

STAFF REPORT



CITY OF OCEANSIDE

DATE: April 6, 2022

TO: Honorable Mayor and City Councilmembers

FROM: Water Utilities Department

SUBJECT: **FRANCHISE AGREEMENT WITH WASTE MANAGEMENT OF CALIFORNIA**

SYNOPSIS

Staff recommends that the City Council:

- A. Approve the Franchise Agreement with Waste Management of California (WM) for Recyclable Materials, Organic Materials, and Solid Waste Collection, Organic Materials Processing, and Disposal of Solid Waste Services, to commence January 1, 2024; and
- B. Authorize the City Manager to make any non-substantive changes to the Franchise Agreement and execute the Franchise Agreement.

In connection with this item, Property Management staff is recommending approval of a new lease agreement with Agri Service Recycling, Inc. (Agri Service) for the organics processing facility at El Corazon, to commence January 1, 2024 and amendments to existing lease and operating agreements with Agri Service, to change the expiration dates on those agreements to December 31, 2023. A separate staff report on this agenda has been prepared for the actions to be taken regarding Agri Service.

BACKGROUND

The City's current Solid Waste Collection and Processing Franchise Agreement with WM expires on December 31, 2023. In recent years, the State has enacted several laws, including AB 1826 and SB 1383, which mandate additional organics recovery. In December 2020, the City released a Request for Proposals (RFP) for a new Franchise Agreement to include new organic waste programs to comply with mandates from the State of California. The new Franchise Agreement is intended to be the City's primary compliance vehicle for SB 1383, with City staff overseeing and facilitating Oceanside's compliance and reporting requirements. The results of the competitive procurement process were presented to the City Council as a workshop on November 10, 2021. At this workshop, Council directed staff to continue to negotiate a Franchise Agreement with WM.

Staff presented the results of negotiations with WM at a City Council Workshop on February 2, 2022 and sought direction on program options to be included in the next Franchise Agreement. The City Council approved inclusion of the following optional local programs in addition to the base services: compost and mulch giveaways; Citywide donation and landfill weeks; infrastructure investment for food waste at San Luis Rey Water Reclamation Facility (SLRWRF); transition from City to contractor billing; provision of vacation rental kits; and curbside household hazardous waste (HHW) pickup for seniors and disabled ratepayers. The City Council further directed staff to return with a final Franchise Agreement with WM for consideration and approval.

ANALYSIS

Negotiation Status Update

Staff finalized negotiations with WM after the February 2, 2022 Council Workshop, which culminated in a new executed Franchise Agreement. A synopsis of additional resolved terms is included below, and the Franchise Agreement is included as Attachment A.

Resolved Terms

Conformance of Contract Terms. Throughout contract negotiation, staff clarified service details and additional opportunities not previously accounted for in WM's original Proposal, including definition changes, reference to organics processing at WM's CORE facility in Orange County, addition of food waste receiving at SLRWRF, and other minor differences. Staff and WM have reconciled all differences and have come to a final agreement (Attachment A).

Utilization of Existing Collection Containers. The negotiated Franchise Agreement utilizes existing collection containers, assuming a 6% attrition rate, which results in a cost savings of approximately \$437,727 per year on container purchases, compared to replacement of all existing containers City-wide. All new collection containers placed in service will comply with SB 1383.

Organic Materials Processing Facility. WM has provided an executed subcontracting agreement with Agri Service for the processing of residential comingled organics and commercial yard trimmings in compliance with SB 1383 and in conformance to the Franchise Agreement terms. Staff has further negotiated a new Lease Agreement with Agri Service for use of the El Corazon Organic Materials Processing Facility that aligns with the Franchise Agreement, commencing January 1, 2024. The Lease Agreement is being presented to Council for consideration as a separate agenda item on the April 6 Council agenda.

Next Steps

If approved by the City Council, services and resources outlined in the Franchise Agreement will commence on January 1, 2024, for a contract term of seven (7) years with the option to extend for an additional three (3) years. The Franchise Agreement will provide residential curbside organics collection inclusive of food waste and food soiled

paper. To support compliance with SB 1383, WM is working with City staff to ensure all commercial businesses and multi-family properties have access to food scraps services, made available through Amendment 1 of the existing Franchise Agreement. Furthermore, staff will return to City Council at a future public hearing to adopt a resolution establishing new residential and commercial solid waste user rates to commence January 1, 2024. Additionally, staff will work with WM to move forward with the transition between the existing and next Franchise Agreement ahead of 2024. The transition of billing services, reconciliation of street sweeping route conflicts, development of education materials, implementation of route review procedures, and staff training will all occur prior to January 1, 2024, when the user rates described in the Fiscal Impact section will be implemented. Until the commencement of the new Franchise Agreement, the City is not able to provide fully-compliant SB 1383 services.

Additionally, in the new agreement, WM will provide an enhanced customer service program, which includes extended customer call center hours, a commitment that all calls will be answered within 30 seconds with a maximum hold time of 90 seconds, a dedicated municipal website, and a live digital chat feature with a mobile app option.

FISCAL IMPACT

The City currently receives an annual SB 1383 fee of \$750,000 from WM, this fee will be increased to \$815,000 under the new Franchise Agreement. Additionally, under the current Franchise Agreement, WM remits a Collector Fee in the minimum amount of \$1,700,000 annually to the City. If nine percent (9%) of gross receipts are more than \$1,700,000, WM pays the difference to the City, which was a total of \$683,752 in CY 2021. Lastly, the City currently receives a contract administration fee of \$1,130,197. Together, these existing fees total \$4,263,949.

Upon commencement of the new Franchise Agreement, these amounts will change as follows: WM will pay the City a negotiated franchise fee of 6.09 percent of revenues collected, which translates to an estimated \$2,100,000 per year. The City will also collect an annual solid waste programming fee of \$1,430,000. This fee is known as the contract administration fee in the current Franchise Agreement. These fees along with the SB 1383 fee referenced above will total \$4,345,000. Table 1 shows existing and proposed revenues annually received by the City. Table 2 demonstrates the analysis and breakdown of the activities and costs outlined in the new Franchise Agreement from WM.

Table 1: Existing and Proposed Revenues Received by City Annually

City Fee	To City (\$)	To GF (\$)	To Water/Sewer/Solid Waste Enterprise (\$)
Existing Franchise Agreement*			
Collector Payment	2,383,752	2,041,876	341,876
Admin Fee	1,130,197		1,130,197
SB 1383 Fee	750,000		750,000
TOTAL:	4,263,949	2,041,876	2,222,073
NEW Franchise Agreement – Effective January 1, 2024			
Franchise Reimbursement	2,100,000	2,100,000	
Admin Fee	1,430,000		1,430,000
SB 1383 Fee	815,000		815,000
TOTAL:	\$4,345,000	\$2,100,000	\$2,245,000

*Based on CY 2021 data.

The Admin Fee, SB 1383 Fee and half of excess revenues fund program expenses are in 700010731 Waste & Recycling Admin account.

Table 2: New Franchise Agreement Annual Cost Analysis

Cost Category	Total
Operating Costs	\$ 19,201,377
Disposal	\$ 4,553,171
Recyclables Processing	\$ 351,223
Organics Processing	\$ 4,864,886
SLR Infrastructure investment	\$ 648,909
C&D Processing	\$ 192,912
Collector Fee/Franchise Reimbursement	\$ 2,100,000
Other City Reimbursements	\$ 2,245,000
Profit	\$ 4,163,407
Total	\$ 38,320,886

Proposed residential rate impacts are described in Table 3 and commercial rate impacts are described in Table 4 and will not take effect until services become available after January 1, 2024. Adoption of a resolution establishing new residential and commercial solid waste user rates will return to City Council as a public hearing item prior to commencement of the new Franchise Agreement on January 1, 2024.

Table 3: Residential Service Level Rate Impacts

Residential Service Level	Current 2021-2022 Rate	July 1, 2024 Rate	Difference
32-gal Cart	\$20.17	\$28.35	\$8.18 (+ 40.6%)
64-gal Cart	\$22.84	\$32.09	\$9.25 (+ 40.5%)
96-gal Cart	\$22.84	\$32.09	\$9.25 (+ 40.5%)

Table 4: Commercial Service Level Rate Impacts

Services	Collection Frequency	Current Rate	July 1, 2024 Rate	Difference
Standard Commercial Cart Bundle (1-96-gal trash, 1-96-gal rec, 1-64-gal food scraps)	1	\$45.46	\$63.05	\$17.59 (+38.69%)
Commercial Trash 1-3 yd Bin	1	\$119.76	\$166.15	\$46.39 (+38.74%)
Commercial Commingled Recycling 1-3 yd Bin	1	\$59.15	\$82.08	\$22.93 (+38.77%)
Food Waste 1-2 yd dumpster	1	\$89.65	\$94.36	\$4.71 (+5.25%)

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council:

- A. Approve the Franchise Agreement with Waste Management of California (WM) for Recyclable Materials, Organic Materials, and Solid Waste Collection, Organic Materials Processing, and Disposal of Solid Waste Services, to commence January 1, 2024; and
- B. Authorize the City Manager to make any non-substantive changes to the Franchise Agreement and execute the Franchise Agreement.

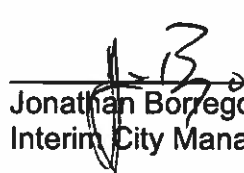
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PREPARED BY:



Colleen Foster
Environmental Officer

SUBMITTED BY:



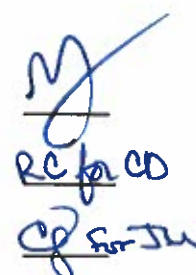
Jonathan Borrego
Interim City Manager

REVIEWED BY:

Michael Gossman, Assistant City Manager

Cari Dale, Water Utilities Director

Jill Moya, Financial Services Director



ATTACHMENTS:

A: Franchise Agreement

FRANCHISE AGREEMENT

BETWEEN

CITY OF OCEANSIDE

AND

WASTE MANAGEMENT OF CALIFORNIA, INC.

FOR

**RECYCLABLE MATERIALS, ORGANIC MATERIALS, AND SOLID
WASTE COLLECTION, ORGANIC MATERIALS PROCESSING, AND
DISPOSAL OF SOLID WASTE SERVICES**

MARCH 30, 2022

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- I. Environmentally Preferable Purchasing Policy
- J. Acceptable & Unacceptable Waste for HHW Events
- K. Approved Organic Materials Processing Subcontracting Agreement
- L. Performance Bond

**DRAFT FRANCHISE AGREEMENT
BETWEEN
CITY OF OCEANSIDE
AND
WASTE MANAGEMENT OF CALIFORNIA, INC
FOR
RECYCLABLE MATERIALS, ORGANIC MATERIALS, AND SOLID
WASTE COLLECTION, ORGANIC MATERIALS PROCESSING, AND
DISPOSAL OF SOLID WASTE SERVICES**

THIS FRANCHISE AGREEMENT is made and entered into as of January 1, 2024, between the City of Oceanside, California, a Charter City in the State of California (hereinafter "City"), and Waste Management of California, Inc. , a California corporation, (hereinafter referred to as the "Contractor").

RECITALS

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

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

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

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

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

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

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

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

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

WHEREAS, under Municipal Code Section 13.14, the City Council may establish one (1) or more authorized collectors by franchise, contract, or permit upon such terms and conditions as the City Council deems appropriate for the public health, safety, and welfare of the City.

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

ARTICLE 1. GRANT AND ACCEPTANCE OF FRANCHISE

1.1 Grant and Acceptance of Franchise

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

1.2 Limitations to the Franchise

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

- A. **Recyclable and Organic Materials.** Other Persons shall maintain the right to: (1) accept Source Separated Recyclable Materials and Source Separated Organic Materials donated from the service recipient; (2) to pay the service recipient for Source Separated Recyclable Materials and Source

Separated Organic Materials; or, (3) to donate or Transport Source Separated Yard Trimmings, provided that there is no net payment made by the service recipient to such other Person.

- B. **Self-Hauled Materials.** Recyclable Materials, Organic Materials, and Large Landfill Items that are removed from any Premises by the Generator, and that are Transported personally by such Generator (or by its full-time employees) to a Processing or Disposal Facility in a manner consistent with all Applicable Laws and regulations.
- C. **Construction and Demolition Debris (C&D).** Other Persons shall have the right to Collect C&D, provided that such Persons maintain a City-issued permit granting such right, and the C&D was generated from a construction, demolition, alteration, or remodel project pursuant to a permit issued by the City.
- D. **Donated or Sold Materials.** Any items that are Source Separated at any Premises by the Generator and sold or donated to other Persons, including youth, civic, or charitable organizations.
- E. **Edible Food.** Edible Food that is Collected from a Generator by other Person(s), such as a Person from a Food Recovery Organization or Food Recovery Service, for the purposes of Food Recovery; or that is Self-Hauled by the Generator to another Person(s), such as a Person from a Food Recovery Organization, for the purposes of Food Recovery, regardless of whether the Generator donates, sells, or pays a fee to the other Person(s) to Collect or receive the Edible Food.
- F. **Food Scraps.** Food Scraps that are separated by the Generator and used by the Generator, or distributed to other Person(s), for lawful use as animal feed, in accordance with 14 CCR Section 18983.1(b)(7). Food Scraps intended for animal feed may be Self-Hauled by Generator or hauled by another party.
- G. **Materials That Contractor Does Not Divert.** Discarded Materials that the Contractor is not required to Process and Divert under this Agreement as of the Effective Date of this Agreement, which subsequently (in the City's reasonable judgment) become economically feasible to Divert. In such event, Contractor shall have the exclusive right to Collect and Process such materials provided that Contractor shall be entitled to a reasonable adjustment in Rates pursuant to Section 8.3. If Contractor is unwilling to Process and Divert such new materials at the adjusted Rates, the City may provide for Collection, Processing, and Diversion of such materials in any manner it deems appropriate; provided that Contractor shall be entitled to a reasonable credit or offset to applicable Diversion targets or goals under Applicable Law. Such materials may include, but not be limited to, Organic Waste that Contractor would otherwise Dispose.
- H. **Beverage Containers.** Containers delivered for Recycling under the California Beverage Container Recycling and Litter Reduction Act, Section 14500, et seq. California Public Resources Code.
- I. **Materials Removed by Customer's Contractor as Incidental Part of Services.** Recyclable Materials, Organic Materials, Solid Waste, and Large Landfill Items removed from a Premises by a contractor (e.g., gardener, landscaper, tree-trimming service, construction contractor, Residential clean-out service) as an incidental part of the service being performed, rather than as a separately contracted or subcontracted hauling service; or if such contractor is providing a service that is not included in the scope of this Agreement.

- J. **On-site Composting.** Organic Materials Composted or otherwise legally managed at the site where they are generated (e.g., backyard Composting or on-site anaerobic digestion).
- K. **Fats, Oils, and Grease:** Including but not limited to animal waste (e.g., remains from slaughterhouse or butcher shops), grease waste, and used cooking oil, including any variation thereof.
- L. **Sewage Treatment By-Product.** By-products of sewage treatment, including sludge, sludge ash, grit, and screenings.
- M. **Excluded Waste.** Excluded Waste regardless of its source.
- N. **Materials Generated by State and County Facilities.** Materials generated by State and County facilities located in the City including, but not limited to, the Oceanside Unified School District, provided that the Generator has arranged services with other Persons or has arranged services with the Contractor through a separate agreement.
- O. **Government Agencies Other Than the City.** Collection and Processing services for governmental agencies other than City that may have facilities in the City, but over which City has no jurisdiction in connection with the regulation of Solid Waste.
- P. **Hazardous, Biohazardous, and Excluded Waste.** The Collection, Transfer, Transport, Recycling, Processing, and Disposal of Hazardous Substances, Hazardous Waste, Biohazardous Waste, Excluded Waste, and radioactive waste, regardless of its source.
- Q. **Discarded Materials Collected by City Employees.** The Collection, Transfer, Transport, Recycling, Processing, and Disposal of Solid Waste by City through City officers or employees in the normal course of their employment.
- R. **Cannabis Waste.** As described in 4 CCR Section 17223.

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

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

1.3 Obligations of Parties

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

- A. Use their reasonable Commercial efforts to enforce the exclusive nature of the franchise by the Contractor's identification and documentation of violations of the Agreement and the City's notification of Generators and Collection companies reasonably believed to be violating the franchise regarding the terms of this Agreement.
- B. Provide timely notice to one another of a perceived failure to perform any obligations under this Agreement and access to information demonstrating the Party's failure to perform.
- C. Provide timely access to the City Franchise Contract Administrator and the Contractor's Franchise Contract Manager (or his/her designated representative) and complete and timely responses to requests of the other Party.
- D. Provide timely notice of matters that may affect either Party's ability to perform under the Agreement.

ARTICLE 2. TERM OF AGREEMENT

2.1 Effective Date

The Effective Date of this Agreement shall be the date on which all of the obligations set forth in Section 2.3 of this Agreement have been satisfied.

This Agreement shall become effective on the Effective Date. However, the provision of services, imposition of Customer Rates, payment of City Reimbursements, and actual Collection services by Contractor shall begin on January 1, 2024 (Commencement Date), as described in Section 2.2. Notwithstanding the foregoing, the Procurement Reimbursement and San Luis Rey Water Reclamation Facility Infrastructure Reimbursement shall be paid within five (5) business days of the Effective Date as specified in Sections 7.7 and 7.8. Contractor understands and agrees that the interim time between the Effective Date and the Commencement Date is intended to provide Contractor with ample and sufficient time to, among other things, order equipment, prepare necessary routing schedules and route maps, obtain any permits and licenses, establish and/or build facilities, obtain required service agreements, and begin the public awareness campaign as part of Contractor's transition program as specified in this Agreement.

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

2.2 Term and Option to Extend

The Term of this Agreement shall commence January 1, 2024 (Commencement Date) and continue in full force for a period of seven (7) years, through and including December 31, 2030, unless the Agreement is extended in accordance with this Section or terminated pursuant to Section 10.3.

This Agreement may be extended by agreement of the Parties without amendment for a period of no more than three (3) additional years for a total Term that does not extend beyond December 31, 2033. If either Party desires to extend the Agreement, it shall provide the other with written notice of its decision to seek extension of the Agreement at least one (1) year before the expiration of the initial Term and at least six (6) months before the expiration of any extended Term. Such notice by City shall specify the duration of the extension.

This Agreement shall be extended at the City's sole discretion if the award of a future agreement and related decisions are subject to review and repeal by the City's citizens through a referendum or similar petition, or to various types of legal and environmental challenges (such referenda, similar petition, and legal and environmental challenges being referred to collectively as "Legal Challenges"). Under such condition, the City shall notify the Contractor of any such Legal Challenges within thirty (30) days of becoming aware of any such Legal Challenges and notify Contractor of the extension of the Term for the duration of the Legal Challenges but not to exceed twelve (12) months, unless otherwise agreed to by the parties.

2.3 Conditions to Effectiveness of Agreement

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

- A. Accuracy of Representations.** The Contractor's representations and warranties made in Contractor's Proposal and Article 11 of this Agreement are true and correct on and as of the Effective Date.
- B. Furnishings of Insurance and Performance Bond.** Contractor has furnished evidence of the insurance and performance bond required by Article 9 that is satisfactory to the City.
- C. Absence of Litigation.** To the best of Contractor's knowledge, after reasonable investigation, there is no action, suit, proceeding, or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending, or threatened against Contractor wherein an unfavorable decision, ruling, or finding, in any single case or in the aggregate, would:
 - 1. Materially adversely affect the performance by Contractor of its obligations hereunder;
 - 2. Adversely affect the validity or enforceability of this Agreement; or,
 - 3. Have a material adverse effect on the financial condition of Contractor, or any surety or entity guaranteeing Contractor's performance under this Agreement.
- D. Permits Furnished.** Contractor has provided City with copies of all permits necessary for operation of all Approved Facilities owned or operated by Contractor or any Subcontractor for use under the terms of this Agreement.
- E. Legal Challenge.** Contractor understands and acknowledges that the award of this Agreement and related decisions may be subject to review and repeal by Legal Challenges. Accordingly, this

Agreement shall not become effective until the City reasonably determines that: (1) any Legal Challenges that had been initiated as of the time of such determination have been resolved in favor of the City's award of this Agreement to Contractor; and, (2) the deadline to initiate any additional Legal Challenges has expired. However, Contractor shall be entitled to rescind this Agreement upon thirty (30) days' prior written notice to the City if such determination is not made by September 1, 2022.

ARTICLE 3. SCOPE OF AGREEMENT

3.1 Summary Scope of Services

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

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

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

- B. Transporting Collected materials to the appropriate Approved Facilities pursuant to requirements of Article 4 and Exhibit B;
- C. Processing Collected Recyclable Materials and Organic Materials at the appropriate Approved Facilities pursuant to the requirements of Article 4 and Exhibit B;
- D. Performing all other services required by this Agreement including, but not limited to, Customer billing, public education and outreach, Customer service, contamination monitoring, and record keeping and reporting, pursuant to Articles 4 and 6, Exhibit C (Public Education & Outreach Requirements), and Exhibit D (Reporting Requirements);
- E. Furnishing all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and all other items and services necessary to perform its obligations under this Agreement;
- F. Paying all expenses related to provision of services required by this Agreement including, but not limited to, taxes, regulatory fees (including City Reimbursements), and utilities;
- G. Performing or providing all services necessary to fulfill its obligations in full accordance with this Agreement at all times using best industry practice for comparable operations; and,
- H. Complying with all Applicable Laws.

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

3.2 Use of Approved/Designated Facilities

The Contractor, without constraint and as a free-market business decision in accepting this Agreement, agrees to use the Approved Recyclable Materials Processing Facility for the purposes of Processing all Recyclable Materials, Approved Disposal Facility for the purposes of Disposing of Solid Waste and Residue, Approved Transfer Facility for the purposes of Transporting Discarded Materials, and other material Collected in the City, with the exception of Organic Materials as addressed in Section 3.3. Use of a facility must be approved by the City in writing prior to use, consistent with the requirements of Article 4. Such decision by Contractor in no way constitutes a restraint of trade, notwithstanding any Change in Law regarding Flow Control limitations or any definition thereof.

3.3 Designated Organic Materials Processing Facility

The City reserves the right to direct the facility at which Organic Materials are Processed during the Term (Designated Organic Materials Processing Facility), subject to Applicable Law. As of the Effective Date, the City has directed that Residential Organic Materials Collected in the City be Transported to the El Corazon Composting Facility for Processing, and Commercial Organic Materials Collected in the City be Transported to the Orange County CORE Facility for Processing.

Should the City direct that Organic Materials be Transported to a location other than the Designated Organic Materials Processing Facility for Processing, Contractor or City shall be entitled to a Rate adjustment in accordance with Section 8.3 or as otherwise mutually agreed between the Parties, up or down, for the actual incremental cost changes associated with delivering material to a different location as well as any incremental differences in tipping fees.

3.4 Subcontracting

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

3.5 Responsibility for Materials

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

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

3.6 City-Directed Changes to Scope

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

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

ARTICLE 4. SCOPE OF SERVICES

4.1 General

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

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

4.2 Recyclable Materials

- A. **Collection.** Contractor shall provide Recyclable Materials Collection services as described in Exhibit B.
- B. **Transfer.** Contractor plans to Transport Recyclable Materials to the Approved Transfer Facility where the materials will be unloaded from Collection vehicles and loaded into large-capacity vehicles and Transported to the Approved Recyclable Materials Processing Facility. Contractor shall keep all existing permits and approvals necessary for use of the Approved Transfer Facility in full regulatory compliance. Upon request, Contractor shall provide copies of facility permits and/or notices of violations (obtained from its Transfer facility Subcontractor if necessary) to City Franchise Contract Administrator. If the Contractor is unable to use the Approved Transfer Facility, then the Contractor shall be responsible for making other Transportation arrangements. In such event, Contractor shall not be compensated for any additional costs. If the Contractor plans to change its Transfer method, Contractor shall obtain written approval from the City prior to making the change.
- C. **Processing.** Contractor shall Transport and deliver all Source Separated Recyclable Materials placed in Recyclable Materials Containers in the City to the Approved Recyclable Materials Processing Facility. All tipping fees and other costs associated with Transporting to, and Processing of, such Recyclable Materials at the Approved Recyclable Materials Processing Facility and Disposing of the Residue as required in Section 4.2.E below shall be paid by Contractor.
1. **Capacity Guarantee.** Contractor guarantees sufficient capacity at the Approved Recyclable Materials Processing Facility to Process all Source Separated Recyclable Materials Collected by Contractor under this Agreement throughout the Term of the Agreement.
 2. **Compliance with Regulatory Requirements and Applicable Law.** Contractor shall keep all existing permits and approvals necessary for use of the Approved Recyclable Materials Processing Facility in full regulatory compliance. Upon request, Contractor shall provide copies of facility permits and/or notices of violations (obtained from its Processing Facility Subcontractor if necessary) to City Franchise Contract Administrator.

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

3. **Notification of Emergency Conditions.** If Contractor is unable to use the Approved Recyclable Materials Processing Facility due to an event that meets the requirements for excusing Contractor from performance of this specific obligation as described in Section 10.7, Contractor shall use an Alternative Facility provided that the Contractor provides written notice to City Franchise Contract Administrator. Within forty-eight (48) hours of such emergency or sudden and unforeseen closure, the Contractor shall provide a written description of the reasons the use of the Approved Recyclable Materials Processing Facility is not feasible and the period of time Contractor proposes to use the Alternative Facility. Such

a change in Processing Facility shall be temporarily permitted until such time as the City Franchise Contract Administrator is able to consider and respond to the use of the proposed Alternative Facility. If the use of the proposed Alternative Facility is anticipated to, or actually does, exceed thirty (30) days in a consecutive twelve (12) month period, the use of such Processing Facility shall be subject to approval by the City Franchise Contract Administrator. The City Franchise Contract Administrator may, in their sole discretion, approve, conditionally approve, temporarily approve, or disapprove of the use of the proposed Alternative Facility. In the event that the City disapproves the use of the proposed Alternative Facility, the Parties shall meet and confer to determine an acceptable Processing Facility.

4. **Load Non-Collection.** Contractor shall use the Approved Disposal Facility for Recyclable Material loads that were not Collected pursuant to Section 4.12.1.D of this Agreement, which describes the acceptable standards and methods used by the Approved Recyclable Materials Processing Facility for non-Collection.
 5. **Approved Facility(ies) Unavailable/Use of Alternative Facility(ies).** If the use of an Alternative Facility is for reasons within Contractor's Control, Contractor's Compensation shall not be adjusted for any change in Transportation and Processing costs associated with use of the Alternative Facility. However, if the use of an Alternative Facility is due to reasons beyond Contractor's or its Subcontractor's Control, then City shall adjust, either up or down, Contractor's Compensation for changes in Transportation and Processing costs associated with the use of the Alternative Facility. The performance of Recyclable Materials commodity markets shall not be considered an acceptable basis for use of an Alternative Facility, nor shall it serve as the basis for any adjustment in Contractor's Compensation under this Agreement, other than as specifically contemplated in Exhibit E to this Agreement. In the event that the change in the Processing Facility results in increased costs, City may identify and direct Contractor to a less-costly Alternative Facility without additional compensation to Contractor. Except for the conditions described in this section (and further described in Section 10.7), Contractor shall not change its selection of the Approved Recyclable Materials Processing Facility without City's written approval, which may be withheld in the City's sole discretion. If Contractor elects to use a Recyclable Materials Processing Facility that is different than the initial Approved Recyclable Materials Processing Facility, it shall request written approval from the City Franchise Contract Administrator sixty (60) calendar days prior to use of the site and obtain City's written approval no later than ten (10) calendar days prior to use of the site. Failure to meet the requirements of this Section shall result in Liquidated Damages.
- D. **Marketing.** The Contractor shall be responsible for marketing Recyclable Materials Collected in the City that are delivered for Processing at Contractor's Approved Recyclable Materials Processing Facility. Contractor's marketing strategy shall include use of local, regional, and domestic markets for Recyclable Materials.
- E. **Residue Disposal.** Residue from the Processing of Source Separated Recyclable Materials Collected under this Agreement at Contractor's Approved Recyclable Materials Processing Facility, which cannot be marketed, shall be Disposed of by Contractor, or the Processing Facility Subcontractor. Residue delivered for Disposal shall not include any Excluded Waste.

4.3 Organic Materials

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

B. **Processing.**

1. **General.** Contractor shall Transport and deliver all Source Separated Organic Materials placed in Organic Materials Containers in the City to the Designated Organic Materials Processing Facility. All tipping fees and other costs associated with Transporting such Organic Materials to the Designated Organic Materials Processing Facility(ies) and Disposing of the Residue as required in Section 4.3.D below shall be paid by Contractor.

a. **Capacity Guarantee.** Contractor guarantees sufficient capacity at the Designated Organic Materials Processing Facility(ies) to Process all Source Separated Organic Materials Collected by Contractor under this Agreement throughout the Term of the Agreement.

b. **Compliance with Regulatory Requirements and Applicable Law.** Contractor shall keep all existing permits and approvals necessary for use of the Designated Organic Materials Processing Facility(ies) in full regulatory compliance. Upon request, Contractor shall provide copies of facility permits and/or notices of violations (obtained from its Processing Facility(ies) Subcontractor if necessary) to City Franchise Contract Administrator.

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

c. **Notification of Emergency Conditions.** Each Approved Facility shall notify the City of any unforeseen operational restrictions that have been imposed upon the facility by a regulatory agency or any unforeseen equipment or operational failure that will temporarily prevent the facility from Processing the Discarded Materials Collected under this Agreement.

d. **Load Non-Collection** Contractor shall use the Approved Disposal Facility for Organic Materials loads that were not Collected pursuant to Section 4.12.1.D of this Agreement, which describes the acceptable standards and methods used by the Designated Organic Materials Processing Facility for non-Collection.

e. **Approved Facility(ies) Unavailable/Use of Alternative Facility(ies).** If Contractor is unable to use the Designated Organic Materials Processing Facility due to an event that meets the requirements for excusing Contractor from performance of this specific obligation as described in Section 10.7, Contractor shall use an alternative Processing

Facility provided that the Contractor provides written notice to City Franchise Contract Administrator.

In the event the Designated Organic Materials Processing Facility Subcontractor is unable to provide the required services under the Subcontracting agreement, as attached in Exhibit K, for the Contractor to fulfill its obligation under this Agreement, Contractor shall utilize an Alternative Facility for Organic Materials Processing that is approved by the City in writing at no additional charge. Contractor or its Subcontractor, as applicable, shall provide sufficient capacity to process all Organic Materials generated by the City.

Within forty-eight (48) hours of emergency or sudden and unforeseen closure, the Contractor shall provide a written description of the reasons the use of the Designated Organic Materials Processing Facility is not feasible and the period of time Contractor proposes to use the Alternative Facility. Such a change in Processing Facility shall be temporarily permitted until such time as the City Franchise Contract Administrator is able to consider and respond to the use of the proposed Alternative Facility. If the use of the proposed Alternative Facility is anticipated to or actually does exceed thirty (30) days in a consecutive twelve (12) month period, the use of such Processing Facility shall be subject to approval by the City Franchise Contract Administrator. The City Franchise Contract Administrator may, in their sole discretion, approve, conditionally approve, temporarily approve, or disapprove of the use of the proposed Alternative Facility. In the event that the City disapproves the use of the proposed Alternative Facility, the Parties shall meet and confer to determine an acceptable Processing Facility.

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

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

2. **Bags to Contain Organic Materials.** Subject to the limitations set forth in 14 CCR Section 18984.1(a)(1)(A), Contractor shall permit Customers to use clear or translucent plastic bags and/or liners, or Compostable Plastic bags, for containment of Organic Materials by

Customers that allow for identification of Discarded Materials. In the event that a Customer uses an opaque bag and/or liner, Contractor may consider it and its contents a contaminant. Contractor shall Collect and Transport such materials for Processing at the Designated Organic Materials Processing Facility. At least six (6) months prior to the commencement of the Agreement, and annually thereafter, Contractor shall provide the written notification to the City submitted by the Processing Facility that it has and will continue to have the capability to Process and recover the Compostable Plastics throughout the Term of the Agreement; and the Contractor shall not revoke this authorization at any time during the Term of the Agreement except as required by a Change in Law. If the Contractor does not submit such notification, or if at any time during the Term of the Agreement the Designated Organic Materials Processing Facility can no longer accept and/or Process Compostable Plastics, the City may assess Liquidated Damages or deem such failure an event of default of the Contractor under Article 10. Contractor shall notify the City within thirty (30) days of the Designated Organic Materials Processing Facility's inability to accept the Compostable Plastics. The notification shall, at a minimum, include: the date and a description of the reasons that the Designated Organic Materials Processing Facility is not able to Process and recover the Compostable Plastics; the period of time the Designated Organic Materials Processing Facility will not Process and recover these materials; and, the Contractor's proposed plan to find an Alternative Facility or arrangement to Process the Compostable Plastics, subject to City approval. City may prohibit or restrict the use of Compostable Plastics, with a six (6) month notice to Contractor, and this shall not constitute a City-directed change in scope or Change in Law under this Agreement.

3. **San Luis Rey Wastewater Treatment Plant Processing.** Contractor shall cooperate with City's infrastructure improvement project(s) to the San Luis Rey Wastewater Treatment Plant (SLR) at 3950 N River Rd, Oceanside, CA 92058, to Process Food Waste. Upon thirty (30) days written notice from the City, Contractor shall Transport loads of pre-Processed Food Waste to SLR for acceptance testing. Upon successful completion of acceptance testing at SLR, City retains the right to direct Contractor to Transport some or all pre-Processed Food Waste to SLR for Processing. City shall inform the Contractor in writing of the effective date for Contractor to begin Transporting pre-Processed Food Waste to SLR.

C. **Marketing.** The Contractor shall be responsible for marketing Organic Materials Collected in the City that are delivered for Processing at the Designated Organic Materials Processing Facility. Contractor's marketing strategy shall include use of local markets for Organic Materials.

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

4.4 Solid Waste

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

B. **Transfer.** Contractor plans to Transport Solid Waste to the Approved Transfer Facility where the materials will be unloaded from Collection vehicles and loaded into large-capacity vehicles and Transported to the Approved Disposal Facility.

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

If the use of an Alternative Facility is for reasons within Contractor's or Subcontractor's Control, Contractor's Compensation shall not be adjusted for any change in Transportation costs associated with use of the Alternative Facility. However, if the use of an Alternative Facility is due to reasons beyond Contractor's or its Subcontractor's Control, then City shall adjust, either up or down, Contractor's Compensation for changes in Transportation costs associated with the use of the Alternative Facility. In the event that the change in either the Approved Transfer Facility or the Approved Disposal Facility results in increased costs, City may identify and direct Contractor to a less-costly Alternative Facility, at the Contractor's

expense. Failure to meet the requirements of this Section shall result in Liquidated Damages as identified in Exhibit F.

Contractor shall Transport all Solid Waste Collected in City to either the Approved Transfer Facility or the Approved Disposal Facility. Contractor shall pay all costs associated with Transportation and Disposal of Solid Waste, including payment of any gate fees charged at either the Approved Transfer Facility or the Approved Disposal Facility.

4.5 Large Landfill Item Service and Reusable Materials Collection

- A. **Designated Reusable Materials Donation Weeks.** Contractor shall offer City-wide Reusable Materials Collection services as described in Exhibit B. Contractor shall provide a minimum of four (4) Reusable Materials donation weeks per year, as scheduled and agreed upon by the Contractor and the City Franchise Contract Administrator, to Collect Reusable Materials. Contractor shall pay all costs associated with Transporting and Processing Reusable Materials. Contractor shall observe and comply with all regulations in effect at the Approved Reusable Materials Processing Facility and cooperate with and take direction from the operator thereof with respect to delivery of Reusable Materials.
- B. **Designated Non-Reusable/Repairable Large Landfill Item Weeks.** Contractor shall offer City-wide non-reusable/repairable Large Landfill Item Collection services as described in Exhibit B. Contractor shall provide a minimum of four (4) designated landfill weeks per year, as scheduled and agreed upon by the Contractor and the City Franchise Contract Administrator, to Collect Large Landfill Items or Discarded Materials that are beyond repair or reuse, pursuant to Exhibit B.
- C. **On-call Large Landfill Item and E-Waste Pick-up.** Additionally, Contractor shall provide on-call Collection services pursuant to Exhibit B. Customers can schedule a Large Landfill Item and E-Waste pick up of up to five (5) items, up to three (3) times per year. Contractor shall provide Collection service on the Customer's regularly-scheduled Collection day at no additional charge, provided that Customer submits the Collection request at least twenty-four (24) hours in advance.

4.6 Special Events

At the direction of the City Franchise Contract Administrator, Contractor shall participate in and promote zero waste and other Diversion techniques at City-sponsored special events and local activities. Such participation would include without limitation, and without additional cost to the City, educational and publicity information promoting the goals of City's zero waste Green Oceanside program. Upon thirty (30) days' notice, Contractor shall provide Recyclable Materials, Organic Materials, and Solid Waste services at up to fifty (50) special events per Rate Period, at no cost to the City. Contractor shall provide the special event services to other events that are sponsored by City upon thirty (30) calendar days' advance request by the City Franchise Contract Administrator. Special event services include:

- A. **Event Collection Stations.** Contractor shall provide and set-up event Collection stations for Collection of Recyclable Materials, Organic Materials, and Solid Waste at City-sponsored special events. Each event Collection station shall include a separate Container for each of Recyclable Materials, Organic Materials, and Solid Waste, as approved by the City Franchise Contract Administrator. Contractor shall provide a sufficient number of event Collection stations of sufficient capacity to meet the needs of the event as determined by Contractor in cooperation with the event organizer. Collection stations shall utilize the same Containers used to provide services to

Residential Customers, unless alternative Containers are approved by the City. Contractor shall provide liners/bags for the Carts at the Collection stations and shall line the Containers as a part of the station set-up. Collection stations shall include adequate signage and labeling in languages as approved by the City Franchise Contract Administrator.

- B. **Collection Station Monitors.** Upon request, Contractor shall provide up to six (6) Collection station monitors who shall be present for the duration of each special event. City may request additional Collection station monitors from the Contractor at an approved Rate. Contractor shall require Collection station monitors to monitor event Collection stations and educate event attendees and vendors about what materials are acceptable in each Collection station Containers. The Collection station monitors shall be responsible for Transporting materials contained in event Collection stations to Roll-Off Boxes or Bins, which will subsequently be Collected by the Contractor. Station monitors will also sort Discarded Materials both at the Collection stations and at the Bins or Roll-Off Boxes to ensure that they are properly separated.
- C. **Roll-Off Boxes and Bins.** Upon request, Contractor shall provide Containers for the aggregation of material removed from event Collection stations during the course of the event. Contractor shall provide clean and properly-labeled Containers (to allow for simple Source Separation procedures and practices) in sufficient number of appropriate type(s) for the needs of the event as determined by Contractor in cooperation with the event organizer. Contractor shall service Containers, as agreed-upon with the event organizer, and deliver Collected materials to the appropriate Approved Facility for Processing and/or Disposal.
- D. **Public Education Booth.** Upon request of either the City Franchise Contract Administrator or the event organizer, Contractor shall staff a booth or exhibit at the event for the purpose of educating the public about the services and including but not limited to the City's zero waste program and the benefits of source reduction, reuse, repair, Recycling, Composting, and Source Separating Discarded Materials.
- E. **Reporting.** Within fourteen (14) calendar days of the end of the event, Contractor shall submit a report to the City Franchise Contract Administrator and event organizer. The report should include, at a minimum: the number of event Collection stations deployed at the event, the number of Collection station monitors, the Tonnage of each material type (i.e., Recyclable Materials, Organic Materials, and Solid Waste) Collected, and a description of the public education provided at the event.

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

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

4.7 Public Education and Outreach

Contractor acknowledges and agrees that education and public awareness are critical, key, and essential elements of any efforts to achieve the City's zero waste goals and AB 939, AB 341, AB 1826, and SB 1383

requirements, and other Applicable Law. Accordingly, Contractor agrees to take direction from City to take advantage of opportunities to expand public and Customer knowledge concerning needs and methods to reduce, reuse, repair, Recycle, Compost, and Source Separate Discarded Materials and to cooperate fully with City in this regard.

The public education and outreach activities included in the scope of services provided by Contractor under this Agreement are described in this Section 4.7 and in Exhibit C. Contractor shall produce and distribute public education and outreach materials upon City request, and contribute any remaining funds in Contractor's annual public education budget to the City to support the City's public education and outreach efforts.

- A. **Program Objectives.** The City's education and outreach consultant shall be responsible for designing a public education and outreach program, and the Contractor shall be responsible for the production and distribution of all materials, both in print and digital form, under this program in accordance with this Agreement. The City's public education and outreach strategy shall focus on improving Generator understanding of the benefits of, and opportunities for, source reduction, reuse, repair, Recycling, Composting, Source Separating Discarded Materials, and supporting compliance with Applicable Laws and regulations, including, but not limited to AB 341, AB 1826, and SB 1383. Examples of goals of the City-provided public education and outreach program include, but are not limited to: (i) informing Generators about the services that are provided under this Agreement with specific focus on describing the methods and benefits of source reduction, reuse, repair, Recycling, Composting, and Source Separating Discarded Materials; (ii) instructing Generators on the proper method for placing materials in Containers for Collection and setting Containers out for Collection, with specific focus on minimizing contamination of Recyclable Materials and Organic Materials; (iii) clearly defining Excluded Waste and educating Generators about the hazards of such materials and their opportunities for proper handling; (iv) discouraging Generators from buying products if the product and its packaging are not readily reusable, Recyclable, or Compostable; (v) informing Generators subject to Food Recovery requirements under SB 1383 of their obligation to recover Edible Food and actions they can take to prevent the creation of Food Waste; (vi) encouraging the use of Compost and recovered Organic Waste products; (vii) encouraging Generators to purchase products/packaging made with Recycled content materials; (viii) instructing Generators on proper Disposal of Hazardous Waste and Sharps Waste; and, (ix) informing Generators about the benefits of participating in the City's Large Landfill Item and Reusable Materials Collection service.

The cumulative intended effect of these efforts is to reduce generation of Discarded Materials and, ultimately, Disposal of Discarded Materials by each Generator in the City, and Contractor agrees to support and not undermine or interfere with such efforts.

- B. **Contractor Public Education and Outreach Requirements.** Contractor agrees to print, produce, and distribute education materials and conduct outreach, as required by the City, based on the City's adopted program and subject to the requirements of Exhibit C.

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

Contractor shall obtain approval from the City Franchise Contract Administrator on all Contractor-provided advertising, promotional, or service-related materials used within the City before publication, distribution, and/or the timeline for release of all materials. Contractor shall cooperate fully with the City's Outreach Contractor as identified in Exhibit C. The City Franchise Contract Administrator, in their sole discretion, shall have the right to deny the use of any materials or content or may request that Contractor include City identification and contact information on materials and Contractor's approval of such requests shall not be unreasonably withheld.

4.8 Billing

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

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

- B. **Customer Accounts.** Contractor shall develop, maintain, and regularly use a Customer Account Information Database, which shall include but is not limited to:

1. Customer name;
2. Phone number;
3. Service address;
4. Billing Address;
5. Email address; and,
6. Customer Service Levels, including:
 - a. Customer Service Levels exceptions, and,
 - b. Customer service waivers.

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

- C. **Billing Procedures.** Contractor shall bill Customers electronically using paperless invoices; however, Contractor shall bill Customers who decline or are otherwise unable to provide email contact information by standard mail, using standard (paper) invoices. Contractor shall permit Customers the ability to pay their bills through an electronic check or credit card and include the ability for Customer billings to be automatically charged on a recurring basis. Contractor shall prepare, mail, and collect bills from Customers who decline to use such internet-based billing system. Contractor shall make arrangements to allow such Customers to pay bills by cash, check, electronic check, money order, and credit card.
- D. **Billing Inserts.** Up to once per billing cycle for each Customer Type, City may direct Contractor to attach inserts to Customer invoices. Contractor shall provide electronic bill inserts to Customers who are billed electronically, and paper bill inserts to Customers who receive paper bills. Electronic bill inserts/attachments must be readily available for the Customer to view upon receipt of the invoice (attachments shall not be provided as links). Upon City request for such attachments, Contractor shall comply with such request during its next billing cycle for the targeted Customer group. Contractor shall perform this service with no additional requirement for compensation.
- E. **Record Storage.** Contractor shall maintain copies of all billings and receipts, each in chronological order or stored digitally and sortable by date, for the Term of this Agreement, for inspection and verification by the City Franchise Contract Administrator at any reasonable time but in no case more than fourteen (14) calendar days after receiving a request to do so.
- F. **Bad Debt.** Contractor shall be responsible for collection of payment from Customers with past due accounts ("bad debt") in accordance with this Section 4.8. Contractor shall make reasonable efforts to obtain payment from delinquent accounts through issuance of late payment notices, telephone requests for payments, and assistance from collection agencies.
- G. **Delinquency Notices & Late Fees.** Monthly Customer invoices shall be due thirty (30) calendar days from the first day of the billing period. In the event that any account becomes more than thirty (30) calendar days past due, Contractor shall notify such Customer of the delinquency via written correspondence, instructing the Customer that unpaid bills that become more than forty-five (45) calendar days delinquent may be assessed a one and five tenths percent (1.5%) late fee per month. Contractor shall provide a second written notice of delinquency to any account that becomes more than sixty (60) calendar days past due, and a third written notice of delinquency to any account that becomes more than ninety (90) calendar days past due. Should any account become more than one hundred and twenty (120) calendar days past due, Contractor may discontinue providing service to the Customer. Contractor shall notify the City Franchise Contract Administrator of the address, Service Level, service frequency, and delinquent billing amount at least seven (7) days before discontinuing service to any Customer. Contractor may withhold service from a delinquent account until past delinquencies are paid in full. Upon restoring service to a previously delinquent account, Contractor may require a deposit from the Customer not to exceed one (1) month's billings at the Customer's Service Level, and may charge Customer a reinstatement fee.
- H. **Failure to Invoice.** If Contractor fails to invoice a Customer, or otherwise under-charges a Customer for services provided for more than six (6) months, Contractor may not subsequently attempt to collect the under-charged amount for more than six (6) months of service. If Contractor over-charges a Customer for a period of more than six (6) months, Contractor shall reimburse or credit the Customer for at least six (6) months of the over-charged service. This Agreement also does not

prohibit Contractor from reimbursing or crediting a Customer for more than six (6) months of overcharges.

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

4.9 Customer Service Program

4.9.1 Program Requirements

- A. **Availability of Representatives.** The Contractor shall maintain an office where Complaints can be received. A representative of the Contractor who is knowledgeable of the service area, services, and Rates shall be available from 8 a.m. to 5 p.m. Pacific Standard Time (PST), Monday through Friday to communicate with the public by telephone. Contractor shall maintain a local or toll-free telephone number, which it shall publicize. Contractor shall also maintain an after-hours telephone number allowing twenty-four (24) hour per day access to Contractor management by City Franchise Contract Administrator in the event of an emergency involving Contractor's equipment or services including, but not necessarily limited to, fires, blocked access, or property damage.
- B. **Telephone.** City shall secure, and Contractor shall use, pay all costs incurred by, and maintain during the Term of this Agreement, a toll-free phone number that shall serve as the primary point of contact between Contractor and the public during normal business hours. Upon expiration or early termination of this Agreement, the City shall retain the Control of the toll-free phone number. The Contractor shall provide the City with a separate emergency telephone number for use by the City Franchise Contract Administrator outside normal business hours. The Contractor shall have contact with a representative, available at the emergency telephone number during all hours other than normal office hours.

Contractor shall maintain a telephone system in operation from 9 a.m. to 7 p.m. PST and shall have sufficient equipment in place and staff a representative, or an answering service to available to handle the volume of calls experienced on the busiest days and such telephone equipment shall be capable of recording the responsiveness to calls. Contractor's telephone system shall offer Customers who have been placed on-hold to opt to leave a voice message or email, rather than remain on-hold. In the event that Contractor's telephone Customer service performance falls below the performance standards established in Exhibit F, the City shall have the right to require Contractor to increase its staffing levels and/or call handling capacity without requirement for any additional compensation to the Contractor. Recording of Contractor's responsiveness to calls shall include, at a minimum, all items included in the "Service Quality and Reliability" and "Customer Service" performance standards listed in Exhibit F. An answering machine or voicemail service shall record Customer calls and voice messages after normal operating hours and weekends. Contractor shall provide a live, not automated, call back on the next Working Day to all Customers by 10:00 a.m. PST.

- C. **Web Site and Email Access.** Contractor shall develop and maintain a website that is accessible by the public and solely dedicated to the operations under this Agreement in the City. Contractor's web site shall include all Rates allowed to be charged under the Agreement, all public education and outreach materials produced and distributed under this Agreement, and provide the public the

ability to e-mail or live-chat the Contractor questions, service requests, schedule Large Landfill Item pickups, or Complaints. Contractor shall respond by the next Working Day to all Customers who leave e-mail messages. Contractor may respond to Customer e-mails either via e-mail or phone.

4.9.2 Service Requests, Complaints

Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all Customer service requests and Complaints. Contractor shall record, in its computer system or a separate log, approved as to form by City Franchise Contract Administrator, all Complaints, noting the name and address of complainant, date and time of Complaint, nature of Complaint, and nature and date of resolution. The Contractor shall retain this Complaint log for the Term. Contractor shall record and respond to all Complaints as communicated by the Customer, utilizing a "Customer is always right" approach, shall not challenge or dispute the Customer's assertions or Complaints, and shall at all times prioritize Customer satisfaction. Contractor shall compile and submit to the City Franchise Contract Administrator, a summary statistical table of the Complaint log on the first day of each month following the execution of this Agreement.

Contractor shall respond to all Complaints received in accordance with the requirements of Section 4.9.1.B, and 4.9.1.C. Complaints related to missed Collections shall be addressed in accordance with Section 4.9.3. Complaints related to repair or replacement of Carts or Bins, shall be addressed in accordance with Section 5.6.E.

4.9.3 Missed Collections

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

- B. Schedule for Resolution.** Contractor shall resolve each and every Customer Complaint of a missed or incomplete Collection by returning to the Customer address and completing the Collection. For all Complaints related to missed Collections that are received by 3:00 p.m. on a Working Day, the Contractor shall return to the Customer address and Collect the missed materials on the same Working Day on which the missed Collection was reported. For those Complaints related to missed Collections that are received after 3:00 p.m. on a Working Day, the Contractor shall have until the end of the following Working Day to resolve the Complaint. Contractor shall pay Customer rebates for late Collections in accordance with Section 5.13. Contractor's failure to comply with this Section 4.9.3 may result in Liquidated Damages.

Contractor shall not be required to return and complete a Collection in response to a Complaint if the Contractor's driver has left a non-Collection notice in accordance with Section 5.3.B.

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

4.9.4 SB 1383 Non-Compliance Complaints

For Complaints received in which the Person alleges that an entity is in violation of SB 1383 requirements, Contractor shall document the information listed in Exhibit D. Contractor shall provide this information in a brief Complaint report, in a form as approved by City Franchise Contract Administrator to the City for each SB 1383-noncompliance Complaint within twenty-four (24) hours of receipt of such Complaint, and a monthly summary report of SB 1383-non-compliance Complaints in accordance with Exhibit D.

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

4.9.5 New Customer Service Initiation Process

Contractor shall provide a new Customer outreach and educational packet to each new Customer within one (1) week of the account services start date. Contractor shall also provide on-site technical assistance to each new Commercial Customer no later than one (1) month following the service start date. Contractor's process and methodology (including any proposed updates) must be approved by City Franchise Contract Administrator, and it is in the City Franchise Contract Administrator's sole discretion to approve or deny such proposals. All new Customer information shall be uploaded to a City approved cloud-based software program at least one (1) time per week. Failure to comply with the provisions of this Section shall result in Liquidated Damages.

4.10 Access to Customer Service and Billing Systems

Contractor shall provide access and any necessary training to one (1) or more City employee(s) (as designated by the City) regarding the use of Contractor information systems as described in this Section. Contractor shall designate one (1) member of Contractor staff to work directly with such City employee(s). Contractor shall provide such City employee with access to Customer service, call center, and operations information systems in order to validate Contractor performance standards, verify that Customer rebates have been issued in accordance with Section 5.13, and recommend changes to Customer Service Levels to resolve service issues or otherwise address Customer needs. In the event that recommended Service Level changes are made, the designated City staff will work with Contractor's route manager to make such changes, which shall not be denied by Contractor except for reasons related to Customer, route driver, and/or equipment safety. Contractor shall also provide access to Customer contact information (including email addresses) for purposes of City-provided public education and outreach activities. In addition,

Contractor shall ensure that the City Franchise Contract Administrator and any other City staff, as requested by the City, have read-only access to all service order, billing, and Customer service records in Contractor's internal information systems. Such read-only access is intended to provide the City the ability to review notes related to Customer service and/or billing issues.

4.11 Service Exemptions

Contractor shall honor any service exemption(s) granted by City Franchise Contract Administrator that is consistent with Applicable Law.

4.12 Contamination Monitoring

4.12.1 Annual Route Reviews

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

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

1. For weekly routes with less than 1,500 Generators, the Contractor shall sample a minimum of twenty-five (25) Containers;
2. For weekly routes with 1,500-3,999 Generators, the Contractor shall sample a minimum of thirty (30) Containers;
3. For weekly routes with 4,000-6,999 Generators, the Contractor shall sample a minimum of thirty-five (35) Containers; and,
4. For weekly routes with more than 7,000 Generators, the study shall include a minimum of forty (40) samples.

Contractor shall develop a specific route review methodology to accomplish the above Container inspection requirements and such methodology shall comply with the requirements of 14 CCR Section 18984.5(b). Contractor shall submit its proposed route review methodology for the coming year to the City no later than January 31 of each year describing its proposed methodology for the calendar year and schedule for performance of each route's annual review. Contractor's proposed route review methodology shall include not only its plan for Container inspections, but shall also include its plan for prioritizing the inspection of Customers that are more likely to be out of compliance. Contractor's proposed route review methodology and schedule shall not interfere with City posted street sweeping schedules. The City will review and approve the proposed methodology. Contractor may commence with the proposed methodology upon approval by the City Franchise Contract Administrator.

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

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

- B. **Contamination Notification.** Upon identification of Prohibited Container Contaminants in a Customer's Container, Contractor shall provide the Customer with a notice of contamination in the form of either a courtesy pick-up notice or a non-Collection notice as determined by the route auditor.
- C. **Courtesy Pick-Up Notice.** Upon identification of Prohibited Container Contaminants in a Customer's Container, Contractor shall provide the Customer a courtesy pick-up notice at the Customer's offending Container, and in addition by mail and e-mail. Additionally, contractor may contact the Customer by phone, text message, or other electronic means. Contractor shall additionally post any notice to Customer's account, whereby Customer can view such notice within twenty-four (24) hours of having received such notice. Contractor shall also attach or adhere courtesy pick-up notice to Generator's contaminated Containers.

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

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

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

Contractor shall Collect the contaminated Recyclable Materials and/or Organic Materials Containers and either Transport the material to the appropriate Approved Facility for Processing; or, Contractor may Collect the contaminated materials with Solid Waste and Transport the contaminated materials

to the Approved Disposal Facility. A courtesy Collection of contaminated Recyclable Materials or Organic Materials, where the materials are sent to the Approved Disposal Facility, may be made with a Solid Waste Collection vehicle, provided that the contaminants may safely and lawfully be Collected as Solid Waste.

D. Non-Collection Notices

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

The non-Collection notice shall, at a minimum:

- a. inform the Customer of the reason(s) for non-Collection;
 - b. include education materials on Source Separation as described in Exhibit C;
 - c. include the date and time the notice was left or issued;
 - d. describe the premium charge to Customer for Contractor to return and Collect the Container after Customer removes the contamination;
 - e. provide a warning statement that a contamination Processing fee may be assessed; and,
 - f. include photographic evidence of the violation(s).
2. Communications with Customer. Whenever a Container is not Collected, Contractor shall contact the Customer by telephone on the scheduled Collection day to provide an opportunity for the Customer to correct the contamination issue. The Contractor shall contact the Customer within twenty-four (24) hours of the scheduled Collection day by telephone, e-mail, text message, or other verbal or electronic message to explain why the Container was not Collected. Whenever a Container is not Collected because of Prohibited Container Contaminants, a Customer service representative shall contact the Customer to discuss and encourage the Customer to adopt proper Discarded Materials preparation and separation procedures.
 3. Contractor Return for Collection. Upon request from Customer, Contractor shall Collect Containers that received non-Collection notices within one (1) Working Day of Customer's request if the request is made at least two (2) Working Days prior to the regularly scheduled Collection Day. Contractor shall bill Customer for the extra Collection service event ("extra pick-up") at the applicable City-approved Rates only if Contractor notifies Customer of the Rate for this service at the time the request is made by Customer.

