project, in addition to the reporting requirements stated in Section 4.3.

3.7.10 Multi-Family Valet Service

Upon Service Recipient request, Contractor shall provide Solid Waste, Recyclables and Compostables valet service to Large Apartment Complexes and Multi-Family Properties subscribing to centralized Collection service. Valet service shall be provided by the third party subcontractor identified in Exhibit I Approved Collection Subcontractors. The valet service provider shall be directly compensated by Service Recipient at the per-unit rate specified in Exhibit A Maximum Rates Approved by City as adjusted annually as provided in Article 6.

No fewer than two days per week, the valet service provider shall Collect Recyclables and Compostables placed outside each individual dwelling unit within the subscribing Large Apartment Complex, and transport Collected materials to the appropriate, centrally located Container within the Large Apartment Complex. Contractor shall Collect materials from the centrally located Containers pursuant to Sections 3.5 and 3.6.

3.7.11 Community Reuse Event

Once every calendar year, Contractor shall coordinate a Community Reuse Event (Event). This Event will be offered free of charge to City residents and will be designed to promote Recycling and Reuse. The Event will be held at an agreed upon location between the City and Contractor and will encourage residents to drop-off Recyclables and donate items for Reuse. Contractor may enlist the services of a certified non-profit organization (i.e., Goodwill, St. Vincent De Paul, Disabled American Veterans, etc.) to assist in the handling of donated items. Contractor shall design, supply and distribute all outreach materials and use various media channels (i.e., website, newspaper, etc.) to promote the Event.

3.7.12 Mussel Rock Transfer Station

Prior to, or following the Commencement Date City and/or Contractor may request that the Parties meet and confer regarding possible Contractor use of the Mussel Rock Transfer Station for incidental uses related to provision of Collection Services, such as storage of Containers. The Parties acknowledge it is City intent to decommission the Mussel Rock Transfer Station and understand that it is unlikely to be available for Contractor use throughout the Term.

3.7.14 On-Call HHW Collection

Upon City request, and at the rate provided in Exhibit A, as adjusted using the CPI methodology of Section 6.2.2, Contractor shall implement the on-call HHW Collection service as described in Exhibit B-1.

3.8 Collection Standards**3.8.1 Hours of Collection**

Collection shall begin no earlier than 4:00 a.m., and end no later than 6:00 p.m. for all Service Recipients.

3.8.2 Holiday Service

Contractor shall not be required to perform any services under this Agreement on Holidays. Collection services that would be performed under Article 3 but for the Holiday shall be rescheduled to the business day immediately following the Holiday unless otherwise specifically approved in advance in writing by the City. Contractor shall provide written notice of the Holiday rescheduling and the rescheduling of any other services affected by Holiday rescheduling to each affected Service Recipient at least thirty (30) days in advance of the rescheduled service.

3.8.3 Care of Private Property

The following general requirements must be met for all operations performed by Contractor, its subcontractors, agents and Collection crews. All Containers shall be replaced where they were found, or at the Collection point in a manner so as not to obstruct the path of travel. Lids shall be securely replaced on all Containers after emptying. Contractor shall re-lock any lockable on-site enclosures, if applicable. In the event of damage or breakage to enclosure-locking mechanisms, Contractor shall replace or repair the lock within 24 hours, and supply property owner with a reasonable number of new keys, if necessary. Damage to property shall be avoided. Should damage to property occur, Contractor agrees to repair or reimburse resident/property owner/City for the cost of damages, and such costs shall not be an Eligible Expense.

3.8.4 Clean-Up and Noise

Collection personnel shall carry cleanup equipment and shall clean up any spilled or dropped material and any litter within fifteen (15) feet of the Container location or route to the Collection equipment. Collection personnel shall avoid unnecessary and excessive noise while collecting or dumping the Service Recipient's Containers.

3.8.5 Collection Equipment

A. **General Provisions.** All Collection equipment used by Contractor in the performance of services under this Agreement shall be in good and serviceable condition. The vehicles shall be designed

- 1536 and operated so as to prevent commingling Solid Waste, Recyclables, Compostables, and Bulky
1537 Goods and prevent Discarded Materials from escaping from the vehicles. Hoppers shall be
1538 enclosed on top and on all sides to prevent material from leaking, blowing or falling from the
1539 vehicles. Each Collection vehicle shall be equipped with a shovel and broom for clean-up of
1540 spillage.
- 1541 B. **Vehicles and Fueling Station.** All vehicles used by Contractor in providing services under this
1542 Agreement, except those vehicles used solely on Contractor's premises, shall be licensed by the
1543 California Department of Motor Vehicles. All Collection vehicles shall use compressed natural
1544 gas or "CNG" fuel. Contractor shall develop a "slow-fill" CNG fueling station at 1685 Edgeworth
1545 Avenue with twenty five (25) stations as provided in Exhibit F Contractor's Proposal, beginning
1546 on page 108. Contractor shall over the Term modify the capability of the CNG fueling station as
1547 necessary to ensure adequacy to meet all fueling needs for its Collection fleet.
- 1548 C. **Safety Markings.** All Collection equipment used by Contractor shall have appropriate safety
1549 markings including, but not limited to, highway lighting, flashing and warning lights, clearance
1550 lights, and warning flags. All such safety markings shall be in accordance with the requirements
1551 of the California Vehicle Code, as from time to time amended, and shall be subject to approval
1552 by City.
- 1553 D. **Vehicle Signage.** Contractor's name, telephone number and vehicle number shall be visibly
1554 displayed on both sides of all Collection vehicles in letters and figures not less than eight (8)
1555 inches high.
- 1556 E. **Collection Vehicle Noise Level.** The noise level generated by Collection vehicles using
1557 compaction mechanisms during the stationary compaction process shall not exceed seventy-five
1558 (75) decibels at a distance of twenty-five (25) feet from the Collection vehicle measured at an
1559 elevation of five (5) feet above ground level using the "A" scale of a standard sound level meter
1560 at slow response.
- 1561 F. **Equipment Maintenance.** Contractor shall maintain Collection equipment in a clean condition
1562 and in good repair at all times. All parts and systems of the Collection equipment shall operate
1563 properly and be maintained in a condition satisfactory to City. Contractor shall repaint all
1564 Collection vehicles (including vehicle striping) during the term of this Agreement on a frequency
1565 necessary to maintain a positive public image as reasonably determined by the City. Contractor
1566 shall wash all Collection vehicles at least once a week using reclaimed water, if available.
- 1567 G. **Equipment Inventory.** On or before the Effective Date of this Agreement, Contractor shall
1568 provide to City an inventory of Collection vehicles and Major Equipment used by Contractor for
1569 Collection or transportation in performance of services under this Agreement. The inventory
1570 shall indicate each Collection vehicle by identification number, DMV license number, the age of
1571 the chassis and body, type of fuel used, the type and capacity of each vehicle, the number of
1572 vehicles, the date of acquisition, the decibel rating and the maintenance and rebuilt status.
1573 Contractor shall submit to City an updated inventory annually, or more often at the request of
1574 the City. Each vehicle inventory shall be accompanied by a certification signed by Contractor
1575 that all Collection vehicles meet the requirements of this Section.
- 1576 H. **Back-up Equipment.** Contractor shall maintain sufficient back-up Collection equipment to
1577 ensure uninterrupted Collection service during the term of this Agreement.

3.8.6 Personnel

A. General Contractor shall insure that Collection personnel conduct themselves in a safe, courteous and professional manner while performing their services. Contractor shall regularly train its employees in customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection personnel to perform the work as quietly as possible. Contractor shall ensure Collection personnel are adequately trained to handle routine questions on services from the public and provide such information while performing their Collection services. Information brochures approved by the City shall be available on each piece of Contractor's Collection equipment and shall be offered to members of the public who request additional information.

B. Key Role of Management.

i. City Right to Review and Comment. Contractor recognizes the importance of establishing a successful relationship between its management and City. Before extending an offer of employment for the position of general manager, both initially and throughout the Term, Contractor shall provide City with the description of the proposed position, an opportunity to review and comment upon the position description before it is released, the background, experience and qualifications of each candidate being considered for the position, and an opportunity to meet with each candidate. Contractor shall give thoughtful consideration to City's comments on the descriptions of the proposed position and on each candidate, but shall have the ultimate right and unrestricted discretion to make employment decisions in its best business judgment.

ii. Addressing City Concerns. If City is dissatisfied with the performance of any of Contractor's management personnel, City shall contact the general manager to discuss the employee's performance. If City is dissatisfied with the general manager, City shall contact the group manager to discuss the general manager's performance. Contractor shall advise the affected management employee of any complaints made by City regarding the employee's performance. The Parties shall meet and confer in good faith to address City's concerns, and shall endeavor in good faith to agree on a corrective course of action to be implemented immediately. Contractor agrees to consider in good faith any requests by City to transfer or re-assign a management employee should City maintain in good faith that it can no longer work constructively with said employee; however, Contractor retains the ultimate right and unrestricted discretion to make employment decisions in its best business judgment.

C. **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

D. **Identification and Uniforms Contractor** shall require its drivers and all other employees who routinely come in contact with the public to wear clean standardized uniforms bearing the Contractor's name and the employee's name, all as approved by City.

E. **Safety Training** Contractor shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment. Contractor shall train its Collection employees in identifying and dealing with Hazardous Material.

F. **No Gratuities** Contractor shall not permit its employees to demand or solicit, directly or

indirectly, any additional compensation or gratuity from members of the public for the Collection of Discarded Materials under this Agreement.

- G. **Employee Conduct and Courtesy Complaints** regarding courtesy, spillage, excessive noise and other standards established shall be considered as complaints for purposes set forth in Section 4.5.5. If any employee is found not to be performing services in the manner required by this Agreement, Contractor shall take all appropriate corrective measures.

3.8.7 Removal of Hazardous Waste

Contractor shall not collect Hazardous Waste unless performed under a specific City-approved Hazardous Waste collection program. Collection personnel shall have proper training in identifying and dealing with Hazardous Waste which may be encountered during the normal course of Discarded Materials Collection. Contractor shall have a plan, approved in advance by City, for identification, recording, notification and disposal of such Hazardous Waste improperly placed for disposal by Service Recipients. Contractor shall insure that no Hazardous Materials or other prohibited waste is disposed of in the landfill.

3.8.8 Transport of Discarded Materials

Contractor shall transport all Discarded Materials to Approved Facility(ies). Documented expenses related to transportation are Eligible Expenses and Contractor is compensated for such expenses through the Maximum Rates based on Exhibit J Operating Assumptions and Cost Basis for Rate Period One Rates.

Except when material is being loaded or unloaded or the vehicle is on route in the process of Collection, Contractor shall at all times keep loads completely covered so as to prevent leakage or spillage from the Collection vehicle. Contractor shall immediately clean up any spillage which occurs during Collection.

3.9 Post-Collection Facility Responsibilities

3.9.1 General Apportionment of Responsibilities

- A. **Contractor.** Contractor is solely responsible for the conduct of all Post-Collection Services in accordance with the requirements of this Agreement, including but not limited to:

1. Entering into, maintaining, and revising Post-Collection Arrangements as provided in Section 3.9.2. Contractor shall enter into such Post-Collection Arrangements as are necessary to ensure Approved Facilities are fully available to provide Post-Collection Services on the Commencement Date and throughout the Term in compliance with the requirements of this Agreement, whether such Approved Facilities are owned by Contractor, Affiliates, or third party subcontractors. Post-Collection Arrangements also apply to Contingent Facility Operators.
2. Ongoing management of all Approved Facility and Contingent Facility responsibilities consistent with the Post-Collection Arrangements.
3. Delivery of all Discarded Materials Collected by Contractor only to Approved Facilities, or to Contingent Facilities with City approval. Exhibit K Approved Post-Collection Facilities identifies Approved Facilities and Contingent Facilities as of the Effective Date.

4. Compensating Approved Facility Operators and Contingency Facility Operators on a per-ton basis for all delivered Discarded Materials at the applicable per-ton rates for each Rate Period, as provided in Exhibit A Maximum Rates.
5. Ensuring adequacy of Approved Facility capacity, and ability and commitment of Approved Facility Operators to accept all Discarded Materials delivered throughout the Term.
6. Informing City of the need for, and arranging for the use of Contingent Facilities due to short-term inability of an Approved Facility Operator to accept Delivered Materials for factors outside of the reasonable control of Contractor.
7. Anticipating, and in consultation with City taking the necessary steps to arrange for Post-Collection facility capacity as necessary to replace lost or reduced capacity provided by an Approved Facility that is no longer able to accept Discarded Material.
8. Avoiding, and if necessary resolving any disputes with an Approved Facility Operator regarding the quality or composition of delivered Discarded Materials successfully, and in a timely manner.
9. Ensuring that Post-Collection Services and all of Contractor's related responsibilities are discharged in a manner that is consistent with widely accepted industry practices, whether or not such practices are enumerated in this Agreement.

Contractor shall as requested by City demonstrate compliance with the requirements of this Section 3.9.1.A on or before the Effective Date of this Agreement.

B. City. City is solely responsible for:

1. Approving Contractor use of Approved Facilities and Contingent Facilities.
2. Setting customer Rates for each Rate Period as provided in Article 6.

C. Parties. The Parties agree to meet and confer in good faith as necessary to resolve any issue related to Post-Collection Services, to the extent that the responsibility or requirements for resolution of the issue are not otherwise specified in this Agreement.

3.9.2. Contractor's Post-Collection Arrangements.

Contractor shall enter into such Post-Collection Arrangements as required in this Section 3.9.2, or as Contractor otherwise deems necessary to ensure compliance with the requirements of this Section 3.9, and with the requirements of Sections 3.10 through 3.14 as applicable to each Approved Facility.

A. Minimum Requirements. Post-Collection Arrangements shall include, but are not limited to compliance with, or inclusion of the following:

1. To provide Post-Collection Services through the Term as specified in Section 2.2, and any extensions.
2. The labor requirements of Section 2.9.
3. The transition, maximum capacity availability, vehicle turnaround, maximum residue specifications and any other specifications contained in Exhibit K Approved Post-Collection Facilities.
4. Data tracking and reporting requirements of Section 4.3.

5. The insurance requirements and indemnifications of Article 7, with provisions consistent with this Agreement and enforceable by the City as an additional insured or third party beneficiary thereof in the same manner as provided in Article 7 and in a form reasonably satisfactory to City.

6. Coordination and cooperation with City and Contractor in the event the City provides Collection Services or causes Collection Services to be provided under the terms of Article 8. Facility Operators and Contingent Facility Operators will accept delivered Discarded Materials up to their maximum tonnage commitments, and under the same terms accorded the Contractor.

7. To continue to provide Post-Collection Services in the event of a Contractor default, termination, or other event triggering the provisions of Article 9. In addition, in the event of Contractor termination prior to the end of the Term, City shall have the right, but not the obligation to directly contract with any or all Approved Facility Operators and Contingent Facility Operators to continue to provide Post-Collection Services on the same terms.

B. Post-Collection Services Provided by Contractor or Affiliates. To the extent Contractor or an Affiliate provides Post-Collection Services as an Approved Facility Operator, Contractor shall enter into such Post-Collection Arrangements as it deems necessary to ensure such services are provided as required. The absence of such verbal or written arrangements in no way excuses Contractor from its obligations related to provision of Post-Collection Services.

C. Post-Collection Services Provided by Third Parties. For Post-Collection Services to be provided by third parties as identified in Exhibit K Approved Post-Collection Facilities, Contractor shall enter into subcontracts prior to the Effective Date, subject to City review and comment.

D. Coordination Between Parties Providing Post-Collection Services. Post-Collection Arrangements must address coordination between Approved Facility Operators, as necessary to ensure uninterrupted provision of quality Post-Collection Services. Examples of such coordination include, but are not limited to Transfer of Recyclables from an Approved Transfer Facility to an Approved Recyclables Processing Facility, or Transfer of Solid Waste from an Approved Transfer Facility to an Approved Disposal Facility.

F. Contingent Facilities. Contractor shall enter into Post-Collection Arrangements with Contingent Facility Operators prior to the Effective Date, subject to review by the City upon City request. Post-Collection Arrangements with Contingent Facility Operators must ensure that Discarded Materials can be delivered to a Contingent Facility within two (2) business Days of Contractor or City notice in substantial compliance with the provisions of this Section 3.9. Should Contractor use of the Contingent Facility exceed thirty (30) Days, City may require Contractor provide additional reasonable assurances of the Contingent Facility's ability to accept Discarded Materials under the terms of this Agreement.

G. Facility Limitations. Post-Collection Arrangements shall not contain provisions that are more stringent than those provided in Exhibit K Approved Post-Collection Facilities without prior consent of the City.

3.9.3 Maintenance of Facility Capacity.

A. Approved Facilities. Contractor shall ensure each Approved Facility Operator maintains the ability to accept delivery of Discarded Materials up to the maximum tonnage commitments

specified in Exhibit K Approved Post-Collection Facilities, and shall provide the City, upon request, with documentation demonstrating the availability of such capacity.

Contractor shall notify the City should tons of delivered Discarded Materials reach ninety (90) percent of the maximum tonnage commitment for any Approved Facility. Approved Facility Operators shall make a reasonable effort to accept materials in excess of the maximum tonnage commitments for short periods of time. Approved Facility Operators shall assist Contractor and City in identifying a resolution should an Approved Facility's maximum tonnage commitment be regularly exceeded, or it appears likely that it will be regularly exceeded.

