

**CITY OF YUBA CITY**  
**COLLECTION SERVICES FRANCHISE AGREEMENT**

Executed Between the City of Yuba City

and

Recology Yuba-Sutter

**This 20th day of August, 2019**

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## City of Yuba City

This Agreement made and entered into this 20 day of Aug, 2019, by and between the City of Yuba City, a municipal corporation, hereinafter referred to as ("CITY") and Recology Yuba-Sutter, a California corporation, hereinafter referred to as ("CONTRACTOR.")

### RECITALS

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

**WHEREAS;** the State of California has found and declared that the amount of Solid Waste generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from landfilling and the need to conserve natural resources, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has, through enactment of the Act, and subsequent related legislation including, but not limited to AB 341, AB 1594 and AB 1826, directed the responsible State agency and all local agencies to promote disposal site diversion and to maximize the use of feasible Solid Waste reduction, reuse, Recycling, and Composting options in order to reduce the amount of Solid Waste that must be disposed of in disposal sites; and,

**WHEREAS;** CONTRACTOR is a private enterprise involved in the solid waste industry and capable of providing the CITY with Solid Waste handling services including but not necessarily limited to Source Reduction, Recycling and Composting activities in conjunction with the collection, transfer and disposal of Solid Waste; and,

**WHEREAS;** pursuant to California Public Resources Code Section 40059(a) as may be amended from time to time, the CITY has determined that the public health, safety, and well-being require an exclusive agreement to provide Collection Services and other services related to meeting the State's diversion goals and other requirements of the Act, without competitive bidding except for Collection of materials excluded in the CITY Municipal Code; and,

**WHEREAS;** the CITY further declares its intent to approve and maintain the Maximum Service Rates for the Collection, transportation, Processing, Recycling, Composting, and/or disposal of Solid Waste, Recyclable Materials, Green Waste, Organic Materials, Bulky Items, Construction and Demolition Debris and Sludge; and,

**WHEREAS;** the Parties hereto desire to enter into a wholly exclusive agreement for the provision of Collection Services except for those limitations specified in this Agreement; and,

**WHEREAS;** this Agreement has been developed by and is satisfactory to the CITY and the CONTRACTOR,

**NOW, THEREFORE,** in consideration of the mutual covenants, conditions and consideration contained herein, the CITY and CONTRACTOR hereby agree as follows:



## **ARTICLE 1: DEFINITIONS**

For the purpose of this Collection Service Franchise Agreement (hereinafter referred to as "Agreement"), the definitions contained in this Article shall apply unless otherwise specifically stated. If a word or phrase is not defined in this Agreement, the definition of such word or phrase as contained in the CITY Municipal Code shall control. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender.

### **1.1 ACT (DIVISION 30 OF THE CALIFORNIA PUBLIC RESOURCES CODE) (ASSEMBLY BILL 939, AB 939)**

"Act" means the California Integrated Waste Management Act (California Public Resources Code Sections 40000 et seq), also commonly referred to as "AB 939," as amended, supplemented, superseded, and replaced from time to time.

### **1.2 AFFILIATE**

"Affiliate" means all businesses (including corporations, limited and general partnerships and sole proprietorships) that are directly or indirectly related to CONTRACTOR by virtue of direct or indirect ownership interest or common management. They shall be deemed to be "Affiliated with" CONTRACTOR and included within the term "Affiliates" as used herein. An Affiliate shall include: (i) a business in which CONTRACTOR has a direct or indirect ownership interest, (ii) a business that has a direct or indirect ownership interest in CONTRACTOR and/or (iii) a business that is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in CONTRACTOR. For the purposes of this definition, "ownership" means ownership as defined in the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date here, provided that ten percent (10%) shall be substituted for fifty percent (50%) in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest of value that the ownership interest represents.

### **1.3 AGREEMENT**

"Agreement" means this Agreement between the CITY and CONTRACTOR, including all exhibits, and any future amendments hereto.

### **1.4 AGREEMENT YEAR**

"Agreement Year" means each twelve (12) month period from October 1<sup>st</sup> to September 30<sup>th</sup>, beginning October 1, 2019.

### **1.5 ALTERNATIVE DAILY COVER (ADC)**

"Alternative Daily Cover" means materials placed on the surface of the active face of the refuse fill area at the end of each operating day to control vectors, fires, odor, blowing litter and scavenging, as defined in Section 20164 of the California Code of Regulations. ADC includes all approved waste-derived and non-waste-derived material types as defined in Section 20690b. During the Term of this Collection Service Agreement, effective

January 1, 2020, the use of green material as ADC does not constitute Diversion through Recycling and shall be considered disposal pursuant to Section 41781.3 (2)(A).