- E. Assessment of Contamination Processing Fees.** If the Contractor observes twenty percent (20%) or more Prohibited Container Contaminants in a Commercial Generator's Recyclable Materials Container, or in a Commercial Generator's Organic Materials Container and has issued and documented at least three (3) courtesy notice(s) or non-Collection notice(s), as appropriate, the Contractor may impose a contamination Rate approved by the City for that Customer's Service Level

only if the Contractor notifies Customer of the contamination Rate for this service prior to imposing the contamination Rate. Contractor shall bill Customer for the contamination Rate approved by the City for that Customer's Service Level. Residential and Multi-Family Generators shall not be charged a contamination Rate, but instead will be provided the option to remove the Prohibited Container Contaminants from the Container or request the Contractor to Collect Containers that received Non-Collection Notices as described in Section 4.12.1.D.3.

The intent of contamination fees is to provide a behavioral tool to educate and prevent Customers from placing Source Separated Discarded Material into the improper designated Container(s). To ensure that assessment of fees are to be used for the intended purposes and not as a form of revenue generation, Contractor agrees that contamination fees shall not exceed one percent (1%) of Contractor's Gross Receipts in any calendar quarter. The Contractor shall inform the City Franchise Contract Administrator if the contamination fees reach seventy-five hundredths percent (0.75%) of Contractor's Gross Receipts and shall schedule a meet and confer between both Parties to evaluate the contamination fee program. The Parties shall meet prior to the Contractor's Gross Receipts meeting or exceeding the one percent (1%) threshold.

In the event that contamination fees exceed one percent (1%) of Contractor's Gross Receipts in any calendar quarter, the assessment of contamination fees shall be suspended immediately and indefinitely pending a program assessment by the City and Contractor. Upon program suspension or at the request of the City at any time during the Term of the Agreement, City and Contractor shall meet and confer regarding the application and effectiveness of contamination fees in accomplishing the behavior change.

If the program is suspended due to excessive revenue generation, the City may require Contractor to either: i) modify the program parameters; ii) modify the amount of the contamination fee; or, iii) return to the City any funds generated by the contamination fee that exceed one percent (1%) of Contractor's Gross Receipts for a given period of time. In addition, where there are two (2) or more documented instances of Prohibited Container Contaminants in a Customer Container within the twelve (12) month period, Contractor may make a request to the City to modify service requirements through additional Containers, increased frequency of Collection, use of locking Containers, or other appropriate means.

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

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

1. **Contamination Processing Fee Notice.** Contamination Processing fee notices shall be in a format approved by the City Franchise Contract Administrator. Contractor shall notify the City in its monthly report of Customers for which contamination Processing fees were assessed per Section 4.12.1.F.

Each contamination Processing fee notice shall, at a minimum:

- a. describe the specific material(s) of issue;

- b. explain how to correct future set outs; and,
- c. indicate that the Customer will be charged a contamination Processing fee on their next bill.

F. Contamination Monitoring Reporting Requirements.

1. **Container Contaminant Log:** The driver or other Contractor representative shall record each event of identification of Prohibited Container Contaminants in a written log or in the on-board computer system including, but not limited to: date, time, Customer's address, type of Container, and photographic evidence.
2. **Contaminant Fees Assessment Report:** Additionally, on no less than a weekly basis, Contractor's Franchise Contract Manager shall update the Customer's account records to note the contaminant event(s) as identified by Contractor Representative(s). Contractor shall maintain records and report to the City monthly on contamination monitoring activities and actions taken, consistent with the submittal timing and content requirements of Exhibit D. Failure to meet the requirements of this Section 4.12.1.F.2, shall equate to Liquidated Damages as identified in Exhibit F.
3. **Monthly Report:** The monthly report shall include, but is not limited to: list of Customers that were assessed charges; photographic evidence of each contamination event(s) where a fee(s) was assessed; verification processes to ensure accurate fee assessment; date of notification; form(s) of notification given to Customer; list of efforts made in educating the Customer that was assessed a fee; list of Customer Complaints in response to fee assessment; Contractor's response and actions taken in response to Customer Complaints; and, the dollar amount of contamination fees assessed during the reporting period. Failure to meet the requirements of this Section 4.12.1.F.3, shall equate to Liquidated Damages as identified in Exhibit F.

4.12.2 Waste Characterization Studies

- A. **Recyclable Materials.** Contractor shall, at its sole expense, design and perform a Residue characterization of the Recyclable Materials Processed at the Approved Recyclable Materials Processing Facility a minimum of one (1) time per calendar per year. Contractor shall propose a study methodology that must include separately Processing at least thirty (30) Tons of Recyclable Materials, stratified across no fewer than three (3) distinct days of service, from the City at the Approved Recyclable Materials Processing Facility under normal operating conditions for the facility (e.g., staffing levels, belt speed, burden depth). The methodology must be approved by the City Franchise Contract Administrator in writing prior to Contractor conducting such a study. The results of that study shall be used to determine the allowable level of Residue Disposal costs for the upcoming Rate Period.
- B. **Organic Materials.** Contractor shall, at its sole expense, design and perform waste characterization studies for Prohibited Container Contaminants for Organic Materials Collected in the City. The Contractor shall conduct waste composition studies at least two (2) times per year and the studies shall occur in two (2) distinct seasons of the year. The Contractor shall submit a proposed methodology to the City for review and approval, and the methodology must include the requirements presented below.

1. **Organic Materials Samples.** The study shall include samples of Organic Materials and Solid Waste taken from Containers located in different areas of the City that are representative of the City's waste stream. The minimum number of Containers to be sampled shall be based on weekly route size, as follows:
 - a. For weekly routes with less than 1,500 Generators, the Contractor shall sample a minimum of twenty-five (25) Containers;
 - b. For weekly routes with 1,500-3,999 Generators, the Contractor shall sample a minimum of thirty (30) Containers;
 - c. For weekly routes with 4,000-6,999 Generators, the Contractor shall sample a minimum of thirty-five (35) Containers; and,
 - d. For weekly routes with more than 7,000 Generators, the study shall include a minimum of forty (40) Containers.

2. **Organic Material Testing.** The Contractor shall Transport all of the material Collected for sampling to a sorting area at an Approved Processing Facility where it shall do its own testing, which shall include, but is not limited to: determining the presence of Prohibited Container Contaminants for each Container type and measuring to determine the ratio of Prohibited Container Contaminants present in each material stream by weight. To determine the ratio of Prohibited Container Contaminants, the Contractor shall use the following protocol:
 - a. The Contractor shall take one sample of at least two hundred (200) pounds from the material Collected from each material stream for sampling. For example, Contractor shall take a two hundred (200) pound sample taken from the combined contents of the Organic Materials Container samples.
 - b. The two hundred (200) pound sample shall be randomly selected from different areas of the pile of Collected material for that material stream.
 - c. For each two hundred (200) pound sample, the Contractor shall remove any Prohibited Container Contaminants and determine the weight of Prohibited Container Contaminants.
 - d. The Contractor shall determine the ratio of Prohibited Container Contaminants in the sample by dividing the total weight of Prohibited Container Contaminants by the total weight of the sample.
 - e. All weights shall be recorded in pounds.

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

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

4.13 Edible Food Recovery Program

4.13.1 General.

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

4.13.2 Identification of Commercial Edible Food Generators.

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

ARTICLE 5. STANDARD OF PERFORMANCE

5.1 General

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

5.2 Operating Hours and Schedules

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

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

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

- B. **Changes in Collection Routes.** Prior to commencement of this Agreement, Contractor shall provide the City with route maps identifying at a minimum: the type of route (e.g., Single-Family, Multi-Family, Commercial) and the service day. City shall either approve or deny proposed standard Collection routes. If City denies any standard Collection routes, Contractor may request a meet and confer with the City Franchise Contract Administrator to discuss potential options. The City Franchise Contract Administrator's decision shall be final with respect to any routing changes that may impact the day of service of any Customer. Contractor may, at any time during the Term of this Agreement, propose changes or additional routes, subject to City approval. If a standard Collection route change is approved, Contractor must notify all affected Customers fourteen (14) days prior to Contractor implementing the new route. Failure to obtain City approval on route changes resulting in service day changes for Customers shall be subject to Liquidated Damages.
- C. **Holiday Collection.** Contractor, at its sole discretion, may choose not to provide Collection services on a Holiday. In such event, Contractor shall provide Single-Family Collection services on the day following the Holiday, thereby adjusting subsequent work that week with normally-scheduled Friday Collection services being performed on Saturday; however, Customer service days shall be returned to the normal schedule within one (1) week of the Holiday. Multi-Family, Commercial, and City Collection services shall be adjusted as agreed between the Contractor and the Customer, but must meet the minimum frequency requirement of one (1) time per week. The Contractor shall provide Customers printed and electronic City-approved notice of Holiday-related changes in Collection schedules at least two (2) weeks prior to the change.

5.3 Collection Standards

5.3.1 General

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

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

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

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

B. **Non-Collection, Courtesy Noticing.** Prior to the Commencement Date, Contractor shall develop, and submit to the City Franchise Contract Administrator for review and approval, and as per the requirements of Section 4.12.1.D the following:

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

Per the requirements identified in Section 4.12.1, in the event that Contractor encounters circumstances at a Customer Premises that prevents the Contractor from Collecting Discarded Materials that have been placed for Collection, Contractor shall leave a non-Collection notice at the Customer Premises clearly explaining Contractor's reason for refusal to Collect the Discarded Materials. Contractor shall not be required to Collect Discarded Materials that are reasonably believed to contain Excluded Waste, pursuant to the requirements of Section 5.8. If Contractor intentionally refuses to Collect Discarded Materials (including Cardboard overages), but does not leave a Non-Collection notice, it shall be considered a missed Collection per Section 4.9.3, and provisions of Section 5.13 shall apply. Contractor may propose an alternative to a paper non-Collection notice left at Customer Premises (e.g., Customer notification via a phone call or e-mail) subject to City approval. Such an alternative must involve pro-active communication with Customer, initiated by Contractor.

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

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

Contractor may refuse to Collect Recyclable Materials or Organic Materials Containers that are contaminated in accordance with Exhibit B and Section 4.12, and shall leave an approved Non-Collection notice informing Customer how to properly separate materials.

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

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

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

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

1. Closing Container lids and right sizing service: Contractor shall promptly provide Customer a courtesy notice, by a tag placed on the Container, mail, and email. In addition, Contractor may also provide information by phone, text or other electronic means, which will serve as outreach and education to the Customer. Photos of the Container will be taken by drivers, attached to the Customer's account, and will be available to outreach and Customer service staff in order to demonstrate to the Customer where a problem exists. In addition, where there are two (2) or more documented instances of overfull Containers within a ninety (90) day period, Contractor may make a request to the City to modify service requirements through additional Containers, increased frequency of Collection, use of locking Containers, or other appropriate means.
2. Outreach to Customer on the importance of bagging lightweight materials such as plastic bags, film plastics, foam peanuts, and other materials that can easily become litter due to their lightweight nature.
3. Driver training on litter reduction techniques and litter removal best management practices. Affixing signage to the back of Contractor trucks that provides a phone number for residents to report material spills.

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

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

5.3.2 Scout Service

Contractor shall provide scout service at no additional charge, whereby Contractor will access Containers using a small vehicle either to move Containers to street or other public right-of-way for Collection, or Collecting directly from Container storage location, or retrieve a Container when operationally required in order to safely position the Container for Collection.

If Contractor must place a Container in the public right-of-way to facilitate Collection, Contractor shall not permit the Container to remain in the public right-of-way over one (1) hour. If the Container is stored under a chute for Collection, the Container must be serviced and returned immediately.

Any changes to the Customer scout service list shall be approved by the City Franchise Contract Administrator prior to Contractor adding or removing this service for any Customer.

5.3.3 Bin Roll-Out Service

Contractor shall provide Bin Roll-Out Service, whereby Contractor will move Bins manually to facilitate Collection. Push-out service up to twenty-five (25) feet from the enclosure/Container location to the Collection vehicle will be provided at no additional charge (push up to 25 feet then return.) Contractor may charge the Customer the Bin Roll-Out Service fee included in the approved Rate schedule.

5.3.4 Locking Bins

Contractor shall provide locking Bin service (providing the hasp and lock and servicing the lock) to Customers that request such service at no additional charge. Contractor shall also provide, upon request of Customer, "gravity" locking mechanisms for Bins at no additional charge.

5.4 Transfer and Processing Standards

5.4.1 Equipment and Supplies

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

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

5.4.2 Scales and Weighing

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

- A. **Facility Scales.** Contractor shall maintain State-certified motor vehicle scales in accordance with Applicable Law. All scales shall be linked to a centralized computer recording system at the Approved Processing Facilities to record weights for all incoming and outgoing materials. Contractor shall provide back-up generator(s) capable of supplying power to the scales in the event of a power outage. Contractor shall promptly arrange for use of substitute portable scales should its usual scales not be available for whatever reason. Pending substitution of portable scales, Contractor shall as necessary, estimate the Tonnages of materials delivered to and Transported from the Approved Processing Facilities, on the basis of delivery vehicle and Transfer trailer volumes, tare weights, and/or other available facility weight records. These estimates shall take the place of actual weights while scales are inoperable and shall be identified as estimates in electronic records and reporting.
- B. **Tare Weights.** No less than thirty (30) calendar days prior to the Commencement Date, Contractor shall ensure that all vehicles used by Contractor to deliver Recyclable Materials, Organic Materials, and Solid Waste to the Approved Processing Facilities are weighed to determine unloaded (“tare”) weights. Contractor shall electronically record the tare weight, identify vehicle as Contractor owned, and provide a distinct vehicle identification number for each vehicle. Contractor shall provide City with a report listing the vehicle tare weight information upon request. Contractor shall promptly weigh additional or replacement vehicles prior to placing them into service. Contractor shall check tare weights at least annually, or within fourteen (14) calendar days of a City request, and shall re-tare vehicles immediately after any major maintenance or service event.
- C. **Testing.** Contractor shall test and calibrate all scales in accordance with Applicable Law, but at least every twelve (12) months or upon City request.
- D. **Records & Inspection.** Contractor shall maintain computerized scale records and reports that provide information including date of receipt, inbound time, inbound and outbound weights of vehicles, and vehicle identification number. Contractor shall also maintain computerized scale records and reports providing historical vehicle tare weights for each vehicle and the date and location for each tare weight recorded. City reserves the right to inspect such records upon three (3) days’ notice. This right to inspection also includes the right to inspect facility operations.
- E. **Upon-Request Reporting.** If vehicle receiving and unloading operations are recorded on video cameras at the Approved Processing Facilities, Contractor shall make those videos available for City review during the Approved Processing Facility’s operating hours, upon request of the City, and shall provide the name of the driver of any particular load if available.

5.5 Collection Vehicle Requirements

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

1. All such vehicles shall have watertight bodies designed to prevent leakage, spillage, or overflow. All such vehicles shall meet the Best Available Control Technology (BACT) for the year in which such vehicle is purchased (e.g., vehicles purchased in 2024 must meet BACT for year 2024) and generally comply with all Federal, State, and local laws and regulations. Contractor's vehicles shall utilize Recycled motor oil to the extent practicable.
 2. To the extent Renewable Natural Gas (RNG) is commercially available in the jurisdiction, Contractor shall use best efforts to fuel Collection vehicles used by Contractor under this Agreement (excluding spares and scout vehicles) with RNG to assist City in complying with its annual recovered Organic Waste product procurement target under 14 CCR 18993.1. Contractor vehicles may additionally be powered by RNG that is purchased through a wheeling agreement with a party(ies), provided that the wheeling agreement is for purchase of gas derived from Organic Waste that has been Diverted from a landfill and Processed at an in-vessel digestion facility that is permitted or otherwise authorized by 14 CCR to Recycle Organic Waste and meets SB 1383 requirements. Contractor shall comply with this requirement, to the extent RNG is Commercially available in the jurisdiction, as of January 1, 2024. Upon City's request, Contractor shall obtain and provide the City with a written certification by an authorized representative of the wheeling agreement service provider certifying that the in-vessel digestion facility produces the RNG consistent with the requirements of 14 CCR Section 18993.1(h). Contractor shall maintain records of the amount of RNG purchased and shall report this information in accordance with Exhibit D. Contractor shall agree to the City the right to report this RNG usage toward the City's fulfillment of its annual recovered Organic Waste product procurement target in accordance with 14 CCR Section 18993.1.
 3. Collection vehicles shall have the capability of carrying and safely Transporting empty and full used oil recovery kits, as well as the capacity to Collect and Transport loose Cardboard overages, to ensure that Contractor is capable of complying with Exhibit B.
 4. Collection vehicles shall present a clean appearance while providing service under this Agreement.
- B. **Vehicle Display.** Contractor's name and local telephone number shall be displayed on all vehicles in at least four (4) inch characters. Vehicles shall be equipped with sign board holders or other hardware to allow public education signage, approved or provided by the City, of no less than thirty-six (36) by forty-eight (48) inches to be displayed on both sides of the vehicle.
- C. **Vehicle Maintenance.**
- D. **Inspection.** Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly shall be taken out of service until they are repaired and operate properly. Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. If any vehicle fails to meet CHP BIT standards, Contractor shall report the findings of inspection to City within forty-eight (48) hours of failed inspection. City Franchise Contract Administrator may inspect vehicles at any reasonable time, and within three (3) calendar days of such a request, to determine compliance with sanitation requirements.

- E. **Vehicle Operations.** All Collection operations shall be conducted as quietly as possible and shall conform to applicable Federal, State, County, and City noise level regulations, including the requirement that the noise level during the stationary compaction process not exceed fifty (50) decibels in Residential areas and sixty-five (65) decibels in Commercial areas. All decibel readings shall be based on a distance of ten (10) feet from any part of the vehicle. The City may request Contractor to check any piece of equipment for conformance with the noise limits in response to Complaints and/or when the City Franchise Contract Administrator believes it is reasonable.

5.6 Container Requirements

- A. **Containers Provided to Customers.** On or before the Commencement Date, Contractor shall provide Customers (including Single-Family, Multi-Family, Commercial, and City facility Customers) with Collection Containers as requested by the Customer to meet its desired Service Level. Contractor shall provide Containers to new Customers requesting service initiation, within three (3) Working Days of Contractor's first receipt of the Customer request. Contractor-provided Containers shall be new and shall comply with the Container standards set forth in this Section including, but not limited to, Bin locks. Any Commercial Customer Containers that do not have a locking mechanism shall not be responsible for any contamination or overages.

B. **Container Standards**

1. All Carts shall be manufactured by injection or rotational molding methods. The Cart handles and handle mounts may be an integrally molded part of the Cart body or molded as part of the lid. The Cart handles shall provide comfortable gripping area for pulling or pushing the Cart or lifting the lid. Pinch points are unacceptable. Carts provided to Customer shall have a useful life of ten (10) or more years, or more as evidenced by a manufacturer's warranty or other documentation acceptable to the City.
2. Carts shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the Term of this Agreement: maintain its original shape and appearance; be resistant to kicks and blows; require no routine maintenance and essentially be maintenance free; not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that shall interfere with its intended use; resist degradation from ultraviolet radiation; be incapable of penetration by biting or clawing of household pets (e.g., dogs and cats) or other wild and non-domesticated pests (e.g., raccoons and rats); the bottoms of Cart bodies must remain impervious to any damage that would interfere with the Cart's intended use after repeated contact with gravel, concrete, asphalt, or any other rough and abrasive surface; and, all wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended.
3. Carts shall be resistant to common household or Residential products and chemicals; human and animal urine and feces; and, airborne gases or particulate matter currently present in the ambient air of the service area.
4. All Containers with a capacity of one (1) cubic yard or more shall meet applicable Federal regulations for Bin safety and be covered with attached lids.

5. Contractor shall obtain the City's written approval of Container material, design, colors, labeling, and other specifications before acquisition, painting, labeling, or distribution occurs.
6. When purchasing plastic Collection Containers, Contractor shall purchase Containers that contain a minimum of thirty percent (30%) post-consumer Recycled plastic content, unless such requirement is waived by the City Franchise Contract Administrator.
7. Container lids shall be designed such that the follow requirements are met:
 - a. Prevents the intrusion of rainwater and vectors;
 - b. Prevents the emissions on odors;
 - c. Enables the free and complete flow of material from the Container during the dump cycle without interference with the material already deposited in the truck body or the truck body itself and its lifting mechanism;
 - d. Permits users of the Cart to conveniently and easily open and shut the lid throughout the serviceable life of the Cart;
 - e. Hinged to the Cart body in such a manner so as to enable the lid to be fully opened, free of tension, to a position whereby it may rest against the backside of the Cart body;
 - f. Prevents damage to the Container body, the lid itself, or any component parts through repeated opening and closing of the lid by Generators or in the dumping process as intended;
 - g. Remains closed in winds up to twenty-five (25) miles per hour from any direction. All lid hinges must remain fully functional and continually hold the lid in the original designed and intended positions when either opened or closed or any position between the two extremes; and,
 - h. Designed and constructed such that it prevents physical injury to the user while opening and closing the Cart.
8. Containers shall be stable and self-balancing in the upright position, when either empty or loaded to its maximum design capacity with an evenly distributed load, and with the lid in either a closed or an open position. Containers shall be capable of maintaining upright position in sustained or gusting winds of up to twenty-five (25) miles per hour as applied from any direction.
9. Containers shall be capable of being easily moved and maneuvered, if applicable, with an evenly distributed load equal in weight to its maximum design capacity on a level, sloped or stepped surface.
10. All such Containers shall be one hundred percent (100%) Recyclable at the end of their useful life.

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

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

1. For a three-Container system:

- a. Recyclable Materials Container bodies and lids shall be blue;
- b. Organic Materials Container bodies and lids shall be green; and
- c. Solid Waste Container bodies and lids shall be grey or black.

2. For a four-Container system:

- a. Recyclable Materials Container bodies and lids shall be blue;
- b. Organic Materials Container bodies and lids shall be green;
- c. Food Waste Container bodies and lids shall be brown; and,
- d. Solid Waste Container bodies and lids shall be grey or black.

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

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

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

All Carts shall include a high-quality educational information label using in-mold technology, such that all labeling shall be integral to the lid, through the use of injection molding, and shall not be

affixed to any part of the Cart or lid through the use of adhesives. Notwithstanding the provisions of this Section, or the requirements of SB 1383, the in-mold lid label shall, at a minimum, include for each Container: primary materials accepted; primary Prohibited Container Contaminants; a clear indication of Prohibited Container Contaminants for that Container type; acceptable materials; Prohibited Container Contaminants; notification forbidding Hazardous Waste and describing proper Disposal thereof; notification forbidding scavenging (through words and international symbols) and describing the penalties therefore under California law or City Resolution; information about the Collection program; and, the City's name and logo. Subject to City approval, Contractor shall display City's name, website, and Contractor's designated telephone number using labels, decals, or other approved method. Upon expiration or early termination of this Agreement, Contractor shall transfer access and rights of such phone number and website created specifically and solely for this Agreement to the City. Contractor shall be prohibited from including Contractor's name and/or logo on any Containers utilized in the City.

E. **Repair and Replacement of Containers.** Contractor shall be responsible for acquiring and providing the replacement Containers. Contractor shall repair or replace all damaged or broken Containers within three (3) Working Days of Customer or City request, or when Contractor determines the Container is no longer suitable for service. Minor cracks, holes, and other damages to hinges, wheels, axle, hardware, and other component parts shall be readily repairable by the Contractor personnel. All repairs must restore the Cart to its full functionality to meet the design and performance requirements as set for herein. Additionally, Contractor shall repair or replace all Containers damaged by Collection operations in accordance with standards specified in this Section 5.6.E. All Containers shall be maintained in a functional condition.

F. **Inventory.** Contractor shall maintain a sufficient inventory of Containers to accommodate new Customer requests for service, requests for change in Service Levels (size, type, or number of Containers) from current Subscribers, and requests for replacement due to damage. Contractor shall ensure such inventory is sufficient for each type of service provided under this Agreement.

Contractor shall provide to Single-Family Customers one (1) free Cart replacement per any twelve (12) month period for any reason, upon Customer request. If Customer requests more than one (1) Cart replacement per any twelve (12) month period, Contractor shall make Carts available at the City-approved Rate for such services. In addition, Single-Family Customers may also request one Cart size exchange per Rate Period at no charge. All such Containers shall be provided within three (3) Working Days of request. Contractor shall proactively monitor Contractor's failure to comply with the Container requirements. If Contractor fails to comply with Container requirements, the City may assess Liquidated Damages. Contractor shall, at least one (1) time per year, direct mail all Customers for the purposes of notifying them of the annual Container replacement or Container swap at no additional charge.

G. **Maintenance, Cleaning, Painting.** All Containers shall be maintained in a safe, serviceable, and functional condition and present a clean appearance. Contractor shall steam clean and repaint all Containers as needed (other than Carts) so as to present a clean appearance. Contractor shall offer steam cleaning service (or clean Container exchange) to Customers requesting such service (or Container exchange) at no cost one (1) time per Rate Period, with additional Container cleaning or exchanges provided to Customer at a cost approved by City Franchise Contract Administrator.

Contractor shall proactively monitor Customer Containers and shall remove graffiti from Containers within forty-eight (48) hours of identification by Contractor or notice by City or Customer if such graffiti includes any written or pictorial obscenities and otherwise on Customer's next Service Opportunity, but not to exceed one (1) week. This service shall not account for any Customer's swap-service that is allowed at no cost one (1) time per year.

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

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

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

5.7 Personnel

- A. **General.** Contractor shall furnish such qualified personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner. Contractor shall designate at least one (1) qualified employee as City's primary point of contact with Contractor who is principally responsible for Collection operations and resolution of service requests and Complaints. Such individual shall be empowered to negotiate on behalf of and bind Contractor with respect to any changes in scope, dispute resolution, compensation adjustments, and service-related matters that may arise during the Term of this Agreement.

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

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

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

Upon hiring of displaced employees, Contractor shall prioritize the hiring of City residents to staff remaining positions, including but not limited to, Customer service positions at the local office.

- C. **Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. Contractor shall use the Class II California Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.
- D. **Safety Training.** Contractor shall provide suitable operational and safety training for all of its employees who operate Collection vehicles or equipment. Contractor shall train its employees involved in Collection to identify, and not to Collect, Excluded Waste. Upon the City Franchise Contract Administrator's request, Contractor shall provide a copy of its safety policy and safety training program, the name of its safety officer, and the frequency of its trainings.
- E. **Designated Staff.**
 - 1. **Contract Liaison.** Contractor shall designate in writing a "Contract Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Contract-related issues. The Contractor must respond to all inquiries from the City within one (1) Working Day from the time of the inquiry. City shall be notified in advance of any change in Contract Liaison.
 - 2. **Field Supervisor.** Contractor shall designate one (1) qualified full-time employee as supervisor of field operations. The designated field supervisor will devote at least fifty percent (50%) of his/her time in the City in the field checking on Collection operations, including responding to Customer requests, inquiries, and Complaints.
 - 3. **Diversion Coordinators.** Contractor shall provide three (3) full-time Diversion Coordinators who are solely dedicated to the City and shall not perform any work related to other jurisdictions, proposals, or business functions of Contractor. Contractor shall hire the Diversion Coordinators in advance of the Commencement Date and the Diversion Coordinators shall assist in contacting all Multi-Family and Commercial Customers prior to the Commencement Date to determine Service Levels. The duties of the Diversion Coordinator will be focused on public education, community outreach, Commercial and Multi-Family site visits, and technical assistance, and will be substantially as set forth in Exhibit G and in Exhibit C Public Education and Outreach Requirements. Diversion Coordinator(s) shall be full-time, regular, professional positions, compensated in accordance with the wages shown in Contractor's Proposal for such positions. Contractor acknowledges that the Diversion Coordinator role is not intended to be an internship, or entry-level role. City shall have the option to participate in the hiring and training process of Contractor's Diversion Coordinators. City may also employ corresponding staff member who will work in partnership with Contractor's Diversion Coordinator and Contractor's Diversion Coordinator shall cooperate and share information openly with such City employee.

In the event that Contractor fails to provide the required number of full-time equivalent Diversion Coordinators for more than two (2) months, Contractor shall remit to the City eight thousand three hundred and thirty-three dollars (\$8,333) per un-provided employee for every month (in excess of two (2) months) such employee is not provided. Such amount shall be adjusted annually by the same percentage used to adjust Rates in accordance with Exhibit E. For example, if for six (6) months Contractor provides only two (2) public education staff,

rather than the required three (3), Contractor would remit to the City a minimum of thirty three thousand three hundred and thirty-two dollars (\$33,332), assuming no annual adjustment of the amount has occurred. Contractor shall remit such payment within fifteen (15) Business Days of a written request by the City. The intent of this payment is for the City to utilize the funds to separately procure equivalent public education services and ensure the contractually agreed upon levels of technical assistance and outreach to Customers.

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

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

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

5.8 Hazardous and Excluded Waste Inspection and Handling

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

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

- B. **Response to Excluded Waste Identified During Collection.** If Contractor determines that material placed in any Container for Collection is Excluded Waste or presents a hazard to Contractor's employees, the Contractor shall have the right to refuse to accept such material. The Generator shall be contacted by the Contractor and requested to arrange proper Disposal. If the Generator cannot be reached immediately, the Contractor shall, before leaving the Premises, leave a non-Collection notice, which indicates the reason for refusing to Collect the material and lists the phone number of a facility that accepts the Excluded Waste or a phone number of an entity that can

provide information on proper Disposal of the Excluded Waste. Under no circumstances shall Contractor's employees knowingly Collect Excluded Waste or remove unsafe or poorly containerized Excluded Waste from a Collection Container.

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

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

5.9 Contract Management

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

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

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

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

In the event of dispute between the City Franchise Contract Administrator and the Contractor regarding the interpretation of or the performance of services under this Agreement, the City Franchise Contract

Administrator's determination shall be conclusive except where such determination results in a material impact to the Contractor's revenue and/or cost of operations. In the event a dispute between the City Franchise Contract Administrator and the Contractor results in such material impact to the Contractor, the provisions of Section 10.9 shall apply. For the purposes of this Section, "material impact" may be an amount equal to or greater than two-hundred thousand dollars (\$200,000).

City Franchise Contract Administrator or their designate shall have the right to observe and review Contractor operations and Processing Facilities and enter Premises for the purposes of such observation and review, including review of Contractor's records, during reasonable hours with reasonable notice. In no event shall Contractor prevent access to such Premises for a period of more than three (3) calendar days after receiving such a request. City Franchise Contract Administrator shall be granted access to Contractor's information systems and Customer service database in accordance with Section 4.8.B.

5.10 Environmentally-Preferable Purchasing

Contractor shall, prior to the Commencement Date, develop and implement an "Environmentally Preferable Purchasing Policy." The policy shall be subject to review, request for modification, and approval by the City Franchise Contract Administrator. The policy shall, at a minimum, include provisions for: (1) purchasing materials with the highest available Recycled content without materially degrading the performance of the product; (2) purchasing materials that utilize non-toxic, non-polluting alternative chemistry; (3) a twenty percent (20%) price preference, relative to virgin or toxic content products, for purchasing environmentally preferable materials and supplies; and, (4) source reduction and pollution prevention strategies for Contractor's operations. Contractor shall include a summary of their environmentally-preferable purchasing activities in their annual report to City (e.g., volume of Recycled content paper purchased, source reduction strategies implemented during the year and the quantified results of that strategy).

5.11 Local Purchasing Preference

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

5.12 Diversion Requirements

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

City and Contractor agree that in the course of providing the services described in the Agreement, Contractor shall make continuous annual improvement over the Term by:

1. Increasing Participation. Increasing the percentage Customers receiving Recyclable Materials and Organic Materials Collection service, to a target of one hundred percent (100%) or more each for Single-Family, Multi-Family, and Commercial Customers;
2. Increasing Capture Rate. Increasing the average pounds Collected per cubic yard of subscribed Organic Materials capacity by Multi-Family Customers and Commercial Customers; and,
3. Achieving Service Level Ratio. Contractor shall provide Multi-Family and Commercial Customers with Recyclable Materials and Organic Materials Service such that the Service Level Ratio shall be forty percent (40%) on a City-wide basis for Commercial and Multi-Family Customers. "Service Level Ratio" means the proportion of weekly Container capacity Collected for Recyclable Materials and Organic Materials compared to the total weekly Container capacity for Recyclable Materials, Organic Materials, and Solid Waste. The Service Level Ratio, which shall be reported as a percentage, shall be calculated as the sum of the weekly cubic yards of Recyclable Materials and Organic Materials Collection service capacity provided to all Multi-Family and Commercial Customers divided by the sum of the total weekly cubic yards of Recyclable Materials, Organic Materials, and Solid Waste Collection service capacity provided to all Multi-Family and Commercial Customers.

Assessing progress for items 1 through 3 above shall be based on comparing the annual calendar year data for each metric as reported in the annual report as provided in Exhibit D (Reporting Requirements) with the comparable data for the previous calendar year.

- B. Program Effectiveness.** Additionally, if City Franchise Contract Administrator or Contractor notice a measurable decline in participation or the effectiveness of the program(s), City Franchise Contract Administrator and Contractor's Franchise Contract Manager must meet and confer to determine how to improve messaging and/or service(s). City acknowledges that Contractor may not achieve progress for items 1 through 3 in Section 5.12.A over a given period of time. Should Contractor fail to make progress for at least two (2) of the three (3) items in Section 5.12.A above, Contractor shall have the opportunity to meet and confer with the City Franchise Contract Administrator to present Contractor's efforts in striving to achieve such targets, prior to the City assessing any Liquidated Damages. City may in its reasonable discretion waive such penalties, or portions of penalties, based on a determination that Contractor has made a good faith effort towards improved progress over time in each of the items 1 through 3 in Section 5.12.A. In the event that Contractor and City agree to implement a new program or changes to any such program(s) result in increased costs of providing services, Contractor shall be entitled to a Rate adjustment in accordance with Section 8.3.

All programs with City oversight shall have their costs itemized and City reserves the right to eliminate any program that is ineffective in meeting the intended goals of the programs. Those funds may then be directed to new or other programs at the discretion of City Franchise Contract Administrator. On an annual basis, Contractor shall provide a narrative for improving any and all programs that are either underperforming or where program results have become stagnant.

Failure to meet the requirement of this Section may result in Liquidated Damages in accordance with Section 10.6.

5.13 Customer Rebates for Failure to Provide Service

- A. **General.** Contractor and City agree that Contractor's failure to provide service in accordance with Articles 4 and 5 of this Agreement will result in the impacted Customer receiving a lower Service Level than is anticipated by the Customer's subscribed Rate, and creates additional burdens on the impacted Customer. To account for this, Contractor shall issue rebates to Customers for specific events of non-performance, in accordance with this Section 5.13. Such rebates shall be assessed for each calendar day the issue remains unresolved. Contractor shall issue such rebates automatically, regardless of whether or not the impacted Customer requests a rebate. Rebates as described in this Section 5.13 shall be in addition to any Liquidated Damages or other remedies associated with Contractor's failure to perform.
- B. **Missed Collection Rebate.** For each failure to resolve a missed or incomplete Collection by 12:00 p.m. on the next Collection day or on the date agreed upon with the Customer, Contractor shall remit to the Customer a Missed Collection Rebate. The Missed Collection Rebate amount shall be five dollars (\$5.00) per calendar day in Rate Period One, and shall be adjusted annually thereafter by the same percentage used to adjust Rates in accordance with Exhibit E. Contractor shall continue to remit the Missed Collection Rebate each calendar day until the Container(s) in question have been Collected. As an example, for a Collection scheduled for Friday that Contractor misses and subsequently Collects on the following Monday, Contractor shall rebate the Customer the current Missed Collection Rebate Rate multiplied by three calendar days. The Missed Collection Rebate applies to missed Collections of all material types, including but not limited to Large Landfill Items and Reusable Materials.
- C. **Late Container Delivery Rebate.** For each failure to deliver a Container to a new or existing Customer in accordance with the schedule provided in Section 5.6, or as agreed upon with the Customer, Contractor shall remit to the Customer a Late Container Delivery Rebate. The Late Container Delivery Rebate amount shall be five dollars (\$5.00) per calendar day per Container in Rate Period One, and shall be adjusted annually thereafter by the same percentage used to adjust Rates in accordance with Exhibit E. Contractor shall continue to remit the Late Container Delivery Rebate each calendar day until the Container(s) in question have been delivered.
- D. **Reporting Requirements:**
1. **Missed Collection Rebate Report:** Additionally, on no less than a weekly basis, Contractor's Franchise Contract Manager shall update the Customer's account records to note the Missed Collection Rebate event(s). Contractor shall maintain records and report to the City monthly on Missed Collection Rebate monitoring activities and actions taken, consistent with the submittal timing and content requirements of Exhibit D. The monthly report shall include, but is not limited to: list of Customers that were provided rebates, date of rebate, amount of rebate, list of Customer Complaints relating to missed Collection, and Contractor's response and actions taken in response to Customer Complaints.
 2. **Late Container Delivery Rebate Report:** Additionally, on no less than a weekly basis, Contractor's Franchise Contract Manager shall update the Customer's account records to note the late Container delivery event(s). Contractor shall maintain records and report to the City monthly on late Container delivery monitoring activities and actions taken, consistent with the submittal timing and content requirements of Exhibit D. The monthly report shall

include, but is not limited to: list of Customers that were provided rebates, date of rebate, amount of rebate, list of Customer Complaints relating to late Container delivery, and Contractor's response and actions taken in response to Customer Complaints.

ARTICLE 6. RECORD KEEPING AND REPORTING

6.1 Record Keeping

Contractor shall maintain Customer contact data, Customer service, accounting, statistical, operational, programmatic, and other records, and associated documentation, related to its performance as shall be necessary to provide detailed and accurate reports under this Agreement, and to demonstrate compliance with this Agreement and Applicable Law. Unless otherwise required in this Article, Contractor shall retain all records and data required to be maintained by this Agreement for the Term of this Agreement plus five (5) years after its expiration or earlier termination. Records and data shall be in chronological and organized form that is readily and easily interpreted to facilitate the flexible use of data to structure reports. Contractor's records shall be stored in one central location, physical or electronic, that can be readily accessed by Contractor.

Upon request, any such records shall be retrieved in a timely manner, not to exceed five (5) Working Days of a request by the City Franchise Contract Administrator, and made available to the City Franchise Contract Administrator; including any record or documentation that City, in their sole discretion, may deem necessary, for the City to fulfill obligations under Applicable Law including, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, SB 1383, and other current or future Federal, State, or local regulations, as amended.

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

At a mutually agreed upon time during normal business hours, but within five (5) work days of a written request, Contractor shall provide to the City the Contractor's data and records with respect to the matters covered by this Agreement and Applicable Law. Contractor shall permit the City, or its designee, to audit, examine, and make excerpts or transcripts from such data and records, and make copies of all data relating to all matters covered by this Agreement and Applicable Law. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five (5) years following the City's receipt of final payment under this Agreement unless the City agrees in writing to an earlier disposition. Contractor agrees that all data regarding business operations, Customer lists, routing, Tonnage, Service Levels, work orders issued from dispatch, Customer service logs and account notes, and work force and bargaining agreements, do not constitute Proprietary Information or Trade Secrets and shall be made available to the City Franchise Contract Administrator or their designee upon request and within the timelines required by this Article 6.

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

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

6.2 Report Submittal Requirements

Contractor shall submit monthly reports within seventeen (17) calendar days after the end of the calendar month and annual reports no later than forty-five (45) calendar days after the end of each calendar year. Monthly and annual reports shall include at a minimum, all data and information described in Exhibit D, unless otherwise specified under this Agreement.

Contractor may propose report formats that are responsive to the objectives and audiences for each report. The format of each report shall be approved by the City Franchise Contract Administrator, in their sole discretion. City Franchise Contract Administrator may, from time to time during the Term, review and request changes to Contractor’s report formats and content, which includes but is not limited to, any information that the City must report to a local or State agency, and Contractor shall not unreasonably deny such requests.

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

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

6.3 Performance Review and Audit

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

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

ARTICLE 7. CITY REIMBURSEMENT

7.1 Franchise Reimbursement

The Contractor shall pay a Franchise Reimbursement to City each month in exchange for the exclusive rights granted under this Agreement. The amount of the Franchise Reimbursement shall be equal to six and nine hundredths percent (6.09%) of Gross Receipts, for all services performed under this Agreement and shall be paid in monthly installments.

7.2 AB 939/SB 1383 Reimbursement

The Contractor shall pay an AB 939/SB 1383 Reimbursement to City each month. The amount of the AB 939/SB 1383 Reimbursement shall be eight hundred fifteen thousand dollars (\$815,000) per year in Rate Period One and shall be paid in equal monthly installments. City shall use the AB 939/SB 1383 Reimbursement to refund expenses including but not limited to, staffing costs related to City programs, pilot studies, education and outreach campaigns, technical assistance to Customers, reporting, compliance, capacity planning, provision of special containers, or other activities involved in compliance with AB 939 and/or SB 1383. The City shall retain the sole right to set priorities for the use of its AB 939/SB 1383 Reimbursement. This fee shall be a pass-through cost.

7.3 Solid Waste Programming Fee

The Contractor shall pay a Solid Waste Programming Fee to the City each month. The amount of the Solid Waste Programming Fee shall equal one hundred nineteen thousand, one hundred sixty-six dollars and sixty-seven cents (\$119,166.67) per month in Rate Period One. This fee is to reimburse the City for the cost of providing certain services and programs that are related to the provision of Solid Waste services.

7.4 Curbside Program Rebate Sharing Reimbursement

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

With respect to each Rate Period commencing on January 1, Contractor shall pay the Curbside Program Rebate Sharing Reimbursement, which is the amount by which the annual Curbside program revenue sharing payment received from CalRecycle pursuant to the California Beverage Container Recycling & Litter Reduction Act for each Rate Period exceeds eighty thousand dollars (\$80,000.00) for CRV Materials Collected by Contractor in the City. Payment to the City is due forty-five (45) days following Contractor's receipt of the rebate payment from CalRecycle. The amount of the payment will be prorated for any Rate Period during the Term that is less than twelve (12) months.

7.5 Adjustment To Reimbursement

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

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

7.6 Payment Schedule and Late Fees

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

Each monthly remittance to City shall be accompanied by a statement listing the amount of each fee paid; calculation of each fee; and, statement of Gross Receipts by Customer Type for the period collected from all operations conducted or permitted by this Agreement. City Franchise Contract Administrator may, at any time during the Term, request a detailed calculation of Gross Receipts that may include, but is not necessarily limited to, the number of Customers charged at each Service Level and Rate for each billing

period. Contractor shall maintain all supporting documents and calculations for each payment made to City as required by Section 6.1.

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

7.7 Procurement Reimbursement

Within five (5) Business Days of the Effective Date of this Agreement, Contractor shall pay the City a one-(1) time reimbursement of three-hundred thousand dollars (\$300,000.00) to compensate City for its costs associated with performing due diligence related to the selection of Contractor for this Agreement.

7.8 San Luis Rey Water Reclamation Facility Infrastructure Reimbursement

Within five (5) Business Days of the Effective Date of this Agreement, Contractor shall pay the City a one-(1) time reimbursement of five million dollars (\$5,000,000.00) to compensate City for its costs associated with infrastructure development at the San Luis Rey Water Reclamation Facility.

ARTICLE 8. CONTRACTOR'S COMPENSATION AND RATE SETTING

8.1 General

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

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

Under this Agreement, Contractor shall have the right and obligation to charge and collect from Customers, Rates in Exhibit G3 that are approved by the City for provision of services to Customers. The Rates for Rate Period One are based on the Contractor's Proposal. Contractor's proposed costs and operating assumptions for Rate Period One are presented in Exhibit G2.

8.2 Rates and Annual Adjustments

- A. **General.** The City Franchise Contract Administrator shall be responsible for approving Rates as described in this Article. If at any time during the Term of the Agreement, the Contractor determines the need for a Rate that does not appear on the City-approved Rate schedule in Exhibit G3, Contractor shall immediately notify the City and request establishment of such Rate. For example, if a Customer requires Collection of Organic Materials in a fifteen (15) cubic yard Compactor five (5) times per week and the City-approved Rate schedule does not include this Service Level, the Contractor must request that the City approve a Rate for this Service Level.
- B. **Rates for Rate Period One.** Rates for Rate Period One, which are presented in Exhibit G3, were determined by Contractor and City and were approved along with the Agreement. The Rates for Rate Period One shall be effective from January 1, 2024 through December 31, 2024.
- C. **Rates for Subsequent Rate Periods.** Rates for subsequent Rate Periods shall be adjusted annually in accordance with this Section 8.2 and Exhibit E.

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

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

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

8.3 Extraordinary Rate Adjustments

It is understood that the Contractor accepts the risk for changes in cost of providing services and the Service Levels requested by Customers and therefore the extraordinary adjustments to Rates shall be limited as set forth in this Section. If a Change in Law or City-directed change in scope (pursuant to Section 3.6), Force Majeure Event, or City's exercise of Flow Control (pursuant to Section 3.3) occurs, the Contractor may petition City for an adjustment to the Rates in excess of the annual adjustment described in Section 8.2 to compensate Contractor for materially increased costs of providing services arising out of a Change in Law, a City-directed change in scope, City's exercise of Flow Control (including, but not limited

to, transportation costs and payments for unamortized capital investments incurred under the Contractors subcontract with Agri Service Recycling, Inc.), or a Force Majeure Event.

Contractor shall prepare an application for the extraordinary Rate increase. Such submittal shall provide all information reasonably requested by City Franchise Contract Administrator specific to the nature of the request being made. The Contractor shall also submit a schedule showing how its total costs and total revenues have changed over the past two (2) years for the services provided under this Agreement. Contractor shall pay all reasonable costs incurred by City, including the costs of outside accountants and/or consultants, in order to make a determination of the reasonableness of the requested Rate adjustment. The application shall clearly document the reason for the proposed adjustment, include calculation of the proposed Rate adjustments, and provide supporting documentation.

In the event of such an application for extraordinary Rate increase, it is understood that the Contractor shall have the burden of demonstrating to the reasonable satisfaction of the City Franchise Contract Administrator that the failure of City to adjust the Rates will result in the Contractor's financial loss or failure to achieve reasonable profitability due to the Change in Law, City-directed change in scope, or Force Majeure Event.

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

ARTICLE 9. INDEMNITY, INSURANCE, AND PERFORMANCE BOND

9.1 Indemnification

- A. **General.** Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless (to the full extent permitted by law) City and its officers, officials, employees, volunteers, and agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs (including without limitation costs and fees of litigation, including attorneys' and expert witness fees) (collectively, "Damages") of every nature arising out of or in connection with Contractor's performance under this Agreement, or its failure to comply with any of its obligations contained in the Agreement, except to the extent such loss or damage was caused by the negligence or willful misconduct of City.
- B. **Excluded Waste.** Contractor acknowledges that it is responsible for compliance during the entire Term of this Agreement with all Applicable Laws. Contractor shall not store, Transport, use, or Dispose of any Excluded Waste except in strict compliance with all Applicable Laws.

In the event that Contractor negligently or willfully mishandles Excluded Waste in the course of carrying out its activities under this Agreement, Contractor shall at its sole expense promptly take all investigatory and/or remedial action reasonably required for the remediation of such environmental contamination. Prior to undertaking any investigatory or remedial action, Contractor

shall first obtain City's approval of any proposed investigatory or remedial action. Should Contractor fail at any time to promptly take such action, City may undertake such action at Contractor's sole cost and expense, and Contractor shall reimburse City for all such expenses within thirty (30) calendar days of being billed for those expenses, and any amount not paid within that thirty (30) calendar day period shall thereafter be deemed delinquent and subject to the delinquent fee payment provision of Section 7.6. These obligations are in addition to any defense and indemnity obligations that Contractor may have under this Agreement. The provisions of this Section shall survive the termination or expiration of this Agreement.

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

- C. **Environmental Indemnity.** Contractor shall defend, indemnify, and hold City harmless against and from any and all claims, suits, losses, penalties, damages, and liability for damages of every name, kind, and description, including attorneys' fees and costs incurred, attributable to the negligence or willful misconduct of Contractor in handling Excluded Waste.
- D. **Electronic and Web based Information Indemnity.** Contractor shall defend, indemnify, and hold City harmless against and from any and all claims, suits, losses, penalties, damages, and liability for damages of every name, kind and description, including attorneys' fees and costs incurred, attributable to the negligence or willful misconduct of Contractor in handling Customer information over which Contractor has Control, including but not limited to billing details, electronic payment(s), and Customer account information that is not readily available to the general public. Contractor shall maintain electronic files and Contractor's website in accordance with the industry best practices for maintaining such information as safely and securely as possible.
- E. **Related to AB 939, AB 341, AB 1826, and SB 1383.** Contractor's duty to defend and indemnify herein includes all fines and/or penalties imposed by CalRecycle, if the requirements of AB 939, AB 341, AB 1826, and/or SB 1383 are not met by City with respect to the waste streams Collected and services provided by Contractor under this Agreement, and such failure is: (i) due to the failure of Contractor to meet its obligations under this Agreement; or, (ii) due to Contractor delays in providing information that prevents Contractor or City from submitting reports to regulators in a timely manner.
- F. **Related to Proposition 218.** Should there be a Change in Law or a new judicial interpretation of Applicable Law, including, but not limited to, Article XIII C and D of the California Constitution (Commonly Proposition 218), which impacts the Rates for the Collection services established in accordance with this Agreement, Contractor agrees to meet and confer with City to discuss the impact of such Change in Law on either Party's ability to perform under this Agreement.

If, at any time, a Rate adjustment determined to be appropriate by both City and Contractor to compensate Contractor for increases in costs as described in this Agreement cannot be implemented for any reason, Contractor shall be granted the option to negotiate with City, in good faith, a reduction of services equal to the value of the Rate adjustment that cannot be implemented. If City and Contractor are unable to reach agreement about such a reduction in services, then Contractor may terminate this Agreement upon one year's prior written notice to City, in which

case the Contractor and City shall each be entitled to payment of amounts due for contract performance through the date of termination but otherwise will have no further obligation to one another unless this Agreement specifically states otherwise, after the date of such termination. Should a court of competent jurisdiction determine that the Contractor cannot charge and/or increase its Rates for charges related to Franchise Reimbursements and governmental fees and charges, Contractor shall reduce the Rates it charges Customers a corresponding amount, providing said fees, Rates and/or charges disallowed by the court are not related to the cost of providing service hereunder and had been incorporated in the Rates charged by Contractor to its Customers.

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

This provision (i.e., Section 9.1) will survive the expiration or earlier termination of this Agreement and shall not be construed as a waiver of City's legal and/or equitable rights as defined herein and permitted under Applicable Law.

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

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

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

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

- H. **Related to Award of Agreement.** Contractor shall defend, indemnify and hold harmless the City, its officers, officials, employees and agents from any claim, action or proceeding against the City,

its officers, officials, employees or agents to attack, set aside, void or annul the City's award of this Agreement to Contractor. Notwithstanding the foregoing, Contractor is not obligated to defend, indemnify, and hold harmless the City for any claim, action, or proceeding under this Section 9.1(H) to the extent such claim, action, or proceeding is the result of willful or negligent action, error or omission, or lack of reasonable diligence of City in awarding this Agreement to Contractor. The City will promptly notify Contractor and will cooperate with Contractor in the legal defense of any such challenge, claim, suit, action or legal proceeding.

9.2 Insurance

- A. **General Requirements.** Contractor shall, at its sole cost and expense, maintain in effect at all times during the Term of this Agreement not less than the following coverage and limits of insurance:
- B. **Coverages and Requirements.** During the Term of this Agreement, Contractor shall at all times maintain, at its expense, the following coverages and requirements. The comprehensive general liability insurance shall include broad form property damage insurance.
1. Minimum Coverages. Insurance coverage shall be with limits not less than the following:
 - a. **Commercial General Liability** – Insurance Services Office (ISO) Form CG 00 01, with limits of not less than ten million dollars (\$10,000,000) combined single limit per occurrence for bodily injury, completed operations, personal and advertising injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04, or its equivalent) or the general aggregate limit shall be twice the required occurrence limit.
 - b. **Automobile Liability** – Insurance Services Office (ISO) Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired (Code 8), and non-owned autos (Code 9), with limit not less than ten million dollars (\$10,000,000) per accident for bodily injury and property damage and Transportation related pollution liability.
 - c. **Workers' Compensation** – Statutory Limits/Employers' Liability – one million dollars (\$1,000,000)/accident for bodily injury or disease.
 - d. **Commercial Crime** – Five hundred thousand dollars (\$500,000) per employee loss covering dishonesty, forgery, alteration, theft, disappearance, and destruction (inside or outside).
 - e. **Hazardous Waste and Environmental Pollution Liability** - Three hundred thousand (\$3,000,000) per incident. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
 - f. **Transportation Pollution Liability** - When applicable, the Automobile Liability policy shall be endorsed to include Transportation Pollution Liability insurance, covering materials to be Transported by Contractor pursuant to the contract. This coverage may also be provided on the Contractor's Pollution Liability policy.

2. Additional Insured. The City, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the CGL and Auto policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).
 3. Said policies shall remain in force through the life of this Agreement and, with the exception of Hazardous Waste and Environmental Pollution Liability, shall be payable on a "per occurrence" basis unless City's Risk Manager specifically consents in writing to a "claims made" basis. For all "claims made" coverage, in the event that the Contractor changes insurance carriers Contractor shall purchase "tail" coverage or otherwise provide for continuous coverage covering the Term of this Agreement and not less than three (3) years thereafter. Proof of such "tail" or other continuous coverage shall be required at any time that the Contractor changes to a new carrier prior to receipt of any payments due.
 4. The Contractor shall declare all aggregate limits on the coverage before commencing performance of this Agreement.
 5. The deductibles or self-insured retentions are for the account of Contractor and shall be the sole responsibility of the Contractor.
 6. Each insurance policy shall provide or be endorsed to state that coverage shall not be canceled by either Party, except after thirty (30) calendar days prior written notice has been given to City Franchise Contract Administrator, except for delinquent insurance premiums that are subject to ten (10) Business Days' written notice. If Contractor is made aware that coverage is suspended, voided, canceled, or reduced in coverage, Contractor shall inform the City Franchise Contract Administrator within five (5) Business Days.
 7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise approved by City Risk Manager.
 8. The policies shall cover all activities of Contractor, its officers, employees, agents, and volunteers arising out of or in connection with this Agreement.
 9. For any claims relating to this Agreement, the Contractor's insurance coverage shall be primary, including as respects City, its officers, agents, employees, and volunteers. Any insurance maintained by City shall apply in excess of, and not contribute with, insurance provided by Contractor's liability insurance policy.
 10. The Contractor shall waive all rights of subrogation against City, its officers, employees, agents, and volunteers.
- C. **Endorsements.** Prior to the Effective Date pursuant to this Agreement, Contractor shall furnish City Franchise Contract Administrator with certificates or original endorsements reflecting coverage required by this Agreement. All certificates and endorsements are to be received and approved by the City before work commences. The certificates or endorsements are to be signed by a Person

authorized by that insurer to bind coverage on its behalf. All certificates or endorsements are to be received by, and are subject to the approval of, City Risk Manager before work commences.

- D. **Renewals.** During the Term of this Agreement, Contractor shall furnish City Franchise Contract Administrator with certificates or original endorsements reflecting renewals, changes in insurance companies, and any other documents reflecting the maintenance of the required coverage throughout the entire Term of this Agreement. The certificates or endorsements are to be signed by a Person authorized by that insurer to bind coverage on its behalf.
- E. **Workers' Compensation.** Contractor shall provide workers' compensation coverage as required by State law and shall comply with Section 3700 of the State Labor Code.

9.3 Performance Bond

Within seven (7) calendar days of the City's notification to Contractor that the City has executed this Agreement, Contractor shall file with the City a bond, payable to the City, securing the Contractor's performance of its obligations under this Agreement and such bond shall be renewed annually if necessary so that the performance bond is maintained at all times during the Term. The principal sum of the bond shall be and shall be adjusted every three (3) years, commencing with Rate Period Three, to equal three (3) months of the prior Rate Period's annual Gross Receipts. The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California that has a rating of A or better in the most recent edition of Best's Key Rating Guide, and that has a record of service and financial condition satisfactory to the City. The bond shall be in the form attached as Exhibit L.

ARTICLE 10. DEFAULT AND REMEDIES

10.1 Events of Default

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

- A. **Fraud or Deceit.** Contractor practices, or attempts to practice, any fraud or deceit upon the City.
- B. **Insolvency or Bankruptcy.** Contractor becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.
- C. **Failure to Maintain Coverage.** Contractor fails to provide or maintain in full force and affect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.
- D. **Violations of Regulation.** Contractor violates any orders or filings of any regulatory body having authority over Contractor relative to this Agreement, provided that Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach or default of this Agreement shall be deemed to have occurred.
- E. **Violations of Applicable Law.** Contractor violates Applicable Law relative to this Agreement.