Contractor shall immediately notify City should it become aware that an Approved Facility Operator has become, or may become unable to accept Discarded Materials up to its maximum tonnage commitment. City may assess Contractor liquidated damages in accordance with Section 9.8 and Exhibit C should an Approved Facility Operator fail to accept some or all delivered Discarded Materials due to failure to maintain capacity up to the maximum tonnage commitments provided in Exhibit K Approved Post-Collection Facilities.

- B. Contingent Facilities.** Contractor shall ensure that Contingent Facilities are able to accept Discarded Materials on a continuous basis for no less than thirty (30) Days, subject to any daily limits on delivered tonnages agreed to by Contractor and Contingent Facility Operator.

3.9.4 Tonnage Commitments and Compensation.

- A. Delivery of All Collected Discarded Materials.** Contractor shall deliver all Discarded Materials it Collects to the applicable Approved Facility, or to a Contingent Facility as approved by the City as provided in Exhibit K Approved Post-Collection Facilities.

- B. Compensation for Post-Collection Services.** Contractor is solely responsible for compensating each Approved Facility Operator or Contingent Facilities Operator in accordance with Article 6 and Exhibit A Maximum Rates Approved by City, for actual tons of each type of Discarded Material delivered at the then-current per-ton rate for the applicable Approved Facility or Contingent Facilities. Contractor shall have the right to retain any net revenues it receives from an Approved Recyclables Processing Facility Operator.

- C. Only Compensation.** The then-current per-ton compensation, as adjusted by CPI and for any changes in government fees, shall be the only form of compensation due to Approved Facility Operators or Contingent Facilities Operators, including for Disposal of Residue.

- D. No Put or Pay.** Neither this Agreement, nor any Post-Collection Arrangement shall express or imply Contractor or City commitment to delivery of any minimum tonnage of Discarded Materials to Approved Facilities or Contingent Facilities, or corresponding compensation for undelivered minimum tonnages in the form of "put-or-pay" payments.

- E. Timely Payment.** Contractor shall ensure payment of third party Approved Facility Operators and Contingent within 30 calendar days of receipt of invoices.

3.9.5 Rate Setting

City shall be responsible for setting rates and for compensating Contractor accordingly as provided in Article 6. Contractor shall at all times fully compensate Approved Facility Operators and Contingency Facility Operators for services provided. The rate adjustment procedures defined in Article 6 are

Contractor's only vehicle for redress of any Contractor claim of inadequacy or inequity in compensation to meet its expenses, including payment for Post-Collection Services.

3.9.6 Vehicle Weighing

Contractor is solely responsible for ensuring that Approved Facility Operators at all times provide accurate weighing of all materials entering and leaving Approved Facilities.

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

B. Tare Weights. Within thirty (30) Days prior to the Commencement Date, Contractor shall coordinate with Approved Facility Operators to ensure that all Contractor vehicles used to deliver Discarded Materials to Approved Facilities are weighed to determine unloaded ("tare") weights. Contractor and Approved Facility Operators shall electronically record the tare weight, Contractor or Approved Facility Operator name, and vehicle identification number for each vehicle. Contractor shall provide City with a report listing the vehicle tare weight information upon request. Contractor shall promptly coordinate with Approved Facility Operators to weigh additional or replacement vehicles prior to placing them into service. Approved Facility Operators shall check tare weights at least annually, or within fourteen (14) Days of a City request.

3.9.7 Contractor Compliance with Facility Rules

Contractor shall observe and comply with all regulations in effect at Approved Facilities and cooperate with Approved Facility Operators with respect to delivery of Discarded Materials, including but not limited to delivery during approved days and hours, directions to unload Discarded Materials in designated areas, operating in a safe manner, accommodating operations and maintenance activities, and complying with Hazardous Substance exclusion programs.

3.9.8 Load Checking

A. Inspection. Contractor shall ensure that Approved Facility Operators use standard industry practice to detect and reject Hazardous Substances in a uniform manner and shall not knowingly accept Hazardous Substances at the Approved Facilities. Approved Facility Operators shall comply with the inspection procedures contained in the applicable Permit requirements, and shall promptly modify inspection procedures to reflect any changes in Permits or Applicable Law.

B. Hazardous Substances Handling and Costs. Contractor shall arrange for or provide handling, Transportation, and delivery to a Recycling facility, incinerator, or landfill permitted in accordance with Applicable Law of all Hazardous Substances detected at the Approved Facilities. Contractor is solely responsible for making those arrangements or provisions and for all costs thereof.

C. Remedies for Rejected Materials. If a Hazardous Substance is delivered to an Approved Facility, the Approved Facility Operator shall promptly inform Contractor to coordinate efforts to determine the source of the Hazardous Substance. Contractor and Approved Facility Operator shall be entitled to pursue whatever remedies, if any, they may have against the Generator of the Hazardous Substance.

3.9.9 Compliance with Applicable Law and Facility Permits

A. General. Contractor shall ensure that each Approved Facility Operator is at all times in full compliance with all Permits and regulatory approvals necessary for use of each Approved Facility. Contractor shall, upon City request, provide copies of Permits, notices of violation of Permits, or other regulatory documentation or communications to the City within ten (10) days of the request. Contractor is solely responsible for ensuring payment of any fines or penalties imposed for noncompliance with, or violation of Permits or failure to obtain Permits.

B. Third Party Facilities. Contractor shall: (1) verify compliance for Approved Facilities owned and/or operated by third parties by contacting the local enforcement agency and other regulatory agencies having jurisdiction over the Approved Facilities at least annually; and (2) upon City direction, shall promptly provide City with copies of the Approved Facilities' Permits or notice of violations to City.

3.9.10 Data Management

Contractor shall require that all Approved Facility Operator(s) collect and provide Contractor data regarding tonnages delivered to the Approved Facilities. Contractor shall verify such information, and shall include it in Contractor's reports to City as provided in Section 4.3.

3.9.11 City Right to Enter Facilities and Observe Operations

The City and its designated representative(s) reserve the right to enter, observe, and inspect any Approved Facility during operations; meet with the Approved Facility manager(s) or his or her representatives at any time, provided that the City and its representatives comply with Approved Facility Operators' reasonable safety and security rules and do not interfere with the work of the Approved Facility Operators. Approved Facility Operators are obligated to allow entry of City staff or their designated representative(s) to Approved Facilities, and to allow for representatives to conduct observations, inspections, studies, or surveys.

Upon City direction, Approved Facility Operators and Contractor shall make personnel available to accompany City employees or representatives on inspections. Contractor shall ensure that its employees cooperate with the City and respond to the City's reasonable inquiries. Contractor shall facilitate similar observation and inspection at Approved Facilities owned by it or an Approved Facility Operator upon City request and within three (3) business days of receiving such request.

If the Approved Facility manager is not at the Approved Facility when the City or its designated representative(s) visit without prior announcement, Approved Facility Operator(s) may limit the visit of the City or its designated representative to a portion of the Approved Facility including, but not limited to, offices, container and vehicle storage areas, or maintenance yard. In that event, Contractor shall arrange for City or its designated representative(s) to return for a visit of the complete facility within 24 hours of the City's visit.

3.9.12 Contractor-Initiated Change in Approved Facility

- A. Written Request.** Contractor may request a change in an Approved Facility(ies) or a Contingent Facility(ies) owned and operated by Contractor or an Affiliate, or owned and/or operated by a third party with the third party's prior written consent. Contractor shall submit a written request to the City no less than sixty (60) Days prior to the date for proposed use of the new facility, and shall obtain the City's written approval no later than ten (10) Days prior to use of new proposed facility. Contractor's request must demonstrate that requested new facility will, at a minimum provide the same type and level of Post-Collection Service as the current Approved Facility(ies).
- B. No Additional Compensation.** Contractor will bear any increased costs associated with a Contractor-initiated change in the Approved Facility(ies), and shall not be compensated for any increase in costs for changes in Collection or Post-Collection activities related to use of the new Approved Facility. Upon City approval, Contractor shall revise or enter into Post-Collection Arrangements as provided in Section 3.9.2, and as may be necessary for use of the new Approved Facility. Exhibit K shall be revised as necessary to reflect performance specifications for new Approved Facility.

3.9.13 Use of Contingent Facilities

If Contractor is unable to use an Approved Facility due to an emergency or sudden unforeseen closure of the Approved Facility, Contractor may use a Contingent Facility provided that the Contractor provides immediate verbal notice of the need to use a Contingent Facility to the City, and receives verbal approval from the City at least twenty-four (24) hours prior to the use of such Contingent Facility. Contractor shall within one (1) Day provide City a written notice specifying the reasons the Approved Facility is not available and the period of time Contractor proposes to use the Contingent Facility. Upon City review and comment regarding the written notice, City shall compensate Contractor may be compensated for any increase change in the increased transport or Post-Collection Services costs.

3.9.14 Delivery to Non-Approved Facilities Prohibited.

Should Contractor deliver Discarded Materials to a facility other than an Approved Facility, and Contractor knew, or should reasonably have known, that the designated Approved Facility was able and willing to accept the Discarded Material for delivery, Contractor shall be subject to the penalty identified in Exhibit C Performance Standards and Liquidated Damages for "Delivery to a Non-Approved Facility".

3.9.15 Disposal of Recyclables and Compostables, Use as ADC or AIC Prohibited

With the exception of Solid Waste and Residue, during the provision of Collection Services or Post-Collection Services Discarded Materials may not be Disposed of, or used for ADC or AIC in lieu of Processing for Diversion, without the expressed prior written approval of the City. Failure of Contractor, Approved Facility Operators, or Contingent Facility Operators to comply with this requirement may

1899 subject Contractor to the applicable penalties specified in Exhibit C Performance Standards and
1900 Liquidated Damages.

1901 **3.9.16 Materials Marketing**

1902 Upon request, Contractor shall provide:

1903 A. Proof to the City that all Recyclables, Compostables and C&D intended for Processing as
1904 provided in Exhibit K Approved Post-Collection Facilities are Processed and recovered, or reused
1905 in such a manner that materials shall be considered as Diverted in accordance with the State
1906 law.

1907 B. Information from Approved Facility Operators regarding end markets for Processed materials,
1908 including type and location of sale or end-use and general pricing.

1909 Approved Facility Operators shall take reasonable steps to monitor brokers and buyers of Processed
1910 materials to ensure such material has not been disposed of or otherwise handled illegally. Should this
1911 occur, Approved Facility Operators shall immediately inform the Contractor and the City, and terminate
1912 such contracts or working relationships.

1913 **3.9.17 Other Provisions**

1914 Either Party may request, and Contractor and Approved Facility Operators shall reasonably
1915 accommodate or facilitate, non-routine vehicle or material weighing needs during Approved Facility
1916 operating hours, including but not limited to those related to conducting waste characterizations.

1917 **3.10 Transfer**

1918 **3.10.1 Delivery of Discarded Materials**

1919 Contractor shall deliver Discarded Materials Collected from the Service Area to Approved Transfer
1920 Facilities as specified in Exhibit K Approved Post-Collection Facilities. In addition to, and in elaboration of
1921 the requirements of Section 3.9 Contractor shall ensure that Approved Transfer Facility Operator(s) are
1922 in compliance with the provisions of this Section 3.10.

1923 **3.10.2 Approved Transfer Facility Operations**

1924 Approved Transfer Facility Operator(s) shall provide Transfer services in accordance with Applicable
1925 Laws and regulations, standard industry practice, due diligence and specification, and other
1926 requirements of this Agreement. In addition, Approved Transfer Facility Operator(s) shall comply with
1927 the following service specifications:

1928 A. Operating, managing, and maintaining the Approved Transfer Facility including all buildings,
1929 scales, roads, utilities, equipment, and other facility requirements.

1930 B. Accepting all Discarded Materials delivered by Contractor according to the facility schedule and
1931 up to the maximum capacity commitment provided in Exhibit K Approved Post-Collection
1932 Facilities.

1933 C. Managing Recyclables and Compostables in a manner compliant with AB 939, AB 341, AB 1594,
1934 and AB 1826, and related State law, to ensure that the City shall benefit from the full Diversion
1935 credit for that material.

- 1936 D. Loading materials into Transfer vehicles powered by CNG or similar non-diesel alternative fuels.
- 1937 E. Using reasonable efforts to ensure that Transfer vehicles do not exceed legal road weight limits.
- 1938 F. Transferring Solid Waste delivered by Contractor to the Approved Disposal Facility.
- 1939 G. Transferring Recyclables delivered by Contractor to the Approved Recyclables Processing
1940 Facility, as applicable.
- 1941 H. Transferring Compostables delivered by Contractor to the Approved Compostables Processing
1942 Facility.
- 1943 I. Maintaining the maximum average vehicle turnaround time specified in Exhibit K for Contractor
1944 delivery of Discarded Materials.
- 1945 J. Providing for delivery of Discarded Materials by self-haul from City residents and businesses,
1946 including: verifying City origin for parties delivering Discarded Materials on a self-haul basis;
1947 weighing, or estimating the weight of such delivered Discarded Materials, and reporting
1948 tonnages of such Discarded Materials to Contractor.

1949 **3.11 Recyclables Processing and Marketing**

1950 **3.11.1 Delivery of Recyclables**

1951 Contractor, and Approved Transfer Station Operators, as applicable, shall deliver Recyclables Collected
1952 from the Service Area to Approved Recyclables Processing Facilities as specified in Exhibit K Approved
1953 Post-Collection Facilities. In addition to, and in elaboration of the requirements of Section 3.9 Contractor
1954 shall ensure that Approved Recyclables Processing Facility Operator(s) are in compliance with the
1955 provisions of this Section 3.11.

1956 **3.11.2 Approved Recyclables Processing Facility Operations**

1957 Approved Recyclables Processing Facility Operator(s) shall provide Processing services in accordance
1958 with Applicable Laws and regulations, standard industry practice, due diligence and specification, and
1959 other requirements of this Agreement. In addition, Approved Recyclables Processing Facility Operator(s)
1960 shall comply with the following service specifications:

- 1961 A. Operating, managing, and maintaining the Approved Recyclables Processing Facility including all
1962 buildings, scales, roads, utilities, equipment, and other facility requirements.
- 1963 B. Accepting all Recyclables delivered by Contractor or by an Approved Transfer Facility Operator
1964 according to the facility schedule, within the specifications, and up to the maximum capacity
1965 commitment provided in Exhibit K Approved Post-Collection Facilities.
- 1966 C. Processing Recyclable and preparing recovered materials for Marketing in a manner compliant
1967 with AB 939, AB 341, AB 1594, and AB 1826, and related State law, to ensure that the City shall
1968 benefit from the full Diversion credit for that material.
- 1969 D. Marketing materials resulting from Recyclables Processing and arranging for or providing
1970 transport of the recovered materials to end-users or Markets. The Approved Facility Operator
1971 shall ensure it is compensated by the purchasers of such materials at no less than fair market
1972 value.
- 1973 E. Maintaining as a maximum the Residue level(s) specified in Exhibit K Approved Post-Collection

1974 Facilities throughout the Term. All Residues shall be accounted for as Disposal tonnage and
1975 reported as such to Contractor.

1976 F. Loading into vehicles, and transporting Processing Residue for Disposal.

1977 G. Maintaining the maximum average vehicle turnaround time specified in Exhibit K Approved
1978 Post-Collection Facilities for Contractor and Approved Transfer Facility Operator delivery of
1979 Recyclables.

1980 **3.12 Compostables Processing and Marketing**

1981 **3.12.1 Delivery of Compostables**

1982 Contractor, and Approved Transfer Station Operators, as applicable, shall deliver Compostables
1983 Collected from the Service Area to Approved Compostables Processing Facilities as specified in Exhibit K
1984 Approved Post-Collection Facilities. In addition to, and in elaboration of the requirements of Section 3.9
1985 Contractor shall ensure that Approved Compostables Processing Facility Operator(s) are in compliance
1986 with the provisions of this Section 3.12.

1987 **3.12.2 Approved Compostables Processing Facility Operations**

1988 Approved Compostables Processing Facility Operator(s) shall provide Processing services in accordance
1989 with Applicable Laws and regulations, standard industry practice, due diligence and specification, and
1990 other requirements of this Agreement. In addition, Approved Compostables Processing Facility
1991 Operator(s) shall comply with the following service specifications:

1992 A. Operating, managing, and maintaining the Approved Compostables Processing Facility including
1993 all buildings, scales, roads, utilities, equipment, and other facility requirements.

1994 B. Accepting all Compostables delivered by Contractor or by an Approved Transfer Facility
1995 Operator according to the facility schedule, within the specifications, and up to the maximum
1996 capacity commitment provided in Exhibit K Approved Post-Collection Facilities.

1997 C. Processing Compostables and preparing recovered materials for Marketing in a manner
1998 compliant with AB 939, AB 341, AB 1594, and AB 1826, and related State law, to ensure that the
1999 City shall benefit from the full Diversion credit for that material. Compost should be tested
2000 through the Seal of Testing Assurance Program ("STA") or other program with comparable
2001 requirements.

2002 D. Marketing materials resulting from Compostables Processing and arranging for or providing
2003 transport of the recovered materials to end-users or Markets. The Approved Facility Operator
2004 shall ensure it is compensated by purchasers of such materials at no less than fair market value.

2005 E. Maintaining as a maximum the Residue level(s) specified in Exhibit K Approved Post-Collection
2006 Facilities throughout the Term. All Residues shall be accounted for as Disposal tonnage and
2007 reported as such to Contractor.

2008 F. Loading into vehicles, and transporting Processing Residue for Disposal.

2009 G. Maintaining the maximum average vehicle turnaround time specified in Exhibit K Approved
2010 Post-Collection Facilities for Contractor and Approved Transfer Facility Operator delivery of
2011 Compostables.

