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AGREEMENT
FOR THE PROVISION OF
SOLID WASTE COLLECTION SERVICES
Executed Between the
City of El Cerrito and East Bay Sanitary, Inc.

June 1, 2022

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94 This Agreement is effective as of June 1, 2022 ("Effective Date"), and is between the City of El Cerrito, a
95 charter city of the State of California, referred to as "City" and East Bay Sanitary Co., Inc. referred to as
96 "Contractor". This Agreement supersedes all prior Agreements between the City and Contractor, with the
97 exception of the Street Sweeping Agreement, dated November 25, 2014.

98
99 Now, therefore, in consideration of the mutual covenants, agreements and consideration contained in this
100 Agreement, City and Contractor agree as follows:

101 **Article 1. Definitions**

102 For the purpose of this Collection Services Agreement, referred to as "Agreement", the definitions contained
103 in this Article apply unless otherwise specifically stated. When not inconsistent with the context, words used
104 in the present tense include the future, words in the plural include the singular, and words in the singular
105 include the plural.

106 1.01 AB 341. "AB 341" means State of California Assembly Bill No. 341 approved October 5,
107 2011. AB 341 requires businesses, defined to include commercial or public entities that generate more
108 than 4 cubic yards of commercial Solid Waste per week or residential dwellings of five (5) units or more,
109 to arrange for Recycling services.

110 1.02 AB 827. "AB 827" means State of California Assembly Bill No. 827 approved October 02,
111 2019. AB 827 requires businesses that are mandated to recycle under AB 341 ("MCR") and/or mandated
112 to recycle Organic Waste under AB 1826 ("MOR") or SB 1383 and that provide customers access to the
113 business, to provide customers with a Recycling bin and/or Organic Waste collection bin for those waste
114 streams that is visible, easily accessible, and adjacent to each Garbage Container.

115 1.03 AB 939. "AB 939" or "The Act" means "The California Integrated Waste Management Act
116 of 1989" codified in part in Public Resources Collection §§ 40000 et seq, as it may be amended and as
117 implemented by the regulations of the California Department of Resources Recycling and Recovery
118 (CalRecycle), or its successor agency.

119 1.04 AB 1594. "AB 1594" means State of California Assembly Bill No. 1594 approved
120 September 28, 2014. AB 1594 provides that as of January 1, 2020, the use of Green Waste as Alternative
121 Daily Cover does not constitute diversion.

122 1.05 AB 1826. "AB 1826" means State of California Assembly Bill No. 1826 approved
123 September 28, 2014. AB 1826 requires each jurisdiction, on and after January 1, 2016, to implement an
124 Organic Waste recycling program to divert from the landfill Organic Waste from businesses. Each business
125 meeting specific Organic Waste or Solid Waste generation thresholds phased in from April 1, 2016, to
126 January 1, 2020, is required to arrange for Organic Waste recycling services.

127 1.06 AB 3036. "AB 3036" means State of California Assembly Bill No. 3036 approved
128 September 27, 2018. AB 3036 prohibits a County, City, District, or local government agency from
129 subjecting the hauling of certain byproducts from the processing of food or beverages to an exclusive
130 agreement, contract, license, or permit.

131 1.07 Agreement. "Agreement" means this written agreement between the City and the
132 Contractor covering the work to be performed and all contract documents attached to the agreement and
133 made a part thereof.

134 1.08 Agreement Administrator. "Agreement Administrator" means the Public Works Director, or
135 designee, designated to administer and monitor the provisions of the Agreement.

136 1.09 Agreement Year. "Agreement Year" means each twelve (12) month period from May 1 to
137 April 30 during the term of this Agreement.

138 1.10 Applicable Law. "Applicable Law" means all laws, regulations, rules, orders, judgments,
139 decrees, permits, approvals, or other requirement of any federal, state, county, city, and local
140 governmental agency having jurisdiction over the collection and disposition of Garbage, Organic Waste,
141 and Construction and Demolition Waste.

142 1.11 Assignee. "Assignee" means any person, company or corporation to whom the rights and
143 obligations of this Agreement are transferred pursuant to Article 32

144 1.12 Bin. "Bin" means a container designed or intended to be mechanically serviced by a
145 commercial Collection Vehicle. It shall be designed to hold from one (1) to two (2) cubic yards of material
146 with the lid properly closed.

147 1.13 Biohazardous or Biomedical Waste. "Biohazardous or Biomedical Waste" means any
148 waste which may cause disease or reasonably be suspected of harboring pathogenic organisms; included
149 is waste resulting from the operation of medical clinics, hospitals, and other facilities processing wastes
150 which may consist of, but are not limited to, human and animal parts, contaminated bandages, pathological
151 specimens, hypodermic needles, sharps, contaminated clothing and surgical gloves.

152 1.14 Business Day. "Business Day" means any Monday through Friday, excluding any Holidays.

153 1.15 Calendar Year. "Calendar Year" means each twelve (12) month period from January 1 to
154 December 31.

155 1.16 California Code of Regulations. "California Code of Regulations" or "CCR" means the
156 State of California Code of Regulations. CCR references in this Agreement are preceded with a number
157 that refers to the relevant Title of the CCR (e.g., "14 CCR" refers to Title 14 of CCR).

158 1.17 Cart. "Cart" means a receptacle with a rated capacity of at least twenty (20) and not more
159 than sixty-four (64) gallons, having a hinged tight-fitting lid and wheels, that is provided by the Contractor,
160 approved by the City, and used by Service Recipients for collection, accumulation, and removal of Solid
161 Waste from commercial, industrial, or residential premises in connection with Collection Services.

162 1.18 CERCLA. "CERCLA" means the Comprehensive Environmental Response, Compensation
163 and Liability Act of 1980, 42 U.S.C. Sections 9601 and following, as may be amended and regulations
164 promulgated thereunder.

165 1.19 Change in Control. "Change in Control" means when Mark Figone and/or Cara Figone
166 and/or their lineal descendants shall cease to have the power, directly or indirectly, to control the
167 management, operation and policies of the Contractor, whether through the ownership of a majority of
168 voting securities, as trustee, by contract or otherwise.

169 1.20 Change in Law. “Change in Law” means any of the following events or conditions which
170 has a material and adverse effect on the performance by either party of its obligations under this
171 Agreement (except for payment obligations), or on the siting, design, permitting, acquisition, construction,
172 equipping, financing, ownership, possession, management operation or maintenance of the operating
173 assets or providing the Collection Services or other matters to which Applicable Law applies:

174 A. the enactment, adoption, promulgation, issuance, modification, or written change
175 of or in Applicable Law, including but not limited to new or adjusted fees and charges imposed by the State
176 of California or the U.S. Federal government, directly related to the collection, handling, processing,
177 Recycling or disposal of Garbage, Organic Waste, or C&D, or the enactment, adoption, promulgation,
178 issuance, modification, or written change in administrative or judicial interpretation on or after Effective Date
179 of any Applicable Law;

180 B. the order or judgment of any Governmental Body, on or after the Effective Date, to
181 the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of
182 reasonable diligence of the City or of the Contractor, whichever is asserting the occurrence of a Change in
183 Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such
184 order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission
185 or lack of reasonable diligence; or

186 C. the denial of an application for, delay in the review, issuance or renewal of,
187 suspension, termination, interruption or imposition of a new or more stringent condition in connection with
188 the issuance, renewal or failure of issuance or renewal on or after the Effective Date of any Legal
189 Entitlement to the extent that such denial, delay, suspension, termination, interruption, imposition or failure
190 materially and adversely interferes with the performance of this Agreement, of and to the extent that such
191 denial, delay, suspension, termination, interruption, imposition or failure is not the result of willful or
192 negligent action, error or omission or a lack of reasonable diligence of the City or of the Contractor,
193 whichever is asserting the occurrence of a Change of Law; provided, however, that the contesting in good
194 faith or failure in good faith to contest any such denial, delay, suspension, termination, interruption,
195 imposition or failure shall not be construed as such a willful or negligent action, error or omission or lack of
196 reasonable diligence.

197 1.21 City. “City” means the City of El Cerrito, California.

198 1.22 City Facility(ies). “City Facility(ies)” means any building or other site owned or leased by
199 the City.

200 1.23 City Manager. “City Manager” means the City Manager of the City of El Cerrito, or his or
201 her designated representative, or any employee of the City who succeeds to the duties and responsibilities
202 of the City Manager. All references in this Agreement to City Manager mean “City Manager or designee”.

203 1.24 City Service Recipient. “City Service Recipient” means any City Facilities that utilize Bins,
204 Carts, or Roll-Off Containers for the accumulation and set-out of Solid Waste. City Service Recipients
205 are the properties set forth in Exhibit 1 and may be modified by written notice to Contractor by the City.

206 1.25 Collection. “Collection” means the process whereby Residential, Commercial, Roll-off, and
207 City Garbage, Organic Waste, and Construction & Demolition Waste are removed and delivered to a

208 Disposal Facility, Organic Waste Processing Facility, C&D Processing Facility, or other Solid Waste facility
209 as appropriate.

210 1.26 Container. "Container" means a Bin, Cart, or Roll-Off Container that is approved by the
211 Agreement Administrator for use by Service Recipients for Collection Services under this Agreement.

212 1.27 Collection Services. "Collection Services" means all services provided by this Agreement.

213 1.28 Commercial Collection Service. "Commercial Collection Service" means ongoing regularly
214 scheduled collection of Commercial Garbage and Commercial Organic Waste by Contractor from
215 Commercial Service Recipients and the delivery of that Garbage to a Disposal Facility and/or Organic
216 Waste to an Organic Waste Processing Facility.

217 1.29 Commercial Garbage. "Commercial Garbage" means Garbage originating from
218 Commercial Service Recipients.

219 1.30 Commercial Organic Waste. "Commercial Organic Waste" means Organic Waste
220 originating from Commercial Service Recipients.

221 1.31 Commercial Service Recipient. "Commercial Service Recipient" means a firm, partnership,
222 proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall,
223 industrial facility, or a Multi-Family Residential Dwelling, or as otherwise defined in 14 (CCR) Section
224 18982(a)(6). A Multi-Family Residential Dwelling that consists of five (5) or more units is a Commercial
225 Business for purposes of this Agreement.

226 1.32 Collection Vehicle. "Collection Vehicle" means a licensed vehicle that is approved by the
227 Agreement Administrator for use by Contractor for the collection and hauling of Garbage or Organic Waste.

228 1.33 Compactor. "Compactor" means any Container which has a compaction mechanism,
229 whether stationary or mobile. Compactors are most typically Roll-off Containers but may also be Bins.

230 1.34 Compost. "Compost" means the product resulting from the managed and controlled
231 biological decomposition of Organic Waste that is Source Separated from Garbage, or which is
232 separated at a centralized facility.

233 1.35 Composting. "Composting" means the controlled and monitored process of converting
234 Organic Waste into Compost.

235 1.36 Construction and Demolition Waste or C&D. "Construction and Demolition Waste" or "C&D"
236 means Solid Waste consisting of waste building materials, packaging, and rubble resulting from
237 construction, remodeling, repair and demolition operations on pavements, houses, Commercial buildings,
238 and other structures.

239 1.37 Construction and Demolition Waste (or C&D) Processing Facility. "Construction and
240 Demolition Waste Processing Facility" or "C&D Processing Facility" means a State permitted Solid Waste
241 facility which accepts and processes C&D and designated by the City as the destination for C&D Collected
242 pursuant to the terms of this Agreement.

243 1.38 Contamination. "Contamination" means all of the following: (i) materials placed in the
244 Recycling Container that are not identified as acceptable Source Separated Recyclable Materials for the
245 Recycling Container; (ii) materials placed in the Organic Waste Container that are not identified as
246 acceptable Source Separated Organic Waste; (iii) materials placed in the Landfill Container that are

247 acceptable Source Separated Recyclable Materials or Organic Waste that can be placed in the Recycling
248 Container and/or acceptable Source Separated Organic Waste; and (iv) Excluded Wastes placed in any
249 Container, Bin, Cart or Compactor.

250 1.39 Contractor. "Contractor" means the entity that has obtained from the City this Agreement
251 to provide Collection Services.

252 1.40 Contractor's Compensation. "Contractor's Compensation" means the compensation to
253 Contractor via payment of Service Rates by Service Recipients as set forth in Section 4.01 and
254 compensation for Service Charges as set forth in Exhibit 3.

255 1.41 CPI All Other. "CPI All Other" means the Consumer Price Index for All Urban Consumers:
256 All Items in San Francisco-Oakland-Hayward, CA (CBSA), 1982-1984=100, Not Seasonally
257 Adjusted (CUURA422SA0) published by the U.S. Bureau of Labor Statistics ("BLS"). If the index described
258 in the preceding sentence is discontinued, the successor index with which it is replaced shall be used for
259 subsequent calculations. If no successor index is identified by the BLS, the index published by BLS that
260 is most comparable to the discontinued index shall be used.

261 1.42 Dispose or Disposal. "Dispose" or "Disposal" means the final disposition of Garbage at a
262 permitted Landfill or other permitted Solid Waste Disposal Facility, as defined in California Public
263 Resources Code 40192.

264 1.43 Disposal Facility. "Disposal Facility" means a State permitted Solid Waste facility which
265 accepts Garbage for landfill Disposal and designated by the City as the destination for Garbage collected
266 by Contractor pursuant to the terms of this Agreement.

267 1.44 Edible Food. "Edible Food" means food intended for human consumption, or as otherwise
268 defined in 14 CCR Section 18982(a)(18). For the purposes of this Agreement or as otherwise defined in
269 14 CCR Section 18982(a)(18), Edible Food is not Solid Waste if it is recovered and not discarded.
270 Nothing in this Agreement or in 14 CCR, Division 7, Chapter 12 requires or authorizes the recovery of
271 Edible Food that does not meet the food safety requirements of the California Retail Food Code.

272 1.45 Edible Food Recovery. "Edible Food Recovery" means actions to collect and distribute food
273 for human consumption that otherwise would be disposed, or as otherwise defined in 14 CCR Section
274 18982(a)(24).

275 1.46 Effective Date. "Effective Date" means the date designated in the Agreement as the
276 effective date. If no such date is indicated, it shall mean the date on which the Agreement is signed and
277 delivered by the last of the parties to sign and deliver.

278 1.47 Electronic Waste or E-Waste. "Electronic Waste" or "E-Waste" means electronic equipment
279 such as stereos, televisions, computers, VCR's and other similar items.

280 1.48 Excluded Waste. "Excluded Waste" means hazardous substances, Hazardous Waste,
281 infectious waste, designated waste, waste that is volatile, corrosive or infectious, medical waste, regulated
282 radioactive waste, and toxic substances or material that facility operator(s), which receive materials from
283 the City, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or disposal,
284 be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or
285 conditions, waste that cannot be disposed of in Class III landfills or accepted at the facility by permit

286 conditions, waste that in the City's reasonable opinion would present a significant risk to human health or
287 the environment, cause a nuisance or otherwise create or expose the City to potential liability; but not
288 including de minimis volumes or concentrations of waste of a type and amount normally found in Solid
289 Waste after implementation of programs for the safe collection, processing, recycling, treatment, and
290 disposal of batteries and paint in compliance with Sections 41500 and 41802 of the Public Resources
291 Code. Excluded Wastes do not include used motor oil and filters, household batteries, Universal Wastes,
292 and/or latex paint when such materials are defined as allowable materials for collection through the City's
293 collection programs and the Service Recipient has properly placed the materials for collection pursuant to
294 instructions provided by the Contractor.

295 1.49 Exempt Waste. "Exempt Waste" means Biohazardous or Biomedical Waste, Hazardous
296 Waste, sludge, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion
297 engines, lead-acid batteries, dead animals, and those wastes under the control of the Nuclear Regulatory
298 Commission.

299 1.50 Food Waste. "Food Waste" means all edible or inedible food such as, but not limited to,
300 fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, dairy, coffee grounds,
301 and eggshells. Food Waste excludes fats, oils, and grease when such materials are Source Separated
302 from other Food Waste. Food Waste includes food soiled paper, including paper plates, paper cups,
303 napkins, paper bags, and any other items as determined by the City.

304 1.51 Franchise Fee. "Franchise Fee" means a payment that Contractor has voluntarily agreed
305 to pay to City in consideration of the exclusive rights granted by the City under this Agreement. City and
306 Contractor acknowledge and agree that the amount of the Franchise Fee is the result of bona fide, arms-
307 length negotiations between City and Contractor. Contractor further acknowledges and agrees that the
308 amount of the Franchise Fee represents Contractor's independent determination of the market value of
309 the exclusive rights granted by City under this Agreement based upon its knowledge of the amount of fees
310 paid by comparable businesses in the relevant geographic area for comparable exclusive rights.
311 Contractor is not required by this Agreement or any City ordinance, resolution, or regulation to charge the
312 Franchise Fee to Service Recipients. Because the Franchise Fee represents a cost to Contractor in
313 performing services pursuant to this Agreement, Contractor may, in its sole discretion, include an amount
314 equal to the Franchise Fee in Contractor's Compensation.

315 1.52 Garbage. "Garbage" means those elements of the Solid Waste stream designated for
316 Disposal, and excludes Hazardous Waste, Universal Waste, Excluded Wastes, materials designated as
317 Organic Waste or for Recycling or materials which have been separated for Reuse.

318 1.53 Garbage Collection Service. "Garbage Collection Service" means the Collection of
319 Garbage from Service Recipients for delivery to a permitted Disposal facility.

320 1.54 Green Waste. "Green Waste" means Solid Waste consisting of any vegetative waste
321 generated from the maintenance or alteration of residential, commercial, or industrial premises including,
322 but not limited to, grass clippings, leaves, tree trimmings, prunings, brush, weeds, flowers, herbs, and
323 Holiday Trees.

324 1.55 Gross Revenue. "Gross Revenue" means all monetary amounts actually collected or
325 received by Contractor for the provision of Collection Services pursuant to this Agreement, excepting

326 revenues derived from Bin rentals as listed in the Contractor's audited financial statements. Gross
327 Revenue shall include all receipts from Service Recipients including Service Rates, late charges,
328 Contamination charges, Overage charges, and all charges listed in Exhibit 3, including an amount equal
329 to the Franchise Fee, in the event that Contractor elects to include an amount equal to the Franchise Fee
330 in Contractor's Compensation.

331 1.56 Hazardous Waste. "Hazardous Waste" means a waste, or combination of wastes as
332 defined by Code of Federal Regulations, Title 40.

333 1.57 Holiday. "Holiday" means Christmas Day and New Year's Day.

334 1.58 Household Hazardous Waste. "Household Hazardous Waste" means that waste resulting
335 from products purchased by the general public for household use which, because of its quantity,
336 concentration or physical, chemical or infectious characteristics, may pose a substantial known or potential
337 hazard to human health or the environment when improperly treated, disposed or otherwise managed, or,
338 in combination with other Solid Waste, may be infectious, explosive, poisonous, caustic, toxic, or exhibit
339 any of the characteristics of ignitability, corrosivity, reactivity, or toxicity as per California Code of
340 Regulations Title 22, Division 4.5, Chapter 11, Section 66261.3

341 1.59 Integrated Waste Management or IWM Fee. "Integrated Waste Management Fee" or "IWM
342 Fee" means the fee set by resolution of the City Council and paid by Service Recipients for the City's
343 provision of its integrated waste management services.

344 1.60 Large Items. "Large Items" means Solid Waste consisting of discarded White Goods,
345 furniture, tires, carpets, mattresses, and similar large items which do not fit in a regular Container and
346 require special handling due to their size but can be collected and transported without the assistance of
347 special loading equipment (such as forklifts or cranes) and without violating Collection Vehicle load limits.
348 It does not include abandoned automobiles and other vehicles, nor does it include items defined as Exempt
349 Waste.

350 1.61 Non-Collection Notice. "Non-Collection Notice" means a form developed and used by
351 Contractor, as approved by City, to notify Service Recipients of the reason for non-collection of materials
352 set out by the Service Recipient for Collection by Contractor pursuant to this Agreement.

353 1.62 Organic Waste. "Organic Waste" means Solid Waste containing material originated from
354 living organisms and their metabolic waste products, including, but not limited to Food Waste, Green
355 Waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with Food Waste, organic
356 textiles and organic carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids,
357 digestate, and sludges or as otherwise defined in 14 CCR Section 18982(a)(46).

358 1.63 Organic Waste Collection Service. "Organic Waste Collection Service" means the
359 Collection of Organic Waste from Service Recipients for delivery to an Organic Waste Processing Facility.

360 1.64 Organic Waste Processing Facility. "Organic Waste Processing Facility" means a State
361 permitted Solid Waste facility which accepts and processes Organic Waste and designated by the City as
362 the destination for Organic Waste Collected pursuant to the terms of this Agreement.

363 1.65 Overage. "Overage" means excess Garbage and Organic Waste (i) placed inside a
364 Container that prevents the lid on the Container from being completely closed (i.e., lid remains open

365 greater than 45-degrees) or excess materials placed on top of or around a Container and (ii) could
366 potentially result in excess materials spilling/dislodging during collection activity by Contractor's Collection
367 Vehicles.

368 1.66 Premises. "Premises" means any land or building in the City where Garbage or Organic
369 Waste is generated or accumulated.

370 1.67 Recyclable Materials. "Recyclable Materials" means Solid Waste consisting of any material
371 which retains useful properties and can be reclaimed after the production or consumption process.

372 1.68 Recycling. "Recycling" means the process of collecting, sorting, cleansing, treating and/or
373 marketing Recyclable Materials that would otherwise be disposed of in a landfill. The collection,
374 transportation or disposal of Solid Waste not intended for, or capable of, reuse is not Recycling.

375 1.69 Residential Collection Service. "Residential Collection Service" means ongoing regularly
376 scheduled collection of Residential Garbage and Residential Organic Waste by Contractor from
377 Residential Service Recipients and the delivery of that Residential Garbage to a Disposal Facility and/or
378 Organic Waste to an Organic Waste Processing Facility.

379 1.70 Residential Garbage. "Residential Garbage" means Garbage originating from Residential
380 Service Recipients.

381 1.71 Residential Organic Waste. "Residential Organic Waste" means Organic Waste originating
382 from Residential Service Recipients.

383 1.72 Residential Service Recipient. "Residential Service Recipient" means any Premises in the
384 Service Area comprised of one (1) to four (4) dwelling units.

385 1.73 Residue. "Residue" means Solid Waste that is not diverted from landfill disposal after it has
386 been delivered to an Organic Waste Processing Facility for processing for diversion from landfill disposal.
387 Residue does not include Organic Waste that is processed for diversion but has no available markets.

388 1.74 Reuse. "Reuse" occurs when an item of the Solid Waste stream is reused in its
389 manufactured form without reprocessing. Reusable materials include but are not limited to clothing, indoor
390 and outdoor furnishings, clean fill dirt, architectural detailing, art and art supplies, books and antiques.

391 1.75 Roll-off Collection Service. "Roll-off Collection Service" means Collection Service provided
392 by Contractor in Roll-off Containers.

393 1.76 Roll-off Container. "Roll-off Container" means a large container with a capacity of ten (10),
394 twenty (20), thirty (30), or forty (40) cubic yards that is loaded onto a specialized Collection Vehicle.

395 1.77 Roll-off Service Recipient. "Roll-off Service Recipient" means a Service Recipient receiving
396 Roll-off Collection Service.

397 1.78 SB 1383. "SB 1383" means Senate Bill 1383, the Short-lived Climate Pollutant Reduction
398 Act of 2016.

399 1.79 SB 1383 Regulations. "SB 1383 Regulations" means or refers to, for the purposes of this
400 Agreement, the Short-Lived Climate Pollutants: Organic Waste Reduction regulations developed by

401 CalRecycle and adopted in 2020 that created 14 CCR, Division 7, Chapter 12 and amended portions of
402 regulations of 14 CCR and 27 CCR.

403 1.80 Service Area. "Service Area" means that area within the city limits of the City of El Cerrito
404 designated by City as the Service Area.

405 1.81 Service Rate(s). "Service Rate(s)" means the maximum rates authorized by this
406 Agreement, as confirmed by resolution of the City Council, and paid by Service Recipients to Contractor
407 for provision of Collection Services. Service Rates are the means of payment of Contractor's
408 Compensation, which includes compensation for any and all expenses associated with delivery and tipping
409 of Garbage at the Disposal Facility, Organic Waste at the Organic Waste Processing Facility, and C&D at
410 the C&D Processing Facility.

411 1.82 Service Recipient. "Service Recipient" means Residential Service Recipients, Commercial
412 Service Recipients, Roll-off Service Recipients, and City Service Recipients.

413 1.83 Solid Waste. "Solid Waste" has the same meaning as defined in Public Resources Code
414 Section 40191, which defines Solid Waste as all putrescible and nonputrescible solid, semisolid, and liquid
415 wastes, including Garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and
416 construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances,
417 dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable
418 or animal solid and semi-Solid Wastes, and other discarded solid and semi-Solid Wastes, with the
419 exception that Solid Waste does not include any of the following wastes: Hazardous waste, as defined in
420 the Public Resources Code Section 40141; Radioactive waste regulated pursuant to the State Radiation
421 Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and
422 Safety Code); Medical waste regulated pursuant to the State Medical Waste Management Act (Part 14
423 (commencing with Section 117600) of Division 104 of the Health and Safety Code). Untreated medical
424 waste shall not be disposed of in a Solid Waste landfill, as defined in Public Resources Code Section
425 40195.1. Medical waste that has been treated and deemed to be Solid Waste shall be regulated pursuant
426 to Division 30 of the Public Resources Code.

427 1.84 Source Separated. "Source Separated" means materials that have been kept separate
428 from the Solid Waste stream, at the point of generation, for the purpose of additional sorting or processing
429 in order to return them to the economic mainstream in the form of raw material for new, Reused, or
430 reconstituted products, which meet the quality standards necessary to be used in the marketplace, or as
431 otherwise defined in 14 CCR Section 17402.5(b)(4). For the purposes of this Agreement, Source
432 Separated shall include separation of waste and materials into different containers for the purpose of
433 complying with this Agreement.

434 1.85 Term. "Term" means the time period or duration of this Agreement.

435 1.86 Universal Waste or U-Waste. "Universal Waste" or "U-Waste" means hazardous wastes,
436 including, but not limited to, electronic devices, fluorescent lamps, cathode ray tubes, instruments that
437 contain mercury, batteries, and many other items, as determined by the California Department of Toxic
438 Substance Control pursuant to the California Code of Regulations (Title 22 Universal Waste Rule).

439 1.87 Waste Reporting System. “Waste Reporting System” means an online/digital data system
440 designated by the City for recording and documenting outreach, customer service, site visits, service
441 levels, weights and volumes by waste stream, and field issues for compliance, and reporting purposes.