- F. **Failure to Perform Direct Services.** Contractor ceases to provide Collection, Transportation, or Processing services as required under this Agreement for a period of two (2) consecutive calendar days or more, for any reason within the Control of Contractor.
- G. **Failure to Pay or Report.** Contractor fails to make any payments to City required under this Agreement including payment of City Reimbursements or Liquidated Damages and/or refuses to provide City with required information, reports, and/or records in a timely manner as provided for in the Agreement.
- H. **Acts or Omissions.** Any other act or omission by Contractor that violates the terms, conditions, or requirements of this Agreement, or Applicable Law and that is not corrected or remedied within the time set in the written notice of the violation or, if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if Contractor should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.
- I. **False, Misleading, or Inaccurate Statements.** Any representation or disclosure made to the City by Contractor in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made; and, any Contractor-provided report containing a misstatement, misrepresentation, data manipulation, or an omission of fact or content explicitly defined by the Agreement, excepting non-numerical typographical and grammatical errors.
- J. **Seizure or Attachment.** There is a seizure of, attachment of, or levy on, some or all of Contractor's operating equipment, including without limits its equipment, maintenance or office facilities, Approved Facility(ies), or any part thereof.
- K. **Suspension or Termination of Service.** There is any termination or suspension of the transaction of business by Contractor related to this Agreement, including without limit, due to labor unrest including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action lasting more than two (2) calendar days.
- L. **Criminal Activity.** Contractor, its officers, managers, or employees are found guilty of criminal activity related directly or indirectly to performance of this Agreement or any other agreement held with the City.
- M. **Assignment without Approval.** Contractor transfers or assigns this Agreement without the expressed written approval of the City unless the assignment is permitted without City approval pursuant to Section 12.6.
- N. **Failure to Provide Proposal or Implement Change in Service.** Contractor fails to provide a proposal for new services or changes to services or fails to implement a change in service as requested by the City as specified in Section 3.6.
- O. **Failure to Complete Transition.** Contractor fails to complete the tasks identified in Contractor's Implementation Plan as specified in Exhibit G4.
- P. **Failure to Implement Collection Program.** Contractor fails to implement a Collection program that complies with the requirements of Article 4 and Exhibit B.

- Q. **Failure to Provide Processing Capacity.** Contractor fails to provide adequate Processing capacity in accordance with Section 4.2, Section 4.3, and Exhibit B1-B5.
- R. **Failure to Achieve Processing Standards.** Contractor fails to achieve at its affiliated or subcontracted facilities the Processing standards specified in Section 4.2, Section 4.3, and Exhibit B-1 through B-5, including achievement of minimum Organic Waste recovery rates.
- S. **Failure to Comply with Other Requirements of SB 1383.** Contractor fails to comply with other requirements of the Agreement including public education, reporting, contamination monitoring, recordkeeping and reporting, or other obligations of this Agreement that delegate the City's responsibility and/or authority under SB 1383 to the Contractor.
- T. **Failure to Perform Any Obligation.** Contractor fails to perform any obligation established under this Agreement.

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

10.2 Contractor's Right To Cure; City's Right to Terminate Upon Event of Default

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

Contractor shall be given ten (10) Business Days from written notification by City to cure any default arising under subsections C, E, F, I, J, K, L, or M in Section 10.1. However, if Contractor cannot reasonably correct or remedy the breach within the time set forth in a notice of violation, it shall not be in breach if it commences to correct or remedy such violation within the time set forth in such notice and diligently effects such correction or remedy thereafter. The City shall not be obligated to provide Contractor with a notice and cure opportunity if the Contractor has committed the same or similar breach/default within a twenty-four (24) month period.

Contractor shall be given thirty (30) calendar days from written notification by City to cure any other default (which is not required to be cured within ten (10) Business Days); however, that the City shall not be obligated to provide Contractor with a notice and cure opportunity if the Contractor has committed the same or similar breach/default within a twenty-four (24) month period. However, if Contractor cannot reasonably correct or remedy the breach within the time set forth in a notice of violation or thirty (30) calendar days, whichever is longer, it shall not be in breach if it commences to correct or remedy such violation within the time set forth in such notice and diligently effects such correction or remedy thereafter.

10.3 City's Remedies In the Event of Default

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

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

- B. **Suspension of Contractor's Obligation.** City may suspend Contractor's performance of its obligations if Contractor fails to cure default in the time frame specified in Section 10.2 until such time the Contractor can provide assurance of performance in accordance with Section 10.8.
- C. **Liquidated Damages.** City may assess Liquidated Damages for Contractor's failure to meet specific performance standards pursuant to Section 10.6 and Exhibit F.
- D. **Termination.**
 - 1. **Public Hearing.** The City Franchise Contract Administrator may, in their sole discretion, set a public hearing for the City Council to determine whether to terminate this Agreement. Subject to Contractor's right to cure as described in Section 10.2, such termination hearing must be set if a default remains uncured thirty (30) calendar days after receipt of written notice of default from the City. Such termination hearing must also be set if a Contractor's default is not cured within ten (10) calendar days and the default:
 - a. Creates a potential public health and safety threat; or
 - b. Arises under Section 10.1.C, E, F, I, J, K, L, or M.
 - 2. **Action Upon Termination.** If the City terminates this Agreement based on the adopted findings of the termination hearing, the City Franchise Contract Administrator shall first provide written notice to the Contractor twenty (20) calendar days before the date of termination. The Contractor shall thereafter be relieved on a going-forward basis of all liabilities and obligations required by this Agreement, except for Section 9.1 and any other provisions specifically identified to survive termination of this Agreement. Upon expiration of the twenty (20) day notice, the City may, in its sole discretion:
 - a. Directly undertake performance of the services; or
 - b. Arrange with other Persons to perform the services with or without a written agreement; or
 - c. Permit Contractor to continue operating under this Agreement including Contractor's Compensation until such time that City is able to find substitute services.

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

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

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

10.4 Possession of Records Upon Termination

In the event of termination or expiration of this Agreement, the Contractor shall, subject to Applicable Law, including laws governing data security and privacy, furnish City Franchise Contract Administrator

with immediate access to all records related to the services provided under this Agreement related to its Customers, Collection routes, and billing of accounts for Collection services.

10.5 City's Remedies Cumulative; Specific Performance

City's termination of the Agreement and/or the imposition of Liquidated Damages shall not constitute an election of remedies. Instead, these rights shall be in addition to any and all other legal and equitable rights and remedies which City may have.

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

10.6 Performance Standards and Liquidated Damages

- A. **General.** The Parties find that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a result of a breach by Contractor of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that exclusive services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and, (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.
- B. **Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties further acknowledge that consistent, reliable Collection services are of utmost importance to City and that City has considered and relied on Contractor's representations as to its quality of service commitment in awarding the Agreement to it. The Parties recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents and businesses will suffer damages, and that it is, and will be, impractical and extremely difficult to ascertain and determine the exact amount of damages that the City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Section, the Parties agree that the Liquidated Damage amounts established in Exhibit F of this Agreement represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical.

City may assess (as Liquidated Damages and not as a penalty) the amounts set forth in the Performance Standards and Liquidated Damages, Exhibit F.

Before assessing Liquidated Damages, City shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s) and non-performance. City may review (and make copies at its own expense) all information in the possession of Contractor relating to incident(s) and/or non-performance. City may, within ten (10) Business Days after issuing the notice, request a meeting with Contractor. City may present evidence of non-performance in writing and through testimony of its employees and others relevant to the incident(s) and non-performance. City Franchise Contract Administrator will provide Contractor with a written explanation of their determination on each incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages under this Section 10.6. The decision of City Franchise Contract Administrator shall be final, but shall be subject to the provisions of Section 10.9 and Applicable Law.

- C. **Amount.** City may assess Liquidated Damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement in the amounts specified in Exhibit F subject to annual adjustment described below.
- D. **Timing of Payment.** Contractor shall pay any Liquidated Damages assessed by City under this Agreement within ten (10) Business Days of the date the Liquidated Damages are assessed. If they are not paid within the ten (10) Business Day period, City may proceed against the performance bond required by the Agreement, order the termination of the rights or “franchise” granted by this Agreement, or all of the above.

10.7 Excuse from Performance

The Parties understand and agree herein that the services provided under this Agreement are critical to the protection of public health and safety and that Contractor is expected to perform these services despite the occurrence of events that may otherwise give rise to Force Majeure conditions. The Parties herein agree that the obligations for excuse from performance under this Agreement should and do have a higher standard than the general law understanding of Force Majeure. In particular, a Party shall be excused from performing their obligations hereunder and from any obligation to pay Liquidated Damages if they are prevented from so performing by reason of floods, earthquakes, other acts of nature, pandemics, epidemics, war, civil insurrection, riots, acts of any domestic government (including judicial action), and other similar catastrophic events which are beyond the Control of and not the fault of the Party claiming excuse from performance hereunder (“Force Majeure Event”). The Party claiming excuse from performance due to a Force Majeure Event shall provide written notice of the specific contractual obligations it cannot perform, notwithstanding its best efforts, as a result of the Force Majeure Event. All other performance obligations shall be required to continue.

In the case of labor unrest or job action directed at a third party over whom Contractor has no Control, the inability of Contractor to provide services in accordance with this Agreement due to the unwillingness or failure of the third party to: (i) provide reasonable assurance of the safety of Contractor's employees while providing such services; or, (ii) make reasonable accommodations with respect to Container placement and point of Delivery, time of Collection, or other operating circumstances to minimize any confrontation with pickets or the number of Persons necessary to make Collections shall, to that limited extent, excuse performance. The foregoing excuse shall be conditioned on Contractor's cooperation in performing Collection services at different times and in different locations. Further, in the event of labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by the Contractor's employees or directed at the Contractor, or a

subsidiary, the Contractor shall not be excused from performance. In such case, Contractor shall continue to provide a reasonably satisfactory level of performance during the pendency thereof, but the Contractor shall not be required to adhere strictly to the specific requirements of this Agreement regarding routes, Collection times or similar matters. However, in no event shall more than seven (7) calendar days elapse between pickups for Residential and Commercial Customers. Any labor action initiated by Contractor, including but not limited to a lock-out, shall not be grounds for any excuse from performance and Contractor shall perform all obligations under this Agreement during the pendency of such Contractor-initiated labor action.

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

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

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

10.8 Right to Demand Assurances of Performance

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

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

10.9 Dispute Resolution

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

- A. **Notice.** Notice from either Party must consist of electronic mail in addition to a certified letter to the other Party.
- B. **Meet and Confer.** In the event of disputes regarding the performance of any obligation under this Agreement which results in a material impact to the Contractor's revenue and/or cost of operations, the City and Contractor agree that they promptly will meet and confer to attempt to resolve the matter between themselves.
- C. **Mediation.** In the event disputes arise under this Agreement that cannot be resolved satisfactorily between the Parties in accordance with Section 10.9.B, the City and Contractor agree that such disputes shall be submitted to mandatory, non-binding mediation by a mutually agreed upon independent third party. Mediation shall not exceed six (6) months from the first date of mediation. If during the allowable six (6) month period of mediation, the Mediator rules that the Parties are at an impasse, Parties may proceed to litigation without further discussion.
- D. **Period of Time.** Insofar as allowed by Applicable Law, the period of time otherwise applicable for filing claims against the City under Applicable Law shall be tolled during the period of time for which meet and confer or mediation procedures are pending, in accordance with Sections 10.9.B and 10.9.C.
- E. **Litigation.** Litigation may be commenced once the time allowed for mediation has expired, or the Mediator has ruled that the Parties are at an impasse pursuant to Sections 10.9.A, 10.9.B, and 10.9.C.

ARTICLE 11. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

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

11.1 Contractor's Corporate Status

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

11.2 Contractor's Corporate Authorization

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

11.3 Agreement Will Not Cause Breach

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

11.4 No Litigation

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

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

11.5 No Adverse Judicial Decisions

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

11.6 No Legal Prohibition

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

11.7 Contractor's Ability to Perform

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

ARTICLE 12. OTHER AGREEMENTS OF THE PARTIES

12.1 Relationship of Parties

The Parties intend that Contractor shall perform the services required by this Agreement as an independent Contractor engaged by City and neither as an officer nor employee of City, nor as a partner

or agent of, or joint venturer with, City. No employee or agent of Contractor shall be, or shall be deemed to be, an employee or agent of City. Contractor shall have the exclusive Control over the manner and means of performing services under this Agreement, except as expressly provided herein. Contractor shall be solely responsible for the acts and omissions of its officers, employees, Subcontractors, and agents. Neither Contractor nor its officers, employees, Subcontractors, and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with City.

12.2 Compliance with Law

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

12.3 Governing Law

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

12.4 Jurisdiction

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of the County of San Diego, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed in the County of San Diego.

12.5 Binding on Successors

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

12.6 Assignment

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

For purposes of this Section, "assignment" shall include, but not be limited to: (i) a sale, exchange or other transfer of substantially all of Contractor's local, regional, and/or corporate assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of ten percent (10%) or more of the local, regional, and/or corporate assets, stock, or ownership of Contractor to a Person (other than a transfer of shares in Contractor by the owner of such shares to a revocable trust for the benefit of his family or to another owner of shares in Contractor) except that no cumulative sale, exchange, or transfer of shares may exceed twenty percent (20%) during the Term of the Agreement (other than a transfer of shares in Contractor by the owner of such shares to a revocable trust for the benefit of his family or to another owner of shares in Contractor); (iii) any reorganization, consolidation, merger, recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other

transaction to which Contractor or any of its shareholders is a party that results in a change of ownership or Control of ten percent (10%) or more of the value or voting rights in the local, regional, and/or corporate stock of Contractor; (iv) divestiture of an Affiliate (e.g., trucking company, materials recovery facility, Transfer station) used by Contractor to fulfill its obligations under this Agreement; and, (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) that has the effect of any such transfer or change of local, regional, and/or corporate ownership and/or Control of Contractor. For purposes of this Section, the term "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant to the assignment.

Notwithstanding the above, the requirements of A through E below do not apply in the event of an assignment to an Affiliate of Contractor having the same parent (an "Affiliate Transfer"). Contractor shall notify the City of the proposed assignment, and the City may approve or deny the request in its reasonable judgment.

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

If Contractor requests City's consideration of and consent to an assignment, City may deny or approve such request in its sole and complete discretion. No request by Contractor for consent to an assignment need be considered by City unless and until Contractor has met the following requirements. The City may, in its sole discretion, waive one (1) or more of these requirements.

- A. On the date the Contractor submits a written request for the City's written consent of an assignment, Contractor shall pay the City a transfer fee in the amount of one percent (1%) of the Gross Receipts for the most-recently completed Rate Period, provided that Contractor shall not pay the City a transfer fee under this Section for any Affiliate Transfer.
- B. Contractor shall pay City its actual expenses for attorneys' fees, consultants' fees, accountants' fees, staff time, and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment. Such payment shall be required regardless of the ultimate determination of the City with regard to the approval or denial of the assignment. Upon submittal of Contractor's request for assignment to City, Contractor shall submit an initial deposit of one hundred thousand dollars (\$100,000) for this purpose.
- C. Contractor shall furnish City with reviewed financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years.
- D. Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Recyclable Materials, Organic Materials, and Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any citations

or other censure from any Federal, State, or local contractor having jurisdiction over its waste management operations due to any significant failure to comply with State, Federal, or local waste management laws, and that the assignee has provided the City with a complete list of such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its operations and management practices in accordance with sound waste management practices in full compliance with all Federal, State, and local laws regulating the Collection, Transportation, Processing, and Disposal of Recyclable Materials, Organic Materials, and Solid Waste including Hazardous Waste; and, (v) that any other information required by City demonstrates that the proposed assignee can fulfill the terms of this Agreement in a timely, safe, and effective manner.

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

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

12.7 No Third Party Beneficiaries

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

12.8 Waiver

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

12.9 Notice Procedures

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

If to City:

City of Oceanside
Attn: City Franchise Contract Administrator
300 North Coast Highway
Oceanside, CA, 92054

If to Contractor:

Waste Management of California, Inc.

Attn: Director of Operations
9081 Tujunga Avenue
Sun Valley, CA 91352

With copy to:

Waste Management-Southern California Market Area
Attn: Assistant General Counsel
9081 Tujunga Avenue
Sun Valley, CA 91352

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

12.10 Representatives of the Parties

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

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

ARTICLE 13. MISCELLANEOUS AGREEMENTS

13.1 Entire Agreement

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

13.2 Section Headings

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

13.3 References to Laws

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

13.4 Amendments

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

13.5 Severability

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

13.6 Counterparts

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

13.7 Exhibits

Each of the Exhibits identified as Exhibit "A" through "L" is attached hereto and incorporated herein and made a part hereof by this reference. In the event of a conflict between the terms of this Agreement and the terms of an Exhibit, the terms of this Agreement shall control. In the event of a conflict between Exhibit G1 and any other Exhibit(s), such other Exhibit(s) shall control.

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

City of Oceanside
A Municipal Corporation "CITY"

Date
Mayor

Date
City Manager

The Foregoing Agreement Has been Reviewed and Approval Is Recommended:

Date
Water Utilities Director


APPROVED AS TO FORM:

Date
City Attorney

ATTEST:

Date
City Clerk

"CONTRACTOR"
Waste Management of California, Inc.



Signature Date 3/31/2022

Michael Hammer

Print Name of Signatory

President-Southern California Area

Title of Signatory

Signature Date

Print Name of Signatory

Title of Signatory

City Business License #

Resolution Number XXXX-XXX

Approved by City Council

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**EXHIBIT A:
DEFINITIONS**

EXHIBIT A: DEFINITIONS

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

"AB 1826" means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 modifying Division 30 of the California Public Resources Code), also commonly referred to as "AB 1826," as amended, supplemented, superseded, and replaced from time to time.

"AB 341" means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 [Chesbro, AB 341]), also commonly referred to as "AB 341", as amended, supplemented, superseded, and replaced from time to time.

"AB 827" means the Assembly Bill approved by the Governor of the State of California on October 2, 2019, which amended Sections 42649.2, 42649.2, 42649.8, and 42649.81 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time.

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

"AB 939/SB 1383 Reimbursement" means a reimbursement to City by Contractor for expenses including but not limited to, staffing costs related to City programs, pilot studies, education and outreach campaigns, technical assistance to Customers, reporting, compliance, capacity planning, provision of special containers, or other activities involved in compliance with AB 939 and/or SB 1383. The City shall retain the sole right to set priorities for the use of its AB 939/SB 1383 Reimbursement. This reimbursement shall be a pass-through cost. The Contractor shall pay an AB 939/SB 1383 Reimbursement to City each month. The amount of the AB 939/SB 1383 Reimbursement shall be eight hundred fifteen thousand dollars (\$815,000) per year in Rate Period One and shall be paid in equal monthly installments. In subsequent Rate Periods, the AB 939/SB 1383 Reimbursement shall be adjusted in accordance with Section 7.5.

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

"Alternative Facility" means a Facility approved by the City Franchise Contract Administrator for use in the event that an Approved Facility is unavailable.

"Applicable Law" means all Federal, State, County, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, Transportation, and Processing of Recyclable Materials, Organic Materials, and Solid Waste that are in force on the Effective Date and as may be enacted, issued or amended during the Term of this Agreement. Applicable Law includes, but is in no way limited to, AB 939, AB 341, AB 1826, and SB 1383.

"Approved Disposal Facility(ies)" means the landfill, selected by the operator of the Approved Transfer Facility, where Solid Waste Collected under this Agreement is sent for final Disposal.

EXHIBIT A: DEFINITIONS

“Approved Facility(ies)” means any one of or any combination of the: Approved Disposal Facility; Approved Organic Materials Processing Facility; Approved Recyclable Materials Processing Facility; Approved Reusable Materials Processing Facility; Approved Transfer Facility; and/or Designated Organic Materials Processing Facility.

“Approved Organic Materials Processing Facility(ies)” means the Orange County CORe facility, which is owned and operated by Contractor, El Corazon Composting facility, which is owned and operated by Agri Service Recycling Inc, or another facility as approved by the City Franchise Contract Administrator.

“Approved Processing Facility(ies)” means any one of or any combination of the: Approved Organic Materials Processing Facility; Approved Recyclable Materials Processing Facility; Approved Reusable Materials Processing Facility; Approved Transfer Facility; or Designated Organic Materials Processing Facility.

“Approved Recyclable Materials Processing Facility” means the Orange County Materials Recovery facility, which is owned and operated by Contractor, or another facility as approved by the City Franchise Contract Administrator.

“Approved Reusable Materials Processing Facility” means the facility which is owned and operated by Disabled American Veterans Thrift Store, or another facility as approved by the City Franchise Contract Administrator.

“Approved Transfer Facility” means the Palomar Transfer Station (PTS), at 5960 El Camino Real, Carlsbad, CA, which is owned by the County and operated by Republic Services for Solid Waste and C&D Materials Collected by the Contractor; or, the Waste Management North County Limited Volume Transfer Operation, located at 2141 Oceanside Blvd., Oceanside, CA 92054, or another facility as approved by the City Franchise Contract Administrator for Recyclable Materials Collected by the Contractor.

“Bin” means a Container with capacity of approximately one (1) to six (6) cubic yards, with a hinged lid, and with wheels (where appropriate), that is serviced by a front end-loading Collection vehicle, including Bins with Compactors attached to increase the capacity of the Bin.

“Business Days” mean days during which the City offices are open to do business with the public.

“California Code of Regulations (CCR)” means the State of California Code of Regulations. CCR references in this Agreement are preceded with a number that refers to the relevant Title of the CCR (e.g., “14 CCR” refers to Title 14 of CCR).

“CalRecycle” means California's Department of Resources Recycling and Recovery.

“Cardboard” means corrugated fiberboard consisting of a fluted corrugated sheet and one or two flat linerboards, as is often used in the manufacture of shipping containers and corrugated boxes. Cardboard is a subset of Recyclable Materials.

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

EXHIBIT A: DEFINITIONS

"Change in Law" means any of the following events or conditions that has a material and adverse effect on the performance by the Parties of their respective obligations under this Agreement (except for payment obligations):

- A. The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation of any Applicable Law on or after the Effective Date; or,
- B. The order or judgment of any governmental body, on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission, or lack of reasonable diligence of City or of the Contractor, whichever is asserting the occurrence of a Change in Law. However, the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

"City" means the City of Oceanside and all the territory lying within its boundaries as presently existing or as such boundaries may be modified during the Term of this Agreement.

"City Franchise Contract Administrator" means the Person, or his designee, designated by the City to administer and monitor the provisions of this Contract as designated in Section 5.9.

"City Reimbursements" means all amounts payable to the City, identified and referenced in Article 7 of this Agreement.

"Collect" or "Collection" (or any variation thereof) means the act of taking possession of Recyclable Materials, Organic Materials, Solid Waste, Large Landfill Items, and other material at the place of generation in City.

"Commencement Date" means the date specified in Section 2.1 when Collection, Transportation, and Processing services required by this Agreement shall be provided.

"Commercial" means of, from, or pertaining to non-Residential Premises where business activity is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing, and industrial operations, but excluding businesses conducted upon Residential property which are permitted under applicable zoning regulations and are not the primary use of the property.

"Commercial Edible Food Generator" includes Tier One Commercial Edible Food Generators and Tier Two Commercial Edible Food Generators, or as otherwise defined in 14 CCR Section 18982(a)(7), and all Commercial Generators who derive economic value from the sale or production of Edible Food. For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators, or as otherwise specified by 14 CCR Section 18982(a)(7).

"Commercial Premises" means Premises upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding Residential Premises upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the property.

EXHIBIT A: DEFINITIONS

“Compactor” means a mechanical apparatus that compresses materials together with the Container that holds the compressed materials or the Container that holds the compressed materials if it is detached from the mechanical compaction apparatus. Compactors include two (2) to six (6) cubic yard Bin Compactors serviced by front-end loader Collection vehicles and ten (10) to forty (40) cubic yard Roll-Off Box Compactors serviced by roll-off Collection vehicles.

“Complaint” shall mean each written or orally communicated statement made by any Person, whether to City or Contractor, alleging: (1) non-performance, or deficiencies in Contractor’s performance, of its duties under this Agreement; (2) a violation by Contractor of this Agreement; or, (3) an SB 1383 Non-Compliance Complaint.

“Compost” or “Composting” (or any variation thereof) includes a controlled biological decomposition of Organic Materials yielding a safe and nuisance free Compost product.

“Compostable Plastics” or “Compostable Plastic” means food-service and food-packaging plastic materials or plastic bags used for collecting Organic Material that are placed in the Organic Materials Container and Transported to an Organic Materials Processing Facility or Facility(ies), in-vessel digestion operation(s) or other facility provided the Organic Waste Processing Facility accepts the material and has provided written notification annually to the City stating that the facility can process and recover that material for Composability, as defined in 14 CCR Section 18984.1(a)(1)(A) for three Container systems.

“Construction and Demolition Debris (C&D)” includes discarded building materials, packaging, debris, and rubble resulting from construction, alteration, remodeling, repair or demolition operations on any pavements, excavation projects, houses, Commercial buildings, or other structures, excluding Excluded Waste. Construction and Demolition Debris includes rocks, soils, tree remains and other Yard Trimmings that result from land clearing or land development operations in preparation for construction.

“Container(s)” mean Bins, Carts, Compactors, and Roll-Off Boxes.

“Contractor” means Waste Management of California, Inc., organized and operating under the laws of the State and its officers, directors, employees, agents, companies, related-parties, affiliates, subsidiaries, and Subcontractors.

“Contractor’s Compensation” means the monetary compensation received by Contractor in return for providing services in accordance with this Agreement as described in Article 8.

“Contractor’s Franchise Contract Manager” means an employee of Contractor who is responsible for working closely with the City Franchise Contract Administrator in the monitoring and administration of this Agreement. The Contractor’s Franchise Contract Manager shall not be involved in the management, operations, administration, marketing, or other activities of Contractor other than under this Agreement and up to one (1) other community’s franchise agreement.

“Contractor’s Proposal” means the proposal submitted to City by Contractor on March 26, 2021, subject to certain redactions as agreed by the Parties, for provision of Recyclable Materials, Organic Materials, and Solid Waste Collection, Processing, and Disposal services and certain supplemental written materials, which are included as Exhibits G to this Agreement and are incorporated by reference.

EXHIBIT A: DEFINITIONS

“Control” means the power to direct or cause the direction of the management of, or operations of another, either directly or indirectly.

“County” means the County of San Diego, a political subdivision of the State of California.

“Curb” or “Curbside” (or any variation thereof) means the cornered edging between the street and sidewalk. Curb or Curbside also means and describes the location of a Collection Container for pick-up, where such Container is placed on the street or alley against the face of the Curb, or where no Curb exists, the Container is placed not more than five (5) feet from the outside edge of the street or alley nearest the property’s entrance.

“Customer” means the Person whom Contractor submits its billing invoice to and collects payment from for Collection services provided to a Premises. The Customer may be either the Occupant or Owner of the Premises.

“Customer Account Information Database” means the Customer Account Information Database as identified in Section 4.8 that shall be developed, maintained, and monitored in accordance with the requirements of this Agreement.

“Customer Type” means the Customer’s sector category including, but not limited to, Single-Family, Multi-Family, Commercial, Roll-Off Box, and City.

“Designated Organic Materials Processing Facility(ies)” means the Orange County CORe facility, at 2050 N Glassell St, Orange County, CA 92865, which is owned and operated by Contractor and the El Corazon Composting Facility at 3210 Oceanside Blvd, Oceanside, CA 92056, which is owned and operated by Agri Service Recycling Inc., or another facility as approved by the City Franchise Contract Administrator. The Designated Organic Materials Processing Facility(ies) shall serve as the Processing site(s) for all Organic Materials Collected by Contractor.

“Designated Waste” means non-Hazardous Waste which may pose special Disposal problems because of its potential to contaminate the environment and which may be Disposed of only in Class II Disposal sites or Class III Disposal sites pursuant to a variance issued by the California Department of Health Services. Designated Waste consists of those substances classified as Designated Waste by the State, in California Code of Regulations Title 23, Section 2522 as may be amended from time to time.

“Disabled Person” or “Disability” (or any variation thereof) means a Person who is considered disabled as defined in 2 CCR Section 11065(d) of California State Law.

“Discarded Materials” means Recyclable Materials, Organic Materials, and Solid Waste placed by a Generator in a receptacle and/or at a location for the purposes of Collection by Contractor, excluding Excluded Waste.

“Disposal Facility” means a landfill, or other facility for ultimate Disposal of Solid Waste.

“Dispose” or “Disposal” (or any variation thereof) means the final disposition of Solid Waste, or Processing Residue at a Disposal Facility.

EXHIBIT A: DEFINITIONS

“Divert” or “Diversion” (or any variation thereof) means to prevent Discarded Materials from Disposal at landfill or transformation facilities, (including facilities using incineration, pyrolysis, distillation, gasification, or biological conversion methods) through source reduction, reuse, repair, Recycling, Composting, anaerobic digestion, or other method of Processing, subsequent to the provisions of AB 939. Diversion is a broad concept that is to be inclusive of material handling and Processing changes that may occur over the Term including, but not limited to, changes in standard industry practice or implementation of innovative (but not necessarily fully proven) techniques or technology that reduce Disposal risk, decrease costs and/or are for other reasons deemed desirable by the City.

“Dwelling Unit” means any individual living unit in a Single-Family or Multi-Family structure or building, a mobile home, or a motor home located on a permanent site intended for, or capable of being utilized for, Residential living other than a hotel or motel.

“Edible Food” means food intended for human consumption. For the purposes of this Agreement, Edible Food is not Solid Waste if it is recovered and not discarded. Nothing in this Agreement requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code. If the definition in 14 CCR Section 18982(a)(18) for Edible Food differs from this definition, the definition in 14 CCR Section 18982(a)(18) shall apply to this Agreement.

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

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

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

“Federal” means belonging to or pertaining to the Federal government of the United States.

“Flow Control” means City right to direct Discarded Materials to a facility of the City’s choosing.

“Food Recovery” means actions to Collect and distribute food for human consumption that otherwise would be Disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).

EXHIBIT A: DEFINITIONS

“Food Recovery Organization” means an entity that primarily engages in the Collection or receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the public for Food Recovery either directly or through other entities, including, but not limited to:

- A. A food bank as defined in Section 113783 of the Health and Safety Code;
- B. A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,
- C. A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.
- D. A Commercial business or entrepreneur that generates added value to Recovered Food.

If the definition in 14 CCR Section 18982(a)(25) for Food Recovery Organization differs from this definition, the definition in 14 CCR Section 18982(a)(25) shall apply to this Agreement.

“Food Recovery Service” means a Person or entity that Collects and Transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery; or as otherwise defined in 14 CCR Section 18982(a)(26).

“Food Scraps” means those Discarded Materials that will decompose and/or putrefy including: (i) all kitchen and table food waste; (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs; (iii) fruit waste, grain waste, dairy waste, meat, and fish waste; and, (iv) vegetable trimmings, houseplant trimmings and other Compostable Organic Waste common to the occupancy of Residential Dwelling Units. Food Scraps are a subset of Food Waste.

“Food-Soiled Paper” means Compostable paper material that has come in contact with Food Scraps or liquid, such as, but not limited to, Compostable paper plates, paper liners, paper coffee cups, napkins, and pizza boxes. Food-Soiled Paper is a subset of Food Waste.

“Food Waste” means Source Separated Food Scraps, Food-Soiled Paper, and Compostable Plastics. Food Waste is a subset of Organic Materials.

“Franchise Reimbursement” means the fee paid by Contractor to the City as described in Section 7.1.

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

“Gross Receipts” shall mean total cash receipts collected from Customers by the Contractor for the provision of services pursuant to this Agreement, without any deductions. Gross Receipts do not include revenues from the sale of Recyclable Materials.

“Hazardous Substance” means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to: (i) the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8,

EXHIBIT A: DEFINITIONS

25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and, (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and, (c) any other hazardous or toxic substance, material, chemical, waste, or pollutant identified as hazardous or toxic or regulated under any other Applicable Law currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's (PCBs), petroleum, natural gas, and synthetic fuel products, and by-products.

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

"Holidays" are defined as New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

"Household Hazardous Waste" or "HHW" means Hazardous Waste generated at Residential Premises within the City. HHW includes: paint, stain, varnish, thinner, adhesives, auto products such as old fuel, used motor oil, used oil filter, batteries, household batteries, fluorescent bulbs, tubes, cleaners and sprays, pesticides, fertilizers and other garden products, needles, syringes, and lancets.

"Infectious Waste" means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, and other similar establishments that are identified in Health and Safety Code Section 25117.5 as may be amended from time to time.

"Large Landfill Item" means discarded non-Reusable Items, Appliances (including refrigerators), furniture, tires, carpets, mattresses, E-Waste, and similar large items which can be handled by two (2) people, weigh no more than two hundred (200) pounds, and require special Collection due to their size or nature, but can be Collected without the assistance of special loading equipment (such as forklifts or cranes) and without violating vehicle load limits, that are intended to be Disposed of in a landfill. Large Landfill Items must be generated by the Customer and at the service address wherein the Large Landfill Items are Collected. Large Landfill Items do not include abandoned automobiles, large auto parts, trees, Construction and Demolition Debris, or items herein defined as Excluded Waste.

"Late Container Delivery Rebate" means the amount due to Customers for each failure to deliver a Container to a new or existing Customer in accordance with the schedule provided in Section 5.6 or as agreed upon with the Customer. The Late Container Delivery Rebate amount shall be five dollars (\$5.00) per calendar day per Container in Rate Period One, and shall be adjusted annually thereafter by the same percentage used to adjust Rates in accordance with Exhibit E.

"Liquidated Damages" means the amounts assessed by City for failure to meet specific standards of performance as described in Section 10.6 and Exhibit F.

EXHIBIT A: DEFINITIONS

“Missed Collection Rebate” means the amount due to Customers for each failure to resolve a missed or incomplete Collection on the scheduled Collection by 12:00 p.m. on the next Collection day or on the date agreed upon with the Customer. The Missed Collection Rebate amount shall be five dollars (\$5.00) per calendar day in Rate Period One, and shall be adjusted annually thereafter by the same percentage used to adjust Rates in accordance with Exhibit E.

“Move-in Kit” refers to a pre-prepared and standardized collection of useful items to be given by property managers or Owners of Multi-Family Premises to new Multi-Family Occupants upon move-in to a Multi-Family Dwelling Unit. At a minimum, Move-in Kits shall include a Multi-Family Recycling guide, an in-home Recyclable Materials tote bag, a kitchen Food Scraps pail, and stickers or refrigerator-magnets that clearly define the accepted and Prohibited Container Contaminants in the Recycling program, and an In Home Recyclable Materials Container (upon request).

“Mulch” means a layer of material applied on top of soil, and, for the purposes of the Agreement, Mulch shall conform with the following conditions, or conditions as otherwise specified in 14 CCR Section 18993.1(f)(4):

- A. Meets or exceeds the physical contamination, maximum metal concentration, and pathogen density standards for land applications specified in 14 CCR Section 17852(a)(24.5)(A)(1) through (3).
- B. Was produced at one or more of the following types of Facilities:
 - 1. A Compostable material handling operation or facility as defined in 14 CCR Section 17852(a)(12), that is permitted or authorized under Division 7 of Title 14 of the CCR, other than a chipping and grinding operation or facility as defined in 14 CCR Section 17852(a)(10); Guidance: Note that this criteria disallows Mulch produced from chipping and grinding operations to count toward fulfillment of a Jurisdiction’s annual Organic Waste product procurement target.
 - 2. A Transfer/Processing Facility or Transfer/Processing operation as defined in 14 CCR Section 17402(a)(30) and (31), respectively, that is permitted or authorized under 14 CCR, Division 7, Chapter 12; or,
 - 3. A Solid Waste landfill as defined in PRC Section 40195.1 that is permitted under 27 CCR, Division 2.

“Multi-Family” means any Residential Premises, other than a Single-Family Premises, with five (5) or more Dwelling Units used for Residential purposes (regardless of whether residence therein is temporary or permanent, vacant or occupied), that receive centralized, shared, Collection service for all units on the Premises which are billed to one (1) Customer at one (1) address. Customers residing in Townhouses, mobile homes, condominiums, or other structures with five (5) or more Dwelling Units who receive individual service and are billed separately shall not be considered Multi-Family.

“Occupant” means the Person who occupies a Premises.

EXHIBIT A: DEFINITIONS

“Organic Materials” means Yard Trimmings and Food Waste, individually or collectively. No Discarded Material shall be considered Organic Materials unless it is separated from Recyclable Materials and Solid Waste. Organic Materials are a subset of Organic Waste.

“Organic Waste” means wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, food, Yard Trimmings, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.

“Owner” means the Person(s) holding legal title to real property and/or any improvements thereon, and shall include the Person(s) listed on the latest equalized assessment roll of the County Assessor.

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

“Person(s)” means any individual, firm, association, organization, partnership, consortium, corporation, trust, joint venture, Commercial entity, governmental entity, public entity, or any other legal Person.

“Premises” means any land or building in the City where Recyclable Materials, Organic Materials, or Solid Waste are generated or accumulated.

“Primary Responsible Party” means the party designated as primarily responsible for Multi-Family or Commercial shared service, as further described in Exhibit B2.6 and Exhibit B3.4, respectively. The Primary Responsible Party will serve as the singular point of contact for communication and billing from Contractor and the City, along with a list of all addresses with which the Primary Responsible Party will share service.

“Process” or “Processing” (or any variation thereof) means the controlled separation, recovery, volume reduction, conversion, or Recycling of Solid Waste including, but not limited to, organized, manual, automated, or mechanical sorting, the use of vehicles for spreading of waste for the purpose of recovery, and/or includes the use of conveyor belts, sorting lines, or volume reduction equipment, or as otherwise defined in 14 CCR Section 17402(a)(20).

“Processing Facility(ies)” means any plant or site used for the purpose of sorting, cleansing, treating or reconstituting Recyclable Materials, or Reusable Materials for the purpose of making such material available for Recycling or reuse or the facility for the Processing and/or Composting of Organic Materials.

“Prohibited Container Contaminants” means the following: (i) Discarded Materials placed in the Recyclable Materials Container that are not identified as acceptable Recyclable Materials for the City’s Collection program; (ii) Discarded Materials placed in the Organic Materials Container that are not identified as acceptable Organic Materials for the City’s Collection program; (iii) Discarded Materials placed in the Solid Waste Container that are acceptable Recyclable Materials and/or Organic Materials to be placed in the City’s Recyclable Materials or Organic Materials Containers or otherwise managed under the City’s Collection program; and, (iv) Excluded Waste placed in any Container.

“Proprietary” or “Proprietary Information” means that information provided by Contractor to the City that is protected from disclosure by the California Public Records Act and meets that definition of Proprietary Information. Nothing required to be submitted to the City in any report described in this

EXHIBIT A: DEFINITIONS

Agreement shall be considered Proprietary. If it is, Contractor's Customer lists for Customers served under this Agreement are specifically not considered Proprietary for the purposes of this Agreement; however, the City may protect such information from disclosure consistent with the provisions of the Public Records Act.

"Public Street" means all City-owned and maintained paved areas between the normal Curb line of a roadway, including public parking lots, roadway dividers, and medians.

"Rate" means the maximum amount, expressed as a dollar unit, approved by the City that the Contractor may bill a Customer for providing services under this Agreement. A Rate has been established for each individual Service Level and the initial Rates for Rate Period One are presented in Exhibit G3. The Rates approved by City are the maximum Rate that Contractor may charge a Customer and Contractor may, in its sole discretion, charge any amount up to and including the maximum Rate approved by the City.

"Rate Period" means a twelve (12) month period, commencing July 1 and concluding June 30.

"Recyclable Materials" means those Discarded Materials that the Generators set out in Recyclable Materials Containers for Collection for the purpose of Recycling by the Contractor and that exclude Excluded Waste. No Discarded Materials shall be considered Recyclable Materials unless such material is separated from Organic Materials, and Solid Waste. Recyclable Materials shall include, but not be limited to: newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons, milk cartons and similar packaging, telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, tabletop beverage containers, cereal, and other similar food boxes yet excluding paper tissues, paper towels, paper with plastic coating, paper contaminated with food, wax paper, Tyvek non-tearing paper envelopes); chipboard; corrugated Cardboard; glass containers of any color (including brown, clear, and green glass bottles and jars); aluminum (including beverage containers and small pieces of scrap metal); steel, tin or bi-metal cans; mixed plastics such as plastic containers (no. 1 to 7), except expanded Polystyrene (EPS); bottles including containers made of PP (no. 5), HDPE (no. 2), , or PET (no. 1); film plastic (when clean, dry, and contained inside of a plastic bag); dry cell household batteries when placed on the Recyclable Materials Cart in a sealed heavy-duty plastic bag; and, those materials added by the Contractor from time to time.

"Recycle" or "Recycling" means the process of sorting, cleansing, treating, and reconstituting at a Recyclable Materials Processing Facility materials that would otherwise be Disposed of at a landfill for the purpose of returning such materials to the economy in the form of raw materials for new, reused, or reconstituted products. Recycling includes processes deemed to constitute a reduction of landfill Disposal pursuant to 14 CCR, Division 7, Chapter 12, Article 2. Recycling does not include gasification or transformation as defined in Public Resources Code Section 40201.

"Renewable Natural Gas" or "RNG" means gas derived from Organic Waste that has been Diverted from a landfill and Processed at an in-vessel digestion facility that is permitted or otherwise authorized by 14 CCR to recover Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(62).

EXHIBIT A: DEFINITIONS

“Residential” shall mean of, from, or pertaining to a Single-Family Premises or Multi-Family Premises including Single-Family homes, apartments, condominiums, Townhouse complexes, mobile home parks, and cooperative apartments.

“Residue” means those materials which, after Processing, are Disposed rather than Recycled due to either the lack of markets for materials or the inability of the Processing Facility to capture and recover the materials.

“Reusable Materials” means items that are capable of being used again after minimal Processing. Reusable Materials may be Collected Source Separated or recovered through a Processing Facility.

“Roll-Off Box” means a metal Container with a capacity of (10) or more cubic yards that is normally loaded onto a motor vehicle and Transported to an appropriate Approved Facility.

“Roll-Out Service” means a service provided to Multi-Family Dwellings and Commercial Premises where Contractor's driver must dismount the Collection vehicle and move one (1) or more Bins in order to accomplish Collection using the standard Collection vehicle.

“SB 1383” means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a Statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

For the purposes of this Agreement, SB 1383 specifically refers to the Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle and adopted in November 2020 that created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.

“Self-Haul” or “Self-Hauler” means a Person who hauls Discarded Materials, recovered material, or any other material, to another Person, or as otherwise defined in 14 CCR Section 18982(a)(66). Self-Hauler also includes a Person who back-hauls waste, as defined in 14 CCR Section 18982(a)(66)(A).

“Senior” or “Senior Citizen” means a Person sixty-two (62) years of age or older, or fifty-five (55) years of age or older in a Senior Citizen housing development as defined in California State Civil Code Section 51.3(b)(1).

“Service Level” refers to the size of a Customer’s Container and the frequency of Collection service.

“Service Opportunity” shall mean each individual scheduled opportunity the Contractor has to Collect from a Container at a Customer’s location. For example, a Commercial Customer receiving Recyclable Materials Collection service two (2) times per week from two (2) Containers, Organic Materials Collection service two (2) times per week from (2) Containers, and Solid Waste Collection service two (2) times per week from two (2) Containers would have a total of twelve (12) Service Opportunities each week. Service Opportunities shall be calculated based on the subscription levels presented in Contractor’s most recent Quarterly Report to City.

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“Sharps Waste” means waste generated by a household that includes a hypodermic needle, syringe, or lancet as defined in State Health and Safety Code (H & S Code) Sections 40190.5 and 117671.

“Single-Family” means, notwithstanding any contrary definition in City Code, any detached or attached house or residence designed or used for occupancy by one (1) family, provided that Collection service feasibly can be provided to such Premises as an independent unit, and the Owner or Occupant of such independent unit is billed directly for the Collection service. Single-Family includes Townhouses, and each independent unit of duplex, tri-plex, or four-plex Residential structures, regardless of whether each unit is separately billed for their specific Service Level.

“Solid Waste” means solid waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated hereunder. Excluded from the definition of Solid Waste are Excluded Waste, C&D, Source Separated Recyclable Materials, Source Separated Organic Materials, and radioactive waste. Notwithstanding any provision to the contrary, Solid Waste may include de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of Household Hazardous Waste in compliance with Section 41500 and 41802 of the California Public Resources Code as may be amended from time to time. Solid Waste includes salvageable materials only when such materials are included for Collection in a Solid Waste Container not Source Separated from Solid Waste at the site of generation.

“Solid Waste Programming Fee” means the fee paid by Contractor to City to reimburse the City for the cost of providing certain services and programs that are related to the provision of Solid Waste services. The Contractor shall pay a Solid Waste Programming Fee to the City each month. The amount of the Solid Waste Programming Fee shall equal \$119,166.67 per month in Rate Period One.

“Source Separated,” “Source Separation,” or “Source Separating” means the segregation, by the Generator, of materials designated for separate Collection for some form of Recycling, Composting, recovery, or reuse.

“Split-Bin” or “Split-Container” means a Container that is split or divided into two sections in order to segregate two Source Separated Discarded Material types in one Container.

“State” means the State of California.

“Subcontractor” means a Party who has entered into a contract, express or implied, with the Contractor for the performance of an act that is necessary for the Contractor’s fulfillment of its obligations for providing service under this Agreement. Vendors providing materials and supplies to Contractor shall not be considered Subcontractors.

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

“Tier One Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one of the following, each as defined in 14 CCR Section 18982:

- A. Supermarket.

EXHIBIT A: DEFINITIONS

- B. Grocery Store with a total facility size equal to or greater than ten thousand (10,000) square feet.
- C. Food Service Provider.
- D. Food Distributor.
- E. Wholesale Food Vendor.

If the definition in 14 CCR Section 18982(a)(73) of Tier One Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(73) shall apply to this Agreement.

“Tier Two Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one of the following, each as defined in 14 CCR Section 18982:

- A. Restaurant with two hundred and fifty (250) or more seats, or a total facility size equal to or greater than five thousand (5,000) square feet.
- B. Hotel with an on-site food facility and two hundred (200) or more rooms.
- C. Health facility with an on-site food facility and one hundred (100) or more beds.
- D. Large Venue.
- E. Large Event.
- F. A State agency with a cafeteria with two hundred fifty (250) or more seats or total cafeteria facility size equal to or greater than five thousand (5,000) square feet.
- G. A local education agency with an on-site food facility. If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(74) shall apply to this Agreement.

“Ton” or “Tonnage” means a unit of measure for weight equivalent to two thousand (2,000) standard pounds where each pound contains sixteen (16) ounces.

“Townhouse” means an attached or semi-attached Single-Family Premises within a group of attached or semi-attached Single-Family Premises, regardless of whether the Premises is billed individually or through a central account (e.g., homeowner association, property manager), wherein each unit maintains individual Collection service subscription, as determined in writing by the City Franchise Contract Administrator.

“Trade Secrets” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) derives actual independent economic value from not being generally known to the public or to other Persons who can obtain economic value from its disclosure or use; and, (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

“Transfer” means the act of transferring the materials Collected by Contractor in its route vehicles into larger vehicles for Transport to other facilities for the purpose of Recycling or Disposing of such materials.

“Transport” or “Transportation” means the act of conveying Collected materials from one location to another.

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

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“Vacation Rental” means a short-term Dwelling Unit, or any portion thereof, offered for rent or rented for dwelling, lodging or sleeping for no more than thirty (30) consecutive days in the City, including Single-Family or Multi-Family Dwelling Units. This excludes bed and breakfasts, hotels, motels, and timeshares. Or as otherwise defined by Chapter 24 of the City municipal code.

“Working Days” means days on which the Contractor is required to provide regularly scheduled Collection services under this Agreement.

“Yard Trimmings” means those Discarded Materials that will decompose and/or putrefy, including, but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of Organic Materials resulting from normal yard and landscaping maintenance that may be specified in City Legislation for Collection and Processing as Organic Materials under this Agreement. Yard Trimmings does not include items herein defined as Excluded Waste. Yard Trimmings are a subset of Organic Materials. Yard Trimmings placed for Collection may not exceed six (6) inches in diameter and three (3) feet in length and must fit within the Contractor-provided Container.

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**EXHIBIT B:
DIRECT SERVICES**

EXHIBIT B: DIRECT SERVICES

The following Exhibits (B1 through B5) describe the programs which, in aggregate, represent the direct services to be performed under this Agreement by the Contractor.

Each of the following Exhibits (B1 through B5) present the programs to be provided to each Customer Type by Contractor. Within each program description are specific requirements for the:

- Type and size of Containers or Service Level to be offered by Contractor under each program;
- Frequency of service to be offered by Contractor to Customers;
- Location of service, including an indication of whether or not additional charges may apply if a Customer selects a location that is more costly to serve (e.g., back-yard service);
- Prohibited Container Contaminants and materials that are acceptable within the program;
- Provision of additional services to the Customer if the standard Service Levels are inadequate, either on a regular or periodic basis, and an indication of whether or not additional charges may apply; and/or,
- Other requirements and considerations of the program.

Contractor shall provide the services for each program described in accordance with the specific program requirements detailed in Exhibits B1 through B5. Contractor shall promote such programs using the public education and outreach methods described in Exhibit C.

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**EXHIBIT B1:
SINGLE-FAMILY RESIDENTIAL SERVICES**

EXHIBIT B1:

SINGLE-FAMILY RESIDENTIAL SERVICES

1. Recyclable Materials Collection

Contractor shall Collect Recyclable Materials placed in Contractor-provided Containers one (1) time per week from Single-Family (including Townhouse) Customers and Transport all Recyclable Materials to the Approved Recyclable Materials Processing Facility for Processing.

Containers: Carts

Container Sizes: 35-, 64-, and 96-gallon Carts (or comparable size approved by the City). Default Container size is 96-gallon. 64-gallon service shall be made available for no additional charge, upon request by Customer.

Service Frequency: One (1) time per week on the same day as Organic Materials and Solid Waste Collection services.

Service Location: Curbside

Acceptable Materials: Recyclable Materials

Prohibited Container Contaminants: Solid Waste, Organic Materials, Excluded Waste

Additional Service: Single-Family Customers shall receive one (1) Recyclable Materials Cart standard and may request up to two (2) additional Recyclable Materials Carts at no additional charge. Contractor shall provide additional Recyclable Materials Carts to Single-Family Customers upon request and may charge the appropriate Rate approved by the City.

Contractor shall allow Single-Family Customers to place unlimited flattened Cardboard (pieces no larger than 2' x 3') contained in tied bundles, adjacent to the Recyclable Materials Cart on their regularly-scheduled Collection day at no additional charge to the Customer.

Other Requirements: Contractor shall accept discarded cell phones and household batteries in the Recyclable Materials program, provided that those batteries have been separately packaged in a sealed, clear, storage plastic bag and placed on top of the Recyclable Materials Cart.

Contractor may refuse to Collect a Recyclable Materials Container that contains more than twenty percent (20%) by volume of Prohibited Container Contaminants, provided that Contractor leaves a non-Collection notice in accordance with Section 5.3.1.B of this Agreement. Contractor shall instruct the Customer to either remove the Prohibited Container Contaminants, or pay the City-approved Rate to have the contents of the contaminated Recyclable Materials Container Collected as Solid Waste. Contractor may charge the Customer the City-approved Rate for a special pick-up if the Customer elects to have their corrected or contaminated Recyclable Materials Container serviced before the next regular Collection day. Prior to refusing Collection of a contaminated Container and leaving a non-Collection notice, Contractor must provide three (3) courtesy notices in accordance with Section 5.3.1.B of this Agreement. Contractor shall keep a record of all non-Collection notices and courtesy notices issued to Customers, recording at a minimum the date,

EXHIBIT B1:

SINGLE-FAMILY RESIDENTIAL SERVICES

Customer address, and material type of the Container in question. Contractor shall keep a record of all non-Collection notices and courtesy notices issued to Customers, recording at a minimum the date, Customer address, Customer account number, Customer phone number, and material type of the Container in question.

2. Organic Materials Collection

Contractor shall Collect Organic Materials placed in Contractor-provided Carts one (1) time per week from Single-Family Customers and Transport all Organic Materials to the Designated Organic Materials Processing Facility for Processing.

Containers: Carts

Container Sizes: 35-, 64-, 96-gallons (or comparable size approved by the City).

Default Container size of 96-gallon.

Service Frequency: One (1) time per week on the same day as Recyclable Materials and Solid Waste Collection service.

Service Location: Curbside

Acceptable Materials: Organic Materials (including Yard Trimmings and Food Waste)

Prohibited Container Contaminants: Recyclable Materials, Solid Waste, Excluded Waste

Additional Service: Single-Family Customers shall receive one (1) Organic Materials Cart standard and may request up to one (1) additional Organic Materials Carts at no additional charge. Contractor shall provide additional Organic Materials Carts to Single-Family Customers upon request and may charge the appropriate Rate approved by the City.

Other Requirements: Contractor shall provide to all Single-Family Customers kitchen pails designed to contain Food Scraps and Food-Soiled Paper prior to placement in the Customer's Organic Materials Cart. Kitchen pail specifications shall be approved by the City prior to ordering and distribution.

Single-Family Customers may place Organic Materials in Compostable Plastic bags, paper bags, or clear or translucent plastic liners, and then place the bagged Organic Materials into their Organic Materials Carts for Collection. Compostable bags must be labeled as "Compostable" by the manufacturer and certified by BPI. Contractor shall submit the required Compostable Plastic Processing notifications in accordance with Section 4.3.B and Exhibit D of this Agreement.

Contractor may refuse to Collect an Organic Materials Container that contains more than twenty percent (20%) by volume of Prohibited Container Contaminants, provided that Contractor leaves a non-Collection notice in accordance with Section 5.3.1.B of this Agreement. Contractor shall instruct the Customer to either remove the Prohibited Container Contaminants, or pay the City-approved Rate to have the contents of the contaminated Organic Materials Container Collected as Solid Waste. Contractor may charge the Customer the

EXHIBIT B1: SINGLE-FAMILY RESIDENTIAL SERVICES

City-approved Rate for a special pick-up if the Customer elects to have their corrected or contaminated Organic Materials Container serviced before the next regular Collection day. Prior to refusing Collection of a contaminated Container and leaving a non-Collection notice, Contractor must provide three (3) courtesy notices in accordance with Section 5.3.1.B of this Agreement. Contractor shall keep a record of all non-Collection notices and courtesy notices issued to Customers, recording at a minimum the date, Customer address, and material type of the Container in question. Contractor shall keep a record of all non-Collection notices and courtesy notices issued to Customers, recording at a minimum the date, Customer address, Customer account number, Customer phone number, and material type of the Container in question.

3. Solid Waste Collection

Contractor shall Collect Solid Waste placed in Contractor-provided Carts one (1) time per week from Single-Family Customers and Transport all Solid Waste to the Approved Disposal Facility for Disposal.

- Containers:** Carts
- Container Sizes:** 35-, 64-, and 96-gallons (or comparable sizes approved by the City) Default Container size is 35-gallon.
- Service Frequency:** One (1) time per week on the same day as Recyclable Materials and Organic Materials Collection service.
- Service Location:** Curbside
- Acceptable Materials:** Solid Waste
- Prohibited Container Contaminants:** Recyclable Materials, Organic Materials, Excluded Waste
- Additional Service:** Contractor shall provide additional Solid Waste Carts to Single-Family Customers upon request and shall charge the appropriate Rate approved by the City.
- Other Requirements:** None

4. Large Landfill Item and Reusable Materials Collection Programs

Contractor shall Collect Large Landfill Items, Reusable Materials, and other materials described herein from Single-Family Customers. In the event a question ever arises as to whether a specific item or category of items meets the definition of Large Landfill Item, the City Franchise Contract Administrator will make the final determination. Contractor shall Transport all Collected materials to the appropriate Approved Facility for reuse, repair, Processing, or Disposal based on the Reusable Materials hierarchy. Contractor shall implement separate donation and landfill week Collection programs as described below.

A. ON-CALL LARGE LANDFILL ITEM COLLECTION

- Containers:** Not applicable
- Service Level:** Up to five (5) Large Landfill Items, E-Waste, or Discarded Materials. Items shall not exceed six (6) feet in length, or two-hundred (200) pounds.
- Service Frequency:** Three (3) times per year
- Service Location:** Curbside

EXHIBIT B1: SINGLE-FAMILY RESIDENTIAL SERVICES

Acceptable Materials: Large Landfill Items, E-Waste, or Discarded Materials that cannot be reused

Prohibited Container Contaminants: Food Scraps, Yard Trimmings, Hazardous Materials, abandoned automobiles, trees, Excluded Waste or any single item (e.g., large auto parts, etc.) that exceeds two-hundred (200) pounds in weight.

Additional Service: Contractor shall provide additional Large Landfill Item and E-Waste Collections to Single-Family Customers, beyond five (5) times per year, and shall Collect additional acceptable materials (as described herein) that exceed the required Service Level (as requested by Customer), and may charge the appropriate Rates approved by the City for such additional service.