3.13 Construction and Demolition Debris Processing and Marketing**3.13.1 Delivery of Construction and Demolition Debris**

Contractor, and Approved Transfer Station Operators, as applicable, shall deliver C&D Collected from the Service Area to Approved C&D Processing Facilities as specified in Exhibit K Approved Post-Collection Facilities. In addition to, and in elaboration of the requirements of Section 3.9 Contractor shall ensure that Approved C&D Processing Facility Operator(s) are in compliance with the provisions of this Section 3.13.

3.13.2 Approved C&D Processing Facility Operations

Approved C&D Processing Facility Operator(s) shall provide Processing services in accordance with Applicable Laws and regulations, standard industry practice, due diligence and specification, and other requirements of this Agreement. In addition, Approved C&D Processing Facility Operator(s) shall comply with the following service specifications:

- A. Operating, managing, and maintaining the Approved C&D Processing Facility including all buildings, scales, roads, utilities, equipment, and other facility requirements.
- B. Accepting all C&D delivered by Contractor or by an Approved Transfer Facility Operator according to the facility schedule, within the specifications, and up to the maximum capacity commitment provided in Exhibit K Approved Post-Collection Facilities.
- C. Processing C&D and preparing recovered materials for Marketing in a manner compliant with AB 939, AB 341, AB 1594, and AB 1826, and related State law, to ensure that the City shall benefit from the full Diversion credit for that material.
- D. Marketing materials resulting from C&D Processing and arranging for or providing transport of the recovered materials to end-users or Markets. The Approved Facility Operator shall ensure it is compensated by the purchasers of such materials at no less than fair market value.
- E. Maintaining as a maximum the Residue level(s) specified in Exhibit K throughout the Term. All Residues shall be accounted for as Disposal tonnage and reported as such to Contractor.
- F. Loading into vehicles, and transporting Processing Residue for Disposal.
- G. Maintaining the maximum average vehicle turnaround time specified in Exhibit K for Contractor and Approved Transfer Facility Operator delivery of C&D.

3.14 Disposal**3.14.1 Delivery of Solid Waste**

Contractor, and Approved Transfer Facility Operators or other Approved Facility Operators, as applicable, shall deliver Solid Waste Collected from the Service Area to the Approved Disposal Facility specified in Exhibit K Approved Post-Collection Facilities. In addition to, and in elaboration of the requirements of Section 3.9 Contractor shall ensure that Approved Disposal Facility Operator is in compliance with the provisions of this Section 3.14.

Nothing in this Agreement shall limit the ability of the Approved Facility Operator or the Approved Disposal Facility Operator to enter into a bilateral arrangement for delivery and Disposal of Residues.

2049 3.14.2 Approved Disposal Facility Operations

2050 Approved Disposal Facility Operator(s) shall provide Disposal services in accordance with Applicable
 2051 Laws and regulations, standard industry practice, due diligence and specification, and other
 2052 requirements of this Agreement. In addition, Approved Disposal Facility Operator shall comply with the
 2053 following service specifications:

- 2054 A. Operating, managing, and maintaining the Approved Disposal Facility including all buildings,
 2055 scales, roads, utilities, equipment, and other facility requirements.
- 2056 B. Accepting all Solid Waste delivered an Approved Transfer Facility Operator or the Contractor,
 2057 according to the facility schedule and up to the maximum capacity commitment provided in
 2058 Exhibit K Approved Post-Collection Facilities.
- 2059 C. Operating, managing and maintaining the Solid Waste fill areas, including the placement,
 2060 burying, and compaction of Solid Waste in the refuse fill areas; stockpiling, placement and
 2061 compaction of daily cover, intermediate cover, and final cover; management of fill operations
 2062 with regard to fill sequencing, side slopes configuration, and working face location and
 2063 configuration.
- 2064 D. Providing, operating, and maintaining all equipment, rolling stock, and supplies necessary for
 2065 operations, closure, post-closure, and environmental monitoring.
- 2066 E. Funding all closure and post-closure needs and commitments related to Disposal of Solid Waste
 2067 or Residue originating from the City that may occur or be required during or following the Term
 2068 solely through the per-ton compensation provided in Exhibit A Maximum Rates Approved by
 2069 City, as they may be escalated through the Term.
- 2070 F. Operating, maintaining, and managing leachate and landfill gas management systems,
 2071 groundwater monitoring and management systems, storm water drainage and control systems,
 2072 treatment facilities, buildings, on-site roadways, utilities, and any other required facility
 2073 elements.
- 2074 G. Maintaining the maximum average vehicle turnaround time specified in Exhibit K Approved
 2075 Post-Collection Facilities for Contractor and Approved Transfer Facility Operator delivery of
 2076 Solid Waste.

ARTICLE 4: OTHER COLLECTION-RELATED SERVICES, STANDARDS, AND AGREEMENTS

Throughout the term of this Agreement, Contractor shall perform Collection Services as provided in this Article 4, and as provided in further detail in Exhibit B – Final Approved Plans and Exhibit F – Contractor’s Proposal, and in compliance with the requirements of Exhibit C Performance Standards and Liquidated Damages.

4.1 Service Recipients

4.1.1 Mandatory Service Recipients

Mandatory Service Recipients shall include all Residential Property, Multifamily Residential Property and Commercial Property within the City boundaries, and all such premises which may be added from time to time by means of annexation, new construction, or otherwise during the term of this Agreement, unless as otherwise provided by Applicable Law. Any question as to whether premises fall within the category of Mandatory Service Recipient shall be determined by City. Contractor shall immediately initiate Collection services described in Article 3 of this Agreement to all Mandatory Service Recipients which are added to Service Area by means of annexation or development. City shall notify Contractor of such Service Recipients in a timely manner. Mandatory Service Recipients may be deleted from the list of Service Recipients if the premises are demolished, or otherwise rendered inappropriate for Collection services under this Agreement. Contractor or City shall immediately notify the other Party in writing of any circumstances which would make it appropriate for the deletion of a Mandatory Service Recipient and, upon the written approval of City, Contractor shall cease providing Collection services to such premises.

4.1.2 Other Service Recipients

Contractor shall provide Collection services described in Article 3 of this Agreement to Other Service Recipients in Service Area within fourteen (14) calendar days of request by the Service Recipient. Contractor shall cease providing Collection services to Other Service Recipients within fourteen (14) calendar days of notice from the Service Recipient or City to stop service, or within such shorter time as the City may direct. If Contractor receives a request to begin or terminate service directly from the Service Recipient, Contractor shall notify City of such change within 24 hours of the request.

4.1.3 Service Recipient Changes

City and Contractor acknowledge that during the term of this Agreement it may be necessary or desirable to add or delete Service Recipients for which Contractor will provide Collection services.

4.2 Billing Services

City shall provide billing services to Contractor for all Service Recipients in the Service Area, including all Residential Properties, Multi-Family Properties and Commercial Properties. Billing of Service Recipients shall normally be performed bimonthly by City, or in a manner deemed most appropriate by City. Contractor shall bill and collect for temporary or periodic Debris Box service

4.2.1 Reimbursement of Costs

Within (5) Business Days of the Effective Date of this Agreement, Contractor shall reimburse City for the costs of providing billing services in the amount of ninety-four thousand, three hundred and twenty dollars \$94,320 for the annual cost of one Account Clerk II position, including all benefits and other costs associated with such position. City shall adjust such amount annually by CPI as provided in Section 6.2.2. City shall reduce its monthly remittance to Contractor for each June following the Commencement Date by the above dollar amount. The Contractor may recover the actual annual amount of this payment as an Eligible Expense.

4.2.2 Remittances to Contractor

City shall remit to Contractor actual City billed cash receipts, net of amounts due City, including but not limited to, franchise fees as provided in Section 5.1.1, the Mussel Rock Landfill maintenance fee, withholding of monthly payments and nonrefundable charges for failure to perform under this Agreement, billing service charges as provided in Section 4.2.1, and other such amounts due City which from time to time may accrue, and; fifty (50) percent of City ratepayer bad debt that is recovered over time. Such remittance shall be made to Contractor on a monthly basis within 15 working days after the last day of the preceding month. The remittance shall be accompanied by a statement of account showing a sufficient amount of detail to allow Contractor to prepare financial reports as required elsewhere in this Agreement and to allow Contractor to adequately manage its operations. The format shall be that mutually agreed to by Contractor and City.

4.2.3 New Accounts and Changes to Accounts

All new Service Recipient accounts shall be processed by City. Contractor shall refer all requests for changes to accounts by Service Recipients to City for processing immediately upon receipt by Contractor. City shall notify Contractor of all changes in service within 48 hours of the change.

4.2.4 Collection Route/Service Billing Database

City and Contractor agree to maintain compatible databases both for Collection routes as maintained by Contractor and service billings performed by City in order to provide increased control over services provided and services billed during the term of this Agreement. Contractor shall make available all information required to insure that accounts are properly billed for service actually provided. Contractor shall perform field reconciliations at least twice annually to insure that all services provided are actually billed. Transmission of data to City may be through such method as approved by City, such as magnetic media or on-line file transfer. In addition, Contractor shall provide City with real-time, read-only access to Contractor's account-related data. All costs incurred by Contractor for maintaining its database and providing access to City shall be borne by Contractor and considered Eligible Expenses under this Agreement.

4.2.5 Billing for Solid Waste Overages

City will bill for Solid Waste overages along with the normal billings of accounts for those Service Recipients where Contractor has submitted a Solid Waste overage tag to City in a timely manner. City shall not be responsible for billing for Solid Waste overages where Contractor failed to submit to City a tag for Solid Waste overage Collection or where the tag has not been completed by Contractor in a proper manner.

4.3 Records, Reports, and Information Requirements

4.3.1 General Reporting Requirements

Contractor shall maintain at all times a computerized database, as more fully set forth elsewhere in this Article 4. The database shall contain sufficient fields to allow input of information for City and Contractor to reconcile Contractor's compensation payable under this Agreement, to ascertain compliance with performance standards including those of Section 9.8 and Exhibit C Performance Standards and Liquidated Damages, to allow City to monitor provision of Post-Collection Services, and to meet any and all other reasonable City data requirements. City may at its discretion, but is not obligated to monitor provision of Post-Collection Services. Contractor shall cooperate with City with respect to providing information relevant to this Agreement which is not specified in this Article 4. The reports submitted as required by Sections 4.3.2, 4.3.3 and 4.3.4 are public information, and Contractor may not claim confidentiality for any report or any portion of a report. City may require reasonable modifications in reporting formats.

All data collection, management and reporting requirements of Section 4.3 of the Agreement apply to the entire Service Area, including the County Pockets. All reports required in Sections 4.3.2, 4.3.3, and 4.3.4 must clearly distinguish the two unincorporated County areas from the City for, at a minimum the purposes of reporting tonnages Collected and Diverted, Diversion rates, and Service Recipient issues including complaints and missed pickups. All such data shall be provided in the same reports as for the City in a format that reasonably allows the County to monitor provision of service in the unincorporated areas.

Contractor may recommend, and City may in its discretion approve allocation and/or sampling methods to distinguish data for the City and for the County Pockets, for Commercial accounts and Multi-Family accounts, and for Large Apartment Complexes separate from other Multi-Family Complexes.

At least two (2) times per year, Contractor will run allocation percentages to properly report and record materials collected from County Pockets separately from materials collected from the City. When determining the correct allocation percentage for County Pockets, Contractor will calculate the total capacity of each material stream (i.e., Solid Waste, Recyclables, and Compostables) by determining the total number of Containers for each material stream and multiplying that by the frequency that each of the Containers are Collected weekly (i.e., ten (10) 32-gallon Carts Collected once per week equals three hundred twenty (320) gallons of capacity). Contractor will take the sum total capacity of each material stream for all accounts in the County Pockets and will use the same methodology for determining the total capacity Collected of each material stream for all accounts in the Service Area. Contractor will compare the County Pocket capacity totals with the total capacity Collected to determine the correct tonnage allocation percentage to be associated with the County Pockets (i.e., if County Pockets total capacity calculation is three hundred twenty (320) gallons and the overall total capacity calculation is three thousand two hundred (3,200) gallons, the appropriate tonnage allocation attributed to County Pockets is 10% of the total tonnage).

4.3.2 Monthly Reports

Contractor shall transmit monthly reports to City within 10 working days following the reporting period. Each monthly report shall include all the information required by this Article.

- 2193 A. **Solid Waste Collected.** The monthly report shall specify the number of tons of Solid Waste
2194 Collected by service type, with separate data for Large Apartment Complexes, including:
- 2195 i. Route number(s) for each load.
- 2196 ii. Tons per load and per route, with separate data for Large Apartment Complexes.
- 2197 iii. Number of the certified weight tickets provided by the Approved Facility(ies) for delivered
2198 materials.
- 2199 iv. Total number of hours on route per crew.
- 2200 v. Downtime per truck.
- 2201 B. **Recyclables Tonnages.** The monthly report shall specify the number of tons of Recyclables
2202 Collected for each type of material and shall include all of the following information:
- 2203 i. Route number(s) for each load.
- 2204 ii. Tons per load and per route, with separate data for Large Apartment Complexes.
- 2205 iii. Number of the certified weight tickets provided by the Approved Facility(ies) for delivered
2206 materials.
- 2207 iv. Date, time, route number, truck number, and reason for rejection for any delivered loads
2208 rejected by an Approved Facility Operator(s).
- 2209 iv. Summary of tonnages of loads Collected by material, as determined by a sampling method
2210 approved by the City.
- 2211 v. Total number of hours on route per crew.
- 2212 vi. Downtime per truck.
- 2213 vii. Diversion and Residue figures reported by the Approved Facility(ies) for that month.
- 2214 C. **Yard Trimming and Compostables Tonnages.** The monthly report shall separately specify the
2215 number of tons of Source-Separated Yard Trimmings, and of other Compostables Collected from
2216 all Service Recipients, and Compostables Collected from Commercial customers, including:
- 2217 i. Route number(s) for each load.
- 2218 ii. Tons per load and per route, with separate data for Large Apartment Complexes.
- 2219 iii. Number of the certified weight tickets provided by the Approved Facility(ies) for delivered
2220 materials.
- 2221 iv. Date, time, route number, truck number, and reason for rejection for any delivered loads
2222 rejected by an Approved Facility Operator(s).

- 2223 v. Total number of hours on route per crew.
- 2224 vi. Downtime per truck.
- 2225 vii Diversion and Residue figures reported by the Approved Facility(ies) for that month.
- 2226 D. **Complaint Log.** The monthly report shall contain a copy of Contractor's complaint log, with initial
2227 date of complaint, a description of how each complaint was resolved, and the date of resolution.
- 2228 E. **Missed Pickups.** The monthly report shall contain a written record of all contacts (via phone,
2229 email, etc) related to missed pickups, and a description of the response to each call.
- 2230 F. **Vacation Holds.** The number of vacation holds and the planned duration of each.
- 2231 G. **Non-Collection Notices.** Monthly data for Non-Collection Notices as compiled from the weekly
2232 reports required in Section 4.5.8.
- 2233 H. **Debris Box Services and Fees.** Contractor shall report to City by the 10th working day after the
2234 end of the prior month the total tonnages Collected and total dollar amounts billed by Contractor
2235 for Debris Box service (including all C&D Collection services) for the prior month in order that the
2236 City may include this amount in the monthly calculation of Franchise Fees and amounts due
2237 Contractor.
- 2238 I. **Post-Collection Services Compensation.** Copies of all invoices submitted by Approved Facilities
2239 and Contingent Facilities, with proof of Contractor payment within thirty (30) Days.

2240 4.3.3 Quarterly Reports

2241 Contractor shall submit quarterly reports on Solid Waste Collection and Disposal, Recyclables Collection,
2242 Processing and marketing, and Compostables Collection, Processing and marketing that meet the
2243 reporting requirements of AB 939, and of other state law. For the purposes of the quarterly reports,
2244 quarters shall be defined as: First Quarter consisting of July, August and September; Second Quarter
2245 consisting of October, November and December; Third Quarter consisting of January, February and
2246 March; Fourth Quarter consisting of April, May and June. Contractor shall submit quarterly reports
2247 within thirty (30) calendar days after the end of each quarter.

2248 In addition to the information required by the California Integrated Waste Management Act, each
2249 quarterly report shall include the information described in this Article. The quarterly report shall contain
2250 a summary of the information reported pursuant to Section 4.3.2 of this Agreement. The quarterly
2251 report shall include quarterly and year-to-date data for Solid Waste, Recyclables, Compostables and
2252 Commercial Compostables Collected, Disposed, and Processed by customer type, with a Diversion rate
2253 for the quarter. Quarterly Diversion data shall be provided in such detail as is sufficient to allow the City
2254 to determine compliance with the requirements of Section 2.10.2, with reporting of tonnage, by service
2255 type (i.e., single-family residential, multi-family residential (and separately for Large Apartment
2256 Complexes), commercial retail, commercial industrial/institutional, debris box, and compactor), Diverted
2257 by Contractor divided by the tonnage Collected by Contractor multiplied by 100.

The quarterly report shall also identify, and include a description of how state statutes and regulations or judicial determinations are or will affect provision of Commercial Services or Post-Collection Services, including but not limited to AB 341, AB 1594, and AB 1826.