**1.6 ASSEMBLY BILL 341 (CHAPTER 476, STATUTES OF 2011) (AB 341)**

“AB 341”, as amended, supplemented, superseded, and replaced from time to time, requires all businesses generating four (4) or more cubic yards of non-recyclable solid waste per week, and all Multi-Family dwellings consisting of five (5) units or more, to arrange for Recycling services and requires all local agencies to provide a commercial Recycling program meeting specified criteria on or before July 1, 2012.

**1.7 ASSEMBLY BILL 1594 (CHAPTER 719, STATUTES OF 2014) (AB 1594)**

“AB 1594”, as amended, supplemented, superseded, and replaced from time to time, mandates that as of January 1, 2020, the use of green material as Alternative Daily Cover (ADC) will no longer constitute diversion through Recycling and will instead be considered disposal in terms of measuring a jurisdiction’s annual 50 percent per capita disposal rate.

**1.8 ASSEMBLY BILL 1669 (CHAPTER 1072, STATUTES OF 2016) (AB 1669)**

“AB 1669”, as amended, supplemented, superseded, and replaced from time to time, mandates that as of January 2017, if CONTRACTOR declared intent to offer employment to eligible employees of the previous Contractor, the CONTRACTOR shall fulfill all wage rate, benefit, minimum employment duration, etc, as required in Chapter 1072 and as declared in the CONTRACTOR’S Proposal.

**1.9 ASSEMBLY BILL 1826 (CHAPTER 727, STATUTES OF 2014) (AB 1826)**

“AB 1826”, as amended, supplemented, superseded, and replaced from time to time, requires all businesses generating four (4) or more cubic yards of Organic Waste (called Organic Materials in the remainder of this Agreement) per week to Recycle their Organic Waste; multi-family housing with five (5) or more units generating four (4) or more cubic yards of green waste and landscape and pruning waste to Recycle their green waste and landscape and pruning waste; and, requires all local agencies to provide a commercial organic Recycling program meeting specified criteria on or before January 1, 2016. On or before January 1, 2019, AB 1826 requires businesses generating four (4) or more cubic yards of Solid Waste per week to Recycle their Organic Materials and multi-family housing with five (5) or more units generating four (4) or more cubic yards of solid waste per week to Recycle their green waste and landscape and pruning waste. If CalRecycle determines that the statewide disposal of Organic Materials in 2020 has not been reduced by 50 percent of the level of Disposal during 2014, the organic Recycling requirements on businesses will expand to cover businesses that generate 2 cubic yards or more of Commercial solid waste per week.

**1.10 APPLICABLE LAW**

“Applicable Law” means all Federal, State, County, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, transportation, Processing or Disposal of Discarded Materials that are in force on the Effective Date and as may be enacted, issued or amended during the Term of this Agreement. Without limiting the foregoing, Applicable Law includes Environmental Laws.

**1.11 APPROVED CONSTRUCTION & DEMOLITION (C&D) PROCESSING FACILITY**

“Approved Construction & Demolition Processing Facility” and “Approved C&D Processing Facility” means the Recology Yuba-Sutter Integrated Waste Recovery Facility located at 3001 North Levee Road, Marysville, CA.

**1.12 APPROVED DISPOSAL FACILITY**

“Approved Disposal Facility” means the Recology Ostrom Road Landfill located at 5900 Ostrom Road, Wheatland, CA..

**1.13 APPROVED FACILITY(IES)**

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

**1.14 APPROVED ORGANIC MATERIALS PROCESSING FACILITY**

“Approved Organics Processing Facility” means the Recology Feather River Organics Facility located at 3001 North Levee Road, Marysville, CA.

**1.15 APPROVED RECYCLABLE MATERIALS PROCESSING FACILITY**

“Approved Recyclable Materials Processing Facility” means the Recology Yuba-Sutter Integrated Waste Recovery Facility located at 3001 North Levee Road, Marysville, CA.

**1.16 APPROVED TRANSFER STATION**

“Approved Transfer Station” means the Recology Yuba-Sutter Integrated Waste Recovery Facility located at 3001 North Levee Road, Marysville, CA.

**1.17 BIN**

“Bin” means a metal or plastic container, with a capacity of one (1) cubic yard up to, and including, eight (8) cubic yards, designed or intended to be mechanically dumped into a loader packer type truck that is approved for such purpose by the CITY. Bins may also include Compactors that are owned by the Multi-Family Dwelling (MFD) or Commercial Service Unit wherein the MFD or Commercial Collection Service occurs.