Other Requirements: Contractor shall provide the service to the Customer no later than the Customer's next Collection service day.

B. "LANDFILL" AND "DONATION" COLLECTION WEEKS

Containers: Not applicable

Service Level: Unlimited Large Landfill Items, E-Waste, or Discarded Materials Collection during designated "landfill" weeks. Unlimited Reusable Materials Collection during designated "donation" weeks.

Service Frequency: Four (4) landfill and four (4) donation weeks, annually.

Service Location: Curbside

Acceptable Materials: Large Landfill Items (landfill weeks only), Reusable Materials (donation weeks only)

Prohibited Container Contaminants: Food Scraps, Yard Trimmings, Hazardous Materials, abandoned automobiles, trees, Excluded Waste, or any single item (e.g., large auto parts, etc.) that exceeds two-hundred (200) pounds in weight

Additional Service: None.

Other Requirements: Contractor shall hold landfill and donation Collection week(s) a minimum of four (4) weeks per year each. Two (2) landfill and two (2) donation Collection weeks in the Spring, and two (2) landfill and two (2) donation Collection weeks in the Fall, as scheduled and agreed upon by the Contractor and the City. Customers call to schedule pick up of items with Contractor. Reusable Materials Collection is only scheduled for items that can be reused or donated to an appropriate Approved Facility or organization for Reuse.

Contractor shall not Dispose of materials Collected during the donation weeks unless the materials cannot be reused, repaired, or Recycled. Contractor shall Transport, Process, and Dispose of Reusable Materials Collected during donation week(s) from Customers in accordance with the following hierarchy: (1) reuse as is (where energy efficiency is not compromised); (2) disassemble for reuse or Recycling; (3) Recycle or Compost; (4) Dispose. Contractor shall Transport Large Landfill Items and Reusable Materials to the appropriate Approved Facility for reuse or Processing.

EXHIBIT B1: SINGLE-FAMILY RESIDENTIAL SERVICES

5. Holiday Tree Collection

Annually, commencing the day after December 25 and three (3) weeks thereafter, the Contractor shall Collect holiday trees from Single-Family Customers. Customers are required to place the holiday trees Curbside on the Customer's regularly scheduled Collection day. Holiday trees must be removed from stands and placed in the Organic Materials Collection Container with the lid closed, or placed adjacent to the Cart at the Curb; and, be free of ornaments, garlands, tinsel, flocking, or other decorations. The Contractor shall not be required to Collect holiday trees that do not meet the aforementioned criteria. The Contractor shall affix a non-Collection notice to any non-Collected tree informing the Customer of the reason(s) for non-Collection. Contractor may charge City-approved Rates to return and Collect a previously non-Collected holiday tree that has been corrected and set out. Contractor shall deliver all Collected holiday trees to the Approved Organic Materials Processing Facility for Processing.

At the City's request, Contractor shall provide a Roll-Off Box at the City yard to provide Single-Family Customers with the opportunity to drop-off flocked and large holiday trees.

Holiday tree Collection services shall be provided at no additional cost to the City or the Customer.

6. Alternative Service Location for Disabled Single-Family Customers

Contractor shall allow for Persons that have a Disability as defined by the Americans with Disabilities Act (which means Public Law 101-336, 104 Stat. 327, 42 U.S.C. 12101-12213 and 27 U.S.C. 225 and 611, and all Federal rules and regulations relating thereto) that are Occupants of Single-Family Premises to receive Collection services at a location other than Curbside at no extra charge to the Customer. Contractor shall review all applications (which shall include statements from physicians) made by Customers to determine conformance with this exemption provision and shall grant exemptions, if applicable. Contractor shall make reasonable accommodations with regard to provision and servicing of Containers (e.g., Container size and type, placement of Containers for Collection, etc.) at no additional cost to the Customer. Upon Customer request, Contractor may make such alternative service locations available to Single-Family Customers that do not have a Disability (as defined herein) for an additional, City-approved Rate.

7. Senior/ADA Curbside Household Hazardous Waste (HHW)

During the Term of this Agreement, Contractor shall provide for Curbside Collection of HHW and Universal Waste generated by Senior residents and Disabled residents. Customers will be provided service through making a reservation in advance, which shall be on a first-come, first served basis until all available spots are filled. Contractor shall offer at least one (1) Curbside pickup day each month. There will be no limit on the number of items Collected. Contractor shall additionally provide Customers on a monthly basis, with an announcement noticing at a minimum, the date, time, and location of the next HHW Curbside HHW event.

Contractor is responsible for the acceptance, packing for Transport, Transfer, and Disposal of HHW. The program will include, at a minimum, the items listed in Exhibit J listed as Acceptable Waste. The Contractor is not required to accept the items listed in Exhibit J as Unacceptable Waste. The City agrees to assist the Contractor in applying for grants to fund HHW Collection; however, where the City has used reasonable efforts to assist the Contractor, the Contractor's obligation to provide HHW Collection shall continue even though grant funding is not obtained.

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**EXHIBIT B2:
MULTI-FAMILY RESIDENTIAL SERVICES**

EXHIBIT B2: MULTI-FAMILY RESIDENTIAL SERVICES

1. Recyclable Materials Collection

Contractor shall Collect Recyclable Materials placed in Contractor-provided Containers from Multi-Family Customers at no additional charge with Customer subscription to Solid Waste Collection service, and shall Transport all Recyclable Materials to the Approved Recyclable Materials Processing Facility for Processing. Recyclable Materials Collection Services shall be provided to Multi-Family Customers at no additional charge.

Containers: Carts, Bins

Container Sizes: 35-, 64-, and 96-gallon Carts (or comparable size approved by the City); 1-, 2-, 3-, 4-, 5-, and 6-cubic yard Bins, and 3-cubic yard Split-Containers (Recyclable Materials/Solid Waste) as requested by Customer. 96-gallon Cart shall be the default Container size when Cart Service is provided. Multi-Family with four (4) to eight (8) Dwelling Units must have at least two (2), 96-gallon Carts per four (4) units. Multi-Family with nine (9) or more Dwelling Units must subscribe to Bin service.

Service Frequency: Up to six (6) times per week but not less than one (1) time per week (as requested by Customer).

Service Location: Curbside or other Customer-selected service location at the Multi-Family Premises

Acceptable Materials: Recyclable Materials

Prohibited Container Contaminants: Organic Materials, Solid Waste, Excluded Waste

Additional Service: Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at an approved additional charge.

Other Requirements: Contractor shall provide to all Multi-Family Dwelling Units personal Recyclable Materials totes designed to contain Recyclable Materials prior to placement in the Recyclable Materials Container. Personal Recyclable Materials tote specifications shall be approved by the City prior to ordering and distribution.

Contractor shall make contact with each and every Multi-Family Customer in advance of the Commencement Date to determine appropriate Container sizes and service frequency. Contractor shall deliver Recyclable Materials Containers to each and every Multi-Family Customer at the same time that the Contractor delivers Solid Waste Containers.

Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and service Containers (additional charge may apply). A push/pull of Containers up to twenty-five (25) feet from the enclosure/Container location to the Collection vehicle will be provided at no additional charge (push up to 25 feet then return).

Contractor may refuse to Collect a Recyclable Materials Container that contains more than twenty percent (20%) by volume of Prohibited Container Contaminants, provided that Contractor leaves a non-Collection notice in

EXHIBIT B2: MULTI-FAMILY RESIDENTIAL SERVICES

accordance with Section 5.3.1.B of this Agreement. Contractor shall instruct the Customer to either remove the Prohibited Container Contaminants, or pay the City-approved Rate to have the contents of the contaminated Recyclable Materials Container Collected as Solid Waste. Contractor may charge the Customer the City-approved Rate for a special pick-up if the Customer elects to have their corrected or contaminated Recyclable Materials Container serviced before the next regular Collection day. Prior to refusing Collection of a contaminated Container and leaving a non-Collection notice, Contractor must provide three (3) courtesy notices in accordance with Section 5.3.1.B of this Agreement. Contractor shall keep a record of all non-Collection notices and courtesy notices issued to Customers, recording at a minimum the date, Customer address, and material type of the Container in question. Contractor shall keep a record of all non-Collection notices and courtesy notices issued to Customers, recording at a minimum the date, Customer address, Customer account number, Customer phone number, and material type of the Container in question.

2. Organic Materials Collection

Contractor shall Collect Organic Materials in Contractor-provided Carts not less than one (1) time per week from Multi-Family Customers and Transport all Organic Materials to the Approved Organic Materials Processing Facility for Processing. Organic Materials Collection services shall be provided to Multi-Family Customers at no additional charge.

- Containers:** Carts, Bins
- Container Sizes:** 35-, 64-, and 96-gallon Carts (or comparable size approved by the City); 1-, 1.5- 2-cubic yard Bins, as requested by Customer.
- Service Frequency:** Up to six (6) times per week but not less than one (1) time per week, as requested by the Multi-Family Customer.
- Service Location:** Curbside or other Customer-selected service location at the Multi-Family Premises
- Acceptable Materials:** Organic Materials (including Yard Trimmings and Food Waste)
- Prohibited Container Contaminants:** Recyclable Materials, Solid Waste, Excluded Waste
- Additional Service:** Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at an approved additional charge.
- Other Requirements:** Contractor shall provide to all Multi-Family Dwelling Units kitchen pails designed to contain Food Scraps prior to placement in the Customer's Organic Materials Container. Kitchen pail specifications shall be approved by the City prior to ordering and distribution.

Contractor shall make contact with each and every Multi-Family Customer in advance of the Commencement Date to determine appropriate Container sizes and service frequency. Contractor shall deliver Organic Materials Containers to each and every Multi-Family Customer at the same time that the Contractor

EXHIBIT B2: MULTI-FAMILY RESIDENTIAL SERVICES

delivers Solid Waste Containers.

Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers (additional charge may apply). A push/pull of Containers up to twenty-five (25) feet from the enclosure/Container location to the Collection vehicle will be provided at no additional charge (push up to 25 feet then return).

Contractor may refuse to Collect an Organic Materials Container that contains more than twenty percent (20%) by volume of Prohibited Container Contaminants, provided that Contractor leaves a non-Collection notice in accordance with Section 5.3.1.B of this Agreement. Contractor shall instruct the Customer to either remove the Prohibited Container Contaminants, or pay the City-approved Rate to have the contents of the contaminated Organic Materials Container Collected as Solid Waste. Contractor may charge the Customer the City-approved Rate for a special pick-up if the Customer elects to have their corrected or contaminated Organic Materials Container serviced before the next regular Collection day. Prior to refusing Collection of a contaminated Container and leaving a non-Collection notice, Contractor must provide three (3) courtesy notices in accordance with Section 5.3.1.B of this Agreement. Contractor shall keep a record of all non-Collection notices and courtesy notices issued to Customers, recording at a minimum the date, Customer address, and material type of the Container in question. Contractor shall keep a record of all non-Collection notices and courtesy notices issued to Customers, recording at a minimum the date, Customer address, Customer account number, Customer phone number, and material type of the Container in question.

3. Solid Waste Collection

Contractor shall Collect Solid Waste placed in Contractor-provided Containers not less than one (1) time per week from Multi-Family Customers and Transport all Solid Waste to the Approved Disposal Facility for Disposal.

- Containers:** Carts, Bins
- Container Sizes:** 35-, 64-, and 96-gallon Carts (or comparable size approved by the City); 1-, 2-, 3-, 4-, 5-, and 6-cubic yard Bins, and 3-cubic yard Split-Containers (Recyclable Materials/Solid Waste) as requested by Customer
- Service Frequency:** Up to seven (7) times per week but not less than one (1) time per week, as requested by Customer.
- Service Location:** Curbside or other Customer-selected service location at the Multi-Family Premises.
- Acceptable Materials:** Solid Waste
- Prohibited Container Contaminants:** Recyclable Materials, Organic Materials, Excluded Waste
- Additional Service:** Special pick-ups requested by a Customer, on days other than their regularly

EXHIBIT B2: MULTI-FAMILY RESIDENTIAL SERVICES

scheduled Collection day, will be available at an approved additional charge.

Other Requirements: Contractor shall make contact with each and every Multi-Family Customer in advance of the Commencement Date to determine appropriate Container sizes and service frequency.

Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and service Containers (additional charge may apply). A push/pull of Containers up to twenty-five (25) feet from the enclosure/Container location to the Collection vehicle will be provided at no additional charge (push up to 25 feet then return).

4. "Landfill" and "Donation" Weeks Collection

Contractor shall Collect Large Landfill Items, Reusable Materials, and other materials described herein from Multi-Family Customers. In the event a question ever arises as to whether a specific item or category of items meets the definition of a Large Landfill Item(s), the City Franchise Contract Administrator shall make a final determination. Contractor shall Transport all Collected materials to the appropriate Approved Facility for reuse, Processing, or Disposal based on the Reusable Materials hierarchy. Contractor shall implement separate donation and landfill week Collection programs as described below.

Containers: Not applicable

Service Level: Unlimited Large Landfill Items, E-Waste, or Discarded Materials Collection during designated "landfill" weeks. Unlimited Reusable Materials Collection during designated "donation" weeks.

Service Frequency: Four (4) landfill and four (4) donation weeks, annually.

Service Location: Curbside

Acceptable Materials: Large Landfill Items (landfill weeks only), Reusable Materials (donation weeks only)

Prohibited Container Contaminants: Food Scraps, Yard Trimmings, Hazardous Materials, abandoned automobiles, trees, Excluded Waste or any single item (e.g., large auto parts, etc.) that exceeds two-hundred (200) pounds in weight.

Additional Service: None.

Other Requirements: Contractor shall hold landfill and donation Collection week(s) a minimum of four (4) weeks per year each. Two (2) landfill and two (2) donation Collection weeks in the Spring, and two (2) landfill and two (2) donation Collection weeks in the Fall, as scheduled and agreed upon by the Contractor and the City. Customers call to schedule pick up of items with Contractor. Reusable Materials Collection is only scheduled for items that can be reused or donated to an appropriate Approved Facility, or organization, for Reuse.

Contractor shall not Dispose of materials Collected during the landfill and donation weeks unless the materials cannot be reused, repaired, Recycled, or Processed. Contractor shall Transport, Process, and Dispose of Reusable

EXHIBIT B2: MULTI-FAMILY RESIDENTIAL SERVICES

Materials Collected during donation week(s) from Customers in accordance with the following hierarchy: (1) reuse as is (where energy efficiency is not compromised); (2) disassemble for reuse or Recycling; (3) Recycle or Compost; (4) Dispose. Contractor shall Transport Large Landfill Items and Reusable Materials to the appropriate Approved Facility for reuse or Processing.

5. Holiday Tree Collection

Annually, commencing the day after December 25 and three (3) weeks thereafter, or as otherwise approved by the City Franchise Contract Administrator, Contractor shall Collect holiday trees from Multi-Family Customers at a mutually agreed upon time, date, and designated Collection location, as arranged by the Contractor and each Multi-Family property Owner or manager. Contractor shall offer each Multi-Family property Owner or manager Collection service Curbside, or from designated location at the Multi-Family Premises mutually agreed upon between Contractor and the property Owner or manager.

Holiday trees must be removed from stands; placed in the Organic Materials Collection Container with the lid closed, or placed adjacent to the Cart at the Curb; and, be free of ornaments, garlands, tinsel, flocking, or other decorations. The Contractor shall not be required to Collect holiday trees that do not meet the aforementioned criteria and/or are not placed at the agreed upon Collection location and time period. The Contractor shall affix a non-Collection notice to any non-Collected holiday tree informing the Customer of the reason(s) for non-Collection.

At the City's request, Contractor shall provide a Roll-Off Box at the City yard to provide Multi-Family Customers with the opportunity to drop-off flocked and large holiday trees.

6. Container Sharing

In special circumstances for Customers with significant space limitations and upon approval by the City Franchise Contract Administrator, the Contractor shall permit Multi-Family Customers to share Discarded Materials service with other geographically proximate Customers. Such shared service shall be performed and billed as if it were being provided to a single Customer, with the exception that Contractor shall require all Customers sharing a single service account to identify a "Primary Responsible Party" that will serve as the singular point of contact for communication and billing from Contractor and the City, along with a list of all addresses with which the Primary Responsible Party will share service.

7. Split-Containers

The Contractor shall, upon Customer request, provide Split-Bins for Multi-Family Customers with space limitations for Recyclable Materials and Solid Waste, and shall Collect, Transport, Transfer, and Process or Dispose of each material type in accordance with this Agreement.

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**EXHIBIT B3:
COMMERCIAL SERVICES**

EXHIBIT B3: COMMERCIAL SERVICES

1. Recyclable Materials Collection

Contractor shall Collect Recyclable Materials placed in Contractor-provided Containers from Commercial Customers subscribing to Recyclable Materials Collection service and Transport all Recyclable Materials to the Approved Recyclable Materials Processing Facility for Processing.

Containers: Carts, Bins, Roll-Off Boxes, and Compactors

Container Sizes: 96-gallon Carts (or comparable size approved by the City); 1-, 2-, 3-, 4-, 5-, and 6-cubic yard Bins; and 3-cubic yard Split-Containers (Recyclable Materials/Solid Waste); 2- and 3-cubic yard Bin Compactors; and 10-, 20-, 30-, and 40-cubic yard Roll-Off Boxes; or Customer owned Compactors as requested by the Customer.

If any Customer receives service for Solid Waste, Recyclable Materials, and Organic Materials Carts in the same manner as Single-Family Customers, all Carts must be serviced on the same Collection day.

Service Frequency: Up to six (6) times per week, but not less than one (1) time per week, as requested by Customer.

Service Location: Curbside or other Customer-selected service location at the Commercial Premises; additional charges may apply if the service location is greater than twenty-five (25) feet from the enclosure/container location to the Collection Vehicle.

Acceptable Materials: Recyclable Materials

Prohibited Container Contaminants: Organic Materials, Solid Waste, Excluded Waste

Additional Service: Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at an approved additional charge.

Other Requirements: Contractor shall make contact with each and every Commercial Customer in advance of the Commencement Date to determine appropriate Container sizes and service frequency. Contractor shall deliver Recyclable Materials Containers to each and every Commercial Customer at the same time that the Contractor delivers Solid Waste Containers.

Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers (additional charge may apply). A push/pull of Containers up to twenty-five (25) feet from the enclosure/Container location to the Collection vehicle will be provided at no additional charge (push up to 25 feet then return.)

Contractor may refuse to Collect a Recyclable Materials Container that contains more than twenty percent (20%) by volume of Prohibited Container Contaminants, provided that Contractor leaves a non-Collection notice in accordance with Section 5.3.1.B of this Agreement. Contractor shall instruct the Customer to either remove the Prohibited Container Contaminants, or pay the City-approved Rate to have the contents of the contaminated Recyclable Materials Container Collected as Solid Waste. Contractor may charge the

EXHIBIT B3: COMMERCIAL SERVICES

Customer the City-approved Rate for a special pick-up if the Customer elects to have their corrected or contaminated Recyclable Materials Container serviced before the next regular Collection day. Prior to refusing Collection of a contaminated Container and leaving a non-Collection notice, Contractor must provide three (3) courtesy notices in accordance with Section 5.3.1.B of this Agreement. Contractor shall keep a record of all non-Collection notices and courtesy notices issued to Customers, recording at a minimum the date, Customer address, and material type of the Container in question. Contractor shall keep a record of all non-Collection notices and courtesy notices issued to Customers, recording at a minimum the date, Customer address, Customer account number, Customer phone number, and material type of the Container in question.

2. Organic Materials Collection

A. YARD TRIMMINGS

Contractor shall Collect Organic Materials placed in Contractor-provided Containers not less than one (1) time per week from Commercial Customers and Transport all Organic Materials to the Approved Organic Materials Processing Facility for Processing. Nothing in this Section 2 of Exhibit B3 shall prevent other Persons from also providing similar services to businesses in the City, and charging for such service, provided that such Persons maintain a City-issued permit granting such right, in accordance with the City's Municipal Code.

- Containers:** Carts, Bins, Compactors
- Container Sizes:** 35-, or 64-gallon Carts (or comparable size approved by the City); 1-, 1.5-, and 2-cubic yard Bins; as requested by Customer.
- If any Customer receives service for Solid Waste, Recyclable Materials, and Organic Materials Carts in the same manner as Single-Family Customers, all Carts must be serviced on the same Collection day.
- Service Frequency:** Up to seven (7) times per week, but not less than one (1) time per week, as requested by Customer.
- Service Location:** Curbside or other Customer-selected service location at the Commercial Premises; additional charges may apply if the service location is greater than twenty-five (25) feet the enclosure/container location to the Collection Vehicle.
- Acceptable Materials:** Yard Trimmings
- Prohibited Container Contaminants:** Recyclable Materials, Solid Waste, Excluded Waste
- Additional Service:** Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at an approved additional charge.
- Other Requirements:** Contractor shall make contact with each and every Commercial Customer in advance of the Commencement Date to determine appropriate Container sizes and service frequency. Contractor shall deliver Organic Materials Containers to each and every Commercial Customer at the same time that the Contractor delivers Solid Waste Containers, unless that Commercial Customer has

EXHIBIT B3: COMMERCIAL SERVICES

demonstrated to the City that it is Diverting Organic Materials through subscription with another City-approved hauler (applicable to Yard Trimmings only), or other City-approved method.

Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers (additional charge may apply). A push/pull of Containers up to twenty-five (25) feet from the enclosure/Container location to the Collection vehicle will be provided at no additional charge (push up to 25 feet then return).

Contractor may refuse to Collect an Organic Materials Container that contains more than twenty percent (20%) by volume of Prohibited Container Contaminants, provided that Contractor leaves a non-Collection notice in accordance with Section 5.3.1.B of this Agreement. Contractor shall instruct the Customer to either remove the Prohibited Container Contaminants, or pay the City-approved Rate to have the contents of the contaminated Organic Materials Container Collected as Solid Waste. Contractor may charge the Customer the City-approved Rate for a special pick-up if the Customer elects to have their corrected or contaminated Organic Materials Container serviced before the next regular Collection day. Prior to refusing Collection of a contaminated Container and leaving a non-Collection notice, Contractor must provide three (3) courtesy notices in accordance with Section 5.3.1.B of this Agreement. Contractor shall keep a record of all non-Collection notices and courtesy notices issued to Customers, recording at a minimum the date, Customer address, and material type of the Container in question. Contractor shall keep a record of all non-Collection notices and courtesy notices issued to Customers, recording at a minimum the date, Customer address, Customer account number, Customer phone number, and material type of the Container in question.

B. FOOD WASTE

Contractor shall Collect Organic Materials placed in Contractor-provided Containers not less than one (1) time per week from Commercial Customers and Transport all Organic Materials to the Approved Organic Materials Processing Facility for Processing. Nothing in this Section 2 of Exhibit B3 shall prevent other Persons from also providing similar services to Commercial Customers in the City provided such Persons fall within the exemptions set forth in Section 1.2 of the Agreement and provided that such Persons maintain a City-issued permit granting such right, in accordance with the City's Municipal Code and provided such Persons comply with Applicable Law.

Containers: Carts, Bins, Compactors

Container Sizes: 35-, or 64-gallon Carts (or comparable size approved by the City); 1-, 1.5-, and 2-cubic yard Bins; as requested by Customer.

If any Customer receives service for Solid Waste, Recyclable Materials, and Organic Materials Carts in the same manner as Single-Family Customers, all Carts must be serviced on the same Collection day.

Service Frequency: Up to seven (7) times per week, but not less than one (1) time per week, as

EXHIBIT B3: COMMERCIAL SERVICES

requested by Customer.

Service Location: Curbside or other Customer-selected service location at the Commercial Premises; additional charges may apply if the service location is greater than twenty-five (25) feet from the enclosure/container location to the Collection Vehicle.

Acceptable Materials: Organic Materials (including Food Scraps)

Prohibited Container Contaminants: Recyclable Materials, Solid Waste, Excluded Waste

Additional Service: Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at an approved additional charge.

Other Requirements: Contractor shall make contact with each and every Commercial Customer in advance of the Commencement Date to determine appropriate Container sizes and service frequency. Contractor shall deliver Organic Materials Containers to each and every Commercial Customer at the same time that the Contractor delivers Solid Waste Containers, unless that Commercial Customer has demonstrated to the City that it is Diverting Organic Materials through subscription with another City-approved hauler (applicable to Yard Trimmings only), or other City-approved method.

Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers (additional charge may apply). A push/pull of Containers up to twenty-five (25) feet from the enclosure/Container location to the Collection vehicle will be provided at no additional charge (push up to 25 feet then return).

Contractor may refuse to Collect an Organic Materials Container that contains more than twenty percent (20%) by volume of Prohibited Container Contaminants, provided that Contractor leaves a non-Collection notice in accordance with Section 5.3.1.B of this Agreement. Contractor shall instruct the Customer to either remove the Prohibited Container Contaminants, or pay the City-approved Rate to have the contents of the contaminated Organic Materials Container Collected as Solid Waste. Contractor may charge the Customer the City-approved Rate for a special pick-up if the Customer elects to have their corrected or contaminated Organic Materials Container serviced before the next regular Collection day. Prior to refusing Collection of a contaminated Container and leaving a non-Collection notice, Contractor must provide three (3) courtesy notices in accordance with Section 5.3.1.B of this Agreement. Contractor shall keep a record of all non-Collection notices and courtesy notices issued to Customers, recording at a minimum the date, Customer address, and material type of the Container in question. Contractor shall keep a record of all non-Collection notices and courtesy notices issued to Customers, recording at a minimum the date, Customer address, Customer account number, Customer phone number, and material type of the Container in question.

EXHIBIT B3: COMMERCIAL SERVICES

3. Solid Waste Collection

Contractor shall Collect Solid Waste placed in Contractor-provided Containers not less than one (1) time per week from Commercial Customers and Transport all Solid Waste to the Approved Disposal Facility for Disposal.

Containers: Carts, Bins, Roll-Off Boxes, Compactors

Container Sizes: 35-, 64-, and 96-gallon Carts (or comparable size approved by the City); 1-, 2-, 3-, 4-, 5-, and 6-cubic yard Bins; and 3-cubic yard Split-Containers (Recyclable Materials/Solid Waste); 2-, 3- cubic yard Bin Compactors; and 10-, 20-, 30-, and 40-cubic yard Roll-Off Boxes; or Customer owned Compactors as requested by Customer.

If any Customer receives service for Solid Waste, Recyclable Materials, and Organic Materials Carts in the same manner as Single-Family Customers, all Carts must be serviced on the same Collection day.

Service Frequency: Up to seven (7) times per week, but not less than one (1) time per week, as requested by Customer.

Service Location: Curbside or other Customer-selected service location at the Commercial Premises; additional charges may apply if the service location is greater than twenty-five (25) feet from the enclosure/Container location to the nearest point that a Collection vehicle can access from a paved surface.

Acceptable Materials: Solid Waste

Prohibited Container Contaminants: Recyclable Materials, Organic Materials, Excluded Waste

Additional Service: Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at an approved additional charge.

Other Requirements: Contractor shall make contact with each and every Commercial Customer in advance of the Commencement Date to determine appropriate Container sizes and service frequency.

Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers (additional charge may apply). A push/pull of Containers up to twenty-five (25) feet from the enclosure/Container location to the Collection vehicle will be provided at no additional charge (push up to 25 feet then return).

4. Commercial Container Sharing

In special circumstances, for Customers with significant space limitations and upon approval by the City Franchise Contract Administrator, the City shall permit Commercial Customers to share Discarded Materials service with other geographically proximate Commercial Customers. Such shared service shall be performed, and billed, as if it were being provided to a single Customer, with the exception that Contractor shall require all Customers sharing a single service account to identify a "Primary Responsible

EXHIBIT B3: COMMERCIAL SERVICES

Party” that will serve as the singular point of contact for communication and billing from Contractor and the City, along with a list of all addresses with which the Primary Responsible Party will share service.

5. Split-Containers

The Contractor shall, upon Customer request, provide Split-Bins for Recyclable Materials and Solid Waste for Customers with space limitations, and shall Collect, Transport, Transfer, and Process or Dispose of each material type in accordance with this Agreement.

6. Edible Food Recovery Support

Contractor shall assist City in identifying Tier One and Tier Two Commercial Edible Food Generators as described in Section 4.13.2 of the Agreement.

**EXHIBIT B4:
CITY SERVICES**

EXHIBIT B4: CITY SERVICES

1. Commercial Customer Services to City Facilities

Contractor shall Collect Recyclable Materials, Organic Materials, and Solid Waste, from City facilities in the same manner as those services are provided to Commercial Customers, and provide designated personnel in accordance with Section 5.7.E of this Agreement. Contractor shall provide service to all existing City facilities and City Cans identified in Exhibit B5 as well as any future City facilities established after the Commencement Date. Contractor shall provide these services at no additional cost to the City. City facility service as described by this Section shall include unlimited Roll-Off Box Collection service, and periodic Bulky Item Collection. Contractor shall deliver Roll-Off Boxes within twenty-four (24) hours of City request. Contractor shall Collect, empty, and return Roll-Off Boxes within twenty-four (24) hours of City request. Contractor shall remove Roll-Off Boxes within twenty-four (24) hours of City request. The foregoing timeframes may be modified by mutual agreement of City and Contractor.

2. Emergency Services

Contractor shall provide emergency services (i.e., special Collections, Transport, Processing and Disposal) at the request of the City Contract Manager in the event of major accidents, disruptions, or natural calamities. Contractor shall be capable of providing emergency services within twenty-four (24) hours of notification by the City Contract Manager or as soon thereafter as is reasonably practical in light of the circumstances. For any services which exceed the scope of services under this Agreement, Contractor shall be entitled to compensation at the emergency service Rates approved under this Agreement. The City shall have discretion in the method of such compensation between direct payments by the City and allowing such costs to be considered in the adjustment of Rates for the following Rate Period.

3. Provision of Compost and Mulch Product

A. Bulk Compost and/or Mulch for City Use. Contractor shall procure on behalf of the City bulk Compost, Mulch, or both, each Calendar Year in an amount needed to fully achieve the City's recovered organic waste product purchasing requirements of SB 1383, as they may be determined and adjusted throughout the term of this Agreement. The production, acquisition, advertising, storage, transportation, distribution, and/or any other costs needed to achieve this requirement shall be performed by Contractor at no additional cost to the City. City will notify Contractor as to the City's needs for delivery of finished Compost, Mulch, or both, throughout each Calendar Year. Contractor shall deliver Compost, Mulch, or both, within five (5) Business Days of a request of the City Contract Manager to any accessible location within City limits at no additional cost to City. Contractor shall work actively with the City Contract Manager and appropriate City departments to educate, develop, test, and support expanded uses of qualified Compost and Mulch in the City. The City will specify the material type (i.e. Compost, Mulch, or both) to be provided and the quality specifications of the selected material type for any given application, even if that requires Contractor to procure such material from a third party in order to provide it to the City.

B. Bulk Compost and/or Mulch for Private Uses. The City shall notify Contractor in writing no later than March 31 of each Calendar Year if it is unable to use the full amount of Compost, Mulch, or both, required by SB 1383 in a given Calendar Year. Contractor shall arrange for the donation, giveaway or other use as permitted by SB 1383 of the remainder of the City's SB 1383 allotment of Compost, Mulch, or both, provided that such donation, giveaway, or other use does not constitute a gift of public funds by the City. The production, acquisition, advertising, storage, transportation, distribution, or any other costs needed

EXHIBIT B4: CITY SERVICES

to achieve this requirement shall be performed by Contractor at no additional cost to the City or Customers.

C. SB 1383 Procurement. Contractor agrees that all Compost, Mulch, or both, provided through this Agreement shall comply with the municipal procurement requirements of SB 1383, including being generated from California Organic Waste Products, as defined by SB 1383 for each applicable material type.

4. News Media Relations.

Contractor shall notify the City Contract Manager by e-mail of all requests for news media interviews related to the Collection services program within twenty-four (24) hours of Contractor's receipt of the request. Before responding to any inquiries involving controversial issues or any issues likely to affect participation or Customer perception of services, Contractor will discuss Contractor's proposed response with the City Contract Manager.

Copies of draft news releases or proposed articles related to the provision of Collection services under this Agreement shall be submitted to City for prior review and approval at least five (5) Business Days in advance of provision to such Persons, except where Contractor is required by any law or regulation to submit materials to any regulatory agency in a shorter period of time, in which case Contractor shall submit such materials to City simultaneously with Contractor's submittal to such regulatory agency.

Copies of articles resulting from media interviews or news releases shall be provided to the City within five (5) Business Days after publication.

5. Waste Generation, Characterization, and Pilot Studies.

A. Contractor acknowledges that City, CalRecycle, or other governmental agencies may wish to perform generation and characterization studies periodically with respect to materials covered under this Agreement. Contractor agrees to participate and cooperate with City and its agents and to perform such studies and data collection exercises, as needed, to determine weights, volumes and composition of materials generated, Disposed, Diverted or otherwise Processed. If City requires Contractor to participate in such a study, Contractor and City shall mutually agree on the scope of services to be provided by Contractor and the amount of compensation that the City will pay to Contractor for such participation. In any event, Contractor shall permit and in no way interfere with the Collection and handling of the subject materials by other Persons for such purposes except as required to protect health and safety of persons or property.

B. Contractor acknowledges that the County, in coordination with the City, is required by SB 1383 to conduct Organic Waste and Edible Food capacity planning studies. The Contractor shall provide information to the City as needed for the City's participation in such capacity planning studies pursuant to 14 CCR 18992.1 and 18992.2. This information may include, but is not limited to, information supporting waste characterization studies; information regarding existing and potential new or expanded capacity in the Contractor's operations for the Collection, Transport, or Processing of Recyclable and Organic Materials; and any other information deemed reasonably necessary by the City or County for purposes of the study. The Contractor shall respond to any request for information from the City within sixty (60) days, unless another timeframe is otherwise specified or authorized by the City.

EXHIBIT B4: CITY SERVICES

C. Contractor acknowledges that the City may wish to conduct and/or participate in pilot studies related to the Customers and materials that are the subject of this Agreement. If City requires Contractor to participate in any such a pilot study, Contractor and City shall mutually agree on the scope of services to be provided by Contractor and the amount of compensation that the City will pay to Contractor for such participation. In any event, Contractor shall permit and in no way interfere with the Collection and handling of the subject materials by other Persons for such purposes except as required to protect health and safety of persons or property.

6. Special Events

Contractor shall provide services at no additional costs for up to fifty (50) Special Events per year, as further described in Section 4.6.

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**EXHIBIT B5:
CITY FACILITY SERVICE LEVELS, LOCATIONS, AND
SPECIAL EVENTS**

EXHIBIT B5: CITY FACILITY SERVICE LEVELS, LOCATIONS, AND SPECIAL EVENTS

During the term of this Agreement, Contractor will Collect Recyclable Materials, Organic Materials, and Solid Waste from City facilities (including parks) in the same manner as those services are provided to Commercial Customers. Contractor shall provide service to all City facilities, present and future, at no additional cost to the City. Contractor shall provide special event services pursuant to Section 4.6 of the Agreement.

Name	Street #	Street	Food Waste Container Size	Food Waste Container Quantity	Food Waste Container Frequency	Food Waste Container Days
Aquatics Center	3302	Senior Center Dr	2CY	1	1	W
Beach Recreation Center	300	The Strand N	2CY	1	1	M
City of Oceanside City Hall	300	Coast HWY N	2CY	1	2	M, F
City of Oceanside Operations Yard (A)	4925	Oceanside Blvd	2CY	1	2	T, F
Country Club Senior Center	455	Country Club Ln	2CY	1	1	M
El Camino Senior Center	3302	Senior Center Dr	2CY	1	2	tbd
Fire Station 7	3350	Mission Ave	2CY	1	1	T
La Salina Wastewater Plant		Tait/Witherby	2CY	1	1	W
Melba Bishop Recreation Center	5306	North River Rd	2CY	1	1	F
Mission Basin Groundwater Purification Facility	215	Fireside St	2CY	1	1	F
Oceanside City Hall Nevada Annex	300	Coast HWY N	2CY	1	2	T, F
Oceanside Police Department	3855	Mission Ave	2CY	1	1	W
San Luis Rey Water Reclamation Facility	3950	North River Rd	2CY	1	2	W, F
Water Yard (Jones Road)	110	Jones Rd	2CY	1	1	T
Balderama Park	605	San Diego St	64g	1	2	tbd
Brooks Street Pool	200	Brooks St	64g	1	2	tbd
City of Oceanside IT Dept	2797	College Blvd	64g	1	1	tbd
City of Oceanside Lake Park		Lake/Cannon	64g	1	2	tbd
Code Enforcement Admin Bldg	602	Civic Center Dr	64g	1	1	W
Community Garden (Crown Heights)	1315	Division St	64g	1	1	tbd
Crown Heights Resource Center	1210	Division St	64g	1	2	T, F
Fire Station 4	3990	Lake Blvd	64g	1	2	M, TH
Fire Station 2	1740	Ditmar St S	64g	1	2	T, F
Fire Station 3	3101	Oceanside Blvd	64g	1	2	tbd
Fire Station 5	4841	North River Rd	64g	1	2	M, TH
Fire Station 6	895	Santa Fe Ave N	64g	1	2	T, F
Fire Station City Hall	712	Pier View Way	64g	1	2	tbd
Fire Training Center	302	Jones Rd	64g	1	1	T
Harbor Office	1540	Harbor	64g	2	1	tbd
Heritage Park		Peyri Rd	64g	1	2	tbd
Ivey Ranch Park	110	Rancho del Oro	64g	1	2	tbd
John Landes Park	2855	Cedar Rd	64g	1	3	M, W, F
Libby Lake Resource Center	4700	North River Rd	64g	2	2	tbd
Oceanside Library (City Hall)	330	Coast HWY N	64g	1	2	T, F
Oceanside Library (Mission)	3784	Mission Ave	64g	1	2	tbd
Oceanside Police Department	3855	Mission Ave	64g	1	4	T, W, TH, F
Oceanside Police Department	3855	Mission Ave	64g	1	4	T, W, TH, F
Ron Ortega Park		Brooks St/Maxson	64g	1	2	tbd

EXHIBIT B5: CITY FACILITY SERVICE LEVELS, LOCATIONS, AND SPECIAL EVENTS

Name	Street #	Street	Recyclable Materials Container Size	Recyclable Materials Container Quantity	Recyclable Materials Container Frequency	Recyclable Materials Service Days
Alamosa Park		Alamosa Park	N/A	N/A	N/A	N/A
Aquatics Center	3302	Senior Center Dr	3yd	1	3	M, W, F
Balderama Park	605	San Diego St	3yd	1	3	M, W, F
Beach Recreation Center	300	The Strand N	3yd	1	2	M, TH
Brooks Street Pool	200	Brooks St	3yd	1	1	W
Buccaneer Park	1508	Pacific St S	3yd	1	3	M, W, F
Buddy Todd Park		Mesa Dr	3yd	1	4	M, W, F, S
Capistrano Park		Capistrano Dr	3yd	1	2	T, F
City of Oceanside City Hall	300	Coast HWY N	N/A	N/A	N/A	N/A
City of Oceanside Evidence	4927	Oceanside Blvd	N/A	N/A	N/A	N/A
City of Oceanside IT Dept	2797	College Blvd	96g	1	1	TH
City of Oceanside Lake Park		Lake/Cannon	3yd	1	1	TH
City of Oceanside Operations Yard (A)	4925	Oceanside Blvd	N/A	N/A	N/A	N/A
City of Oceanside Operations Yard (B)	4925	Oceanside Blvd	4yd	4	3	M, W, F
City of Oceanside Operations Yard (C)	4925	Oceanside Blvd	3yd	2	3	M, W, F
City of Oside Club 55	448	Country Club Ln	96g	1	1	F
Code Enforcement Admin Bldg	602	Civic Center Dr	3yd	1	1	TH
Community Garden (Crown Heights)	1315	Division St	96g	2	1	F
Country Club Senior Center	455	Country Club Ln	3yd	1	3	M, W, F
Country Senior Center	455	Country Club Ln	3yd	1	3	M, W, F
Crown Heights Resource Center	1210	Division St	3yd	1	1	TH
Crown Heights Resource Center	1210	Division St	96g	2	1	TH
El Camino Senior Center	3302	Senior Center Dr	3yd	1	5	M, T, W, TH, F
Fire Station 4	3990	Lake Blvd	3yd	1	1	TH
Fire Station 2	1740	Dilmar St S	N/A	N/A	N/A	N/A
Fire Station 3	3101	Oceanside Blvd	3yd	1	1	M
Fire Station 5	4841	North River Rd	N/A	N/A	N/A	N/A
Fire Station 6	895	Santa Fe Ave N	3yd	1	1	T
Fire Station 7	3350	Mission Ave	3yd	1	2	M, F
Fire Station City Hall	712	Pier View Way	N/A	N/A	N/A	N/A
Fire Training Center	302	Jones Rd	3yd	1	2	T, F
Harbor 1300 Block Insert	1540	Harbor	3yd	1	2	M, TH
Harbor 1400 Block Insert	1540	Harbor	N/A	N/A	N/A	N/A
Harbor 1500 Block Insert	1540	Harbor	N/A	N/A	N/A	N/A
Harbor 1600 Block Insert	1540	Harbor	N/A	N/A	N/A	N/A
Harbor Bathroom Bln	1540	Harbor	N/A	N/A	N/A	N/A
Harbor Lot 1	1540	Harbor	N/A	N/A	N/A	N/A
Harbor Lot 10	1540	Harbor	3yd	1	4	M, TH, F, S
Harbor Lot 13A	1540	Harbor	3yd	1	4	M, TH, F, S
Harbor Lot 11B Beachside	1540	Harbor	3yd	1	4	M, TH, F, S
Harbor Lot 12 North	1540	Harbor	3yd	1	6	M, T, W, TH, F, S
Harbor Lot 2	1540	Harbor	3yd	2	3	M, TH, S
Harbor Lot 3	1540	Harbor	3yd	1	1	TH
Harbor Lot 4	1540	Harbor	3yd	1	2	M, TH
Harbor Lot 5	1540	Harbor	3yd	1	6	M, T, W, TH, F, S
Harbor Lot 6 & 7	1540	Harbor	3yd	2	2	M, TH
Harbor Office	1540	Harbor	3yd	1	2	M, TH
Harbor Urban Corps (A)	1540	Harbor	4yd	2	3	M, F, S
Harbor Urban Corps (B)	1540	Harbor	N/A	N/A	N/A	M, F, S
Heritage Park		Peyri Rd	N/A	N/A	N/A	N/A
Ivey Ranch Park	110	Rancho del Oro	N/A	N/A	N/A	N/A
John Landes Park	2855	Cedar Rd	3yd	1	3	M, W, F
La Salina Wastewater Plant		Talt/Witherby	3yd	2	1	W
Libby Lake Resource Center	4700	North River Rd	3yd	1	1	T
Luiseno Park	1069	Teal way	N/A	N/A	N/A	N/A
Mance Buchanan Park	425	College Blvd	3yd	2	3	M, W, F
Martin Luther King Park	4300	Mesa Dr	3yd	1	2	M, W
Melba Bishop Park	5306	North River Rd	N/A	N/A	N/A	N/A
Melba Bishop Recreation Center	5306	North River Rd	3yd	1	2	T, F
Mission Basin Groundwater Purification Facility	215	Fireside St	3yd	1	1	M
Oceanside City Hall Nevada Annex	300	Coast HWY N	3yd	1	4	T, W, TH, F
Oceanside Fuel Dock	1540	Harbor	3yd	1	3	M, TH, S
Oceanside Library (City Hall)	330	Coast HWY N	N/A	N/A	N/A	N/A
Oceanside Library (Mission)	3784	Mission Ave	N/A	N/A	N/A	N/A
Oceanside Police Department	3855	Mission Ave	N/A	N/A	N/A	N/A
Oceanside Police Department	3855	Mission Ave	N/A	N/A	N/A	N/A
Oceanside Police Department	3855	Mission Ave	3yd	2	6	M, W, F
Oceanside Police Firing Range	3950	North River Rd	N/A	N/A	N/A	N/A
Pier Lot 30 (Betty's Lot)	122	The Strand N	N/A	N/A	N/A	N/A
Ron Ortega Park		Brooks St/Maxson	3yd	1	2	T, F
San Luis Rey Water Reclamation Facility	3950	North River Rd	3yd	2	1	T
The Strand	301	The Strand Various	N/A	N/A	N/A	N/A
Water Yard (Jones Road)	110	Jones Rd	4yd	1	1	T

EXHIBIT B5: CITY FACILITY SERVICE LEVELS, LOCATIONS, AND SPECIAL EVENTS

Name	Street #	Street	Solid Waste Container Size	Solid Waste Container Quantity	Solid Waste Container Frequency	Solid Waste Container Days
Alamosa Park		Alamosa Park	3yd	1	1	W
Aquatics Center	3302	Senior Center Dr	3yd	1	3	M, W, F
Balderama Park	605	San Diego St	3yd	1	3	M, W, F
Beach Recreation Center	300	The Strand N	3yd	1	2	M, TH
Brooks Street Pool	200	Brooks St	3yd	1	1	W
Buccaneer Park	1508	Pacific St S	3yd	1	3	M, W, F
Buddy Todd Park		Mesa Dr	3yd	1	4	M, W, F, S
Capistrano Park		Capistrano Dr	3yd	1	2	M, TH
City of Oceanside City Hall	300	Coast HWY N	N/A	N/A	N/A	N/A
City of Oceanside Evidence	4927	Oceanside Blvd	3yd	1	1	T
City of Oceanside IT Dept	2797	College Blvd	N/A	N/A	N/A	N/A
City of Oceanside Lake Park		Lake/Cannon	3yd	1	2	M, TH
City of Oceanside Operations Yard (A)	4925	Oceanside Blvd	3yd	4	2	T, F
City of Oceanside Operations Yard (B)	4925	Oceanside Blvd	N/A	N/A	N/A	N/A
City of Oceanside Operations Yard (C)	4925	Oceanside Blvd	N/A	N/A	N/A	N/A
City of Oside Club 55	448	Country Club Ln	96g	1	1	TH
Code Enforcement Admin Bldg	602	Civic Center Dr	3yd	1	1	TH
Community Garden (Crown Heights)	1315	Division St	96g	1	1	F
Country Club Senior Center	455	Country Club Ln	3yd	1	3	M, W, F
Country Senior Center	455	Country Club Ln	N/A	N/A	N/A	N/A
Crown Heights Resource Center	1210	Division St	3yd	1	2	W, F
Crown Heights Resource Center	1210	Division St	N/A	N/A	N/A	N/A
El Camino Senior Center	3302	Senior Center Dr	3yd	1	5	M, T, W, TH, F
Fire Station 4	3990	Lake Blvd	3yd	1	1	TH
Fire Station 2	1740	Ditmar St S	N/A	N/A	N/A	N/A
Fire Station 3	3101	Oceanside Blvd	3yd	1	1	T
Fire Station 5	4841	North River Rd	N/A	N/A	N/A	N/A
Fire Station 6	895	Santa Fe Ave N	3yd	1	1	W
Fire Station 7	3350	Mission Ave	3yd	1	1	F
Fire Station City Hall	712	Pier View Way	3yd	1	5	M, T, W, TH, F
Fire Training Center	302	Jones Rd	3yd	1	2	T, F
Harbor 1300 Block Insert	1540	Harbor	3yd	1	3	M, TH, S
Harbor 1400 Block Insert	1540	Harbor	N/A	N/A	N/A	N/A
Harbor 1500 Block Insert	1540	Harbor	N/A	N/A	N/A	N/A
Harbor 1600 Block Insert	1540	Harbor	N/A	N/A	N/A	N/A
Harbor Bathroom Bin	1540	Harbor	4yd	1	6	S
Harbor Lot 1	1540	Harbor	4yd	2	3	M, TH, S
Harbor Lot 10	1540	Harbor	3yd	2	4	M, TH, S
Harbor Lot 11A	1540	Harbor	3yd	1	4	M, TH, F, S
Harbor Lot 11B Beachside	1540	Harbor	3yd	1	4	M, TH, F, S
Harbor Lot 12 North	1540	Harbor	3yd	1	7	S, SU
Harbor Lot 2	1540	Harbor	3yd	3	2	M, S
Harbor Lot 3	1540	Harbor	3yd	1	3	M, TH, S
Harbor Lot 4	1540	Harbor	3yd	1	6	S
Harbor Lot 5	1540	Harbor	3yd	2	6	S
Harbor Lot 6 & 7	1540	Harbor	3yd	2	3	M, TH, S
Harbor Office	1540	Harbor	3yd	1	3	M, TH, S
Harbor Urban Corps (A)	1540	Harbor	4yd	2	3	M, F, S
Harbor Urban Corps (B)	1540	Harbor	N/A	N/A	N/A	N/A
Heritage Park		Peyri Rd	N/A	N/A	N/A	N/A
Ivey Ranch Park	110	Rancho del Oro	3yd	1	3	M, W, F
John Landes Park	2855	Cedar Rd	3yd	1	4	M, W, F, S
La Salina Wastewater Plant		Tait/Witherby	3yd	1	1	W
Libby Lake Resource Center	4700	North River Rd	3yd	1	3	T, TH, S
Luiseno Park	1069	Teal way	N/A	N/A	N/A	N/A
Mance Buchanon Park	425	College Blvd	3yd	2	3	M, W, F
Martin Luther King Park	4300	Mesa Dr	3yd	1	2	M, TH
Melba Bishop Park	5306	North River Rd	3yd	1	3	T, TH, S
Melba Bishop Recreation Center	5306	North River Rd	3yd	1	5	M, T, W, TH, F
Mission Basin Groundwater Purification Facility	215	Fireside St	3yd	2	1	T
Oceanside City Hall Nevada Annex	300	Coast HWY N	N/A	N/A	N/A	N/A
Oceanside Fuel Dock	1540	Harbor	3yd	1	3	M, TH, S
Oceanside Library (City Hall)	330	Coast HWY N	N/A	N/A	N/A	N/A
Oceanside Library (Mission)	3784	Mission Ave	3yd	1	2	M, TH
Oceanside Police Department	3855	Mission Ave	3yd	1	6	S
Oceanside Police Department	3855	Mission Ave	N/A	N/A	N/A	N/A
Oceanside Police Department	3855	Mission Ave	N/A	N/A	N/A	N/A
Oceanside Police Firing Range	3950	North River Rd	N/A	N/A	N/A	N/A
Pier Lot 30 (Betty's Lot)	122	The Strand N	3yd	1	3	M, W, F
Ron Ortega Park		Brooks St/Maxson	3yd	1	2	T, F
San Luis Rey Water Reclamation Facility	3950	North River Rd	3yd	2	1	W
The Strand	301	The Strand Various	3yd	5	6	S
Water Yard (Jones Road)	110	Jones Rd	3yd	3	1	T

EXHIBIT B5: CITY FACILITY SERVICE LEVELS, LOCATIONS, AND SPECIAL EVENTS

Name	Street #	Street	Yard Waste Container Size	Yard Waste Container Quantity	Yard Waste Container Frequency	Yard Waste Container Days
City of Oceanside Operations Yard (B)	4925	Oceanside Blvd	3yd	1	1	M
Community Garden (Crown Heights)	1315	Division St	96g	6	1	F
Ivey Ranch Park	110	Rancho del Oro	96g	1	1	F

Name	Street #	Street	Split Bin Container Size	Split Bin Container Quantity	Split Bin Container Frequency	Split Bin Container Days
City of Oceanside City Hall	300	Coast HWY N	3yd	1	5	M, T, W, TH, F
Fire Station 2	1740	Ditmar St S	3yd	1	1	TH
Fire Station 5	4841	North River Rd	3yd	1	2	T, TH
Harbor 1400 Block Insert	1540	Harbor	3yd	1	3	M, TH, S
Harbor 1500 Block Insert	1540	Harbor	3yd	1	3	M, TH, S
Harbor 1600 Block Insert	1540	Harbor	3yd	1	3	M, TH, S
Heritage Park		Peyri Rd	3yd	1	1	T
Luiseno Park	1069	Teal way	3yd	1	2	M, F
Oceanside Library (City Hall)	330	Coast HWY N	3yd	1	1	TH
Oceanside Police Department	3855	Mission Ave	3yd	1	3	M, W, F
Oceanside Police Firing Range	3950	North River Rd	3yd	1	1	W

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**EXHIBIT C:
PUBLIC EDUCATION AND OUTREACH REQUIREMENTS**

EXHIBIT C:

PUBLIC EDUCATION AND OUTREACH REQUIREMENTS

1. General Administration

The City places the utmost importance on effective public outreach and education in helping residents, businesses, and visitors fully understand options for and benefits of source reduction, reuse, repair, Recycling, and Composting. General provisions for public education and outreach are as follows:

- A. Prior to the Commencement Date and by September 30 of each following year during the Term of this Agreement, Contractor shall work with City Staff and the City's public education outreach consultant to develop and submit an annual public education plan to promote the programs designed by the City and performed by Contractor under this Agreement. Each public education plan shall specify four (4) campaigns per Rate Period to increase Diversion and resident participation, the target audience for services provided, include upcoming promotions for ongoing and known special events, identify program objectives, individual tasks, public education materials to be distributed, opportunities for expanded partnerships, a timeline for implementation, and an itemized description of how Contractor's annual public education budget (described in Section 3 of this Exhibit C) will be spent. The City Franchise Contract Administrator shall be permitted to provide input on each annual public education plan, and the plan shall not be finalized or implemented without approval of the City Franchise Contract Administrator. Each plan's implementation success shall be measured based on agreed-upon metrics for the impact of each plan and/or campaign (e.g., changes in Diversion, contamination, social media engagement rates, and click-through rates resulting from the education and/or outreach efforts). Contractor shall meet with the City Franchise Contract Administrator to present and discuss the plan, review the prior year's activities (including sponsorships and services provided to City-sponsored events) and determine whether community activities and the provision of services to the City reflect the needs of City staff and the City Council. City Franchise Contract Administrator shall be allowed up to thirty (30) calendar days after receipt to review and request modifications. The City Franchise Contract Administrator may request, and Contractor shall not unreasonably deny, modifications to be completed prior to approving the plan. Contractor shall have up to fifteen (15) Business Days to revise the plan in response to any requested changes by the City Franchise Contract Administrator. Any further delays may result in Liquidated Damages for failure to perform education and outreach activities as identified in Exhibit F. Each Business Day that the plan is late shall count as a single event/activity.
- B. Upon request from the City Franchise Contract Administrator, City Franchise Contract Administrator and Contractor's Franchise Contract Manager shall meet up to one (1) time per month to discuss services, outreach, and educational campaigns and request changes or adaptations to the annual public education plan.
- C. The City will be responsible for overseeing and directing the public education outreach consultant contract. The public education outreach consultant will prepare all public education materials to be distributed by the Contractor upon approval from the City. If requested, Contractor shall review and comment on the materials within two (2) weeks of request from the City.
- D. Contractor shall distribute instructional information, public education, and promotion materials in advance of, and following, commencement of services. All Public Education and Outreach material must be provided in a minimum of four (4) languages, to include, without limitation: English,

EXHIBIT C:

PUBLIC EDUCATION AND OUTREACH REQUIREMENTS

Spanish, Tagalog, and Chinese (Cantonese and Mandarin). This shall entail, at a minimum, distributing program literature to all Customers at the Commencement of the Agreement as well as to any new Customer during the Agreement Term. Contractor shall use multiple media sources including print, radio, television, electronic/ social media, and events to notify Customers of the change in their service provider, if applicable, and to highlight new program offerings. Transition and ongoing sector-specific collateral materials shall be distributed. For any public education materials not produced by the City, the Contractor shall submit all draft materials to City Franchise Contract Administrator for review and approval.