The quarterly report shall also include a description of the public education/community relations activities performed by Contractor during the quarter, and Contractor's evaluation of the success of such activities in promoting Diversion, and in addressing problems encountered by Contractor, and; public education/community relations activities Contractor plans to conduct the next quarter. All public education/community relations activities shall be discussed and evaluated in relation to the applicable provisions of Exhibit B.3 Outreach and Education Plan, and the other plans contained in Exhibit B Final Plans. The quarterly report shall include identification of any Multi-Family or Commercial Properties that are covered by but are not in compliance with AB 341, other applicable state law, or the City ordinance, and shall identify any Multi-Family Property owners/managers that have declined to meet at least once per year with Diversion Coordinators as provided in Section 4.6. The quarterly reports shall identify Multi-Family Complexes that are subscribing to the valet service, and provide contact information for an individual at each complex that is familiar with the service. The quarterly reports should provide detailed information on progress with the Commercial Compostables program, including participants added to the program and tonnages Collected from each program participant; and with the Large Apartment Complexes including descriptions of outreach and education at each specific complex.

The quarterly reports shall identify specific steps Contractor has taken to remedy any areas of noncompliance identified by the City during the previous quarter, including but not limited to those that result in a determination of noncompliance with Section 9.8 or Exhibit C Performance Standards and Liquidated Damages. The quarterly reports shall continue to report on such progress until Contractor performance in any area of noncompliance has been fully corrected.

4.3.4 Annual Reports

A. **Annual Performance Report Submitted By Contractor.** Within 90 days after the end of each contract year, Contractor shall submit to City an annual performance report covering the immediately preceding contract year and the report shall include all of the following information:

- i. Summary of Monthly and Quarterly Reports. A collated summary of the information contained in the monthly and quarterly reports, including the reconciliation of any adjustments from prior quarterly reports.
- ii. Operational Information by "Service Type" (i.e., Residential Solid Waste, Residential Recyclables, Residential Compostables, Commercial Solid Waste, Commercial Recyclables, Commercial Compostables, etc.).
 - a. Number of routes per day
 - b. Number of actual labor hours per route per day and per year
 - c. Type of vehicle on each route
 - d. Crew size on each route
 - e. Number of accounts per route per day
 - f. Number of set-outs per route per day

- 2298 g. Tons per route per day
- 2299 h. Average cost per route
- 2300 i. Route maps
- 2301 iii. Educational Activities.
- 2302 a. Public education materials produced and total number of each distributed
- 2303 b. Dates, times, and group names of meetings attended
- 2304 c. Dates, times, and names of school where presentations were performed
- 2305 iv. Account Summary. In table format, the number of customers for each rate category.
- 2306
- 2307 v. Inventory. A complete inventory of Collection vehicles and other major equipment.
- 2308 vi. Highlights and Other Noteworthy Experiences. A discussion of highlights and other
- 2309 noteworthy experiences, along with measures taken to resolve problems, increase
- 2310 efficiency, and increase participation.
- 2311 Vii Plans for Following Year. A discussion of key areas of activity, and pending challenges for
- 2312 the following year to improve Collection Services, increase Diversion, enhance outreach
- 2313 and education, etc.

2314 **4.3.5 Annual Audited Financial Reports**

2315 Within 90 days after the end of each Contract Year of this Agreement, Contractor shall cause to be
2316 prepared annual financial statements for the preceding Contract Year. Such statements shall be
2317 prepared according to Generally Accepted Accounting Principles, and reflect all operations of Contractor
2318 in connection with this Agreement, including all required footnote disclosures.

2319 **4.3.6 Independent Audit**

2320 Contractor shall engage a Certified Public Accountant licensed to practice in the State of California and
2321 approved by the City to perform an independent audit on the Contractor's annual financial statements
2322 prepared as required by Section 4.3.5 and render an opinion thereon. The audited financial statements
2323 shall be submitted directly to the City by the independent auditor within 90 days after the end of each
2324 Contract Year of this Agreement.

2325 **4.3.7 Format of Annual Financial Statements**

2326 Contractor shall prepare its annual financial statements in a format as approved in advance by City
2327 containing a sufficient level of detail so that City may verify compliance with all provisions of this
2328 Agreement.

2329 **4.3.8 Management Letter**

2330 In conjunction with the independent audit of Contractor's annual financial statements, the independent
2331 auditor shall prepare a management letter. The management letter shall cover material and
2332 nonmaterial weaknesses in internal control as well as general suggestions for improvement in
2333 operations, both financial and nonfinancial in nature. The management letter shall be submitted

2334 directly to the City by the independent auditor within 90 days after the end of each Contract Year of this
2335 Agreement.

2336 **4.3.9 Related Parties**

2337 Included in the notes to the Annual Financial Statements shall be a listing of all related party
2338 transactions and a description of the relationship between Contractor and the related party. For
2339 purposes of disclosure required by this section, related party is any entity which either has a five percent
2340 (5%) or more ownership interest in Contractor, or in which Contractor has a five percent (5%) or more
2341 ownership interest, or any entity which has either a twenty percent (20%) interest or more in
2342 Contractor's parent Company, or in which Contractor's parent Company has a twenty percent (20%) or
2343 more ownership interest.

2344 **4.3.10 Auditors' Work Papers**

2345 Contractor shall include in its agreement for professional services with its independent auditor a clause
2346 which allows inspection by City, or City's designated representative, of all independent auditor's work
2347 papers, reports and notes prepared in conjunction with auditor's examination of the Contractor's
2348 financial statements required under of this Agreement.

2349 **4.3.11 Submittal of Reports**

2350 Contractor shall submit all reports required by this Agreement to:

2351 City Manager
2352 City of Daly City
2353 333 - 90th Street
2354 Daly City, CA 94015

2355 or to such other address as the City may designate in writing.

2356 **4.3.12 Waste Generation/Characterization Studies**

2357 At City's direction, Contractor shall perform or assist City in performing waste generation/
2358 characterization studies as considered necessary by City and/ or as required by Applicable Law.

2359 **4.4 Inspection by City**

2360 **4.4.1 General**

2361 City reserves the right to inspect any and all of Contractor's facilities at any time during normal business
2362 hours, without notice, and at any other time with reasonable notice. Contractor shall ensure that
2363 Approved Facilities and Contingent Facilities are available for City inspection upon three (3) Days notice.

2364 **4.4.2 Performance Audits**

2365 Performance and service quality audits and evaluations may be conducted or caused to be conducted by
2366 the City at its discretion throughout the Term and any extensions. Such audits may be conducted from
2367 time to time during the term of this Agreement by a qualified independent consultant selected by City.
2368 The reports required by this Agreement and the Contractor's ability or inability to achieve Diversion
2369 goals may be utilized as a basis of review. Such audits may include, but shall not be limited to analyses

of both financial and qualitative performance of Contractor and Contractor's operations. If any noncompliance with the Agreement is found, the City may direct the Contractor to correct the inadequacies in accordance with the terms of this Agreement. If the Contractor fails to correct the noncompliance items, said failure will be considered a default under this Agreement. Contractor shall cooperate fully with City in conducting such evaluations and audits. The cost of such audits shall be borne by Contractor, and shall be considered to be Eligible Expenses under this Agreement.

4.4.3 Route Audits

City may conduct or require that Contractor shall conduct a route audit for each of Contractor's Collection routes by type of material Collected. The period in which the audit is conducted shall be set by City. City reserves the right to determine which routes will be audited in a particular week and, if City exercises this right, shall notify Contractor of the routes not less than seventy-two (72) hours in advance. The route audits shall include the following information for each Collection route:

- A. The route number, the date of the audit, and the starting and ending times of Collection during the audit.
- B. A description of the route location, including the names of the streets covered.
- C. The number of Service Recipients by category on the route.
- D. The number of Service Recipients by category participating on the date of the audit and the number and type (e.g., Solid Waste, Recyclables, Compostables, Used Motor Oil, Cooking Oil) of pickups in each Service Recipient category.
- E. For Collection routes, the number of Service Recipients by category which set out overages and the total number of overages Collected.
- F. For the Recyclables and Compostables Collection routes, the number of Containers distributed by Service Recipient category.
- G. For routes with Use Motor Oil Collection, the number of Used Motor Oil Containers Collected and the number of Use Motor Oil Containers distributed by Service Recipient category.
- H. For routes with Cooking Oil Collection, the number of Cooking Oil Containers Collected and the number of Cooking Oil Containers distributed by Service Recipient category.
- I. The number of Collection vehicles used on the route by vehicle type (e.g., rear loader Solid Waste truck, compartmentalized Recyclables truck), the weight of each vehicle, the capacity of each vehicle by weight and volume, and the number of trips made by each vehicle to Approved Facilities).
- J. The tonnages or volumes by type of material Collected per vehicle trip.
- K. A description of any changes in the route occurring since the immediately preceding route audit, including changes in the location of the route, the number of Service Recipients, equipment used, and Collection methods employed.
- L. The name(s), telephone number(s) and signature(s) of the persons performing each route audit.

The City reserves the right to request any additional data it, in its sole discretion, deems necessary to evaluate the effectiveness of Contractor's operations. Costs of special route audits, if any, shall be borne by Contractor and shall be considered Eligible Expenses under this Agreement.

4.5 Customer Services

Contractor shall at all times be in compliance with this Section 4.5 and with the provisions of the Customer Service Plan contained in Exhibit B. Contractor shall revise, modify and otherwise update such Plan throughout the Term as it deems necessary, or as reasonably requested by the City.

4.5.1 Office Location and Hours

Except with prior City approval, Contractor shall maintain a principal office that shall at all times during the term of this Agreement be located in the City. The office shall be open at a minimum from 7:00 a.m. to 5:00 p.m. daily except Saturdays, Sundays and Holidays. A representative of Contractor shall be available during office hours at Contractor's office for communication with City and the public.

4.5.2 Local Telephone Number

Contractor's principal office shall be accessible by a local (toll-free to Service Recipients) telephone number at least during the office hours specified in Section 4.5.1 and from 8:00 a.m. to noon on Saturdays. The telephone number shall be listed under Contractor's name in the local telephone directory.

4.5.3 Emergency Telephone Number

Contractor shall maintain an emergency telephone number for use outside Contractor's office hours. The emergency telephone number shall be listed as an emergency number under Contractor's name and under the City in the local telephone directory. Contractor shall have a representative, or an answering service to contact such representative, available at Contractor's emergency telephone number during all hours other than Contractor's office hours.

4.5.4 Multilingual/TDD Service

Contractor shall at all times maintain the capability of responding to telephone calls in English, Spanish, Mandarin, and such other languages as City may direct, employing a service such as ATT Language Line. Contractor shall at all times maintain the capability of responding to telephone calls through Telecommunications Device for the Deaf (TDD) Services. These capabilities shall be maintained for both the local telephone number and the emergency telephone number.

4.5.5 Service Recipient Complaints and Inquiries

During office hours, Contractor shall maintain a complaint service and a telephone answering system capable of accepting at least three (3) incoming calls at one time. Contractor shall record in a computerized daily log all complaints, including date, time, complainant's name and address if the complainant is willing to give this information, and nature and date and manner of resolution of complaint. Any such calls received via Contractor's answering service shall be recorded in the log no later than the following work day. This log shall be available for inspection by City during Contractor's office hours and shall be accessible to City at all times. The computer log shall be in a format approved by City. Contractor shall provide a copy of this log to City with Contractor's monthly report. All incoming calls shall be answered within a maximum of four (4) rings. Any call "on-hold" in excess of 1.5

minutes shall be switched to a message center where Contractor shall maintain information in a daily log to enable a customer service representative to return customer calls. All "call backs" shall be attempted a minimum of one time prior to 6:00 p.m. on the day of the call. If the caller is not contacted on the first attempt, Contractor shall make subsequent attempts on the next working day after the original call. Contractor shall make a minimum of three (3) attempts within twenty-four (24) hours of the receipt of the call. If Contractor is unable to reach the caller on the next working day, Contractor shall send a postcard to the caller on the second working day after the call was received, indicating that the Contractor has attempted to return the call. All attempts to contact the caller shall be recorded in the log kept by Contractor.

4.5.6 Missed Pick-Ups

The failure of Contractor to pick up Discarded Materials which has been set out in an approved manner as described in Article 3 by a Service Recipient shall be considered a missed pick-up. Contractor shall Collect the material from the Service Recipient within twenty-four (24) hours of Contractor's receipt of notification of the missed pick-up except where Collection on a Sunday would be required, in which case Contractor may perform the Collection of a missed pick-up on the Monday immediately following the date of notification. If Contractor is notified of a missed pick-up on the business day following the scheduled Collection day for the Service Recipient and such notification is made by 9:00 a.m., Contractor shall Collect the missed pick-up on the day of notification. Contractor shall maintain a written record of all calls related to missed pick-ups and the response provided by Contractor. The record shall be maintained in accordance with the reporting and monitoring requirements of this Agreement. In the event Contractor fails to Collect a missed pick-up within the times set forth in this Section, City or its agents may Collect and transport the material. City shall notify Contractor in writing whenever City or its agent collects a missed pick-up. Contractor shall reimburse City for all costs so incurred by City as provided in this Agreement, and such costs are not an Eligible Expense.

4.5.7 Vacation Holds

Upon customer request, Contractor shall place a "vacation hold" on existing Service Recipient accounts for periods of no less than one (1) week in length. Contractor shall allow each Service Recipient to utilize the "vacation hold" service for a combined period of up to four (4) weeks each Contract Year. City and Contractor shall coordinate as necessary regarding provision of this service.

4.5.8 Non-Collection Notices

Contractor shall report to City on a weekly basis regarding Contractor issuance of non-Collection notices, in such format and with a timing as City may require.

4.6 Community Relations Program

Contractor shall at all times be in compliance with this Section 4.6 and with the provisions of the Transition and Diversion Plans contained in Exhibit B. Contractor shall revise, modify and otherwise update such Plans throughout the Term as it deems necessary, or as reasonably requested by the City.

4.6.1 Initial Start-Up Public Education

A. **Door Hangers.** On or before the Commencement Date Contractor shall deliver City-approved written materials announcing applicable changes to Collection services. These materials will be in the form of door hangers, or other format approved by the City, to be placed at the premises

2486 of each Service Recipient. These materials shall specify Service Recipient’s scheduled Collection
2487 day(s) as well as summary information regarding Holiday schedule and Bulky Goods Collection.

2488 B. **Initial Mailing.** On or before the Commencement Date Contractor shall prepare and release a
2489 City-approved initial mailing (via Bulk Mail – Postal Customer Local) to residents and businesses
2490 explaining any changes to existing Collection programs and any new programs.

2491 **4.6.2 Ongoing Public Education**

2492 A. **General.** The public education and outreach activities referenced herein are further described in
2493 the Diversion Plan contained in Exhibit B (Final Approved Plans). Contractor’s public education
2494 and outreach strategy shall focus on improving Service Recipients’ understanding of the benefits
2495 of and opportunities for Source Reduction, Reuse, Recycling and Composting. Contractor shall
2496 prepare and distribute public education materials to Service Recipients in Service Area four
2497 times during each year of this Agreement on a schedule approved by the City. The materials
2498 shall be designed to address specific Collection needs or problems. The materials shall be
2499 printed in English, Spanish, and other languages specified by City. The materials shall be
2500 professionally printed on paper stock with not less than fifty percent (50%) recycled paper
2501 content including at least ten percent (10%) post-consumer recycled paper content. Contractor
2502 shall provide camera-ready copy to City for City’s review and approval prior to printing and
2503 distribution. Any promotional materials or news releases developed for Contractor’s own use
2504 shall be developed at Contractor’s sole cost and expense. Contractor shall obtain City’s written
2505 approval of the materials prior to printing or distributing the materials.

2506 B. **Website.** Contractor shall develop a comprehensive website specific to City which fully explains
2507 and effectively promotes the Diversion options offered to its Service Recipients. The website
2508 shall contain the full approved Maximum Rates schedule as well as any other information that
2509 may be helpful to City and Service Recipients in meeting City’s Diversion goals.

2510 C. **HHW Education.** Contractor shall develop and implement a public education program designed
2511 to educate Generators regarding proper methods of recognizing, handling and disposing of
2512 HHW.

2513 D. **Multi-Family Residential and Commercial Technical Assistance.** Contractor shall develop and
2514 implement a comprehensive technical assistance program designed to provide targeted
2515 education and Diversion assistance to Multi-Family Residential and Commercial customers. Such
2516 program shall include at a minimum, dedicated Contractor employee time, program promotion
2517 and outreach, customer service level audits, customer site assessments and reporting.

2518 E. **School Programs.** Contractor shall develop a program to educate and engage students at
2519 schools located within the City. The program shall include, at a minimum, assembly
2520 presentations, classroom projects, field trip opportunities, a high school internship program, and
2521 educational resources (e.g., lesson plans regarding sustainability, online resources) for
2522 educators.

2523 F. **Neighborhood Watch Program.** Contractor shall implement its “We’re Looking Out for You”
2524 neighborhood watch program. Contractor shall train drivers to assist law enforcement officials
2525 in identifying and reporting suspicious behavior through Contractor’s dispatch department.

2526 Contractor shall also train drivers to identify situations where they can provide assistance to the
2527 public during extreme weather events.

2528 **4.6.3 Non-Collection Notice**

2529 On or before the Commencement Date of this Agreement Contractor shall have developed and begun
2530 utilizing City-approved Non-Collection Notices as provided in Article 3. The notices shall be a least two
2531 inches by six inches in size and shall have the capability of making instant copies from the original at the
2532 spot of non-collection (e.g. carbonless copy paper).