**1.18 BIOHAZARDOUS OR BIOMEDICAL WASTE**

“Biohazardous” or “Biomedical Waste” means Discarded Materials which are likely to be infectious, pathological or biohazardous, originating from residences, hospitals, public or private medical clinics, departments of research laboratories, pharmaceutical industries, blood banks, forensic medical departments, mortuaries, veterinary facilities and other similar facilities and includes (without limitations) equipment, instruments, utensils, fomites, laboratory wastes (including pathological specimens and fomites attendant thereto), surgical facilities, equipment, bedding and utensils (including pathological specimens and disposal fomites attendant thereto), sharps (hypodermic needles, syringes, etc.), dialysis unit waste, chemotherapeutic waste, animal carcasses, offal and body parts, biological materials (vaccines, medicines, etc.), and other similar materials, but excluding any such Discarded Materials which are reasonably determined by CONTRACTOR to be noninfectious, non-pathological and non-biohazardous.

**1.19 BROWN GOODS**

“Brown Goods” means electronic equipment such as stereos, radios, microwave ovens, VCRs, DVD players, personal data assistants (PDAs), telephones, and other similar items, that are not Covered Electronic Waste.

**1.20 BULKY ITEM(S)**

“Bulky Item(s)” means discarded appliances, furniture, tires, carpets, mattresses, and similar large items that 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. Bulky Items must be

generated by the Customer and at the service address wherein the Bulky Items are Collected. The maximum weight and dimensions of Bulky Items shall be as directed by CONTRACTOR. In the event a question ever arises as to whether a specific item or category of items meets the definition of Bulky Items, the CITY shall be responsible to determine whether said definition shall apply. Bulky Items do not include items herein defined as Exempt Waste or Construction and Demolition Debris.

**1.21 BULKY ITEM COLLECTION SERVICE**

“Bulky Item Collection Service” means the periodic on-call Collection of Bulky Items by the CONTRACTOR in the Service Area and the delivery of those Bulky Items to the Approved Facility.

**1.22 BUSINESS DAYS**

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

**1.23 CALRECYCLE**

“CalRecycle” means the California Department of Resources Recycling and Recovery or its successor.

**1.24 CART**

“Cart” means a heavy plastic receptacle and a rated capacity of at least thirty-two (32) gallons and not more than ninety-six (96) gallons, having a hinged, tight-fitting lid and wheels, that is approved by the Contract Administrator for use by Service Recipients for Collection Services under this Agreement.

**1.25 CHANGE IN LAW**

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

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

Change in Law does not include provisions related to the Recology Yuba-Sutter Landfill in Marysville or any of the Approved Facilities.

**1.26 CITY**

“CITY” means the City of Yuba City, California.

**1.27 CITY CLEAN-UP SERVICE**

“CITY Clean-up Service” means the Collection of Solid Waste, Green Waste, Recyclable Materials and Bulky Items by the CONTRACTOR resulting from written or verbal requests from the CITY for temporary clean-up programs at a centralized collection site. Such service shall include the provision of Bins or Debris Box Containers by the CONTRACTOR and the transport and delivery of the Collected materials to the appropriate Approved Facility(ies).

**1.28 CITY CONTAINER SERVICE**

“CITY Container Service” means the Collection of Solid Waste and Recyclable Materials from public litter containers distributed and maintained by the CITY or the Yuba-Sutter Transit Authority and the transport and delivery of the Collected materials to the appropriate Approved Facility(ies).

**1.29 CITY SERVICE UNIT**

“CITY Service Unit” means those CITY properties or CITY locations which the Contract Administrator requests that CONTRACTOR provide services as provided in this Agreement.

**1.30 CITY SELF-HAUL SERVICE**

“CITY Self-Haul Service” means the receipt of Solid Waste, Organic Materials including Green Waste and Food Waste, Bulky Items and Construction and Demolition Debris self-hauled by CITY employees in CITY vehicles to the designated Transfer Station, Materials Recovery Facility and Organic Materials Processing Facility.

**1.31 CITY WASTE**

“CITY Waste” means Solid Waste, Recyclable Materials, Green Waste, Organic Materials and Bulky Items generated at a CITY Service Unit. CITY Waste must be generated by and at the CITY Service Unit wherein the CITY Waste is Collected and does not include items defined herein as Exempt Waste.