442 1.88 White Goods. “White Goods” means enamel-coated major appliances, such as washing
443 machines, clothes dryers, hot water heaters, stoves, and refrigerators.

444 1.89 Work Day. “Work Day” means any day, Monday through Saturday, that is not a Holiday.

445 1.90 Wood waste. “Wood waste” means Solid Waste consisting of stumps, large branches, tree
446 trunks, and wood pieces or particles that are generated from the manufacturing or production of wood
447 products, harvesting, processing or storage of raw wood materials, or construction and demolition
448 activities.

449 Article 2. Term of Agreement

450 2.01 Term. The term of this Agreement shall begin on June 1, 2022, and extend through May
451 31, 2032.

452 2.02 Automatic Annual Extension of Term. Provided that Contractor is in compliance with the
453 terms and conditions of this Agreement, the Term shall be annually extended for one (1) additional
454 Agreement Year on April 30, 2023, and on April 30 of each succeeding year.

455 2.03 Notice of Non-Extension. The automatic annual extension of Term described in Section
456 2.02 above may be terminated by either party in its sole discretion, without cause, by providing written
457 notice to the other party (a “Notice of Non-Extension”) prior to such annual extension. Such Notice shall be
458 effective on April 30 of the Agreement Year in which the Notice is provided and will only terminate the
459 automatic annual extension described in Section 2.02.

460 2.03 An assignment of this Agreement pursuant to Article 32 shall automatically trigger the non-
461 extension of the Term of this Agreement pursuant to Section 2.03 above, with the Notice of Non-Extension
462 date being the same as the effective date of the assignment of the Agreement. The City may, in its sole
463 discretion, allow the automatic annual extension of this Agreement to continue after an assignment of this
464 Agreement. In the event that the City exercises its discretion to allow the automatic annual extension of this
465 Agreement to continue, it shall provide written notice to the Assignee.

466 2.04 Maximum Term. Notwithstanding Section 2.02 above, the maximum Term of this
467 Agreement shall be twenty-five (25) years through April 30, 2047.

468 2.05 Extension to Maximum Term. On or around May 1, 2036, and provided that Contractor is
469 in compliance with the terms and conditions of this Agreement, the parties shall meet and confer in good
470 faith to determine whether to extend to the maximum Term referenced in Section 2.04 above. In considering
471 whether to extend the maximum Term, the parties shall also conduct a review of the Agreement to
472 determine whether amended or new terms and conditions are needed.

473 Article 3. General Conditions

474 3.01 Grant of Exclusive Agreement. City hereby grants to Contractor, on the terms and
475 conditions set forth herein, the exclusive right and privilege to collect, remove and dispose of, in a lawful
476 manner, Garbage and Organic Waste accumulating in the City’s Service Area that are required to be

477 accumulated and offered for collection to the Contractor in accordance with the City's Municipal Code, for
478 the Term of and within the scope set forth in this Agreement.

479 3.02 Exclusions to Exclusivity.

480 3.02.1 Specialized Materials. If Contractor is unable or unwilling to collect and process for
481 diversion of specialized materials, including, but not limited to, Organic Waste, metals, construction and
482 demolition debris, laboratory waste, pallets and others, and which a third party is able to re-use or recycle,
483 Service Recipients shall have the right to engage the third-party recycler to collect and recycle those source-
484 separated materials provided that the diversion is verified by the City and the third party obtains a City
485 business license.

486 3.02.2 Byproducts of Food and Beverage Processing. Under AB 3036 (2018), certain
487 byproducts from the processing of food or beverages from agricultural or industrial sources, provided they
488 are source-separated and used as animal feed, are exempted from this Agreement. Entities requesting
489 exemption must apply to the City and be any of the following: registered pursuant to Section 110460 of the
490 Health and Safety Code or be exempted from registration pursuant to Section 110480 of the Health and
491 Safety Code or be a beer manufacturer as defined in Section 23012 of the Business and Professions Code,
492 or a distilled spirits manufacturer, as defined in Section 23015 of the Business and Professions Code.

493 3.02.3 Donated Solid Waste. This Agreement shall not prohibit any Service Recipient
494 from donating Organic Waste or Large Items to youth, civic or charitable organizations qualified as such
495 pursuant to Federal law. Organic Waste or Large Items donated pursuant this section must be Source
496 Separated at a premises.

497 3.02.4 Gardening or Landscape Services. This Agreement shall not prohibit a gardening,
498 landscaping, or tree trimming company from removing Green Waste from a premises as an incidental part
499 of a total service offered by that company. This section shall not apply to removal of Green Waste from a
500 premises by a gardening, landscaping, or tree trimming company that is providing a hauling service
501 separately and not as an incidental part of a total service.

502 3.02.5 Sale or Donation of Organic Waste. This Agreement shall not prohibit any person
503 from selling Organic Waste or giving Organic Waste away to persons or entities other than Contractor.
504 However, in either instance: (1) the Organic Waste must be Source Separated from and not mixed with other
505 Solid Waste; and (2) the seller/donor may not pay the buyer/donee any consideration for collecting,
506 processing or transporting such Organic Waste. A discount or reduction in the price for collection, disposal
507 and/or Recycling services for any form of un-segregated or segregated Solid Waste is not a sale or donation
508 of Organic Waste and does not qualify for this exception. However, once Organic Waste has been placed in
509 the Container and the Container set out for Collection, the Organic Waste become the property of Contractor.

510 3.03 Contractor Payments to City.

511 3.03.1 Franchise Fee. Contractor shall pay the City a Franchise Fee equal to fifteen
512 percent (15%) of Gross Revenue. The amount of the Franchise Fee may be adjusted by mutual agreement
513 of the City and Contractor through a written amendment to this Agreement. Contractor shall make monthly
514 payments of the Franchise Fee to the City. Contractor shall calculate and pay the Franchise Fee based on
515 Gross Revenue received from Service Recipients. Contractor shall reconcile Franchise Fee payments to the
516 City for Gross Revenue received during the City's fiscal year (July 1 through June 30) by August 30 of each

517 Calendar Year. In the event that the City and Contractor agree to an adjustment to the amount of the
518 Franchise fee during the term of this Agreement, Contractor may, in its sole discretion, include an amount
519 equal to the adjustment in Contractor's Compensation.

520 3.03.2 Integrated Waste Management Fee. Contractor shall collect Integrated Waste
521 Management Fees (IWM Fees) on its bills. The IWM Fees billed on Contractor's bills shall be those set by
522 City Council resolution. Contractor shall make monthly payments of collected IWM Fees to the City.
523 Contractor shall pay IWM Fees based on IWM Fee payments received from Service Recipients each
524 calendar month. Contractor shall reconcile IWM payments to the City for IWM Fee payments received from
525 Service Recipients during the City's fiscal year (July 1 through June 30) by August 30 of each Calendar
526 Year.

527 3.03.3 Remittances. Franchise Fee and IWM Fees remittances to the City will be
528 accompanied by a report, prepared in a format acceptable to City Manager, setting forth the basis, and
529 calculations used for computing the amount paid to the City. The figures used shall be taken from the general
530 books of account of the Contractor. All supporting documentation must be retained by the Contractor.

531 (a) If the Franchise Fee and IWM Fees remittances to the City are not paid by the date
532 set by this Agreement, then in addition to the fees, the Contractor shall pay a penalty as
533 specified in Exhibit 2, except to the extent that such lateness is due to uncontrollable
534 circumstances, as defined in Section 19.06 of this Agreement.

535 (b) In addition, the Contractor shall pay interest on all unpaid fees at the rate of six (6)
536 percent per annum or the prime (lending) rate, whichever is higher but not to exceed the
537 maximum legal rate, from the date the fees were due and payable to the date actually paid.

538 (c) If the delay is due to uncontrollable circumstances, Contractor must request
539 approval in writing from the City Manager at least ten (10) business days prior to the date
540 on which fees and reports are due. City shall contact Contractor within five (5) business
541 days of receiving request for submission delay as to whether delay shall be permitted.

542 3.03.4 Taxes and Utility Charges. The Contractor shall pay all Taxes lawfully levied or
543 assessed upon or in respect of the operating assets or the Collection Services, or upon any part thereof or
544 upon any revenues necessary for the operation of the operating assets and the provision of the Collection
545 Services, when the same shall become due.

546 3.03.5 Disputes. In the event of any disputes between the Contractor and the City with
547 respect to the fees described in Section 3.03, the City shall provide the Contractor with written objection
548 within 365 days of the receipt of the remittance report described in Section 3.03.3, indicating the reason the
549 report is disputed and providing all reasons then known to the City for its objection to or disagreement with
550 such amount. If any such amount is adjusted in the City's favor pursuant to agreement, mediation, legal
551 proceeding, or otherwise, the Contractor shall pay the amount of such adjustment to the City, with interest
552 pursuant to Section 3.03.3(b) above from the date such disputed amount was due to the City to the date of
553 payment in full of such amount. Nothing contained in this subsection shall limit the authority of any authorized
554 office of the City or any other governmental agency to raise a further objection to any amount billed by the
555 Contractor pursuant to an audit conducted pursuant to Applicable Law. If the Contractor prevails in the
556 dispute, the Contractor shall have the right to recover from the City the overage paid.

557 3.04 Service Standards. Contractor must perform all Collection Services under this Agreement
558 in a thorough and professional manner while meeting the minimum performance and diversion standards
559 included herein.

560 3.05 Labor and Equipment. Contractor must provide and maintain all labor, equipment, tools,
561 facilities, and personnel supervision required for the performance of Contractor's obligations under this
562 Agreement. Contractor must always have sufficient backup equipment and labor to fulfill Contractor's
563 obligations under this Agreement. No payment for Contractor's Collection Services or for Contractor's supply
564 of labor, equipment, tools, facilities or supervision will be provided or paid to Contractor by any Service
565 Recipient except as expressly provided by this Agreement.

566 3.06 Holiday Service. Contractor is not required to provide Collection Services or maintain office
567 hours on Christmas Day and New Year's Day. In any week in which one of these Holidays falls on a Work
568 Day, Collection Services for the Holiday and each Work Day thereafter will be delayed one Work Day for the
569 remainder of the week with normally scheduled Friday Collection Services being performed on Saturday.
570 Service Recipients subscribed to Saturday service would still receive Saturday service.

571 3.07 Inspections. The City has the right to inspect Contractor's facilities or Collection Vehicles
572 and their contents at any reasonable time while operating inside or outside the City.

573 3.08 Commingling of Materials. Contractor may not at any time commingle Garbage, Organic
574 Waste or C&D pursuant to this Agreement with any other material type Collected by Contractor, without the
575 express prior written authorization of the Agreement Administrator.

576 3.09 Contamination. Contractor must offer Service Recipients the correct combination of Cart
577 and Bin sizes and collection frequency beyond the minimum service requirements as necessary, that
578 matches their unique service needs to reduce Contamination of Recyclable Materials and Organic Waste.
579 Contractor is only required to collect Organic Waste if it has been separated by the Service Recipient from
580 Garbage and Recyclable Materials. Contractor agrees to provide outreach and support to Service
581 Recipients. Additionally, Contractor's route collection personnel will report to Contractor's supervisors if they
582 observe potential Contamination problems, and/or insufficient collection capacity. For purposes of
583 determining if Organic Waste are deemed to be contaminated, if, by visual inspection, Organic Waste is
584 commingled with three percent (3%) by volume of Garbage or Recyclable Materials, then Organic Waste
585 will be deemed to be contaminated and Contractor may take the following steps.

586 3.09.1 First and Second Occurrence. For the first and second occurrence within any one
587 Calendar Year of Contamination for a particular container (i.e., Organic Waste), Contractor must collect the
588 contaminated container (as Garbage) and must affix a City-approved Contamination Violation Notice that
589 meets the requirements of 14 CCR Section 18995.1(a)(4) to the contaminated container which contains
590 instructions on the proper procedures for sorting Organic Waste and Recyclable Materials. Contractor must
591 also notify the Service Recipient by phone, U.S. mail, e-mail, and in person (which may be a container tag
592 or door hanger), that for the third and subsequent incidents of excess Contamination, the Service Recipient
593 may be charged a Contamination charge for the Collection of the contents of the contaminated Container
594 per Exhibit 3 and Contractor may increase the Container size or require an additional Container. Contractor's
595 representative must also contact the Service Recipient by phone, U.S. mail, e-mail, or in person (which may
596 be a container tag) to ensure that they have the appropriate level of service for proper collection of Organic

597 Waste. Contractor must also document all Contamination issues in the Waste Reporting System and provide
598 digital/visual documentation to the Service Recipient that clearly documents the Service Recipient's on-going
599 Contamination problems.

600 3.09.2 Third and Subsequent Occurrences. For the third and subsequent occurrence
601 within any one Calendar Year of Contamination of Organic Waste, Contractor will provide a Contamination
602 Violation Notice that contains instructions on the proper procedures for setting out Recyclable Materials or
603 Organic Waste. Contractor must collect the contaminated Container as Garbage and may charge the Service
604 Recipient a Contamination charge. For any Contamination charge being billed, Contractor must provide
605 digital/visual documentation to the Service Recipient that clearly documents the Service Recipient's on-going
606 Contamination problems. Contractor may increase the Container size, require locking Containers, or
607 increase collection frequency, and impose a Contamination charge on the account for a period of six months
608 or until the Service Recipient has demonstrated no Contamination for a period of three consecutive months.
609 Contractor must document Contamination issues and charges in the Waste Reporting System and notify
610 City within five (5) Business Days if Contractor increases the Container size, requires locking Containers,
611 increases collection frequency for excessive Contamination, or imposes the Contamination charge to the
612 account. City will consult with Contractor and consider, and pursue as applicable, appropriate legal remedies
613 against offending Service Recipients in order to secure discontinuance of the Contamination.

614 3.09.3 Tracking Occurrences of Contamination. Each Contamination occurrence is
615 tracked annually per Calendar Year, and resets at the start of each Calendar Year if Contamination
616 occurrences are not active and consecutive. Where Contamination is occurring, and occurrences are
617 consecutive and unremedied, their count shall continue across Calendar Years until remedy occurs. In this
618 case, once a Service Recipient has demonstrated no Contamination for a period of three consecutive months
619 the tracking calendar will reset.

620 3.09.4 Disputes Over Contamination Charge. If a Service Recipient disputes a
621 Contamination charge (which must be within 30 days of them being charged), Contractor will temporarily
622 halt any Contamination charge and/or increased Container size and/or collection frequency and Contractor
623 may request a ruling by the Agreement Administrator to resolve the dispute. During the pendency of any
624 request, Contractor may restore Container size, quantity, or collection frequency to the prior levels. A request
625 by Contractor to the Agreement Administrator to rule on any such dispute must be filed within ten (10)
626 Business Days of Contractor's halting of Contamination charge and must include written documentation and
627 digital/visual evidence of ongoing overall problems. The Agreement Administrator may request a meeting
628 (in person or video conference or phone) with both the Service Recipient and Contractor to resolve the
629 dispute. Following such a meeting, the Agreement Administrator will rule on the dispute within ten (10)
630 Business Days, and the decision on resolving the dispute between Contractor and Service Recipient will be
631 final. If the ruling is in favor of the Service Recipient, Contractor will credit the disputed Contamination
632 charges. If the ruling is in favor of Contractor, Contractor may charge Service Recipient the prior halted
633 Contamination charge resulting from increasing the Container size or collection frequency.

634 3.10 Overage and Correction Procedures. Contractor shall provide the Service Recipients the
635 correct combination of Containers and collection frequency that matches each Service Recipient's unique
636 service needs to enable clean, efficient, and cost-effective collection of Garbage and Organic Waste. City
637 and Contractor agree that overflow of Garbage or Organic Waste that is not properly in the Service

638 Recipient's Containers may negatively impact public health and safety. If a Service Recipient is found to
639 habitually overflow Container(s), i.e., lid will not close, Contractor may take the steps as listed below to
640 correct Service Recipient's on-going overflow of material.

641 3.10.1 Prior Arrangements. If a Service Recipient has made prior arrangements with
642 Contractor for collection of Garbage or Organic Waste Overages, Contractor must collect such Overages as
643 arranged, and may bill the Service Recipient an Overage charge as set forth in Exhibit 3.

644 3.10.2 No Prior Arrangements. If a Service Recipient has not made prior arrangements
645 with Contractor for collection of an Overage, (i) Contractor may collect such Overage at no additional charge
646 as a courtesy, (ii) Contractor may not collect the Overage and leave a Non-Collection Notice explaining the
647 reason for non-collection of the Overage, or (iii) Contractor may collect the Overage and charge the Service
648 Recipient an Overage charge.

649 3.10.3 Disputes Over Container Overage Charges. Any disputes regarding Overage
650 charges shall follow the same process as for Contamination charges, as described in Section 3.09.4, above.

651 3.11 Ownership of Materials. Except as provided otherwise under Applicable Law, title to
652 Garbage and Organic Waste will pass to Contractor at such time as said materials are set out for Collection.

653 3.12 Ownership of Carts and Bins. Ownership of Garbage and Organic Waste Carts and Bins
654 shall rest with Contractor, except that ownership of Carts and Bins in the possession of a Service Recipient
655 at the expiration of this Agreement shall rest with City. At the time of transfer of such Carts and Bins,
656 Contractor will be reimbursed for the net book value of Garbage and Organic Waste Carts and Bins being
657 transferred. Ownership of Recyclable Material Carts shall rest with the City. At its sole discretion, City may
658 elect not to exercise its rights with regards to this Section and in such case the Carts shall remain the property
659 of Contractor upon termination of this Agreement. In this event Contractor shall be responsible for removing
660 all Carts and Bins in service from the Service Area and reusing or Recycling the Carts and Bins.

661 3.13 Container Cleaning. Contractor shall provide for cleaning of Containers, including Carts,
662 Bins, and Roll-off Containers as requested by Service Recipients or the City per the charges listed in Exhibit
663 3. There shall be no cost to the City for the cleaning of containers in use at City facilities.

664 3.14 Spillage and Litter. Contractor may not litter premises in the process of providing Collection
665 Services or while its Collection Vehicles are on the road. Contractor must transport all materials Collected
666 under the terms of this Agreement in such a manner as to prevent the spilling or blowing of such materials
667 from Contractor's Collection Vehicles. Contractor must exercise all reasonable care and diligence in
668 providing Collection Services so as to prevent spilling or dropping of Garbage or Organic Waste and must
669 immediately, at the time of occurrence, clean up such spilled or dropped Garbage or Organic Waste.

670 3.14.1 Contractor is not responsible for cleaning up sanitary conditions caused by the
671 carelessness of the Service Recipient; however, Contractor must clean up any material or residue that is
672 spilled or scattered by Contractor or its employees.

673 3.14.2 Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting
674 from Contractor's operations or equipment repair must be covered immediately with an absorbent material
675 and removed from the street surface. Contractor must document spillage and notify City's stormwater
676 compliance coordinator within two (2) hours of any spills resulting from Contractor's operations or equipment.

677 When necessary, Contractor must apply a suitable cleaning agent and cleaning technique to the street
678 surface to provide adequate cleaning as approved by the City's stormwater compliance coordinator to be
679 compliant with the City's stormwater permit.

680 3.14.3 The above paragraphs notwithstanding, Contractor must clean up any spillage or
681 litter caused by Contractor within two (2) hours upon notice from the City. If City deems necessary,
682 Contractor must engage third-party environmental clean-up specialist to remove any equipment oil, hydraulic
683 fluids, or any other liquid or debris that remains on street after Contractor's own clean-up efforts. If clean-up
684 is not conducted to satisfaction of City, City has right to engage environmental clean-up specialist to perform
685 additional clean-up work at the expense of Contractor.

686 3.14.4 In the event where damage to City streets is caused by a hydraulic fluid spill (i.e.,
687 any physical damage in excess of a simple cosmetic stain caused by the spill), Contractor shall be
688 responsible for all repairs to return the street to the same condition as that prior to the spill. Contractor shall
689 be responsible for all clean-up activities related to the spill. Repairs and clean-up shall be performed in a
690 manner satisfactory to the City and at no cost to the City.

691 3.14.5 To facilitate immediate cleanup, Contractor's Collection Vehicles must always
692 carry sufficient quantities of absorbent materials along with a broom and shovel.

693 3.15 Regulations and Record Keeping. Contractor must comply with emergency notification
694 procedures required by applicable laws, regulatory requirements, and other sections of this Agreement. All
695 records required by regulations must be maintained at Contractor's office.

696 3.16 Additions and Deletions. Contractor must provide Collection Services described in this
697 Agreement to new Service Recipients in Contractor's Service Area within five (5) Work Days of receipt of
698 notice from the new Service Recipient or the City to begin such Service.

699 3.17 Annexation. If during the term of this Agreement, additional territory within or adjacent to
700 the Contractor's Service Area is acquired by City through annexation, subject to the requirements of Public
701 Resources Code section 49520, Contractor agrees to provide Collection Services in such annexed area in
702 accordance with the provisions set forth in this Agreement. Such Collection Services must begin within five
703 (5) Work Days of receipt of written notice from City, subject to Collection Container availability. Contractor
704 may not begin Collection Service without written authorization from City.

705 3.18 Section 18988.1 and 18988.2 Compliance. Contractor is responsible for delivery of all
706 Garbage, Organic Waste and C&D to properly permitted Disposal Facilities, transfer stations, Organic
707 Waste Processing Facilities, and C&D Processing Facilities as designated by the City. Failure to comply
708 with this provision will result in the levy of an Administrative Charge or Penalty as specified in Exhibit 2 and
709 may result in Contractor being in default under this Agreement. Contractor shall comply with its obligations
710 under this Agreement and the obligations that by operation of law are imposed upon it directly pursuant to
711 the SB 1383 Regulations.

712 3.19 Organic Waste Processing Facility. Contractor must deliver all Organic Waste Collected
713 pursuant to this Agreement to a fully permitted Organic Waste Processing Facility that has been selected
714 by the City. All expenses related to Organic Waste processing will be the sole responsibility of Contractor.
715 Failure to comply with this provision constitutes default under this Agreement. City has the right to designate
716 the Organic Waste Processing Facility and Contractor's Compensation shall be adjusted to reflect any

717 increase or decrease in Contractor's costs resulting from the City's exercise of flow control rights. Contractor
 718 must ensure that the Organic Waste Collected pursuant to this Agreement is not delivered to a Disposal
 719 Facility.

720 3.20 Disposal Facility. Except as set forth below, all Garbage Collected as a result of performing
 721 Garbage Collection Services must be transported to, and disposed of, at the Disposal Facility that has been
 722 selected by the City. All expenses related to Garbage Disposal are responsibility of Contractor. Failure to
 723 comply with this provision constitutes default under this Agreement. City has the right to designate the
 724 Disposal Facility and Contractor's Compensation shall be adjusted to reflect any increase or decrease in
 725 Contractor's costs resulting from the City's exercise of flow control rights.

726 Article 4. Contractor's Compensation and Billing

727 4.01 Contractor's Compensation. Contractor shall be due an annual Contractor's Compensation
 728 for provision of Collection Services, which Contractor shall retain from its collection of Service Rates for
 729 Collection Services. Contractor's Compensation amount shall be calculated annually in accordance with
 730 Section 4.02 and Exhibit 4 to this Agreement. Annual Contractor's Compensation set per Exhibit 4 shall
 731 also be adjusted annually per a balancing adjustment calculated based on over or under collection of
 732 revenues from collection of Service Rates for Collection Services compared to Contractor's Compensation
 733 as set for such Calendar Year. For example, adjusted Contractor's Compensation as set for Calendar Year
 734 2020 was \$4,764,353 and Contractor's collection of revenues from Services Rates for Collection Services
 735 during Calendar Year 2020, based on Contractor's audited financial statement, was \$4,866,026, yielding
 736 over-collection of revenues from Service Rates for Collection Services of \$101,673. That over-collection
 737 was credited to Contractor's Compensation as set for Calendar Year 2022 (calculated per the methodology
 738 in Section 4.02 and Exhibit 4 to be \$5,070,115) yielding an adjusted Contractor's Compensation of
 739 \$4,968,441 due to Contractor in 2022. Contractor's Compensation for Calendar Year 2023 would likewise
 740 be calculated based on 2022 Contractor's Compensation of \$5,070,155 times the Annual Indexed
 741 Adjustment per Section 4.02 and Exhibit 4, plus the difference between the 2021 adjusted Contractor's
 742 Compensation of \$4,717,975 and the actual Service Rate Revenue for Collection Services for Calendar
 743 Year 2021 per the Contractor's audited financial statements. Example calculation table for annual
 744 Contractor's Compensation and adjustments is shown below.

745

	2020	2021	2022
<i>Percentage Increase to Contractor's Compensation (Per Section 4.02)</i>	3.72%	1.64%	2.49%
EBS Annual Revenue Requirement for Garbage and Organic Waste Collection and Franchise Fees	\$ 4,867,115	\$ 4,946,936	\$ 5,070,115
Under (Over) Balancing From 2 years prior	\$ (102,763)	\$ (228,961)	\$ (101,673)
Adjusted Contractor's Compensation after Over (Under) Balancing	\$ 4,764,353	\$ 4,717,975	\$ 4,968,441
Service Rate Revenue for Collection Services per Contractor's Audited Financial Statements	\$ 4,866,026		
Actual Revenues Over (Under) Adjusted Contractor's Compensation	\$ 101,673		

746 4.02 Annual Indexed Adjustment to Contractor's Compensation. Beginning on January 1, 2023,
747 and annually thereafter, Contractor shall, subject to compliance with all provisions of this Section, be eligible
748 for an annual adjustment to Contractors' Compensation via an Indexed Adjustment calculated in
749 accordance with Exhibit 4 to this Agreement. On or before October 1, 2022, and annually thereafter during
750 the Term of this Agreement, Contractor shall deliver to City its application for adjustment to its
751 Compensation, including required financial information and the calculated Indexed Adjustment to
752 Contractor's Compensation. Such financial information shall be in the format as may be mutually agreed
753 on between the City and Contractor. Contractor's failure to provide the financial information shall not
754 preclude the City from applying the Indexed Adjustment using the prior year's financial data, or pro forma
755 data if no prior year financial data is available, if that application would result in a negative adjustment to
756 Contractor's Compensation. If Contractor fails to submit the financial information required by October 1, the
757 City at its sole and reasonable discretion, may consider a late request for the Indexed Adjustment.

758 4.03 Detailed Compensation Review. City reserves the right to conduct a detailed review of
759 Contractor's Compensation no more frequently than every three years. Contractor reserves the right to
760 request a detailed Contractor's Compensation review if variance arises in total actual costs as compared
761 to total indexed costs by greater than 5% in any year. The methodology to be followed, including
762 allowable and non-allowable expenses and expense limitations, is included in Exhibit 5. Contractor shall
763 pay the cost of the review that will be an allowable expense to be recovered during the following year and
764 then removed from Contractor's Compensation.