- E. At the Commencement of the Agreement, as well as to any new Customer during the Agreement Term, the Contractor shall distribute Organic Materials kitchen pails to all Single-Family and Multi-Family Customers as part of the Organic Materials education and outreach program. One Organic Materials kitchen pail shall be distributed per household or Multi-Family Dwelling Unit along with instructional information on how to use, clean, and care for the kitchen pail.
- F. Contractor shall, at a minimum, organize, promote, and host community workshops to educate Commercial Customers at least annually. The workshop will describe the benefits of Organic Materials and Recyclable Materials as well as City and State compliance requirements. Contractor shall work with business associations including, but not limited to, Main Street Oceanside and Visit Oceanside to promote workshops.
- G. Contractor shall, at a minimum, organize, promote, and host community workshops to educate Residential Customers at least annually. The workshop will describe the benefits of Organic Materials and Recyclable Materials as well as City and State compliance requirements. Contractor shall work with neighborhood groups and associations to promote workshops.
- H. All City facilities shall receive any and all public education and outreach materials and services provided to the Commercial sector. Contractor shall provide all printed public education materials to City offices and facilities to have available for the public that visits those facilities and shall replenish the materials as requested by the City Franchise Contract Administrator.
- I. Bill inserts shall be designed and produced by the City; and the Contractor shall be responsible for printing and distributing the billing inserts to all Customers. Contractor shall provide electronic bill inserts (or separate email attachments) to Customers who are billed electronically, and paper bill inserts to Customers who receive paper bills. For Customers receiving electronic bills, Contractor agrees to distribute brochures, newsletters, or other information developed by the City as attachments to Customer invoices. Electronic bill inserts/attachments must be readily available for the Customer to view upon receipt of the invoice (attachments shall not be provided as links). For Customers receiving paper bill inserts, bill inserts must be double-sided and available in languages prescribed above in Section 1.D of this Exhibit C. Upon City request for billing inserts, Contractor shall comply with such request during its next billing cycle for the targeted Customer group, if specified. Contractor shall perform this service with no additional requirement for compensation.
- J. Contractor shall develop a website specific to its operations in the City, with a section specific to City programs and Customers, that will be used to post educational materials for download, highlight program successes, and provide Diversion statistics. The Contractor's City-specific website

EXHIBIT C: PUBLIC EDUCATION AND OUTREACH REQUIREMENTS

shall also include links to relevant web pages of the City's website where further information can be found, and provide information on "Green Oceanside" campaigns. Contractor to update website within twenty-four (24) hours of notification of inaccurate information contained on website. Additionally, information requested by City shall be posted within three (3) Working Days of request.

- K. Contractor shall develop social media accounts specific to its operations in the City. The Contractor's City-specific social media accounts shall promote, but not be limited to, upcoming programs and events, source reduction tips, changes in service due to Holidays, and other updates as requested by the City.
- L. Contractor shall develop school curriculum and school presentations to promote the City's zero waste goals. Information shall include, but is not limited to, Food Recovery, source reduction, reuse, repair, Recycling, and environmental stewardship.

2. Public Education and Outreach Team

To best achieve the highest possible level of public education and awareness, Contractor has proposed to employ at least three (3) full-time equivalent staff member(s) to coordinate and implement all public education and outreach activities required by this Agreement. The public education and outreach staff shall, at a minimum, perform the following tasks:

- A. Work to develop partnerships with and incorporate City program and educational activities into Contractor activities, and vice versa;
- B. Prepare proposals and presentations to City entities;
- C. Participate and represent Contractor in community activities;
- D. Oversee Customer satisfaction of all program services, as described in Exhibit B to the Agreement;
- E. Coordinate and produce the annual education and outreach plan required by Section 1 of this Exhibit C to the Agreement;
- F. Coordinate implementation of the annual public education plan;
- G. Perform annual visits to identify the service needs of every Customer, other than Single-Family Customers, by conducting "Diversion opportunity assessments" of Customer locations and facilities;
- H. Manage follow-up Diversion opportunity assessments for businesses to conduct a more comprehensive investigation and educational process after the initial review;
- I. Provide all Customers with appropriate educational information necessary to make informed, environmentally-forward decisions relative to source reduction, reuse, repair, Recycling, and other Diversion activities;

EXHIBIT C:

PUBLIC EDUCATION AND OUTREACH REQUIREMENTS

- J. Maximize the opportunity for initial and sustained program success by seeking to identify a "champion" (ideally a senior manager) at each Commercial and Multi-Family Premises who will serve as a primary contact and advocate for Diversion programs within the Customer's organization;
- K. Assist in planning service needs for special events and large venues with a focus on reducing the Disposal of materials resulting from such events or venues; and,
- L. Create and distribute reports as required under this Agreement and/or requested by City Franchise Contract Administrator.

3. Annual Budget

In addition to staffing expenses, Contractor shall spend, for the public education and outreach services described in this Exhibit C, no less than four hundred thousand dollars (\$400,000) in Rate Period One. In addition to staffing expenses, Contractor shall spend, for the public education and outreach services described in this Exhibit C, no less than three hundred thousand dollars (\$300,000) in Rate Period Two. The Rate Period Two budget shall be adjusted annually thereafter by the Annual Percentage Change in CPI-U (as defined in Exhibit E) beginning with Rate Period Three. Annually, Contractor shall provide to the City Franchise Contract Administrator for review and approval a detailed description of how such budget will be spent as part of the annual public education plan to be developed in accordance with Section 1 of this Exhibit C. Upon request by the City, the Contractor shall contribute funds to regional campaigns should the City coordinate education and outreach campaigns with other jurisdictions. This is a qualifying event. At the conclusion of each Rate Period, any unused funds shall be transferred to the City. Contractor shall be prohibited from expending such funds without the prior written approval of the City Franchise Contract Administrator. Any expenditures not approved by the City in advance shall neither be counted in Contractor's annual public education and outreach budget, nor be recovered through Rates.

4. Sector-Specific Activities

The following tables present the public education and outreach activities to be performed by Contractor each Rate Period as minimum requirements under this Agreement, as proposed by Contractor in Contractor's Proposal. Each Customer type faces unique Discarded Materials management opportunities and challenges; therefore, Contractor shall develop targeted, sector-specific educational materials and perform outreach activities as described for each Customer Type.

EXHIBIT C: PUBLIC EDUCATION AND OUTREACH REQUIREMENTS

Public Education and Outreach | All Sectors

All printed materials also to be posted to the Company's website.

The following general public education and outreach materials shall each be produced for the benefit of all Customer Types that receive Collection service from the Contractor.

Activity	Description	Estimated Quantity	Distribution/Frequency
Subcontractor: NV5 Global Inc.	Graphic design for all Contractor-obligated public education materials outlined in contract in collaboration with City		
Recyclist	Web-based software to be used for public education and outreach tracking, record keeping, and reporting		
Newspaper Advertisement	Contractor will fund a City-produced newspaper advertisement that explains all programs that will be offered under the new Agreement to an agreed-upon print news publication		One (1) time at beginning of the Agreement (20-30 days prior to contract start date).
Public Service Announcement (PSA)	Distribute a City-produced PSA for local radio and cable television broadcast describing the new programs under the Agreement.		One (1) time at beginning of the Agreement (20-30 days prior to contract start date).
Press Release	Distribute a City-produced press release to advertise and promote all programs, with particular focus on any new programs that will be offered to each sector (Single-Family, Multi-Family, Commercial, City facilities).		One (1) time at beginning of the Agreement (20-30 days prior to contract start date).
Website	Contractor has a "Single-Family Customer" section of its website where it will present Oceanside residents with "how-to" information for participating in Contractor-provided programs, including proper Container set-outs, and provide Single-Family Customers with links to click on for additional resources. All other Single-Family educational materials specified in this Section shall be posted on this section of Contractor's website in PDF and/or video format. The website shall also publish the current Rates charged to Single-Family Customers within the City.		At least thirty (30) calendar days prior to Commencement Date. Updated no less than quarterly.

EXHIBIT C: PUBLIC EDUCATION AND OUTREACH REQUIREMENTS

Public Education and Outreach | Single-Family Education and Outreach Activities

All printed materials also to be posted to the Company's website.

Activity	Description	Estimated Quantity	Distribution/Frequency
New Programs Mailing	Contractor will produce and distribute a City-designed initial mailing to Single-Family Customers that will explain and describe new programs available to residents; changes from the existing programs to new programs; SB 1383 regulatory requirements; and, the effective date of the change. Waste Management will include its Holiday schedule and the Residential Recycling guide.	42,300	One (1) time at beginning of the Agreement (45-60 days prior to Commencement Date) via direct mail.
Recycling Guide	Contractor will produce and distribute a City-designed "Recycling guide" specific to Single-Family Customers. This guide will include information on Collection methodologies, set out instructions, set out schedule, contact information, and acceptability and necessary preparation of materials for all Single-Family programs described in the Agreement. A section of the guide will specifically address proper methods of handling and Disposal of Hazardous Wastes.	42,300	Affixed (inside plastic bag, zip-tied to handle) to every Single-Family and Townhouse Recyclable Materials Cart delivered prior to the Commencement Date, and thereafter to all new Customers. By direct mail annually thereafter to each Single-Family and Townhouse Customer.
Neighborhood Group & HOA Visits	Upon City request, the Contractor Diversion Coordinator will visit homeowner associations and other neighborhood groups and associations to promote and explain the Recycling programs available to them.	As needed	At City Franchise Contract Administrator or Customer request.
Bill Inserts	Contractor will produce and distribute City-designed bill Inserts that creatively inform Residential Customers about such topics as availability of Large Landfill item pick-ups, home Composting, proper handling of Household Hazardous Waste, E- Waste, and U-Waste, other environmental conservation topics statistics, trends, and facts about programs performed under this Agreement (e.g., material Collected, Tonnage, year over year increase/decrease, markets for material Collected, what each material is Recycled into, and the importance of buying Recycled). Contractor's annual public education plan shall define a theme for each bill insert.	42,300 each occurrence	Six (6) times per year included in each mailed Customer bill and downloadable from electronic Customer bills.
Corrective Action Notices	Contractor will create and distribute a Single-Family Customer oriented non-Collection notice (tag), and courtesy notice for use in instances where the Customer includes Prohibited Container Contaminants in a Container or fails to properly prepare or set-out Containers.	As needed	As needed.

EXHIBIT C: PUBLIC EDUCATION AND OUTREACH REQUIREMENTS

Activity	Description	Estimated Quantity	Distribution/Frequency
Donation Week Notification	Contractor will provide written notification to all Single-Family Customers advertising each scheduled Donation Week event. The notification shall inform Customers of the schedule, acceptable materials and Prohibited Container Contaminants, and set-out requirements for the program.	42,300 each occurrence	At least one month prior to event via direct mail.
Mandatory Recyclable Materials and Organic Materials Outreach Activities	Produce and Distribute City- produced outreach materials containing information to assist City with outreach compliance for various Applicable Laws related to mandatory Recyclable Materials and Organic Materials activities, including but not limited to SB 1383. Information will be included in Recycling Guide	42,300	One (1) time annually in conjunction with Recycling Guide mailer
Food Recovery and Food Waste reduction program	Contractor will include the below information in the Recycling Guide: <ol style="list-style-type: none"> 1. Information about the City's Edible Food Recovery program 2. Information about Food Recovery Organizations and Food Recovery Services operating within the City 3. Information about actions that Residents can take to prevent the creation of Food Waste where a list of those Food Recovery Organizations and Food Recovery Services can be found 	42,300	One (1) time annually to all Single-Family Residents in conjunction with Recycling Guide mailer

EXHIBIT C: PUBLIC EDUCATION AND OUTREACH REQUIREMENTS

Public Education and Outreach | Multi-Family Education and Outreach Activities

All printed materials also to be posted to the Company's website and in languages consistent with the contract. All graphic design will be completed by NV5 Global, Inc., the preferred design vendor for the City. NV5 is familiar with the style and design framework the City is accustomed to for most of its public outreach. Contractor understands the City's request to send direct mailers to each individual Multi-Family Dwelling Unit; however, Contractor considers distribution via the Property Managers or through our Diversion Coordinator to be more efficient due to our inability to retrieve reliable and accurate information required to send materials directly to each Dwelling Unit

Description	Purpose	Estimated Quantity	Distribution/Frequency
New Programs Mailing	Contractor will produce and distribute an education and outreach initial mailing to all Multi-Family Dwelling Units within City explaining the program changes in the new Agreement; changes from the existing Collection programs to new programs; new regulatory requirements, including SB 1383; and, the effective date of the change.	20,560	One (1) time at beginning of the Agreement (45-60 days prior to Commencement Date) via direct mail to each Multi-Family Property Manager/Owner or via door-to-door delivery during site assessments performed by the Diversion Coordinator for distribution to tenants
Recycling Guide	Contractor will produce and distribute a City-produced "Recycling Guide" specific to Multi-Family Customers, and updated versions of the guide as needed. This guide shall include information such as Collection methodologies, set out instructions, contact information, and acceptability and necessary preparation of materials for all Multi-Family programs described in Exhibit B2. A section of the guide will specifically address proper methods of handling and Disposal of Hazardous Wastes.	20,560	One (1) time at beginning of the Agreement (20-30 days prior to Commencement Date) and as needed via direct mail to each Multi-Family Property Manager/Owner or via door-to-door delivery during site assessments performed by the Diversion Coordinator for distribution to tenants
Direct Mailers	Contractor will produce and distribute City-designed direct mailers to all Multi-Family locations for distribution to individual Dwelling Units that creatively inform Residential Customers about such topics as availability of Large Landfill item pick-ups, home Composting, proper handling of Household Hazardous Waste, E-Waste, and U-Waste, other environmental conservation topics statistics, trends, and facts about programs performed under this Agreement (e.g., material Collected, Tonnage, year over year increase/decrease, markets for material Collected, what each material is Recycled into, and the importance of buying Recycled). Contractor's annual public education plan shall define a theme for each bill insert.	20,560 each occurrence	Six (6) times per year

EXHIBIT C: PUBLIC EDUCATION AND OUTREACH REQUIREMENTS

Description	Purpose	Estimated Quantity	Distribution/Frequency
<p>Technical Assistance: Diversion Opportunity Assessments</p>	<p>Contractor Diversion Coordinator will offer assessments at least one (1) time annually to each and every Multi-Family Customer to meet with the property manager/Owner of Multi-Family Premises to promote Recyclable Materials and Organic Materials Collection and replenish Move-in Kits as needed by each Multi-Family Premises. The Diversion Coordinator will make contact via phone call, follow-up email confirming the details of the phone conversation and/or leave a message confirming a voice message has been made, and offer an on-site assessment</p> <p>Additionally, upon City or Customer request, the Contractor Diversion Coordinator shall perform complete walk-throughs of each facility/complex and discuss the internal and external layout with the property manager; identify areas of generation, Collection, noting areas for improved infrastructure consistent with City ordinances, placement, or educational materials. Contractor Diversion Coordinator shall also identify major components of the waste stream by location and identify special wastes or Source Separated materials potentials and then make recommendations for waste reduction, contamination prevention, and Service Level or frequency modification.</p>	<p>452</p>	<p>Offer in-Person meetings to each and every Multi-Family Customer conducted one (1) time per year, plus follow-up meetings with individual Customers, as needed.</p>
	<p>Contractor Diversion Coordinator will utilize Recyclist or some other web-based software program designed for tracking education and outreach to prepare and submit reports to City that document Customers targeted monthly, the existing Service Levels, recommendations made, and the outcome of technical assistance provided.</p>		
<p>Move-in Kits</p>	<p>Contractor will produce and distribute Move-in Kits for property managers and Owners of Multi-Family Premises to provide to new Occupants. Move-in Kits shall include a Multi-Family Recycling guide, an in-home Recyclable Materials tote bag, kitchen Food Scraps pail, and stickers or refrigerator magnets that clearly define the accepted and Prohibited Container Contaminants in the Recyclable Materials program.</p>	<p>20,560</p>	<p>Distributed during technical assistance Diversion opportunity assessments.</p>
<p>Workshops</p>	<p>The Contractor Diversion Coordinator will offer and respond to requests for on-site meetings and workshops that will show property managers and residents, in a hands-on interactive format, how to use the Recyclable Materials and Organic Materials program and will provide resources for additional information and support.</p>	<p>As needed</p>	<p>At Customer's request.</p>

EXHIBIT C: PUBLIC EDUCATION AND OUTREACH REQUIREMENTS

Description	Purpose	Estimated Quantity	Distribution/Frequency
"How-to" Guide: Electronic, Universal and Excluded Waste	Contractor will produce a City designed "how-to" guide on proper Recycling, handling and Disposal of Household Hazardous Waste, E-Waste, and U-Waste directly to Occupants of Multi-Family Premises. Contractor may arrange for distribution to each Dwelling Unit a flyer, door hanger, or other public education piece by coordinating with the Owner or property manager of the Premises.	20,560	One (1) time per year via direct mail to each Multi-Family Property Manager/Owner or via door-to-door delivery during site assessments performed by the Diversion Coordinator for distribution to tenants in conjunction with Recycling Guides
Corrective Action Notices	Contractor will produce a Multi-Family Customer oriented corrective action notice for use in instances where the Customer includes Prohibited Container Contaminants in a Container or fails to properly prepare or set-out Containers.	As needed	As needed via email, printed mail, and Cart tag, as appropriate.
Holiday Tree Collection Notification	Contractor will produce and distribute a City-designed written notification to each Multi-Family property manager/Owner advertising the availability of holiday tree Collection services. The notification will include information that will inform managers of the schedule, acceptable methods of tree Disposal, Collection method options, and set-out requirements for the program. The notification shall include the Contractor's contact information for Multi-Family Customers to contact to discuss schedule and designated Collection location. The format and content of the notification shall be approved by the City Franchise Contract Administrator.	20,560	At least fourteen (14) calendar days prior to event via direct mail to each Multi-Family Property Manager/Owner for distribution to tenants, e-mail, or in-Person.
Mandatory Recyclable Materials and Organic Materials Outreach Activities	Contractor will distribute outreach materials containing information to assist City with outreach compliance for various Applicable Laws related to Mandatory Recyclable Materials and Organic Materials activities including AB 341, AB 1826, and SB 1383 as one of the six direct mailer campaigns	20,560	One (1) time annually
Educational Materials for Tenants	Contractor will provide Multi-Family property managers/Owners with City-produced public education materials, required by SB 1383, for their distribution to all Dwelling Units. The public education materials shall include, at a minimum, information about Organic Waste recovery requirements and proper sorting of Discarded Materials. Multi-Family property managers/Owners may request these materials more frequently if needed to comply with the SB 1383 requirement to provide information to new Occupants. The materials will also be available via Waste Management's website.	20,560	One (1) time annually; or more frequently upon Customer request.

EXHIBIT C: PUBLIC EDUCATION AND OUTREACH REQUIREMENTS

Description	Purpose	Estimated Quantity	Distribution/Frequency
Food Recovery and Food Waste reduction program	<p>Contractor will include the below information in the Recycling Guide:</p> <ol style="list-style-type: none"> Information about the City's Edible Food Recovery program Information about Food Recovery Organizations and Food Recovery Services operating within the City Information about actions that Residents can take to prevent the creation of Food Waste where a list of those Food Recovery Organizations and Food Recovery Services can be found 	20,560	One (1) time annually via direct mail to each Multi-Family Property Manager/Owner for distribution to tenants, e-mail, or in-Person, in conjunction with the Recycling Guide mailer.

Public Education and Outreach | Commercial Education and Outreach Activities

All printed materials also to be posted to the Company's website and in languages consistent with the contract. All graphic design will be completed by NV5 Global, Inc., the preferred design vendor for the City. NV5 is familiar with the style and design framework the City is accustomed to for most of its public outreach

Description	Purpose	Estimated Quantity	Distribution/Frequency
New Programs Mailing	Contractor will prepare and distribute an initial mailing to all Commercial Customers within the City explaining the program changes in the new Agreement; changes from the existing Collection programs to new programs; and, the effective date of the change.	2,550	One (1) time at beginning of the Agreement (45-60 days prior to Commencement Date) via direct mail.
Recycling Guide	Contractor will produce a "Recycling guide" specific to Commercial Customers and update the guide as needed. This guide shall include information on Collection methodologies, set out instructions, contact information, and acceptability and necessary preparation of materials for all Commercial programs described in Exhibit B3. A section of the guide will specifically address proper methods of handling and Disposal of Hazardous Wastes.	2,550	One (1) time at beginning of the Agreement (20-30 days prior to Commencement Date) and as needed via direct mail. Distributed during Diversion opportunity assessments.
"How-to" Flyer: Recyclable Materials	Contractor will prepare and distribute a "how-to" brochure explaining the Recyclable Materials Collection programs for each general business type (restaurants, office/Commercial buildings, strip malls, and large Commercial businesses).	2,550	One (1) time at beginning of the Agreement (20-30 days prior to contract start date) via direct mail. Distributed during Diversion opportunity assessments.
"How-to" Flyer: Organic Materials	Contractor will prepare and distribute a flyer describing the Organic Materials Collection services available and how to prepare Organic Materials for Collection for each general business type (restaurants, office/Commercial buildings, strip malls, and large Commercial businesses).	2,550	One (1) time at beginning of the Agreement (20-30 days prior to contract start date) via direct mail. Distributed during Diversion opportunity assessments in conjunction with the "How-to" Recyclable Materials Flyer

EXHIBIT C: PUBLIC EDUCATION AND OUTREACH REQUIREMENTS

Description	Purpose	Estimated Quantity	Distribution/Frequency
<p>Technical Assistance: Diversion Opportunity Waste Assessments</p>	<p>Contractor Diversion Coordinator will offer Diversion opportunity assessments at least one (1) time annually to each Commercial Customer to promote Recyclable Materials and Organic Materials Collection and replenish Recycling guides and Recyclable Materials and Organic Materials posters as needed by each Customer. Additionally, the Diversion Coordinator will perform walk-throughs of the facility/complex and discuss the internal and external layout with manager and/or representative of the business who manages Solid Waste and Diversion programs; identify areas of generation, Collection, noting areas for improved infrastructure consistent with City ordinances, placement, or educational materials. Contractor will also identify major components of the waste stream by location and identify special wastes or Source Separated materials potentials. Contractor shall then make recommendations for waste reduction, contamination prevention, and Service Level or frequency modification. In addition to the waste assessment requirements stated above, the Diversion Coordinator will assist the City in complying with the requirements included in AB 827. During the waste assessments, Contractor will provide educational material (to be approved by City) to businesses that meet the requirements of AB 827, and make notation of the name of the business, the business address, business contact information, and business compliance or non-compliance. Waste Management Diversion Coordinator will utilize Recyclelist or some other web-based software program designed for tracking education and outreach to prepare and submit reports to City that document Customers targeted monthly, the existing Service Levels, recommendations made, and the outcome of technical assistance provided.</p>	<p>2,550</p>	<p>Offer one (1) time annually during in-Person meetings with each Commercial Customer, plus follow-up meetings with individual Customers, as required.</p>
<p>Recyclable Materials and Organic Materials Posters</p>	<p>Waste Management will produce and the Contractor Diversion Coordinator will distribute laminated Recyclable Materials and Organic Materials posters that provide graphic illustrations of acceptable materials and Prohibited Container Contaminants within each program.</p>	<p>2,550</p>	<p>Distributed during Diversion opportunity assessments.</p>
<p>Monthly Bill Inserts</p>	<p>Contractor will prepare and distribute bill inserts that creatively inform Commercial Customers about such topics as: cost savings available from source reduction, reuse, rep air, and Recycling; tips for overcoming common operational challenges businesses have with Recyclable Materials and Organic Materials programs; the environmental benefits of buying Recycled-content products and statistics, trends, and facts about programs performed under this Agreement (e.g., material Collected, Tonnage, year over year increase/decrease, markets for material Collected, what each material is Recycled into) as appropriate. Contractor's annual public education plan will define a theme for each insert.</p>	<p>2,550 each occurrence</p>	<p>One (1) time per month via direct mail to each Commercial Customer in City, up to ten (10) times per year.</p>

EXHIBIT C: PUBLIC EDUCATION AND OUTREACH REQUIREMENTS

Description	Purpose	Estimated Quantity	Distribution/Frequency
Program Announcements	On each bill, Contractor shall include a brief statement to Commercial Customers providing service-related announcements such as messages about new services, program updates, contamination trends, proper handling of House hold Hazardous Waste, etc.	2,500	Included in Customer bill.
Corrective Action Notices	Contractor will produce a Commercial and Multi-Family Customer oriented corrective action notice for use in instances where the Customer includes Prohibited Container Contaminants in a Container or fails to properly prepare or set-out Containers.	As needed	As needed via email, printed mail, and Cart tag, as appropriate.
Mandatory Recyclable Materials and Organic Materials Outreach Activities	Contractor will distribute outreach materials related to the mandatory nature of Recyclable Materials and Organic Materials Collection services. Such outreach will be designed to assist the City in complying with the outreach requirements of various Applicable Laws related to the mandatory provision of Recyclable Materials and Organic Materials Collection and Diversion services.	2,550	One (1) time annually
Educational Materials for Employees	Contractor will provide Commercial property managers/Owners with City- produced public education materials, required by SB 1383, for their distribution to all employees, contractors, Occupants, and Customers of the property or business. The public education materials shall include, at a minimum, information about Organic Waste recovery requirements and proper sorting of Discarded Materials. Commercial Customers may request these materials more frequently if needed to comply with the SB 1383 requirement to provide information to new Occupants before or within 14 days of occupancy.	2,550	One (1) time annually; or more frequently upon Customer request.
Commercial Edible Food Generator Education	Contractor will provide Customers that are Commercial Edible Food Generators with the following: <ol style="list-style-type: none"> 1. Information about the City's Edible Food Recovery program; 2. Information about the Commercial Edible Food Generator requirements under 14 CCR, Division 7, Chapter 12, Article 10; 3. Information about Food Recovery Organizations and Food Recovery Services operating within the City, and where a list of those Food Recovery Organizations and Food Recovery Services can be found; and, 4. Information about actions that Commercial Edible Food Generators can take to prevent the creation of Food Waste 	2,550	One (1) time annually

EXHIBIT C: PUBLIC EDUCATION AND OUTREACH REQUIREMENTS

Public Education and Outreach | Schools

All printed materials also to be posted to the Company's website as well as links to teacher resources.

Description	Purpose	Estimated Quantity	Distribution/Frequency
Educational Materials	Contractor shall produce and distribute educational materials designed by the City that are geared towards younger audiences, such as educational videos, activity books, and Recycling posters. Waste Management will provide schools with copies of the video upon request for classroom use. The video shall be made accessible through Contractor's website.		Upon request.
Technical Assistance: Diversion Opportunity Assessment	Contractor Diversion Coordinator will be available for on-going technical assistance to schools subscribing to Contractor's services, including performing annual waste assessments, calculating Diversion rates, and communicating the results to the City to improve existing school Recyclable Materials and Organic Materials programs. The annual waste assessments shall include a specific assessment of Food Waste generated on the school Premises; potential for source reduction and Diversion of Food Waste; and identification of Food Recovery education and programs that may be established, both internally (e.g., lunch share tables) and externally (e.g., partnerships with local Food Recovery Organizations and Food Recovery Services).		Offered to schools Upon Request.
Presentation	Contractor's Subcontractor will present curriculum to teach children how to Recycle, Compost, and reduce waste at school and at home.		At City Request.
Facility Tours	Contractor will coordinate and conduct educational field trips to the Approved Facilities.		At City Request.

Note: Contractor shall perform these education and outreach services to all schools, public and private, within the City without respect to the Contractor's status as the service provider for a given school or school district.

EXHIBIT C: PUBLIC EDUCATION AND OUTREACH REQUIREMENTS

Public Education and Outreach | Special Events

All printed materials also to be posted to the Company's website as well as links to teacher resources.

Description	Purpose	Estimated Quantity	Distribution/Frequency
Event Exhibit	<p>Contractor will staff an exhibit booth and distribute promotional and educational materials at special events.</p> <p>Contractor shall provide visual displays, copies of educational materials (including all guides, flyers, and brochures produced for this Agreement), and Recycling education activities appropriate to a variety of age groups. Display components will be professionally designed and created and shall be scalable to be appropriate for a variety of booth or display configurations. Materials will include those pertaining to the programs provided under this Agreement as well as general information on "green" and/or sustainable behaviors.</p>		Up to 50 events per year upon City request.

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**EXHIBIT D:
REPORTING REQUIREMENTS**

EXHIBIT D: REPORTING REQUIREMENTS

1. General

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed, as defined in this Agreement. Contractor shall utilize City-approved cloud-based software to generate reports. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

- A. Determine and set Rates and evaluate the financial efficacy of operations.
- B. Evaluate past and expected progress towards achieving the Contractor's Diversion goals and objectives.
- C. Provide concise and comprehensive program information and metrics for use in fulfilling reporting requirements under Applicable Law.
- D. Determine needs for adjustment to programs.
- E. Evaluate Customer service and Complaints.
- F. Determine Customer compliance with AB 341, AB 827, AB 1826, SB 1383, and any subsequent State-mandated Recyclable Materials requirements.

2. Monthly Report Content

Monthly reports shall be submitted by Contractor to the City and shall include the following information pertaining to the most recently-completed calendar month. In addition, each monthly report shall include a year-to-date summary page that includes the data submitted from the monthly report(s) submitted in the calendar year prior to the submittal of the current monthly report. Contractor shall report the information included in the following subsections.

A. Tonnage Report

- 1. Tonnage delivered to each Approved Facility by Customer Type, subtotalling and clearly identifying those Tons that are Diverted and those that are Disposed.
- 2. Solid Waste Tonnage Disposed.
- 3. Recyclable Materials Tonnage marketed (by commodity and including average commodity value for each) and Processing Residue Tonnage Disposed.
- 4. Large Landfill Items and Reusable Materials Tonnage marketed and Tonnage Disposed from non-Divertible materials and Processing Residue by material type.
- 5. Monthly Diversion rate by Customer Type and in aggregate for all Customer Types under this Agreement.

EXHIBIT D: REPORTING REQUIREMENTS

- B. **Diversion Report.** Contractor shall report the Diversion level for each month and the cumulative year-to-date Diversion level, where Diversion level shall be calculated as: (Discarded Materials Collected – Solid Waste Collected – Processing Residue Disposed) / Discarded Materials Collected.
- C. **Revenue Report.** Provide a statement detailing Gross Receipts from all operations conducted or permitted pursuant to this Agreement as required by Section 7.6.

Provide a list of Customers that are forty five (45) or more calendar days past due and include the following information for each delinquent account: name; service address; contact information; number of days the account is delinquent; and method(s) the Contractor has used to attempt collection of the bad debt including date of such attempt(s).

D. **Customer Subscription and Collection Report**

1. A summary of Customer subscription data, including the number of accounts; the number of Customers subscribing to each Service Level listed separately by Customer Type and Discarded Material type.
2. Number of Containers at each Service Level by Customer Type and program. Summarizing the total gallons of Cart service, cubic yards of Bin service, and pulls and cubic yards or Tons of Roll-Off Box and Compactor service by Customer Type. Report should calculate the average volume of service received per: Single-Family Dwelling Unit (separately identifying Dwelling Units in a duplex, triplex, or fourplex); Multi-Family Dwelling Unit; and, Commercial Customer.
3. List of all Commercial and Multi-Family Customers with Solid Waste Service. Such list shall include each such Customer's service address and subscribed Solid Waste, Recyclable Materials, and Organic Materials Service Levels, and other information as required by the Agreement. The list should include all information in one line for each Customer illustrating the Service Level for each material type and the total Service Level for all material types the Customer has subscribed to.
4. Number of Large Landfill Item/Reusable Materials Collection events by Customer Type.
5. Number of Customers subscribing to each City-approved service exemption by Customer Type;
6. List of Commercial Generators with decreased Service Levels, cancellation of service, and new service.

E. **City Services Report**

1. City facility Diversion rate report (i.e., volume of service by Service Type received by each City Facility and the percentage of the total Service Levels that are for Diversion services relative to the total).
2. Summary report on the programs offered to City as described in Exhibit B5 focused on when each service was provided and any issues/concerns identified.

EXHIBIT D: REPORTING REQUIREMENTS

F. Customer Service Report

1. Number of Customer calls listed separately by Complaints and inquiries (where inquiries include requests for Recycling information, Rate information, etc.). For Complaints, list the number of calls separately by category (e.g., missed pickups, scheduled cleanups, billing concerns, damage claims). These Complaints and inquiries shall be documented and reported separately from SB 1383 noncompliance Complaints or other regulatory noncompliance Complaints.
2. Customer Service representative response time for phone calls and emails documented in minutes as well as the percentage of calls/emails that were responded to after one (1) Business Day.
2. Number of missed or incomplete Collections reported in total, and per one thousand (1,000) Service Opportunities in the City, presented in a graph format with corresponding data that compares total missed Collections in the City to total missed Collections in the other agencies served by Contractor's Franchise Contract Manager.
3. Number of missed or incomplete Collections reported in total, and per one thousand (1,000) Service Opportunities in the City, presented in a graph format with corresponding data that compares total missed Collections in the City during the current report period to total missed Collections in the City in past reporting periods.
4. Number of new service requests for each Customer Type and program.
5. Number of events of Discarded Materials being tagged for non-Collection summarized by the reason for tagging (e.g., inclusion of non-Recyclable or non-Compostable materials, improper set-out, Hazardous Waste, etc.).
6. Number of courtesy Collections summarized by the reason for leaving a courtesy notice (e.g., inclusion of non-Recyclable or non-Organic Materials, improper set-out, Hazardous Waste, etc.).
7. List of Customers for which Contractor has performed a courtesy Collection, including the Customer address, and material type for which the courtesy Collection was performed.
8. Number of hits and unique visitors to the Contractor's website and social media accounts.
9. Instances and amounts of Missed Collection Rebates, and Late Container Delivery Rebates paid in accordance with Section 5.13 of the Agreement.
10. Record of SB 1383 non-compliance Complaints received, including the following information:
 - a. Total number of Complaints received and total number of Complaints investigated.
 - b. Copies of documentation recorded for each Complaint received, which shall at a minimum include the following information: (i) The Complaint as received; (ii) The name

EXHIBIT D: REPORTING REQUIREMENTS

and contact information of the complainant, if the Complaint is not submitted anonymously; (iii) The identity of the alleged violator, if known; (iv) A description of the alleged violation; including location(s) and all other relevant facts known to the complainant; (v) Any relevant photographic or documentary evidence submitted to support the allegations in the Complaint; and, (vi) The identity of any witnesses, if known.

- c. Copies of all Complaint reports submitted to the City, pursuant to Section 4.9.2 of this Agreement.
- d. Documentation of any follow-up inspections and/or outreach, if any, conducted upon City request pursuant to Section 4.9 of this Agreement, which shall include at a minimum: (i) The date the Contractor investigated the Complaint; (ii) Documentation of the findings of the investigation; and (iii) Any photographic or other evidence collected during the investigation.

G. Education and Outreach

- 1. Status report of Contractor's actual activities completed and budget expended compared to the annual public education plan and budget. For each completed item, document the results including what date the activity was performed, how many Customers were targeted or participated, and what methods were used to accomplish the task, if different from the plan.
- 2. A copy of all education and outreach materials provided to Generators, or otherwise used for education and outreach efforts in accordance with Section 4.7 of the Agreement, including, but not limited to: flyers, brochures, newsletters, invoice messaging/billing inserts, and website and social media postings.
- 3. A record of the date and to whom the information was disseminated, or direct contact made, in the form of a list that includes: the Generator's name or account name, the type of education or outreach received; the distribution date, and the method of distribution.
- 4. For any mass distribution through mailings or bill inserts, provide a record of the date, a copy of the information distributed, and the type and number of accounts that received the information.
- 5. A copy of all electronic media, including the dates posted or sent of: social media posts, e-mail communications, or other electronic messages. A summary report shall be provided for electronic marketing that itemizes each communication and reports performance metrics for each that are relevant to that type of communication (e.g., open and click-through rates for email marketing, engagement numbers for social media).
- 6. Summary of the results of the Diversion opportunity assessments provided to Customers (reporting Multi-Family separate from Commercial) by identifying the number of Diversion opportunity assessments conducted each month in the most-recently completed quarter, and contact information including address, contact names, telephone number of Persons contacted, number of Dwelling Units (for Multi-Family), and the Recyclable Materials, Organic

EXHIBIT D: REPORTING REQUIREMENTS

Materials, and Solid Waste Service Level for each complex. Include any Service Level changes resulting from such visits.

7. Summary of the public education materials and activities provided to schools in the month, if any; including results from Diversion opportunity assessments as described in Exhibit C.
8. Dates, times, and group or event names of any site visits, meetings, and events attended in the month.

H. Contamination Monitoring Report

1. The number of route reviews conducted pursuant to Section 4.12 of this Agreement.
2. Description of the Contractor's process for determining the level of contamination or Container overfilling during route reviews. Contractor shall document the contamination and/or overfilling through use of film or digital photography
3. A record of each inspection and contamination fee assessed, which shall include, at a minimum:
 - a. Name and address of the Customer;
 - c. The date the contaminated Container was observed;
 - d. The staff who conducted the inspection;
 - e. The total number of violations found and a description of what action was taken for each; including date and method of contact for three (3) prior violations;
 - f. Copies of all notices to Customers with Prohibited Container Contaminants; and,
 - g. Photographic documentation.
4. Documentation of the total number of Containers Disposed of due to observation of Prohibited Container Contaminants;
5. Summary report of courtesy pick-up notices, non-Collection notices, and/or contamination Processing fee assessment notices issued, which for each notice shall include the date of issuance, Customer name, and service address.
6. A list of all Customers assessed contamination Processing fees, pursuant to Section 4.12 of this Agreement, reported separately by Customer Type, and including the Customer name, Customer address, and reason for the assessment of the contamination Processing fee; the total number of instances contamination Processing fees were assessed in the month; and, the total amount of fees collected in the month.

EXHIBIT D: REPORTING REQUIREMENTS

7. Results of the waste characterization studies conducted pursuant to Section 4.12.2 of this Agreement.
8. The total percentage of contamination fees collected in relation to Gross Receipts, pursuant to Section 4.12.
9. Any other information reasonably requested by the City or specified in contamination monitoring provisions of this Agreement.

- I. **Pilot and New Programs Report.** For each pilot and/or new program, provide activity related and narrative reports on goals, milestones, and accomplishments. Describe problems encountered, actions taken and any recommendations to facilitate progress. Describe vehicles, personnel, and equipment utilized for each program.

3. Annual Report Content

The annual report shall be the final monthly report, including annual totals, summary pages, and a compilation of any materials required by the monthly reports, plus the following additional information.

- A. **Summary Assessment.** Provide a summary assessment of the programs performed under this Agreement from Contractor's perspective relative to the financial and physical status of the program. The physical status assessment shall reflect how well the program is operating in terms of efficiency, economy, and effectiveness in meeting all the goals and objectives of this Agreement, particularly the Contractor's Diversion goals. Provide recommendations and plans to improve, and highlight significant accomplishments and problems. Results shall be compared to other similar size communities served by the Contactor in the State.

B. Collection and Processing Report

1. The total Tonnage amount of Discarded Materials, listed separately by Discarded Material type, removed from homeless encampments and illegal Disposal sites as part of an abatement activity, listing each Collection event separately by date, location, and Tonnage Collected.
2. A record of all compliance agreements for quarantined Organic Waste that are Disposed of, including the name of Generator, date issued, location of final disposition, and the amount of quarantined Organic Waste that was required to be Disposed at a landfill.
3. Written notification that the Approved Organic Materials Processing Facility(ies) has and will continue to have the capabilities to Process and recover the Compostable Plastics, in accordance with Section 4.3.B of the Agreement.

C. Education and Outreach Report

1. A summary of the status of the annual education plan of the reporting year, including activities conducted and the quantitative and/or qualitative results of those activities.
2. The annual public education plan required by Section 4.7 of the Agreement for the upcoming then-current calendar year. For example, Contractor submittal of a 2021 annual report in

EXHIBIT D: REPORTING REQUIREMENTS

February 2022 shall include Contractor submittal of the annual public education plan for calendar year 2022.

D. Commercial Edible Food Generator Report

1. Commercial Customer list including contact information requested by the City Franchise Contract Administrator and designation of each Commercial Customer as either "Tier One," "Tier Two," or "Non-Covered" Edible Food Generator.

E. Vehicle Inventory

1. A list of all vehicles used in performing services under this Agreement including the license plate number, VIN, make, model, model year, purchase date, engine overhaul/rebuild date (if applicable), and mileage at December 31.
2. The total amount of RNG procured by the Contractor for use in Contractor vehicles, in diesel gallon equivalents (DGE), including copies of any receipts, invoices, or other similar documentation evidencing procurement. In addition to the amount procured, Contractor shall include the total amount actually used in Contractor vehicles in the calendar year, if these values are different.
3. The name, physical location, and contact information of each entity, operation, or facility from whom the Contractor procured RNG for Collection vehicles.

F. Recyclable and Organic Materials Markets. Contractor shall provide a report describing its marketing of Recyclable Materials. The marketing report shall include: 1) quantities of each accepted Recyclable Material marketed during the prior year; 2) actual prior year and estimated coming year per unit or per Ton market values for each; and, 3) brokers, markets, and end uses for each.

G. AB 341 and AB 1826 Compliance. Provide a listing of Commercial Customers subscribing to four (4) or more cubic yards of Solid Waste service per week who do not currently subscribe to Recyclable Materials Collection service from Contractor, and a listing of Commercial Customers subscribing to two (2) or more cubic yards of Solid Waste service per week who do not currently subscribe to Organic Materials Collection service from Contractor.

4. Additional Reports

A. Upon Incident Reporting. City reserves the right to request additional reports or documents in the case of unforeseen events or additional requirements imposed upon the City. The Contractor shall provide the requested reports, documents, or information within ten (10) Business Days upon receipt of the request or within a timeframe determined by the City Franchise Contract Administrator, which shall not to exceed ten (10) days.

B. AB 901 Reporting. At the City's option, City may require that Contractor provide the City copies of Contractor's AB 901 reports on a regular basis (such as monthly, quarterly, or annually) or within ten (10) Business Days of the request.

EXHIBIT D: REPORTING REQUIREMENTS

- C. CalRecycle Reports.** At the City's option, City reserves the right to request Contractor to submit any and all information that the City Franchise Contract Administrator finds necessary in the preparation of the Electronic Annual Report (EAR) required by CalRecycle by providing any requested reports, documents, or information, or information within ten (10) Business Days upon receipt of the request by the City Franchise Contract Administrator, which shall not to exceed ten (10) days.
- D. SB 1383 Compliance.** The City reserves the right to request Contractor to provide customized reports from records Contractor is required to maintain and/or require a specified format to include but not limited to: zero waste and SB 1383 implementation, Organic Materials contamination and monitoring enforcement protocols , design, Edible Food Recovery inspection programs, implementation of Technical Assistance, etc.
- E. Customized Reports.** The City reserves the right to request Contractor to prepare and provide customized reports from records Contractor is required to maintain; or require a specified format or submission system, such as the use of a web-based software platform.

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**EXHIBIT E:
RATE ADJUSTMENT METHODOLOGY**

EXHIBIT E: RATE ADJUSTMENT METHODOLOGY

1. General

Subject to the terms herein, the City shall adjust all Rates on an annual basis. Contractor shall submit its application for a Rate adjustment to the City Franchise Contract Administrator on or before August 1 of each Rate Period where Rates shall be adjusted using the index-based methodology described in Exhibit E1. Contractor shall submit its application on or before August 1 for any Rate Period where Rates shall be adjusted using the cost-based methodology described in Exhibit E2. Contractor's Rate application shall document all calculations and include all supporting schedules, documentation of per-Ton charges for Approved Facilities, documentation of changes in governmental fees at Approved Facilities (if applicable), and any other documentation or evidence determined by the City Franchise Contract Administrator to be reasonably necessary to ensure that the calculation of Rate adjustments has been performed in strict conformance to the requirements of this Exhibit E.

The City Council shall make a good faith effort to approve Rates by January 1 of each year, and such Rates shall be effective on each subsequent January 1. If Rates are not effective by January 1 due to a delay caused solely by City, City shall allow Contractor to retroactively bill Customers for the amount of the Rate increase for any period of said delay that is solely caused by City (subject to the City's approval of how the retroactive adjustment is billed) or the City may compensate the Contractor for lost Gross Rate Revenues. In the case of a delayed Rate adjustment, the Contractor may bill the Customer during the next billing cycle to recoup the deferred Rate increase. If Rates are not effective by January 1 as a result of Contractor's delay in submitting the Rate application in a complete and accurate form, then prior Rates remain in effect until such adjustment is made and Contractor shall not be entitled to a retroactive adjustment for lost Gross Rate Revenues.

EXHIBIT E: RATE ADJUSTMENT METHODOLOGY

2. Definitions

Certain terms that are specific to this Exhibit (including Exhibits E1 and E2) are defined below:

- A. **“Annual Percentage Change”** means the annual percentage change in any of the indices defined above calculated as described in the following paragraph.

The Annual Percentage Change for a cost index shall be calculated as the Average Index Value for the most recently available 12-month period of the then-current Rate Period minus the Average Index Value for the corresponding 12-month period of the most-recently completed Rate Period and the result of which shall be divided by the Average Index Value for the same 12-month period of the most recently completed Rate Period.

For example, if the Contractor is calculating the Total Calculated Costs in July 2024 to be effective for Rate Period Two (January 2025 through December 2025), the Annual Percentage Change for the CPI-U would be calculated as follows:

[(Average CPI-U for July 2023 through June 2024) minus (Average CPI-U for July 2022 through July 2023)] divided by (Average CPI-U for July 2022 through June 2023)

The calculated Annual Percentage Change shall be carried to three places to the right of the decimal and rounded to the nearest thousandths.

- B. **“Average Index Value”** means the sum of the monthly index values during the most recently available 12-month period divided by 12 (in the case of indices published monthly) or the sum of the bi-monthly index values divided by 6 (in the case of indices published bi-monthly).
- C. **“CPI-U”** means the Consumer Price Index, All Urban Consumers, all items, not seasonally adjusted San Diego Metropolitan Area compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.
- D. **“Disposal Cost”** means the cost of Disposing of Solid Waste at the Approved Disposal Facility where the per-Ton tipping fee (cost) is specified by the City.
- E. **“ECI”** means the Employment Cost Index, Total Compensation, Private Industry, Service-Providing Industries, seasonally adjusted, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.
- F. **“Fuel Index”** means the per-therm price for Core Natural Gas Service for Compression on Customer’s Premises, compiled and published by the Pacific Gas and Electric Company Analysis and Rate Department and reported monthly in its “Gas RateFinder” publication https://www.socalgas.com/sites/default/files/2019-10/10-1_rate_summary_100819.pdf). The January 2020 Fuel Index reflects the sum of the Customer charge, procurement charge (22.108 cents/therm), Transportation charge (81.540 cents/therm), and public purpose program (PPP) charge (10.060 cents/therm) for natural gas service for compression on Customer’s Premises as reported by Pacific Gas and Electric Company.

EXHIBIT E: RATE ADJUSTMENT METHODOLOGY

- G. **“Motor Vehicle Maintenance and Repair Index”** or **“MVI”** means the Consumer Price Index, All Urban Consumers, Motor Vehicle Maintenance and Repair, not seasonally adjusted U.S. city average, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.
- H. **“Recyclable Materials Rebate Index”** means the low side of the “Official Board Markets”, “Los Angeles” index for “Mixed Paper -MP”, rounded to the nearest penny.
- I. **“Total Calculated Costs”** means the total amount to be used as a basis for determining the Rate Adjustment Factor. The Total Calculated Costs do not reflect or in any way guarantee the Gross Rate Revenues that are to be generated by Rates or retained by the Contractor. Note that for determining Rates for Rate Period Two, the total Proposed costs for Rate Period One (January 1, 2024 through December 31, 2024) shall be used for the calculations.

Table 1 provides additional information about the four indices defined above.

TABLE 1*

	CPI-U	Fuel Index	Motor Vehicle Maintenance and Repair
Description	Consumer Price Index - All Urban Consumers	Core Natural Gas for Compression at Customer’s Premises for Motor Vehicles	Consumer Price Index – All Urban Consumers, Motor Vehicle Maintenance and Repair
Series ID		G-NGV1	CUUR0000SETD
Adjusted	Not seasonally adjusted	N/A	Not seasonally adjusted
Area	San Diego	N/A	U.S. City average
Item	All items	N/A	Motor vehicle maintenance and repair
Base Period	1967=100	N/A	1982-84=100
Periodicity	Bi-monthly	Monthly	Monthly

* All indices published by the U.S. Bureau of Labor Statistics with the exception of the Fuel Index, which is published by Pacific Gas and Electric Company Analysis and Rate Department.

3. Cost of Rate Adjustment Process

The City may incur costs, including consulting and legal fees, when determining adjustments to the Rates in accordance with this Exhibit and may require the Contractor to pay for such costs within sixty (60) calendar days of receipt of the City’s invoice for such costs. The Contractor may recover such costs through the Rates by treating the costs as an allowable Pass-Through Cost. Regardless of Contractor’s payment of costs associated with said review, the City shall retain full and unimpeded discretion in selection of its agents to ensure, at a minimum, that no conflict of interest arises in the review of Contractor’s request. The City retains the right to select its agents on the basis of their qualifications and experience and without regard to cost.

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**EXHIBIT E1:
MULTI-INDEX RATE ADJUSTMENT METHODOLOGY**

EXHIBIT E1: MULTI-INDEX RATE ADJUSTMENT METHODOLOGY

1. General

The purpose of this attachment is to describe and illustrate the method by which the City will calculate the annual adjustment to Rates to reflect changes in various cost indices and changes to Processing and Disposal Costs based on Tonnages of materials Collected and changes in tipping fees. This index-based adjustment process shall be used to determine Rates for all Rate Periods beginning with Rate Period Two (January 1, 2025 through December 31, 2025) with the exception that in place of the index adjustment to set Rates, the methodology described in Exhibit E2 shall be used in Rate Periods Four and Eight, subject to the provisions of Section 8.3 of the Agreement.

The index-based adjustment involves application of indices to various costs that comprise the Total Proposed Annual Costs for Rate Period One (and to Total Calculated Costs for future Rate Periods) to determine the Total Calculated Costs for the coming Rate Period. In addition, Processing and Disposal costs shall be adjusted to reflect actual Tonnage Collected during the most-recently completed Rate Period.

The difference (measured as a percentage) between the Total Calculated Costs for the coming Rate Period and the Total Calculated Costs for the then-current Rate Period is the Rate Adjustment Factor. The Rate Adjustment Factor is applied to the current Rates to determine the Rates for the coming Rate Period.

The Rate Adjustment Factor calculated pursuant to this Exhibit E1 may not exceed five percent (5%). In the event that the calculation results in a calculated increase exceeding five percent (5%), the dollar amount exceeding five percent (5%) shall be applied to the following Rate Period and each subsequent Rate Period until any such excess is fully applied.

In the event that the index-based adjustment as calculated by this Exhibit E1 results in a negative Rate Adjustment Factor, the City reserves the right to "roll-under" the Rate reduction, such that there is no Rate adjustment in the Rate Period for which the negative Rate Adjustment Factor was calculated, but the calculated Rate reduction may be deferred to the following Rate Period, as a credit against future Rate increases.

2. Adjustment of Total Calculated Costs

The cost categories of the main components of Total Calculated Costs are presented in detail in Exhibit G2. Adjustments to these components to calculate costs for the coming Rate Period shall be calculated as follows:

A. Total Annual Cost of Operations

1. **Labor-Related Costs.** The Labor-Related Costs component of Total Calculated Costs for the then-current Rate Period is multiplied by one plus the Annual Percentage Change in the ECI.

For example, in Rate Period Two when calculating the Labor-Related Costs for Rate Period Three, the Labor-Related Costs of Rate Period Two shall be multiplied by one plus the Annual Percentage change in the ECI.

EXHIBIT E1: MULTI-INDEX RATE ADJUSTMENT METHODOLOGY

2. **Vehicle-Related Costs (excluding Fuel).** The Vehicle-Related Costs component of Total Calculated Costs for the then-current Rate Period is multiplied by one plus the Annual Percentage Change in the Motor Vehicle Maintenance and Repair Index.
3. **Fuel Costs.** The Fuel Cost component of Total Calculated Costs for the then-current Rate Period is multiplied by one plus the Annual Percentage Change in the Fuel Index.
4. **Other Costs.** The Other Costs component of the Total Calculated Costs for the then-current Rate Period is multiplied by one plus the Annual Percentage Change in the CPI-U.
5. **Direct Depreciation.** Direct Depreciation is specified in the Table below by year for Rate Periods One through Ten. If the Agreement is extended beyond Rate Period Ten, direct depreciation shall be zero in any subsequent Rate Periods unless Parties mutually agree to a different amount.

Rate Year	Dates	Vehicle Depreciation	Container Depreciation	Other Depreciation
Rate Year 1	1/1/2024-12/31/2024	\$ 964,082.55	\$ 1,039,330.31	\$ 33,710.00
Rate Year 2	1/1/2025-12/31/2025	\$ 1,738,764.39	\$ 1,039,330.31	\$ 33,710.00
Rate Year 3	1/1/2026-12/31/2026	\$ 1,286,180.39	\$ 1,039,330.31	\$ 33,710.00
Rate Year 4	1/1/2027-12/31/2027	\$ 1,078,164.14	\$ 1,039,330.31	\$ 33,710.00
Rate Year 5	1/1/2028-12/31/2028	\$ 1,526,683.67	\$ 1,039,330.31	\$ 33,710.00
Rate Year 6	1/1/2029-12/31/2029	\$ 1,728,112.03	\$ 1,039,330.31	\$ 33,710.00
Rate Year 7	1/1/2024-12/31/2024	\$ 1,873,298.44	\$ 1,039,330.31	\$ 33,710.00
Rate Year 8	1/1/2031-12/31/2031	\$ 1,850,653.99	\$ 1,039,330.31	\$ 33,710.00
Rate Year 9	1/1/2032-12/31/2032	\$ 1,887,223.83	\$ 1,039,330.31	\$ 33,710.00
Rate Year 10	1/1/2033-12/31/2033	\$ 2,002,235.95	\$ 1,039,330.31	\$ 33,710.00

6. **Allocated Costs (Labor, Vehicle, Fuel, and Other Costs).** The Allocated Costs (Labor, Vehicle, Fuel, and Other Costs) component for the then-current Rate Period is multiplied by one plus the Annual Percentage Change in the CPI-U.
7. **Allocated Depreciation and Start-Up Costs.** The Allocated Depreciation and Start-Up Costs shall be \$89,200 per year for Rate Period Two through Ten, and are not annually adjusted.

EXHIBIT E1: MULTI-INDEX RATE ADJUSTMENT METHODOLOGY

These costs shall be zero for all subsequent Rate Periods unless Parties mutually agree to a different amount.

8. **Total Annual Cost of Operations.** The Total Annual Cost of Operations for the coming Rate Period equals the sum of the costs calculated in subsections (1) through (7) above.
- B. **Profit.** Profit for the coming Rate Period shall be calculated by dividing the Total Annual Cost of Operations for the coming Rate Period (the value calculated in Section 2.A.8 above) by an operating ratio (71.46%) and subtracting from the result the Total Annual Cost of Operations for the coming year.

$$\text{Profit} = \frac{\text{Total Annual Cost of Operations for Coming Rate Period}}{\text{Operating Ratio}} - \text{Total Annual Cost of Operations for Coming Rate Period}$$

C. **Pass-Through Costs (Excluded from the Calculation of Profit)**

1. **Recyclable Materials Processing Costs.** The Recyclable Materials Processing Costs shall be calculated as follows:

Recyclable Materials Processing Cost = [(Per-Ton Recyclable Materials Processing Cost for the then-current Rate Period - All regulatory fees identified on Form 7 of Exhibit G2 and included in the then-current per-Ton cost) x (1 + Annual Percentage Change in the CPI-U) + (Then-current per-Ton regulatory fees)] x (Total Tons of Recyclable Materials Collected for the most-recently completed 12-month period).

2. **Recyclable Materials Processing Rebate.** The Recyclable Materials Processing Rebate shall be calculated as follows:

Recyclable Materials Processing Rebate = [(Per-Ton Recyclable Materials Processing Rebate for the then-current Rate Period) x (1 + Annual Percentage Change in the Recyclable Materials Rebate Index)] x (Total Tons of Recyclable Materials Collected for the most-recently completed 12-month period).

(Note: this value should be reflected as a negative number)

3. **Organic Materials Processing Costs.** The Organic Materials Processing Costs shall be calculated as follows:

Organic Materials Processing Costs = Per-Ton Organic Materials Processing fee at the Designated Organic Materials Processing Facility for the coming Rate Period x Total Tons of Organic Materials Collected for the most-recently completed 12-month period.

4. **Reusable Materials Processing Costs.** The Reusable Materials Processing Cost shall be calculated as follows:

EXHIBIT E1: MULTI-INDEX RATE ADJUSTMENT METHODOLOGY

Reusable Materials Processing Cost = [(Per-Ton Reusable Materials Processing Cost for the then-current Rate Period - All regulatory fees identified on Form 7 of Exhibit G2 and included in the then-current per-Ton cost) x (1 + Annual Percentage Change in the CPI-U) + (Then-current per-Ton regulatory fees)] x (Total Tons of Reusable Materials Collected for the most-recently completed 12-month period).

5. **Disposal Costs.** The Disposal Costs shall be calculated as follows:

Disposal Costs = Per-Ton Disposal fee at the Approved Disposal Facility (to be specified by the City) for the coming Rate Period x Total Tons of Solid Waste Collected for the most-recently completed 12-month period.

6. **Interest Expense.** The Interest Expense amount is \$1,238,017 in Rate Period Two through Ten, is not annually adjusted, and shall be zero in any subsequent Rate Period unless Parties mutually agree to a different amount.

7. **Direct Lease Costs.** The Direct Lease Costs amount is \$0 in Rate Period Two through Ten, is not annually adjusted, and shall be zero in any subsequent Rate Period unless Parties mutually agree to a different amount.