**1.32 COLLECT, COLLECTED, COLLECTION**

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

**1.33 COLLECTION SERVICES**

"Collection Services" means SFD Collection Service, MFD Collection Service, City Collection Service, and Commercial Collection Service.

**1.34 COMMERCIAL SERVICE WORK DAY**

“Commercial Service Work Day” means any day Monday through Sunday.

**1.35 COMMENCEMENT DATE**

“Commencement Date” means the date specified in Article 3.1 when the CONTRACTOR is to begin providing Collection and related services required by this Agreement.

**1.36 COMMERCIAL, COMMERCIAL SERVICE UNIT**

“Commercial” or “Commercial Service Unit” means all retail, professional, office, wholesale and industrial facilities, other commercial enterprises offering goods or services to the public excluding businesses conducted upon any Residential Property; organizations; and agencies other than CITY agencies.

**1.37 COMMERCIAL WASTE**

“Commercial Waste” means Solid Waste, Recyclable Materials, Green Waste, Organic Materials and Bulky Items generated at a Commercial Service Unit. Commercial Waste must be generated by and at the Commercial Service Unit wherein the Commercial Waste is Collected and does not include items defined herein as Exempt Waste.

### **1.38 COMPACTOR, COMPACTION**

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

### **1.39 COMPOST**

“Compost” means the resulting material from Composting.

### **1.40 COMPOSTING**

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

### **1.41 CONSTRUCTION AND DEMOLITION DEBRIS (C&D)**

“Construction and Demolition Debris” or “C&D” mean materials resulting from construction, renovation, remodeling, repair, or demolition operations relating to or resulting from a building, structure, pavement or other improvement, including concrete, brick, bituminous concrete, rubble, wood and masonry, composition roofing and roofing paper, steel, and other metals such as copper. “Construction and Demolition Debris” or “C&D” also includes rocks, soils, tree remains and other Green Waste which results from land clearing or land development operations in preparation for construction. “Construction and Demolition Debris” or “C&D” do not include Exempt Waste.

### **1.42 CONTAINERS**

“Containers” mean Bins, Carts, Compactors, and Drop Boxes.

### **1.43 CONTAMINATION**

“Contamination”, “Contaminate”, “Contaminating” means the inclusion in a Container of Exempt Waste of any amount; or materials other than Organic Materials in an Organic Materials Container, or materials other than Recyclable Materials in a Recyclable Materials Container, which render more than ten percent (10%) of the contents of the Container materially unsuitable for the intended type of Diversion. CONTRACTOR may refuse to collect Contaminated containers, in accordance with the terms and conditions of this Agreement.

### **1.44 CONTRACTOR**

“CONTRACTOR” mean Recology Yuba-Sutter, a California corporation and its parent company Recology, Inc.

### **1.45 CONTRACT ADMINISTRATOR**

“Contract Administrator” means that person, or their designee, designated by the CITY to administer and monitor the provisions of this Agreement. CITY designates the [enter position] as the Contract Administrator for purposes of this Agreement.

### **1.46 CONTRACTOR COMPENSATION**

“CONTRACTOR Compensation” means the monetary compensation received by CONTRACTOR in return for providing services in accordance with this Agreement as described in Article 10.

**1.47 CONTRACTOR'S PROPOSAL**

"CONTRACTOR's Proposal" means the proposal submitted to the CITY by CONTRACTOR on January 26, 2018 for provision of Solid Waste, Recyclables, and Organic Materials services and certain supplemental written materials, which are included as Exhibit 2 to this Agreement and are incorporated by reference.

**1.48 COVERED ELECTRONIC WASTE (CEW)**

"Covered Electronic Waste" or "CEW" means discarded electronic devices that the California Department of Toxic Substances Control (DTSC) has determined to be a covered electronic device, as specified by Section 42463(f) of the California Public Resources Code. CEWs include cathode ray tube (CRT) devices (including televisions and computer monitors); LCD desktop monitors; laptop computers with LCD displays; LCD televisions; plasma televisions; portable DVD players with LCD screens; and other electronic devices as may be added by the DTSC from time to time.

**1.49 CUSTOMER**

"Customer" means the Person whom the CONTRACTOR submits its billing invoice to and collects payment from for Collection services provided to a Premises. The Customer is not necessarily the owner of the Premises and may be either the Person who occupies the Premises or the owner of the Premises.

**1.50 DAY**

"Day" means calendar day unless otherwise specified in this Agreement.