765 4.04 Extraordinary Adjustment to Contractor's Compensation. If a Change in Law occurs after
766 the Effective Date that City and Contractor agree increases Contractor's allowable costs of operation, then
767 City and Contractor shall negotiate in good faith a reasonable and appropriate adjustment to Contractor's
768 Compensation sufficient to offset Contractor's increased allowable costs of operation resulting from the
769 Change in Law. As an exception to the preceding sentence, Contractor shall not be entitled to an adjustment
770 in Contractor's Compensation with respect to the first \$50,000 of increased costs incurred by Contractor
771 resulting from the Change in Law. The Parties may negotiate and agree on the amount of Contractor's
772 Compensation adjustment pursuant to this Section 4.04 without a Detailed Compensation Review pursuant
773 to Section 4.03. Contractor shall bear the burden of justifying to City any adjustment due to a Change in
774 Law and shall bear its own costs of preparing its request for an adjustment and supporting documentation.
775 City may request from Contractor such further information as it reasonably deems necessary to fully
776 evaluate Contractor's request and make its determination whether Contractor has satisfied its burden,
777 which determination shall not be unreasonably withheld. City shall notify Contractor of its determination
778 within ninety (90) calendar days of receipt of the written request and all other additional information
779 reasonably requested by City. Any such change will be implemented on the following January 1st, or within
780 any other time frame agreed upon between City and Contractor. The City Council shall consider
781 Contractor's request and, based upon the information submitted, confirm whether the adjustment in
782 Contractor's Compensation has been justified as necessary to offset Contractor's increased allowable costs
783 of operation resulting from the Change in Law. The adjustment shall be memorialized in a written
784 amendment to this Agreement.

785 4.05 Performance Standards for Adjustments to Contractor's Compensation. To be eligible for
786 an Indexed Adjustment to Contractor's Compensation under Section 4.02, a detailed Compensation

787 adjustment under Section 4.03, or an extraordinary adjustment under Section 4.04, Contractor must cure
788 any material default under Article 23 of this Agreement for which City has provided notice to Contractor.

789 4.06 Billing and Collection Services. Contractor may bill Service Recipients up to the maximum
790 Service Rates authorized by this Agreement, as confirmed by City Council resolution, and other charges
791 per Exhibit 3. Contractor is responsible for the billing and collection of payments for all Service Rates, IWM
792 Fees, and other charges.

793 4.06.1 Production of Invoices. The Contractor shall prepare, mail or electronically
794 transmit, and collect bills (or shall issue written receipts for cash payments) for services under this
795 Agreement in advance but no less than three (3) times per year. Billing shall not be permitted more than 15
796 days prior to the initiation of collection service period. Bills shall not be subject to late notification or charges
797 until 30 days following the closing day of the service period. Contractor shall include e-mail address on all
798 billing notices and shall accept payment by check, credit card or electronic fund transfer, with no fees
799 payable by the Service Recipient or bill payor. Contractor shall make credit card or electronic fund transfer
800 payment known and available on its website and on all paper or electronic bills. Billings shall include
801 sufficient space on the statement to accommodate up to 35 typed characters as specified by the City. Where
802 it has been determined that a Service Recipient has overpaid for service for any reason, Contractor must
803 provide the Service Recipient a credit against future invoices or a refund (where the account is closing or
804 as selected by the Service Recipient, and where the refund amount exceeds the lesser of the regular
805 invoicing amount or \$200) within thirty (30) days of such determination.

806 4.06.2 Delinquent Service Accounts. Contractor shall be entitled to payment of Service
807 Rates and IWM Fees, and other charges from the Service Recipients. In the event of nonpayment from a
808 Service Recipient, the Contractor may temporarily stop collection as of the second scheduled collection
809 day after the payment due date until payment has been secured, or until the City Manager authorizes a
810 waiver or exemption from Collection Services as provided for in the City's Municipal Code. Prior to stopping
811 Collection Services, the Contractor shall individually notify the Service Recipient in writing or by phone that
812 service will be stopped if payment is not secured. If payment is not secured after thirty (30) days from the
813 payment due date, the Contractor shall notify the City Manager in writing of the failure to pay and the date
814 that Collection Service was stopped. Upon notification, the City Manager will investigate whether the lack
815 of Collection Service constitutes a nuisance as defined in Chapter 8.34 of the City's Municipal Code or
816 whether a waiver or exemption from Collection Service as provided for in the Municipal Code is allowable.
817 The City Manager may require the Contractor to continue to provide Collection Services for occupied
818 residences or businesses and may pursue nuisance abatement pursuant to Chapter 8.34 of the City's
819 Municipal Code. Any cost recovery of abatement costs, as authorized pursuant to Chapter 8.34 of the City's
820 Municipal Code, shall not be recoverable by recording a lien or special assessment against the parcel of
821 land on which the nuisance is or was maintained. Contractor shall provide the City with, and shall post on
822 its website, a written procedure through which a Service Recipient may contest billings.

823 4.06.3 Contractor must report to the Agreement Administrator, bi-monthly, all Service
824 Recipients who have received Collection Service and whose account is over ninety (90) days past due. The
825 Contractor may discontinue service to a Service Recipient who is delinquent in paying for Collection
826 Services rendered no earlier than 60 days after the last day of the billing period or that date on which the
827 billing for the service period is delivered to the Service Recipient, whichever is later. For this purpose,

828 delivery of the billing shall include the date such billing is deposited by to Contractor into the U.S. Mail or
829 delivered electronically. The Contractor shall notify the Service Recipient and the City Manager in writing
830 of its intent to discontinue service not less than 10 business days before such discontinuation shall occur.

831 4.07 Service Rates. Contractor's Compensation is paid to Contractor solely based on collection
832 of Service Rates from Service Recipients. The City and Contractor will annually meet and confer to prepare
833 recommended adjustments to Service Rates that will meet the Contractor's Compensation for the coming
834 Calendar Year. The adjustments to the Service Rates are subject to consideration by the City Council to
835 confirm that they are consistent with this Agreement and meet the Contractor's Compensation for the
836 following Calendar Year. The City Council's determination regarding the proposed adjustments to the
837 Service Rates will be made by resolution of the City Council.

838 4.08 Procedures in Event of Invalidation of Adjustments to Service Rates. In the event that City
839 is unable by operation of Applicable Law to confirm a proposed adjustment to the Service Rates, or some
840 or all of the Service Rates are disallowed by operation of Applicable Law, Contractor will have the right,
841 within thirty (30) days after notice of any such inability to confirm or invalidation of a Service Rate
842 adjustment, to request, in writing, that City negotiate in good faith regarding alternative adjustments to
843 Service Rates and reductions in programs, services, or fees to compensate for any negative impact from
844 the unconfirmed or invalidated Service Rate adjustment. If City fails to commence negotiations in good faith
845 or negotiations are not completed within forty-five (45) days following the date of receipt of Contractor's
846 request, either party may terminate this Agreement no earlier than one hundred and eighty (180) days after
847 written notice to the other.

848 Article 5. Diversion

849 5.01 Warranties and Representations. Contractor warrants that it is aware of and familiar with
850 City's Solid Waste system, and that it has the ability to provide sufficient programs and Collection Services
851 designed to ensure City will meet or exceed the diversion requirements as set forth in this Article 5, as well
852 as the diversion requirements of the Applicable Laws (including, without limitation, amounts of Solid Waste
853 to be diverted, time frames for diversion, and any other requirements) (including AB 939, AB 341, AB 1826,
854 AB 1594, SB 1016, and SB 1383, and all amendments and related subsequent legislation), and that it will
855 do so within Contractor's Compensation as stipulated in this Agreement.

856 5.02 Mutual Cooperation. City and Contractor will reasonably cooperate in good faith with all
857 efforts by each other to meet City's diversion and other compliance requirements imposed by AB 939, AB
858 341, AB 1826, AB 1594, SB 1016, and SB 1383 and other Applicable Laws, and to meet Contractor's
859 obligations under this Article 5. In this regard, City's obligations include, without limitation, making such
860 petitions and applications as may be reasonably requested by Contractor for time extensions in meeting
861 diversion goals, or other exceptions from the terms of Applicable Laws, and to agree to authorize such
862 changes to Contractor's Organic Waste, or Garbage programs as may be reasonably requested by
863 Contractor in order to achieve the minimum requirements of this Article 5.

864 5.03 Guarantee. Except for programs currently required by Applicable Law but not set forth in
865 this Agreement, or programs Contractor is expressly instructed by City not to implement, or Collection
866 Services which a Service Recipient refuses to accept, Contractor shall implement the diversion programs
867 set forth in this Agreement such that: (i) Contractor and City will at all times be in compliance with the
868 requirements of the Applicable Laws applicable to them including specifically AB 939, AB 341, AB 1826,

906 6.04 On-Premises Service. Notwithstanding any term or definition set forth in this Agreement,
907 Contractor must provide Collection of Residential Garbage and Organic Waste on the Residential Service
908 Recipients premises, including side or rear yard, as follows and at no additional Cost to the Service
909 Recipient.

910 6.04.1 Residential Service Recipients where all adult Service Recipients residing
911 therein have disabilities that prevent them from setting their Garbage or Organic Waste Cart at the curb
912 for Collection, and if a request for on-premises service has been made.

913 6.04.2 Residential Service Recipients where all adult Service Recipients residing
914 therein have medical or physical conditions that prevent them from setting their Garbage or Organic
915 Waste Cart at the curb for Collection, as determined by the City and agreed by the Contractor, and if a
916 request for on-premises service has been made.

917 6.04.3 Contractor must provide on-premises Collection Service on the same Work Day
918 that curbside Collection would otherwise be provided to the Residential Service Recipient.

919 6.05 Frequency and Scheduling of Service and Hours of Collection. Residential Collection
920 Service must be provided a minimum one (1) time per week on a scheduled route basis. Residential
921 Collection Service must be scheduled so that all Service Recipients receive Garbage Collection Service
922 and Organic Waste Collection Service on the same Work Day. Residential Collection Service must be
923 provided, commencing no earlier than 6:00 a.m. and terminating no later than 7:00 p.m., Monday through
924 Friday, except for Holidays. The City has the right, in coordination with the Contractor, to determine that the
925 Residential Collection Service commence no earlier than 7:00 a.m. The hours, day, or both of Collection
926 may be extended due to uncontrollable circumstances or conditions with the prior verbal or written consent
927 of the Agreement Administrator.

928 6.06 Manner of Collection. The Contractor must provide Residential Collection Service with as
929 little disturbance as possible and must leave any Garbage or Organic Waste Carts in an upright position
930 and with the lid closed at the same point it was Collected without obstructing alleys, roadways, driveways,
931 sidewalks or mail boxes. Contractor's employees providing Residential Collection Service must follow the
932 regular walk for pedestrians while on private property and may not trespass nor cross property to the
933 adjoining premises unless the occupant or owner of both properties has given permission. Care should be
934 taken to prevent damage to property, including flowers, shrubs, and other plantings.

935 6.07 Non-Collection. Contractor is not required to Collect any Residential Garbage that is not
936 placed in a Garbage Cart. In the event of non-collection, Contractor will follow the steps set forth in Section
937 3.11. Contractor is not required to Collect Organic Waste if the Service Recipient does not segregate the
938 Organic Waste from Garbage or Recyclable Materials. Furthermore, Contractor is not required to Collect
939 Organic Wastes that are contaminated through commingling with Garbage or Recyclable Materials.
940 Contractor will address Contamination in accordance with Section 3.09.

941 6.08 Carts. Contractor shall procure and supply all Residential Service Recipients with new
942 Garbage and Recyclable Materials Carts by April 1, 2023. All Garbage, Organic Waste and Recyclable
943 Materials Carts must meet the color and labelling requirements of 14 CCR 18984 (a)-(c). Specifically,
944 Garbage Carts must be black or grey, Organic Waste Carts must be green, and Recyclable Materials Carts
945 must be blue, and with all such Cart colors subject to pre-approval by the City. Labels on all Carts must be

946 durable long-lasting labels placed on the Cart lids and must specify what materials are allowed to be placed
947 in each container and items that are prohibited container Contamination for each container, subject to pre-
948 approval by the City. Contractor shall continue to procure and supply sufficient Carts as necessary to meet
949 the needs of all Residential Service Recipients for the duration of the Agreement. Contractor shall not be
950 entitled to or eligible for any change in Contractor's Compensation for any expenses related to the Carts
951 purchased pursuant to the first sentence in this Section. Depreciation and interest expenses for all Carts
952 purchased by Contractor pursuant to the first sentence in this Section shall not be included in the amounts
953 of depreciation and interest used for the purposes of determining any Annual Indexed Adjustment to
954 Contractor's Compensation per Section 4.02 nor for the purposes of a Detailed Compensation Review per
955 Section 4.03. City shall directly reimburse Contractor for the following costs associated with the Recyclable
956 Materials Carts (but not the Garbage Carts or Organic Waste Carts) purchased pursuant to the first
957 sentence of this Section: assembly and distribution, reclamation of existing carts for recyclable materials,
958 taxes, and freight. Contractor shall provide City with an invoice showing actual amounts paid for costs to
959 be reimbursed by City pursuant to the immediately preceding sentence.

960 6.09 Cart Exchange. Upon notification to Contractor by City or a Service Recipient that a change
961 in the size of a Cart is requested, Contractor must deliver such Cart to such Service Recipient within five
962 (5) Work Days.

963 6.10 Cart Replacement. Contractor's employees must take care to prevent damage to Carts by
964 unnecessary rough treatment. However, any Cart damaged by the Contractor must be replaced by
965 Contractor, at Contractor's expense, within five (5) Work Days at no cost or inconvenience to the Service
966 Recipient.

967 6.10.1 Upon notification to Contractor by City or a Service Recipient that the Service
968 Recipient's Cart(s) has been stolen or damaged beyond repair through no fault of Contractor, Contractor
969 must deliver a replacement Cart(s) to such Service Recipient within five (5) Work Days. Contractor must
970 maintain records documenting all Cart replacements occurring and report through the Waste Reporting
971 System.

972 6.10.2 Each Service Recipient is entitled to the replacement of one (1) lost, destroyed,
973 or stolen Cart every ten (10) years during the term of this Agreement at no cost to the Service Recipient.
974 Except in the case of a Cart that must be replaced because of damage caused by Contractor or in the case
975 where Contractor elects to replace a Cart rather than repair it on-site, Contractor may bill the Service
976 Recipient for the cost of those replacements in excess of one (1) per type of Cart per Service Recipient in
977 a ten (10) year period, in accordance a Cart Replacement charge per Exhibit 3.

978 6.10.3 Contractor understands and agrees that this provision is intended to be applied
979 on a per Cart type, individual Service Recipient basis and accordingly each Service Recipient could receive
980 up to two (2) replacement Carts, one (1) of each type, every ten (10) years during the term of the contract.

981 6.11 Cart Repair. Contractor is responsible for the repair of Carts, including but not be limited
982 to, hinged lids, wheels and axles. Within five (5) Work Days of notification by the City or a Service Recipient
983 of the need for such repairs, Contractor must repair the Cart or if necessary, remove the Cart for repairs
984 and deliver a replacement Cart to the Service Recipient.

985 6.12 Additional Cart Request. Upon notification to the Contractor by City or a Service Recipient
986 that additional Carts for Garbage or Organic Waste are requested, Contractor shall deliver such Carts to
987 such Service Recipient within five (5) Work Days. Contractor shall also notify the City of any Service
988 Recipient requests for additional Recycling Carts.

989 6.13 Holiday Tree Collection. Contractor must Collect Holiday Trees set out at the curb for
990 Collection during the three-week period beginning December 26th each year during the term of this
991 Agreement. Contractor must deliver the Collected Holiday Trees to the Organic Waste Processing Facility.
992 This annual service will be provided at no additional charge to the Service Recipient. Contractor is not
993 required to divert Holiday Trees with tinsel, flocking or ornaments.

994 6.14 Large Item Collection Service. Contractor must provide Large Item Collection Service to all
995 Residential Service Recipients in the Service Area whose Large Items have been placed within six (6) feet
996 of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location
997 agreed to by Contractor and Service Recipient, that will provide safe and efficient accessibility to
998 Contractor's Collection crew and Collection Vehicle. Up to two (2) times per Calendar Year each Residential
999 Service Recipient is entitled to receive Large Item Collection amounting to a combined annual maximum of
1000 the equivalent of (a) eight (8) cubic yards of uncontainerized Garbage or Organic Waste, or (b) eight (8)
1001 Large Items, or (c) twenty-five (25) 32-gallon bags at no additional cost and expense. For subsequent
1002 collection in any Calendar Year, the Contractor may bill the Service Recipient the charge per Exhibit 3.

1003 6.14.1 Frequency of Service. Large Item Collection Service will be provided on the next
1004 regular Collection day if the request is received at least two (2) Work Days in advance of the next regular
1005 Collection day. The Service Recipient may not commingle Large Items with Garbage.

1006 6.14.2 Large Items Containing Freon. In the event Contractor Collects Large Items that
1007 contain Freon, Contractor must handle such Large Items in a manner such that the Large Items are not
1008 subject to regulation as Hazardous Waste under applicable State and Federal laws or regulations.

1009 6.14.3 Maximum Reuse and Recycling. Contractor must dispose of Large Items
1010 collected from Service Recipients pursuant to this Agreement in accordance with the following hierarchy:

1011 6.14.3.1 Reuse as is (where energy efficiency is not compromised).

1012 6.14.3.2 Disassemble for reuse or Recycling.

1013 6.14.3.3 Recycle.

1014 6.14.3.4 Disposal.

1015 6.14.4 Disposal of Large Items. Contractor may not landfill such Large Items unless the
1016 Large Items cannot be reused or recycled.

1017 6.14.5 City Direction of Large Items. City reserves the right to direct Contractor to take
1018 specific types of Large Items Collected pursuant to this Section to designated sites not more than twenty
1019 (20) miles from City Hall for the purpose of reuse or Recycling at no cost. Contractor has no obligation to
1020 dispose of the Large Item Residue remaining at the directed site or sites after scavengers and recyclers
1021 have removed reusable or recyclable Large Items.

1022 6.15 E-waste and U-waste Collection Service. Contractor shall provide Residential Service
1023 Recipients with three (3) times annual collection of E-waste and/or U-waste at no additional cost or
1024 expense.

1025 Article 7. Commercial Services

1026 7.01 Conditions of Service. Except as set forth below, Contractor must provide Commercial
1027 Collection Services to all Commercial Service Recipients in the Service Area. This service is governed by
1028 the following terms and conditions.

1029 7.02 Provision of Service. Contractor must provide Commercial Garbage Collection Service and
1030 Commercial Organic Waste Collection Service to all Commercial Service Recipients in the Service Area
1031 whose Garbage and Organic Waste are properly containerized in Containers. Contractor must offer
1032 Garbage Carts in 20-, 32- and 64-gallon sizes and Organic Waste Carts in 32- and 64-gallon sizes.
1033 Contractor must offer Garbage Bins in 1 and 2-cubic yard sizes and 1-cubic yards for Organic Waste Bins.
1034 The size of the container and the frequency (above the once weekly minimum) of collection will be
1035 determined between the Service Recipient and Contractor. However, the size and frequency must be
1036 sufficient to provide that no Garbage or Organic Waste need be placed outside the Container. The base
1037 Garbage Collection Service will include Commercial Organic Waste Collection Service as described below.

1038 7.03 Size and Frequency of Service. Commercial Collection Service must be provided as
1039 deemed necessary and determined between Contractor and the Commercial Service Recipient, but such
1040 service must be received no less than one (1) time per week. The size of Garbage and Organic Waste
1041 Containers and the frequency (above the minimum) of Collection will be determined between the
1042 Commercial Service Recipient and Contractor. However, size and frequency must be sufficient to provide
1043 that no Garbage or Organic Waste need be placed outside the Containers. Service Recipients may own
1044 and provide their own Compactor provided that the Service Recipient is completely responsible for its
1045 proper maintenance, and such Compactor is of a type that is compatible with Contractor's equipment. All
1046 other Containers used by Service Recipients must be owned and supplied by Contractor.

1047 7.04 Organic Waste Collection Service. Contractor shall provide all Commercial Service
1048 Recipients with one (1) 64-Gallon Organic Waste Cart by June 1, 2022. Additional Organic Waste Cart or
1049 Bin service may be requested by the Service Recipient, subject to Service Rates for those additional
1050 Containers. To be exempted from Commercial Organic Waste Collection Service, Service Recipient must
1051 apply for waiver per the City's Municipal Code. All such waiver applications must be reported in the Waste
1052 Reporting System and approved by the City.

1053 7.04.1 Organic Waste - Improper Procedure. Contractor is not required to Collect Organic
1054 Waste if the Service Recipient does not separate the Organic Waste from Garbage and Recyclable
1055 Materials. Furthermore, Contractor is not required to collect Organic Waste that is contaminated through
1056 commingling with Garbage or Recyclable Materials. To address Contamination, Contractor must follow the
1057 steps set forth in Section 3.09.

1058 7.04.2 Additional Organic Waste Containers. Contractor must provide additional Organic
1059 Waste Containers to Service Recipients at Service Rates for those additional Containers, provided that
1060 additional Containers are used by Service Recipients for the proposes of setting out additional Organic
1061 Waste for regular weekly Organic Waste Collection Service

1062 7.04.3 Compliance with AB 1826 and SB 1383. Contractor will develop and maintain its
1063 Commercial Organic Waste Collection Service in a manner designed to assist City and Service Recipients
1064 to achieve and maintain compliance with AB 1826 and SB 1383. Contractor will notify non-exempt covered
1065 Commercial Service Recipients of the requirements to comply with the law annually starting July 1, 2022
1066 and as requested by the City thereafter.

1067 7.05 Hours of Collection. Commercial Collection Service must be provided, commencing no
1068 earlier than 5:00 a.m., and terminating no later than 7:00 p.m., Monday through Saturday, except for
1069 Holidays. There will be no Commercial Collection Service on Sundays. The hours, day, or both of Collection
1070 may be extended due to uncontrollable circumstances or conditions with the prior verbal or written consent
1071 of the Agreement Administrator. The City has the right, in coordination with the Contractor, to determine
1072 that the Commercial Collection Service commence no earlier than 6:00 a.m.

1073 7.06 Accessibility. Contractor must Collect all Containers that are readily accessible to
1074 Contractor's crew and Collection Vehicles and not blocked.

1075 7.07 Manner of Collection. Contractor must provide Commercial Collection Service with as little
1076 disturbance as possible and must leave any Container at the same point it originally located without
1077 obstructing alleys, roadways, driveways, sidewalks or mail boxes.

1078 7.08 Non-Collection. Contractor is not required to Collect any Commercial Garbage that is not
1079 placed in a Garbage Container unless such Commercial Garbage is outside the Garbage Container
1080 because of Overage. In the event of non-collection or Overage, Contractor must follow the steps as set
1081 forth in Section 3.10.

1082 7.09 Carts. Contractor shall procure and supply all Commercial Service Recipients that
1083 subscribe to Cart service with new Garbage and Recyclable Materials Carts by April 1, 2023. All Garbage,
1084 Organic Waste and Recyclable Materials Carts must meet the color and labelling requirements of 14 CCR
1085 18984 (a)-(c). Specifically, Garbage Carts must be black or grey, Organic Waste Carts must be green, and
1086 Recyclable Materials Carts must be blue, and with all such Cart colors subject to pre-approval by the City.
1087 Labels on all Carts must be durable long-lasting labels placed on the Cart lids and must specify what
1088 materials are allowed to be placed in each container and items that are prohibited container Contamination
1089 for each container, subject to pre-approval by the City. Contractor shall continue to procure and supply
1090 sufficient Carts as necessary to meet the needs of all Commercial Service Recipients for the duration of
1091 the Agreement. Contractor shall not be entitled to or eligible for any change in Contractor's Compensation
1092 for any expenses related to the Carts purchased pursuant to the first sentence in this Section. Depreciation
1093 and interest expenses for all Carts purchased by Contractor pursuant to the first sentence in this Section
1094 shall not be included in the amounts of depreciation and interest used for the purposes of determining any
1095 Annual Indexed Adjustment to Contractor's Compensation per Section 4.02 nor for the purposes of a
1096 Detailed Compensation Review per Section 4.03. City shall directly reimburse Contractor for the following
1097 costs associated with the Recyclable Materials Carts (but not the Garbage Carts or Organic Waste Carts)
1098 purchased pursuant to the first sentence of this Section: assembly and distribution, reclamation of existing
1099 carts for recyclable materials, taxes, and freight. Contractor shall provide City with an invoice showing actual
1100 amounts paid for costs to be reimbursed by City pursuant to the immediately preceding sentence.

1101 7.10 Bins. Contractor must make commercially reasonable efforts to distribute newly painted
1102 and labelled Bins to all Commercial Service Recipients in the Service Area that subscribe to Garbage,
1103 Organic Waste and Recycling Bin service by December 1, 2022 with such Bins meeting the color and
1104 labelling requirements of 14 CCR 18984 (a)-(c). All Garbage and Organic Waste Bins must display
1105 Contractor's name and Contractor's customer service telephone number and website and all Recycling
1106 Bins must display City's name and City's customer service telephone number and website. Garbage and
1107 Organic Waste Bins must be free of dents and painted as needed to maintain an orderly appearance
1108 throughout the term of the Agreement, but not less frequently than once every three years. Garbage and
1109 Organic Waste Bins may be subject to periodic, unscheduled inspections by City and determination as to
1110 sanitary condition will be made by City. Contractor shall continue to procure and supply sufficient Garbage
1111 and Organic Waste Bins as necessary to meet the needs of all Commercial Service Recipients for the
1112 duration of the Agreement. Contractor shall not be entitled to or eligible for any change in Contractor's
1113 Compensation for any expenses related to the Bins purchased pursuant to the first sentence in this Section.
1114 Depreciation and interest expenses for all Bins purchased or upgraded by Contractor pursuant to the first
1115 sentence in this Section shall not be included in the amounts of depreciation and interest used for the
1116 purposes of determining any Annual Indexed Adjustment to Contractor's Compensation per Section 4.02
1117 nor for the purposes of a Detailed Compensation Review per Section 4.03.

1118 7.11 Container Exchange. Upon notification to Contractor by City or a Service Recipient that a
1119 change in the size of their Containers is required, Contractor must deliver such Containers to such Service
1120 Recipient within five (5) Work Days.

1121 7.12 Container Replacement. Contractor's employees must avoid damage to Containers by
1122 unnecessary rough treatment. Any Container damaged by the Contractor must be replaced by Contractor,
1123 at Contractor's expense, within five (5) Work Days at no cost or inconvenience to the Service Recipient.