2533 **4.6.4 Diversion Coordinators**

2534 Contractor shall employ a minimum of two full-time employees designated as Diversion Coordinators to
2535 assist Service Recipients in Diverting the maximum amount of Solid Waste from the landfill. Diversion
2536 Coordinators shall serve as the Contractor's exclusive technical assistance representatives to assist
2537 Multi-Family and Commercial Service Recipients with selecting service levels to meet their Solid Waste,
2538 Recyclables, and Compostables (including Yard Trimmings) Collection needs.

2539 Diversion Coordinators will, at a minimum conduct the following activities: 1) perform waste and route
2540 audits; 2) assist Multi-Family and Commercial customers in determining the number and size of each
2541 such customer's Containers, frequency of Collection; 3) assist Multi-Family Property owners and
2542 managers in becoming aware of, and in scheduling on-call per-unit Bulky Goods Collections; 4) conduct
2543 at least one (1) annual meeting with each property manager/owner; 5) conduct annual on-site
2544 assessments of the Multi-Family and Commercial premises to improve Recyclables and Compostables
2545 Collection program participation, and improve set-outs including reducing Contamination; 6) educate
2546 Multi-Family and Commercial Customers regarding the mandatory Recycling requirements of AB 341
2547 and City ordinance; 7) notifying noncompliant Multi-Family and Commercial Customers at least semi-
2548 annually; 8) perform other outreach activities such as conducting training workshops, visiting business
2549 association meetings and performing school outreach upon reasonable prior request by City; and 9)
2550 report on the above activities as required in Section 4.3.

2551 City shall have the right to hire, and deduct from the monthly payment to Contractor, the costs of one or
2552 both of the Diversion Coordinators should either position be vacant for 30 calendar days or should the
2553 City determine, in its sole discretion, that Contractor's Diversion efforts are not adequate or effective;
2554 provided, however, that the amount of this deduction shall not exceed Contractor's actual costs
2555 associated with each such position as established by the position's salary and benefits during the most
2556 recent three month period. Any such costs shall be deemed an Eligible Expense.

2557 **4.6.5 Analysis of Discarded Material Composition**

2558 Contractor shall cooperate in activities requested by the City to measure Diversion of Solid Waste from
2559 landfills including, but not limited to, providing a location for conducting Discard Material sorting, and
2560 re-routing trucks on a temporary basis to facilitate composition analysis. Such reports shall include, but
2561 not necessarily be limited to, throughput, recovery rates per material type, Residue rates by material
2562 type, costs, Recyclable Material commodity values, and final disposition of Source Separated Recyclables
2563 and Source Separated Compostables. Contractor shall also supply any other information reasonably
2564 requested by the City to meet State, Federal, County, or City regulatory requirements as those
2565 requirements may be amended from time to time. Reasonable and necessary documented costs

2566 expended by Contractor with relation to the services described in this Section 4.6.5, and with prior
2567 approval of City, shall constitute an Eligible Expense.

2568 **4.7 Affirmative Action**

2569 **4.7.1 Nondiscrimination**

2570 In the performance of all work and services under this Agreement, Contractor shall not discriminate
2571 against any person on the basis of such person's race, sex, color, national origin, religion, marital status
2572 or sexual orientation. Contractor shall comply with Applicable Law regarding nondiscrimination,
2573 including those prohibiting discrimination in employment.

ARTICLE 5: CITY FEES

5.1 Franchise Fee**5.1.1 Franchise Fee Amount**

City shall assess during the term of this Agreement a franchise fee (the "Franchise Fee") of twelve percent (12%) of Gross Revenues collected by City or Contractor from others arising out of the services to be performed by Contractor under this Agreement. For purposes of calculating the Franchise Fee, Gross Revenues from all activities conducted under this Agreement arising from services provided within the Service Area shall be used. If in any month Contractor shall receive revenues from sources other than City from Collection activities conducted under this Agreement, such revenues are to be included in the amount of Gross Revenues subject to the Franchise Fee. Contractor shall notify City of the amount and source of such revenues no later than the tenth (10th) calendar day of the following month. Pursuant to Section 6.2.1, City will deduct applicable Franchise Fees from those billings processed by the City before remitting funds to Contractor.

5.1.2 Time and Method of Payment

For those billings, if any, processed by Contractor, where a Franchise Fee has not been withheld by City, Contractor shall remit all applicable franchise fees to the City on a monthly basis, by the 10th calendar day of the following month.

5.1.3 Adjustment to Franchise Fee

City reserves the right to adjust the Franchise Fee as it deems appropriate at any time during the Term of this Agreement. Any such increase shall be deemed an Eligible Expense, and City shall consider a rate increase such that Contractor is not financially disadvantaged by any such increase.

5.2 Mussel Rock Fees**5.2.1 Mussel Rock Landfill Maintenance Fee**

Responsibility for maintenance of the closure requirements established by various state agencies has been assumed by City and City will continue its responsibility for maintenance of the closed landfill site known as the Mussel Rock Landfill. City shall assess a fee during the term of this Agreement as follows. City shall Collect \$33,333 on a monthly basis for a total of \$400,000 for Contract Year One, and \$34,667 on a monthly basis for a total of \$416,000 for Contract Year Two. City shall continue to collect the fee through the Term, as escalated annually by 4% for each Contract Year, for the continued maintenance of the site. In the event that additional maintenance requirements or other actions are required by responsible State or federal agencies which require additional maintenance funds, Contractor shall increase the monthly fee amount by that amount determined by City necessary to meet these obligations. Pursuant to Section 6.2.1, City will deduct the Mussel Rock Landfill Maintenance Fee from billings processed by the City before remitting funds to Contractor. Said amounts deducted by the City are considered part of the Eligible Expenses for Contractor. Contractor shall bear no other obligations for the closed landfill site except as agreed to by City and Contractor.

5.2.2 Mussel Rock Transfer Station Decommissioning Fee

City has the responsibility for decommissioning the Mussel Rock Transfer Station, including but not limited to removal of structures, and restoration and maintenance of the property. City has established a Mussel Rock Transfer Station Decommissioning Fee to be assessed during the Term of this Agreement on a temporary basis (one or more years) or on an ongoing basis. The Fee is set at \$0.00 as of the Effective Date. City may collect the fee from Contractor on a monthly basis in the similar manner as provided in Section 5.2.1, and with or without an annual escalation factor. Pursuant to Section 6.2.1, City will deduct the Mussel Rock Landfill Maintenance Fee from billings processed by the City before remitting funds to Contractor. Said amounts deducted by the City are considered part of the Eligible Expenses for Contractor. Contractor shall bear no other obligations for the transfer station site except as agreed to by City and Contractor.

5.3 One-Time Procurement Cost Payment

Within (5) Business Days of the Effective Date of this Agreement, Contractor shall pay the City three hundred fifty five thousand dollars (\$355,000). The Contractor may recover this payment as an Eligible Expense if the expense is amortized over the Term.

5.4 Other Fees

City reserves right to establish (and thereafter modify) other fees during the Term at its sole discretion. In this event, Maximum Rates shall be concurrently adjusted as necessary to reflect the new or modified fee(s), and City will deduct such fee(s) from billings processed by the City before remitting funds to Contractor pursuant to Section 6.2.1. Said amounts deducted by the City are considered part of Eligible Expenses.

ARTICLE 6: CONTRACTOR'S COMPENSATION AND RATES

Will be revised as needed to reflect final Term length. Pending route allocation language will be reviewed and inserted.

6.1 Rate Periods

Rate Periods "1" through "5" are identified as follows:

Rate Period 1	February 1, 2016 – June 30, 2017
Rate Period 2	July 1, 2017 – June 30, 2019
Rate Period 3	July 1, 2019 – June 30, 2021
Rate Period 4	July 1, 2021 – June 30, 2023
Rate Period 5	July 1, 2023 – June 30, 2025

Rate Periods shall be the periods for which Maximum Rates are set, with the exception of adjustments resulting from extraordinary expenses pursuant to Section 6.2.5. However, City reserves the right to provide for any two year Rate adjustment in the form of two, one-year adjustments. Thus, City may elect to apply a four percent (4%) Rate adjustment in the form of a two percent (2%) Rate adjustment in one year, and a two percent (2%) Rate adjustment in the next year.

6.2 Rates for Solid Waste Collection**6.2.1 Establishing and Collecting Rates; Compensation of Contractor**

City shall, from time to time, establish Maximum Rates for various categories of Service Recipients which are designed to provide revenues to fund all activities and pay all fees provided for under this Agreement. City shall be responsible for billing and collecting such revenues except as specifically provided for herein. From revenues collected by City, City shall first deduct all amounts owed or otherwise due to City, together with all amounts to be otherwise withheld pursuant to this Agreement, and the balance shall be remitted to Contractor, on a monthly basis. Contractor's sole compensation for rendering services pursuant to this Agreement shall consist of the amounts to be paid to, or retained by, Contractor under this Agreement.

6.2.2 Rate Setting for Rate Period 1

Contractor's initial proposed Maximum Rates, set forth in Exhibit F (Contractor's Proposal), shall be adjusted prior to the Commencement Date, as described below. Rates in effect as of the Commencement Date shall remain in effect until June 30, 2017, without adjustment. Such rates are as proposed and approved by the City, and set forth in Exhibit F.

First, the portion of Contractor's initial proposed Maximum Rates attributable to wages and salaries of Contractor's employees governed by collective bargaining agreements (CBAs) shall be increased by the

percentage increases in such wages and salaries required by the applicable CBAs for FY 2015-16 and FY 2016-17 (it being understood that Contractor's proposal was based on FY 2014-15 numbers).

Second, Contractor's proposed Maximum Rates shall be adjusted upward or downward to reflect actual capital costs for vehicles and equipment included on Form 4 of the Contractor's cost proposal. How each Maximum Rate is adjusted upward or downward to reflect actual capital costs shall be determined by mutual agreement between the Parties prior to setting Rate Period 1 Maximum Rates.

Third, the adjusted Maximum Rates from the first step, shall be adjusted upward or downward on the basis of one hundred percent (100%) of the percentage change in the Consumer Price Index, All Urban Consumers (All Items), for the San Francisco/Oakland Metropolitan Area as published by the U.S. Department of Labor, Bureau of Labor Statistics ("CPI"), Series ID: CUURA422SA0.

The net percentage change shall be calculated by the following formula:

$$\text{Net Percentage Change (NPC)} = \frac{X(i) - X(i-2)}{X(i-2)}$$

Where,

X(i) = Index value for December 2014;

X(i-2) = Index value for December 2012

Changes in the net percentage change of less than one tenth of one point (0.1) shall be rounded to the nearest one-tenth of a point, i.e., 1.50 to 1.54 shall be treated as 1.5; 1.55 to 1.59 shall be treated as 1.6.

Should the CPI not be published in December of the year required for calculation of rate adjustments, the CPI values of the month most immediately preceding that December shall be used. If said CPI is discontinued, it shall be replaced by the CPI which most closely approximates the original category as determined by the U.S. Bureau of Labor Statistics.

6.2.3 Rate Adjustment Process for Rate Period 2

A. **Summary.** The Rate adjustment process for Rate Period 2 involves: review of "Total Contractor's Costs", consisting of Contractor's actual, allowable, and Eligible Expenses from Contractor's most recently completed Fiscal Year; review of Contractor's projected Eligible Expenses for Rate Period 2; the calculation of allowable profit for Rate Period 2; and, the calculation of City Fees and Pass-through Expenses.

The difference (measured as a percentage) between Total Contractor Costs for Rate Period 2 (calculated in accordance with 6.2.3.C) and total projected Eligible Revenues at current rates is the Rate Adjustment Factor. One (1) plus the Rate Adjustment Factor is applied to the current Rates to determine the Maximum Rates for Rate Period 2. If the Rate Adjustment Factor as calculated, excluding changes in costs related to Change in Law and City fees, exceeds ten percent (10%), City and Contractor shall meet and confer to determine whether and how Contractor's obligations under the Agreement can be suspended, delayed or otherwise modified to reduce Eligible Expenses and the resulting calculated Rate Adjustment Factor.

Regardless of Contractor demonstration of the reasonableness of a Rate adjustment in excess of ten percent (10%), City is not obligated to grant Contractor such a Rate adjustment. Should the calculated Rate Adjustment Factor exceed ten percent (10%), and should the City in its sole discretion decide to grant Contractor an adjustment in excess of ten percent (10%), the City reserves the right to divide the Rate adjustment over multiple Rate Periods, with ten percent (10%) of the Rate adjustment occurring in Rate Period 2, and the remainder of the Rate adjustment being carried over to Rate Period 3 and added to the Rate Adjustment that would otherwise take effect in Rate Period 3 and, if necessary, be carried over to Rate Period 4 so that no adjustment in a given Rate Period exceeds ten percent (10%).

In addition, City reserves the right to moderate the impact of any Rate adjustment in excess of ten percent (10%) by applying it to individual years rather than as a one-time adjustment(s) applied to one or more two-year Rate Periods. For example, City may elect to apply the four percent (4%) increment of a fourteen percent (14%) Rate adjustment above ten percent (10%) in the form of a two percent (2%) Rate adjustment in one year, and a two percent (2%) Rate adjustment in the next year.

B. **Application Submittal.** By January 1, 2017, City and Contractor shall meet and confer about the scheduled timing for the Rate Period 2 Rate adjustment process. The Parties shall determine if the process should proceed as specified in this Section 6.2.3, or be delayed due to ongoing changes related to the transition to new services. If the latter, the Rate Period 2 Rate adjustment shall be a CPI adjustment only, as provided in Section 6.2.4. On March 1, 2017, Contractor shall submit to the City an application requesting the adjustment of Maximum Rates for Rate Period 2 via mail and an electronic copy via email. Such Application shall include (i) a copy of the Contractor's audited financial statements for the Contractor's most-recently completed fiscal year; (ii) Rate Period 2 projected total Contractor costs, presented substantially similar to that included in Exhibit F (Contractor's Proposal); (ii) a copy of the Rate schedule currently in effect, and a pro forma Rate schedule showing the Rates that Contractor proposes for the Rate Period 2; (iii) projected Eligible Revenue at current rates (with supporting documentation); and, (iv) all other information that Contractor deems necessary to support its projected total contractor costs and proposed Maximum Rates.

C. **Determination of Total Contractor Costs.** Total allowable Contractor costs for Rate Period 2 shall be the sum of: 1) Contractor's projected Eligible Expenses; 2) Contractor's allowable profit; 3) Contractor's projected Pass-through Expenses; and, 4) City Fees.

Contractor's projected Eligible Expenses for Rate Period 2 shall be calculated by: multiplying one plus the NPC calculation described in Section 6.2.2 by Contractor's allowable Eligible Expenses.

Contractor's allowable Eligible Expenses shall be derived from Contractor's actual expenses shown in the audited financial statements for their most-recently completed fiscal year and limited to those cost categories identified in Exhibit F (Contractor's Proposal). Allowable Eligible Expenses shall include all expenses, both direct and indirect, which are attributable to the provision of all of the services delineated in this Agreement, approved as appropriate and necessary by City. Non-allowable costs, in addition to those discussed in detail in Sections 6.2.3.E and 6.2.3.F, include: oncall HHW services, MFD valet services, -entertainment expenses, political and charitable contributions, land and goodwill acquisition (including interest thereon), increase in the value of assets above their book value prior to purchase except as agreed to by City, payments to or for the benefit of previous owners, labor and equipment for personnel and

vehicles not specified in Exhibit F (Contractor's Proposal), or other expenses determined by City as unnecessary for the provision of services under this Agreement.

Contractor's allowable profit shall equal Eligible Expenses divided by an Operating Ratio of 86.761%, and subtracting from the result the Contractor's Eligible Expenses.

Contractor's projected Pass-through Expenses for Rate Period 2 shall be calculated by: multiplying one plus the NPC calculation described in Section 6.2.2 by Contractor's allowable Pass-through Expenses.

Contractor's allowable Pass-through Expenses shall be derived from the Contractor's actual expenses shown in the audited financial statements for their most-recently completed fiscal year and limited to interest on capital assets reflected in Exhibit J and Post-Collection Services expenses. Contractor's actual Pass-through Expenses shall be adjusted to exclude any non-allowable expenses. Non-allowable expenses, in addition to those discussed in detail in Section 6.2.3.D, include: entertainment expenses, political and charitable contributions, land and goodwill acquisition (including interest thereon), increase in the value of assets above their book value prior to purchase except as agreed to by City, payments to or for the benefit of previous owners, labor and equipment for personnel and vehicles not specified in Exhibit F (Contractor's Proposal), or other expenses determined by City as unnecessary for the provision of services under this Agreement.

City Fees shall be calculated in accordance with Article 5.

Notwithstanding the provisions of this Section 6.2.3 and subsection C. Determination of Total Contractor Costs, the following costs are excluded from consideration as Eligible Expenses during Rate Period 2:

1. Increased capital, labor or any other costs associated with off-route time incurred by Collection crews beyond that assumed by Contractor in Exhibit F Contractor's Proposal and Exhibit J Operating Assumptions and Cost Basis.
2. The addition of routes, trucks, containers, and associated capital, labor, interest and all other directly or indirectly related costs beyond those assumed by Contractor in Exhibit F Contractor's Proposal, and in Exhibit J Operating Assumptions and Cost Basis, except as follows. Eligible Expenses may include increases in containers, trucks, labor, and/or routes to the extent that the Contractor fully documents the need to City satisfaction based on: 1) increases in specific types of Service Recipients, and; 2) demonstration that the need cannot be accommodated by shifts in use of existing containers, trucks, labor, and/or routes.
3. Changes in compensation to Approved Facilities and Contingent Facilities due to changes in the relative or absolute tonnages delivered to each Approved Facility or Contingent Facility.