**1.51 DISCARDED MATERIALS**

"Discarded Materials" means Solid Waste, Recyclable Materials, Organic Materials, and C&D placed by a Generator in a receptacle and/or at a location for the purposes of Collection by CONTRACTOR, excluding Exempt Waste.

**1.52 DISPOSAL**

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

**1.53 DISPOSAL FACILITY**

"Disposal Facility" means the designated landfill(s), or such place or places specifically designated by the CONTRACTOR and approved by the CITY, or specifically designated by the CITY, for the Disposal or processing, as appropriate, of Solid Waste and other materials Collected under the terms of this Agreement.

**1.54 DIVERT, DIVERSION**

"Divert" or "Diversion (or any variation thereof)" means to prevent Recyclables and Organic Materials from Disposal at landfill through Source Reduction, reuse, Recycling, and Composting, as provided in Section 41780-41786 of AB 939, as AB 939 may be hereafter amended or superseded.

Diversion 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.

**1.55 DROP BOX**

"Drop Box" mean open-top Containers with a typical capacity of eight (8) to forty (40) cubic yards that are

serviced by a roll-off Collection vehicle. Drop Boxes that contain putrescible materials require a lid.

#### **1.56 DWELLING UNIT**

“Dwelling Unit” means any individual living unit in a Single-Family Dwelling (SFD) or Multi-Family Dwelling (MFD) structure or building intended for, or capable of being utilized for, residential living other than a hotel or motel.

#### **1.57 EFFECTIVE DATE**

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

#### **1.58 ELECTRONIC WASTE**

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

#### **1.59 ENVIRONMENTAL LAWS**

“Environmental Laws” means all federal and State statutes, and county and CITY ordinances concerning public health, safety and the environment including, by way of example and not limitation, AB 341, AB 939, AB 1826, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6902 et seq.; the Federal Clean Water Act, 33 U.S.C. §1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Occupational Safety and Health Act, 29 U.S.C. §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

#### **1.60 EXEMPT WASTE**

“Exempt Waste” means Hazardous Substances, Hazardous Waste, Biohazardous or Biomedical Waste, volatile, corrosive, biomedical, infectious, 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 Solid Waste in compliance with Sections 41500 and 41802 of the California Public Resources Code.

#### **1.61 FIXED BODY VEHICLE**

“Fixed Body Vehicle” means any wheeled vehicle that does not rely on a Drop Box Container or other detachable container to Collect, contain and transport material. Dump trucks shall be considered Fixed Body Vehicles.



#### **1.62 FOOD WASTE**

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

#### **1.63 GENERATOR**

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

#### **1.64 GREEN WASTE**

"Green Waste" means any vegetative matter resulting from normal yard and landscaping maintenance that is not more than three (3) feet in its longest dimension or six (6) inches in diameter which has been source separated by the Customer and set out for Green Waste Collection which except for such Source Separation and set out would have been processed or disposed of as Solid Waste. Green Waste includes plant debris, such as palm, yucca and cactus, ivy, grass clippings, leaves, pruning, weeds, branches, brush, holiday trees (without stands, flocking or ornamentation), and other forms of vegetative waste and must be generated by and at the Service Unit wherein the Green Waste is Collected. Green Waste does not include items herein defined as Exempt Waste.

#### **1.65 GROSS BILLINGS**

"Gross Billings" means total amount invoiced to Customers by the Contractor for the provision of services pursuant to this Agreement, without any deductions. Gross Billings do not include revenues from the sale of Recyclable Materials.

#### **1.66 HAZARDOUS SUBSTANCE**

"Hazardous Substance" means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances" or hazardous material, Hazardous Waste, 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 Law, 49 USC §5101, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and, (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated there under to such enumerated statutes or acts currently existing or hereafter enacted; and, (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other Applicable Law currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's (PCBs), petroleum, natural gas, and synthetic fuel products, and by-products.

#### **1.67 HAZARDOUS WASTE**

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

USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

**1.68 HOLIDAYS**

“Holidays” shall mean the observed holiday for Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and New Year’s Day.

**1.69 HOME GENERATED SHARPS**

Home-generated Sharps means hypodermic needles, pen needles, intravenous needles, lancets and other devices that are used to penetrate the skin for the delivery of medications derived from a Residential Property.

**1.70 HOUSEHOLD BATTERIES**

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

**1.71 HOUSEHOLD HAZARDOUS WASTE (HHW)**

“Household Hazardous Waste” or “HHW” means Hazardous Waste generated at an SFD or MFD Residential Property within the CITY. HHW includes, but is not limited to: paint, stain, varnish, thinner, adhesives, auto products such as old fuel, batteries, Household Batteries, fluorescent bulbs, tubes, cleaners and sprays, and pesticides, fertilizers, and other garden products.