1124 7.12.1 Upon notification to Contractor by City or a Service Recipient that the Service
1125 Recipient's Cart(s) has been stolen or damaged beyond repair through no fault of Contractor, Contractor
1126 must deliver a replacement Cart(s) to such Service Recipient within five (5) Work Days. Contractor must
1127 maintain records documenting all Cart replacements occurring and report through the Waste Reporting
1128 System.

1129 7.12.2 Each Commercial Service Recipient is entitled to the replacement of one (1) lost,
1130 destroyed, or stolen Garbage and Organic Container every ten (10) years during the term of this Agreement
1131 at no cost to the Service Recipient. Accordingly, Contractor may bill the Service Recipient for the cost of
1132 those replacements in excess of one (1) Garbage and Organic Container per Commercial Service Recipient
1133 during the term of the Agreement, in accordance with the Container Replacement charge per Exhibit 3.
1134 Contractor must deliver a replacement Container to such Service Recipient within five (5) Work Days.

1135 7.13 Container Repair. Contractor is responsible for repair of Containers. Within five (5) Work
1136 Days of notification by City or a Service Recipient of the need for such repairs, Contractor must repair the
1137 Container or if necessary, remove the Container for repairs and deliver a replacement Container to the
1138 Service Recipient. Container repair also includes the removal of graffiti from the Container.

1139 7.14 Large Item Collection Service. Contractor must provide Large Item Collection Service to all
1140 Commercial Service Recipients in the Service Area that 1) include dwelling units and 2) whose Large Items
1141 have been placed within six (6) feet of the curb, swale, paved surface of the public roadway, closest

1142 accessible roadway, or other such location agreed to by Contractor and Service Recipient, that will provide
1143 safe and efficient accessibility to Contractor's Collection crew and Collection Vehicle.

1144 7.14.1 General. Each Commercial Service Recipient that includes dwelling units is
1145 annually entitled to receive Large Item Collection of up to a combined annual maximum of the equivalent
1146 of (a) four (4) Large Items, or (b) twelve (12) 32-gallon bags of Garbage per dwelling unit for up to twenty
1147 (20) units at no additional cost and expense. The Contractor may bill the Service Recipient a charge per
1148 Exhibit 3 for Large Item Collection Service in excess of the annual amounts listed in this Section 7.14,
1149 provided that Contractor provides notice to the Commercial Service Recipient in advance of scheduling and
1150 providing Large Item Collection Service that would be subject to a charge.

1151 7.14.2 Frequency of Service. Large Item Collection Service will be provided to
1152 Commercial Service Recipients that include dwelling units within ten (10) Work Days of a request from the
1153 Commercial Service Recipient. The Service Recipient may not commingle Large Items with Garbage, and
1154 the Service Recipient may not use Large Item Collection Service as a supplement to regular Garbage or
1155 Organic Waste Collection Service.

1156 7.14.3 Contractor shall work with the property manager of each eligible Commercial
1157 Service Recipient to arrange for a Large Item Collection at a designated location within the Commercial
1158 Service Recipient on the scheduled Collection date. Only the property manager or other designated
1159 representative of an eligible Commercial Service Recipient may request and schedule Large Item
1160 Collection, not tenants.

1161 7.14.4 Contractor shall, in coordination with the City, develop and implement a program
1162 whereby eligible Commercial Service Recipients can notify their tenants of the availability of the Large Item
1163 Collection Service, and instructing the tenants to request Large Item Collection service through the property
1164 manager or other designated representative of the Commercial Service Recipient.

1165 7.14.5 Large Items Containing Freon. In the event Contractor Collects Large Items that
1166 contain Freon, Contractor must handle such Large Items in a manner such that the Large Items are not
1167 subject to regulation as Hazardous Waste under applicable State and Federal laws or regulations.

1168 7.14.6 Maximum Reuse and Recycling. Contractor must dispose of Large Items collected
1169 from Service Recipients pursuant to this Agreement in accordance with the following hierarchy:

1170 7.14.6.1 Reuse as is (where energy efficiency is not compromised).

1171 7.14.6.2 Disassemble for reuse or Recycling.

1172 7.14.6.3 Recycle.

1173 7.14.6.4 Disposal.

1174 7.14.7 Disposal of Large Items. Contractor may not landfill such Large Items unless the
1175 Large Items cannot be reused or recycled.

1176 7.14.8 City Direction of Large Items. City reserves the right to direct Contractor to take
1177 specific types of Large Items Collected pursuant to this Section to designated sites not more than twenty
1178 (20) miles from City Hall for the purpose of reuse or Recycling at no cost. Contractor has no obligation to

1179 dispose of the Large Item Residue remaining at the directed site or sites after scavengers and recyclers
1180 have removed reusable or recyclable Large Items.

1181 **Article 8. Roll-off Services**

1182 8.01 Conditions of Service. Except as set forth below, Contractor must provide Roll-off
1183 Services to Service Recipients in the Service Area requesting such service. Roll-off Collection Services
1184 are governed by the following terms and conditions. Contractor has the exclusive right and obligation to
1185 provide Roll-off Service in the City.

1186 8.02 Frequency and Scheduling of Service and Hours of Collection. Roll-off Service is a non-
1187 regular temporary service and is scheduled and provided on the request of a Service Recipient in
1188 coordination with the Contractor. Roll-off Service is not a substitute for regular Residential or Commercial
1189 Collection Services. Roll-off Collection Service must not commence earlier than 6:00 a.m. and terminating
1190 no later than 7:00 p.m., Monday through Saturday, except for Holidays.

1191 8.03 Manner of Collection. The Contractor must provide Roll-off Collection Service with as little
1192 disturbance as possible and must leave any Roll-off Containers in a designated accessible location meeting
1193 the requirements of the City and the Service Recipient without obstructing alleys, roadways, driveways,
1194 sidewalks or mailboxes. Contractor's employees providing Roll-off Collection Service must follow the
1195 regular walk for pedestrians while on private property and may not trespass nor cross property to the
1196 adjoining premises unless the occupant or owner of both properties has given permission. Care should be
1197 taken to prevent damage to property, including flowers, shrubs, and other plantings. Contractor is
1198 responsible for cleaning up any Garbage, Organic Waste, or C&D Waste that spills from any Roll-off
1199 Container during provision of Roll-off Collection Service.

1200 8.04 Roll-off Containers. Contractor is responsible for ensuring that its Roll-off Containers are
1201 well maintained, durable, safe, and labelled in accordance with Container contents. Any Roll-off Containers
1202 that may contain liquids shall be leak proof.

1203 **Article 9. City Services**

1204 9.01 Conditions of Service. Collection Services provided to City shall be governed by the
1205 following terms and conditions.

1206 9.02 Contractor shall provide Garbage and Organic Waste Collection Services to all City Service
1207 Recipients set forth in Exhibit 1 (and where applicable, subject to the conditions in this section), where the
1208 Containers are not blocked and are accessible by Contractor's Collection Vehicles. The frequency of
1209 collection may be designated by the City, but not to exceed six (6) times per week per container. City may
1210 change the City Service Recipients receiving service, and the container volume and collection frequency
1211 provided to any City Service Recipient, by written notice to Contractor.

1212 9.03 Contractor shall receive written permission from the City before placing any Containers on
1213 City owned property for service, except that no such permission shall be needed to place Containers at
1214 locations specified for such Containers in Exhibit 1.

1215 9.04 Contractor shall limit the number of trips and the path of travel for Collection Vehicles in
1216 City parking lots.

1217 9.05 Public Area Garbage and Organic Waste Collection. At no additional cost or expense to
1218 the City, Contractor shall provide Garbage and Organic Waste Collection Service from Containers placed
1219 at the public-right-of-way locations designated by the City in Exhibit 6, in Containers provided by the City.
1220 Garbage and Organic Waste Containers shall be serviced on a regular schedule of no less than one (1)
1221 day per week, and up to five (5) days per week for high usage areas, or as-needed basis as directed by the
1222 City, to avoid any Overage of Garbage or Organic Waste.

1223 9.06 Clean-Up Services. Within two (2) Work Days of a request from the Agreement
1224 Administrator, Contractor shall provide Roll-off Containers to support City's requested clean-up services in
1225 the Service Area. City shall be responsible for loading or arranging for loading of each Roll-off Container.
1226 Contractor shall collect, transport and deliver collected Garbage and Organic Waste to a Disposal Facility
1227 or Organic Waste Processing Facility, as appropriate given the characteristics of the load. Contractor shall
1228 deliver, and collect, transport and process the Garbage and/or Organic Waste from up to twenty-four (24)
1229 Roll-off Containers each Calendar Year at no charge to the City. Contractor shall provide written notice to
1230 the Agreement Administrator when twenty (20) such services have been provided. Contractor and City
1231 agree that Contractor shall not exceed twenty-four (24) such services except by written approval of the City.

1232 9.07 Clean-up of Downed Trees. Within one (1) Work Day of a request from the Agreement
1233 Administrator, Contractor shall provide Roll-off Containers to support City's clean-up and removal of
1234 downed trees that result from natural events (storms, high winds etc.) in the Service Area. City shall be
1235 responsible for loading or arranging for loading of each Roll-off Container. Contractor shall collect, transport
1236 and deliver said Organic Waste to an Organic Waste Processing Facility. Contractor shall deliver, and
1237 collect, transport and process Organic Waste from up to ten (10) Roll-off Containers each Calendar Year
1238 at no charge to the City. Contractor shall provide written notice to the Agreement Administrator when eight
1239 (8) such services have been provided. Contractor and City agree that Contractor shall not exceed ten (10)
1240 such services except by written approval of the City.

1241 9.08 City Fire Prevention Clean-ups. Within four (4) Work Days of a request from the Agreement
1242 Administrator, Contractor shall provide Roll-off Containers to support City's fire prevention efforts.
1243 Contractor shall collect, transport and deliver said Organic Waste to an Organic Waste Processing Facility.
1244 Contractor shall deliver, and collect, transport and process Organic Waste from up to twenty-four (24) Roll-
1245 off Containers each Calendar Year at no charge to the City. Contractor shall provide written notice to the
1246 Agreement Administrator when twenty (20) such services have been provided. Contractor and City agree
1247 that Contractor shall not exceed twenty-four (24) such services except by written approval of the City.

1248 9.09 City Roll-off Collection Service. Contractor shall provide Roll-off Collection Services to the
1249 City facilities locations identified in Exhibit 7. Contractor shall provide City with the prioritization of Roll-off
1250 Collection Service that it provides to other Service Recipients, and at the minimum sizes and frequencies
1251 of collection identified in Exhibit 7. Contractor will provide Roll-off Collection Service to the City within 36
1252 hours of request. Contractor may request a meet and confer with the City to add Roll-off routing capacity if
1253 needed service levels increase such that additional routing is needed to meet this service expectation.

1254 9.10 Abandoned Garbage/Illegal Dumping Reporting. When conducting service within the City,
1255 Contractor shall direct its Collection Vehicle drivers to report to Contractor sightings of illegal dumping of
1256 Garbage or Organics Waste by recording: (i) the addresses of any Service Recipient where Garbage,
1257 Recyclable Material, and/or Organic Waste is accumulating; and (ii) the address, or other location

1258 description at which Garbage, Recyclable Material, and/or Organic Waste has been dumped. Contractor
1259 shall report to the City sightings and the recorded address within two (2) Work Days.

1260 9.11 Abandoned Garbage/Illegal Dumping Clean-up. At City's direction, Contractor shall collect,
1261 transport and process dumped items from up to fifty (50) illegal dumping clean-up requests per year at no
1262 additional charge to City. Contractor shall respond to clean up items within one (1) Work Day. Contractor
1263 shall provide written notice to the Agreement Administrator when forty (40) such services have been
1264 provided. Contractor and City agree that Contractor shall not exceed fifty (50) such services except by
1265 written approval of the City.

1266 9.12 City-Sponsored Events Service. Upon request by the City, Contractor shall provide
1267 Garbage and Organic Waste Containers and Collection Services at up to five (5) City-Sponsored Events
1268 annually at no cost to the City.

1269 9.13 Large Item Collection Service. Contractor shall collect Large Items, including E-Waste and
1270 Universal Waste, from City Service Recipients as listed on Exhibit 1 on an on-call basis on the same terms
1271 and conditions as are provided to Residential Service Recipients.

1272 Article 10. Back-up Recycling Collection Services

1273 10.01 Back-up Recycling Collection Service by Contractor Collection Vehicle driven by
1274 Contractor Driver. Contractor shall, upon request by the City, provide back-up Collection Vehicles to be
1275 driven by a Contractor driver(s), to provide collection of Recyclable Materials, subject to compliance with all
1276 applicable collective bargaining agreements and the availability of said Collection Vehicles accompanied by
1277 Contractor drivers. The provisions of this Agreement pertaining to liability and insurance shall apply to
1278 Contractor's Collection Vehicles and drivers while provided to the City under this Section 10.01. Upon such
1279 a request by the City, Contractor shall coordinate with the City to provide the Collection Vehicles and
1280 Contractor drivers for back-up collection of Recyclable Materials and shall do so in a manner meeting the
1281 Collection Service expectations contained in this Agreement. Contractor will be compensated by City for
1282 provision of the back-up Collection Vehicles and Contractor drivers based upon the charges listed in Exhibit
1283 3. The City and Contractor may enter into a separate agreement regarding use of the Contractors drivers if
1284 necessitated by applicable collective bargaining agreements.

1285 10.02 Contractor shall also, upon request by the City, provide back-up Collection Vehicles for use
1286 by City drivers to provide collection of Recyclable Materials, subject to the availability of said Collection
1287 Vehicles. Upon such a request by the City, Contractor shall coordinate with the City to provide Collection
1288 Vehicles for use by City drivers for back-up collection of Recyclable Materials and shall do so in a manner
1289 meeting the Collection Service expectations contained in this Agreement. Contractor will be compensated
1290 by City for provision of back-up Collection Vehicles based upon the charges listed in Exhibit 3. The City and
1291 Contractor shall enter into a separate agreement to address allocation of liability and application of insurance
1292 related to City driver use of Contractor's back-up Collection Vehicles. City and Contractor may enter into a
1293 separate agreement regarding Contractor's providing back-up Collection Vehicles to provide such collection
1294 of Recyclable Materials.

Article 11. Collection Routes

1295
1296 11.01 Service Routes. Contractor must provide City with and publicly display on its website maps
1297 precisely defining Collection routes, together with the days and the times at which Collection will regularly
1298 commence. Contractor shall update such maps on its website within four (4) Work Days of any change in
1299 Collection routes.

1300 11.02 Service Route Changes. Contractor must submit to City, in writing, any proposed route
1301 change (including maps thereof) not less than sixty (60) calendar days prior to the proposed date of
1302 implementation. Contractor may not implement any route changes without the prior review of the Agreement
1303 Administrator. If the change will change the Collection day for a Service Recipient, Contractor must notify
1304 those Service Recipients in writing of route changes not less than thirty (30) days before the proposed date
1305 of implementation.

1306 11.03 Collection Route Audits. City reserves the right to conduct audits of Contractor's Collection
1307 routes. Contractor must cooperate with City in connection therewith, including permitting City employees or
1308 agents, designated by the Agreement Administrator, to ride in the Collection Vehicles to conduct the audits.
1309 Contractor has no responsibility or liability for the salary, wages, benefits or worker compensation claims of
1310 any person designated by the Agreement Administrator to conduct such audits.

1311 11.04 Route Map Update. Contractor must revise the Service Recipient route maps to show the
1312 addition of Service Recipients added due to annexation and must provide such revised maps to the
1313 Agreement Administrator as requested.

Article 12. Minimum Performance Standards

1314
1315 12.01 Administrative Charges and Penalties. Administrative charges and penalties as detailed in
1316 Exhibit 2 may be assessed on the Contractor by the City pursuant to this Agreement. Charges and penalties
1317 will be adjusted by the change in the CPI All Other a maximum of one time annually.

1318 12.02 Billing/Financial Audit and Performance Reviews. Contractor shall review its billings to all
1319 Service Recipients. The purpose of the review is to determine that the amount which the Contractor is billing
1320 each Service Recipient is correct with regard to the level of service (i.e., frequency of collection, size of
1321 container, location of container) and Service Rates and charges in effect at the time. The Contractor shall
1322 review Service Recipient accounts not less than every two (2) years and provide a written certification to the
1323 City that all such billing is correct. The documentation of the review, as well as verification that any errors
1324 have been corrected should be provided to the City within thirty (30) days of Contractor's completion of the
1325 billing review.

1326 12.02.1 Selection and Cost. City may conduct billing audit, financial audit and performance
1327 reviews (together, "reviews") of Contractor's performance at any time during the term of this Agreement. The
1328 reviews will be performed by the City or a qualified firm under contract to City. City will have the final
1329 responsibility for the selection of the firm. City may conduct reviews at any time during the term of the
1330 Agreement. City and Contractor agree to each pay fifty percent (50%) of the cost of the audits and
1331 performance reviews.

1332 12.02.2 Purpose. The reviews will be designed to verify that billings have been properly
1333 calculated and they correspond to the level of service received by the Service Recipient, verify that

1334 Contractor is correctly billing for all Collection Services provided, Franchise Fees, Integrated Waste
1335 Management Fees required under this Agreement have been properly calculated and paid to City, verify
1336 Contractor's compliance with the reporting requirements and performance standards of this Agreement,
1337 verify the diversion percentages reported by Contractor, and verify any other provisions of the Agreement.
1338 City (or its designated consultant) may utilize a variety of methods in the execution of this review, including,
1339 but not limited to, analysis of relevant documents, on-site and field observations, and interviews. City (or its
1340 designated consultant) will review and document the items in the Agreement that require Contractor to meet
1341 specific performance standards, submit information or reports, perform additional services, or document
1342 operating procedures, that can be objectively evaluated. This information will be documented and be
1343 formatted in a "compliance checklist" with supporting documentation and findings tracked for each of the
1344 identified items. City (or its designated consultant) may review the customer service functions and structure
1345 utilized by Contractor. This may include Contractor's protocol for addressing complaints and service
1346 interruption procedures. Complaint logs may be reviewed, along with procedures and systems for tracking
1347 and addressing complaints. On-site and field observations by City (or its designated consultant) may include,
1348 but are not necessarily limited to:

- 1349 1. Interviews and discussions with Contractor's administration and management personnel;
- 1350 2. Review and observation of Contractor's customer service functions and structure;
- 1351 3. Review of public education and outreach materials;
- 1352 4. Interviews and discussions with Contractor's financial and accounting personnel;
- 1353 5. Interviews with route dispatchers, field supervisors and managers;
- 1354 6. Interviews with route drivers;
- 1355 7. Interviews with Collection Vehicle maintenance staff and observation of maintenance practices;
1356 and
- 1357 8. Review of on-route Collection Services, including observation of driver performance and
1358 collection productivity and visual inspection of residential routes before and after collection to
1359 evaluate cart placement and cleanliness of streets.

1360 12.02.3 Contractor's Cooperation. Contractor shall cooperate fully with the review and
1361 provide all requested data, including operational data, financial data and other data reasonably requested
1362 by City within fifteen (15) Work Days of the request.

1363 12.02.4 Additional Billing/Financial Audit and Performance Review. In the event that the
1364 Billing/Financial Audit and Performance Review concludes that Contractor is not in compliance with all terms
1365 and conditions of this Agreement and such non-compliance is material, Contractor is subject to
1366 administrative charges and penalties as described in Exhibit 2 as well as reimbursement to the City for the
1367 full cost of the audit plus any underpayments discovered during the Audit. Additionally, City may conduct an
1368 Additional Billing Audit and Performance Review to ensure that Contractor has cured any such area of non-
1369 compliance. Contractor will be responsible for the cost of any such Additional Billing/Financial Audit and
1370 Performance Review for a maximum cost of Fifty Thousand Dollars (\$50,000) to be adjusted by the annual
1371 change in the CPI All Other a maximum of one time annually.

1372 12.02.5 City Requested Program Review. City reserves the right to require Contractor to
1373 periodically conduct reviews of the Residential and Commercial Garbage and Organic Waste collection
1374 programs, provided that such reviews are reasonable and can be accomplished at no additional cost to
1375 Contractor and without interfering with Contractor's operations. Such reviews could assess one or more of

1376 the following performance indicators: average volume of Organic Waste per setout per Service Recipient,
1377 participation level, Contamination levels, etc. Prior to the program evaluation review, City and Contractor will
1378 meet and discuss the purpose of the review and agree on the method, scope, and data to be provided by
1379 Contractor.

1380 Article 13. Collection Equipment

1381 13.01 Equipment Specifications. All equipment used by Contractor in the performance of
1382 Collection Services under this Agreement must be of a high quality and meet all Federal, State, and local
1383 regulations and air quality standards. Collection Vehicles must be designed and operated so as to prevent
1384 collected materials from escaping from the Collection Vehicles. Hoppers must be closed on top and on all
1385 sides with screening material to prevent collected materials from leaking, blowing or falling from the
1386 Collection Vehicles. All Collection Vehicles and Containers must be watertight and must be operated so that
1387 liquids do not spill during Collection or in transit.

1388 13.01.1 Collection Vehicles. Contractor shall make commercially reasonable efforts to
1389 operate primary Collection Vehicles that do not exceed ten (10) years from the date of manufacture, except
1390 for backup and Roll-off Collection Vehicles. Contractor must notify City of a need to use any Collection
1391 Vehicle exceeding ten (10) years from the date of manufacture as a primary Collection Vehicle. Such
1392 notification must accompany documentation demonstrating that such Collection Vehicle is in good operating
1393 condition, meets required safety and emissions standards, and is free of leaks. Collection Vehicles must use
1394 renewable diesel. During the Term, to the extent required by law, Contractor shall provide its Collection
1395 Vehicles to be in full compliance with all Applicable Laws, including State and Federal clean air requirements
1396 that are adopted or proposed to be adopted, including, but not limited to, the California Air Resources Board
1397 Heavy Duty Engine Standards as currently proposed to be contained in California Code of Regulations, title
1398 13, sections 2020 et seq., the Federal EPA's Highway Diesel Fuel Sulfur regulations and all other applicable
1399 air pollution control laws. Collection Vehicles used for Collection of Large Items may not use compactor
1400 mechanisms or mechanical handling equipment that may damage reusable goods or release Freon or other
1401 gases from pressurized appliances.

1402 13.01.2 Fleet Planning. Contractor will work with the City to replace Contractor's current
1403 Collection Vehicles (as inventoried pursuant to Section 13.06) with Collection Vehicles that will reduce
1404 carbon emissions. As of the Effective Date of this Agreement, Contractor will fuel all diesel Collection
1405 Vehicles with renewable diesel.

1406 13.01.3 Electric or Zero Emission Collection Vehicles. At such time as it is technologically
1407 and economically feasible, and unless a "Notice of Non-Extension" has previously been provided by either
1408 party per Section 2.03, Contractor shall purchase electric or other zero emission Collection Vehicles and
1409 procure electricity or other fuel from qualifying sources to support procurement goals. City and Contractor
1410 shall proactively take such steps as are necessary to plan for, and upon City direction, execute transition of
1411 the Contractor's Collection Vehicles to reliance on electricity or other zero emission technologies as a fuel
1412 source. Contractor shall report to the City no less than annually on the status of the transition. The City and
1413 Contractor shall, no less than annually, confer on the degree to which it is technologically and economically
1414 feasible to transition some or all Collection Vehicles to electricity or other zero emission technology. In
1415 determining whether it is economically feasible to transition Collection Vehicles per this Section, the City and
1416 Contractor shall review and evaluate Contractor's current and historical finances and profitability compared

1417 to the targeted Operating Ratio listed in Exhibit 5. The transition to electric or other zero emission Collection
1418 Vehicles will be economically feasible when the cost, including depreciation and interest, of each such
1419 proposed electric or other zero emission Collection Vehicle that is in excess of the cost, including
1420 depreciation and interest, of a conventional diesel Collection Vehicle is projected, taking into account
1421 Contractor's projected revenue and other net operating costs, exclusive of Pass-Through Costs and Non-
1422 Allowable Costs, and without a Compensation adjustment, to achieve an Operating Ratio of ninety and one-
1423 half percent (90.5%) or less. Upon a determination by the City that it is technologically and economically
1424 feasible to transition some or all Collection Vehicles to electricity or other zero emissions technology,
1425 Contractor shall proceed to purchase and operate such vehicles on a schedule mutually agreed to by
1426 Contractor and City, and Contractor shall only be entitled to or eligible for a change in Contractor's
1427 Compensation for the cost, including depreciation and interest, of replacement diesel Collection Vehicles
1428 but not for the excess cost, including depreciation and interest, of transitioning to electric or zero emission
1429 Collection Vehicles. For the purposes of determining any Annual Indexed Adjustment to Contractor's
1430 Compensation per Section 4.02, and for the purposes of conducting any Detailed Compensation Review per
1431 Section 4.03, depreciation and interest expenses for all Collection Vehicles purchased by Contractor
1432 pursuant to this Section shall not include any amounts of depreciation and interest above the amounts that
1433 would have been incurred had Contractor replaced Collection Vehicles with diesel Collection Vehicles and
1434 not transitioned to electric or zero emission Collection Vehicles per this Section. Contractor shall be entitled
1435 to a change in Contractor's Compensation for construction of an electric charging or other fueling station,
1436 subject to the mutual agreement of the City and Contractor and approval of the City Council. Contractor will
1437 coordinate with the City in finding or constructing a suitable charging or other fueling station for Contractor's
1438 electric or other zero emission Collection Vehicles.

1439 13.01.4 Collection Vehicle Size Limitations / Overweight Vehicle Charge. Contractor may
1440 not use any Collection Vehicle in violation of weight limitations in Applicable Law. The Contractor may
1441 exceed the Collection Vehicle size limitation for a limited time due to extraordinary circumstances or
1442 conditions with the prior written consent of the Agreement Administrator. The limited time may not exceed
1443 120 days. Contractor must report all instances of overweight Collection Vehicles to City quarterly and as part
1444 of its Annual Reports to the City. Contractor may be assessed administrative charges as specified in Article
1445 12 as a result of exceeding an overweight Collection Vehicle rate of five percent (5.00%) in any Calendar
1446 Year during the term of the Agreement, except to the extent resulting from extraordinary circumstances, as
1447 described below. The overweight Collection Vehicle rate will be calculated as the total number of overweight
1448 Collection Vehicle instances during the Calendar Year, divided by the total number of Collection Vehicle
1449 loads transported during the Calendar Year. Prior to collecting administrative charges for overweight
1450 Collection Vehicles, the City shall afford Contractor a reasonable opportunity to provide the Agreement
1451 Administrator documentation of the extraordinary circumstance that caused the overweight Collection
1452 Vehicles. Extraordinary circumstances in this particular case include, but may be limited to, heavy rains or
1453 high winds that caused excess Green Waste to be generated, rain to accumulate in open Containers, or
1454 normal Collection routes to be delayed or shortened to extreme weather conditions. The Agreement
1455 Administrator shall have authority to consider Contractor's documentation and uphold and collect the
1456 assessed charge, to reduce the charge, or waive and dismiss the charge. The Agreement Administrator
1457 shall also have the authority to waive charges in advance of an anticipated, or in response to an actual,
1458 emergency event.