- D. **Expenses – Capital.** Without limiting the generality of the foregoing, Contractor's allowable Pass-through costs shall include interest on Contractor's capital used in performing services for the City under the Agreement, whether equipment is purchased or leased. For purposes of calculating Contractor's interest expense, the rate on California Municipal Financing Authority ("CMFA") bonds as of the Effective Date and as it may be modified during the Term, shall be used to calculate Contractor's interest expense associated with Contractor's capital assets being

used to perform services under the Agreement and shall be multiplied by the total value of Contractor's capital assets reflected in Exhibit J. If Contractor is unable to obtain CMFA financing for its capital assets, the interest rate used to calculate Contractor's interest expenses shall be the CMFA rate, or the rate for Treasury bonds of constant maturity having the same term as the purchased equipment's depreciation term (e.g., 10-year bonds for equipment depreciated over 10-years), as such rate appears on the web site of the Federal Reserve Board (<http://www.federalreserve.gov/releases/H15/data.htm>), whichever is less. If the Treasury bond of constant maturity having the same term as the lease term is discontinued, the successor bond (identified by the Federal Reserve) with which it is replaced will be used for subsequent calculations. If no successor bond is identified by the Federal Reserve, the Parties agree to meet and confer to determine the successor bond which is most comparable.

E. **Regional and Corporate Overhead.** Indirect expenses from Contractor's regional and/or corporate headquarters allocated to the local operation shall be limited to 3.25 % of gross revenue.

F. **Employee Stock Ownership Plan (ESOP).** The establishment of an Employee Stock Ownership Plan (ESOP) is neither encouraged nor prohibited by this Agreement; however, the formation or support of an ESOP, or the creation or support of a trust whose assets are composed of the stock of the Contractor, or of the stock of any holding company, subsidiary corporation or related corporation to Contractor, where the trust assets are either allocated to employee accounts or to a pension or retirement fund for the benefit of Contractor's employees or retirees, such ESOP or trust costs or contributions, to and including acquisition of stock costs and financing costs, shall not constitute a chargeable or operating cost or expense (Eligible Expense) of the Contractor.

6.2.4 Rate Adjustment Process for Subsequent Rate Periods

A. **Application Submittal.** On March 1, prior to the commencement of the Rate Period for which Maximum Rates are to be determined (coming Rate Period), Contractor shall submit to the City an application requesting the adjustment of Maximum Rates for the coming Rate Year via mail and an electronic copy via email. For example, on March 1, 2019, the Contractor shall submit its application for the adjustment of Maximum Rates to be effective July 1, 2019 (i.e., Rate Period Three).

Such Application shall include (i) a copy of the Contractor's audited financial statements for the Contractor's most-recently completed fiscal year; (ii) projected Eligible Expenses, profit, projected Pass-through Costs, and projected City fees for the coming Rate Period, presented substantially similar to that included in Exhibit F (Contractor's Proposal), including the basis for projections; (iii) projected Eligible Revenue at current rates; (iv) the rate adjustment calculation in accordance with 6.2.4.B; and, (v) a copy of the Maximum Rate schedule currently in effect, and a pro forma schedule showing the Maximum Rates that Contractor proposes for the coming Rate Period.

B. **Rate Adjustment Methodology.** Subject to the restrictions set forth below, each Maximum Rate shall be adjusted upward or downward on the basis of one hundred percent (100%) of the net percentage change in the Consumer Price Index, All Urban Consumers (All Items), for the San Francisco/Oakland Metropolitan Area as published by the U.S. Department of Labor, Bureau of Labor Statistics ("Index"). Series ID: CUURA422SA0.

2824 The net percentage change shall be calculated by the following formula:

$$\begin{array}{l} 2825 \quad \text{Net percentage change (NPC)} = \frac{X(i)-X(i-2)}{X(i-2)} \\ 2826 \end{array}$$

2827 Where,

2828 $X(i)$ = Index value for December of the year preceding the coming Rate Period;

2829 $X(i-2)$ = Index value for December 24 months preceding the coming Rate Period

2830 Changes in the net percentage change of less than one tenth of one point (0.1) shall be rounded to the
2831 nearest one-tenth of a point, i.e., 1.50 to 1.54 shall be treated as 1.5; 1.55 to 1.59 shall be treated as 1.6.

2832 Should the CPI not be published in December of the year required for calculation of rate adjustments,
2833 the CPI values of the month most immediately preceding that December shall be used. If said CPI is
2834 discontinued, it shall be replaced by the CPI which most closely approximates the original category as
2835 determined by the U.S. Bureau of Labor Statistics.

2836 If such upward adjustment would result in a projected Operating Ratio to Contractor lower than
2837 86.761% on an annual basis, then, except as provided below, such upward adjustment shall be scaled
2838 back so as to result in a projected Operating Ratio to Contractor of no less than 86.761% on an annual
2839 basis. This calculation will be done based on the most-recently submitted audited financial statements
2840 and the Contractor's projected Eligible Expenses, profit, projected Pass-through Costs, and projected
2841 City fees submitted with the rate application.

2842 **6.2.5 Approved Facility and Contingent Facility Fee**

2843 Initial Approved Facility and Contingent Facility Fees, subject to adjustment for Rate Period One and
2844 subsequent Rate Periods are included in Exhibit A Maximum Rates Approved by City.

2845 **6.2.6 Extraordinary Expenses**

2846 An exception to the biennial Rate adjustment shall be the consideration of interim adjustments when
2847 extraordinary and unforeseen expenses occur which were not contained within the estimates provided
2848 during the Rate review process. By way of example, such increases may be the result of a Change in Law
2849 which results in substantial and unexpected costs or savings to the operations, or a new or modified City
2850 fee. The City shall consider requests for interim rate adjustments on a case-by-case basis and shall make
2851 the sole determination as to the appropriateness of an interim adjustment.

2852 The following items are excluded from consideration as extraordinary expenses:

- 2853 1. Increased capital, labor or any other costs associated with off-route time incurred by
2854 Collection crews beyond that assumed by Contractor in Exhibit F Contractor's Proposal and
2855 Exhibit J Operating Assumptions and Cost Basis.
- 2856 2. The addition of routes, trucks, containers, and associated capital, labor, interest and all other
2857 directly or indirectly related costs beyond those assumed by Contractor in Exhibit F
2858 Contractor's Proposal, and in Exhibit J Operating Assumptions and Cost Basis, except as

2859 follows. Eligible Expenses may include increases in containers, trucks, labor, and/or routes
2860 to the extent that the Contractor fully documents the need to City satisfaction based on: 1)
2861 increases in specific types of Service Recipients, and; 2) demonstration that the need cannot
2862 be accommodated by shifts in use of existing containers, trucks, labor, and/or routes.

2863 3. Changes in compensation to Approved Facilities and Contingent Facilities due to changes in
2864 the relative or absolute tonnages delivered to each Approved Facility or Contingent Facility.

2865 Should the City in its sole discretion decide to engage a third party for the purpose of reviewing changes
2866 in costs to the Contractor attributable to the extraordinary Rate adjustment, the Contractor shall bear
2867 the cost of the review, and such cost shall be considered an Eligible Expense.

2868 **6.2.7 Cost Savings Programs**

2869 In addition to the above, Contractor is encouraged and expected to improve operational efficiency while
2870 maintaining a high level of service. In order to provide an incentive to decrease cost to the ultimate
2871 benefit of the Service Recipients and provide incentive to the Contractor, Contractor shall be authorized
2872 to retain savings generated between rate adjustment review periods except as limited by the Rate
2873 adjustment formula. As part of the rate setting process, Contractor shall provide separate estimates
2874 regarding anticipated cost reduction measures.

2875 **6.2.8 Rate Structure**

2876 The City shall have the right to change the relationship of individual Maximum Rates in comparison with
2877 other Maximum Rates as it deems appropriate. Any such changes would occur in conjunction with the
2878 Maximum Rate adjustment process described in Sections 6.2.2, 6.2.3, 6.2.4, and/or 6.2.5. Such changes
2879 to the rate structure must be revenue neutral, which means the total anticipated revenue generated by
2880 the existing Maximum Rates and the total anticipated revenue generated by the adjusted Maximum
2881 Rates must equal.

2882 **6.3 Adjustments to Contractor's Payments**

2883 **6.3.1 Deductions from Contractor's Payment**

2884 If City makes any payments or incurs any costs for which City is entitled to reimbursement from
2885 Contractor pursuant to this Agreement, City may deduct such reimbursement from any payment
2886 otherwise due to Contractor from City. City shall submit to Contractor written documentation in
2887 support of such deduction upon the request of Contractor. In the event City does not deduct such
2888 reimbursement from Contractor's payment but submits to Contractor an invoice for reimbursement,
2889 Contractor shall reimburse City within thirty (30) days of receipt of such invoice.

2890 **6.3.2 Records Reimbursement**

2891 In the event Contractor fails to maintain adequate and accurate records, or fails to maintain records for
2892 services performed under this Agreement separate from records for other services, and City makes any
2893 payment or incurs any cost for the creation, recreation, correction or maintenance of such records,
2894 Contractor shall reimburse City for any and all payments so made or costs so incurred by City plus an
2895 administrative fee in the amount of twenty-five percent (25%) of such payments or costs.

2896 **6.4 Grant Funding**

2897 Contractor shall monitor, and shall apply for applicable grant funding programs awarding in excess of
2898 \$10,000 as they come available throughout the term of this Agreement, including but not limited to
2899 Diversion program assistance and alternative fuels and equipment purchase programs. Contractor shall
2900 take such steps as are necessary to ensure that grant applications are completed and submitted in a
2901 professional manner. Prior to submitting applications for such grants, Contractor shall notify City of its
2902 intent to apply, and Contractor shall not submit any applications relating to the City without prior City
2903 approval, which shall not be unreasonably withheld. Contractor shall take direction from City regarding
2904 applying for specific grants, and shall do so in a timely manner.

ARTICLE 7: INDEMNIFICATION, INSURANCE AND BOND**7.1 Indemnification****7.1.1 Indemnification and Hold Harmless - Contractor**

Contractor, for and on behalf of itself and its agents, subcontractors, directors, officers, employees and representatives shall indemnify and hold harmless City, its officers and employees from and against any and all losses, liabilities, penalties, claims, demands, judgments, damages, actions or suits, of any and every kind and description, arising or resulting from any work or services performed by Contractor or its agents, subcontractors, directors, officers, employees or representatives pursuant to this Agreement, or which results from their noncompliance with any Applicable Law. Such indemnification and hold harmless shall include, but not be limited to any allegation that Contractor, or its agents, subcontractors, directors, officers, employees, or representatives has breached an express or implied warranty of merchantability or fitness for particular use or any other warranty relating to the Recyclables Collected pursuant to this Agreement and to any allegation that any of them has violated any license, copyright or other limitation on Contractor's use of any computer software in connection with Contractor's performance of services under this Agreement. The acceptance by City of any work or services under this Agreement shall not operate as a waiver of such indemnification or hold harmless.

Subject to the provisions of Public Resources Code section 40059.2, Contractor's duty to defend and indemnify herein includes all fines and/or penalties imposed by CalRecycle if the requirements of AB 939, AB 341, AB 1594 or AB 1826 are not met by the Contractor with respect to the materials Collected under this Agreement and/or Contractor's other obligations under this Agreement, and such failure is: (i) due to the failure of Contractor to meet its obligations under this Agreement; or, (ii) due to Contractor delays in providing information that prevents Contractor or the City from submitting reports to regulators in a timely manner.

7.1.2 AB 939, AB 341, AB 1594, AB 1826 and Local Ordinance Compliance

Contractor shall perform all education, outreach, monitoring, and reporting for all Commercial and Multi-Family properties as required by AB 939, AB 341, AB 1594 and AB 1826, and any City ordinance and as more fully set out in Section 4.6, and in Exhibit B. Contractor has developed, and shall implement and update as necessary a Diversion Plan as provided in Exhibit B that, among other things supports and educates Multi-Family and Commercial Customers on both State and City requirements. Contractor shall provide all necessary reporting relating to the City's compliance requirements pertaining to AB 939 and AB 341, and as it affects the County's Integrated Waste Management Plan, as required by Section 4.3.

7.1.3 Hazardous Substance Indemnification

To the extent allowed by Applicable Law, Contractor shall indemnify, defend with counsel acceptable to City (provided that such acceptance shall not be unreasonably withheld), and hold harmless City and its employees, volunteers, and agents (collectively, "Indemnitees") from and against any and all claims, damages (including but not limited to special, consequential, natural resources, and punitive damages), injuries, costs (including but not limited to all response, remediation, and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including attorneys' and expert witness fees incurred in connection with defending against any of the foregoing or in enforcing this indemnity (collectively, "damages")) of any nature whatsoever paid, incurred, suffered by, or asserted against Indemnitees,

arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure, or other plan concerning any Hazardous Substances or Hazardous Waste released, spilled, or disposed of by Contractor pursuant to this Agreement. Notwithstanding the foregoing, however, Contractor is not required to indemnify the Indemnitees against claims arising from Contractor's delivery of Discarded Materials to a facility owned or operated by a third party, unless such claims are a direct result of Contractor's negligence or willful misconduct. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9607(e), California Health and Safety Code Section 25364, and the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. to defend, protect, hold harmless, and indemnify Indemnitees from liability, and shall survive the expiration or earlier termination of this Agreement.

7.1.4 Indemnification and Hold Harmless - City

City, for and on behalf of itself and its agents, subcontractors, directors, officers, employees and representatives shall indemnify and hold harmless Contractor and Contractor's officers and employees from and against any and all losses, liabilities penalties, claims, demands, judgments, damages, actions or suits resulting from the City's sole negligence, City's active negligence, City's comparative negligence or willful misconduct, excluding any third party claims or actions arising out of or asserted based upon the theory of negligent entrustment of services to Contractor or otherwise arising or asserted solely based upon the theory of the City's passive negligence. City shall have no obligation to defend the Contractor, or contractor's officers, directors, employees or representatives from any claims or actions found to be caused by the negligence or willful misconduct of the Contractor, its directors, officers, agents or employees.

7.1.5 Defense

Upon the demand of the City Attorney, Contractor shall defend City, its officers and/or employees against any matter described in Section 7.1.1 and 7.1.2 of this Agreement.

7.1.6 Exception

Notwithstanding Sections 7.1.1 and 7.1.2, and subject to Public Resources Code section 40059.2, Contractor's obligation to indemnify, hold harmless and defend City, its officers and employees shall not extend to any loss, liability, penalty, claim, demand, action or suit arising or resulting from acts or omissions constituting sole negligence, active negligence, comparative negligence, or willful misconduct on the part of City, its officers or employees.

7.1.7 Damage by Contractor

If Contractor's employees or subcontractors cause any injury, damage or loss to City property, including but not limited to City streets or curbs, Contractor shall either repair the same or reimburse City for City's costs of repairing such injury, damage or loss. Such reimbursement is not in derogation of any right of City to be indemnified by Contractor for any such injury, damage or loss. With the prior written approval of City's Director of Public Works, Contractor may repair the damage at Contractor's sole cost and expense.

2984 **7.2 Insurance**2985 **7.2.1 Insurance Policies**

2986 Contractor shall procure and maintain throughout the Term and any extension of this Agreement
 2987 insurance against claims for injuries to persons or damages to Property which may arise from or in
 2988 connection with Contractor's performance of work or services under this Agreement. Contractor's
 2989 insurance shall include full coverage of Contractor's employees, agents, representatives and
 2990 subcontractors. Contractor warrants that employees and subcontractors are properly licensed, including
 2991 any required commercial vehicle licenses, to drive Contractor's vehicles. All provisions for insurance shall
 2992 be deemed an eligible expense.

2993 **7.2.2 Minimum Scope and Limits of Insurance**

2994 Insurance Coverage shall be at least as broad as the following:

2995 A. **Workers' Compensation.** Statutory Workers' Compensation Insurance and Employer's Liability
 2996 Insurance with limits of not less than five million dollars (\$5,000,000) for any and all persons
 2997 employed directly or indirectly by Contractor. In the alternative, Contractor may rely on a self-
 2998 insurance program to meet these requirements so long as the program of self-insurance
 2999 complies fully with the provisions of the California Labor Code. In such case, excess Worker's
 3000 Compensation Insurance with limits of not less than ten million dollars (\$10,000,000) shall be
 3001 maintained. The insurer, if insurance is provided, and the Contractor, if a program of self-
 3002 insurance is provided, shall waive all rights of subrogation against the City of Daly City for loss
 3003 arising from worker injuries sustained under this Agreement. Said limits can be achieved
 3004 through the placement of primary and umbrella or excess policies.

3005 B. **Commercial General and Automobile Liability.** Contractor, at Contractor's own cost and
 3006 expense, shall maintain Commercial General Liability insurance for the period covered by this
 3007 Agreement, and any extension of this Agreement in an amount not less than ten million dollars
 3008 (\$10,000,000) combined single limit coverage for risks associated with the work contemplated
 3009 by this Agreement. If a Commercial General Liability Insurance form or other form with a
 3010 general aggregate limit is used, either the general aggregate limit shall apply separately to the
 3011 work to be performed under this Agreement or the general aggregate limit shall be at least
 3012 twenty million dollars (\$20,000,000.00). Such coverage shall include but shall not be limited to,
 3013 protection against claims arising from bodily and personal injury, including death resulting
 3014 therefrom, and damage to property resulting from activities contemplated under this
 3015 Agreement, including the use of owned and non-owned automobiles, as well as waste hauling,
 3016 transfer vehicles or other commercial transport. Said limits can be achieved through the
 3017 placement of primary and umbrella or excess policies.