8. **Allocated Lease Costs.** The Allocated Lease Costs amount is \$835,939 for Rate Period Two through Ten (including interest costs for Allocated General and Administrative of \$835,939, Allocated Vehicle Maintenance costs of \$0, and Allocated Container Maintenance of \$0) is not annually adjusted, and shall remain unadjusted in any subsequent Rate Period unless Parties mutually agree to a different amount.

9. **Total Pass-Through Costs.** Total Pass-Through Costs for the coming Rate Period are the sum of the amounts in subsections (1) through (8) above.

- D. **Total Calculated Costs before City Reimbursements/Fees/Payments.** The Total Calculated Costs before City Fees/Payments shall be the sum of the Total Annual Cost of Operations, profit, and Total Pass-Through Costs for the coming Rate Period.

E. **City Fees/Payments (Pass-Through Fees)**

1. **Franchise Reimbursement.** Franchise Reimbursements for the coming Rate Period, which shall equal six and nine hundredths percent (6.09%) of the Total Calculated Costs, shall be calculated as follows: \$34,409,463 x (Total Calculated Costs before City Reimbursements plus the sum of other City Reimbursements specified in Sections 2.E.2 of this Exhibit E1) and other adjustments, if any, pursuant to Section 2.F of this Exhibit E1. While the Franchise Reimbursement is calculated based on Total Calculated Cost for the purposes of this formula, it shall be paid out of Contractor's profit.

2. **AB 939/SB 1383 Reimbursement.** The AB 939/SB 1383 Reimbursement for the coming Rate Period shall equal the total AB 939/SB 1383 Reimbursement paid to the City in the most-recently completed 12-month period multiplied by 1 plus the Annual Percentage Change in the CPI-U, or as otherwise directed by the City.

EXHIBIT E1: MULTI-INDEX RATE ADJUSTMENT METHODOLOGY

3. **Solid Waste Programming Fee.** The Solid Waste Programming Fee for the coming Rate Period shall equal the total Solid Waste Programming Fee paid to the City in the most-recently completed 12-month period multiplied by 1 plus the Annual Percentage Change in the CPI-U, or as otherwise directed by the City.
 4. **Total City Reimbursements/Fees/Payments.** The Total City Reimbursement/Payments for the coming Rate Period shall equal costs calculated in subsection (1) through (3) above; however, any adjustment in any such fee, whether pursuant to the relevant index or as the result of the decision of City, shall be pass-through fees (which are excluded from the calculation of profit) and reflected in the Total City Fees/Payments. In addition, County or State taxes, charges or fees shall be pass-through fees.
- F. **Other Adjustments.** From time to time during the Term of the Agreement, it may be necessary to make other adjustments to the compensation calculations. For example, if the City elects to roll-under a negative Rate adjustment to a future year, the dollar value of that negative adjustment shall be reflected as an adjustment. In such case, the adjustment would be a reduction to the Total Calculated Costs.
- G. **Total Calculated Costs.** The Total Calculated Costs for the coming Rate Period shall equal the sum of the Total Annual Cost of Operations, Profit, Total Pass-Through Costs, Total City Reimbursements/Payments, and Other Adjustments (if applicable), for the coming Rate Period.

3. Rate Adjustment Factor

The Rate Adjustment Factor shall equal the Total Calculated Costs for the coming Rate Period divided by the Total Calculated Costs for the then-current Rate Period, which shall be rounded to the nearest thousandth. Note that when determining the Rate Adjustment Factor for Rate Period Two, the Rate Adjustment Factor shall equal the Total Calculated Costs for Rate Period Two divided by the Total Proposed Costs of \$34,490,463 for Rate Period One.

4. Adjustment of Rates

Each then-current Rate shall be multiplied by the Rate Adjustment Factor to calculate the effective Rate for the coming Rate Period. The adjustment to each Rate shall be rounded to the nearest cent.

5. Examples

The following examples illustrates the index-based adjustment method for determining Rates for Rate Period Three. The dollar amounts shown are hypothetical amounts for Total Calculated Costs for Rate Period Two (January 1, 2025 through December 31, 2025F) and the adjustment factors are based on assumed changes in the various indices between the Average Index Values for the twelve (12) months ending July 2024 and for the twelve (12) months ending July 2025 Example A depicts a standard index-based adjustment, wherein the calculated Total Annual Cost of Operations increased greater than zero percent (0%) and less than five percent (5%) over the prior Rate Period. Example B depicts an index-based adjustment wherein the calculated Total Annual Cost of Operations resulted in a decrease from the prior Rate Period.

A. EXAMPLE A

EXHIBIT E1: MULTI-INDEX RATE ADJUSTMENT METHODOLOGY

1. Assumptions for Example Adjustment to Contractor's Compensation:

Most-Recently Completed Rate Period = Rate Period One (January 1, 2024 through December 31, 2024)

Then-current Rate Period = Rate Period Two (January 1, 2025 through December 31, 2025)

Coming Rate Period = Rate Period Three (January 1, 2026 through December 30, 2026)

Recyclable Materials Processing Costs per Ton for the then-current Rate Period = \$60.00 per Ton

Recyclable Materials Processing Rebate per Ton for the then-current Rate Period = (\$30.00) per Ton

Commercial Organic Materials Processing Costs per Ton for the then-current Rate Period = \$30.00 per Ton

Residential Organic Materials Processing Costs per Ton for the coming Rate Period = \$40.00 per Ton

Reusable Materials Processing Costs per Ton for the then-current Rate Period = \$30.00 per Ton

Disposal cost for the coming Rate Period = \$43.00 per Ton

Annual Percentage Change in the CPI-U = 0.040

Annual Percentage Change in the ECI = 0.018

Annual Percentage Change in the Motor Vehicle Maintenance and Repair Index = 0.031

Annual Percentage Change in the Fuel Index = 0.075

Annual Percentage Change in the Recyclable Materials Rebate Index = 0.021

Tonnages for the most-recently completed 12-month period:

Recyclable Materials – 8,000 Tons

Commercial Organic Materials – 3,000 Tons

Residential Organic Materials – 9,000 Tons

Solid Waste – 14,000 Tons

Large Landfill Items and Reusable Materials – 500 Tons

Note: All values presented in this table are hypothetical and used for illustrative purposes only.

EXHIBIT E1: MULTI-INDEX RATE ADJUSTMENT METHODOLOGY

TABLE 2: Example A Calculation of Total Calculated Costs for Rate Period Three

	Rate Period Two	Adjustment Index	Adjustment Factor	Rate Period Three
Processing Tip Fee Adjustments (per Ton)				
Recyclable Materials Processing Tip Fee	\$60.00	CPI-U	1 + 0.040	\$62.40
Recyclable Materials Processing Rebate	(\$30.00)	RRI	1 + 0.021	(\$30.63)
Commercial Organic Materials Processing Tip Fee	\$30.00	CPI-U	1 + 0.040	\$31.20
Reusable Materials Processing Tip Fee	\$30.00	CPI-U	1 + 0.040	\$31.20
Annual Cost of Operations				
Labor-related Costs	\$2,000,000	ECI	1 + 0.018	\$2,036,000
Vehicle-related Costs (excluding fuel)	\$400,000	MVI	1 + 0.031	\$412,400
Fuel Costs	\$800,000	FUEL	1 + 0.075	\$860,000
Other Costs	\$250,000	CPI-U	1 + 0.040	\$260,000
Direct Depreciation	\$700,000	N.A.	N.A.	\$700,000
Allocated Costs (Labor, Vehicle, Fuel, and Other Costs)*	\$1,000,000	CPI-U	1 + 0.040	\$1,040,000
Allocated Costs (Depreciation and Start-Up)	\$100,000	N.A.	N.A.	\$100,000
Total Annual Cost of Operations	\$5,250,000		N.A.	\$5,408,400
Profit (assuming operating ratio of 0.92)	\$456,522			\$470,296
Pass-Through Costs				
Recyclable Materials Processing Costs	\$480,000	Tip Fee x Tons	8,000 x \$62.40	\$499,200
Recyclable Materials Processing Rebate	(\$240,000)	Tip Fee x Tons	8,000 x (\$30.63)	(\$245,040)
Residential Organic Materials Processing Costs	\$333,000	Tip Fee x Tons	9,000 x \$40.00	\$360,000
Commercial Organic Materials Processing Costs	\$90,000	Tip Fee x Tons	9,000 x \$31.20	\$93,600
Reusable Materials Processing Costs	\$15,000	Tip Fee x Tons	500 x \$31.20	\$15,600
Solid Waste Disposal Costs	\$560,000	Tip Fee x Tons	14,000 x \$43.00	\$602,000
Interest Expense	\$150,000	N.A.	N.A.	\$150,000
Direct Lease Costs	\$200,000	N.A.	N.A.	\$200,000
Allocated Lease Costs	\$25,000	N.A.	N.A.	\$25,000
Total Pass-Through Costs	\$1,613,000			\$1,700,360
Total Calculated Costs before City Fees	\$7,319,522			\$7,579,056
City Fees/Payments				
Franchise Fee	\$1,326,427.83	N.A.	N.A.	\$1,373,387.07
AB 939 Fee	\$182,000	CPI-U	1 + 0.040	\$189,280
Vehicle Impact Mitigation Fee	\$15,000	N.A.	N.A.	\$15,000
HHW Fee	\$30,000	CPI-U	1 + 0.040	\$31,200
Rate Application Review Fee	\$35,000	N.A.	N.A.	\$35,000
Procurement Reimbursement	\$30,000	N.A.	N.A.	\$30,000
Total City Fees/Payments	\$1,618,428			\$1,673,867
Other Adjustments (as needed from time to time)	N.A.	N.A.	N.A.	N.A.
Total Calculated Costs	\$8,937,950			\$9,252,923

* Fuel costs included in allocated costs shall be adjusted using the CPI-U not Fuel Index.

EXHIBIT E1: MULTI-INDEX RATE ADJUSTMENT METHODOLOGY

2. Example Calculation of the Rate Adjustment Factor and Adjusted Rate for Rate Period Three

Rate Adjustment Factor = $\$9,252,923 / \$8,937,950 = 1.035$

20-gallon Single-Family Rate for Rate Period Three = $\$22.62 \times 1.035 = \23.41 , which shall be effective January 1, 2026.

B. EXAMPLE B

1. Assumptions for Example Adjustment to Contractor's Compensation:

Most-Recently Completed Rate Period = Rate Period One (January 1, 2024 through December 31, 2024)

Then-current Rate Period = Rate Period Two (January 1, 2025 through December 31, 2025)

Coming Rate Period = Rate Period Three (January 1, 2026 through December 30, 2026)

Recyclable Materials Processing Costs per Ton for the then-current Rate Period = \$60.00 per Ton

Recyclable Materials Processing Rebate per Ton for the then-current Rate Period = (\$30.00) per Ton

Commercial Organic Materials Processing Costs per Ton for the then-current Rate Period = \$30.00 per Ton

Residential Organic Materials Processing Costs per Ton for the coming Rate Period = \$40.00 per Ton

Reusable Materials Processing Costs per Ton for the then-current Rate Period = \$30.00 per Ton

Disposal cost for the coming Rate Period = \$43.00 per Ton

Annual Percentage Change in the CPI-U = -0.040

Annual Percentage Change in the ECI = -0.018

Annual Percentage Change in the Motor Vehicle Maintenance and Repair Index = 0.031

Annual Percentage Change in the Fuel Index = -0.075

Annual Percentage Change in the Recyclable Materials Rebate Index = 0.021

Tonnages for the most-recently completed 12-month period:

Recyclable Materials – 8,000 Tons

Commercial Organic Materials – 3,000 Tons

Residential Organic Materials – 9,000 Tons

Solid Waste – 14,000 Tons

Large Landfill Items and Reusable Materials – 500 Tons

Note: All values presented in this table are hypothetical and used for illustrative purposes only.

EXHIBIT E1: MULTI-INDEX RATE ADJUSTMENT METHODOLOGY

TABLE 2: Example B Calculation of Total Calculated Costs for Rate Period Three

	Rate Period Two	Adjustment Index	Adjustment Factor	Rate Period Three
Processing Tip Fee Adjustments (per Ton)				
Recyclable Materials Processing Tip Fee	\$60.00	CPI-U	1 + -0.040	\$57.60
Recyclable Materials Processing Rebate	(\$30.00)	RRI	1 + 0.021	(\$30.63)
Commercial Organic Materials Processing Tip Fee	\$30.00	CPI-U	1 + -0.040	\$28.80
Reusable Materials Processing Tip Fee	\$30.00	CPI-U	1 + -0.040	\$28.80
Annual Cost of Operations				
Labor-related Costs	\$2,000,000	ECI	1 + -0.018	\$1,964,000
Vehicle-related Costs (excluding fuel)	\$400,000	MVI	1 + 0.031	\$412,400
Fuel Costs	\$800,000	FUEL	1 + -0.075	\$740,000
Other Costs	\$250,000	CPI-U	1 + -0.040	\$240,000
Direct Depreciation	\$700,000	N.A.	N.A.	\$700,000
Allocated Costs (Labor, Vehicle, Fuel, and Other Costs)*	\$1,000,000	CPI-U	1 + -0.040	\$960,000
Allocated Costs (Depreciation and Start-Up)	\$100,000	N.A.	N.A.	\$100,000
Total Annual Cost of Operations	\$5,250,000		N.A.	\$5,116,400
Profit (assuming operating ratio of 0.92)	\$456,522			\$444,904
Pass-Through Costs				
Recyclable Materials Processing Costs	\$480,000	Tip Fee x Tons	8,000 x \$57.60	\$460,800
Recyclable Materials Processing Rebate	(\$240,000)	Tip Fee x Tons	8,000 x (\$30.63)	(\$245,040)
Residential Organic Materials Processing Costs	\$333,000	Tip Fee x Tons	9,000 x \$40.00	\$360,000
Commercial Organic Materials Processing Costs	\$90,000	Tip Fee x Tons	9,000 x \$28.80	\$86,400
Reusable Materials Processing Costs	\$15,000	Tip Fee x Tons	500 x \$28.80	\$14,400
Solid Waste Disposal Costs	\$560,000	Tip Fee x Tons	14,000 x \$43.00	\$602,000
Interest Expense	\$150,000	N.A.	N.A.	\$150,000
Direct Lease Costs	\$200,000	N.A.	N.A.	\$200,000
Allocated Lease Costs	\$25,000	N.A.	N.A.	\$25,000
Total Pass-Through Costs	\$1,613,000			\$1,653,560
Total Calculated Costs before City Fees	\$7,319,522			\$7,214,864
City Fees/Payments				
Franchise Fee	\$1,326,427.83	N.A.	N.A.	\$1,306,726.85
AB 939 Fee	\$182,000	CPI-U	1 + -0.040	\$174,720
Vehicle Impact Mitigation Fee	\$15,000	N.A.	N.A.	\$15,000
HHW Fee	\$30,000	CPI-U	1 + -0.040	\$28,800
Rate Application Review Fee	\$35,000	N.A.	N.A.	\$35,000
Procurement Reimbursement	\$30,000	N.A.	N.A.	\$30,000
Total City Fees/Payments	\$1,618,428			\$1,590,247
Other Adjustments (as needed from time to time)	N.A.	N.A.	N.A.	N.A.
Total Calculated Costs	\$8,937,950			\$8,805,111

* Fuel costs included in allocated costs shall be adjusted using the CPI-U not Fuel Index.

2. Example Calculation of the Rate Adjustment Factor and Adjusted Rate for Rate Period Three

EXHIBIT E1: MULTI-INDEX RATE ADJUSTMENT METHODOLOGY

Total Calculated Costs = \$8,805,111 < \$8,937,950; Adjusted Total Calculated Costs = \$8,937,950 (Total Calculated Costs from prior Rate Period)

Rate Adjustment Factor = $\$8,937,950 / \$8,937,950 = 1.00$

20-gallon Single-Family Rate for Rate Period Three = $\$22.62 \times 1.00 = \22.62 , which shall be effective January 1, 2026 (i.e., NO RATE ADJUSTMENT).

Subsequent Rate Period Adjustment. $\$8,937,950 - \$8,805,111 = \$132,838$ cost savings to be applied as an "Other Adjustment" in the subsequent Rate Period adjustment calculations as an offset to Contractor's Total Calculated Costs.

6. Other

If an index described in Exhibit E is discontinued, the successor index with which it is replaced shall be used for subsequent calculations. If no successor index is identified by the Bureau of Labor Statistics, the index published by the organization which is most comparable shall be used.

**EXHIBIT E2:
COST-BASED RATE ADJUSTMENT METHODOLOGY**

EXHIBIT E2: COST-BASED RATE ADJUSTMENT METHODOLOGY

1. General

The Parties shall use the cost-based Rate adjustment method described in this Exhibit in setting the Rates for Rate Periods Four (4) and Eight (8). The cost-based adjustment involves review of the Contractor's actual cost of operations and operational statistics (staffing levels, routes, route hours, Customers and their Service Levels, etc.) to determine the Actual Allowable Total Annual Cost of Operations for the most-recently completed Rate Period and to forecast the Total Contractor's Compensation for the coming Rate Period. The difference (measured as a percentage) between the Total Contractor's Compensation for the coming Rate Period and the Projected Gross Rate Revenues (which is calculated based on most-recent Customer subscription levels at then-current Rates) is the "Rate Adjustment Factor". The Rate Adjustment Factor is applied to the then-current Rates to determine the Rates for the coming Rate Period.

The intent of performing the cost-based adjustment is to examine the actual impact of changes in inflation or deflation, the number of Customers, and the Service Level of Customers.

In the event that the cost-based adjustment calculated in accordance with this Exhibit E2 results in a negative Rate Adjustment Factor, the City reserves the right to "roll-under" the Rate reduction, such that there is no Rate adjustment in the Rate Period for which the negative Rate Adjustment Factor was calculated, but the calculated Rate reduction may be deferred to the following Rate Period, as a credit against future Rate increases.

A. **Contractor's Rate Application.** Contractor's Rate application for any Rate Period where Rates shall be adjusted using the cost-based methodology described in this Exhibit E2 and shall include the information described in this Section 1.A of Exhibit E2. With the exception of the information identified in Subsections 1, and 2 below, all other items listed may be requested by the City Franchise Contract Administrator at any time during the Term of the Agreement and Contractor shall comply with that request in a timely fashion.

1. **Financial Statements.** Within one hundred twenty (120) calendar days after the close of the Contractor's fiscal year, December 31, Contractor shall deliver to the City one (1) hard copy of the reviewed (or audited) consolidated financial statements of Contractor for the preceding fiscal year. Financial statements shall include a supplemental combining schedule showing Contractor's results of operations, including the specific revenues and expenses in connection with the operations provided for in this Agreement separate from others included in such financial statements. The financial statements and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) consistently applied and fairly reflecting the results of operation and Contractor's financial condition. Annual financial statements shall be reviewed (or audited), in accordance with Generally Accepted Auditing Standards (GAAS) by a Certified Public Accountant (CPA) licensed (in good standing) to practice public accounting in the State as determined by the State Department of Consumer Affairs Board of Accountancy, and that the CPA's opinion on Contractor's annual financial statements shall be unqualified, and shall contain the CPA's conclusions regarding the Contractor's accounting policies and procedures, internal controls, and operating policies. The CPA shall perform an evaluation and, if necessary, shall cite recommendations for improvement. Financial statements provided by Contractor are considered confidential, Proprietary and/or Trade Secret information by Contractor and disclosure of this information shall be subject to the procedures outlined in Section 6.1.

EXHIBIT E2: COST-BASED RATE ADJUSTMENT METHODOLOGY

2. **Financial Schedule Reconciliation.** Contractor shall provide a schedule which clearly and accurately ties the amounts shown in Contractor's Rate application to Contractor's financial schedules. Such schedule shall include any and all allocation factors and methodologies used to report cost and operating information for services provided to the City under this Agreement separately from Contractor obligations related to other public or private entities. Such statement of reconciliation shall include:
- a. General explanation of the various allocation methodologies used for each Rate application line item.
 - b. Specific examples of each type of allocation used showing how an entry is reported in the general ledger and ties to the Rate application.
 - c. Statement indicating whether there have been any changes in allocation methods used since the last Rate application. If any allocation methods have changed clearly identify those changes.

Financial statements provided by Contractor are considered confidential, Proprietary and/or Trade Secret information by Contractor and disclosure of this information shall be subject to the procedures outlined in Section 6.1.

3. **Operational Information.**
- a. Routes by Line of Business:
 1. Number of routes per day.
 2. Types of vehicles.
 3. Crew size per route.
 4. Number of full time equivalent (FTE) routes.
 5. Number of accounts and cubic yards scheduled per route.
 6. Total route hours per Line of Business per year.
 7. Average cost per route.
 - b. Personnel:
 1. Organizational chart.
 2. Job classifications and number of employees (e.g., administrative, Customer service representatives, drivers, supervisors, educational staff).
 3. Wages by job classification.
 4. Number of FTE positions for each job classification.
 5. Number of hours per job classification per year.
 - c. Productivity Statistics:
 1. Average number of accounts per route per day by Line of Business.
 2. Average number of setouts per route per day by Line of Business.

EXHIBIT E2: COST-BASED RATE ADJUSTMENT METHODOLOGY

3. Average Tons per route per day by vehicle type (i.e., side-loader, front-loader, roll-off).
 4. Average cubic yards of Collection scheduled per route.
 - d. Vehicles:
 1. List of Collection vehicles including year purchased and mileage.
 2. Average age of mobile equipment with oldest and newest.
 - e. Operational Changes:
 1. Number of routes.
 2. Staffing.
 3. Supervision.
 4. Collection services.
4. **Variance Analysis.** Provide the following variance analysis for each Line of Business. For any variances greater than five percent (5%) annually, Contractor shall provide sufficient rationale to support variance:
 - a. Variance analysis comparing current Rate Period to each of the prior Rate Periods of Agreement.
 - b. Variance analysis comparing current Rate Period to each of the future projected Rate Periods.
5. **Projections.** Provide the following projection data:
 - a. Provide support for the basis for projected Gross Receipts and line item expenses. Clearly indicate the supporting calculations and assumptions.
 - b. Provide support for the most-recent twelve (12) months of Tonnage data for Rate Period ending October. Clearly indicate the supporting calculations and assumptions.

2. Forecasting Total Contractor's Compensation

The Total Contractor's Compensation for the coming Rate Period shall be forecasted in the manner described in this Section.

A. Forecasting Total Annual Cost of Operations

1. **Determine Actual Allowable Total Annual Cost of Operations.** Contractor's financial statements, books, and records applicable to the services under this Agreement shall be reviewed to determine Contractor's "Actual Allowable Total Annual Cost of Operations" for the most-recently completed Rate Period to perform all the services in the manner required by this Agreement for each of the following cost categories:
 - a. Actual labor-related costs

EXHIBIT E2: COST-BASED RATE ADJUSTMENT METHODOLOGY

- b. Actual vehicle-related costs (excluding fuel and depreciation)
- c. Actual fuel costs
- d. Actual other costs (as defined on Form 6E of Exhibit G2)
- e. Direct depreciation costs (in the amount specified in Exhibit E1)
- f. Actual allocated costs (labor, vehicle, general and administrative, and other costs)
- g. Actual allocated costs (depreciation and start-up) (in the amount stated in Exhibit E1)
- h. Actual Procurement Reimbursement cost

Financial statements provided by Contractor are considered confidential, Proprietary and/or Trade Secret information by Contractor and disclosure of this information shall be subject to the procedures outlined in Section 6.1.

2. Non-Allowable Costs. The following list of non-allowable costs shall be deducted from the Contractor's actual costs when determining the Actual Allowable Total Annual Cost of Operations.

- a. Labor, equipment, fuel, and start-up costs for personnel, vehicles, and facilities that are not specified in the proposal forms contained in Exhibit G2 and/or which cannot be demonstrated to have been incurred as part of the performance of services under this Agreement.
- b. Payments to directors and/or owners of Contractor unless the amount paid is reasonable compensation for services actually rendered. Reasonableness shall be determined based on available market pricing for similar services and shall be in the sole discretion of the City.
- c. Travel expenses and entertainment (above five thousand dollars (\$5,000) annually in total) expenses, unless authorized in advance by the City.
- d. Payments to repair damage to public or private property for which Contractor is legally liable.
- e. Fines or penalties of any nature.
- f. Liquidated Damages assessed under this Agreement.
- g. Federal or State income taxes.
- h. Cash donations or value of in-kind services provided to charitable, political, youth, civic, or other community organizations unless such donation has been previously approved in writing as an allowable expense by the City Franchise Contract Administrator.

EXHIBIT E2: COST-BASED RATE ADJUSTMENT METHODOLOGY

- i. Depreciation or interest expense for Collection vehicles, Containers, other equipment, offices and other facilities if such items are leased as specified in Exhibit G2.
 - j. Attorney's fees and other expenses incurred by Contractor in any court proceeding in which the City and Contractor are adverse Parties.
 - k. Attorney's fees and other expenses incurred by Contractor arising from any act or omission in violation of this Agreement.
 - l. Attorneys' fees and other expenses incurred by Contractor in any court proceeding in which Contractor's own negligence, violation of law or regulation, or wrong doing are in issue and occasion, in whole or in part, the attorneys' fees and expenses claimed; and attorneys' fees and expenses incurred by Contractor in a court proceeding in which the legal theory or statute providing a basis of liability against Contractor also provides for separate potential liability for the City derived from the action of its citizens or Rate payers (such as in a CERCLA lawsuit) unless the Contractor is found not liable in such claims and such claims arise from acts or occurrences within the Term of the Agreement.
 - m. Payments to Related-Party Entities for products or services, in excess of the cost to the Related-Party Entities for those products or services.
 - n. Goodwill.
 - o. Unreasonable profit sharing distributions.
 - p. Replacement costs for Containers that need to be replaced because the useful life of such Container was less than the Term.
 - q. Administrative costs greater than the administrative costs presented in Contractor's Proposal (Exhibit G2) adjusted annually by one plus the Annual Percentage Change in the CPI-U.
 - r. Bad debt write-offs in excess of two percent (2%) of annual Rate revenues.
- 3. Forecast Total Annual Cost of Operations.** Forecasted Total Annual Cost of Operations for the coming Rate Period shall be calculated based on Actual Allowed Total Cost of Operations for the most-recently completed Rate Period determined in accordance with this Exhibit E2, Sections 2.A.1 and 2.A.2 above. The forecasts shall be performed in the following manner:
- a. **Forecasted labor-related costs** shall be calculated for the coming Rate Period by the lesser of:
 - (i) multiplying the allowed labor-related costs, both direct and allocated, for the most-recently completed Rate Period by one plus the Annual Percentage Change in the ECI, and (ii) multiplying the result of step one once more by one plus the Annual Percentage Change in the ECI; **OR,**

EXHIBIT E2: COST-BASED RATE ADJUSTMENT METHODOLOGY

The Labor-Related Costs component of Total Calculated Costs for the then-current Rate Period is multiplied by one plus the Annual Percentage Change in the ECI.

- b. **Forecasted vehicle-related costs** (excluding fuel and depreciation costs) shall be calculated for the coming Rate Period by (i) multiplying the allowed vehicle-related costs, both direct and allocated, for the most-recently completed Rate Period by one plus the Annual Percentage Change in the Motor Vehicle Maintenance and Repair Index, and (ii) multiplying the result of step one once more by one plus the Annual Percentage Change in the Motor Vehicle Maintenance and Repair Index.
- c. **Forecasted fuel costs** shall be calculated for the coming Rate Period by (i) multiplying the allowed fuel costs, both direct and allocated, for the most-recently completed Rate Period by one plus the Annual Percentage Change in the Fuel Index, and (ii) multiplying the result of step one once more by one plus the Annual Percentage Change in the Fuel Index.
- d. **Forecasted other costs** shall be calculated for the coming Rate Period by (i) multiplying the allowed other-related costs, both direct and allocated, for the most-recently completed Rate Period by one plus the Annual Percentage Change in CPI-U, and (ii) multiplying the result of step one once more by one plus the Annual Percentage Change in the CPI-U.
- e. **Forecasted direct depreciation expense** shall be the amount specified in Exhibit G2 for vehicles, Containers, and facilities. Direct depreciation expense is a fixed cost and is not subject to inflation.
- f. **Forecasted allocated labor-related, vehicle-related, general and administrative, and other costs** shall be calculated for the coming Rate Period by (i) multiplying the allowed other-related costs for most-recently completed Rate Period by one plus the Annual Percentage Change in CPI-U, and (ii) multiplying the result of step one once more by one plus the Annual Percentage Change in CPI-U.
- g. **Forecasted allocated depreciation and start-up expense** shall be the amount specified in Section 2.A.7 of Exhibit E1 for vehicles, Containers, and facilities.
- h. **Forecasted Total Annual Cost of Operations** for the coming Rate Period shall equal the sum of the following costs, which shall have been calculated in accordance with the procedures in this Exhibit E2:
 - (1) Forecasted labor-related costs
 - (2) Forecasted vehicle-related costs (excluding fuel and depreciation costs)
 - (3) Forecasted fuel costs
 - (4) Forecasted other costs
 - (5) Forecasted direct depreciation expense

EXHIBIT E2: COST-BASED RATE ADJUSTMENT METHODOLOGY

(6) Forecasted allocated labor-related, vehicle-related, general and administrative, and other costs

(7) Forecasted allocated costs for depreciation and start-up

- B. **Forecast Profit.** Contractor shall be entitled to Profit on Forecasted Total Annual Cost of Operations. Profit shall be calculated using an operating ratio of seventy-one percent (71%) as proposed by Contractor and described in Exhibit G2. Profit shall be calculated using the following formula:

Profit = (Forecasted Total Annual Cost of Operations / Operating Ratio) – Forecasted Total Annual Cost of Operations

For example:

1. Assuming an operating ratio of ninety-two (92%)
2. Assuming a Forecasted Total Annual Cost of Operations of \$1,000,000
3. Profit = (\$1,000,000 / 0.92) – \$1,000,000 = \$86,956.52

- C. **Forecast Pass-Through Costs.** Pass-Through Costs for the coming Rate Period shall be forecasted in the following manner:

1. **Forecasted Recyclable Materials Processing costs** shall be calculated in the manner described in Section 2.C.1 of Exhibit E1.
2. **Forecasted Recyclable Materials Processing Rebate** shall be calculated in the manner described in Section 2.C.2 of Exhibit E1.
3. **Forecasted Residential Organic Materials Processing costs** shall be calculated in the manner described in Section 2.C.3 of Exhibit E1.
4. **Forecasted Commercial Organic Materials Processing costs** shall be calculated in the manner described in Section 2.C.3 of Exhibit E1.
5. **Forecasted Reusable Materials Processing costs** shall be calculated in the manner described in Section 2.C.4 of Exhibit E1.
6. **Forecasted Disposal costs** shall be calculated in the manner described in Section 2.C.5 of Exhibit E1.
7. **Forecasted Interest Expense.** Interest Expense is \$1,238,017 per year and shall not be adjusted over the Term of the Agreement.
8. **Forecasted Direct Lease Costs.** Direct Lease Costs are \$0 per year and shall not be adjusted over the Term of the Agreement.

EXHIBIT E2: COST-BASED RATE ADJUSTMENT METHODOLOGY

9. **Forecasted Allocated Lease Costs.** Allocated Lease Costs are \$1,921,802 per year and shall not be adjusted over the Term of the Agreement.

D. **Forecast City Fees/Payments.** City fees shall be calculated in the manner described in Section 2.E of Exhibit E1.

3. Projected Gross Rate Revenue

Projected Gross Rate Revenue at then-current Rates shall reflect projected annual Gross Rate Revenues from all Customers based on then-current Rates and then-current Customer Service Levels, inclusive of all Rates and special charges authorized under this Agreement. For the purposes of determining Customer Service Levels for on-call services (e.g., Roll-Off Box service provided less than weekly, Bin rentals, etc.) and special charges (e.g., push charges, lock/unlock charges, etc.), the prior 12 months of billing activity for such services and special charges shall be used.

4. Rate Adjustment Factor

The Rate Adjustment Factor shall equal the Forecasted Total Calculated Costs for the coming Rate Period, calculated in accordance with Section 2 herein, divided by the Projected Gross Rate Revenues. The Rate Adjustment Factor shall be rounded to the nearest thousandth.

5. Adjustment of Rates

Each then-current Rate shall be multiplied by the Rate Adjustment Factor to calculate the effective Rate for the coming Rate Period.

**EXHIBIT F:
PERFORMANCE STANDARDS AND LIQUIDATED
DAMAGES**

EXHIBIT F: PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

City wishes to establish standards of performance under the Agreement in each of the six (6) "Performance Areas" listed below. The City Franchise Contract Administrator may monitor Contractor's performance in each of those areas based on the "Specific Performance Measures" within that performance area. In the event that the City Franchise Contract Administrator determines that Contractor has failed to meet the performance standard established for any "Specific Performance Measure", the City may assess Liquidated Damages pursuant to Section 10.6 of the Agreement. Liquidated Damages, if assessed, shall only be assessed for the number of events, days, or other measure in excess of the acceptable performance level.

1. Performance Area: Provision of Universal Three-Container (or Four-Container) Service

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Failure to Provide Recyclable Materials and Organic Materials Collection Services to every Customer	For each occurrence of failing to provide Customers with the three-Container system, including Recyclable Material and Organic Materials, required by and compliant with Article 4 and Exhibit B.	No acceptable failure level	\$100/Residential Customer per month \$500/Commercial Customer per month
Failure to provide Move-in Kits	For each occurrence of failing to provide Customers with the Move-in Kit required by this Agreement	Up to five (5) per contract year	\$250/Customer

The City shall not assess Liquidated Damages item 1, above, under the following circumstances:

- A. City has exempted Customer from Service as provided in Section 4.11 of the Agreement, or Contractor documents that Customer is compliant with Recyclable Materials and Organic Waste Self-Hauling requirements pursuant to Municipal Code Section 13.4 and 14 CCR Division 7, Article 12, Article 7;
- B. Contractor documents to the City that the Customer is being provided Recyclable Materials and/or Organic Materials Collection services from a City-permitted, or non-exclusively franchised, Recycler or Discarded Materials service provider;
- C. Contractor documents that Customer is sharing Recyclable Materials and/or Organic Materials Collection services with another Customer in a manner approved by the City;
- D. The City has failed to adopt a mandatory Recycling ordinance; or
- E. Contractor notifies the City that Contractor has attempted to provide Recyclable Material and/or Organic Material Collection services to the Customer and that the Customer fails or refuses to subscribe to such service.

EXHIBIT F: PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

2. Performance Area: Service Quality and Reliability

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Missed Collections	Each Service Opportunity where Contractor fails to Collect a Container from a Customer who properly placed said Container for Collection, as described in Section 4.9.3, unless Contractor follows the protocols as required in the Agreement	Less than ten (10) per one thousand (1,000) Service Opportunities	\$50/Event
Failure to Correct Missed Collections	Each "missed Collection" as defined in Section 4.9.3, which is not Collected by the end of the Working Day following the receipt of the Customer Complaint about the missed Collection if the Complaint is received by 3:00 p.m. on a Working Day and by the end of the following Working Day for such Complaints received after 3:00 p.m. on a Working Day.	Less than one (1) per one hundred (100) missed Collections	\$50/Event
Failure to Issue Customer Rebate	Each failure to provide a Customer the Missed Collection Rebate or Late Container Delivery Rebate in accordance with Section 5.13. B and 5.13.C of the Agreement.	No acceptable failure level	\$50/Event
Failure to Return Empty Container	Failure to properly return empty Carts or Bins to the Curbside Collection location, or to place Carts upright.	Less than ten (10) per one thousand (1,000) Service Opportunities	\$20/Event

EXHIBIT F: PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Failure to clean or exchange Customer Container	Failure to clean or exchange Customer Container within the required time specified in Agreement	Less than ten (1) per one hundred (100) Customer requests received	\$100/event
Failure to Clean-Up Spillage	Each failure by Contractor to clean up: (1) any items or materials spilled during the Collection of a Container; or, (2) any fluids spilled or leaked from a Container or Collection vehicle prior to leaving the Collection location.	Less than five (5) per one thousand (1,000) Service Opportunities	\$100/Event
Damage to Property	Each event of damage to either public or private property as a result of Collection activity, including without limitation Curbs, sidewalks, landscapes, Container enclosures and gates, signs, light fixtures, and overhead wires and cables, that is uncorrected within ten (10) Business Days. If Contractor cannot reasonably correct or remedy the breach within the time set forth in a notice of violation, it shall not be in breach if it commences to correct or remedy such violation within the time set forth in such notice and diligently effects such correction or remedy thereafter.	Less than two (2) per one thousand (1,000) Service Opportunities	\$200/Event
Damage to Public Streets	Each event of damage to Public Streets within the City caused by Contractor.	No acceptable failure level	Actual cost of repair to City's satisfaction.

EXHIBIT F: PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Failure to Maintain and/or clean vehicles	Each event of failure to maintain equipment or vehicles, in a clean, safe, and sanitary manner.	No acceptable failure level	\$100/Item/Day
Failure to Maintain and/or clean Containers	Each event of failure to maintain Carts, Bins, and other Containers in a clean, safe, and sanitary manner as described in Section 5.6.	No acceptable failure level	\$100/Item/Day
Failure to Comply with Container Standards	Failure to comply with Container labeling and colors pursuant to SB 1383 Regulations.	No acceptable failure level	\$200/Container/Occurrence
Failure to Provide/Utilize/Purchase Required Vehicles/Equipment	Failure to purchase, provide, and utilize required vehicles (Section 5.5), and communications equipment as specified in this Agreement and the Technical Proposal in Exhibit G.	No acceptable failure level	\$100/Item/Day
Failure to Utilize RNG in Collection Vehicles (if applicable)	Failure to use RNG in all Collection vehicles, and/or failure to use RNG that meets the standards specified in this Agreement in Section 5.5.A.2.	No acceptable failure level	\$250/Vehicle/Day
Unlicensed Vehicle Operator	Failure to have a vehicle operator properly licensed.	No acceptable failure level	\$500/Operator/Day
Failure to Display Contractor's Name	Failure to display and maintain visibility of Contractor's name and Customer service phone number on Collection vehicles, Bins, and other Containers.	No acceptable failure level	\$100/Instance/Day
Failure to Wear Uniform	Failure to have Contractor personnel in proper uniform.	No acceptable failure level	\$100/Person/Day
Discourteous Behavior	For each occurrence of uncustomary discourteous behavior of Contractor's employees to a Customer.	Less than five (5) per one thousand (1,000) Service Opportunities	\$250/Event

EXHIBIT F: PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Failure to Complete Route and/or Failure to Notify City Franchise Contract Administrator of Failure to complete route	Failure or neglect to complete at least ninety percent (90%) of each route on the regular scheduled Collection service Working Day.	No acceptable failure level	\$1,000/Route
Changing Routes	Changing routes without proper notification and approval by the City Franchise Contract Administrator, per Section 5.2.B.	No acceptable failure level	\$500/Route/Day until proper notification is sent
Overweight Vehicles	Loading Collection vehicles in excess of State or local weight restrictions.	No acceptable failure level	\$150/Event
Uncovered Loads	Failure to properly cover materials in Collection vehicles.	No acceptable failure level	\$500/Event
Failure to Suspend Contamination Program	Failure to suspend the contamination fee program in the event it exceeds the percent of Gross Receipts allowed in Section 4.12.1.E.	No acceptable failure level	\$50/Contamination Fee Issued After Specified Percentage Threshold is Exceeded
Failure to adjust Service Level	Failure to implement a Service Level adjustment for a Customer that has been requested by the Customer or the City Franchise Contract Administrator within five (5) Business Days of such request.	No acceptable failure level	Any Actual Pro-Rated Rate Savings due to Customer plus; \$50/Container
Failure to provide funding for Education and Outreach program	Each event of Contractor Failure to provide funding for education and outreach program as described in Agreement.	No acceptable failure level	Actual amount unexpended, plus 10% Interest (City Administrative Costs) each month until paid

EXHIBIT F: PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

3. Performance Area: Customer Service

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Failure to Exchange Container for change in Service Level	Any failure by Contractor to exchange Container within ten (10) Working Days of notification that a change in the size or number of Carts or Bins is required.	No acceptable failure level	\$35/Container/Day
Failure to Resolve Complaint	Any failure or neglect by Contractor to resolve each Complaint within the time set forth in Section 4.9.1.	Less than one (1) per one hundred (100) Complaints	\$100/Event
Failure to Answer Phones	Any failure by Contractor to answer a telephone call from a Customer during normal business hours. A call is not considered to be answered if the Customer does not speak with a live operator. (A call is considered to be answered if the Customer hangs-up or abandons the call following a hold time of less than three (3) minutes.) Any failure to have a Customer service representative answer a phone call within a two (2) minute average for any month and/or for each single caller having to wait more than ten (10) minutes.	Less than five (5) per one thousand (1,000) Calls Received Under this Agreement	\$50/Event
Failure to Maintain Office Hours	Failure to maintain office hours as required by this Agreement.	No acceptable failure level	\$100/Event
Provision of Inaccurate information	Each event of a Customer service representative providing inaccurate information in response to a Customer question or Complaint.	No acceptable failure level	\$50/Event
Unauthorized Hours of Operation	Each occurrence of Contractor Collecting from Customers during unauthorized hours.	Less than two (2) per one thousand (1,000) Service Opportunities	\$50/Event
Failure to Conduct Route Reviews and contamination monitoring	Failure to conduct Route Reviews and contamination monitoring as required by this Agreement.	No acceptable failure level	\$150/Audit/Day

EXHIBIT F: PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Failure to Issue Contamination Notices	Failure to issue contamination notices as required by this Agreement.	No acceptable failure level	\$500/Route
Failure to issue courtesy notices	Failure to issue three (3) courtesy notices before issuing Contamination fee to Customer	No acceptable failure level	\$50/Event
Failure to provide Donation and landfill Collection week services to Residential Customers	For each occurrence of failing to provide Customers who request service during the two(2) weeks of donation Collection and two(2) weeks of Large Landfill Item Collection services as required by Exhibit B.	No acceptable failure level	\$500/Event/ Customer Request
Failure to maintain website	Failure for Contractor to maintain an updated website with City specific information	No acceptable failure	\$250/day
Failure to provide multi-lingual Customer service	Failure for Contractor to provide multi-lingual Customer service as required by the Agreement	No acceptable failure	\$500/per event
Failure to provide e-billing	Failure for Contractor to provide electronic ways for Customers to pay their bills (e.g., Phone, Website, phone app, etc.)	No acceptable failure	\$500/day

4. Performance Area: Diversion

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Failure to Meet the Minimum Diversion Requirements (Section 5.12)	Failure to meet the minimum Diversion requirements of this Agreement (calculated per calendar year).	Less than 0.001%	Shortfall of 0.001% - 2%: \$10,000.00 per calendar year. Shortfall of 2.001% or greater: \$25,000.00 per calendar year.
Failure to Perform Education and Outreach Activities	Each individual failure by Contractor to develop, produce, and distribute public education material or perform community outreach activities in the form and manner required under Exhibit C to this Agreement.	No acceptable failure level	\$500/Activity

EXHIBIT F: PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Failure to Provide Technical Assistance	Each individual failure to provide technical assistance to a Commercial or Multi-Family Customer in the manner required under Exhibit C.	No acceptable failure level	\$100/Customer

5. Performance Area: Facilities

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Delivery to Non-Approved Facility	Each individual occurrence of delivering materials to a facility other than the Approved Facility designated for each material type under Article 4 of this Agreement.	No acceptable failure level	\$2,500 per load \$5,000 each subsequent failure.
Disposal of Targeted Diversion Materials	Each individual occurrence of delivering Recyclable Materials, Organic Materials, or Reusable Materials set out for Collection by Customer for Disposal rather than Processing except where a facility closes due to exigent circumstances, by operation of law, or compliance with law as defined in Section(s) 4.2 and 4.3.	No acceptable failure level	\$1,000/Load
Mixing Materials During Collection	Each individual Container that is Collected by Contractor in a vehicle intended or designated for the purpose of Collecting a different material type (e.g., Recyclable Materials Collected in Solid Waste vehicle, Solid Waste Collected in Organic Materials vehicle, etc.)	No acceptable failure level	\$1,000/route Not to exceed \$10,000/route
Commingling with Non-City Materials	Commingling of materials Collected inside and outside the City during Collection.	No acceptable failure level	\$1,000/Event
Failure to Provide Adequate Capacity	Failure to provide adequate primary and alternate capacity to accept and Process Recyclable Materials or Organic Materials.	No acceptable failure level	\$1,000/Day

EXHIBIT F: PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

6. Performance Area: Reporting & Records

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Late Report	Each occurrence of a report, as required under Exhibit D to this Agreement, or otherwise agreed upon by the Parties, being submitted after the due date.	No acceptable failure level	\$250/Report/ Day
Failure to Maintain or Provide Access to Records	Each occurrence of City Franchise Contract Administrator requesting information required to be maintained by Contractor where Contractor fails to provide such information within the time window specified in this Agreement.	No acceptable failure level	\$500/Event
Misleading/Inaccurate Reporting	Each occurrence of Contractor providing misleading or otherwise inaccurate information or reporting to City under or in regard to this Agreement. Typographical, cell reference, mathematical, and/or logic errors shall not be considered legitimate excuses from this requirement, nor shall ignorance.	No acceptable failure level	\$250/Event
Failure to Correct Submittal of Inaccurate Data in a Timely Manner	Failure to correct submittal of inaccurate data within three (3) Business Days (or such other time period as may be agreed to in writing between City and Contractor) of notification by City.	No acceptable failure level	\$500/Day
Failure to maintain and/or provide access to Information Systems	Each day that Contractor fails to provide access to Contractor's information systems as required in Section 6.1 to the City Franchise Contract Administrator.	No acceptable failure level	\$500/Day

EXHIBIT F: PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

This language does not appear anywhere in the Exhibit or Agreement.

By placing designee's initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of Liquidated Damage provisions at the time that the Agreement was made.

Contractor

City

Initial Here: MT

Initial Here: _____

**EXHIBIT G:
CONTRACTOR'S PROPOSAL**

To be included in final Agreement

**EXHIBIT G1:
TECHNICAL PLAN**

To be included in final Agreement

**EXHIBIT G2:
COST BASIS**

To be included in final Agreement

**EXHIBIT G3:
INITIAL RATES FOR COLLECTION SERVICES**

To be included in final Agreement based on Contractor's Proposal

**EXHIBIT G4:
IMPLEMENTATION PLAN AND SCHEDULE**

EXHIBIT G4: IMPLEMENTATION PLAN AND SCHEDULE

Item	Implementation Date	Program Details
Education, outreach, and technical assistance to Commercial and Multi-Family Customers	Upon Commencement Date (2024)	<ul style="list-style-type: none"> • MFD roll out has already begun as of 2021 under prior agreement • All Commercial accounts have or will receive technical assistance with the ongoing project for Organic Materials
Container labeling/color	Upon Commencement Date (2024)	<ul style="list-style-type: none"> • Container Labeling/Color <ul style="list-style-type: none"> ○ Hot stamp lids for landfill and Recycling labeling for SB 1383 requirements ○ Residential Organic Materials lids will be updated ahead of service availability ○ Commercial Containers will be updated for SB 1383 requirements <ul style="list-style-type: none"> ▪ Color of Bins updated ▪ Labeling/Decals updated
Billing transition	Upon Commencement Date (or requested timeline from City)	
Street sweeping re-route	Upon Commencement Date (2024)	<ul style="list-style-type: none"> • Began under prior agreement
Reporting	Upon Commencement Date (or requested timeline from City)	
Site audits/technical assistance	April-December 2023	Public education to Owners/property managers will be mailed to the billing address and distributed in Person to the site location during site audits/technical assistance visits through Contractor's Diversion Coordinator. An initial mailer announcing the NEW and ENHANCED services will be mailed to the billing address. The mailer explains the NEW and ENHANCED Collection services, new regulatory requirements, including SB 1383; and, the effective date of the change.
Distribute kitchen pails and Recyclable Materials totes	April-December 2023	Property managers will receive Recyclable Materials totes designed to contain Recyclable Materials, and Food Scraps pails to distribute to all units on their property during the site assessment.

EXHIBIT G4: IMPLEMENTATION PLAN AND SCHEDULE

Item	Implementation Date	Program Details
Delivery of new Bins and Carts to Commercial Customers	Prior to January 1, 2024	Contractor will automatically schedule swaps of old Bins to the new colored schemed Bins. In addition, in the regular course of business when Customer requests Bin swaps for repair or Service Level change, or when new Customers request services, the new colored schemed Bins will be delivered. Contractor expects to transition all Bins City-wide by January 2025, ahead of SB1383 compliance
Initial mailer	45-60 days prior to service implementation (October 2023)	Residents will receive an initial mailer that will explain and describe new programs available them, including changes from the existing programs to new programs and the effective date of the change.
Food Scraps pail		Residents will receive their new Food Scraps pails at the same time as their new Cart delivery and old Cart removal. All public education on the new Cart, NEW and ENHANCED services, Food Scraps pail instructions, and SB1383 information will be included in the initial mailer.
Implement Residential Organic Materials Collection	Jan 1, 2024	Commercial and Multi-Family services implemented under prior agreement.
Cart right-sizing	Second week of January 2024	If any resident requires any changes to the number and size of their Carts after delivery, Cart exchanges will be scheduled after all new Carts have been delivered. Free exchanges will be accommodated up to 3 months following delivery of the new Carts.
Identify Tier One and Tier Two Commercial Edible Food Generators	June 1, 2024	Six (6) months after the Effective Date of the Agreement, and annually thereafter, Contractor, working with the County Health Department, shall identify and provide a list to the City of Commercial Customers that qualify, or appear to qualify, as Tier One or Tier Two Commercial Edible Food Generators and update this information annually to maintain an up-to-date database.

EXHIBIT G4: IMPLEMENTATION PLAN AND SCHEDULE

Contamination Monitoring Item	Minimum Proposed Start Date in Advance of the "Go Live" Date for Charges	Purpose and Message Ideas
Introductory Communication	60 days	Introduction of upcoming contamination surcharges and reminder about avoiding overage; keeping the community clean and green. 2 letter versions: Carts only (SFD) and Customers with Carts or Bins (CM/MFD), 2-sided insert with the letter (FAQ and education/ sorting guide).
WM's Oceanside website & City website	60 days and on-going	on websites with updated information about surcharges and educational information to avoid contamination.
Digital Assets - City Use	60 days and on-going	Graphic messaging to be developed in a collaborative partnership between Contractor, NV5 and the City
Bill Inserts	30 days and on-going	Include messaging on how to properly sort and manage material to avoid contamination surcharges (Organic Materials and Recyclable Materials); avoid overages -- quarterly bill inserts
Paid Media	30 days and on-going	Local Advertising such as Coast News, NextDoor, UT, and others identified in collaboration between Contractor and the City (exact TBD)
Go Live Reminder Postcard to Account Holder addresses	14 days	Communication to Account holders - Remind Customers when surcharges begin. Educate - how to sort properly, stay clear of additional charges.
Go Live Postcard to Service addresses (if different from account holder)	14 days	Communication to service address (non-account holders). Educate - how to sort properly, stay clear of additional charges.
Email notifications	go live date	Warning and charge versions, Cart and Cart/Bin versions

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**EXHIBIT G5:
APPROVED SUBCONTRACTORS**

EXHIBIT G5: APPROVED SUBCONTRACTORS

Subcontractor Name	Service to be provided
Agri Service Recycling, Inc.	Organic Materials Processing
NV5 Global, Inc.	Graphic design work for public education and outreach materials
FleetGenius, LLC	Bulk item Curbside pickup for landfill and donation weeks program Cart delivery and removal
Disabled American Veterans Thrift Stores	Donation weeks events reuse and Recycling facility for Curbside donation program
Goodwill Industries of San Diego County	Donation weeks events reuse and Recycling facility for Curbside donation program (potential partner)

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**EXHIBIT G6:
CUSTOMER SERVICE PLAN**

EXHIBIT G6: CUSTOMER SERVICE PLAN

Our office accepts walk-in Customer service assistance Monday - Friday from 8:00 a.m. - 5:00 p.m. Our service professionals answer Customer calls in less than 30 seconds and no Customer call is placed on hold for over 90 seconds. Our Genesys = Customer interaction management platform allows us to shift staffing based on call volume. We also have 24/7 capabilities such as a dedicated municipal website, live digital chat, after-hours Customer service features, and a mobile app.

Contractor provides a five-week training program for new Customer service representatives in our dedicated classroom style training facility located within our Customer Service Center, allowing for continuous training without interruption. The curriculum is comprehensive covering everything from an overview of our industry to understanding how to use Contractor-specific Customer service tools and technology. Various training styles are also conducted, such as classroom training, side-by-side shadowing, role-playing, and online programs

The Customer Service Center is located in Commerce, CA and is operated on the PDT time zone, and is open 7 a.m. to 5 p.m., Monday through Friday. The center is closed on New Year's Day, Memorial Day, 4th of July, Labor Day, Thanksgiving Day and Christmas Day. From Commerce we track a variety of Customer service, operational and financial metrics.

Oceanside Residential and Commercial Customer calls will be answered by 142 dedicated CSRs. Contractor's Customer service center has friendly, skilled representatives trained in superior Customer service handling. Our CSRs are empowered to resolve Customer issues on the first call. We use surveys and feedback to continuously improve our operations. Calls are monitored weekly, and one-on- one feedback sessions are conducted between CSRs and supervisors.

Customer contacts, including requests for service, change of status, change of service, status of service, Complaints, and compliments, are tracked through a ticket system. Each ticket is created in an open status and requires closure upon completion of requested action and/or resolution. Local management and their teams are responsible for providing requested service and/or issue resolution and to monitor the status of all tickets for timely service completion.

Contractor utilizes the Genesys Customer interaction management platform to help monitor staff adjustment needs. Genesys is a global leader in the Customer care technology industry. Their system provides the data and an algorithm used for staff-level monitoring and serves as an invaluable tool for our Customer service management team.

We provide sufficient staffing through our ability to shift staffing levels according to the volume of phone calls. If a team of representatives is experiencing higher than normal call volume, we are able to move additional representatives to that team to handle additional incoming calls. Additionally, Customers are provided with an automated call back option (no need to hold; we will call you back) during high call volume periods.

In the event of an emergency, Contractor Customer experience centers in other areas of the U.S. are available for contingency coverage.

EXHIBIT G6: CUSTOMER SERVICE PLAN

Our Commitment to Oceanside

- Quick resolution of issues
- Ease of integration across communication channels
- Backup Customer service centers located throughout the Country in case of an emergency
- Complete Customer satisfaction

Rest assured that Contractor will take the time to explain to Residential and Commercial Customers why a deliberate non-Collection occurred.

Clearly communicating these program details to Customers is essential to fully utilize available services and resources. With over sixty percent (60%) of consumers preferring to conduct business online, providing Solid Waste information through a simple, easy-to-use website is an essential communication tool.

As a Contractor Customer, Oceanside's residents will have access to a local Contractor website that is both easy to navigate and functional. Working in collaboration with your staff, we will customize the website with meaningful service information, photos and resources that reflect the interests of Oceanside.

Using Contractor's local website, Customers will easily and quickly be able find:

Community-specific service information – an overview of all Contractor services available including waste, Recycling, yard waste, bulky items and special Collections. This section also informs Customers of where to place Bins, Collection times, and acceptable items.

Helpful resources – including information concerning Holiday schedules, seasonal cleanups or nearby drop-off sites, Contractor's local website allows us to advise Customers of special programs and services available only for Oceanside. Upcoming events (such as Christmas tree Collection) can be promoted with a prominent banner ad located on the home page.

Recycling education. Customers have access to educational materials and resources available through Contractor's Recycle Right campaign. Whether looking for recycling posters or activities for students, content is printer-friendly and ready to use.

Contractor's local Oceanside website will also allow Customers to take action through 24/7 self- service and account management functionality. Customers can:











- Initiate service or request additional services
- Schedule an empty and return (roll off Customers only)
- View pickup schedule and Collection ETA
- Schedule an extra pickup or bulky item Collection
- Request Cart or Container repair

EXHIBIT G6: CUSTOMER SERVICE PLAN

- Sign up for autopay or make an online payment
- Enroll in paperless billing
- Edit account contact information

As an added convenience, Contractor staff will share access to our web content for cross-promotion on your website. Connecting directly to Contractor’s information will save Oceanside staff time and confirm residents and businesses continuously receive accurate and consistent information.