1459 13.01.5 Registration; Inspection. All Collection Vehicles used by Contractor in providing
1460 Collection Services under this Agreement, except those Collection Vehicles used solely on Contractor's
1461 premises, are to be registered with the California Department of Motor Vehicles. In addition, each such
1462 Collection Vehicle must be inspected by the California Highway Patrol in accordance with Applicable Law.
1463 Within two (2) Work Days of a request from the Agreement Administrator, Contractor must provide City a
1464 copy of its Collection Vehicle maintenance log and any safety compliance report, including, but not limited
1465 to, any report issued under California Vehicle Code sections 34500 and following, as well as the biennial
1466 "BIT" inspections conducted by the California Highway Patrol.

1467 13.01.6 Safety Markings. All Collection equipment used by Contractor must have
1468 appropriate safety markings including, but not limited to, highway lighting, flashing and warning lights,
1469 clearance lights, and warning flags. All such safety markings must be in accordance with the requirements
1470 of the California Vehicle Code, as may be amended from time to time.

1471 13.01.7 Vehicle Signage and Painting. Collection Vehicles must be painted and numbered
1472 without repetition and must have Contractor's name, Contractor's customer service telephone number,
1473 website and the number of the Collection Vehicle painted in letters of contrasting color, at least four (4)
1474 inches high, on each side and the rear of each Collection Vehicle. No advertising is permitted other than the
1475 name of Contractor, its logo and registered service marks, except promotional advertisement of the Organic
1476 Waste programs, which is encouraged. City to approve any promotional material of the Organic Waste
1477 Programs affixed to or painted on Contractor's Collection Vehicles and may require such promotion to be
1478 utilized from time to time in order to encourage correct Recycling, reduce Contamination, and provide
1479 relevant education. Contractor must repaint all Collection Vehicles during the term of this Agreement on a
1480 frequency as necessary to maintain a positive public image as reasonably determined by the Agreement
1481 Administrator, but not less often than once every five years beginning January 1, 2023.

1482 13.02 Vehicle Certification. For each Collection Vehicle used in the performance of Collection
1483 Services under this Agreement, Contractor must obtain a certificate of compliance (smog check) issued
1484 pursuant to Part 5 of Division 26 of the California Health and Safety Code (Section 43000 and following) and
1485 regulations promulgated thereunder and/or a safety compliance report issued pursuant to Division 14.8 of
1486 the California Vehicle Code (Section 34500 and following) and the regulations promulgated thereunder, as
1487 applicable to the Collection Vehicle. Contractor must maintain copies of such certificates and reports and
1488 must make such certificates and reports available for inspection upon request by the Agreement
1489 Administrator.

1490 13.03 No later than January 1, 2023, Contractor must submit to the Agreement Administrator
1491 verification that each of the Contractor's Collection Vehicles has passed the California Heavy Duty Vehicle
1492 Inspection. Thereafter, Contractor must cause each Collection Vehicle in Contractor's Collection fleet to be
1493 tested annually in the California Heavy Duty Inspection Program and must, upon request, submit written
1494 verification to City within ten (10) Work Days of the completion of such test. Contractor may not use any
1495 Collection Vehicle that does not pass such inspection.

1496 13.04 Equipment Maintenance. Contractor must maintain Collection equipment in a clean
1497 condition and in good repair at all times. All parts and systems of the Collection equipment must operate
1498 properly and be maintained in a condition satisfactory to City. Contractor must wash all Collection Vehicles
1499 at least once a week.

1500 13.05 Maintenance Log. Contractor must maintain a maintenance log for all Collection Vehicles.
1501 The log must at all times be accessible to City by physical inspection upon request of Agreement
1502 Administrator, and must show, at a minimum, each Collection Vehicle Contractor assigned identification
1503 number, date purchased or initial lease, dates of performance of routine maintenance, dates of performance
1504 of any additional maintenance, and description of additional maintenance performed.

1505 13.06 Equipment Inventory. On or before July 1, 2022 Contractor shall provide to City an
1506 inventory of Collection Vehicles and major equipment used by Contractor for Collection or transportation
1507 and performance of Collection Services under this Agreement. The inventory must indicate each Collection
1508 Vehicle by Contractor assigned identification number, DMV license number, the age of the chassis and body,
1509 type of fuel used, the type and capacity of each Collection Vehicle, the number of Collection Vehicles by
1510 type, the date of acquisition, the decibel rating and the maintenance and rebuild status. Contractor must
1511 submit to the Agreement Administrator, either by e-mail, an updated inventory annually to the City or more
1512 often at the request of the Agreement Administrator. Each inventory must also include the tare weight of
1513 each Collection Vehicle as determined by weighing at a certified scale used by Contractor. Each Collection
1514 Vehicle inventory must be accompanied by a certification signed by Contractor that all Collection Vehicles
1515 meet the requirements of this Agreement.

1516 13.07 Reserve Equipment. Contractor shall have available to it, at all times, reserve Collection
1517 equipment which can be put into service and operation within one (1) hour of any breakdown. Such reserve
1518 equipment must correspond in size and capacity to the equipment used by the Contractor to perform the
1519 contractual duties.

1520 **Article 14. Contractor’s Office**

1521 14.01 Contractor’s Office. Contractor shall maintain an office or call center where calls, emails
1522 and complaints can be received within the City. Such office must be equipped with enough telephones that
1523 all Collection Service-related calls received during normal business hours are answered by an employee.
1524 The office must have responsible persons in charge during Collection hours and must be open during such
1525 normal business hours, 7:30 a.m. to 3:30 p.m. on Monday through Friday. Contractor must provide either a
1526 local or toll-free telephone number that connects to the call center, and a telephone answering service or
1527 mechanical device to receive Service Recipient inquiries during those times when the office is closed. Calls
1528 received after normal business hours must be addressed the next Work Day morning.

1529 14.02 Emergency Contact. Contractor must provide the Agreement Administrator with an
1530 emergency phone number where the Contractor can be reached outside of the required office hours.

1531 14.03 Multilingual/TDD Service. Contractor’s service and emergency telephone numbers must
1532 be accessible by a local (City) phone number or toll-free number. Contractor shall also maintain service and
1533 emergency telephone numbers accessible by teletypewriter (TTY) devices, including cellphone and
1534 smartphone. The service telephone number(s) shall be listed in the telephone directories covering City’s
1535 boundaries and must be under Contractor’s name in the commercial and residential listings. Contractor’s
1536 service and emergency numbers, including TTY numbers, shall be available through an online search and
1537 listed on the Contractor’s website. Contractor must at all times maintain the capability of responding to
1538 telephone calls in English and such other languages as City may direct. Contractor must at all times maintain
1539 the capability of responding to telephone calls through Telecommunications Device for the Deaf (TDD)
1540 Services.

1541 14.04 Service Recipient Calls. During office hours, Contractor must maintain a telephone
1542 answering system capable of accepting at least five (5) incoming calls at one time. Contractor must record
1543 all calls including any inquiries, service requests and complaints into a customer service log. All incoming
1544 calls will be answered at the local office or call center within 5 rings. Any call “on-hold” in excess of 1.5
1545 minutes must have the option to remain “on-hold” or request a “call-back” from a customer service
1546 representative. Contractor’s customer service representatives must return Service Recipient calls and
1547 emails. For all phone messages left before 3:00 p.m., all “call backs” must be attempted a minimum of one
1548 time prior to 3:00 p.m. on the day of the call. For messages left after 3:00 p.m., all “call backs” must be
1549 attempted a minimum of one time prior to noon the next Work Day. Contractor must make minimum of three
1550 (3) attempts within one (1) Work Day of the receipt of the call. If Contractor is unable to reach the Service
1551 Recipient on the next Work Day, Contractor must send a postcard or email to the Service Recipient on the
1552 second Work Day after the call was received, indicating that the Contractor has attempted to return the call.
1553 Email messages must be responded to within one (1) Work Day.

1554 14.05 Customer Service. All service inquiries and complaints will be directed to Contractor. A
1555 representative of Contractor must be available to receive the complaints during normal business hours.
1556 Contractor is required to maintain a Customer Service Management System for handling of complaints
1557 received by the Contractor or City for Collection Services provided by this Agreement. All service complaints
1558 will be handled by Contractor in a prompt and efficient manner. Complaints must be addressed and resolved
1559 within three (3) Work Days. In the case of a dispute between Contractor and a Service Recipient, the matter
1560 will be reviewed, and a decision made by the Agreement Administrator. By June 1, 2023, Contractor will
1561 utilize a new Customer Service Management System to maintain a record of all inquiries and complaints in
1562 a manner prescribed by City. The Customer Service Management System shall also provide for City’s
1563 access to it and include, but not be limited to, the functionalities listed below:

- 1564 14.05.1 Real time identification of service days and routing.
- 1565 14.05.2 Identification of stopped accounts and generation of daily stop lists.
- 1566 14.05.3 Service Recipient address and contact information.
- 1567 14.05.4 Tracking of Containers by address and service location.
- 1568 14.05.5 Tracking of Garbage, Organic Waste and Recycling routes and service days.
- 1569 14.05.6 Tracking of Container deliveries, late-set outs and missed pickups.
- 1570 14.05.7 Creation of route sheets and delivery lists for Garbage, Organic Waste and
1571 Recycling routes.
- 1572 14.05.8 Notations for any special services, on-premises services, or special conditions for
1573 any Service Recipient.
- 1574 14.05.9 Documentation of any Service Recipient site visits conducted by Contractor or City.
- 1575 14.05.10 Documentation of all Contamination or Overages.
- 1576 14.05.11 Allow for attachment of photos, notices, other documentation in a Service
1577 Recipients account.

1578 14.05.12 Schedule, tracking and documentation of Large Item collections and City
1579 provided Recycling clean-ups.

1580 14.05.13 Generation of statistics including number of stops, lifts, and accounts per
1581 route per day.

1582 14.05.14 Direct emails to Service Recipients.

1583 14.05.15 Geocoding of Service Recipient service addresses for maps, routings and
1584 stop lists.

1585 14.06 Complaints. For those complaints related to missed Collections, where Containers are
1586 properly and timely set out, that are received by 12:00 noon on a Work Day, Contractor will return to the
1587 Service Recipient address and Collect the missed materials before leaving the Service Area for the day. For
1588 those complaints related to missed Collections that are received after 12:00 noon on a Work Day, Contractor
1589 will have until the end of the following Work Day to resolve the complaint. For those complaints related to
1590 repair or replacement of Containers, the appropriate Sections of this Agreement will apply.

1591 14.07 Contractor agrees that it is in the best interest of City that all Residential Garbage and
1592 Organic Waste be collected on the scheduled Collection day. Accordingly, missed Collections will normally
1593 be Collected as set forth above regardless of the reason that the Collection was missed. However, in the
1594 event a Service Recipient requests missed Collection service more than two (2) times in any consecutive
1595 two (2) month period the Agreement Administrator will work with Contractor to determine an appropriate
1596 resolution to that situation. In the event Contractor believes any complaint to be without merit, Contractor
1597 will notify the Agreement Administrator, by e-mail. The Agreement Administrator will investigate all disputed
1598 complaints and render a decision.

1599 Article 15. Support Services

1600 15.01 Compliance Representative. Contractor will designate staff to conduct site visits and
1601 provide outreach and education in support of meeting CalRecycle diversion requirements and to meet State
1602 mandates associated with AB 939, AB 341, AB 1826, AB 827, AB 1594, SB 1016, and SB 1383, and all
1603 amendments and related subsequent legislation. The designated staff shall be available as needed to meet
1604 with the City and conduct site visits to implement diversion programs in the Service Area at least four (4)
1605 days per week. The Contractor staff designated pursuant to this section shall also meet with the City to
1606 discuss provision of services under this Agreement no less than quarterly.

1607 15.02 Compost Procurement and Delivery. At no cost to the City, Contractor must provide City
1608 up to 480 cubic yards of Compost annually, delivered to a location and on a schedule as agreed to between
1609 the Contractor and the City.

1610 15.03 Route Reviews. At least once annually, beginning in 2022, Contractor shall conduct a route
1611 review for each of its routes. The number of Containers to review per route shall be calculated on the basis
1612 of the number of Garbage accounts provided service by a specific route for one week. For example, if
1613 "Route A" collects Garbage from 250 accounts, 4 days per week for a total of 1,000 accounts per week;
1614 include a minimum of 25 accounts for the route review of "Route A". For each route review Contractor shall
1615 inspect at least the following minimum number of Containers but may inspect more if Contractor deems
1616 necessary; and shall inspect all Containers placed for collection (including Recycling Containers, Organic

1617 Waste Containers, and Garbage Containers). Each inspection shall involve lifting the Container lid and
 1618 observing the contents but shall not require Contractor to disturb the contents or open any bags. If
 1619 Contractor observes Contamination Contractor shall follow the provisions outlined in Section 3.09.
 1620 Contractor may select the Containers to be inspected at random, or (if mutually agreed with the City) by
 1621 any other method not prohibited under the SB 1383 regulations. Contractor will also collect photographic
 1622 documentation during route reviews. For the avoidance of doubt, Contractor shall not be required to
 1623 annually inspect every Container on a route. Contractor shall include the results of each Route Review in
 1624 its next regularly scheduled report to City as required by Section 17.

<u>Route Size (# Garbage accounts/ week)</u>	<u>Minimum Number of Containers</u>
Less than 1,500	25
1,500-3,999	30
4,000-6,999	35
7,000 or more	40

1625 15.04 Compliance Reviews. At least once annually, beginning in 2022, Contractor shall review
 1626 the records of its Commercial Service Recipients in the City that are subscribed for at least two (2) cubic
 1627 yards per week of combined Garbage, Organic Waste and Recyclable Materials service, to determine
 1628 whether those Commercial Service Recipients are subscribed for Organic Waste collection service or have
 1629 an applicable waiver. Contractor shall include the results of each compliance review in its quarterly reports
 1630 the City, as required by Section 17.

1631 15.05 Site Visits. Based on Contractor’s Compliance Reviews of the list of Commercial Service
 1632 Recipients requiring site visit compiled in accordance with Section 15.04 above, Contractor shall conduct
 1633 an annual site visit to each Commercial Service Recipient in the City that is determined to not be subscribed
 1634 to Organic Waste Collection Service and is not eligible for a waiver. During the site visits, Contractor shall
 1635 encourage those businesses to sign up for SB 1383 compliant Organics Waste Collection Service and
 1636 provide educational material about SB 1383’s requirements. Contractor will also collect photographic
 1637 documentation during all site visits. The Contractor shall conduct no less than 30 in-depth, in-person,
 1638 diversion site visits per quarter.

1639 15.06 Education and Outreach. Prior to July 1, 2022, and annually thereafter, Contractor shall
 1640 provide the information listed below to all Service Recipients under the Agreement. This information will be
 1641 provided, at a minimum, through print and electronic media, on the Contractor’s website, and may also be
 1642 provided through workshops, meetings and/or on-site visits. Contractor shall collaborate with the City in the
 1643 development of solid waste brochures for residential and commercial Service Recipients and split the cost
 1644 (50/50) to design and print all solid waste brochures. The Contractor also agrees to attach a full-service
 1645 brochure to each residential cart in the City, at the City’s discretion, beginning at the earliest in Calendar
 1646 Year 2022 and at a maximum of every three years thereafter, with the costs not being included in
 1647 Contractor’s Compensation. Contractor shall provide Commercial Service Recipients with interactive
 1648 assistance such as employee trainings, in a virtual or in-person format, when Organic Waste Collection
 1649 Service is added, or upon request.

1650 15.06.1 Information on the Service Recipient's requirements to properly separate Organic
1651 Waste and Recyclable Materials into appropriate Containers.

1652 15.06.2 Information on methods for: the prevention of Organic Waste generation, recycling
1653 Organic Waste on-site, sending Organic Waste to community composting, and any other local requirements
1654 regarding Organic Waste.

1655 15.06.3 Information regarding the methane reduction benefits of reducing the landfill
1656 disposal of Organic Waste, and the methods of Organic Waste recovery contemplated by the Agreement.

1657 15.06.4 Information regarding how to recover Organic Waste.

1658 15.06.5 Information related to the public health and safety and environmental impacts
1659 associated with the landfill disposal of Organic Waste.

1660 15.07 Waivers. Unless other arrangements have been made by the City, Contractor shall be
1661 responsible for the distribution, collection and evaluation of waiver applications as appropriate and provide
1662 the City a recommendation to accept or deny waiver requests. Contractor shall develop waiver application
1663 forms and shall provide them to the City for its approval prior to use. Contractor shall evaluate requests for
1664 exemption or waiver from SB 1383 requirements on the basis of physical space or de minimis generation
1665 and provide the City with periodic recommendations and supporting documentation to deny or approve
1666 waivers, including a site visit and re-evaluation at least every five years as required by the SB 1383
1667 Regulations.

1668 15.08 Edible Food Recovery. Unless other arrangements have been made by the City, Contractor
1669 shall provide the City with a list of Tier One commercial edible food generators located in the City by April
1670 1, 2023 and annually thereafter. Contractor shall provide the City with a list of Tier Two commercial edible
1671 food generators located within their jurisdiction by January 1, 2024 and annual thereafter. Tier One and
1672 Tier Two edible food generators are defined in El Cerrito Municipal Code Chapter 8.12.010. Unless other
1673 arrangements have been made by the City, Contractor shall provide educational materials to Service
1674 Recipients discovered to be out of compliance with the SB 1383 Regulations requirements (e.g., Tier 1 or
1675 2 generator not donating edible food, insufficient interior containers, etc.) and report a list of such Service
1676 Recipients as well as actions taken to the City on a periodic basis.

1677 15.09 Compliance Plan. Contractor, at its own expense, must prepare, submit and implement an
1678 annual (Calendar Year) Compliance Plan ("Plan"), which will guide Contractor's work efforts. This Plan will
1679 include measures to meet diversion targets, increase diversion, and increase participation of Service
1680 Recipients in Recycling and Organic Waste programs, and should target certain materials or "problem"
1681 areas, including Recycling and Organic Waste sorting and Contamination, within Contractor's Service Area
1682 where improvements can be maximized. Planned outreach and education services, and outreach materials
1683 should be included as part of the Plan and updated annually. Targets of outreach should be based on local
1684 Solid Waste trends from data obtained by both the City and Contractor, and other reputable sources.
1685 Contractor will maintain current and state-of-the-art public outreach and education services throughout the
1686 term of this Agreement by providing outreach materials to Service Recipients electronically (via email and
1687 social media) in addition to print. Contractor must submit first year draft Plan to the City by September 1,
1688 2022. City will review and provide revisions to draft Plan within thirty (30) days of receipt. Contractor must
1689 revise and submit final Plan to City by December 1, 2022. The Compliance Plan must include the following:

1690 15.09.1 City-specific website. Contractor shall maintain a City-specific website that fully
1691 explains the Contractor's Collection Services and Service Rates, the diversion options available, and allows
1692 Service Recipients to submit service changes, inquiries, complaints or queries. The website must describe
1693 and promote the use of the available Recyclable Materials and Organic Waste services in the City.
1694 Contractor's local website must provide information specific to the City's programs. Contractor will ensure
1695 that information provided on the website is maintained and up to date. Content will include proper container
1696 set out, educational materials, newsletters and program descriptions. Contractor's website shall include all
1697 information required in SB 1383 18985.1 (a), including the list of edible food recovery services 18985.2 (a).

1698 15.09.2 Available Services Notice and Information. At least annually Contractor must
1699 publish and distribute (by mail and electronically) a notice to all Service Recipients regarding the full range
1700 of services offered by Contractor and City. The notice must contain at a minimum (i) clear descriptions of
1701 the materials to be Collected, (ii) procedures for setting out materials, (iii) the days when Garbage Collection
1702 Services and Organic Waste Collection Services will be provided, (iv) Contractor's local customer service
1703 phone number, (v) instructions on the proper filling of Containers, (vi) instructions as to what materials may
1704 or may not be placed in Recyclable Materials or Organic Waste Containers, (vii) how to select container
1705 sizes to maximize diversion, (viii) participation in Recycling and Organic Waste programs, (ix) the charges
1706 for Overage and Contamination in the event of non-compliance, (x) the availability of on-premises Collection
1707 Services, including the availability of no-charge on-premises Collection Services for qualified persons, (xi)
1708 Large Items Collection Services; and other services described in this Agreement at the direction of the City.
1709 The notice must be provided in English, and other languages as directed by the City, and must be distributed
1710 by Contractor no later than October 1 of each year. The Notice shall meet all requirements of SB 1383
1711 18985.1 (a).

1712 15.09.3 Education and Outreach Materials. Contractor must implement public education
1713 and outreach in conformance with applicable laws (e.g., SB 1383, AB 1826, AB 827, AB 939, AB 341, AB
1714 1594, etc.) and in coordination with the City. Contractor shall attend public events and host booths to promote
1715 education and awareness. Contractor will work with City to identify which special events will be attended.
1716 Contractor, together with City, shall work with local media to ensure information on new programs, events,
1717 Recycling, Organic Waste etc. is communicated to the community. Contractor shall use a variety of options
1718 such as local paper, news, websites, Homeowners Associations, schools and civic groups to distribute
1719 information and education about City Solid Waste programs, and events. Contractor shall distribute
1720 educational material to Service Recipients a minimum of once a quarter by mail or electronically. These
1721 materials should include tips on Recycling properly, use of Organic Waste containers, Composting, battery
1722 and electronics education, prevention of Contamination issues, proper Container placement, resource
1723 information, and HHW education.

1724 15.09.4 Service Recipient Personnel Training. Contractor shall advise and educate
1725 appropriate personnel (management, employees, janitors, etc.) with Commercial Service Recipients on
1726 methods and recommendations to decrease landfilling including best practices for Source Separation.
1727 Annually and during new staff on-boarding, Contractor shall train customer service representatives and
1728 account managers/recycling coordinators serving Organic Waste Service Recipients in the City on the SB
1729 1383 requirements, SB 1383 Regulations as they may be revised from time to time, and on resources
1730 available to assist in compliance. Trainings may be in a virtual or in-person format. The Contractor shall
1731 establish annual customer service and recycling training for all personnel with the objective of providing

1732 consistent high-level customer service. The Contractor shall provide a copy of the proposed training
1733 materials annually, no later than January 31 of each year along with documentation of all staff who received
1734 the prior year's training.

1735 15.10 Contractor shall expend at least twenty-five thousand dollars (\$25,000) per year (as
1736 adjusted annually by the CPI All Other) for development and subsequent implementation of the Plan, which
1737 may include the annual subscription cost for the Waste Reporting System and consultants but may not
1738 include direct personnel or benefit costs associated with the Contractor's staff designated pursuant to
1739 Section 15.01.

1740 15.11 Tri-Annual Customer Satisfaction Assessment and Survey. The Contractor shall establish
1741 a tri-annual customer satisfaction assessment and survey, with the first tri-annual survey completed by
1742 December 31, 2024. The customer satisfaction assessment will include an improvement plan, and the
1743 Contractor shall report the results of the assessment and the improvement plan to the City once finalized.
1744 The Contractor shall submit a draft of the survey to the City for approval by April 1 of each year that the
1745 survey is to be conducted.

1746 Article 16. Emergency Service

1747 16.01 Revised Services During an Emergency. In the event of a major storm, earthquake, fire,
1748 natural disaster, pandemic, or other such event, the Agreement Administrator may grant the Contractor a
1749 variance from regular routes and schedules, which will not be withheld unreasonably. As soon as practicable
1750 after such event, Contractor must advise the Agreement Administrator when it is anticipated that normal
1751 routes and schedules can be resumed. The Agreement Administrator will make an effort through the various
1752 outreach media to inform the public when regular Collection Services may be resumed. The clean-up from
1753 some events may require that Contractor hire additional equipment, employ additional personnel, or work
1754 existing personnel on overtime hours to clean debris resulting from the event. Contractor will receive
1755 additional compensation, above the normal Contractor's Compensation contained in this Agreement, to
1756 cover the costs of rental equipment, additional personnel, overtime hours and other documented expenses
1757 based on the charges per Exhibit 3, provided Contractor has first secured written authorization and approval
1758 from City through the Agreement Administrator. City will be given equal priority and access to resources as
1759 with other jurisdictions held by Contractor or its affiliates.

1760 16.02 Disaster Recovery Support. In the event of a tornado, major storm, earthquake, fire, natural
1761 disaster, or other such event, Contractor agrees to provide disaster recovery support to a reasonable degree,
1762 upon request by Agreement Administrator. This may include additional hauling of debris, temporary storage
1763 of debris where feasible, additional disposal, use of different transfer and disposal facilities, and
1764 documentation of debris type, weight, and diversion. Contractor should follow protocol laid out in the Contra
1765 Costa County or City Disaster Debris Plans, as applied to Solid Waste hauling and handling.

1766 Article 17. Record Keeping and Reporting Requirements

1767 17.01 Record Keeping.

1768 17.01.1 Accounting Records. Contractor must maintain full, complete and separate
1769 financial, statistical and accounting records, pertaining to cash, billing, and provisions of all Collection
1770 Services, prepared on an accrual basis in accordance with generally accepted accounting principles. Such
1771 records will be subject to audit, copy, and inspection. Gross receipts derived from provision of the Collection

1772 Services will be recorded as revenues in the accounts of Contractor. The Contractor shall keep and preserve,
1773 during the Term of this Agreement, and for a period of not less than four (4) years following expiration or
1774 other termination hereof, full, complete and accurate records, including all cash, billing and disposal records,
1775 as indicated in the Agreement.

1776 17.01.2 City reserves the right to request audited, reviewed, or compiled financial
1777 statements prepared by an independent Certified Public Accountant, or as may be provided by Contractor
1778 or its parent company. In the event that Contractor does not maintain separate financial or accounting
1779 records prepared specifically for Collection Services provided under this Agreement, Contractor may use
1780 industry standard allocation methods to provide financial information as applicable to the service provided
1781 under this Agreement.

1782 17.01.3 Material Records. Contractor must maintain records of the quantities of (i)
1783 Residential and Commercial Garbage Collected and disposed under the terms of this Agreement, (ii) Organic
1784 Waste by type, Collected, purchased, processed, sold, donated or given for no compensation, and residue
1785 disposed under the terms of this Agreement.