3018 C. **General Requirements.** Each of the following shall be included in the insurance coverage or
 3019 added as an endorsement to the policy:

3020 i. The City of Daly City, its officers, employees, agents and volunteers are to be covered as
 3021 additional insureds as respects each of the following: liability arising out of activities
 3022 performed by or on behalf of Contractor; products and completed operations of
 3023 Contractor; premises owned, occupied or used by Contractor; or automobiles owned,
 3024 leased, hired, or borrowed by Contractor. The coverage shall contain no special limitations
 3025 on the scope of protection afforded to Daly City, its officers, employees, agents, or

volunteers; except that such coverage shall not apply to the extent of the sole negligence, active negligence, comparative negligence, or willful misconduct of Daly City, its officers, employees, agents, or volunteers.

ii. The insurance policy form shall provide coverage on an occurrence basis, or on the basis of claims made. If claims made coverage is provided, an extended supplemental reporting period of at least 84 months shall be provided.

iii. The insurance must cover contractual liability. This may be provided by amending the definition of "incidental contract" to include any written agreement.

iv. Any explosion, collapse, and underground property damage exclusion must be deleted.

v. An endorsement must state that coverage is primary insurance and that no other insurance or self-insured retention carried by the City of Daly City will be called upon to contribute to a loss under the coverage.

vi. The policy must contain a cross liability or severability of interests clause.

vii. Any failure of Contractor to comply with reporting provisions of the policy shall not affect coverage provided to City of Daly City and its officers, employees, agents, and volunteers.

viii. Broad form property damage liability must be afforded.

ix. Insurance is to be placed with California-authorized insurers, and carrier(s) must be rated "A" or above in the Best's Rating Guide. The City reserves the right to accept or deny use of any particular carrier.

x. Notice of cancellation or nonrenewal must be received by the Daly City City Clerk's Office at least thirty (30) days prior to such change.

7.2.3 Endorsements

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

A. General Liability and Automobile Liability Coverage

i. The City of Daly City, its officers, employees, agents and Contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by, or on behalf of, Contractor; products and completed operations of Contractor; premises owned, leased or used by Contractor; and automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents and Contractors; except that such coverage shall not apply to the extent of the sole negligence, active negligence, comparative negligence, or willful misconduct of Daly City, its officers, employees, agents, or volunteers.

ii. Contractor's insurance coverage shall be primary insurance as respects City, and its officers, employees, agents and Contractors. Any insurance or self-insurance maintained by City, its officers, employees, agents or Contractors shall be in excess of Contractor's insurance and shall not contribute with it.

iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, and its officers, employees, agents, or Contractors.

iv. Except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, this insurance applies:

a. As if each named insured were the only named insured; and

b. Each insured against whom claim is made or suit is brought.

7.2.4 Hazardous Material, Environmental Impairment Liability Insurance

Contractor shall provide, and thereafter maintain throughout the term of this Agreement, and any extension of this Agreement, Hazardous Material and Environmental Impairment Liability Insurance covering all reasonably expected potential losses related to pollution, Hazardous Material, contamination, spills, accidents or migration of toxics, pollutants, Hazardous Material or materials, or unknown materials. Such coverage shall be at a minimum of ten million dollars (\$10,000,000.00) per occurrence. Should aggregate limits be depleted by more than twenty-five percent (25%) during any one policy term, Contractor shall provide notice to City, and may be required at City's reasonable discretion to purchase separate insurance.

Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

A. The insurance coverage, if provided on a claims made form, then a Twelve (12) month Extended Reporting Period shall be provided in the event such coverage or this Agreement is terminated.

B. An endorsement must state that coverage is primary insurance and that no other insurance or self-insured retention carried by the City of Daly City will be called upon to contribute to a loss under the coverage; unless and to the extent of the sole negligence, active negligence, comparative negligence, or willful misconduct of the City, its officers, employees, agents, or volunteers, excluding any third party claims or actions arising out of or asserted based upon the theory of negligent instrument of services to Contractor.

C. Any failure of Contractor to comply with reporting provisions of the policy shall not affect coverage provided to City of Daly City and its officers, employees, agents, and volunteers.

D. Notice of cancellation or nonrenewal must be received by the Daly City City Clerk's Office at least thirty (30) days prior to such change.

7.2.5 Acceptability of Insurers

Insurance is to be placed with insurers with an A.M. Best rating of no less than A-VIII or Standard & Poors (S&P) rating of A-.

7.2.6 Verification of Coverage

Contractor shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Contractor shall furnish City with a new certificate of insurance and endorsements upon each renewal or change of coverage or change of insurers. Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the City:

CITY OF DALY CITY
Risk Manager
333 - 90th Street
Daly City, CA 94015

7.2.7 Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor with terms, conditions and amounts of insurance at least equal to those set forth herein for Contractor.

7.2.8 Modification of Insurance Requirements

The insurance requirements provided in this Agreement may be modified or waived by City's Risk Manager, in writing, upon the request of Contractor if the Risk Manager determines such modification or waiver is in the best interests of City considering all relevant factors, including exposure to City.

7.3 Performance Bond**7.3.1 Performance Bond Requirement**

Within ten (10) calendar days from the date the City Council approves this Agreement and upon the commencement of each Contract Year thereafter, Contractor shall procure and provide the City with a fully prepaid surety bond, for at least the duration of such Contract Year, to guarantee and assure the prompt and faithful performance of Contractor's obligations under this Agreement. Such bond shall be executed by a surety licensed to transact business in the State of California, shall name the City of Daly City as obligee, shall provide at least thirty (30) calendar days prior notice of any cancellation, and shall be in the amount of Five Hundred Thousand Dollars (\$500,000.00). The form of the bond and the surety are subject to the approval of City's Risk Manager and the City Attorney. All provisions for performance bonds shall be deemed an eligible expense.

7.3.2 Alternative to Performance Bond

As an alternative to the performance bond required by Section 7.3.1, at City's option, Contractor may deposit with City a fully prepaid irrevocable letter of credit for at least the duration of the Contract Year for which the letter of credit is deposited. Such letter of credit shall be in the amount of Five Hundred Thousand Dollars (\$500,000.00). The form of the letter of credit and the issuer of the letter of credit are subject to the approval of City's Risk Manager and the City Attorney. Nothing in this Section 7.3.2 shall in any way obligate City to accept a letter of credit in lieu of the performance bond.

3131 **7.3.3 City's Rights**

3132 City shall have the right to draw against the faithful performance bond or the letter of credit in the event
3133 of a breach or default of Contractor or the failure of Contractor to perform fully any obligation under
3134 this Agreement. Within five (5) calendar days of receipt of notice from City, Contractor shall renew or
3135 replace such sums of money as needed to bring the faithful performance bond or letter of credit
3136 current.

3137 **7.3.4 Guaranty**

3138 Concurrently with execution of this Agreement, Contractor shall furnish a guaranty of its performance
3139 under this Agreement, in the form of Exhibit E, properly executed by Republic Services, Inc., a Delaware
3140 corporation which, as the ultimate parent company of Contractor, owns all of the issued and
3141 outstanding common stock of Contractor.

ARTICLE 8: CITY'S RIGHT TO PERFORM SERVICE

8.1 Emergency Conditions

The City Manager may declare the existence of an Emergency Condition and shall provide notice as soon as practicable to Contractor of said declaration. Within 72 hours an emergency meeting of the City Council shall be scheduled and consideration of the continuation of an Emergency Condition shall be heard by the City Council. The City Council shall, by resolution, declare the continued existence of the emergency condition, if appropriate, and transmit a certified copy of the resolution to Contractor.

8.1.1 Emergency Operations

The Parties acknowledge that either temporary cessation or cessation of indeterminate duration of the services to be provided by Contractor hereunder may result in conditions detrimental to the public health, safety and welfare and that, in order to protect the public, invoking the extraordinary provisions of this section may be necessary. From and after the declaration of the existence of an Emergency Condition, City or the designee of City (irrespective of whether such designee is another public agency or privately-owned entity) may assume and carry out, as the "Emergency Operator", any or all Collection operations of Contractor hereunder. During the period of the Emergency Condition exists all revenues which, but for the Emergency Condition, would accrue hereunder to Contractor, shall instead accrue and be payable to the Emergency Operator.

8.1.2 Use of Contractor's Facilities

Upon the declaration of the existence of an Emergency Condition pursuant to this Section, Contractor shall make available and relinquish to the Emergency Operator all of Contractor's operable vehicles, equipment, and other facilities necessary or convenient for providing Collection in the Service Area. Further, Contractor shall provide the Emergency Operator access, and/or rights of access, to such transfer station facilities and/or Disposal or Processing facilities available to, or under the control of, Contractor for the transferring and disposal of Discarded Materials, and Contractor shall, to the extent it possesses rights to use such transfer, Disposal, or Processing facilities, assign such rights to the Emergency Operator for use during the existence of the Emergency Condition. Notwithstanding the foregoing provisions of this section, the use of Contractor's vehicles, equipment, and other facilities and the assignment of rights to Contractor shall, in the case of Contractor's insolvency, bankruptcy or other adverse financial condition, be subject to the provisions of the United States Bankruptcy Act (11 U.S.C. §§101 et seq.) to the extent applicable. During the existence of an Emergency Condition the Emergency Operator shall operate, maintain and repair, and adequately insure, without cost to Contractor, Contractor's vehicles, equipment and other facilities used by it. Upon the cessation of the Emergency Condition the right to use such vehicles, equipment and facilities shall expire and the Emergency Operator shall return said vehicles, equipment and facilities to Contractor in a condition substantially the same as that which existed upon acquiring said vehicles, equipment and facilities, ordinary wear and tear excepted.

8.1.3 Indemnification

In the event that an Emergency Operator appointed by City utilizes any facilities and/or equipment of Contractor, City shall defend, indemnify and hold harmless Contractor and its affiliates from and against any and all losses, expenses, liens, claims, demands and causes of action of every kind and character (excluding those based upon the sole active or passive negligence or willful misconduct of Contractor, its

officers, employees and agents) for death, personal injury, property damage or any other liability or damages, including costs, attorneys fees, and settlements arising out of, or in connection with, the use of Contractor's facilities and/or equipment.

8.1.4 Cessation of Emergency

At any time after the Emergency Operator has commenced the Collection of Discarded Materials, City may hold a hearing on the question of the cessation of the Emergency Condition upon giving not less than forth-eight (48) hours' prior written notice to Contractor and the Emergency Operator. At the hearing Contractor, the Emergency Operator, and any and all interested persons shall be given the opportunity to be heard on the question aforesaid. Upon the conclusion of the hearing, City shall determine if the Emergency Condition has ceased. If it is determined that the Emergency Condition has ceased, the City Council shall, by resolution, declare the cessation of the Emergency Condition, and transmit a certified copy of the resolution to Contractor.

8.1.5 Resumption of Service

Upon the declaration of cessation of the Emergency Condition, the Emergency Operator shall return to Contractor its vehicles, equipment, and other facilities acquired and used by it. Further, upon the declaration of cessation of the Emergency Condition, and unless City has terminated this Agreement pursuant to Article 9, Contractor shall recommence its operations hereunder and shall perform all of its duties and obligations in accordance with the provisions hereof, and shall be entitled to all of its rights hereunder, including accrual of revenues for its benefit, from and after the date upon which the Emergency Condition shall be deemed to have ceased.

8.1.6 Limitation

Notwithstanding anything herein contained to the contrary, no Emergency Condition shall exist for more than 180 consecutive days. Upon the expiration of said 180 days, and unless the Emergency Condition has ceased prior thereto, this Agreement shall terminate. In the event of such termination no rights shall accrue to Contractor under this Agreement from and after the date of termination.

8.1.7 City Termination of Agreement

Notwithstanding the provisions of Section 8.1.5., if, upon the cessation of the Emergency Condition, the City Council determines that Contractor is not substantially able to perform its duties and obligations hereunder due to the effects of the Emergency Condition, the City Council may declare this Agreement terminated effective upon the date of the cessation of the Emergency Condition. In the event of such termination no rights shall accrue to Contractor under this Agreement from and after the date of termination.

8.2 Disaster Operations

8.2.1 Availability of Contractor's Personnel and Equipment

In event of wartime, natural, physical or other disaster in or proximate to the City Limits resulting in the declaration of a State of Emergency by the City Manager or City Council, Contractor shall make available to City, at no cost to City, all equipment, vehicles, and/or personnel normally performing services under this Agreement, for emergency operations conducted or directed by the City.

3221 **8.2.2 Temporary Possession and Employment**

3222 City shall have the right to take temporary possession of all such vehicles and equipment made available
3223 by Contractor, and to temporarily employ all such Contractor personnel as emergency operations forces
3224 of City, under the direction and control of the City.

3225 **8.2.3 Use of Additional Equipment**

3226 Contractor may make available, in addition to the vehicles, equipment, and personnel provided in
3227 Section 8.2.1 above, equipment, vehicles, and personnel from those Contractor operations and
3228 resources not otherwise serving City pursuant to this Agreement, to the extent necessary to conduct
3229 effective Discarded Materials Collection and removal services during any declared State of Emergency,
3230 subject to the direction and control of the City.

3231 **8.2.4 Reimbursement**

3232 City shall not be required to compensate Contractor in any manner or form for Contractor's provision of
3233 Equipment, vehicles, or personnel normally performing services under this Agreement within the City
3234 Limits, when made available during a declared State of Emergency. When additional equipment,
3235 vehicles, or personnel are provided during such an emergency, pursuant to Section 8.2.3 above, City
3236 shall compensate Contractor for actual expenses incurred by Contractor in providing such equipment,
3237 vehicles, and/or personnel upon submission by Contractor to City of detailed records of costs and
3238 expenses actually borne by Contractor, and upon approval by the appropriate Federal agency of City's
3239 reimbursement of expenses incurred by Contractor during such State of Emergency.

3240 **8.2.5 Indemnity**

3241 In the event of a declared State of Emergency during which City takes possession of and utilizes the
3242 equipment, vehicles and/or personnel of Contractor pursuant to this Section 8.2, City agrees to
3243 indemnify and defend Contractor and its officers, directors, agents, and employees, and hold such
3244 parties harmless against all actions, suits, liabilities, costs, and expenses (including reasonable attorneys'
3245 fees and costs of defense) arising out of or related to City's possession and operation of all Contractor's
3246 equipment, vehicles, and facilities utilized by City to render services during any such State of Emergency.

ARTICLE 9: DEFAULT, REMEDIES, AND LIQUIDATED DAMAGES

9.1 Right to Demand Assurances of Performance

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

If Contractor: (i) is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing or other concerted job action; (ii) appears in the reasonable judgment of City to be unable to regularly pay its bills as they become due; or, (iii) is the subject of a civil or criminal judgment or order entered by a Federal, State, regional or local agency for violation of an Applicable Law, and City believes in good faith that Contractor's ability to perform under this Agreement has thereby been placed in substantial jeopardy, City may, at its sole option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance as City believes in good faith is reasonably necessary in the circumstances to evidence continued ability to perform under this Agreement. If Contractor fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by City, such failure or refusal shall be an event of default for purposes of Section 9.2.

9.2 Right to Terminate Upon Default

City may terminate this Agreement upon Contractor's default of any material duty or obligation of Contractor under this Agreement and Contractor's failure to cure such default within thirty (30) calendar days of City's written notice to Contractor of such default. If the default is not capable of cure within said thirty (30) calendar days, Contractor shall provide written notice to City together with a schedule of cure within fifteen (15) calendar days of City's notice of default, shall begin action to cure the default within said thirty (30) calendar days, and shall diligently proceed to cure the default. City may accept Contractor's schedule of cure, may make a written demand that Contractor cure the default within a time period set by City, or may terminate this Agreement at the end of the thirty-day default period.

9.3 Immediate Termination

City may terminate this Agreement immediately upon written notice to Contractor in the event Contractor fails to provide and maintain the performance bond as required by this Agreement, Contractor fails to obtain or maintain the insurance policies and endorsements as required by this Agreement or Contractor fails to provide the proof of insurance as required by this Agreement.

9.4 Bankruptcy or Insolvency of Contractor

City may terminate this Agreement immediately upon written notice to Contractor upon the occurrence of any of the following and Contractor's failure to provide adequate assurance that any of the following can be removed within thirty (30) calendar days of City's demand for such assurance: (1) the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Contractor; (2) Contractor's general assignment of its assets for the benefit of Contractor's creditors; (3) a court entry of any decree or order adjudging Contractor to be insolvent or bankrupt; (4) a court entry of any decree or order approving as properly filed a petition seeking reorganization of Contractor or an

arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any State; or (5) a determination by the City Manager, based upon a statement prepared by an independent certified public accountant mutually agreed upon by Contractor and the City, that there is a reasonable probability that Contractor's financial capability to perform this Agreement is materially impaired.

9.5 Authority to Terminate

The City Manager of the City of Daly City is authorized to terminate this Agreement on behalf of City. Any termination of this Agreement under this Article 9 shall not relieve Contractor of the obligation to pay any fees, taxes or other charges then due to City nor relieve Contractor of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve Contractor from any claim for damages previously accrued or then accruing against Contractor, nor shall any termination relieve the Contractor from performing Contractor's obligations under Section 11.11 or to perform any other action expressed or implied to be required after termination of this Agreement. City shall pay to Contractor any amounts due to Contractor for the performance of services under this Agreement through the effective date of termination even though those services may be billed and collected by City following termination of this Agreement.