Waste Management Technology Working for You

Our Online Capabilities		Residential	Commercial Customers	Full Of Customers
 Autopay	Automatic payments are quick, easy and recurring to help customers ensure on-time payment and avoid potential late fees or service disruptions	✓	✓	✓
 Paperless Billing	Customers can opt into receiving invoices online and are notified with an email when their invoice is available	✓	✓	✓
 Online Bill Pay	Online bill payment was designed for the customer on-the-go. It's available 24x7 and frees the customer from the hassle of calling or mailing in payments.	✓	✓	✓
 wm.com Profile	Creating a wm.com profile enables customers to access billing, account, and self-service applications like scheduling a bulky or extra pickup	✓	✓	✓
 Edit Contact Information	Customers can easily update their personal contact information online 24x7	✓	✓	✓
 Empty and Return	Customers can schedule an empty and return or switch out of containers online. This service can be modified or cancelled as necessary, plus we provide a history of service requests to help with planning and budgeting.	n/a	n/a	✓
 Pickup Schedule/ETA	Customers can view pickup schedule, next pickup date, and estimated time to arrive online to ensure that containers are ready, avoiding any customer inconvenience.	✓	✓	✓
 Holiday Schedule	Holiday Schedules provide up-to-date information online and prepare customers for any potential service delays that occur during holiday seasons.	✓	✓	✓
 Bulky or Extra Pickup	Scheduling a bulky item or an extra pickup is quick and easy for customers with this simple online form.	✓	✓	✓
 Contact us	Customers get timely email responses when they submit their questions or report service-related issues online using our friendly Contact Us form.	✓	✓	✓

Note: n/a – not applicable to this customer segment



Green Pages: A Customer-Focused Knowledge Management Tool

Contractor uses a Proprietary web-based Knowledge Management Tool (KMT) called Green Pages to track and maintain all information related to the services provided in our municipal contracts.

Oceanside will have customized pages within Green Pages that include local, contract-specific information such as available services, rates, Collection schedules, maps, special events, and activities.

EXHIBIT G6: CUSTOMER SERVICE PLAN

Since Green Pages is our go-to source for Oceanside-specific information, we regularly review and update any necessary changes to enhance the quality and delivery of information to our Customers. As new, local programs are developed, the Green Pages are updated in real-time, which is critical for communicating special event information and emergency or weather related messaging.

Since Green Pages is accessible to all our CSRs nationwide, it also enables us to enlist backup support from other regional Customer service centers in an emergency. Our experienced CSRs across the country can instantly access Oceanside's service related information, allowing Contractor to provide consistent, accurate information during the most critical emergency situations.

Measuring Our Customer Service Performance

Contractor strives to meet Customer needs quickly and consistently by utilizing key performance metrics and detailed Customer feedback to continuously improve call handling quality and Customer satisfaction.

Key Performance Metrics

We monitor, measure, and coach key performance metrics to validate availability to service our Customers when they have a need or problem to resolve. We benchmark world-class industry standards to set our goals:

- Average Speed of Answer (ASA): On average, we answer our Customer calls in less than 45 seconds.
- Call Abandon Rate (ABA): Less than five percent (5%) of callers disconnect before their call is answered.
- Average Call Handle Time (AHT): On average, we've addressed our Customers' needs in less than 5 minutes and 30 seconds. Our goal is to resolve every issue at the first point of contact and dedicate as much time as necessary to guarantee Customer satisfaction.

Customer Insights - The Voice of Our Customers Matters

As part of our commitment to continuously keep our Customers at the center of everything we do, we recently launched a new Voice of Our Customers (VOC) survey. The results from this survey provide our team with real-time, actionable feedback to improve service delivery.

Every month, we invite thousands of Customers across the nation to complete the survey, either online or by phone. Our prior survey took seven to eight minutes on average to complete; the new user-friendly version only takes three to four minutes on average. We receive about 12,000 survey responses per month.

The survey initially focuses on core questions related to the Customer's overall relationship with Contractor, then expands into targeted questions regarding the Customer's service experience with our company. This new survey provides us with unprecedented insights into our Customers' service experience, needs, and priorities, which gives us the data we need to develop proactive solutions to not only meet but exceed their expectations every day.

**EXHIBIT G7:
VEHICLE REPLACEMENT PLAN**

EXHIBIT G7: VEHICLE REPLACEMENT PLAN

Truck ID	Year	Description	Fuel	Commodity	Replacement Date
103984	2012	12 Autocar/Labrie ASL Truck	CNG	Solid Waste	1/1/2025
103979	2012	12 Autocar/Labrie ASL Truck	CNG	Solid Waste	1/1/2025
103977	2012	12 Autocar/Labrie ASL Truck	CNG	Solid Waste	1/1/2025
103985	2012	12 Autocar/Labrie ASL Truck	CNG	Solid Waste	1/1/2025
103983	2012	12 Autocar/Labrie ASL Truck	CNG	Solid Waste	1/1/2025
103981	2012	12 Autocar/Labrie ASL Truck	CNG	Solid Waste	1/1/2025
103986	2012	12 Autocar/Labrie ASL Truck	CNG	Solid Waste	1/1/2025
103987	2012	12 Autocar/Labrie ASL Truck	CNG	Solid Waste	1/1/2025
103978	2012	12 Autocar/Labrie ASL Truck	CNG	Solid Waste	1/1/2025
104047	2012	12 Autocar/Labrie ASL Truck	CNG	Recycling	1/1/2025
104050	2012	12 Autocar/Labrie ASL Truck	CNG	Recycling	1/1/2025
	2012	12 Autocar/Labrie ASL Truck	CNG	Recycling	1/1/2025
103982	2012	12 Autocar/Labrie ASL Truck	CNG	Recycling	1/1/2025
103975	2012	12 Autocar/Labrie ASL Truck	CNG	Recycling	1/1/2025
103976	2012	12 Autocar/Labrie ASL Truck	CNG	Recycling	1/1/2025
104051	2012	12 Autocar/Labrie ASL Truck	CNG	Organic Materials	1/1/2025
104048	2012	12 Autocar/Labrie ASL Truck	CNG	Organic Materials	1/1/2025
105504	2017	17 Peterbilt/Amrep ASL Trk	CNG	Organic Materials	1/1/2030
105508	2017	17 Peterbilt/Amrep ASL Trk	CNG	Organic Materials	1/1/2030
105509	2017	17 Peterbilt/Amrep ASL Trk	CNG	Organic Materials	1/1/2030
105502	2017	17 Peterbilt/Amrep ASL Trk	CNG	Organic Materials	1/1/2030
211184	2012	12 Autocar/Labrie FEL Truck	CNG	Solid Waste	1/1/2023
211185	2012	12 Autocar/Labrie FEL Truck	CNG	Solid Waste	1/1/2023
211507	2014	14 Peter/McNeilus FEL Truck	CNG	Solid Waste	1/1/2025
211501	2014	14 Peter/McNeilus FEL Truck	CNG	Solid Waste	1/1/2025
213353	2017	17 Autocar/Amrep SFEL Trk	CNG	Solid Waste	1/1/2028
213351	2017	17 Autocar/Amrep SFEL Trk	CNG	Solid Waste	1/1/2028
213355	2017	17 Autocar/Amrep SFEL Trk	CNG	Solid Waste	1/1/2028
213350	2017	17 Autocar/Amrep SFEL Trk	CNG	Solid Waste	1/1/2028
213358	2017	17 Autocar/Amrep SFEL Trk	CNG	Recycling	1/1/2028
213356	2017	17 Autocar/Amrep SFEL Trk	CNG	Recycling	1/1/2028
212833	2017	17 Peterbilt/Amrep SFEL Trk	CNG	Recycling	1/1/2028
213349	2017	17 Autocar/Amrep SFEL Trk	CNG	Recycling	1/1/2028
213357	2017	17 Autocar/Amrep SFEL Trk	CNG	Recycling	1/1/2028
213356	2017	17 Autocar/Amrep SFEL Trk	CNG	Recycling	1/1/2028
213348	2017	17 Autocar/Amrep RO Trk	CNG	Organic Materials	1/1/2028
213677	2018	18 Autocar/Amrep SFEL Trk	CNG	Organic Materials	1/1/2029
213675	2018	18 Autocar/Amrep SFEL Trk	CNG	Organic Materials	1/1/2029

EXHIBIT G7: VEHICLE REPLACEMENT PLAN

213674	2018	18 Autocar/Amrep SFEL Trk	CNG	Organic Materials	1/1/2029
213676	2018	18 Autocar/Amrep SFEL Trk	CNG	Organic Materials	1/1/2029
213674	2018	18 Autocar/Amrep SFEL Trk	CNG	Organic Materials	1/1/2029
416093	2018	18 Autocar/Amrep RO Trk	CNG	Roll Off	1/1/2031
416092	2018	18 Peterbilt/Amrep RO Trk	CNG	Roll Off	1/1/2031
417579	2020	20 Autocar/Amrep RO CNG	CNG	Roll Off	1/1/2032

**EXHIBIT H:
ANTICIPATED REQUIRED POSITIONS**

EXHIBIT H: ANTICIPATED REQUIRED POSITIONS

Positions detailed in this Exhibit H are the maximum anticipated positions needed for the provision of Recyclable Materials, Organic Materials, and Solid Waste Collection services and other related services in the City.

Route Personnel Headcount	# of Regular Personnel	# of Casual/Pool	Total
Residential Cart Solid Waste	9.0	1.0	10.0
Residential Cart Recyclable Materials	6.0	1.0	7.0
Residential Cart Organic Materials	6.0	1.0	7.0
Commercial Cart Solid Waste	2.0	1.0	3.0
Commercial Cart Recyclable Materials	1.0	1.0	2.0
Commercial Cart Organic Materials (YW only or Comingled YW/GW)	1.0	1.0	2.0
Commercial Cart Organic Materials (FW only)	3.0		3.0
Commercial Bin Solid Waste	4.0	1.0	5.0
Commercial Bin Recyclable Materials	5.0	1.0	6.0
Commercial Bin Organic Materials (YW only or Comingled YW/GW)	1.0	1.0	2.0
Commercial Bin Organic Materials (FW only)	3.0		3.0
Roll-Off	3.0	1.0	4.0
Subtotal Route Personnel	44.0	10.0	54.0

EXHIBIT H: ANTICIPATED REQUIRED POSITIONS

Other Personnel Headcount	# of Employees
General Manager (District Manager)	1.00
Operations Manager	1.00
Municipal Relations Manager (Public Sector Sales Rep I)	1.00
Route Supervisor	3.00
Dispatcher	1.00
Container Maintenance/Welder	2.00
Maintenance Supervisor (Sr. District Fleet Manager)	1.00
Maintenance Personnel	9.00
Safety Specialist (Area Safety Director)	0.01
Staff Accountant	0.30
Human Resources (People Advisor)	0.01
Billings Clerk	1.00
Collection Clerk	0.30
Financial Analyst	0.30
Customer Service Supervisor	0.10
Customer Service Representatives	2.00
Sales Coordinator	0.50
Recycling Manager	1.00
Recycling/Public Education Coordinator	2.00
Subtotal Other Personnel	
	26.5

**EXHIBIT I:
ENVIRONMENTALLY PREFERABLE PURCHASING POLICY**

EXHIBIT I:

ENVIRONMENTALLY PREFERABLE PURCHASING POLICY

As an integral cog in the recycling life cycle with our comprehensive collection and processing operations throughout North America, we understand the critical importance of supporting producers of materials made with recycled content. Not only does Waste Management process recyclables, including paper, but we support the recycled paper market by recycling our office paper and prioritizing recycled-content paper in our supply purchases. Partnerships with suppliers, including shredding service providers, paperless billing vendors, and office supply companies, help us impact the paper life cycle. The following is a diagram that outlines this cycle at our company.

Paper recycling and purchases of recycled content print stock are an integral part of our sustainable supply chain management strategy, including the following objectives:

- Include a Sustainability Clause in all our Master Products and Service Agreements
- Educate our supply chain personnel on sustainability basics, Values and Commitments, and initiatives to reduce Waste Management and our customer's carbon footprint
- Provide tools to initiate discussions about sustainability
- Seek disclosure of relevant sustainability information from suppliers, leveraging shared or existing data when available and communicating preferences for innovative, sustainable solutions
- Determine the availability of viable and innovative procurement options
- Engage and reward key suppliers for establishing and meeting sustainability goals

By integrating sustainable purchasing practices in every procurement level at our company, we aim to reduce greenhouse gasses associated with our operations and support manufacturers that utilize recycled content in their production processes and materials.

Certification to National or International Standards

Although Waste Management as a corporate entity does not hold formal ISO certification, the company's continuous improvement Environmental Management System (EMS) aligns closely with ISO principles. Within the company, several sub-groups have achieved registration or certification:

Waste Management Sustainability Services (Waste Management Sustainability Services) is one of the very few non-facility-based service organizations in the country with an EMS system that is managed in compliance with the aspects outlined in the ISO 14001 standard

- Three individual Waste Management landfills are ISO 14001 certified
- Our Electronics Recycling Division is ISO 14001, 9001, RIOS, and R2 certified
- Our WM Recycle America, L.L.C. Export Group is ISO 9001 certified
- Waste Management's company-wide EMS meets ISO 14001 guidelines for an effective environmental management system

Waste Management Sustainability Services is a full service, ISO 9001 and 14001-certified special services division of Waste Management and provides a complete range of sustainability consulting services and environmental management solutions.

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**EXHIBIT J:
ACCEPTABLE & UNACCEPTABLE WASTE FOR HHW
EVENTS**

EXHIBIT J: ACCEPTABLE & UNACCEPTABLE WASTE FOR HHW EVENTS

Acceptable Waste

GARDEN CHEMICALS

- Insect sprays
- Weed killers
- Other poisons Fertilizer

SWIMMING POOL CHEMICALS

- Pool acid
- Chlorine: tablets, liquid

AUTOMOTIVE WASTE

- Motor oil
- Antifreeze
- Waxes
- Polishes
- Cleaners
- Brake fluid
- Gasoline
- Used oil filters
- Oily rags
- Transmission fluid
- Windshield washer fluid
- Hydraulic fluid
- Automotive batteries

PAINT PRODUCTS

- Oil-based paint
- Latex paint
- Spray paint
- Stripper
- Stains
- Caulking
- Wood preservative
- Glue
- Thinner

HOUSEHOLD CLEANERS

- Bleach
- Cleaning compounds
- Floor stripper
- Drain cleaner
- Tile remover
- Tile cleaners

EXHIBIT J: ACCEPTABLE & UNACCEPTABLE WASTE FOR HHW EVENTS

Rust remover

MISC. HOUSEHOLD

Household batteries-thermometers
Fluorescent tubes
Thermometers
Hobby glue
Artist's paint
Medicines (pills-capsules loose)
Sharps Waste

Unacceptable Waste

Biological waste
Radioactive materials
Smoke detectors
Ammunition
Explosives
Leaking Containers
Unknowns (must be tested)
Fire extinguishers
Pressurized cylinders
Tires
Appliances (larger than microwave)
Waste in 6-gallon or larger container
Commercial chemicals (for business use)
Asbestos
Trash
Construction materials
Not more than five gallons of driveway sealer
Liquid mercury

**EXHIBIT K:
APPROVED ORGANIC MATERIALS PROCESSING
SUBCONTRACTING AGREEMENT**

PROCESSING AND COMPOSTING AGREEMENT

March^{14th} This Processing and Composting Agreement (the "Agreement") is executed this *31st* day of *March*, 2022 by Agri Service Recycling, Inc., a California corporation, located at 3720 Oceanic Way, Suite 204, Oceanside, CA 92056 (collectively "Contractor"), and Waste Management of California, Inc., a California corporation, located at 9081 Tujunga Ave., Sun Valley, California 91352 ("WM"). WM and Contractor are each referred to as a "Party" and collectively referred to as the "Parties."

WHEREAS, Contractor is engaged in the business of receiving Organic Materials at its facility located at 3210 Oceanside Blvd., Oceanside, CA 92056 (the "Facility"), processing such material into Compost products, and marketing, selling and distributing such products to third parties;

WHEREAS, WM is engaged in the business of collecting Organic Waste from generators and transporting such material to Organic Waste processing facilities;

WHEREAS, the City of Oceanside (the "City") and WM are negotiating a draft franchise agreement, in form and in substance to be determined by mutual agreement of the City and WM, but shall be in substantially the form attached hereto as Exhibit A, with a proposed commencement date of January 1, 2024 (the "Underlying Contract");

WHEREAS, in connection of the Underling Contract, WM and the Contractor desire to enter into this Agreement to provide the Exclusive Services (as defined below) and Contractor desires to perform such Services for WM commencing on January 1, 2024 *provided* the Franchise Agreement Condition is satisfied as set forth below; and

WHEREAS, WM and Contractor desire to establish herein the terms and conditions pursuant to which such Services may be provided.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, and intended to be legally bound hereby, the parties agree as follows:

1. **Definitions.**

1.1 "Acceptable Material" means a collection vehicle load of Organic Waste, which does not contain more than twenty percent (20%) Excluded Material (by volume) and which has not been rejected by Contractor pursuant to Section 3.2.

1.2 "Applicable Law" means all Federal, State, County, and local laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, Transportation, and Processing of Recyclable Materials, Organic Materials, and Solid Waste that are in force on the Effective Date and as may be enacted, issued or amended during the Term of this Agreement. Applicable Law includes, but is in no way limited to, AB 939, AB 341, AB 1826, and SB 1383.

1.3 "Beneficial Use" or "Beneficial Reuse" means use as slope stabilization, soil amendment, dust or weed suppression, land application, fertilizer, bulking agents, co-compost, compost and/or mulch, topsoil, seed cover, feedstock for resource/energy recovery processes or constituents for goods made from a recycling process, agricultural use, and other similar uses, as prescribed by Applicable Law.

1.4 "Commencement Date" means January 1, 2024 or the date on which the Services commence as agreed upon by WM and Contractor in writing and as approved by the City, whichever occurs first.

1.5 "Compost" means product resulting from the controlled biological decomposition of Organic Material that has been sanitized through the generation of heat and processed to further reduce pathogens, as defined by the Title 14 of the California Code of Regulations, Chapter 3.1, Section 7.

1.6 "Compostable Plastics" or "Compostable Plastic" means food-service and food-packaging plastic materials or plastic bags used for collecting Organic Material that are placed in the Organic Materials Container and Transported to an Approved Compostable material handling operation(s) or facility(ies), in-vessel digestion operation(s) or other facility provided the Organic Materials Processing Facility accepts the material and has provided written notification annually to the City stating that the facility can process and recover that material for Compostability, as defined in 14 CCR Section 18984.1(a)(1)(A) for three container systems.

1.7 "Digestate" means the solid and/or liquid material remaining after Organic Material has been processed in an in-vessel digester, as defined in 14 CCR Section 18982(a)(16.5).

1.8 "Excluded Material" means material placed in the Organic Materials container that are not identified as acceptable Organic Materials for the city's collection program in the Underlying Contract.

1.9 "Food" means a raw, cooked, or processed edible substance, ice, beverage, an ingredient used or intended for use or for sale in whole or in part for human consumption, and chewing gum as defined in California Health and Safety Code Section 113781.

1.10 "Food Scraps" means those Discarded Materials that will decompose and/or putrefy including: (i) all kitchen and table food waste; (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs; (iii) fruit waste, grain waste, dairy waste, meat, and fish waste; and, (iv) vegetable trimmings, houseplant trimmings and other Compostable Organic Waste common to the occupancy of Residential dwellings. Food Scraps are a subset of Food Waste.

1.11 "Food-Soiled Paper" means compostable paper material that has come in contact with food scraps or liquids, such as, but not limited to, compostable paper plates, paper liners, paper coffee cups, napkins, and pizza boxes. Food-Soiled Paper is a subset of Food Waste.

1.12 "Food Waste" means Source Separated Food Scraps, Food-Soiled Paper, and Compostable Plastics. Food Waste is a subset of Organic Materials.

1.13 “Franchise Agreement Condition” is defined as the execution of the Underlying Contract by the City and WM, subject to and in accordance with all necessary governmental approvals and Applicable Law.

1.14 “Yard Trimmings” means those materials that will decompose and/or putrefy, including, but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of Organic Waste resulting from normal yard and landscaping maintenance that may be specified in the Underlying Agreement. Yard Trimmings does not include items herein defined as Excluded Material. Yard Trimmings are a subset of Organic Waste.

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

1.16 “Organic Materials” means Yard Trimmings and Food Waste, individually or collectively. No Discarded Material shall be considered to be Organic Materials, however, unless it is separated from Recyclable Materials and Solid Waste. Organic Materials are a subset of Organic Waste.

1.17 “Organic Waste” means wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, food, Yard Trimmings, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, and digestate, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.

1.18 “Processing” means the conversion of Organic Waste or Organic Materials for beneficial reuse by means of mechanical processes including, but not limited to chipping, screening, cleaning, grinding, sizing, mulching; and biological processes including, composting.

1.19 “SB 1383 Regulations” means the Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle and adopted in November 2020, amending portions of Titles 14 and 27 of the California Code of Regulations (CCR) and creating Chapter 12 of Title 14 of the CCR, Division 7.

2. **Term.** The term of this Agreement shall commence upon full satisfaction of the Franchise Agreement Condition (the “Effective Date”) and continue through and be commensurate with the term of the Franchise Agreement executed between the City and WM, unless earlier terminated as set forth in Section 11. Should the Franchise Agreement Condition not be fully satisfied in the sole discretion of WM within three (3) months of the execution of this Agreement, then this Agreement shall terminate and be deemed null and void ab initio. WM may extend said three (3) month period of time by written notice to Contractor.

3. **Delivery Rights and Obligations:** From the Commencement Date through the Term of this Agreement, as may be extended:

3.1 the Facility hours shall be 7:30 a.m.- 5:00 p.m., Monday through Friday, and 8:00 a.m. to 4:00 p.m., Saturdays, excluding Federal holidays and subject to change on reasonable notice which shall be at least forty-eight (48) hours prior to the change. The facility hours may be modified in accordance with Agri Service Recycling's lease agreement with the City.

3.2 Contractor shall accept each delivery of Acceptable Material during the above described days and times. If Contractor believes a collection vehicle load of Organic Materials has more than 20% Excluded Material, then Contractor shall immediately notify the WM Site Manager by e-mail and shall provide photographs of the load showing the 20% Excluded Material. Contractor shall not commingle any rejected load with other materials. WM shall have the right to inspect the material and correct such non-conforming load within twenty-four (24) hours of such e-mail notification. If WM does not correct such deficiency, then Contractor may reject the load and WM shall timely remove the load from the premises as agreed upon by the Parties. If WM fails to do so, Contractor shall dispose of such material in accordance with Applicable Law and will charge WM for its reasonable disposal and transportation costs. WM deliveries which are not rejected as outlined in this Section 3.2 will be deemed Acceptable Material, regardless of content, and Contractor will be deemed to have taken title to and responsibility for such material upon WM delivery, with the exception that Contractor shall not take title to and shall have no liability whatsoever with regard to any Hazardous Materials contained in WM's delivery, including but not limited to treated wood.

3.3 Contractor hereby grants to WM a non-exclusive license to enter the Facility during its normal operating hours only, and for the sole purpose of delivering Organic Materials at an area designated by Contractor, and according to Applicable Law and in the manner directed by Contractor. Contractor will use best efforts and consistent with industry practices to provide a safe working environment for WM and its employees, representatives, agents and subcontractors when accessing or coming onto the Facility. WM shall require its transportation service providers to comply with all Facility specific operations and safety rules and procedures of Contractor.

3.4 WM shall take all measures consistent with standard industry practices to deliver or cause to be delivered Organic Materials to the Facility that is Acceptable Material. The Acceptable Material deliveries shall be free from any claims of liens or encumbrances.

3.5 City Exercise of Flow Control Rights

(a) WM shall deliver Organic Materials generated by residential customers to Contractor in accordance with the Underlying Contract. Contractor acknowledges and agrees that WM may, in its sole and absolute discretion, suspend its performance of its obligations under this Agreement or terminate this Agreement without any penalty or liability to Contractor in the event that the City directs WM to send Organic Materials to any other facility or third-party on a permanent basis or for an indeterminate period of time for any reason (City's "Flow Control Rights").

(b) In the event that the City exercises its Flow Control Rights in accordance with the Underlying Contract on or before March 31, 2028, WM shall provide notice to Contractor of the City's exercise of such Flow Control Rights. Within ~~ten (10) days~~ of Contractor's receipt of such notice, Contractor shall provide to WM a full accounting of the reasonable unamortized capital investments incurred by Contractor in expanding the capacity of the Facility for the purposes of processing Organic Materials delivered by WM in accordance with the Underlying Contract and this Agreement ("Contractor's Accounting"). WM shall have a period of ~~thirty (30)~~ days to accept or reject Contractor's Accounting. If WM rejects Contractor's Accounting, Contractor and WM shall meet and confer in good faith to agree on a reasonable value for the unamortized capital investments (the "Agreed Value"). Such meet and confer period shall not exceed ~~thirty (30) days~~, or such other time as the parties may agree. The value of the unamortized capital investments shall be determined by the parties as either Contractor's Accounting or the Agreed Value, in accordance with this Section (hereafter the "Capital Investment").

(c) Within a reasonable time after determining the Capital Investment in accordance with Section 3.5(b), WM shall prepare and deliver to the City a request for a rate increase in accordance with the Underlying Contract. Notwithstanding anything to the contrary in the Underlying Contract and this Agreement, WM's obligation to reimburse Contractor for the Capital Investment under this Section 3.5 is expressly conditioned on WM and the City agreeing in writing to an adjustment of WM's rates in the Underlying Contract for the City's exercise of Flow Control Rights.

(d) Within sixty (60) days of the City and WM agreeing in writing to an adjustment of WM's rates in the Underlying Contract for the City's exercise of its Flow Control Rights in accordance with this Section 3.5, WM shall reimburse Contractor for the Capital Investment. Notwithstanding anything to the contrary, the Capital Investment will be deemed fully amortized on April 1, 2028, and Contractor's right to seek reimbursement under this Section 3.5 shall terminate on April 1, 2028 and thereafter shall have no further force or effect.

4. **Contractor Post-Delivery Obligations.** From the Commencement Date through the Term of this Agreement, as may be extended, Contractor shall perform the following Services:

4.1 Contractor shall Process Acceptable Materials delivered by WM into Compost in compliance with Applicable Law, SB 1383 Regulations for composting facilities and the Underlying Contract.

4.2 Contractor shall market, sell and distribute Compost produced from the Acceptable Material to ensure that it is diverted from landfill disposal and does not constitute landfill disposal as set forth in 14 CCR Section 18983.1. Contractor retains the sole right to determine the end market use of Compost generated from Acceptable Materials including for agricultural or horticultural use or otherwise, except that it may not be disposed of at a landfill. Contractor may hire subcontractors to assist in carrying out its obligations under this Agreement.

4.3 Non-Organic Waste removed from Acceptable Materials during processing (i.e., residue) shall be disposed, at Contractor's sole cost and expense, and in accordance with Applicable Law.

4.4 With regard to each WM delivery to the Facility, Contractor shall weigh and record the weight, date, time, and truck identity. Contractor shall provide WM with reports of such information on a monthly basis, or such other frequency agreed upon by the parties. Contractor shall ensure that scales used to weigh WM deliveries function properly (e.g., are properly calibrated) and are regularly serviced pursuant to applicable industry standards. Contractor shall provide WM with documentation regarding scale maintenance, inspections, etc., upon written request. Contractor's scales at the Facility shall be determinative for invoicing purposes.

4.5 Contractor shall provide WM with monthly reports (not later than 10th day of the following month) specifying the ultimate use of all Acceptable Material delivered to the Facility. Upon WM's reasonable request, Contractor shall provide WM with reports, documents and information (a) to verify Contractor's compliance with this Agreement, (b) as may be required by Applicable Laws, or (c) as may be required pursuant to Franchise Agreement executed between WM and the City, provided said agreement substantially conforms to the Underlying Contract. Except as otherwise set forth below, such reports shall be provided within thirty (30) days of WM's request or earlier if required by Applicable Laws or the City. In addition, Contractor shall maintain and provide documents, reports, site access and other information as reasonably requested by WM to demonstrate compliance with SB 1383 Regulations and as required by the Underlying Contract, including without limitation as follows:

(a) provide within ten (10) days of WM's request, documentation demonstrating Contractor's total capacity and available capacity to process the Organic Materials, including, without limitation, tonnage reports;

(b) provide within five (5) days of WM's request, all existing permits, approvals, and certifications necessary to operate the Facility in full compliance with Applicable Law;

(c) provide within five (5) days of WM's request, any notices of violation or other similar notices or documents from any federal, state, or local government body or regulatory agency relating to Contractor's performance under this Agreement or Applicable Law;

(d) provide within twenty-four (24) hours of the occurrence of an event, notice and documentation of any unforeseen operational restrictions that have been imposed upon Contractor by a regulatory agency or any unforeseen equipment or operational failure that will temporarily prevent Contractor from meeting its obligations under this Agreement for more than twenty-four (24) hours, such notice and documentation to describe how long Contractor anticipates the underlying restriction or condition will persist, as well as the cause of and the action(s) undertaken by Contractor to resolve such restriction or condition;

(e) provide within ten (10) days of WM's request, documentation and information regarding Contractor's performance under this Agreement, including, without limitation: percentage of residue from Acceptable Material sent to disposal; percentage of

Acceptable Material recovered; material sampling; sorting; and waste evaluations of the Acceptable Material delivered and processed by Contractor in accordance with this Agreement to demonstrate compliance with Applicable Law, including without limitation the SB 1383 Regulations;

(f) provide within ten (10) days of WM's request, documents and information regarding weighing standards and scale reports related to weighing of vehicles, and all records and reports as described in 14 CCR Section 17414.2; 14 CCR Section 17869; and 14 CCR Section 18815.7;

(g) permit WM and agents of City to enter the Facility during normal working hours upon five (5) business days notification in order to conduct inspections and investigations in order to examine operations in order to assess compliance with this Agreement, the Underlying Contract, and Applicable Law; and

(h) provide within ten (10) days of WM's request, written notice of the types of products and material streams accepted by the Facility for processing, including without limitation, whether the Facility accepts compostable plastics and/or plastic bags.

4.6 Contractor shall cooperate with and provide WM assistance with written materials necessary to fulfill WM's outreach and education obligations in the Underlying Contract.

5. **Performance Standards.** Contractor represents and warrants that it has the necessary expertise and resources to perform under this Agreement and shall do so in accordance with the standards of professional practice and care observed by those practicing in California who are recognized by their peers as experienced, knowledgeable, and highly skilled in performing similar services. Contractor shall supply all labor, tools, equipment, materials, and personnel required to perform the Services. Contractor shall at all times have, maintain, and comply with all required permits, authorizations, registrations, franchises, certificates, licenses, lease agreements and approvals necessary for performing under this Agreement. Contractor shall ensure that its employees and subcontractors perform the Services hereunder in compliance with all Applicable Laws, including, but not limited to, all applicable environmental, health, and safety requirements. Contractor shall pay any and all federal, state, provincial, and local taxes, including sales tax, if any, for which Contractor may be liable in carrying out the performance of its obligations under this Agreement. Contractor shall prepare and timely provide to WM upon request all documentation, data and/or reports relating to this Agreement that are necessary for WM to comply with all contractual and federal, state and local regulatory and/or permit reporting requirements. WM and Contractor shall each comply with Applicable Law in the performance of their obligations under this Agreement.

6. **Annual Capacity Requirement.** Contractor shall accept and guarantee capacity for processing of all Organic Materials collected from the City and delivered or caused to be delivered by WM.

7. **Contractor Compensation.**

7.1 WM shall pay Contractor for the Services performed in accordance with this Agreement a fee of \$100 per ton for each ton of Acceptable Material delivered to Contractor's

Facility and accepted by the Facility (the “Tip Fee”). To the extent WM desires to deliver or cause to be delivered Organic Materials from another City or site to the Facility, WM and Contractor shall negotiate in good faith the Tip Fee applicable to deliveries of Organic Materials from such site. Tonnage from the City of Oceanside shall be prioritized over materials delivered from other cities or Sites to ensure sufficient capacity in accordance with Section 6 of this Agreement.

7.1 Contractor shall submit an itemized bi-monthly invoice containing sufficient detail as reasonably requested by WM, along with supporting weigh records, for each month during the Term, setting forth all amounts owed by WM to Contractor. All undisputed amounts shall be paid by WM within thirty (30) days of the date of the receipt of the invoice and associated documentation. Any undisputed amounts not timely paid shall bear interest after the due date at the rate of 1.5% per month. If WM receives any invoice or portion thereof that it believes was billed in error, WM will timely pay the undisputed portion of the invoice, and before the invoice payment is due, will notify Contractor of the portion that WM believes to be billed in error, together with information supporting WM’s belief. The due date for these disputed sums shall be extended to fifteen (15) days (or such later time as both parties may agree) from the date that Contractor provides WM with all reasonably requested supporting documentation as to the legitimacy and accuracy of the disputed amount. Any adjustments to the invoice regarding disputed amounts must be agreed upon in writing by the parties.

8. **Annual CPI Adjustment.** Commencing on January 1, 2025, and annually on January 1 of each year thereafter during the Term, as may be extended, the Tip Fee shall adjust (through an increase only) by a percentage equal to the Consumer Price Index (“CPI”) as provided by the U.S. Department of Labor, Bureau of Labor Statistics for All Urban Consumers for the San Diego Metropolitan Area, not seasonally adjusted, by calculating the average of the changes in the CPI between each month during the October through September period immediately preceding the date of the rate adjustment and the same month in the preceding year. No later than December 1 prior to the January 1 adjustment date, Contractor shall provide written notice of the proposed price adjustment to WM. Any reasonable delay by Contractor in timely applying the CPI adjustment to any invoice shall not be deemed a waiver of such increase.

9. **Digestate.** WM and Contractor acknowledge and agree that the City desires WM to deliver and Contractor to accept Digestate in the future for processing pursuant to the terms of this Agreement. WM and Contractor agree to negotiate in good faith regarding the specific terms and conditions for the delivery, acceptance and processing of Digestate, including specifications, volume and compensation for such services, which will be memorialized in an amendment to this Agreement.

10. **Indemnification.**

10.1 WM shall defend, indemnify and hold harmless Contractor and its subsidiaries and affiliates, and each of their respective shareholders, officers, directors, employees, agents, representatives, successors and assigns, from and against any and all costs, losses, liabilities, damages, penalties, lawsuits, deficiencies, claims, and expenses (including, without limitation, reasonable attorneys’ fees and expenses) incurred by Contractor solely as a result of a breach of any of the terms, conditions or obligations of this Agreement by WM or its employees,

representatives, agents or subcontractors, or the negligence or willful misconduct of WM or its employees, representatives, agents or subcontractors in the performance of this Agreement.

10.2 Contractor shall defend, indemnify, and hold harmless WM and its subsidiaries and affiliates, and each of their respective shareholders, officers, directors, employees, agents, representatives, successors and assigns, from and against any and all costs, losses, liabilities, damages, penalties, lawsuits, deficiencies, claims, and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by WM in connection with, arising out of, or resulting from: (1) a breach of any of the terms, conditions or obligations of this Agreement by Contractor or its employees, representatives, agents or subcontractors, including non-compliance with Applicable Law by Contractor or its employees, representatives, agents or subcontractors; (2) any action or inaction of Contractor that causes WM to be in breach of the Underlying Contract; or (3) the negligence or willful misconduct of Contractor or its employees, representatives, agents or subcontractors in the performance of this Agreement.

10.3 The obligations under this Section 9 shall survive the expiration or earlier termination of this Agreement.

11. **Insurance.** Contractor agrees to maintain and furnish to WM certificates attesting to the insurance coverages set forth below:

Workers' Compensation:	Statutory
Employer's Liability:	\$2,000,000/occurrence
Automobile Liability	
Bodily Injury, Property Damage,	
Contractual Liability & Sudden and	
Accidental Pollution	\$2,000,000/occurrence
Commercial General Liability	
Personal Injury, Property Damage	
& Contractual Liability Combined	\$5,000,000/occurrence

Each such certificate shall contain a statement of the insurer's obligation to notify WM at least thirty (30) days prior to cancellation of any policy covered thereunder. Contractor shall cause the aforesaid general liability policies to be duly and properly endorsed by the insurance underwriters as follows: a) to provide a blanket form endorsement listing WM and its affiliates as additional insureds with respect to Contractor's commercial general liability and automotive policies to the extent of Contractor's indemnity obligations under this Agreement; b) to provide

that said insurances, to the extent of Contractor's indemnity obligations under this Agreement, shall be primary in all instances with respect to WM's insurance, which shall be secondary and non-contributing at all times; and c) to provide contractual liability coverage for all liability assumed by Contractor under the terms of this Agreement.

Contractor shall file insurance certificates with the City, name City as an additional insured, and comply with all material terms of the executed Franchise Agreement between the City and WM.

12. Termination and Remedies.

12.1 Events of Default of a Party. Each of the following shall be an event of default by a Party under this Agreement.

(a) A Party fails to observe and perform any material term, covenant or agreement contained in this Agreement on its part to be performed and the continuance of such failure for a period of thirty (30) days after written notice to that Party specifying the nature of such failure and requesting that it be remedied; provided, however, that if the cure for such failure to perform reasonably requires more than 30 days, then that Party shall not be deemed in default so long as the Party promptly commences such cure and diligently pursues such cure to its completion.

(b) A Party makes a general assignment for the benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, petitions or applies to any tribunal for any custodian, receiver or trustee for it or any substantial part of its property, commences any proceeding relating to it under bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereinafter in effect, or if there shall have been filed any such proceeding in which an order for relief or the appointment of any custodian, receiver or trustee for it or any substantial part of its property or suffers such custodianship, receivership or trusteeship to continue undismissed for a period of 60 days or more.

(c) The failure of WM to pay any invoiced fees owed to Contractor that are due hereunder, after forty-five (45) days' written notice of delinquency by Contractor to WM.

12.2 Remedies on Default. In addition to the rights granted to the WM in Section 3.5, whenever any event of default shall have occurred, the non-defaulting Party shall have the following rights and remedies:

(a) Upon thirty (30) days written notice to the defaulting Party, if the defaulting Party is then in default, the non-defaulting Party shall have the option to terminate this Agreement in its entirety unless the event of default is cured prior to the expiration of such thirty (30) day period or unless during such period the defaulting Party has taken remedial steps the effect of which would be to enable the defaulting Party to cure such event of default within a reasonable period of time.

(b) In addition to the foregoing remedies, each Party shall retain and may seek any and all remedies for damages or equitable relief that would be available to that Party under this Agreement or pursuant to statute or common law.

12.3 Other Termination Rights.

(a) Notwithstanding anything to the contrary in this Agreement, if the Facility cannot accept deliveries of Acceptable Material for more than fourteen (14) consecutive days, WM will have the right to suspend performance under this Agreement upon three (3) days' written notice to Contractor. At any time before or after the fourteenth (14th) consecutive day that the Facility cannot accept deliveries, the Parties shall meet and confer in good faith to determine if an agreement can be reached on rates and other requirements for use of a reasonable alternative facility. If the Parties cannot reach a good faith mutual agreement within fifteen (15) days of commencing discussions, then WM may elect to terminate this Agreement, and upon such termination, Contractor shall be paid for its services rendered to date and Contractor shall not have any claims against WM for breach of this Agreement solely due to such termination under this Section 11.3.

(b) Should Contractor's right to lease the site and perform the Services required under this Agreement terminate or expire due to no fault of Contractor, Contractor may terminate this Agreement upon thirty (30) days written notice to WM. Contractor shall be paid for its services rendered through the date of termination and WM shall not have any claims against Contractor for breach of this Agreement solely due to such termination under this Section 11.3.

13. **Notice.** Any notice, consent, waiver, communication or statement required or permitted to be given hereunder shall be in writing and deemed to have been sufficiently given when delivered in person, by registered or certified U.S. Mail, postage prepaid, return receipt requested, by electronic mail, or by overnight delivery service requesting evidence of receipt as part of its service, to the address of the respective party below:.

WM: WASTE MANAGEMENT OF CALIFORNIA, INC.
9081 Tujunga Avenue
Sun Valley, CA 91352
Attn: Mike Hammer and Associate General Counsel
Email: mhammer@wm.com and akhajeto@wm.com

Contractor: AGRI SERVICE RECYCLING, INC.
3720 Oceanic Way, Suite 204
Oceanside, CA 92506
Attn: Mary Matava, President
Email: mary@agriserviceinc.com

Either party may, by notice to the other, change the names and addresses given hereunder for the respective party.

14. **Force Majeure.** The Parties understand and agree herein that the services provided under this Agreement are critical to the protection of public health and safety and that Contractor

is expected to perform these services despite the occurrence of events that may otherwise give rise to Force Majeure conditions. In particular, a Party shall be excused from performing their obligations hereunder if they are prevented from so performing by reason of floods, earthquakes, other acts of nature, pandemics, epidemics, war, civil insurrection, riots, acts of any domestic government (including judicial action), and other similar catastrophic events which are beyond the Control of and not the fault of the Party claiming excuse from performance hereunder (“Force Majeure Event”). If, because of Force Majeure, either party is rendered unable, wholly or in part, to carry out its obligations under this Agreement, then such party shall give to the other party prompt written notice of the Force Majeure with reasonable full details concerning it; thereupon, the obligation of the party giving notice, so far as they are affected by the Force Majeure, shall be suspended during but no longer than, the continuance of the Force Majeure. The affected party shall use all possible diligence to remove the Force Majeure as quickly as possible, but its obligation shall not be deemed to require the settlement of any strike, lockout, or other labor difficulty. During any period in which WM is not performing its obligations due to the Force Majeure, Contractor may obtain alternate supplies of Organic Materials from a third party, without incurring any liability.

15. Change in Applicable Law or Fees.

15.1 In the event that there are any material changes and/or requirements in the Applicable Law or governmental fees and/or charges imposed on Contractor’s operations under this Agreement, which have a material and adverse effect on Contractor’s performance under this Agreement, the parties agree that they shall attempt to negotiate in good faith mutually acceptable changes in the Tip Fee or the obligations under this Agreement. Material changes and/or requirements in the Applicable Law includes:

(a) The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation of any Applicable Law on or after the Effective Date; or,

(b) The order or judgment of any governmental body, on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Contractor, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

15.2 After attempting negotiations in good faith, if the parties are unable to successfully negotiate mutually acceptable changes to the Tip Fee or the obligations under this Agreement, then Contractor and WM shall submit the dispute to a mutually agreed upon mediation service for mediation. WM and Contractor shall provide to the mediation service a joint, written request for mediation setting forth the subject of the dispute and the relief requested. The parties shall cooperate with one another in selecting a mediation service, and shall cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings. The parties covenant that they will use commercially reasonable efforts in participating in the mediation. The parties agree that the mediator’s fees and expenses and the costs incidental to the mediation will be shared equally between the Parties.

15.3 If the Parties cannot resolve such dispute for any reason within sixty (60) days after the beginning of mediation, either Party may terminate this Agreement after giving a minimum of sixty (60) days advance written notice to the other Party.

16. **Independent Contractor.** Each party is and shall perform this Agreement as an independent contractor and, as such, shall have and maintain complete control over all of its employees, agents and operations. Neither party, nor anyone employed by it, shall be, represent, act, purport to act or be deemed to be the agent, representative, employee or servant of the other party. This Agreement does not, nor is intended to, create a partnership or joint venture between the parties.

17. **Assignment.** Except as provided below, this Agreement may not be assigned by either party, without the written consent of the other, which may not be withheld or delayed unreasonably and is not required with respect to an assignment by either party to an affiliate. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

18. **Waiver.** Either party may extend the time for or waive the performance of any of the obligations of the other, waive any inaccuracies in the representations or warranties by the other, or waive compliance by the other with any of the covenants or conditions contained in this Agreement. No waiver is effective unless made in writing. An extension or waiver given by any Party may not operate or be construed as an extension or waiver with regard to any subsequent obligation to perform or with regard to any other act or omission of the parties hereto. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

19. **Severability.** If any provision of this Agreement is or becomes or is deemed invalid, illegal or unenforceable under Applicable Law, such provision will be deemed amended to the extent necessary to conform to Applicable Law or, if it cannot be so amended without materially altering the intention of the parties, it will be stricken, and the remainder of this Agreement will remain in full force and effect.

20. **Entire Agreement.** This Agreement represents the entire understanding and agreement between the parties hereto relating to the subject matter hereof and supersedes any and all prior agreements, whether written or oral, that may exist between the parties regarding the same. Any modification or alteration of this Agreement shall be in writing signed by the parties.

21. **Governing Law and Venue.** This Agreement will be construed under and in accordance with the internal laws of the State of California without regard or giving effect to any choice or conflict of law provision or rule (whether the State of California or any other jurisdiction). Venue for any dispute arising under this Agreement shall be the Superior Court of San Diego County and each party irrevocably submits to the exclusive jurisdiction of such court in any such suit, action, or proceeding; provided that neither party waives any right to remove such suit, action or proceeding to federal court.

22. **Headings.** The headings in this Agreement are intended for convenience and identification only, are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision hereof, and are to be disregarded in the construction and enforcement of this Agreement.

23. **Construction.** Each of the parties hereto agree and acknowledge that each party has reviewed and has had the opportunity to revise this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed to the interpretation of this Agreement, or any amendment.

24. **Remedies Cumulative.** The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party does not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to other rights the parties may have by law, statute, ordinance or otherwise.

25. **Survival.** Expiration or earlier termination of this Agreement shall not release either party from obligations that, either expressly or by their nature, survive such termination or expiration.

26. **Attorneys' Fees.** In the event an action is commenced by either party regarding performance of this Agreement, and/or any claim or action arising out of this Agreement, the substantially prevailing party in such action, in addition to any other relief and recovery awarded by the court, is entitled to recover all costs and reasonable attorneys' fees.

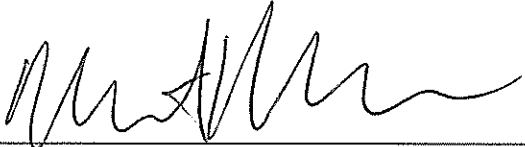
27. **Counterparts.** This Agreement may be executed in any number of counterparts, and each counterpart is deemed to be an original instrument, but all such counterparts constitute but one instrument.

28. **Confidentiality.** Contractor and WM each agree that the terms and conditions of this Agreement shall remain totally and completely confidential and shall not be revealed or disclosed to any person or party whatsoever, for a period of two (2) years following the termination of this Agreement except under the following circumstances: (i) with the written consent of the other Party; (ii) as may be disclosed to such Party's attorneys, accountants, and other representatives that are involved in the consummation of this transaction; (iii) as may be required by Applicable Law; (iv) as may be necessary in connection with assisting WM in obtaining necessary governmental approvals or complying with the Underlying Contract; and (v) to the extent required by Applicable Law, in connection with any litigation between the Parties..

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

WM:

WASTE MANAGEMENT OF CALIFORNIA, INC.

By: 

Name: Mike Hammer

Title: President, Southern California Area

CONTRACTOR:

AGRI SERVICE RECYCLING, INC.

By: _____

Name: Mary Matava

Title: President

EXHIBIT A
DRAFT FRANCHISE AGREEMENT

**EXHIBIT L:
PERFORMANCE BOND**

To be included in final Agreement

STAFF REPORT*CITY OF OCEANSIDE*

DATE: April 6, 2022

TO: Honorable Mayor and City Councilmembers

FROM: Public Works Department

SUBJECT: **APPROVAL OF AMENDMENT 2 TO PROPERTY LEASE AGREEMENT, AMENDMENT 2 TO OPERATING AGREEMENT, AND NEW PROPERTY LEASE AGREEMENT WITH AGRI SERVICE RECYCLING, INC. FOR THE PROPERTY KNOWN AS THE EL CORAZON ORGANIC MATERIALS PROCESSING FACILITY LOCATED WITHIN EL CORAZON IN OCEANSIDE**

SYNOPSIS

Staff recommends that the City Council approve amendments to the existing Property Lease Agreement and Operating Agreement with Agri Service Recycling, Inc. ("Agri Service") to modify the term of each agreement to expire December 31, 2023; approve a new Property Lease Agreement with Agri Service for a ten year term, commencing January 1, 2024, with annual estimated revenue to the City of \$164,000, for use of the property known as the El Corazon Organic Materials Processing Facility located at El Corazon in Oceanside; and authorize the City Manager to execute the amendments and new lease agreement upon receipt of all supporting documents.

BACKGROUND

In 1995, the City of Oceanside ("City") entered into a service agreement with Agri Service of California, to build and operate a composting facility at El Corazon to process all of the City's curbside residential yard waste ("Green Waste") collected by the City's solid waste collection provider. The City's primary objective when entering into the original agreement was to use the products by composting the Green Waste to assist with erosion control and soil stabilization and for use as a soil amendment during the reclamation of the El Corazon site. Another important benefit was the stabilization of the curbside collection cost to the City ratepayers for the pickup of Green Waste by reducing the transportation and disposal costs by composting the Green Waste at El Corazon.

In November of 2009, the City entered into a Property Lease Agreement and Operating Agreement (collectively "Agreements") for 15 years with Agri Service to build and operate a new composting facility ("Facility") at El Corazon ("Premises"). In July 2014, the City approved an assignment of interest in the Agreements to Agri Service, and said Agreements were further amended in September 2014 to change various terms and conditions of the Agreements. Under the existing Agreements, Agri Service pays the City a percentage rent of the commercial revenue and product sales generated from the

Facility. Additionally, the City is allowed to deliver City-generated Green Waste and also receive some of the compost produced at the Facility.

ANALYSIS

As part of the City's pending franchise agreement with Waste Management of California, Inc. ("Waste Management"), Agri Service would be responsible for receiving and processing the City's organic materials to ensure compliance with SB1383. As a result, the City will not be renewing the existing operating agreement with Agri Service, and staff is recommending approval of a new franchise agreement with Waste Management, who will in turn be entering into a Processing and Composting Agreement with Agri Service to receive and process the City's organic materials. The franchise agreement with Waste Management is also on the April 6, 2022 City Council agenda.

At this time staff is recommending that the City amend the existing Agreements to revise the termination dates to expire on December 31, 2023. In addition, staff is recommending that the City enter into a new Property Lease Agreement with Agri Service for a ten-year term for the continued use of the property to commence on January 1, 2024, and terminate on December 31, 2033, unless otherwise extended by mutual agreement of the parties ("Lease"). Agri Service will continue to pay monthly percentage rent to the City in an amount equal to 10% of commercial gross revenues and 5% of all product gross revenues in excess of \$100,000. As further consideration for the Lease, Agri Service shall administer and provide the City's resident compost give-away program, made available to the residents of the City of Oceanside. The Lease provides that either party has the right to terminate the agreement for any reason by giving the other party at least 180 days prior written notice; however, if the City terminates the Lease, as a condition of such early termination, the City shall be required to pay Agri Service the unamortized portion of the cost of any approved Lease improvements installed by Agri Service, as further detailed in the Lease. As of January 1, 2024, the unamortized balance of the existing improvements at the Premises will have an estimated remaining value of \$650,745.

FISCAL IMPACT

The amendments to the existing Agreements have no fiscal impact to the City, as the percentage rent structure that is currently in place will continue within the new Lease for the ten-year term. The monthly percentage rent for the existing Agreements and the new Property Lease Agreement will be deposited into account 320850501.4351. During Fiscal Year 2020-21, Agri Service paid the City approximately \$164,000.

INSURANCE REQUIREMENTS

Does not apply.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council approve amendments to the existing Property Lease Agreement and Operating Agreement with Agri Service Recycling, Inc. ("Agri Service") to modify the term of each agreement to expire December 31, 2023; approve a new Property Lease Agreement with Agri Service for a ten year term, commencing January 1, 2024, with annual estimated revenue to the City of \$164,000, for use of the property known as the El Corazon Organic Materials Processing Facility located at El Corazon in Oceanside; and authorize the City Manager to execute the amendments and new lease agreement upon receipt of all supporting documents.

PREPARED BY:



Vicki L. Gutierrez
Real Estate Manager

SUBMITTED BY:




Jonathan Borrego
Interim City Manager


REVIEWED BY:


Hamid Bahadori, Public Works Director

Jill Moya, Financial Services Director

Cari Dale, Water Utilities Director







ATTACHMENTS:

- 1. Amendment 2 to the Property Lease Agreement
- 2. Amendment 2 to the Operating Agreement
- 3. Property Lease Agreement effective 1/1/2024

**AMENDMENT NO. 2
TO
PROPERTY LEASE AGREEMENT**

THIS AMENDMENT NO. 2 TO PROPERTY LEASE AGREEMENT ("Amendment") is entered into this ____ day of _____ 2022, by and between the City of Oceanside, a public body, corporate and politic ("City"), and AGRI SERVICE RECYCLING, INC., a California corporation, successor in interest to AGRI SERVICE, INC., ("Lessee").

RECITALS

WHEREAS, on November 18, 2009, the City and Lessee's predecessor in interest Agri Service, Inc., entered into a Property Lease Agreement ("Lease") for the lease of a portion of the El Corazon property ("Premises") for the purpose of developing, operating, managing and maintaining a green waste composting facility thereon;

WHEREAS, on November 18, 2009, the City and Lessee's predecessor in interest Agri Service, Inc., also entered into an Operating Agreement for the purpose of enabling Lessee to provide services in conjunction with the operation, management and maintenance of a green waste composting facility on the Premises together with related programs and activities;

WHEREAS, also on August 6, 2014, the City and Lessee amended the Lease as a result of a change to the configuration of the Premises during the grading of the Premises as part of the City's Improvement Obligations, which resulted in a revised legal description of the Premises and clarification other minor modifications of the Lease; and

WHEREAS, the parties at this time are desirous of amending the term of the Lease.

NOW THEREFORE, in consideration of the mutual covenants, conditions and provisions contained herein, the parties hereto agree as follows:

AGREEMENT

1. SECTION 2: TERM — 2.01 **Commencement**. shall be deleted in its entirety and replaced with the following:

The term of this Lease commenced on April 1, 2013 and shall terminate on December 31, 2023.
2. SECTION 2: TERM — 2.04 **Early Termination**. shall be deleted in its entirety.
3. The Assessor's Parcel Number has been changed by the San Diego County Tax Assessor for the Premises and is 162-082-54.
4. Except as set forth in this Amendment all other terms and conditions of the Lease shall remain in full force and effect. Should there be a conflict between this Amendment and the Lease the terms of this Amendment shall prevail.

"City"

CITY OF OCEANSIDE
a public body, corporate and politic

BY: _____
Jonathan Borrego
Interim City Manager

Dated: _____


APPROVED AS TO FORM

BY:  _____
City Attorney

Dated: _____

"Lessee"

AGRI SERVICE RECYCLING, INC.
a California corporation

BY:  _____
NAME: Mary Matava
TITLE: President
Dated: 3/30/22

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego)

On March 30, 2022 before me, Elizabeth S. Hedrick, Notary Public
(insert name and title of the officer)

personally appeared Mary Natava
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Elizabeth S. Hedrick (Seal)



**AMENDMENT NO. 2
TO
OPERATING AGREEMENT**

THIS AMENDMENT NO. 2 TO OPERATING AGREEMENT ("Amendment") is entered into this ____ day of _____ 2022, by and between the City of Oceanside, a public body, corporate and politic ("City"), and AGRI SERVICE RECYCLING, INC., a California corporation, successor in interest to AGRI SERVICE, INC., ("Operator").

RECITALS

WHEREAS, on November 18, 2009, the City and Operator's predecessor in interest Agri Service, Inc., entered into an Operating Agreement ("Agreement") for the purpose of enabling Operator to provide services in conjunction with the operation, management and maintenance of a green waste composting facility on a portion of the El Corazon property ("Premises") together with related programs and activities;

WHEREAS, on November 18, 2009, the City and Operator's predecessor in interest Agri Service, Inc., also entered into a Property Lease Agreement for the lease of said portion of the El Corazon property for the purpose of developing, operating, managing and maintaining a green waste composting facility;

WHEREAS, also on August 6, 2014, the City and Operator amended the Agreement to modify the scope of services and compensation; and

WHEREAS, the parties at this time are desirous of amending the term of the Agreement.

NOW THEREFORE, in consideration of the mutual covenants, conditions and provisions contained herein, the parties hereto agree as follows:

AGREEMENT

1. SECTION 2: TERM — 2.01 **Commencement**. shall be deleted in its entirety and replaced with the following:

The term of this Agreement commenced on April 1, 2013 and shall terminate on December 31, 2023.
2. SECTION 2: TERM — 2.02 **Agreement Transition Extension**. shall be deleted in its entirety.
3. The Assessor's Parcel Number has been changed by the San Diego County Tax Assessor for the Premises and is 162-082-54.
4. Except as set forth in this Amendment all other terms and conditions of the Lease shall remain in full force and effect. Should there be a conflict between this Amendment and the Lease the terms of this Amendment shall prevail.