1786 17.01.4 Other Records. Contractor must maintain all other records reasonably related to
1787 provision of Collection Services, whether or not specified in this Agreement.

1788 17.02 Monthly Report of Franchise Fee and Integrated Waste Management Fee Payments.
1789 Contractor must submit a monthly report of Franchise Fee and Integrated Waste Management Fee
1790 Payments within thirty (30) days of the end of each month. The monthly payment report must include an
1791 accounting of Contractor's Gross Revenue received during the preceding month, and the calculated
1792 Franchise Fee payment. It must also include an accounting of receipts of Integrated Waste Management
1793 Fees paid by Service Recipients.

1794 17.03 Quarterly Reports. Contractor must submit quarterly reports no later than 5 p.m. pacific
1795 time on the last day of the month following the end of the prior quarter (January – March, April – June, July
1796 – September, October – December). Quarterly reports must be provided electronically using software
1797 acceptable to the City. If the last day of the month falls on a day that City is closed or a Holiday, then the
1798 report will be due on the next Work Day.

1799 17.04 Annual Reports. Contractor must submit annual reports no later than 5 p.m. PT on April 1,
1800 2023 and each April 1st thereafter for the previous Calendar Year. If April 1st falls on a day that City is
1801 closed, then the report will be due on the next Work Day. Annual reports must be submitted in hard copy
1802 and must also be provided electronically in software acceptable to the City.

1803 17.05 Report Format. All reports to be submitted in a format approved by the City and in a
1804 format specified by the City and must at minimum include the details listed in Exhibit 8.

1805 Article 18. Nondiscrimination

1806 18.01 Nondiscrimination. In the performance of all work and Collection Services under this
1807 Agreement, Contractor may not discriminate against any person based on such person's race, sex, color,
1808 national origin, religion, marital status, immigration status, disability, or sexual orientation or gender identity.
1809 Contractor must comply with all applicable local, State and Federal laws and regulations regarding
1810 nondiscrimination, including those prohibiting discrimination in employment.

Article 19. Quality of Performance of Contractor

1811
1812 19.01 Intent. Contractor acknowledges and agrees that one of City's primary goals in entering
1813 into this Agreement is to ensure that the Collection Services are of the highest caliber, that Service Recipient
1814 satisfaction remains at the highest level, that maximum diversion levels are achieved, and that materials
1815 Collected are put to the highest and best use to the extent possible.

1816 19.02 Service Supervisor. Contractor must assign a qualified supervisor to be in charge of the
1817 Collection Service within the Service Area and must provide the name of that person in writing to the
1818 Agreement Administrator within thirty (30) days prior to the Effective Date, and at any time the person in that
1819 position changes. The supervisor must be physically located in the Service Area and available to the
1820 Agreement Administrator through the use of telecommunication equipment at all times that Contractor is
1821 providing Collection Services. In the event the supervisor is unavailable due to illness or vacation, Contractor
1822 must designate an acceptable substitute who will be available and who has the authority to act in the same
1823 capacity as the supervisor.

1824 19.03 Agreement Manager. Contractor must designate an Agreement Manager and must provide
1825 the name of that person in writing to City within thirty (30) days prior to the Effective Date and any time the
1826 person in that position changes. The Agreement Manager must be available to the City through the use of
1827 telecommunications equipment at all times that Contractor is providing Collection Services in the Service
1828 Area. The Agreement Manager must provide City with an emergency phone number where the Agreement
1829 Manager can be reached outside of normal business hours.

1830 19.04 Administrative Charges and Penalties. Quality performance by the Contractor is of primary
1831 importance. In respect of this, Contractor agrees to pay City administrative charges and penalties as per
1832 Exhibit 2 should Contractor fail to meet its responsibilities under this Agreement. Should Contractor be in
1833 breach of the requirements set forth in this Agreement, it is mutually understood and agreed that the public
1834 will necessarily suffer damages and that such damages, from the nature of the default in performance will
1835 be extremely difficult and impractical to fix. City finds, and the Contractor agrees, that as of the time of the
1836 execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages
1837 which will be incurred by City as a result of a breach by Contractor of its obligations under this Agreement.
1838 The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact
1839 that: (i) substantial damage results to members of the public who are denied services or denied quality or
1840 reliable service; (ii) such breaches cause inconvenience, anxiety, frustration and deprivation of the benefits
1841 of this Agreement to individual members of the general public for whose benefit this Agreement exists, in
1842 subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary
1843 terms; (iii) services might be available at substantially lower costs than alternative services, and the monetary
1844 loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in
1845 precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies
1846 are, at best, a means of future correction and not remedies which make the public whole for past breaches.

1847 19.05 Procedure for Review of Administrative Charges. The Agreement Administrator may
1848 assess administrative charges and penalties as specified in Article 12 pursuant to this Agreement monthly.
1849 As needed during the term of this Agreement, the Agreement Administrator will issue a written notice to

1850 Contractor ("Notice of Assessment") of the administrative charges assessed and the basis for each
1851 assessment.

1852 19.05.1 The assessment will become final unless, within ten (10) calendar days of the date
1853 of the notice of assessment, Contractor provides a written request for a meeting with the City Manager to
1854 present evidence that the assessment should not be made.

1855 19.05.2 The Agreement Administrator will schedule a meeting between Contractor and the
1856 City Manager as soon as reasonably possible after timely receipt of Contractor's request.

1857 19.05.3 The City Manager will review Contractor's evidence and render a decision
1858 sustaining or reversing the administrative charges as soon as reasonably possible after the meeting. Written
1859 notice of the decision will be provided to Contractor.

1860 19.05.4 In the event Contractor does not submit a written request for a meeting within ten
1861 (10) calendar days of the date of the Notice of Assessment, the Agreement Administrator's determination
1862 will be final.

1863 19.05.5 City's assessment or collection of administrative charges will not prevent City from
1864 exercising any other right or remedy, including the right to terminate this Agreement, for Contractor's failure
1865 to perform the work and services in the manner set forth in this Agreement.

1866 19.06 Uncontrollable Circumstances.

1867 19.06.1 If either party is prevented from or delayed in performing its duties under this
1868 Agreement by circumstances beyond its control, whether or not foreseeable, including, without limitation,
1869 acts of terrorism, landslides, lightning, forest fires, storms, floods, severe weather, freezing, earthquakes,
1870 other natural disasters, the threat of such natural disasters, pandemics (or threat of same), quarantines, civil
1871 disturbances, acts of the public enemy, wars, blockades, public riots, strikes, lockouts, or other labor
1872 disturbances, acts of government or governmental restraint (including but not limited to public health orders
1873 by Contra Costa County or State officials) or other causes, whether of the kind enumerated or otherwise,
1874 that are not reasonably within the control of the affected party, then the affected party will be excused from
1875 performance hereunder during the period of such disability.

1876 19.06.2 If either party is prevented from or delayed in performing its duties under this
1877 Agreement by circumstances beyond its control, as defined in this Article 19, such failure of or delay in
1878 performance shall not constitute a default or breach. The party prevented or delayed shall perform the duty
1879 as soon as practicable after the circumstance preventing or delaying service has abated.

1880 19.06.3 A party prevented from or delayed in performing its duties under this Agreement
1881 by circumstances beyond its control shall provide the other party with notice immediately upon learning that
1882 it will be prevented from or delayed in performing the duty.

1883 **Article 20. Performance Bond**

1884 20.01 Performance Bond. No later than the Effective Date, Contractor must furnish to City, and
1885 keep current, a performance bond, for the faithful performance of this Agreement and all obligations arising
1886 hereunder in an amount of one and one half million dollars (\$1,500,000) and satisfy the requirements listed
1887 below.

1888 20.02 The performance bond must be executed by a surety company licensed to do business in
1889 the State of California; having an "A-" or better rating by A. M. Best or Standard and Poor; and included on
1890 the list of surety companies approved by the Treasurer of the United States.

1891 20.03 In the event City draws on the bond, all of City's costs of collection and enforcement of the
1892 Bond, including reasonable attorneys' fees and costs, must be paid by Contractor.

1893 20.04 The performance bond shall be renewed annually for the entire term of the Agreement and
1894 evidence must be provided to City annually.

1895 **Article 21. Insurance**

1896 21.01 Insurance Policies. Contractor must secure and maintain throughout the term of this
1897 Agreement insurance against claims for injuries to persons or damages to property which may arise from or
1898 in connection with Contractor's performance of work or Collection Services under this Agreement.
1899 Contractor's performance of work or Collection Services includes performance by Contractor's employees,
1900 agents, representatives and subcontractors.

1901 21.02 Minimum Scope of Insurance. Insurance coverage must be at least this broad:

1902 21.02.1 Insurance Services Office Form No. GL 0002 (Ed. 1/96) covering Comprehensive
1903 General Liability and Insurance Services Office Form No. GL 0404 covering Broad Form Comprehensive
1904 General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form
1905 CG 0001), including X, C, U where applicable.

1906 21.02.2 Insurance Services Office Form No.CA 0001 (Ed. 12/93) covering Automobile
1907 Liability, code 1 "any auto", or code 2 "owned autos" and endorsement CA 0025. Coverage must also include
1908 code 8, "hired autos" and code 9 "non-owned autos".

1909 21.02.3 Workers' Compensation insurance as required by the California Labor Code and
1910 Employers Liability Insurance.

1911 21.02.4 Environmental Pollution Liability Insurance.

1912 21.03 Minimum Limits of Insurance. Contractor must maintain insurance limits no less than:

1913 21.03.1 Comprehensive General Liability: \$3,000,000 combined single limit per occurrence
1914 for bodily injury, personal injury and property damage. If Commercial General Liability insurance with a
1915 general aggregate limit is used, either the general aggregate limit will apply separately to this Agreement or
1916 the general aggregate limit must be \$5,000,000.

1917 21.03.2 Automobile Liability: \$10,000,000 combined single limit per accident for bodily
1918 injury and property damage.

1919 21.03.3 Workers' Compensation and Employers Liability: Workers' Compensation limits as
1920 required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident.

1921 21.03.4 Environmental Pollution Liability: \$3,000,000 per occurrence and \$5,000,000
1922 aggregate, with five (5) years' tail coverage. Coverage shall include bodily injury or property damage arising
1923 out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of
1924 pollutants resulting from Contractor's operations.

1925 21.03.5 If Contractor maintains higher limits than the minimum shown above, the City
1926 requires and shall be entitled to coverage for the higher limits maintained by the Service Provider. Any
1927 available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be
1928 available to the City.

1929 21.04 Deductibles and Self-Insured Retention. Any deductibles or self-insured retention must be
1930 declared to City's risk manager. Should City form a reasonable belief that Contractor may be unable to pay
1931 any deductibles or self-insured retentions, Contractor must procure a bond guaranteeing payment of losses
1932 and related investigations, claim administration and defense expenses in an amount specified by City's risk
1933 manager.

1934 21.05 Requirements for All Contractor Insurance Policies.

1935 21.05.01 General Liability, Automobile and Environmental Liability Coverage. Contractor's
1936 general liability, automobile, and environmental liability policies required by this Agreement shall contain
1937 the following:

1938 1. City, its officers, employees, agents and contractors are to be covered as
1939 additional insureds as respects: Liability arising out of activities performed by, or on behalf of, Contractor;
1940 products and completed operations of Contractor; premises owned, leased or used by Contractor; and
1941 automobiles owned, leased, hired or borrowed by Contractor. The coverage must contain no special
1942 limitations on the scope of protection afforded to City, its officers, employees, agents and contractors.

1943 2. Contractor's insurance coverage must be primary insurance as respects
1944 City, its officers, employees, agents and contractors. Any insurance, or self-insurance maintained by City,
1945 its officers, employees, agents or contractors will be in excess of Contractor's insurance and will not
1946 contribute with it.

1947 3. Any failure to comply with reporting provisions of the policies will not
1948 affect coverage provided to City, its officers, employees, agents, or contractors.

1949 4. Coverage must State that Contractor's insurance will apply separately to
1950 each insured against whom claim is made or suit is brought, except with respect to the limits of the
1951 insurer's liability.

1952 21.05.02 All Coverage. Each insurance policy required by this Agreement must be
1953 endorsed to state that coverage may not be canceled except after thirty (30) calendar days (ten (10) days
1954 in the event of cancellation for non-payment) prior written notice has been given to City. Moreover,
1955 Contractor will not order the cancellation of any required insurance policy or change in insurance policy
1956 limits without thirty (30) days prior written notice to City by Contractor.

1957 21.06 Acceptability of Insurers. Insurance is to be placed with insurers having an A.M. Best rating
1958 of A-/VII or better.

1959 21.07 Verification of Coverage. Contractor must furnish City with certificates of insurance and
1960 with original endorsements affecting coverage required by this Agreement. The certificates and endorsement
1961 for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its
1962 behalf. Contractor must furnish City with a new certificate of insurance and endorsements on each renewal
1963 of coverage or change of insurers.

1964 21.07.1 Proof of insurance must be mailed to the following address or any subsequent
1965 address as may be directed by the City:

1966 City of El Cerrito Public Works Department
1967 Attn: Operations + Environmental Services Division Manager
1968 10890 San Pablo Avenue
1969 El Cerrito, CA 94530

1970 21.08 Modification of Insurance Requirements. The insurance requirements provided in this
1971 Agreement may be modified or waived by City's risk manager, in writing, upon the request of Contractor if
1972 City's risk manager determines such modification or waiver is in the best interest of City considering all
1973 relevant factors, including exposure to City.

1974 21.09 Rights of Subrogation. All required insurance policies must preclude any underwriter's
1975 rights of recovery or subrogation against City with respect to matters related to Contractor's performance of
1976 its obligations under this Agreement, with the express intention of the parties being that the required
1977 insurance coverage protects both parties as the primary coverage for any and all losses covered by the
1978 above-described insurance. Contractor must ensure that any companies issuing insurance to cover the
1979 requirements contained in this Agreement agree that they will have no recourse against City for payment or
1980 assessments in any form on any policy of insurance. The clauses 'Other Insurance Provisions' and 'Insured
1981 Duties in the Event of an Occurrence, Claim or Suit' as it appears in any policy of insurance in which City is
1982 named as an additional insured will not apply to City.

1983 21.10 Failure to maintain insurance. Should Contractor fail to obtain or maintain insurance as
1984 required by this Agreement, Contractor shall have 7 days to cure the defect, during which time City shall
1985 have the option, but not the obligation to, at Contractor's sole expense: (i) hire replacement Collection
1986 Services to perform Contractor's tasks until insurance coverage is resumed; or (ii) obtain replacement
1987 insurance coverage during said cure period. Should Contractor fail to correct this defect, City shall have the
1988 option to terminate this Agreement immediately.

1989 Article 22. Hold Harmless and Indemnification

1990 22.01 Hold Harmless. Contractor releases and shall hold City, its elected officials, officers,
1991 agents, employees and volunteers harmless from all of Contractor's claims, demands, lawsuits, judgments,
1992 damages, losses, or injuries and from all liability to Contractor, to Contractor's employees, to Contractor's
1993 contractors or subcontractors, or to the owners of Contractor's firm, which damages, losses, injuries or
1994 liability occur during the work or Collection Services required under this Agreement, or performance of any
1995 activity or work required under this Agreement.

1996 22.02 Defense and Indemnity of Third-Party Claims/Liability. Contractor shall indemnify, defend
1997 with legal counsel reasonably approved by City, and hold harmless City, its officers, officials, employees and
1998 volunteers ("City indemnitee") from and against all liability including, but not limited to, loss, damage,
1999 expense, or cost (including without limitation reasonable legal counsel fees, expert fees and all other costs
2000 and fees of litigation) of every nature arising out of or in connection with Contractor's negligence,
2001 recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of
2002 its obligations contained in this Agreement, except such loss or damage which is caused by the active
2003 negligence or willful misconduct of City. Should conflict of interest principles preclude a single legal counsel
2004 from representing both City and Contractor, or should City otherwise find Contractor's legal counsel

2005 unacceptable, then Contractor shall reimburse City its costs of defense, including without limitation
2006 reasonable legal counsel fees, expert fees and all other costs and fees of litigation. The Contractor shall
2007 promptly pay City any final judgment rendered against City (and its officers, officials, employees and
2008 volunteers) with respect to claims determined by a trier of fact to have been the result of Contractor's
2009 negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply
2010 with any of its obligations contained in this Agreement. It is expressly understood and agreed that the
2011 foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of
2012 California and will survive termination of this Agreement.

2013 22.02.1 Contractor's obligations under this section apply regardless of whether or not such
2014 claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or
2015 penalty, or liability was caused in part or contributed to by a City Indemnitee. However, without affecting the
2016 rights of City under any provision of this Agreement, Contractor shall not be required to indemnify and hold
2017 harmless City for liability attributable to the active negligence or willful misconduct of City, provided such
2018 active negligence or willful misconduct is determined by agreement between the parties or by findings of a
2019 court of competent jurisdiction. In instances where City is shown to have been actively negligent or guilty of
2020 or willful misconduct and where City's active negligence or willful misconduct accounts for only a percentage
2021 of the liability involved, the obligation of the Contractor will be for that entire portion or percentage of liability
2022 not attributable to the active negligence or willful misconduct of City.

2023 22.03 Nonwaiver. City does not waive, nor shall be deemed to have waived, any indemnity,
2024 defense or hold harmless rights under this section because of the acceptance by City, or the deposit with
2025 City, of any insurance certificates or policies described in Article 21.

2026 22.04 Diversion Indemnification. Subject to the requirements of Public Resources Code section
2027 40059.1, which will control in the event of any conflict with the provisions of this Section, Contractor agrees
2028 to protect and defend City Indemnitees with counsel selected by Contractor and approved by City, to pay all
2029 attorneys' fees, and to indemnify and hold City Indemnitees harmless from and against all fines or penalties
2030 imposed by the California Integrated Waste Management Board if the diversion goals specified in California
2031 Public Resources Code section 41780, as it may be amended, are not met by City with respect to the
2032 materials Collected by Contractor and if the lack in meeting such goals is attributable to the failure of
2033 Contractor to implement and operate the diversion programs or undertake the related activities required by
2034 this Agreement. In the event CalRecycle provides an administrative process to challenge the imposition of
2035 a compliance order or a fine or fines, Contractor will be responsible for engaging any consultants or attorneys
2036 necessary to represent City in any challenge. All consultants and attorneys engaged hereunder are subject
2037 to the agreement of City and Contractor.

2038 22.05 Hazardous Substances Indemnification. Contractor agrees to indemnify, defend (with
2039 counsel reasonably approved by City), protect and hold harmless the City Indemnitees from and against any
2040 and all Claims of any kind whatsoever paid, suffered or incurred by or against the City Indemnitees resulting
2041 from any repair, cleanup, removal action or response action undertaken pursuant to CERCLA, the Health &
2042 Safety Code or other similar Federal, State or local law or regulation, with respect to Solid Waste or
2043 Household Hazardous Waste Collected and Disposed of by Contractor. The foregoing indemnity is intended
2044 to operate as an agreement pursuant to Section 107(e) of CERCLA and Section 25364 of the Health &

2045 Safety Code to defend, protect, hold harmless and indemnify the City Indemnitees from all forms of liability
2046 under CERCLA, the Health & Safety Code or other similar Federal, State or local law or regulation.

2047 22.06 Release Regarding Articles XIIC and XIID of the California Constitution. City intends to
2048 comply with all applicable laws concerning the Service Rates. Upon thorough analysis, the parties have
2049 made a good faith determination that the Service Rates for the Collection Services provided under this
2050 Agreement are not subject to California Constitution Articles XIIC and XIID because, among other reasons,
2051 such services are provided by a private corporation and not by City, Service Rates are calculated pursuant
2052 to the terms of this Agreement to provide Contractor's Compensation, the City does not impose Service
2053 Rates on any Service Recipient or property, the receipt of Collection Services is voluntary and not required
2054 of any property within City, and any owner or Service Recipient of property within City has the opportunity
2055 to avoid the Collection Services available under this Agreement either through self-hauling or use of property
2056 in such a manner that Solid Waste is not generated. Accordingly, and subject to Section 4.08, Contractor
2057 agrees to hold harmless and release the City Indemnitees from and against any and all claims Contractor
2058 may have against the City Indemnitees resulting in any form from the Service Rates or in connection with
2059 the application of California Constitution Article XIIC and Article XIID to the imposition, payment or collection
2060 of the Service Rates. This Section will survive the expiration or termination of this Agreement for Claims
2061 arising prior to the expiration or termination of this Agreement.

2062 22.07 Consideration. It is specifically understood and agreed that the consideration inuring to
2063 Contractor for the execution of this Agreement consists of the promises, payments, covenants, rights and
2064 responsibilities contained in this Agreement.

2065 22.08 Obligation. This Agreement obligates Contractor to comply with the foregoing
2066 indemnification and release provisions; however, the collateral obligation of providing insurance must also
2067 be complied with as set forth in this Agreement.

2068 22.09 Exception. Notwithstanding other provisions of this Agreement, Contractor's obligation to
2069 indemnify, hold harmless and defend City, its officers and employees will not extend to any loss, liability,
2070 penalty, damage, action or suit arising or resulting solely from acts or omissions constituting active
2071 negligence, willful misconduct, breach of this Agreement, or violation of law on the part of City, its officers or
2072 employees.

2073 22.10 Damage by Contractor. If Contractor's employees or subcontractors cause any injury,
2074 damage or loss to City property, including but not limited to City streets or curbs, excluding normal wear and
2075 tear, Contractor shall reimburse City for City's cost of repairing or replacing such injury, damage or loss.
2076 Such reimbursement is not in derogation of any right of City to be indemnified by Contractor for any such
2077 injury, damage or loss. With the prior written approval of City, Contractor may repair the damage at
2078 Contractor's sole cost and expense. Any injury, damage or loss to private property caused by the negligent
2079 or willful acts or omissions of Contractor to private property must be repaired or replaced by Contractor at
2080 Contractor's sole expense. Disputes between Contractor and its Service Recipients or private property
2081 owners as to damage to private property are civil matters and complaints of damage will be referred to
2082 Contractor as a matter within its sole responsibility and as a matter within the scope of Article 22.

Article 23. Default of Agreement

2083

2084 23.01 Termination. City may terminate this Agreement, except as otherwise provided below in
2085 this Section, by giving Contractor thirty (30) calendar days' advance written notice, to be served as provided
2086 in this Agreement, upon the happening of any one of the following events:

2087 23.01.1 Contractor voluntarily takes the benefit of any present or future insolvency statute,
2088 or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy (court)
2089 or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness
2090 under the Federal bankruptcy laws or under any other law or statute of the United States or any State thereof,
2091 or consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

2092 23.01.2 By order or decree of a court, Contractor is adjudged bankrupt or an order is made
2093 approving a petition filed by any of its creditors or by any of the stockholders of Contractor, seeking its
2094 reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law
2095 or statute of the United States or of any State thereof, provided that if any such judgment or order is stayed
2096 or vacated within sixty (60) calendar days after the entry thereof, any notice of default will be and become
2097 null, void and of no effect; unless such stayed judgment or order is reinstated in which case, such default
2098 will be deemed immediate; or by, or pursuant to, or under the authority of any legislative act, resolution or
2099 rule or any order or decree of any court or governmental board, agency or officer having jurisdiction, a
2100 receiver, trustee or liquidator takes possession or control of all or substantially all of the property of
2101 Contractor, and such possession or control continues in effect for a period of sixty (60) calendar days; or

2102 23.01.3 Contractor has defaulted, by failing or refusing to pay in a timely manner the
2103 administrative charges or other monies due to City and such default is not cured within thirty (30) calendar
2104 days of receipt of written notice by City to do so; or

2105 23.01.4 Contractor has defaulted by allowing any final judgment for the payment of money
2106 owed to City to stand against it unsatisfied and such default is not cured within thirty (30) calendar days of
2107 receipt of written notice by City to do so; or

2108 23.01.5 In the event that the monies due to City under Section 23.01.3 above or an
2109 unsatisfied final judgment under Section 23.01.4 above is the subject of a judicial proceeding, Contractor
2110 will not be in default if the sum of money is bonded. All bonds must be in the form acceptable to the City
2111 Attorney; or

2112 23.01.6 Contractor has defaulted, by failing or refusing to perform or observe the terms,
2113 conditions or covenants in this Agreement, including the maintenance of a performance bond in accordance
2114 with Article 20, or any of the rules and regulations promulgated by City pursuant thereto or has wrongfully
2115 failed or refused to comply with the instructions of the Agreement Administrator relative thereto and such
2116 default is not cured within thirty (30) calendar days of receipt of written notice by City to do so, or if by reason
2117 of the nature of such default, the same cannot be remedied within thirty (30) calendar days following receipt
2118 by Contractor of written demand from City to do so, Contractor fails to commence the remedy of such default
2119 within such thirty (30) calendar days following such written notice or having so commenced fails thereafter
2120 to continue with diligence the curing thereof (with Contractor having the burden of proof to demonstrate (a)
2121 that the default cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with diligence
2122 to cure such default, and such default will be cured within a reasonable period of time). However,

2123 notwithstanding anything contained herein to the contrary, for the failure of Contractor to provide Collection
2124 Services for a period of three (3) consecutive Work Days, City may secure Contractor's records on the fourth
2125 (4th) Work Day in order to provide interim Collection Services until such time as the matter is resolved and
2126 Contractor is again able to perform pursuant to this Agreement; provided, however, if Contractor is unable
2127 for any reason or cause to resume performance at the end of thirty (30) calendar days all liability of City
2128 under this Agreement to Contractor will cease and this Agreement may be terminated by City.

2129 23.02 Violations. Notwithstanding the foregoing and as supplemental and additional means of
2130 termination of this Agreement under this Article, in the event that Contractor's record of performance shows
2131 that Contractor has defaulted in the performance of any of the covenants and conditions required herein to
2132 be kept and performed by Contractor three (3) or more times in any twelve (12) month period, and regardless
2133 of whether the Contractor has corrected each individual condition of default, Contractor will be deemed a
2134 "habitual violator", will be deemed to have waived the right to any further notice or grace period to correct,
2135 and all such defaults will be considered cumulative and collectively will constitute a condition of irredeemable
2136 default. City will thereupon issue Contractor a final warning citing the circumstances therefor, and any single
2137 default by Contractor of whatever nature, subsequent to the occurrence of the last of such cumulative
2138 defaults, will be grounds for immediate termination of this Agreement. In the event of any such subsequent
2139 default, City may terminate this Agreement upon giving of written final notice to Contractor, such cancellation
2140 to be effective upon the date specified in City's written notice to Contractor, and all contractual fees due
2141 hereunder plus any and all charges and interest will be payable to such date, and Contractor will have no
2142 further rights hereunder. Immediately upon the specified date in such final notice Contractor must cease any
2143 further performance under this Agreement.