9.6 Termination Cumulative

City's right to terminate this Agreement is cumulative to any other rights and remedies provided by Applicable Law or by this Agreement.

9.7 Service Complaint and Penalties

In the event Contractor fails to provide Collection services as required under this Agreement, or where multiple complaints from a location or locations occur within a 30 day period, City may (but shall have no obligation to), and without waiving or relieving Contractor of its obligation to provide such services, make such payment or perform such other act as City deems appropriate to effectuate such services. Contractor shall reimburse City for any payments made or costs incurred by City in effectuating such services plus a fifteen percent (15%) penalty during any period Contractor fails to perform such services. City may deduct the amount of such reimbursement from sums otherwise due to Contractor under this Agreement. Further, in response to multiple complaints of non-collection, or failing to provide service to individual addresses, City may withhold two (2) months of the appropriate Discarded Materials billing Rate charged to the Service Recipient from revenue due to Contractor for each and every complaint during that period. Such penalty shall occur when in the opinion of the City complaints of non-collection are valid and their frequency and nature are such as to result in a degradation of performance under this Agreement.

9.8 Withholding of Monthly Payment and Nonrefundable Charges

If Contractor fails to perform any of the following in accordance with the terms of this Agreement, City may, in addition to any other remedies provided by Applicable Law or this Agreement, 1) withhold the following amounts from payment(s) otherwise due from City to Contractor until such time as Contractor performs in accordance with this Agreement; and 2) impose the following nonrefundable charges on Contractor. Except for items A., G., and J. below, the notice and cure provisions of section 9.2 shall apply.

- 3326 A. Maintenance of Contractor's workplace for customer relations as required under Section 4.5:
3327 Withholding of ten thousand dollars (\$10,000) per month and a nonrefundable charge of one
3328 hundred dollars (\$100) per day.
- 3329 B. Distribution of start-up materials as required under Section 4.6: Withholding of ten thousand
3330 dollars (\$10,000) per month and a nonrefundable charge of one hundred dollars (\$100) per day.
- 3331 C. Submission of complete and accurate reports (monthly, quarterly, and annual) as required
3332 under Article 4.3: Withholding of ten thousand dollars (\$10,000) per month and a
3333 nonrefundable charge of two hundred (\$200) per day.
- 3334 D. Delivery of Recyclables bins as required under Section 3.5.2: Withholding of ten thousand
3335 dollars (\$10,000) per month and a nonrefundable charge of one hundred dollars (\$100) per day.
- 3336 E. Submission of data/documentation for the transition to the next Contractor as required under
3337 Section 11.11: Withholding of ten thousand dollars (\$10,000) per month and a nonrefundable
3338 charge of two hundred dollars (\$200) per day.
- 3339 F. Use of Collection vehicles meeting the noise limitations and other requirements required under
3340 Section 3.8.5: Withholding of ten thousand dollars (\$10,000) per month and a nonrefundable
3341 charge of two hundred dollars (\$200) per day.
- 3342 G. Use of Collection vehicles not meeting the State of California vehicle emission standards:
3343 Withholding of ten thousand dollars (\$10,000) per month and a nonrefundable charge of two
3344 hundred dollars (\$200) per day.
- 3345 H. Contractor's final annual report: Withholding of twenty-five thousand dollars (\$25,000) per
3346 month and a nonrefundable charge of two hundred dollars (\$200) per day.
- 3347 I. Other material provisions of this Agreement: Withholding of ten thousand dollars (\$10,000) per
3348 month and a nonrefundable charge of one hundred dollars (\$200) per day.
- 3349 J. Failure to meet Diversion requirements of Section 2.10.2:
- 3350 i. Achieve and maintain a Diversion rate of 30 percent by no later than July 1, 2017:
- 3351 a. For months July through September, 2017: Withholding of one thousand dollars
3352 (\$1,000) per month and a nonrefundable charge of fifty dollars (\$50) per day.
- 3353 b. For months October through December, 2017: Withholding of two thousand five
3354 hundred dollars (\$2,500) per month and a nonrefundable charge of two hundred
3355 dollars (\$200) per day.
- 3356 c. For months January through June, 2018: Withholding of five thousand dollars (\$5,000)
3357 per month and a nonrefundable charge of five hundred dollars (\$500) per day.
- 3358 ii. Maintain a minimum Diversion rate of 33 percent from July 1, 2018 through June 30, 2019:
- 3359 a. Withholding of ten thousand dollars (\$10,000) per month and a nonrefundable charge
3360 of one thousand dollars (\$1,000) per day.
- 3361 iii. Achieve and maintain a Diversion rate of 36 percent by July 1, 2019:
- 3362 a. For months July through September, 2019: Withholding of one thousand dollars
3363 (\$1,000) per month and a nonrefundable charge of fifty dollars (\$50) per day.

- 3364 b. For months October through December, 2019: Withholding of two thousand five
3365 hundred dollars (\$2,500) per month and a nonrefundable charge of two hundred
3366 dollars (\$200) per day.
- 3367 c. For months January through June, 2019: Withholding of five thousand dollars (\$5,000)
3368 per month and a nonrefundable charge of five hundred dollars (\$500) per day.
- 3369 iv. Maintain a minimum Diversion rate of 40 percent by July 1, 2020.:
- 3370 a. Withholding of ten thousand dollars (\$10,000) per month and a nonrefundable charge
3371 of one thousand dollars (\$1,000) per day.
- 3372 v. Achieve and maintain a Diversion rate of 43 percent by July 1, 2021:
- 3373 a. For months July through September, 2021: Withholding of one thousand dollars
3374 (\$1,000) per month and a nonrefundable charge of fifty dollars (\$50) per day.
- 3375 b. For months October through December, 2021: Withholding of two thousand five
3376 hundred dollars (\$2,500) per month and a nonrefundable charge of two hundred
3377 dollars (\$200) per day.
- 3378 c. For months January through June, 2021: Withholding of five thousand dollars (\$5,000)
3379 per month and a nonrefundable charge of five hundred dollars (\$500) per day.
- 3380 K. Additional performance standards and liquidated damages as delineated in Exhibit C.
3381 Contractor and City agree that such withholdings and nonrefundable charges are a reasonable
3382 estimate of the damages suffered by City as a result of the Contractor's failure to perform and
3383 that such withholdings and charges shall not be considered a penalty. City shall make payment
3384 to Contractor of any withheld amounts (other than nonrefundable charges) within thirty (30)
3385 days following City's receipt of evidence satisfactory to City that Contractor has performed the
3386 services for which payment was withheld. No interest shall be paid on withheld amounts.

3387 9.9 Excuse from Performance

- 3388 A. **Force Majeure.** Neither Party shall be in default of its obligations under this Agreement in the
3389 event, and for so long as, it is impossible or extremely impracticable for it to perform its
3390 obligations due to an "act of God" (including, but not limited to, flood, earthquake or other
3391 catastrophic events), war, insurrection, riot, labor unrest of other than the Party's employees
3392 (including strike, work stoppage, slowdown, sick out, picketing, or other concerted job action), or
3393 other similar cause not the fault of, and beyond the reasonable control of, the Party claiming
3394 excuse (each, an event of "Force Majeure"). A Party claiming excuse under this section must (i)
3395 have taken reasonable precautions, if possible, to avoid being affected by the cause, and (ii) notify
3396 the other party in writing as provided in subsection C.
- 3397 B. **Obligation to Restore Ability to Perform.** Any suspension of performance by a Party pursuant to
3398 this section shall be only to the extent, and for a period of no longer duration than, required by
3399 the nature of the event, and the Party claiming excuse shall use its best efforts to remedy its
3400 inability to perform as quickly as possible and to mitigate damages that may occur as result of the
3401 event.
- 3402 C. **Notice.** The Party claiming excuse shall deliver to the other Party a written notice of intent to
3403 claim excuse from performance under this Agreement by reason of an event of Force Majeure.

3404 Notice required by this section shall be given promptly in light of the circumstances, but in any
3405 event not later than five (5) days after the occurrence of the event of Force Majeure. Such notice
3406 shall describe in detail the event of Force Majeure claimed, the services impacted by the claimed
3407 event of Force Majeure, the expected length of time that the party expects to be prevented from
3408 performing, the steps which the party intends to take to restore its ability to perform, and such
3409 other information as the other party reasonably requests.

3410 D. **Post-Collection Facilities.** The above provisions shall apply to Contractor's subcontracts with
3411 Approved and Contingent Facility Operators to the same extent as set forth above (with the
3412 "Parties," in such case, being Contractor, on the one hand, and the respective Approved or
3413 Contingent Facility Operator, on the other hand).

ARTICLE 10: REPRESENTATIONS AND WARRANTIES

The Parties, by acceptance of this Agreement, represent and warrant the conditions presented in this Article.

10.1 Contractor's Corporate Status

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

10.2 Contractor's Corporate Authorization

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

10.3 Agreement Will Not Cause Breach

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

10.4 No Litigation

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

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

10.5 No Adverse Judicial Decisions

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

3447 **10.6 No Legal Prohibition**

3448 To the best of each Party's knowledge, after reasonable investigation, there is no Applicable Law in
3449 effect on the date that Party signed this Agreement that would prohibit the performance of either their
3450 obligations under this Agreement and the transactions contemplated hereby.

3451 **10.7 Contractor's Ability to Perform**

3452 Contractor possesses the business, professional, and technical expertise to perform all services,
3453 obligations, and duties as described in and required by this Agreement including all exhibits thereto.
3454 Contractor possesses the ability to secure equipment, facility, and employee resources required to
3455 perform its obligations under this Agreement.

ARTICLE 11: OTHER AGREEMENTS OF THE PARTIES

11.1 Independent Contractor

In the performance of services pursuant to this Agreement, Contractor shall be an independent Contractor and not an officer, agent, servant or employee of City. Contractor shall have exclusive control over the details of the services and work performed and over all persons performing such services and work. Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Neither Contractor nor its officers, employees, agents, contractors or subcontractors shall obtain any right to retirement benefits, Workers' Compensation benefits, or any other benefits which accrue to City employees and Contractor expressly waives any claim it may have or acquire to such benefits.

11.2 Compliance with Law

In the performance of this Agreement, Contractor shall comply with all Applicable Laws, regulations, ordinances and codes of federal, state and local governments, including without limitation the Municipal Code of the City of Daly City.

11.3 Law to Govern and Interpretation

The laws of the State of California shall govern the rights, obligations, duties and liabilities of City and Contractor under this Agreement and shall govern the interpretation of this Agreement.

11.4 Venue

Any litigation between City and Contractor concerning or arising out of this Agreement shall be filed and maintained exclusively in the Municipal or Superior Courts of San Mateo County, State of California, or in the United States District Court for the Northern District of California to the fullest extent permissible by Applicable Law. Each Party consents to service of process in any manner authorized by California law.

11.5 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.

11.6 Assignment

The experience and expertise of Contractor are material considerations for this Agreement. Contractor shall not assign, transfer, or sell any of Contractor's rights nor delegate any of Contractor's duties under this Agreement without the express prior written consent of City. Any attempt to so assign Contractor's franchise rights or delegate Contractor's duties shall be void and of no force or effect.

The use of a subcontractor to perform services under this Agreement shall not constitute delegation of Contractor's duties. The use of a subcontractor other than those parties initially listed in Exhibit J Approved Collection Subcontractors and Exhibit K Approved Post-Collection Facilities may be allowed provided that Contractor has received the prior written authorization of City to subcontract such services, and in the case of a non-affiliate the City has approved the subcontractor who will perform such services.

Contractor shall be responsible for directing the work of Contractor's subcontractors and any compensation due or payable to Contractor's subcontractors shall be the sole responsibility of Contractor. The City shall have the right to require the removal of any approved subcontractor, Approved Facility, or Contingent Facility for reasonable cause.

11.7 No Third Party Beneficiaries

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

11.8 Permits and Licenses

Contractor shall obtain, and shall maintain throughout the term of this Agreement, all necessary permits, licenses and approvals required for Contractor to perform the work and services agreed to be performed by Contractor pursuant to this Agreement, including a Daly City business license. Contractor shall show proof of such permits, licenses or approvals and shall demonstrate compliance with the terms and conditions of such permits, licenses and approvals upon request by the City.

11.9 Ownership of Written Materials

All reports, documents, brochures, public education materials, and other written, printed or photographic materials developed by City or Contractor in connection with the services to be performed under this Agreement, whether developed directly or indirectly by City or Contractor, shall be and shall remain the property of City without limitation or restriction on the use of such materials by City. Contractor shall not use such materials in connection with any project not connected with this Agreement without the prior written consent of the City.

11.10 Contractor's Records

Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, tonnages, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City and the Collection and disposition of Discarded Materials for a minimum period of three (3) years, or for any longer period required by Applicable Law, from the date of final payment to Contractor pursuant to this Agreement. Contractor shall maintain all documents and records that demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by Applicable Law, from the date of termination or completion of this Agreement. Any records or documents required to be maintained pursuant to this Agreement shall be maintained in a clear and organized manner, and be made available for inspection or audit, at any time during regular business hours, upon written request by the City. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in this Agreement. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Contractor's business, City may, by written request or demand, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest

11.11 Transition to Next Contractor

In the event Contractor is not awarded an agreement to continue to provide services following the expiration or earlier termination of this Agreement, Contractor shall cooperate fully with City and any subsequent Contractor(s) to assure a smooth transition of services described in this Agreement. Such cooperation shall include but not be limited to transfer of computer data, files and tapes; providing routing information, route maps, vehicle fleet information, and lists of Service Recipients; providing a complete inventory of Solid Waste Containers; providing adequate labor and equipment to complete performance of all services required under this Agreement; taking all actions necessary to transfer possession and ownership of Containers to City at City's option, including transporting such Containers to a location designated by City; coordinating Collection of materials set out in new Collection Containers if new Containers are provided for in a subsequent agreement; and providing other reports and data required by this Agreement.

11.12 Reserved**11.13 City Ownership of Containers at End of Term**

Upon expiration or early termination of Agreement, all Carts and Bins except temporary Debris Boxes purchased and put into service at Service Recipient's Premises during the Term of the Agreement shall become property of the City at no cost to the City if such Containers are fully depreciated. All Carts and Bins except temporary Debris Boxes purchased and put into service at Customers' Premises during the Term of the Agreement that have not been fully depreciated shall be available to the City, at the City's option, at a cost reflecting the net book value.

At its sole discretion, the City may elect not to exercise its rights with regards to this section and, in such case the Containers shall remain the property of the Contractor upon the expiration date of this Agreement or date of its earlier termination of this Agreement. In such case, Contractor shall be responsible for outstanding depreciation and for removing all Containers in service from premises within fourteen (14) Business Days of the expiration date or early termination date of this Agreement.

11.14 Waiver

The waiver by City or Contractor of any breach or violation of any term, covenant or condition of this Agreement shall not be deemed to be a waiver of any other term, covenant or condition or of any subsequent breach or violation of the same or of any other term, covenant or condition. The subsequent acceptance by City of any fee, tax, or any other moneys which may become due from Contractor to City shall not be deemed to be a waiver by City of any breach or violation of any term, covenant or condition of this Agreement.

11.15 Notices

Except as provided in Article 7 - Indemnification, Insurance and Bond, all notices and other communications required or which may be given under this Agreement shall be deemed given when properly addressed and deposited in the United States mail or when personally delivered to the Parties as specified in this Section. All notices or other communications sent by mail shall be sent postage prepaid and return receipt requested to the address specified below:

To City: City Manager
City of Daly City
333-90th Street
Daly City, CA 94015

To Contractor: _____

Either Party may designate a different mailing address by providing notice to the other Party as provided in this Section. Notice by City to Contractor of a missed pick-up or a service recipient problem or complaint may be given to Contractor orally by telephone at Contractor's local office with written confirmation sent by mail or email to Contractor within forty-eight (48) hours of the oral notification.

11.16 Representatives of the Parties

References in this Agreement to the "City" shall mean the City's elected body and all actions to be taken by City except as provided below. The City may delegate, in writing, authority to a designated contract manager and/or to other City officials and may permit such officials, in turn, to delegate in writing some or all of such authority to subordinate officers. The Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

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

ARTICLE 12: MISCELLANEOUS

12.1 Entirety

This Agreement and the exhibits attached hereto represent the entire agreement of City and Contractor with respect to the services to be provided under this Agreement. No prior written or oral statement or proposal shall alter any term or provision of this Agreement.

12.2 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.

12.3 References to Laws

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

12.4 Amendment

This Agreement may be amended or modified only by written agreement duly authorized by Contractor and the City and executed by their authorized representatives.

12.5 Severability

Should one or more of the provisions of this Agreement be held by any court to be invalid, void or unenforceable, the remaining provisions shall nevertheless remain and continue in full force and effect, provided that the continuation of such remaining provisions does not materially change the duties or obligations of either Party from those duties or obligations originally contemplated by this Agreement.

12.6 Counterparts

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

Remainder of page intentionally left blank

12.7 Exhibits

Each of the Exhibits identified as Exhibit “A” through “K” is attached hereto and incorporated herein and made a part hereof by this reference. In the event of a conflict between the terms of this Agreement and the terms of an Exhibit, the terms of this Agreement shall control.

WITNESS the execution of this Agreement on the dates set forth below.

APPROVED AS TO FORM:

CITY OF DALY CITY,
a Municipal corporation

Rose Zimmerman
CITY ATTORNEY

Patricia E. Martel
CITY MANAGER

Date: _____

ALLIED WASTE SERVICES OF NORTH AMERICA, LLC

By:

Date: _____

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