"City"

CITY OF OCEANSIDE
a public body, corporate and politic

BY: _____
Jonathan Borrego
Interim City Manager

Dated: _____

APPROVED AS TO FORM


BY: 
City Attorney

Dated: _____

"Operator"

AGRI SERVICE RECYCLING, INC.
a California corporation

BY: 

NAME: 

TITLE: 

Dated: 3-30-22

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

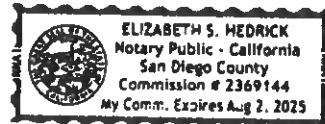
State of California
County of San Diego)

On March 30, 2022 before me, Elizabeth S. Hedrick, Notary Public
(insert name and title of the officer)

personally appeared Mary Matawa
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Elizabeth S. Hedrick (Seal)

**PROPERTY LEASE
AGREEMENT
BY AND
BETWEEN
THE
CITY OF OCEANSIDE
AND
AGRI SERVICE RECYCLING, INC.**

**FOR THE LEASE OF REAL PROPERTY
LOCATED AT
EL CORAZON**

DATED

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**PROPERTY LEASE AGREEMENT
FOR
ORGANIC MATERIALS PROCESSING FACILITY AT EL
CORAZON OCEANSIDE, CA**

THIS PROPERTY LEASE AGREEMENT, herein after called "Lease", dated [_____, 2022 for identification purposes, is executed between the CITY OF OCEANSIDE, a municipal corporation, hereinafter called "City", and AGR1 SERVICE RECYCLING, INC., a California corporation, hereinafter called "Lessee". Notwithstanding the date set forth above, the effective date of this Lease shall be January 1, 2024 ("Effective Date").

RECITALS

WHEREAS, City is the owner of that certain real property commonly known as the El Corazon Organic Materials Processing Facility located in the City of Oceanside, County of San Diego, State of California;

WHEREAS, Lessee is a duly authorized corporation in the State of California in the business of developing, operating, managing and maintaining organic materials processing facilities; and

WHEREAS, City and Lessee are desirous of leasing said real property to Lessee to enable Lessee to develop, operate, manage and maintain an organic materials processing facility ("Facility") thereon together with related programs and activities.

NOW THEREFORE, the parties in consideration of the terms, conditions, covenants and provisions contained herein do mutually agree as follows:

AGREEMENT

SECTION 1: USES

1.01 Premises. City hereby leases to Lessee and Lessee hereby leases from City, in accordance with the terms, conditions, covenants, and provisions of this Lease, all that certain real property situated in the City of Oceanside, County of San Diego, State of California, commonly known as the El Corazon Organic Materials Processing Facility and more particularly described and depicted in Exhibits "A-1" and "B-1" attached hereto and by this reference made a part of this Lease. Said real property is hereinafter called the "Premises."

1.02 Uses. It is expressly agreed that the Premises is leased to Lessee solely and exclusively for the purpose of operating an organic materials processing facility together with related programs and activities open to the general public, and for such other related or incidental purposes as may be first approved in writing by the City Manager of the City of Oceanside and for no other purpose whatsoever.

Lessee covenants and agrees to actively and continuously use and operate the Premises for the above specified, limited and particular exclusive use and to diligently pursue said purposes throughout the term of this Lease, except for failure to so use caused by reasons or events beyond the reasonable control of Lessee and acts of God. Said active and continuous use and operation enhances the value of the City's asset, provides needed public services, additional employment, taxes and other benefits to the general economy of the area. In the event that Lessee fails to continuously use the Premises for said purposes, or uses the Premises for purposes not expressly authorized herein, Lessee shall be deemed in default under this Lease. Except as set forth above, Lessee shall not use the Premises in any manner which disrupts the quiet enjoyment of surrounding property owners' use of their property.

1.03 Condition of Premises. City shall deliver the Premises to Lessee in an "as is, where is" condition without any representation or warranties as to the suitability of the Premises for Lessee's intended use. Lessee hereby accepts the Premises in said "as is, where is" condition and may construct improvements thereon which are necessary for Lessee to occupy the Premises for its intended use pursuant to Section 5.04.

1.04 Related Discretionary Actions. By the granting of this Lease, neither City nor the City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes, but is not limited to rezoning, variances, conditional use permits, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the Premises.

1.05 Quiet Possession. Lessee, paying the rent and performing the covenants and agreements herein, shall at all times during the term hereof peaceably and quietly have, hold and enjoy the Premises.

1.06 Reservation of Rights. City shall not unreasonably or substantially interfere with Lessee's use of the Premises while Lessee is in possession of the Premises; however, the City specifically retains the following rights:

a. Subsurface Rights. City hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals and water on or within the Premises.

b. Easements. City reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.

c. Right to Enter. City has the right to enter the Premises for the purpose of performing maintenance, inspections, repairs or improvements, or developing municipal resources and services. City will pay the costs of the maintenance and repair of all City installations made pursuant to these reserved rights.

SECTION 2: TERM

2.01 Term. The term of this Lease shall be for a period of ten (10) years commencing on the Effective Date and expiring on December 31, 2033.

2.02 Regulatory Compliance.

a. Entitlements. Lessee shall maintain the required regulatory entitlements ("Regulatory Entitlements") needed by Lessee to conduct Lessee's business at the Premises. Lessee agrees that it will use its best efforts to maintain the required regulatory entitlements needed by Lessee.

b. Termination. In the event Lessee is not able to maintain the Regulatory Entitlements, the City shall have the right to terminate this Lease by giving Lessee at least sixty (60) days written notice. It is expressly understood by Lessee that the City as landlord under this Lease and by entering into this Lease does not make any representations to Lessee that it has the authority to provide the regulatory discretionary approvals conferred upon the City of Oceanside as a regulatory agency.

2.03 Tenant Improvement Period. Prior to the Effective Date of the Lease, Lessee may complete certain Lessee Improvements to the Premises as described in Exhibit "C". It is further agreed by the parties that Lessee shall have the opportunity to more particularly describe the Lessee Improvements, subject to approval by City, which approval shall not be unreasonably withheld, once Lessee has processed the Lessee Improvements for regulatory approval. If applicable, a revised description of the Lessee Improvements, entitled Exhibit "C-1" will be attached to the Agreement and replace the Exhibit "C" described herein.

2.04 Early Termination. City and Lessee shall have the right to terminate this Lease for any reason whatsoever by giving the other party at least one hundred and eighty (180) days prior written notice. Further, as a condition of City's early termination of this Lease, City shall be required to pay Lessee the unamortized portion of the cost of the Lessee Improvements incurred by Lessee as determined below provided Lessee is not in default of any of the terms and conditions of the Lease.

a. Unamortized Cost Reimbursement. In the event of an early termination of the Lease by City, City shall pay to Lessee, the unamortized portion of the cost of the Lessee Improvements as determined by the schedule of values allocated to the Lessee Improvements as shown on Exhibit "D" attached hereto and incorporated herein by this reference. The amortization of the cost of the Lessee Improvements shall be on a straight-line depreciation basis as determined by Generally Accepted Accounting Principles. Said payment of the unamortized cost of Lessee Improvements shall be based on the termination date of the Lease as set forth in the early termination notice as described above through the original expiration date of the Lease.

In the event Lessee revises the Lessee Improvements pursuant to Section 2.03 above, a revised description of the Lessee Improvements together with a revised schedule of values, entitled Exhibit "D-1" will be attached to the Agreement and replace the Exhibit "D" described herein.

After the Effective Date of the Lease, in the event new and/or additional equipment is needed by Lessee and/or the Lessee Improvements shown on Exhibit "D" or Exhibit "D-1", as applicable, need replacement, Lessee shall notify City in writing of its desire to amend Exhibit "D". Said notice shall include a description of the equipment, an explanation as to the need to add and/or replace said equipment, and the value (including the useful life) of said equipment. City shall review Lessee's request to amend Exhibit "D" and should the City accept Lessee's changes to the Lessee Improvements, by informing Lessee in writing, the parties shall replace Exhibit "D" with a new exhibit entitled Exhibit "D-1" and so forth, without the need to formally amend the Lease.

2.05 Holdover. Any holding over by Lessee after expiration or termination shall not be considered as a renewal or extension of this Lease. The occupancy of the Premises by Lessee or by Lessee's property after the expiration or termination of this Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease, including rental adjustments, shall continue in full force and effect. In the event of any holding over, Lessee shall continue to, and pay monthly, the Rent as set forth in this Lease.

2.06 Abandonment by Lessee. Even if Lessee breaches the Lease and abandons the Premises, this Lease shall continue in effect for so long as City does not terminate this Lease, and City may enforce all its rights and remedies hereunder, including but not limited to the right to recover any amounts owing under the Lease as said amount becomes due, plus damages.

2.07 Quitclaim of Lessee's Interest. On termination of this Lease for any reason, at City's sole discretion, City shall provide Lessee with and Lessee shall deliver to City a quitclaim deed in recordable form quitclaiming all its rights in and to the Premises. Lessee or its successor in interest shall deliver the same within five (5) days after receiving written demand thereof. City may record such deed only on the expiration or earlier termination of this Lease. If Lessee fails or refuses to deliver the required deed, the City may prepare and record a notice reciting Lessee's failure to execute this lease

provision and the notice will be conclusive evidence of the termination of this Lease and all Lessee's rights to the Premises.

2.08 Surrender of Premises. At the expiration or earlier termination of this Lease, Lessee shall surrender the Premises to City free and clear of all liens and encumbrances created by Lessee. The Premises, when surrendered by Lessee, shall be in a safe and sanitary condition and shall be in as good or better condition as the condition at commencement of this Lease, absent normal wear and tear.

2.09 Time is of Essence. Time is of the essence of all of the terms, covenants, conditions and provisions of this Lease.

SECTION 3: CONSIDERATION

3.01 Time and Place of Payment. Percentage rent (as hereinafter defined) payments shall be due to City and payable by Lessee in arrears on or before the twentieth (20th) day of the month following the month for which the percentage rent is calculated. In addition, Lessee shall provide City with a percentage rent statement showing how the percentage rents were calculated. Also, Lessee shall, concurrently with the filing of its quarterly State Board of Equalization tax statement, provide City with a copy of said statement. The requirements of this section shall survive the expiration or sooner termination of this Lease.

Checks should be made payable to the City of Oceanside and delivered to the City at the address set forth in Section 6 of this Lease. The place and time of payment may be changed at any time by City upon thirty (30) days written notice to Lessee. Lessee assumes all risk of loss and responsibility for late payment charges. Lessee agrees to pay City an additional Twenty-Five and No/100 Dollars (\$25.00) for any returned check which is not honored by the financial institution from which the check is drawn.

3.02 Rent.

a. General. The total annual rent amount shall be equal to the Percentage Rent amount (as defined by Subsection 3.02b), without setoff or deductions.

b. Percentage Rent. The monthly Percentage Rent shall be the total applicable percentages of the gross revenue (as defined in Subsection 3.02c and 3.02d), for the month during which the monthly gross income was calculated. The applicable percentages are as follows:

- (i) An amount equal to ten percent (10%) of all Commercial Gross Revenues (as hereinafter defined) generated and received from the development, operation, management and maintenance of the Premises by Tenant for each month of each Lease Year; and

(ii) An amount equal to five percent (5%) of all Product Gross Revenues (as hereinafter defined) from the sale of product generated at the Premises from the incoming feedstock material brought to the Premises (as hereinafter defined) for each month of each Lease Year in excess of One Hundred Thousand and No/100 Dollars (\$100,000.00).

The monthly Percentage Rent shall be payable to City monthly in arrears not later than twenty (20) days following the end of each calendar month of the term of this Lease as required in Section 3.01 hereinabove.

c. Commercial Gross Revenues. Commercial Gross Revenues shall mean any and all revenue and income of any nature or other thing of value received for the disposition of organic material at the Premises or for any other services in connection with the collection thereof at the Premises or in connection with the use of Premises, including revenue and income typically referred to as "tip fees". Provided, however, "tip fees" collected as part of the City of Oceanside's Franchise Organic Waste program shall not be considered Commercial Gross Revenues. Further, in no event shall any of the following be included in "Commercial Gross Revenues": (i) any sales taxes, excise taxes, gross receipt taxes or similar charges; (ii) proceeds from any refinancing; (iii) any federal, state or municipal taxes collected from Lessee's customers regardless of whether the amount thereof is stated to the customer as a separate charge and paid periodically by Lessee to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by Lessee in computing Commercial Gross Revenue.

d. Product Gross Revenues. Product Gross Revenues shall mean any and all revenue or income of any nature or other thing of value received by Lessee from the sale of goods or materials related thereto on or from the Premises that are created and/or produced by Lessee from the organic materials disposed of at the Premises or any such other similar revenue and income received by Lessee as a result of occupancy of the Premises. Product Gross Revenue shall include the amount of any manufacturer's or importer's excise tax included in the price of any goods or materials sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge, Provided, however, Product Gross Revenue shall not include federal, state or municipal taxes collected from the consumer regardless of whether the amount thereof is stated to the consumer as a separate charge and paid over periodically by Lessee to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by Lessee in computing Product Gross Revenue. Product Gross Revenue shall not include refunds for goods or materials returned for resale on the Premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of Lessee.

(i) In addition, Product Gross Revenues shall not include goods or materials that are created and/or produced by Lessee from the organic materials disposed of at the Premises that are removed from the Premises, which do not

generate any revenue and income to the Lessee (i.e. other thing of value received). In the event a sublessee (subject to approval by City as set forth in Section 6.10) utilizes the Premises to sell a product that is created and/or produced from the organic materials disposed of at the Premises, the definition of Product Gross Revenues shall only apply to the revenue and income that exceeds the organic waste product or material purchased from Lessee provided Lessee has previously accounted for said organic waste product or material purchased as Commercial Gross Revenues.

e. Gross Revenue Related Reports. The Commercial Gross Revenue and the Product Gross Revenue shall be calculated at the end of each month of the term of this Lease. The monthly Commercial Gross Revenue and Product Gross Revenue report ("Gross Revenue Reports") shall be delivered to the City monthly in arrears not later than twenty (20) days following the end of each calendar month of the Term of this Lease. In addition, during the Term of this Lease, Lessee shall also submit annually within sixty (60) days after the last day of each Lease Year, an annual statement of its Gross Revenue Reports for the just ended Lease Year for the Premises. Said Gross Revenue Reports that are to be submitted to City from Lessee are to include but not be limited to Lessee keeping monthly records of the total Organic Materials tonnage and Digestate tonnage delivered to the Premises according to the service categories and details included in Subsection 3.02e.i. through 3.02e.vi. Digestate is defined as the solid and/or liquid material remaining after material has been processed in an in-vessel digester. Organic Materials is defined in the Lessee's Processing and Composting Agreement with Waste Management of California, Inc., and in the City of Oceanside's Franchise Agreement with Waste Management of California, Inc. Reports include:

- i. Organic Materials Tonnage delivered by City's Solid Waste Contractor.
- ii. Digestate Tonnage delivered by City's Solid Waste Contractor.
- iii. Organic Materials Tonnage delivered by private citizens residing in and businesses with their principal address in the City of Oceanside.
- iv. Organic Materials Tonnage delivered on behalf of other cities by their franchise waste hauler, and by city of origin. Reports broken out and reported by material type such as food, yard waste, comingled organics, digestate, etc. by each city of origin.
- v. Organic Materials Tonnage delivered by private individuals and businesses from outside of the City of Oceanside not including sources identified within item e. i. to e. iv. above.
- vi. Product sales by category and quantity sold and gross dollar amount.

All reports required under this section shall contain statements which shall separate revenues directly associated with each of the different service categories. Lessee may, subject to approval by the City, provide Organic Materials Tonnage generation estimates for those services which cannot be readily segregated from one another. Organic Materials Tonnage generation estimates shall include a methodology acceptable to the City, which is used to assign Organic Materials Tonnage and service levels to each category above.

3.03 City of Oceanside Resident Compost Program. As further consideration for this Lease, Lessee shall administer and provide an Oceanside resident product give-away of composted products derived from the City's Organic Materials collected and processed from residential curbsides. Residents of the City of Oceanside shall be required to present proof of residency to shovel free composted products during the normal operating hours of the Facility.

3.04 Product Sales Offset. As further consideration, notwithstanding anything herein to the contrary, Lessee shall make available to the City, One Hundred Thousand and No/100 Dollars (\$100,000) per year worth of the various compost products, provided said prices allocated to the various compost products picked up by the City are at a price equal to or less than the one hundred (100) yard bulk price for a particular product established by Lessee as adjusted from time to time ("Established Price"). Thereafter, the City shall be charged a discounted rate of fifteen percent (15%) below the one hundred (100) yard bulk rate for said particular product.

After the first full year of the term of the Lease, Lessee may request an annual rate adjustment of the One Hundred Thousand and No/100 Dollar (\$100,000.00) amount, which shall become effective the following July 1 of each year of the term of the Lease. The annual adjustment shall be equal to one hundred percent (100%) of the annual percentage change in the San Diego All-Urban Consumers, Consumer Price Index for the last full calendar year prior to the annual anniversary of the Effective Date.

For example: If the "Humic Compost" 100 yard bulk rate is \$9.00 per cubic yard when the Lease started and it escalates to \$9.45 (i.e. a 5% increase) during the first year, the \$100,000.00 will escalate 5% at Lease Anniversary Date to \$105,000.00.

3.05 City Personnel Green Waste Tonnage. The City personnel is allowed to deliver to the Premises for processing, without payment of tip fees, up to Two Thousand (2,000) tons of Green Materials per year. Thereafter, the City shall be required to pay the applicable tip fee as charged by Lessee.

3.06. City Diversion of Organic Materials. It is mutually understood that Lessee has executed a Processing and Composting Agreement between Waste Management of California, Inc. and Lessee dated _____, 2022, to process the City's Organic Materials from Resident Curbside Waste Collection. In the event the City diverts the City's Organic Materials to a facility other than the El Corazon Organic Materials Processing Facility, Lessee will not be obligated to comply with Sections 3.03, 304 and 3.05 of this Lease

3.07 Utilities. Lessee agrees to order, obtain and pay for all utilities (e.g. electricity, water and sewer services), telephone and refuse collection to and for the Premises in connection with the development, occupation, operation, management and maintenance of the Premises.

3.08 Inspection of Records. Lessee shall maintain accurate financial books and records for the operation of its business provided at, or from, the Premises. Said books and records shall be maintained in accordance with normal business standards and good accounting practice. Lessee agrees to make any and all records and accounts available to City for inspection at all reasonable times, so that City can determine Lessee's compliance with this Lease. These records and accounts will be made available by Lessee at the Premises or City's offices and will be complete and accurate showing all income and receipts from Lessee's use of the Premises. Lessee's failure to keep and maintain such records and make them available for inspection by City is a default of this Lease. These records include but are not limited to generally accepted business books, documents, and records. Lessee shall maintain all such books, records and accounts for the term of this Lease. This provision shall survive the expiration or sooner termination of this Lease.

3.09 Delinquent Payments. If Lessee fails to pay any amount when due, Lessee will pay in addition to the unpaid amount, five percent (5%) of the delinquent rent. If said amount is still unpaid at the end of fifteen (15) days, Lessee shall pay an additional five percent (5%) [being a total of ten percent (10%)] which is hereby mutually agreed by the parties to be appropriate to compensate City for loss resulting from delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Acceptance of late charges and any portion of the late payment by City shall in no event constitute a waiver by City of Lessee default with respect to late payment, nor prevent City from exercising any of the other rights and remedies granted in this Lease.

SECTION 4: INSURANCE RISKS/SECURITY

4.01 Indemnity. Lessee shall indemnify and hold harmless the City and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the Lessee or its employees, agents, or others in connection with its use and occupation of the Premises under this Lease, except only for those claims arising from the sole negligence or sole willful conduct of the Lessee, its officers, agents, or employees. Lessee's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, Lessee at its own expense shall, upon written request by the City, defend any such suit or action brought against the City, its officers, agents, or employees.

4.02 Hazardous Substance Indemnification. Lessee shall also indemnify and hold harmless the City and its officers, agents and employees against all claims for damages to persons or property arising from or attributable to any spills or other events occurring during storage, and processing activities, and/or repair, clean-up of detoxification, or preparation and implementation of any removal, remediation, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous, medical or infectious waste. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e)

of the Comprehensive Environmental Response, Compensation and Liability Act. "CERCA", 42 U.S.C. Section 9607(e) and the California Health and Safety Code Section 25364, to insure, protect, and hold harmless and Indemnify City from liability. This Section shall survive the termination of this Lease. Lessee's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, Lessee at its own expense shall, upon written request by the City, defend any such suit or action brought against the City, its officers, agents, or employees.

4.03 Insurance. Lessee shall take out and maintain at all times during the term of this Lease, commencing the Effective Date of the Lease, the following insurance at its sole expense:

- a. Lessee shall maintain the following minimum limits:

General Liability

Combined Single Limit Per Occurrence	\$2,000,000
General Aggregate	\$4,000,000

All Risk

Insurance covering all of the Lessee Improvements, trade fixtures, merchandise and personal property in the Premises, alterations and additions made by Lessee, in an amount not less than 100% of their full replacement, providing protection against perils included in the standard state form of all-risk insurance policy, plus insurance against vandalism and malicious mischief.

- b. All insurance companies affording coverage to the Lessee shall be required to add the City of Oceanside as "additional insured" under the insurance policy(s) required in accordance with this Lease.
- c. All insurance companies affording coverage to the Lessee shall be insurance organizations authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.
- d. All insurance companies affording coverage shall provide thirty (30) days written notice to the City should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

e. Lessee shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Lease.

f. Lessee shall provide a substitute certificate of insurance no later than thirty (30) days after the policy expiration date. Failure by the Lessee to provide such a substitution and extend the policy expiration date shall be considered a default by Lessee and may subject the Lessee to a termination of this Lease.

g. Maintenance of insurance by the Lessee as specified in this Lease shall in no way be interpreted as relieving the Lessee of any responsibility whatever and the Lessee may carry, at its own expense, such additional insurance as it deems necessary.

h. If Lessee fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, City has the right to obtain the insurance. Lessee shall reimburse City for the premiums paid with interest at the maximum allowable legal rate then in effect in California. City shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid; the names of the insurer(s); and the rate of interest. Said reimbursement and interest shall be paid by Lessee on the first (1st) day of the month following the notice of payment by City.

Notwithstanding the preceding provisions of this Subsection, any failure or refusal by Lessee to take out or maintain insurance as required in this Lease, or failure to provide the proof of insurance, shall be deemed a default under this Lease.

i. **Modification.** City, at its discretion, may require the revision of amounts and coverage at any time during the term of this Lease by giving Lessee sixty (60) days prior written notice. City's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises. Lessee also agrees to obtain any additional insurance required by City for new improvements, in order to meet the requirements of this Lease.

4.04 Accident Reports. Lessee shall, within seventy-two (72) hours after occurrence, report to City any accident causing property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved; a statement of the circumstances; the date and hour; the names and addresses of any witnesses; and other pertinent information.

SECTION 5: IMPROVEMENTS/ALTERATIONS/REPAIRS

5.01 Acceptance of Premises. Lessee represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises, including but not limited to an environmental assessment and/or geotechnical analysis of the Premises.

Lessee acknowledges it is relying solely on such independent inspection, tests, investigations, and observations in making this Lease. Lessee further acknowledges that Premises are in the condition called for by this Lease and that Lessee does not hold City responsible for any defects in the Premises which were not directly caused by City.

5.02 Waste, Damage, or Destruction. Lessee shall give written notice to City of any fire or other damage that occurs on the Premises within seventy-two (72) hours of such fire or damage. Lessee shall not commit or suffer to be committed any waste or injury or any public or private nuisance, agrees to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to City. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy and sanitary, Lessee agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage; or, at City's option, and upon receipt of written demand thereof, Lessee agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to City and approved in writing in order to replace in kind and scope the operation which existed prior to such damage. Lessee shall be responsible for all costs incurred in the repair and restoration, or rebuilding of the Premises.

5.03 Maintenance. As part of the consideration for the Lease, Lessee agrees to assume full responsibility and cost for the operation, maintenance and repair of the Premises, including without limitation, the access road to the Premises, the City Improvements and the Lessee Improvements throughout the term of this Lease and without expense to City. Provided, however, Lessee's responsibility and cost of said access road to the Premises (provided said access road is used by others, including but not limited to, other third parties at El Corazon, the general public and the City) shall be limited to Lessee's prorata share thereof, as determined by City, in its reasonable discretion. Lessee will perform all maintenance, repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to City and in compliance with all applicable laws. Lessee further agrees to provide approved containers for trash and garbage and to keep the Premises free and clear of rubbish and litter, or any other fire hazards. Lessee waives all right to make repairs at the expense of City as provided in Section 1942 of the California Civil Code and all rights provided by Section 1941 of said code.

For the purpose of keeping the Premises in a good, safe, healthy and sanitary condition, City shall always have the right, but not the duty, to enter, view, inspect, determine the condition of, and protect its interests in, the Premises. City will provide Lessee with twenty-four (24) hours advance notification prior to entering, viewing or inspecting the Premises, except in the case of an emergency or safety concern. In the event that City finds that the Premises are not in a decent, safe, healthy, and sanitary condition, Lessee must perform the necessary maintenance, repair or replacement work within ten (10) days after written notice from City. In the event Lessee fails to perform such work, City shall have the right, upon written notice to Lessee, to have any necessary

maintenance work done at the expense of Lessee, and Lessee shall promptly pay any and all costs incurred by City in having such necessary maintenance work done, in order to keep said Premises in a decent, safe, healthy, and sanitary condition. Lessee shall make payment no later than ten (10) days after City's written demand therefore. City shall not be required at any time to perform maintenance or to make any improvements or repairs whatsoever, on or for the benefit of the Premises. The rights reserved in this section shall not create any obligations or increase obligations for City elsewhere in this Lease.

5.04 Improvements/Alterations. Except as set forth in Exhibit "C" ("Lessee Improvements"), no improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by Lessee without prior written approval by the City Manager. Further, Lessee agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve Lessee of any obligation under this Lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. City shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

5.05 Liens. Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, and encumbrance or claim on or with respect to all or any portion of the Premises without the prior written consent of the City Manager. Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, and encumbrance or claim on or with respect to all or any portion of the Premises for which Lessee does not have the prior written consent of the City Manager.

5.06 Encumbrance. Upon receiving prior consent by the City Manager, Lessee may encumber this Lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security instrument to assure the payment of a promissory note or notes of Lessee, upon the express condition that the net proceeds of such loan or loans be devoted exclusively to the purpose of developing and/or improving the Premises. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the Premises; on-site improvements; escrow charges; premiums for hazard insurance, or other insurance or bonds required by City; title insurance premiums; reasonable loan costs such as discounts, interest and commissions; and architectural, engineering and attorney's fees and such other normal expenses incidental to such construction.

Any subsequent encumbrances on the Premises or on any permanent improvements thereon shall also have prior approval in writing of City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the Premises or otherwise to the benefit of the City at the discretion of the City Manager. Any

deed of trust, mortgage or other security instrument shall be subject to all of the terms, covenants and conditions of this Lease and shall not amend or alter any of the terms, covenants or conditions of this Lease.

5.07 Taxes. Lessee shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Lessee or the Premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by Lessee or levied by reason of the business or other Lessee activities related to the Premises, including any licenses or permits.

Lessee recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that Lessee may be subject to the payment of taxes levied on such interest, and that Lessee shall pay all such possessory interest taxes.

5.08 Signs. Lessee shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of the City Manager and any such device(s) shall conform to all City of Oceanside ordinances and regulations. If any such unauthorized item is found on the Premises, Lessee shall remove the item at its expense within twenty-four (24) hours of written notice thereof by City, or City may thereupon remove the item at Lessee's cost.

5.09 Ownership of Improvements and Personal Property.

a. Any and all improvements, trade fixtures, structures, and installations or additions to the Premises constructed on the Premises by Lessee, excepting such improvements and operating equipment placed on the Premises by Lessee which may be removed without causing damage to the Premises, shall at Lease expiration or termination be deemed to be part of the Premises and shall become, at City's option, City's property, free of all liens and claims except as otherwise provided in this Lease.

b. If City elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, City shall so notify Lessee in writing thirty (30) days prior to expiration or termination of this Lease, and Lessee shall remove all such improvements, structures and installations, with the exception of the concrete pads on the Premises, as directed by City at Lessee's sole cost and expense on or before Lease expiration or termination. If Lessee fails to remove any improvements, structures, and installations as directed, Lessee agrees to pay City the full cost of any removal.

c. Lessee owned machines, appliances, equipment (other than trade fixtures), and other items of personal property, except as described as Lessee Improvements shall be removed by Lessee by the date of the expiration or termination of this Lease. At City's election, any said items which Lessee fails to remove will be considered abandoned and become City's property free of all claims and liens, or City may, at its option, remove said items at Lessee's expense.

d. If any removal of such personal property by Lessee results in damage to the remaining improvements on the Premises, Lessee shall repair all such damage.

5.10 Eminent Domain. If all or part of the Premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of City and Lessee (or beneficiary or mortgagee) will be as follows:

a. **Total Taking.** In the event the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

b. **Partial Taking.** In the event of a partial taking, if, in the opinion of Lessee, the remaining part of the Premises is unsuitable for the Lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

In the event of a partial taking, if, in the opinion of Lessee, the remainder of the Premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the Premises taken.

c. **Award.** All monies awarded in any such taking of the Premises shall belong to City, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, Lessee shall be entitled to any award attributable to the taking of or damages to Lessee's then remaining leasehold interest in the installations or improvements of Lessee. City shall have no liability to Lessee for any award not provided by the condemning authority.

d. **Repayment of Lessee Improvements.** In the event of a total taking and the City is not awarded any monies by the condemning authority in connection therewith, the City shall not be responsible for any remaining unamortized portion cost of the Lessee Improvements as more specifically set forth in Exhibit "C" subject to Subsection 5.10c., above. In the event of a partial taking and the City is not awarded any monies by the condemning authority in connection therewith, the Lessee Improvements shall be allocated according to the remainder of the Premises and Lessee shall be responsible for the unamortized portion of the cost of the Lessee Improvements applicable to the portion of the Premises so taken.

e. **Transfer.** City has the right to transfer City's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, Lessee shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this lease.

f. **No Inverse Condemnation.** The exercise of any City right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon City for inverse condemnation so long as such rights do not unreasonably or substantially interfere with Lessee's operations.

5.11 Damage or Destruction to Improvements. If any item which Lessee is required to insure pursuant to the terms of this Lease is damaged or destroyed by fire or other risks to be so insured, Lessee (subject to being able to obtain all necessary permits and approvals) shall, within thirty (30) days, commence to repair or reconstruct such items to substantially the same condition in which they were prior to such damage or destruction and prosecute the same diligently to completion.

SECTION 6: GENERAL PROVISIONS

6.01 Notices. All notices, demands, requests, consents or other communications which this Lease contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To City:

CITY OF OCEANSIDE
Property Management Division
300 North Coast Highway
Oceanside, CA 92054
Attention: Real Estate Manager

To Lessee:

Agri Service Recycling, Inc.
3720 Oceanic Way, Suite 204
Oceanside, CA 92056
Attention: Mary Matava, President

Either party may change its address by notice to the other party as provided herein. Communications shall be deemed to have been given and received on the first to occur of: i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above; or (ii) three (3) working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

6.02 City Approval. The City Manager shall be the City's authorized representative in the interpretation and enforcement of all work performed in connection with this Lease. The City Manager may delegate authority in connection with this Lease to the City Manager's designee(s).

6.03 Nondiscrimination. Lessee agrees not to discriminate in any manner against any person or persons on account of race, marital status, familial status, sex, religious creed, color, ancestry, national origin, age, disability, medical condition or sexual orientation in Lessee's use of the Premises.

6.04 Equal Opportunity. Lessee shall take affirmative action to assure applicants are employed and that employees are treated during employment without regard to race, religious creed, color, religion, sex or national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation. Lessee shall certify in writing to City that Lessee is in compliance and throughout the term of this Lease will comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal, State and Local law, regulation and policy (including without limitation those adopted by City) related to equal employment opportunity and affirmative action programs, including any such law, regulation, and policy hereinafter enacted.

Compliance and performance by Lessee of the equal employment opportunity and affirmative action program provision of this Lease is an express condition hereof and any failure by Lessee to so comply and perform shall be a default of this Lease and City may exercise any right as provided herein and as otherwise provided by law.

6.05 Entire Agreement. This Lease contains the entire understanding between the City and Lessee concerning the use and occupation of the Premises and supersedes all prior negotiations, representations, or agreements. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself.

6.06 Interpretation. The interpretation, validity and enforcement of the Lease shall be governed by and construed under the laws of the State of California. The venue of any judicial action brought to enforce any condition, covenant or provision of this Lease shall be in San Diego County, California. The Lease does not limit any other rights or remedies available to City.

The Lessee shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Lease shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Lease are severable.

This Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns.

6.07 Agreement Modification. This Lease may not be modified orally or in any manner other than by an Agreement in writing signed by the parties hereto.

6.08 Waiver. Any City waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the Redevelopment Manager in order to constitute a valid and binding waiver. City delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. City's acceptance of any amounts associated with this Lease is not a waiver of any default preceding the amount payment. City and Lessee specifically agree that the property constituting the Premises is City owned and held in trust for the benefit of the citizens of the City of Oceanside and that the failure of the City Manager or City staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but City shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

6.09 Attorney's Fees. In the event a suit is commenced by City against Lessee to enforce payment of amounts due, or to enforce any of the terms and conditions hereof, or in case City shall commence summary action under the laws of the State of California relating to the unlawful detention of property, for forfeit of this Lease, and the possession of the Premises, provided City effects a recovery, Lessee shall pay City all costs expended in any action, together with a reasonable attorney's fee to be fixed by the Court.

6.10 Assignment and Subletting - No Encumbrance. This Lease and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the Lessee's duties be delegated, without the express written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed. Any attempt to assign or delegate this Lease without the express written consent of City shall be void and of no force or effect. Consent by City to one assignment, transfer, sublease, or delegation shall not be deemed to be consent to any subsequent assignment, transfer, sublease, or delegation.

6.11 Defaults and Termination. It is mutually understood and agreed that if any default be made in the payment of amounts as herein provided or in the performance of the covenants, conditions, or agreements herein or in Lessee's performance under that certain Processing and Composting Agreement between Waste Management of California, Inc. and Lessee dated _____, 2022; or should Lessee fail to fulfill in any manner the uses and purposes for which the Premises are leased as stated in this Lease, and such default is not cured within **thirty (30)** days after written notice thereof if default is in the submittal of amounts due as required in this Lease; or **thirty (30)** days after written notice thereof if default is in the performance of the failure to use provisions pursuant to Section 1.02 of this Lease; or **thirty (30)** days after written notice thereof if default is in the performance of any other covenant, condition and agreements (any covenant or agreement shall be construed and considered as a condition), City shall have the right to immediately terminate this Lease; and that in the event of such termination,

Lessee shall have no further rights hereunder and Lessee shall thereupon forthwith remove from the Premises and shall have no further right to claim thereto, and City shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the Premises. City shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Lessee in the amount necessary to compensate City for all the detriment proximately caused by the Lessee's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result there from.

In the event City consents to an encumbrance of the Lease for security purposes in accordance with Section 5.06 of this Lease, it is understood and agreed that City shall furnish copies of all notices of defaults to the beneficiary or mortgagee under said encumbrance by certified mail contemporaneously with the furnishing of such notices to Lessee, and in the event Lessee shall fail to cure such default or defaults within the time allowed above, said beneficiary or mortgagee shall be afforded the right to cure such default at any time within five (5) days, if the default is for the failure to submit rent as required, or within fifteen (15) days following the expiration of the period within which Lessee may cure such default, provided, however, City shall not be required to furnish any further notice of default to said beneficiary or mortgagee.

In the event of the termination of this Lease pursuant to the provisions of this section, City shall have any rights to which it would be entitled in the event of the expiration or sooner termination of this Lease under the provisions of Sections 5.10 and 5.11 of this Lease.

6.12 Bankruptcy. In the event Lessee becomes insolvent, makes an assignment for the benefit of creditors, becomes the subject of a bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceedings, or in the event of any judicial sale of Lessee's interest under this Lease, City shall have the right to declare this Lease in default.

The conditions of this section shall not be applicable or binding on Lessee or the beneficiary in any deed of trust, mortgage, or other security instrument on the demised Premises which is of record with City and has been consented to by resolution of the City Council, or to said beneficiary's successors in interest consented to by resolution of the City Council, as long as there remains monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided that such beneficiary or its successors in interest, continuously pay to City all rent due or coming due under the provisions of this Lease and the Premises are continuously and actively used in accordance with Section 1.02 of this Lease.

6.13 Section Headings. The Table of Contents and the section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

6.14 Gender/Singular/Plural. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, partnership, or other legal entity when the context so requires. The singular number includes the plural whenever the context so requires.

SECTION 7: SPECIAL PROVISIONS

7.01 Relocation Provision. If during the term of this Lease, the City determines that there is a more desirable location in the City of Oceanside for an organic materials processing facility, the City shall have the right to relocate Lessee to said location, provided, that said property is equal to or greater in operational square footage and has the necessary permits to operate a Full Solid Waste Composting Facility, and that the City is willing to provide Lessee with improvements to said new space substantially similar to those that were constructed at the Premises including organic waste capacity, provided said amount does not exceed amount of the Lessee Improvements as adjusted for inflation per the San Diego All-Urban Consumers, Consumer Price Index. City shall provide Lessee with at least one hundred eighty (180) days prior written notice of City's intention to relocate Lessee. City and Lessee shall amend this Lease to reflect said new property.

7.02 Standards of Operation. Lessee agrees that it shall operate and manage the services and facilities offered upon or from the Premises in a first class manner.

7.03 Hours of Operation. Lessee shall accept deliveries from 7:30 AM to 5:00 PM, Monday through Friday and from 8:00 AM to 4:00 PM on Saturday of each week. All times and drop-off days for operations and grinding are subject to approval by appropriate local, state and federal permitting regulatory agencies. The Lessee agrees that it shall conduct business on the Premises to conform to the published hours and days of operation as so established, and in the best interest of the public, unless otherwise approved in writing by the City.

7.04 Operating Conditions.

a. Noise. All operations conducted at the Premises shall be conducted as quietly as possible and shall conform to applicable federal, state, county and local noise level regulations. City may conduct random checks of noise emission levels to ensure such compliance. Lessee will promptly resolve any complaints of noise to the satisfaction of City.

b. Minimization of Spills. Lessee shall use due care to prevent Organic Materials and related materials from being scattered during processing.

c. Clean-Up. Lessee shall be responsible for cleaning any spills at the El Corazon Site, which are caused by delivery of organic waste or the removal of recovered organic waste products. Lessee shall address instances of repeated spillage not caused by Lessee, directly with the customer responsible and shall report such instances to City.

City shall attempt to rectify such situations with the customer if Lessee has previously attempted to do so without success. City may authorize Lessee to charge an additional service fee for instances of repeated spillage.

e. **Fuel, Oil and Other Vehicle Fluid Spills.** Lessee shall be responsible for immediately cleaning-up all fuel, oil or other vehicle fluid spills and must notify City, City Fire Department and appropriate county and state authorities immediately following each such spill. Costs incurred by City in responding to such spills as well as repair for damages caused by fuel, oil, or other vehicle fluid spills shall be at Lessee's sole cost and expense.

7.05 Manner of Providing Service. Lessee shall provide an experienced and well qualified "on-site" supervisor to oversee all operations conducted by Lessee on the Premises. Said supervisor shall be empowered with authority to act on behalf of Lessee in response to reasonable requests from City to perform maintenance, repairs, and replacements on the Premises to insure the public's health, safety, and welfare. Lessee shall ensure that its employees shall at all times conduct themselves in a creditable and dignified manner, and they shall conform to all laws, rules, regulations and requirements, as well as all rules and regulations as hereafter may be promulgated, or put into operation by the City. Lessee shall maintain a staff in adequate size and number, to City's satisfaction, to effectively operate, maintain and administer all services offered and facilities located on the Premises.

7.06 Continued Occupancy. Lessee covenants and agrees to, and it is the intent of this Lease that the Lessee shall, continuously and uninterruptedly during the term of the Lease, occupy and use the Premises for the purposes hereinabove specified, except while Premises are untenable by reason of fire, flood, or other unavoidable casualty, and, in that event, City shall be promptly notified by Lessee.

7.07 Hazardous Substances. No goods, merchandise or material shall be kept, stored or sold in or on the Premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said Premises, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon said or other premises and the improvements thereon.

No machinery or apparatus shall be used or operated on or about the Premises which will in any way injure the Premises or improvements thereon, or adjacent or other premises, or improvements thereon, or to persons; provided, however, that nothing contained in this section shall preclude Lessee from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects. Open flame burning, gasoline, or other fuel storage is expressly prohibited without prior written consent of the City.

7.08 Memorandum of Lease. City and Lessee agree the Lease shall not be recorded and that the parties shall execute a Memorandum of Lease to be recorded. The form of this Memorandum of Lease is as shown on Exhibit E” attached hereto and incorporated herein by this reference, and shall be recorded in the Official Records of the County of San Diego.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

SECTION 8: SIGNATURES

8.01 Signature Page. The individuals executing this Lease represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Lease on behalf of the respective legal entities of the Lessee and the City.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Property Lease to Agreement be executed by setting hereunto their signatures on the day and year respectively written herein below.

CITY

THE CITY OF OCEANSIDE
a municipal corporation

Date _____

By: _____
Jonathan Borrego
Interim City Manager


APPROVED AS TO FORM:

By: 
City Attorney

LESSEE

AGRI SERVICE RECYCLING, INC.
a California corporation

Date 3-30-22

By: 
Name: Mary Matava
Title: President

NOTARY ACKNOWLEDGMENTS OF LESSEE'S SIGNATURE(S) MUST BE ATTACHED

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego)

On March 30, 2022 before me, Elizabeth S. Hedrick, Notary Public
(insert name and title of the officer)

personally appeared Mary Matava
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Elizabeth S. Hedrick (Seal)



EXHIBIT "A-1"
PARCEL 1
LEASE PARCEL
LEGAL DESCRIPTION

THAT PORTION OF SECTION 20, TOWNSHIP 11 SOUTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWESTERLY TERMINUS OF THE SOUTH LINE OF LOT G OF RANCHO DEL ORO MASTER SUBDIVISION WEST AS SHOWN ON MAP 11410 RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DECEMBER 27, 1985;

THENCE ALONG SAID SOUTH LINE NORTH 88°37'32" WEST (NORTH 88°37'03" WEST PER SAID MAP 11410) 483.46 FEET TO THE SOUTHEAST CORNER OF SAID LOT G;

THENCE LEAVING SAID LOT G NORTH 54°48'13" EAST 331.09 FEET;

THENCE NORTH 87°05'16" EAST 57.85 FEET;

THENCE NORTH 77°49'11" EAST 262.93 FEET;

THENCE NORTH 57°45'04" EAST 144.96 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 71°10'30" EAST 68.68 FEET;

THENCE NORTH 28°33'23" EAST 74.28 FEET;

THENCE NORTH 00°46'00" EAST 468.44 FEET;

THENCE NORTH 05°10'53" EAST 199.62 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 80.00 FEET;

THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 80°26'28" AN ARC LENGTH OF 112.32 FEET;

THENCE NORTH 75°15'35" WEST 265.20 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 80.00 FEET;

THENCE WESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 39°53'24" AN ARC LENGTH OF 55.70 FEET;

THENCE SOUTH 64°51'01" WEST 995.07 FEET TO THE BEGINNING OF A 240.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°50'02" A DISTANCE OF 49.57 FEET;

THENCE NON-TANGENT TO SAID CURVE SOUTH 49°37'11" EAST 197.65 FEET;

THENCE NORTH 64°51'01" EAST 479.43 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 60.00 FEET;

(1)

EXHIBIT "A-1"
PARCEL 1
LEASE PARCEL
LEGAL DESCRIPTION

THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 115°54'59" AN ARC LENGTH OF 121.39 FEET;

THENCE SOUTH 00°46'00" WEST 421.95 FEET;

THENCE NORTH 89°14'00" WEST 30.00 FEET;

THENCE SOUTH 00°46'00" WEST 81.55 FEET;

THENCE SOUTH 88°36'56" EAST 235.01 FEET;

THENCE NORTH 00°46'00" EAST 39.13 FEET;

THENCE SOUTH 89°14'00" EAST 319.72 FEET TO THE TRUE POINT OF BEGINNING.
CONTAINING 15.33 ACRES MORE OR LESS

ATTACHED HERETO AND MADE A PART HEREOF IS A PLAT LABELED EXHIBIT "B"

THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.



MICHAEL SCHLUMPBERGER, PLS 7790

September 27, 2014
DATE



(2)

EXHIBIT "A-1"
PARCEL 2
COMMON AREA
LEGAL DESCRIPTION

THAT PORTION OF SECTION 20, TOWNSHIP 11 SOUTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWESTERLY TERMINUS OF THE SOUTH LINE OF LOT G OF RANCHO DEL ORO MASTER SUBDIVISION WEST AS SHOWN ON MAP 11410 RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DECEMBER 27, 1985;

THENCE ALONG SAID SOUTH LINE NORTH 88°37'32" WEST (NORTH 88°37'03" WEST PER SAID MAP 11410) 483.46 FEET TO THE SOUTHEAST CORNER OF SAID LOT G;

THENCE LEAVING SAID LOT G NORTH 54°48'13" EAST 331.09 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 87°05'16" EAST 57.85 FEET;

THENCE NORTH 77°49'11" EAST 262.93 FEET;

THENCE NORTH 57°45'04" EAST 144.96 FEET

THENCE NORTH 89°14'00" WEST 319.72 FEET;

THENCE SOUTH 00°46'00" WEST 39.13 FEET;

THENCE NORTH 88°36'56" WEST 235.01 FEET;

THENCE NORTH 00°46'00" EAST 81.55 FEET

THENCE SOUTH 89°14'00" EAST 30.00 FEET;

THENCE NORTH 00°46'00" EAST 421.95 FEET TO THE BEGINNING OF A 60.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 115°54'59" A DISTANCE OF 121.39 FEET;

THENCE SOUTH 64°51'01" WEST 479.43 FEET;

THENCE NORTH 49°37'11" WEST 197.65 FEET TO A POINT ON A NON-TANGENT 240.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY, A RADIAL FROM SAID POINT BEARS SOUTH 36°59'01" EAST;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°27'47" A DISTANCE OF 68.96 FEET;

(1)

EXHIBIT "A-1"
PARCEL 2
COMMON AREA
LEGAL DESCRIPTION

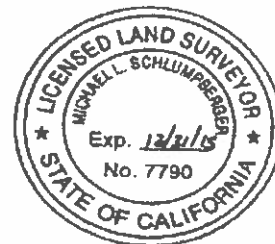
THENCE NON-TANGENT TO SAID CURVE SOUTH 49°37'11" EAST 247.03 FEET;
THENCE NORTH 64°51'01" EAST 426.99 FEET TO THE BEGINNING OF A 30.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY;
THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 115°54'59" A DISTANCE OF 60.69 FEET;
THENCE SOUTH 00°46'00" WEST 359.33 FEET TO THE BEGINNING OF A 30.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY;
THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 118°46'19" A DISTANCE OF 62.19 FEET;
THENCE NORTH 60°27'41" WEST 192.02 FEET TO THE BEGINNING OF A 60.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY;
THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 112°19'12" A DISTANCE OF 117.62 FEET TO THE BEGINNING OF A COMPOUND 195.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY;
THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 67°44'41" A DISTANCE OF 230.56 FEET;
THENCE SOUTH 60°31'34" EAST 95.03 FEET TO THE BEGINNING OF A 200.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY;
THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 51°05'06" A DISTANCE OF 178.32 FEET;
THENCE NORTH 68°23'20" EAST 145.75 FEET TO THE TRUE POINT OF BEGINNING
CONTAINING 5.25 ACRES MORE OR LESS.

ATTACHED HERETO AND MADE A PART HEREOF IS A PLAT LABELED EXHIBIT 'B'

THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT

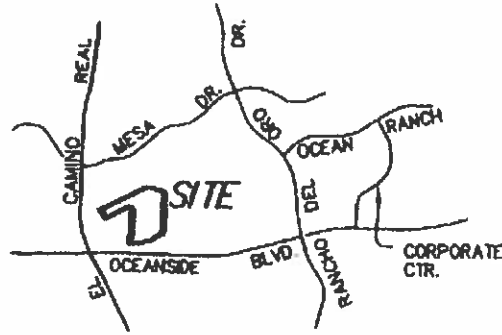

MICHAEL SCHLUMPBERGER, PLS 7790

September 2, 2014
DATE



(2)

EXHIBIT "B-1"



VICINITY MAP
NO SCALE

LINE DATA

- L1 N87°05'16"E 57.85'
- L2 N89°14'00"W 30.00'
- L3 S00°46'00"W 81.55'
- L4 S80°31'34"E 95.03'
- L5 N68°23'20"E 145.75'

CURVE DATA

- C1 Δ=16°27'47" R=240.00' L=68.96'
- C2 Δ=115°54'59" R=30.00' L=60.68'
- C3 Δ=118°46'19" R=30.00' L=62.19'
- C4 Δ=112°19'12" R=60.00' L=117.62'
- C5 Δ=67°44'41" R=195.00' L=230.56'
- C6 Δ=51°05'08" R=200.00' L=178.32'
- C7 Δ=11°50'02" R=240.00' L=49.57'



THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYOR'S ACT.

MICHAEL L. SCHLUMPBERGER, PLS 7790

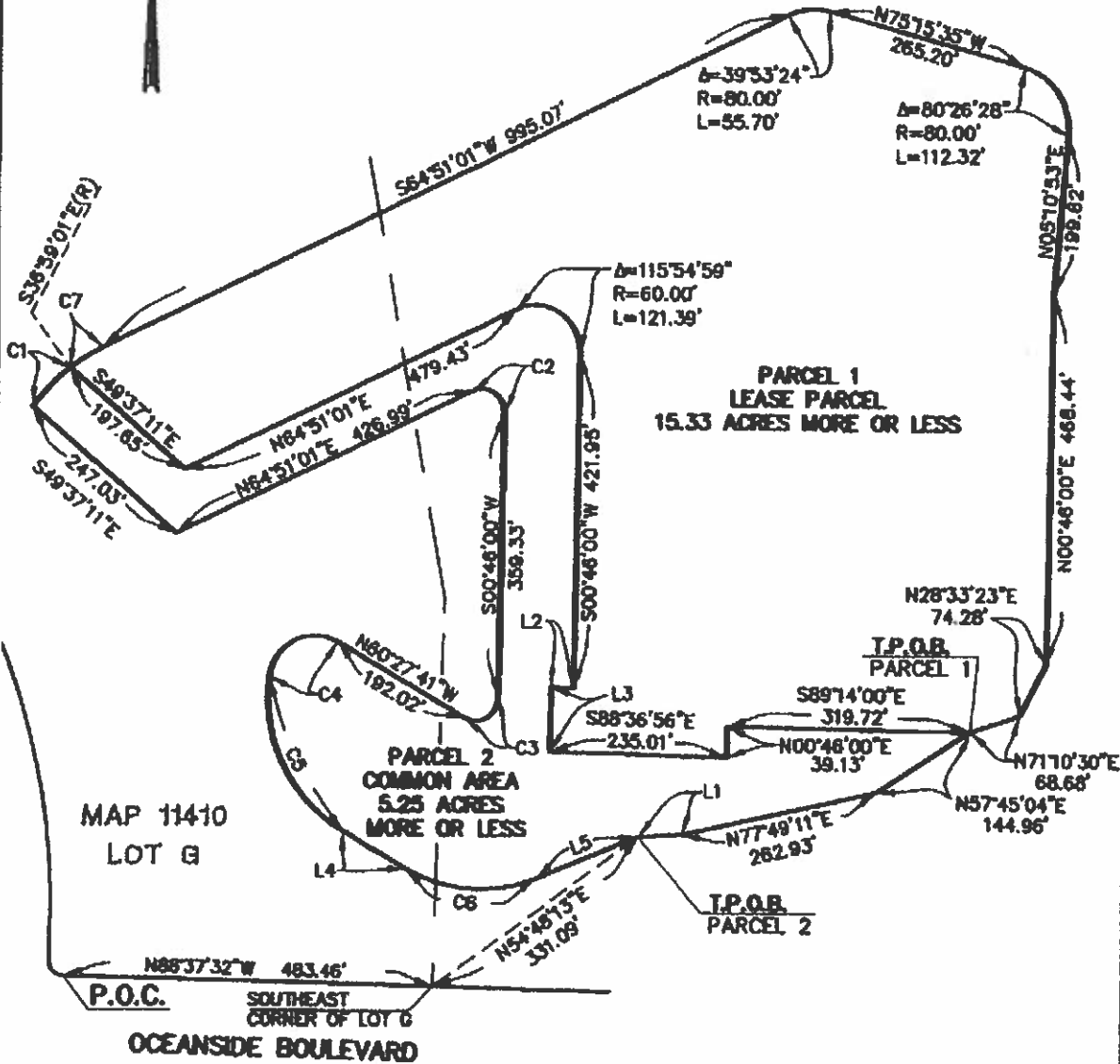
ASSESSORS' PARCEL NO.: 162-082-43

Right-Of-Way Engineering Services, Inc.
 615 South Tremont Street - Oceanside, CA 92054
 (760) 637-2700 FAX (760) 637-2701
 Drawing file name: Lease Parcel Plat.dwg
 Job No.: 0709-0046-01

CITY OF OCEANSIDE	
LEASE PARCEL	
DATE: JULY 29, 2014	SHEET 1 OF 2

EXHIBIT "B-1"

SCALE 1"=200'



ASSESSORS' PARCEL NO.: 162-082-43

Right-Of-Way Engineering Services, Inc.
 616 South Tremont Street • Oceanside, CA 92064
 (760) 637-8700 FAX (760) 637-8701
 Drawing file name: Lease Parcel Plat.dwg
 Job No.: 0705-0048-01

CITY OF OCEANSIDE	
LEASE PARCEL	
DATE: JULY 29, 2014	SHEET 2 OF 2

EXHIBIT C

Schedule of Lessee Improvements

	<u>Actual Cost</u>	<u>Date Purchased</u>	<u>GAAP Estimated Useful Life</u>
<u>Leasehold Improvements</u>			
Existing:			
Aeration Equipment, controls and in-floor system	\$716,823	04/01/2013	15
Onsite construction, grading, and concrete aeration floor	1,423,536	04/01/2013	15
Scale House/Office Building/Restrooms/Maint. Shed & Storage	141,390	04/01/2013	15
Landscaping	<u>15,000</u>	04/01/2013	15
Improvements in Place	\$2,296,749		
	<u>Estimated Cost</u>		
To Be Constructed: (Estimated)			
Tipping Building, Leasehold Improvements and Related Permits	\$1,500,000		
TBD: Depackaging Plant/Expanded Picking Station	1,000,000		
Solar-Power Infrastructure	250,000		
Infrastructure needed to utilize recycled water	100,000		
Contingency	<u>225,000</u>		
Future Improvements Estimated	\$3,075,000		

EXHIBIT D

Schedule of Values for Lessee Improvements

	<u>Actual Cost</u>	<u>Date Purchased</u>	<u>GAAP Estimated Useful Life</u>
<u>Leasehold Improvements</u>			
Existing:			
Aeration Equipment, controls and in-floor system	\$716,823	04/01/2013	15
Onsite construction, grading, and concrete aeration floor	1,423,536	04/01/2013	15
Scale House/Office Building/Restrooms/Maint. Shed & Storage	141,390	04/01/2013	15
Landscaping	<u>15,000</u>	04/01/2013	15
Improvements in Place	\$2,296,749		
	<u>Estimated Cost</u>		
<u>To Be Constructed: (Estimated)</u>			
Tipping Building, Leasehold Improvements and Related Permits	\$1,500,000	TBD	15
TBD: Depackaging Plant/Expanded Picking Station	1,000,000	TBD	7
Solar-Power Infrastructure	250,000	TBD	15
Infrastructure needed to utilize recycled water	100,000	TBD	15
Contingency	<u>225,000</u>	TBD	TBD
Future Improvements Estimated	\$3,075,000		

EXHIBIT E

MEMORANDUM OF PROPERTY LEASE AGREEMENT

THIS MEMORANDUM OF LEASE ("Memorandum") is made as of _____, 20__, by and between THE CITY OF OCEANSIDE, a municipal corporation ("CITY") and AGRI SERVICE RECYCLING, INC., a California corporation ("AGRI SERVICE").

CITY AND AGRI SERVICE have entered into that certain Property Lease Agreement ("Lease") dated as of _____, 20__, pursuant to which CITY has leased to AGRISERVICE, a portion of that certain property located at El Corazon in the City of Oceanside, County of San Diego, State of California and as more particularly described in Exhibit "A-1", which is attached and incorporated by this reference. The purpose of this Memorandum is to give notice to the existence of the Lease Agreement and the provisions thereof. To the extent that any provision of this Memorandum conflicts with any provision of the Lease, the Lease shall control.

This Memorandum may be executed in counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first written above.

"CITY"

CITY OF OCEANSIDE,
a municipal corporation

BY: _____
Name: _____
Title: _____

"AGRI SERVICE"

AGRI SERVICE RECYCLING, INC.,
a California corporation

BY: _____
Name: _____
Title: _____