2144 23.03 Effective Date. In the event of any of the events specified above, and except as otherwise
2145 provided in such subsections, termination will be effective upon the date specified in City's written notice to
2146 Contractor and upon such date this Agreement will be deemed immediately terminated and upon such
2147 termination, except for payment for Collection Services rendered up to and including the date of termination,
2148 all liability of City under this Agreement to Contractor will cease, and City will have the right to call the
2149 performance bond and will be free to negotiate with other contractors for the operation of interim and long-
2150 term Collection Services. Contractor must reimburse City for all direct and indirect costs of providing any
2151 interim Collection Services as a result of Contractor's default in this Agreement.

2152 23.04 Termination Cumulative. City's right to terminate this Agreement is cumulative to any other
2153 rights and remedies provided by law or by this Agreement.

2154 23.05 Alternative Service. Should Contractor, for any reason, except the occurrence or existence
2155 of any of the events or conditions set forth in Section 19.06 [Uncontrollable Circumstances], refuse or be
2156 unable for a period of more than forty-eight (48) hours, to Collect a material portion or all of the Garbage,
2157 Organic Waste and C&D which it is obligated under this Agreement to Collect, and as a result, Garbage,
2158 Organic Waste and C&D should accumulate in City to such an extent, in such a manner, or for such a time
2159 that the City Manager, in the reasonable exercise of the City Manager's discretion, should find that such
2160 accumulation endangers or menaces the public health, safety or welfare, then City will have the right to enter
2161 into an agreement with another Solid Waste Collection enterprise to Collect any or all Garbage, Organic
2162 Waste and C&D which Contractor is obligated to Collect pursuant to this Agreement. City must provide
2163 twenty-four (24) hours' prior written notice to Contractor during the period of such event, before contracting

2164 with another Solid Waste Collection enterprise to Collect any or all Garbage, Organic Waste and C&D that
2165 Contractor would otherwise collect pursuant to this Agreement for the duration of period during which
2166 Contractor is unable to provide such services. In such event, Contractor must undertake commercially
2167 reasonable efforts to identify sources from which such substitute Collection Services are immediately
2168 available and must reimburse City for all of its expenses for such substitute Collection Services during period
2169 in which Contractor is unable to provide Collection Services required by this Agreement.

2170 **Article 24. Modifications to the Agreement**

2171 24.01 City-Directed Change. City has the power to make changes in this Agreement to impose
2172 new rules and regulations on Contractor under this Agreement relative to the scope and methods of providing
2173 Collection Services as may from time-to-time be necessary and desirable for the public welfare. The size of
2174 Containers specified herein are designed to meet the requirements of the State's mandates including AB
2175 341, AB 1826 and SB 1383. City reserves the right to redirect Garbage, Organic Waste, and C&D to alternate
2176 Solid Waste facilities and change the designated sizes of Carts and/or Bins in accordance with any such
2177 changes. City will give the Contractor notice of any proposed change and an opportunity to be heard
2178 concerning those matters.

2179 24.02 Recycling Collection. City has the power to direct Contractor to undertake Collection of
2180 Recyclable Materials from Service Recipients. City and Contractor agree to meet and confer in good faith
2181 regarding City's potential interest in such a change to the Collection Services provided by this Agreement,
2182 Contractor's ability to provide the requested services, adjustments to this Agreement, and adjustments to
2183 Contractor's Compensation that would be requested to implement such a change.

2184 24.03 Adjustments to Contractor's Compensation for a City-Directed Change. In the event of any
2185 City-directed change, Contractor shall be entitled to an adjustment to Contractor's Compensation using the
2186 procedure described in Exhibit 5. The scope and method of providing Collection Services as referenced
2187 herein will be liberally construed to include procedures, operations and obligations, financial or otherwise, of
2188 Contractor. In the event that City and Contractor cannot agree on an adjustment to Contractor's
2189 Compensation resulting from a City-directed change within six months of the change request, or other period
2190 as agreed upon by both parties, City and Contractor agree to submit the proposed change to Contractor's
2191 Compensation to binding arbitration as described in Section 24.05.

2192 24.04 Change in Law. City and Contractor understand and agree that the California Legislature
2193 has the authority to make comprehensive changes in Solid Waste Collection legislation, and that these and
2194 other changes in Applicable Law in the future which mandate certain actions or programs for counties,
2195 municipalities or Contractor may require changes or modifications in some of the terms, conditions or
2196 obligations under this Agreement. Contractor agrees that the terms and provisions of the City of El Cerrito
2197 Municipal Code, as it now exists or as it may be amended in the future, will apply to all of the provisions of
2198 this Agreement and the Service Recipients of Contractor located within the Service Area. In the event any
2199 future change in Federal law or regulations, State or local law or regulation, or the City Code materially alters
2200 the obligations of Contractor, then Contractor may request a change in Contractor's Compensation. Nothing
2201 contained in this Agreement will require any party to perform any act or function contrary to law. City and
2202 Contractor agree to enter into good faith negotiations regarding modifications to this Agreement which may
2203 be required in order to implement changes in the interest of the public welfare or due to a Change in Law.

2241 27.05 Each driver of a Collection Vehicle must at all times carry a valid California driver's license
2242 and all other required licenses for the type of Collection Vehicle that is being operated.

2243 27.06 Each driver of a Collection Vehicle must at all times comply with all applicable State and
2244 Federal laws, regulations and requirements.

2245 27.07 Contractor's employees, officers, and agents may not identify themselves or in any way
2246 represent themselves as being employees or officials of City.

2247 Article 28. Exempt Waste

2248 28.01 Contractor is not required to Collect or dispose of Exempt Waste but may offer such
2249 services. All such Collection and disposal of Exempt Waste is not regulated under this Agreement, but if
2250 provided by Contractor must be in strict compliance with all Applicable Laws.

2251 Article 29. Independent Contractor

2252 29.01 In the performance of Collection Services pursuant to this Agreement, Contractor is an
2253 independent contractor and not an officer, agent, servant or employee of City. Contractor will have exclusive
2254 control of the details of the services and work performed and over all persons performing such services and
2255 work. Contractor is solely responsible for the acts and omissions of its officers, agents, employees,
2256 contractors and subcontractors, if any. Neither Contractor nor its officers, employees, agents, contractors or
2257 subcontractors will obtain any right to retirement benefits, Workers Compensation benefits, or any other
2258 benefits which accrued to City employees and Contractor expressly waives any claim to such benefits.

2259 Article 30. Laws to Govern

2260 30.01 The law of the State of California governs the rights, obligations, duties and liabilities of
2261 City and Contractor under this Agreement and govern the interpretation of this Agreement.

2262 Article 31. Consent to Jurisdiction

2263 31.01 The parties agree that any litigation between City and Contractor concerning or arising out
2264 of this Contract must be filed and maintained exclusively in the Superior Courts of Contra Costa County,
2265 State of California, or in the United States District Court for the Northern District of California to the fullest
2266 extent permissible by law. Each party consents to service of process in any manner authorized by California
2267 law.

2268 Article 32. Assignment

2269 32.01 No interest in this Agreement may be assigned, sold or transferred, either in whole or in
2270 part, by Contractor without the prior written consent of the City which the City may grant or refuse in its
2271 reasonable discretion. The Contractor shall promptly notify the City in writing at least one hundred twenty
2272 (120) days in advance of the proposed closing of any such proposed assignment, sale or transfer. The
2273 Contractor is encouraged to notify the City as soon as possible of any proposed assignment, sale or transfer.
2274 In the event that the City Council approves of any assignment, sale or transfer, said approval shall not relieve
2275 Contractor of any of its obligations or duties under this Agreement unless this Agreement is modified in
2276 writing to that effect.

2277 32.02 Any such assignment, sale or transfer made by the Contractor without the consent of the
2278 City shall be null and void and the attempted assignment, sale or transfer shall constitute a material breach
2279 of this Agreement and give the City grounds to terminate this Agreement upon written notice to the
2280 Contractor, and upon such termination, all liability of the City under this Agreement to the Contractor shall
2281 cease, and the City (1) shall have the right to call the performance bond; and (2) shall be free to negotiate
2282 with other Solid Waste Collection enterprises to provide Solid Waste Collection Services; and (3) shall have
2283 the right to award an agreement for such services to the enterprise of its choice. For purposes of this section,
2284 "assignment, sale or transfer" shall include, but not be limited to:

2285 32.02.1 A sale, exchange or other transfer to a third party of outstanding common stock of
2286 the Contractor which results in a Change in Control.

2287 32.02.2 A sale to a third party of all or substantially all of the Contractor's assets dedicated
2288 to providing Collection Services required by this Agreement.

2289 32.02.3 Any subcontracting of the Contractor's Collection Services required by this
2290 Agreement.

2291 32.02.4 Any dissolution, reorganization, consolidation, merger, recapitalization, stock
2292 issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other
2293 transaction that results in a Change in Control.

2294 32.02.5 Any combination of the foregoing (whether or not related or contemporaneous
2295 transactions) which has the effect of a Change in Control.

2296 32.02.6 Any assignment by operation of law, including insolvency or bankruptcy,
2297 assignment for the benefit of creditors, writ of agreement for an execution being levied against this
2298 Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in a
2299 probate proceeding that results in a Change in Control.

2300 32.03 The Contractor acknowledges that this Agreement involves rendering a vital service to the
2301 City's residents and businesses, and that the City has selected the Contractor to perform the Collection
2302 Services specified herein based on:

2303 32.03.1 The Contractor's experience, skill and reputation for conducting its Solid Waste
2304 management operations in a safe, effective and responsible fashion, at all times in keeping with applicable
2305 local, state and federal environmental laws, regulations and best management practices.

2306 32.03.2 The Contractor's financial resources to maintain the required equipment and to
2307 support its indemnity obligations to City under this Agreement. The City relied on each of these factors,
2308 among others, in choosing the Contractor to perform the Collection Services to be rendered by the
2309 Contractor under this Agreement.

2310 32.04 The City is concerned about the possibility that an assignment, sale or transfer could result
2311 in significant increases in the costs of Collection Services relative to the costs promised by Contractor that
2312 were a material inducement to City to enter into this Agreement, as well as a change in the quality of service.
2313 Accordingly, the following standards have been set to ensure that any assignment, sale or transfer shall
2314 result in continued quality of service and that the Assignee has the ability to provide Collection Services
2315 without significant increases in costs. At a minimum, no request by the Contractor for the City's consent to

2316 an assignment, sale or transfer need be considered by the City unless and until the Contractor has met the
2317 requirements of this Article 32.

2318 32.05 The Contractor shall reimburse the City for its reasonable, documented expenses for
2319 attorneys and other consultants engaged by the City to investigate the suitability of any proposed Assignee,
2320 and to review and finalize any documentation required as a condition for approving any such assignment. In
2321 furtherance of the Contractor's obligation to the City upon notice by the Contractor of its intention to assign
2322 its rights hereunder the Contractor shall pay the City the sum of one hundred thousand dollars (\$100,000)
2323 as a refundable deposit of such expenses of the City. This amount shall be adjusted by the annual change
2324 in the CPI All Other a maximum of one time annually. The City shall refund to the Contractor any portion of
2325 the deposit that the City does not use for the purposes authorized by this Section 32.05.

2326 32.06 The Contractor shall furnish the City with audited financial statements of the proposed
2327 Assignee's operations for the immediately preceding three (3) operating years.

2328 32.07 The Contractor shall furnish the City with satisfactory proof:

2329 32.07.1 That the proposed Assignee has at least ten (10) years of Solid Waste
2330 management experience including the handling of Solid Waste, Recyclable and Organic Materials on a scale
2331 equal to or exceeding the scale of operations conducted by the Contractor under this Agreement;

2332 32.07.2 That in the last five (5) years, neither the proposed Assignee nor any of its affiliates
2333 have suffered significant major citations or other charges from any federal, state or local agency having
2334 jurisdiction over its operations due to any significant failure to comply with state, federal or local
2335 environmental laws and that the Assignee has provided the City with a complete list of such citations and
2336 charges;

2337 32.07.3 That the proposed Assignee has conducted its operations in a reasonably
2338 environmentally safe and conscientious fashion;

2339 32.07.4 That the proposed Assignee has conducted its Solid Waste management practices
2340 in good faith and substantial compliance with sound management practices, including all federal, state and
2341 local laws regulating the collection and disposal of Solid Waste, including Hazardous Wastes; and

2342 32.07.5 That the proposed Assignee can fulfill the terms of this Agreement in a timely, safe
2343 and effective manner without material changes in the quality of Collection Services or materials increases in
2344 the costs of providing them, in the form of any other available information required by City.

2345 32.08 To assist the City in determining whether to provide consent to an assignment, sale, or
2346 transfer, the City may request from the Assignee (directly or through Contractor) reasonable documentation
2347 of Assignee's understanding of and ability and plan to perform the obligations proposed to be assumed by
2348 Assignee under the Agreement. To assist the City in determining whether to consent to an assignment, sale,
2349 or transfer the City may also require one or more representatives of the Assignee to meet in person to
2350 demonstrate to the City's reasonable satisfaction that the Assignee understands and intends and has the
2351 ability to perform the obligations intended to be assumed under this Agreement.

2352 32.09 Under no circumstances shall the City be obliged to consider any proposed assignment,
2353 sale or transfer by the Contractor if the Contractor is in material breach of any provision of this Agreement
2354 at the time of the request or at any time during the period of consideration of the request. The City will provide

2355 the Contractor with a reasonable opportunity to be heard before the City Manager and the opportunity to
2356 correct any such claimed failure of performance or material breach.

2357 32.10 In the event that City approves an assignment, sale or transfer, the Assignee shall not be
2358 entitled to request any adjustment in Contractor's Compensation other than as provided under this
2359 Agreement.

2360 32.11 Contractor shall provide an annual written update to the City by October 1 of each year
2361 detailing the Contractor's plans, actions, accomplishments and next steps with respect to its internal
2362 succession planning. Contractor shall meet with the City on request to discuss details of the Contractor's
2363 succession planning efforts.

2364 Article 33. Compliance with Laws

2365 33.01 In the performance of this Contractor, Contractor must comply with all Applicable Laws,
2366 including, without limitation, the El Cerrito Municipal Code.

2367 33.02 City shall provide written notice to Contractor of any planned amendment of the El Cerrito
2368 Municipal Code that would substantially affect the performance of Contractor's Collection Services pursuant
2369 to this Agreement. Such notice must be provided at least thirty (30) calendar days prior to the City Council's
2370 approval of such an amendment.

2371 Article 34. Permits and Licenses

2372 34.01 Contractor shall obtain, at its own expense, all permits, and licenses required by law or
2373 ordinance and maintain same in full force and effect throughout the term of this Agreement. Contractor must
2374 provide proof of such permits, licenses or approvals and must demonstrate compliance with the terms and
2375 conditions of such permits, licenses and approvals upon the request of the Agreement Administrator.

2376 34.02 The Contractor must have a valid City of El Cerrito Business License throughout the term
2377 of the Agreement.

2378 Article 35. Waiver

2379 35.01 Waiver by City or Contractor of any breach for violation of any term covenant or condition
2380 of this Agreement will not be deemed to be a waiver of any other term, covenant or condition or any
2381 subsequent breach or violation of the same or of any other term, covenant or condition. The subsequent
2382 acceptance by City of any fee, tax, or any other monies which may become due from Contractor to City will
2383 not be deemed to be a waiver by City of any breach for violation of any term, covenant or condition of this
2384 Agreement.

2385 Article 36. Prohibition Against Gifts

2386 36.01 Contractor represents that Contractor is familiar with City's prohibition against the
2387 acceptance of any gift by a City officer or designated employee. Contractor may not offer any City officer or
2388 designated employee any gifts prohibited by the City.

2389 Article 37. Point of Contact

2390 37.01 The day-to-day dealings between Contractor and City will be between Contractor and the
2391 Agreement Administrator.

2392

Article 38. Notices

2393 38.01 Except as provided in this Agreement, whenever either party desires to give notice to the
2394 other, it must be given by written notice addressed to the party for whom it is intended, at the place last
2395 specified and to the place for giving of notice in compliance with the provisions of this Section. For the
2396 present, the parties designate the following as the respective persons and places for giving of notice:

2397

As to the City:

2398

Public Works Director

2399

City of El Cerrito Public Works Dept.

2400

10890 San Pablo Avenue

2401

El Cerrito, CA 94350

2402

Telephone: (510) 215-4385

2403

email: yortiz@ci.el-cerrito.ca.us

2404

As to the Contractor:

2405

President

2406

East Bay Sanitary Co., Inc.

2407

1432 Kearney St.

2408

El Cerrito, CA 94350

2409

Telephone: (510) 237-4321

2410

email: markfigone@ebsan.com

2411 38.02 Notices will be effective when received at the address as specified above. Changes in the
2412 respective address to which such notice is to be directed may be made by written notice.

2413 38.03 Notice by City to Contractor of a Collection or other Service Recipient problem or complaint
2414 may be given to Contractor orally by telephone at Contractor's local office with confirmation sent to
2415 Contractor through the Customer Service System by the end of the Work Day.

2416

Article 39. Transition to Next Contractor

2417 39.01 In the event Contractor is not awarded an extension or new contract to continue to provide
2418 Collection Services following the expiration or early termination of this Agreement, Contractor will cooperate
2419 fully with City and any subsequent contractors to assure a smooth transition of Collection Services described
2420 in this Agreement. Such cooperation will include but not be limited to transfer of computer data, files and
2421 tapes; providing routing information, route maps, Collection Vehicle fleet information, and list of Service
2422 Recipients; providing a complete inventory of all Containers; providing adequate labor and equipment to
2423 complete performance of all Collection Services required under this Agreement; taking reasonable actions
2424 necessary to transfer ownership of Carts and Bins, as appropriate, to City; including transporting such
2425 containers to a location designated by the Agreement Administrator; coordinating Collection of materials set
2426 out in new containers if new containers are provided for in subsequent Agreements and providing other
2427 reports and data required by this Agreement.

2428

Article 40. Contractor’s Records

2429 40.01 Contractor shall keep and preserve, during the Term of this Agreement, full, complete, and
 2430 accurate financial and accounting records, pertaining to cash, billing and disposal transactions for the
 2431 Service Area, prepared on an accrual basis in accordance with generally accepted accounting principles.
 2432 These records and reports are necessary for the City to properly administer and monitor the Agreement and
 2433 to assist the City in meeting the requirements of the Act. The Contractor shall keep and preserve, during the
 2434 Term of this Agreement, and for a period of not less than four (4) years following expiration or other
 2435 termination hereof or for any longer period required by law, full, complete and accurate records as indicated
 2436 in the Agreement.

2437 40.02 Any records or documents required to be maintained pursuant to this Agreement must be
 2438 made available for inspection or audit, at any time during regular business hours, upon written request by
 2439 the Agreement Administrator, the City Attorney, City Auditor, City Manager, or a designated representative
 2440 of any of these officers. Copies of such documents will be provided to City electronically, available to City
 2441 for inspection at the local Contractor office, or an alternate site if mutually agreed upon.

2442 40.03 Contractor acknowledges that City is legally obligated to comply with the California Public
 2443 Records Act (“CPRA”). City acknowledges that Contractor may consider certain records, reports, or
 2444 information contained therein, (“Records”) which Contractor is required to provide to City under this
 2445 Agreement, to be of a proprietary or confidential nature. In such instances, Contractor will inform City in
 2446 writing of which records are considered propriety or confidential and shall identify the statutory exceptions
 2447 to disclosure provided under the CPRA that legally permit non-disclosure of the Records. At such time as
 2448 City receives a request for records under the CPRA or Federal Freedom of Information Act (“FOIA”) or a
 2449 subpoena or other court order requesting disclosure of the Records, City will notify Contractor of the request,
 2450 subpoena or order and of City’s obligation and intent to provide a response within ten (10) calendar days.
 2451 Contractor shall within five (5) calendar days either: (i) consent in writing to the disclosure of the Records;
 2452 or (ii) seek and obtain, at Contractor’s sole cost and expense, the order of a court of competent jurisdiction
 2453 staying or enjoining the disclosure of the Records. If Contractor fails to timely respond, then City may
 2454 proceed to disclosure the Records in which event Contractor agrees to the disclosure and waives and
 2455 releases City of any liability for the disclosure of the Records.

2456 40.04 Where City has reason to believe that such records or documents may be lost or discarded
 2457 in the event of the dissolution, disbandment or termination of Contractor’s business, City may, by written
 2458 request or demand of any of the above-named officers, require that custody of the records be given to City
 2459 and that the records and documents be maintained in City Hall. Access to such records and documents will
 2460 be granted to any party authorized by Contractor, Contractor’s representatives, or Contractor’s successor-
 2461 in-interest.

2462

Article 41. Entire Agreement

2463 41.01 This Agreement and the attached Exhibits constitute the entire Agreement and
 2464 understanding between the parties with respect to the subject matter hereof, and the Agreement will not be
 2465 considered modified, altered, changed or amended in any respect unless in writing and signed by the parties.

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Article 42. Severability

42.01 If any provision of this Agreement or the application of it to any person or situation is to any extent held invalid or unenforceable, the remainder of this Agreement and the application of such provisions to persons or situations other than those as to which it is held invalid or unenforceable, will not be affected, will continue in full force and effect, and will be enforced to the fullest extent permitted by law.

Article 43. Right to Require Performance

43.01 The failure of City at any time to require performance by Contractor of any provision of this Agreement will in no way affect the right of City thereafter to enforce same. Nor will waiver by City of any breach of any provision of this Agreement be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

Article 44. Headings

44.01 Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Agreement.

Article 45. Exhibits

45.01 Each Exhibit referred to in this Agreement forms an essential part of this Agreement. Each such Exhibit is a part of this Agreement, and each is incorporated by this reference.

Article 46. Attorney's Fees

46.01 In the event that arbitration or litigation is brought by a party in connection with this Agreement, each party shall bear its own costs and expenses, including, without limitation, attorneys' fees. Notwithstanding the immediately preceding sentence subsequent to a Change in Control, in the event that either party brings arbitration or litigation in connection with this Agreement, the prevailing party will be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies under this Agreement or the enforcement of any of the terms, conditions, or provisions of this Agreement.

Article 47. Effective Date

47.01 This Agreement will become effective when it is properly executed by City and Contractor and Contractor will begin Collection Services under this Agreement as of June 1, 2022.

2494 IN WITNESS WHEREOF, City and Contractor have executed this Agreement on the respective date(s)
2495 below each signature.

2496 CITY OF EL CERRITO

CONTRACTOR

2497 A Charter Law City

2498 By: _____

By: _____

2499 Karen Pinkos, City Manager

Mark Figone, President

2500

2501

2502 ATTEST: _____

By: _____

2503 Holly M. Charléty, City Clerk

Name

2504 APPROVED AS TO FORM

2505 City Attorney

2506 By: _____

Secretary, Assistant Secretary, Financial Officer, Asst.
Treasurer

2507

2508 Sky Woodruff

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Exhibit 1 City Service Recipients

Contractor shall provide no-cost Garbage and Organic Waste Collection Services for the following City Service Recipients.

Location	Service Level	Frequency
1. Arlington Park	(1) 1 Cubic Yard (CY) bin for garbage (1) 64-gallon for green waste	Once Per Week Pickup
2. Cerrito Vista Park	(1) 1 CY bin for garbage	Once Per Week Pickup
3. Community Center	(1) 1 CY bin for garbage (3) 64-gallon carts for green waste	Once Per Week Pickup
4. El Cerrito Library	(2) 64-gallon carts for garbage (2) 64-gallon carts for green waste	Once Per Week Pickup
5. City Hall	(1) 1 CY bin for garbage (1) 64-gallon cart for green waste	Once Per Week Pickup
6. Public Safety Building	(1) 2 CY bin for garbage (1) 64-gallon cart for green waste	Once Per Week Pickup
7. Fire Station #72	(2) 64-gallon carts for garbage (1) 64-gallon cart for green waste	Once Per Week Pickup
8. Corporation Yard	(2) 64-gallon carts for garbage (2) 64-gallon carts for green waste	Once Per Week Pickup
9. Recycling Center	(1) 64-gallon cart for garbage (1) 64-gallon cart for green waste	Once Per Week Pickup
10. Casa Cerrito	(1) 64-gallon cart for garbage (1) 64-gallon cart for green waste	Once Per Week Pickup

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NOTE: Exhibit 1 may be adjusted from time to time, as needed, to include all premises owned, operated, or maintained by the City.

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Exhibit 2

2517

Administrative Charges and Penalties

Item		Amount if Not Cured in 30 Days	If Cured in 30 Days
a.	Failure to respond to each complaint within three (3) Work Days of receipt of complaint.	\$100 per incident per Service Recipient.	
b.	Failure to maintain call center hours as required by this Agreement.	\$100 per day.	-0-
c.	Failure to submit to City all reports by the deadlines required under the provisions of this Agreement.	\$100 per day.	-0-
d.	Failure to include all parts of quarterly and annual reports specified Exhibit 8.	\$100 per day.	-0-
e.	Failure to submit to City all payments by the deadlines required under the provisions of this Agreement.	1% of the total amount due if fees are 1 – 10 days late; and 10% of the total amount due if fees are more than 10 days late.	
f.	Failure for Collection Container to be compliant with specifications of this Agreement.	\$50.00/each Collection Container not compliant.	-0-
g.	Failure for Collection Container to be compliant with SB 1383 labeling requirements.	\$50.00/each Collection Container not compliant.	-0-
h.	Failure to display Contractor's name and customer service phone number on Collection Vehicles.	\$100 per incident per day.	-0-
i.	Failure to Collect a missed collection Container by close of the next Work Day upon notice to Contractor, that exceeds twenty (20) in any Calendar Year.	\$1,000 per Calendar year, plus \$10 per incident per day.	-0-
j.	Failure to repair or replace damaged Containers within the time required by this Agreement, that exceeds twenty (20) in any Calendar year.	\$1,000 per Calendar year, plus \$10 per incident per day.	
k.	Failure to maintain collection hours as required by this Agreement.	\$100 per day.	-0-
l.	Failure to have Contractor personnel in Contractor-provided uniforms.	\$25 per day per employee.	-0-

Item		Amount if Not Cured in 30 Days	If Cured in 30 Days
m.	Failure of Contractor to follow Contamination and Overage procedures as set forth in this Agreement.	\$100/day for failure to implement correction plan.	Submit for approval to City and implement plan of correction to City within 30 days.
n.	Vehicle fluid leak incidents from Contractor Collection Vehicles in excess of three (3) during a calendar year.		\$5000 per incident in excess of three (3)
o.	Failure of Contractor to provide proof of performance bond as required by this Agreement	Agreement Default	\$500 per day
p.	Failure of Contractor to provide proof of insurance as required by this Agreement	Agreement Default	\$500 per day
q.	Failure to Collect holiday trees on Collection Days.	\$25 per day.	-0-
r.	Failure to commence service to a new Service Recipient within seven (7) days after order.	\$150 per day	-0-
w.	Failure to initially respond to a Service Recipient complaint within one (1) business day.	\$50.00 per failure to resolve Service Recipient compliant or request	-0-
t.	Failure to conduct the required tri-annual customer satisfaction assessment and survey and report the results to the City.	\$1,000	-0-
u.	Failure to conduct any of the required quarterly in-depth diversion site visits within each calendar quarter.	\$50	-0-
v.	Failure to provide Roll-off hauling service from the City of El Cerrito Recycling and Environmental Resource Center and Corporation Yard within 2 working days of the service being requested.	\$250	-0-
w.	Failure to return containers to original service location with lids closed.	\$50	-0-
x.	Failure to comply with State and Federal vehicle weight limitations.	\$200 per incident after twenty-five (25) such incidents per quarter.	-0-

Item		Amount if Not Cured in 30 Days	If Cured in 30 Days
y.	Failure to use City designated Disposal Facility, Organics Waste Facility, and C&D Processing Facility and failure to comply with Section 3.18.	\$100/ton	-0-
z.	Disposal of Organic Waste in the Disposal Facility without first obtaining the required permission of the City.	\$1,000 per load.	-0-
aa.	Failure to deliver to Service Recipients new Garbage, Organic Waste, and Recyclable Materials Carts meeting color and labelling requirements by the date specified in this Agreement.	\$1,000 plus \$50/day	-0-
bb.	Failure to be in compliance with the terms and conditions of the Agreement pursuant to Section 12.02.4.	\$5,000	-0-

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Exhibit 3 Service Charges

Services charges will be adjusted by the change in the CPI All Other a maximum of one time annually. Amounts listed with an asterisk (*) may fluctuate based on market prices except for labor hours which may fluctuate based on labor agreements; the Contractor shall notify the City of any adjustments to these prices a maximum of one time annually.

Service Charge Type	Charge Per Unit
Standard Service Charges	
Contaminated Container Charge (Per Article 3)	\$25.00
Overage Charge (Per Article 3)	\$25.00
Cart Cleaning (Per Article 3)	\$25.00
Bin Cleaning (Per Article 3)	\$50.00
Roll-off Cleaning (Per Article 3)	\$100.00
Cart / Bin Replacement Charge (Per Articles 6 and 7)*	\$65.00 / \$1,000.00
Additional Large Item Collection Charge (Per Articles 6 and 7)	Per Extra Service Rates Below
Back-up Recycling Collection Services Charges (Per Article 10) and Emergency Service Charges (Per Article 16)	
– Collection Vehicle per day*	\$360.00
– Driver per Hour / Overtime*	\$152.00 / \$174.00
– Driver per Day / Overtime*	\$889.00 / \$1065.00
Extra Service Charges (Services and Charges per Service Recipient Request)	
Extra Solid Waste Collection Services	
Return for Service Charge (if Container not set out)	\$25.00
Extra 15-gal bag of Garbage or Organic Waste	\$6.35
Extra 20-gal bag of Garbage or Organic Waste	\$8.45
Extra 30-gal bag of Garbage or Organic Waste	\$12.65
Extra 64-gal bag of Garbage or Organic Waste	\$26.95
Extra 1/2 CU YD (4 x 30-gal bags)	\$42.50
Extra CU YD (8 x 30-gal bags)	\$85.00
Extra Dump on 1 YD Container	\$110.50

Service Charge Type	Charge Per Unit
Extra Dump on 2 YD Container	\$196.05
Additional Services	
Toilet (Seat & Water Tank)*	\$75.00
Sofa up to 7FT / Sofa Bed*	\$60.00 / \$80.00
Stuffed Chair / Lazy Boy / Recliner*	\$60.00
Twin / Full – Mattress or Box Spring*	\$60.00
Queen / King – Mattress or Box Spring*	\$65.00
Baby Crib Mattress*	\$20.00
TV / Computer Monitor*	\$150.00
Dishwasher / Washer / Dryer / Stove*	\$100.00
Water Heater *	\$80 /+\$10 per gal
Refrigerator / Freezer / AC Unit*	\$125.00
Area Rug 5ft and up*	\$20.00 - \$40.00
Office Chair*	\$20.00
Office Desk*	\$20.00 - \$50.00
Patio Furniture (Tables/Chairs)*	\$50.00 - \$90.00
Dining Table / Chairs*	\$50.00 - \$90.00
L-Shape Sectional*	\$60.00 - \$150.00
Bedframe (Head/Footrest + Railing)*	\$50.00 - \$90.00
Bookshelves / End Tables / Nightstands*	\$40.00 - \$90.00
Exercise Equipment*	\$100.00 - \$150.00
Kitchen Cabinets / Sink / Windows*	\$50.00 - \$150.00
Lock and Key Set for Carts or Containers	\$30.00
Locking System Installation on Containers	\$150.00

2526

2527 **Exhibit 4**

2528 **Annual Indexed Adjustment to Contractor's Compensation**

2529 The Contractor shall provide the City with annual audited financial statements no later than July 1 of each
2530 year. The City and Contractor agree that Contractor's Compensation will be adjusted annually based on
2531 the Refuse Rate Index (RRI) methodology described in this Exhibit 4, subject to City Council confirmation
2532 that the proposed adjustments comply with the RRI calculation methodology. The process and timing of
2533 proposed Contractor's Compensation adjustments based upon the RRI calculation methodology shall be
2534 as described in the last paragraph of this Exhibit 4.

2535
2536 **Refuse Rate Index (RRI) Calculation Methodology**

2537 Contractor's Compensation for the following Calendar Year (e.g., 2023) shall be adjusted annually by
2538 multiplying the Contractor's Compensation for the current Calendar Year (e.g., \$5,070,115 for 2022) by
2539 the calculated Index Rate Adjustment Factor that shall equal:

- 2540
- 2541 One (1)
- 2542 Plus
- 2543 [(Union Salaries and Wages Adjustment Factor x Union Salaries and Wages Expense
- 2544 Percentage)
- 2545 Plus
- 2546 (Non-Union Salaries and Wages Adjustment Factor x Non-Union Salaries and Wages Expense
- 2547 Percentage)
- 2548 Plus
- 2549 (Diesel Fuel Adjustment Factor x Diesel Fuel Expense Percentage)
- 2550 Plus
- 2551 (Vehicle Maintenance Adjustment Factor x Vehicle Maintenance Expense Percentage)
- 2552 Plus
- 2553 (All Other Adjustment Factor x All Other Expense Percentage)
- 2554 Plus
- 2555 (Depreciation and Interest x Depreciation and Interest Expense Percentage)]
- 2556

2557 Where:

2558 Union Salaries and Wages Adjustment Factor shall be the applicable annual adjustment to the
2559 wages and benefits specified in the Contractor's then applicable Collective Bargaining
2560 Agreement. The Union Salaries and Wages Expense Percentage used to calculate each annual
2561 adjustment shall be established each year based on the actual percentages of those expense
2562 items as reported in the Contractor's prior year audited Financial Statement.

2563
2564 Non-Union Salaries and Wages Adjustment Factor shall be equal to the CPI All Other annual
2565 adjustment to the wages and benefits for non-union employees. The Non-Union Salaries and
2566 Wages Expense Percentage used to calculate each annual adjustment shall be established each
2567 year based on the actual percentages of those expense items as reported in the Contractor's
2568 prior year audited Financial Statement.

2569
2570 Diesel Fuel Adjustment Factor shall be the average annual percentage change in US Energy
2571 Information Administration Weekly Retail Gasoline and Diesel Prices
2572 (https://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_sca_m.htm) for each of the prior 12 months, as
2573 of August of the Current Year. Diesel Fuel Expense Percentage shall be the percentage of the
2574 Contractor's total operating expenses that are related to diesel fuel expenses.

2575
2576 Vehicle Maintenance Adjustment Factor shall be the average annual percentage change in the
2577 Consumer Price Index (Series ID CUURS49BSA0) for each of the prior 12 months, as of August
2578 of the Current Year. All Other Expense Percentage shall be the percentage of the Contractor's
2579 total operating expenses that are related to expenses for all other operating categories not
2580 otherwise addressed in this Exhibit 4.

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Depreciation and Interest Adjustment Factor shall set based on the Contractor's actual depreciation and interest expenses for the current year compared to the prior year. Depreciation and Interest Expense Percentage shall be the percentage of the Contractor's total operating expenses that are related to depreciation and interest expenses.

The table below provides the actual RRI calculation which was used to adjust Contractor's Compensation for Calendar Year 2022.

Item #	Category	Data Source	RATE YEAR 2022				
			Percent Change ⁽¹⁾	Category Costs	Category Weight ⁽²⁾	Weighted Percentage Change ⁽³⁾	Adjusted Category Costs
1	Union Labor	The applicable annual adjustment to the wage rates and benefits specified in the Company's applicable Union Agreement	2.59%	\$989,289	27.26%	0.71%	\$1,014,917
2	Non-Union Labor	Series ID: CUURS49BSA0 All items in San Francisco-Oakland-Hayward, CA, all urban consumers, not seasonally adjusted	2.55%	\$832,336	22.94%	0.58%	\$853,557
3	Diesel Fuel	California No 2 Diesel Ultra Low Sulfur (0-15 ppm) Retail Prices (Dollars per Gallon) http://www.eia.gov/dnav/pet/pet_pri_gnd_dc_us_sca_m.htm	3.14%	\$101,504	2.80%	0.09%	\$104,687
4	Vehicle Maintenance	Series ID: pcu333924333924 Industrial truck, trailer and stacker mfg.	3.75%	\$125,557	3.46%	0.13%	\$130,269
5	All Other	Series ID: CUURS49BSA0 All items in San Francisco-Oakland-Hayward, CA, all urban consumers, not seasonally adjusted	2.55%	\$1,429,975	39.40%	1.00%	\$1,466,434
6	Depreciation and Interest	Set to actual	-0.66%	\$150,292	4.14%	-0.03%	\$149,297
7	Pension Liability Funding	No annual adjustment to Pension Funding Liability - Existing rates set to generate \$45,885 annually.	0.00%	\$0	0.00%	0.00%	\$0
RRI				\$3,628,952	100.00%	2.49%	\$3,719,161

⁽¹⁾ Assumes these are the percentage changes in the indices from year to year.
⁽²⁾ Assumes the categories represent these percentages as a total of CONTRACTOR'S operating costs.
⁽³⁾ Represents the product of Percentage Change x Category Weight.

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Negative Adjustment Factor

In any year that the calculated RRI results in a negative number, there shall be no adjustment to the Contractor's Compensation. Instead, the negative number shall be added to the result of the subsequent year's calculated RRI. The result shall be an Adjusted RRI that shall be used to calculate the Contractor's Compensation adjustment for that subsequent year.

RRI Exceeding Five Percent

In the event that the calculated RRI exceeds five percent (5%), that calculated adjustment will be used to adjust the Contractor's Compensation for the next year as provided for in the above methodology. However, in such a case the City or Contractor has the option to require that a detailed review of the Contractor's revenues and expenses be conducted the following year (as per Exhibit 5) in lieu of the RRI adjustment process for determining an appropriate Contractor's Compensation adjustment for the next year.

Request for RRI Compensation Adjustment

The Contractor shall submit to the City its Request for RRI Compensation adjustment by October 1 of each year. That Request shall provide support for the calculated RRI and shall show the proposed Contractor's Compensation for the next Calendar Year as the product of the then current year Contractor's Compensation times the RRI. The City shall have the opportunity to review and adjust the Contractor's RRI Compensation Adjustment calculations to ensure mathematical accuracy and adherence to the terms and conditions of this Agreement. The City shall use its best efforts to obtain City Council confirmation of adjustments to Service Rates sufficient to meet Contractor's Compensation by

2614 January 1 of the next year. However, the City shall not seek City Council confirmation of any retroactive
2615 adjustments to compensate the Contractor for any delay in confirming the Service Rates.

Exhibit 5

Detailed Compensation Review

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2617

2618 **General**

2619 In the event that either City or Contractor requests a Detailed Compensation Review, as provided
2620 for in Section 4.03, the Detailed Compensation Review shall be based on evidence or data
2621 presented by City or Contractor contained within the audited financial statements for the
2622 preceding complete Calendar Year for the services required by this Agreement.

2623 **Overview of Detailed Compensation Review Process**

2624 The Detailed Compensation Review process is as follows:

- 2625 1. Identify the reason(s) for the Detailed Compensation Review request.
- 2626 2. Establish the actual financial results for the prior Calendar Year, which shall consist of all
2627 franchised revenues and expenses as reported in Contractor's Annual Audited Financial
2628 Statement. It is expected that any revenues and/or expenses attributed to non- franchised
2629 services shall be clearly reported in the Annual Audited Financial Statement along with
2630 the basis used to assign or allocate such revenues and expenses.
- 2631 3. Make any appropriate adjustments to the actual costs to account for non- allowable costs
2632 and/or to exclude or reduce any costs that were not reasonably and necessarily incurred
2633 in the performance of the services provided in accordance with the Agreement.
- 2634 4. Calculate the adjustment required to achieve a revenue that will, in turn, result in a 90.5%
2635 (ninety- and one-half percent) targeted Operating Ratio.
- 2636 5. Complete and submit a Detailed Compensation Review application.

2637 **Detailed Compensation Review Application**

2638 In support of a Detailed Compensation Review, Contractor shall prepare a Detailed
2639 Compensation Review application (hereinafter "Application") that shall be submitted to the other
2640 Party no later than August 1. The Application shall include:

- 2641 1. The reason(s) for the Application.
- 2642 2. Line-item revenue and expenses for the franchised services as reported in Contractor's
2643 Annual Audited Financial Statement.
- 2644 3. Variance analyses of revenues and expenses for the prior five years, along with
2645 explanations for significant variances.
- 2646 4. Calculated revenue requirement based upon the current Operating Ratio.
- 2647 5. The Contractor shall depreciate all trucks and containers over 10-years or greater for the
2648 duration of the Term.
- 2649 6. Requested adjustment to Contractor's Compensation required to achieve a revenue that
2650 will, in turn, result in a 90.5% (ninety- and one-half percent) targeted Operating Ratio.

2651 **Operating Ratio**

2652 "Operating Ratio" means the ratio, expressed as a percentage, of the net operating costs actually
2653 incurred by Contractor, exclusive of Pass-Through Costs and Non- Allowable Costs, divided by
2654 Contractor's net income, as produced by the Service Rates and Service Charges that are applied
2655 to the services provided under this agreement.

2656 **Pass-Through Costs**

2657 "Pass-Through Cost" means a cost to which no element of overhead, administrative expense, or
2658 profit is added. Pass-Through Costs shall include:

- 2659 • Franchise fees.
- 2660 • All processing and disposal (tip fees) costs incurred by Contractor.

2661 Franchise Fees may be included at Contractor's discretion as an element of costs for calculating
2662 Contractor's Compensation, however these expenses shall not be included in any costs used as

2663 a basis for calculating or determining Operating Ratio. Processing and disposal tip fees are not
2664 included in Contractor's Compensation.

2665 **Compensation for Pension Liability**

2666 The City agrees that, when Contractor's Compensation is calculated, compensation for the
2667 Contractor's then-unfunded pension liability will be 78.5% of actual, pending managerial review
2668 of the pension fund and investment strategy. The Contractor agrees that compensation for the
2669 Contractor's then-unfunded pension liability shall not exceed \$45,885 per year, until a time when
2670 the pension becomes fully funded; upon full funding of the pension liability, or a Change in Control,
2671 the amount will be removed Contractor's Compensation.

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Exhibit 6
Public Area Garbage and Organic Waste Collection Locations and
Frequencies

Location	Service Frequency
11. San Pablo Avenue (northern city limits to southern city limits) Trash receptacles on both sides of street including at transit shelters	5 times/week
12. Ohlone Greenway (northern city limits to southern city limits) Trash receptacles located at cross streets (e.g., Central Ave., Fairmount Ave., Stockton Ave.)	3 times/week
13. El Cerrito High School Area Trash receptacles located on Ashbury Avenue between Fairmount Ave. and Stockton Ave.	3 times/week
14. Hillside Natural Area - can at King Court entrance, can at Schmidt Entrance	3 times/week
15. Miscellaneous Locations: <ul style="list-style-type: none">• Lincoln. Ave at Clayton Ave.• Moeser Lane at Sea View Dr.• Moeser Lane at Shevlin Dr.• 6510 Stockton Avenue	3 times/week

2675 NOTE: Exhibit 6 locations and collection frequencies may be adjusted by City from time to time,
2676 as needed.

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Exhibit 7

2678

City Roll-off Service Facilities, Locations and Service Levels

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Contractor shall provide Roll-off Container Collection Service as needed for all Roll-off Container service requests from the City of El Cerrito Recycling and Environmental Resource Center and Corporation Yard. Tipping Wall Roll-off Containers located at the City's Corporation Yard Tipping Wall shall be maintained in good condition and free of leaks. Contractor shall pick up containers at the Recycling Center and Tipping Wall following all standard operating procedures required under the facility's solid waste, stormwater, and other operating permit(s).

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Location	Container/Service	Service Frequency
1. El Cerrito Recycling Center	20-40 Cubic Yard containers for Recyclable Materials delivered to processing facilities within 35 miles of City Hall, as directed by City.	Minimum service level of 3 days per week, with 1-2 pickups occurring each day, for a total of 3-6 pickups per week.
2. El Cerrito Corporation Yard and Tipping Wall	20 Cubic Yard containers, including separated material streams for landfill disposal, green waste, and street sweep spoils.	Minimum service level of 3 days per week, with 1-2 pickups occurring each day, for a total of 3-6 pickups per week.

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NOTE: Exhibit 7, including Roll-off Container collection types and service frequency may be adjusted by City from time to time, as needed.

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Exhibit 8 Reporting

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2690 The City reserves the right to require reasonable changes to the content and/or format of this
2691 and any and all other reports that the Contractor is required to provide to the City. The City also
2692 reserves the right to require the Contractor to provide any other information that it deems
2693 necessary for effectively administering its franchise with the Contractor in a complete and timely
2694 manner, with the understanding that determination of additional information does not impose
2695 addition costs on the Contractor. Reports shall be submitted in electronic format, with all
2696 numeric information submitted in Excel. Contractor must furnish City with any additional reports
2697 as may reasonably be required, such reports to be prepared within a reasonable time following
2698 the reporting period.

2699 Contractor will provide reasonable assistance to City in preparing annual reports to CalRecycle
2700 (the "Electronic Annual Report" or EAR), including but not limited to supplying required data for
2701 preparation of the reports, and completing all required data input in the Waste Reporting
2702 System. In the event that CalRecycle requires City to report an Implementation Schedule to
2703 comply with AB 341, AB 1826, SB 1383, SB 1594 and other Applicable Laws, Contractor will
2704 provide assistance to City in preparing a report, including Contractor's policies and procedures
2705 related to compliance with AB 341, AB 1826, SB 1383, and other Applicable Laws and how
2706 Recycling or Organic Waste are collected, a description of the geographic area, routes, list of
2707 addresses served and a method for tracking Contamination, copies of route audits, copies of
2708 notice of Contamination, copies of notices, violations, education and enforcement actions
2709 issued, and copies of educational materials, flyers, brochures, newsletters, website, and social
2710 media.

2711 **Quarterly Reports**

2712 Contractor shall submit Quarterly Reports to the City. Quarterly Reports to the City must
2713 include:

- 2714 1. Compliance Reviews. Contractor shall report the date that compliance reviews were
2715 conducted, the name and title of each person that conducted the reviews. Contractor shall
2716 report the results of the review (i.e., Contractor's findings as to whether the Service
2717 Recipients reviewed are subscribed for Organic Waste collection service, have an
2718 applicable waiver, or neither) and any relevant evidence supporting such findings (e.g.
2719 account records). Contractor shall provide copies of any educational materials issued
2720 pursuant to such reviews. Contractor shall report to the City all Service Recipients
2721 discovered to be out of compliance with the SB 1383 Regulations, including a list of the
2722 service recipients, the type of violation, actions taken to educate those Service Recipients,
2723 and contact information for those Service Recipients. This includes identifying Residential
2724 and Commercial accounts that are subscribed to Garbage collection service but that are not
2725 subscribed Organic Waste Container collection service. Contractor must also provide the
2726 following information separately for both AB 341 and AB 1826, including:
- 2727 • The total number of non-exempt Commercial Service Recipients that fall under
2728 the AB 341 or AB 1826 thresholds, and the total number of those non-exempt
2729 Commercial Service Recipients that are not subscribed to Commercial Organic
2730 Waste Collection Service.
 - 2731 • A summary of the type of follow-up outreach that was provided to those non-
2732 exempt Commercial Service Recipients that are not subscribed to Commercial
2733 Organic Waste Collection Service.
- 2734 2. Route Reviews. Contractor shall report the date that route reviews were conducted, the
2735 name and title of each person that conducted the reviews, a list of the account names and

2736 addresses covered by the review, and a description of each route reviewed, including
2737 Contractor's route number. Contractor shall also provide details regarding the results of the
2738 reviews (i.e., the addresses where any prohibited Container Contaminants were found), and
2739 any photographs taken.

- 2740 3. Contamination. To the extent required by Applicable Law, the quarterly report must include a
2741 summary of all instances of qualifying Contamination under the procedures in Section 3.09.
2742 This summary must include the total number of accounts where Contamination occurred, the
2743 total number of Contamination Violation Notices issued by Contractor to Service Recipients,
2744 a list of accounts where such notices occurred, and the total number of instances where
2745 Container size or Collection frequency was increased specifically due to Contamination.
2746 Within twenty (20) Work Days of request by City, Contractor will provide copies of the
2747 Contamination Violation Notices and the digital documentation of Contamination. The
2748 quarterly report must include each Service Recipient incurring a charge for Contamination in
2749 the previous quarter. Contractor shall provide a description of Contractor's process for
2750 determining the level of Container Contamination under the Agreement. Contractor shall
2751 provide documentation relating to observed prohibited Container Contaminants, whether
2752 observed during Route Reviews or otherwise. Contractor shall provide copies of the form of
2753 each notice issued to Service Recipients for prohibited Container Contaminants, as well as,
2754 for each such form, a list of the Service Recipients to which such notice was issued, the
2755 date of issuance, the Service Recipient's name and service address, and the reason for
2756 issuance (if the form is used for multiple reasons). This information will also be provided
2757 monthly to any other government entity approved by the City, including but not limited to
2758 RecycleMore. Contractor shall report the number of times notices were issued to Service
2759 Recipients for prohibited Container Contaminants and the number of Containers where the
2760 contents were disposed due to observation of prohibited Container Contaminants.
- 2761 4. Collection Overage Charges. The quarterly report must include each Service Recipient
2762 incurring a fee charge for an Overage in the previous quarter.
- 2763 5. Service Recipient Complaints Log. The quarterly report must include the Service Recipient
2764 call log collected from the previous quarter, including a summary of the type and number of
2765 complaints and their resolution.
- 2766 6. Missed Pickups. The quarterly report must include a summary of each Service Recipient
2767 receiving a missed pickup in the previous quarter along with a description or the reason for
2768 the missed pickup.
- 2769 7. Non-Collection. The quarterly report must include a summary of each Service Recipient
2770 receiving a Non-Collection Notice in the previous quarter along with a description for the
2771 Non-Collection Notice.
- 2772 8. On-hold Accounts. The quarterly report must include each Service Recipient that was not
2773 billed in the previous quarter due to vacation hold, vacancy etc.

2774 **Annual Reports**

2775 Contractor shall submit Annual Reports to the City. Annual reports to City must include:

- 2776 1. Compliance. Contractor must document education and outreach conducted, public event
2777 participation, school visits, compliance notices mailed, site visits to meet the requirements of
2778 SB 1383, service level audits completed, information distributed, and media used, and
2779 community events hosted. This must include public education activities undertaken during
2780 the year, including distribution of bill inserts, collection notification tags, community
2781 information and events, tours and other activities related to the provision of Collection
2782 Services. Contractor shall also provide copies of all outreach and education information
2783 (including flyers, brochures, newsletters, invoice messaging, website and social media
2784 postings, emails, and other electronic messages), including the date the information was
2785 disseminated or the direct contact made. For website and social media postings, this shall

2786 be the date posted. Contractor must report the total number of Commercial Service
2787 Recipients serviced and the number of containers, container sizes and frequency of
2788 collection for Garbage and Organic Waste for each non-exempt Commercial Service
2789 Recipient.

2790 2. Tonnage and Service Data. Contractor must annually report the number of unique
2791 Residential Service Recipient accounts serviced and the number of unique Commercial
2792 Service Recipient accounts serviced, tonnage of Garbage and Organic Waste collected and
2793 processed for diversion broken down by Container type. Quantities should be broken down
2794 by Residential, Commercial, and City Service Collection Services.

2795 3. Financial Report. Contractor must prepare an annual Financial Report for submittal to the
2796 City. At a minimum, the Financial Report must include the number of Residential Service
2797 Recipients, Commercial Service Recipients provided with Collection Services by Service
2798 Type, container size, frequency of service and current billing Service Rates including any
2799 additional service charges, the Contractor's gross billing and amount collected for each type
2800 of Service Recipient.

2801 4. Container and Vehicle Inventory. An updated complete inventory of Containers by type and
2802 size, and an updated complete inventory of Collection Vehicles including for each Collection
2803 Vehicle: Collection Vehicle number, route number, date purchased, Collection Vehicle type,
2804 tare weight, license plate number, fuel type and Collection Vehicle make and model.

2805 5. Overweight Vehicles. The annual report must include a summary total of all instances of
2806 overweight Collection Vehicles. This summary must include the number of overweight
2807 Collection Vehicle instances expressed as a percentage of the total number of Collection
2808 Vehicle loads transported.

2809 6. Environmental Stewardship. Contractor must describe all environmental management
2810 policies and activities related to Collection Service, including the use of alternative fuel
2811 Collection Vehicles, reduction of air emissions and wear and tear on the City's streets, use
2812 of recycled products throughout operations, use of 100% renewable energy at buildings and
2813 facilities owned or operated by the Contractor, internal Source Separation and Reuse
2814 protocol, water and resource conservation activities within facilities (design, construction and
2815 operation), compliance with laws governing e-waste, HHW, and u-waste, and use of non-
2816 toxic products when possible.

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