**1.72 LIQUIDATED DAMAGES**

“Liquidated Damages” means the amounts due by CONTRACTOR for failure to meet specific quantifiable standards of performance as described in Article 12.6.

**1.73 MATERIALS RECOVERY FACILITY (MRF)**

“Materials Recovery Facility” or “MRF” means the designated Transfer Station(s) or any other Approved Facility(ies), selected by the CONTRACTOR and approved by the CITY, or specifically designated by the CITY, designed, operated, and legally permitted for the purpose of receiving, sorting, processing, storing, or preparing Recyclable Materials and cardboard, scrap metal, wood, asphalt, concrete and other inert materials for sale.

**1.74 MAXIMUM SERVICE RATE**

"Maximum Service Rate," "Maximum Rate," "Service Rate" or "Rate" means the maximum rates, fees and charges that CONTRACTOR is entitled to charge for the provision of Collection Services, as approved by CITY. CONTRACTOR may charge any amount for a service not exceeding the Maximum Service Rate for that service. The initial Maximum Service Rates are set forth in Exhibit 1.

**1.75 MULTI-FAMILY, MULTI-FAMILY DWELLING (MFD), MULTI-FAMILY SERVICE UNIT**

“Multi-Family,” “Multi-Family Dwelling,” “MFD,” or “Multi-Family Service Unit” 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) that receive centralized Collection service for all units on the Premises which are billed to one (1) Customer at one (1) address.

**1.76 NON-COLLECTION NOTICE**

"Non-Collection Notice" means a form, as approved in advance by CITY, used to notify Service Recipient(s) of

the reason for the non-collection of materials set out by the Service Recipient for Collection by CONTRACTOR pursuant to this Agreement.

**1.77 ORGANIC MATERIALS**

“Organic Materials” means those Green Waste and Food Waste which are specifically accepted at the Approved Organic Materials Processing Facility. No Discarded Material shall be considered to be Organic Materials, however, unless it is separated from Solid Waste and Recyclable Material.

**1.78 ORGANIC MATERIALS PROCESSING FACILITY**

“Organic Materials Processing Facility” means the designated Organic Materials Processing Facility(ies) or such other facility selected by the CONTRACTOR and approved by the CITY, or specifically designated by the CITY, which is designed, operated and legally permitted for the purpose of receiving and processing Organic Materials including Green Waste and Food Waste.

**1.79 PARTY, PARTIES**

“Party”, “Parties” refers to the CITY and CONTRACTOR, individually or together.

**1.80 PERSON(S)**

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

**1.81 PREMISES**

“Premises” means any land or building in the Service Area where Solid Waste, Recyclable Materials, Organic Materials, or C&D are generated or accumulated.

**1.82 PROCESSING**

“Processing” means to sort, separate, prepare, treat, bale or otherwise package, compost, cure, or to take other steps necessary to re-use materials at the Approved Facilities, or to remanufacture, reconstitute, and or create new products from Discarded Materials. Processing includes reuse, Recycling and Composting.

**1.83 RATE YEAR**

“Rate Year” means a 12-month period, beginning with the Commencement Date and concluding twelve (12) months later, for which CONTRACTOR’S Compensation is calculated.

**1.84 RECYCLABLE MATERIALS**

“Recyclable Materials” means those materials which are capable of being Recycled and which have been Source Separated by the Customer and which except for such Source Separation would otherwise be processed or disposed of as Solid Waste. No Discarded Materials shall be considered Recyclable Materials unless such material is separated from Solid Waste and Organic Materials. Recyclable Materials shall include, but not be limited to: newspaper (including inserts); mixed paper (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, brown bags and paper, paperboard, paper egg cartons, office ledger paper, and telephone books); glass containers; aluminum beverage containers; pie tins; tin cans; bi-metal containers; #1-7 plastics (except for plastic bags, film plastic, packaging peanuts and foam packaging).

**1.85 RECYCLE, RECYCLING**

“Recycle” or “Recycling” means the process of collecting, sorting, cleansing, treating and reconstituting materials that would otherwise be disposed of in a landfill, and returning them to the economic mainstream

in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.

**1.86 REGIONAL WASTE MANAGEMENT AUTHORITY (RWMA)**

“Regional Waste Management Authority” or “RWMA” means a joint powers authority formed for the purpose of providing reliable, economical, integrated and environmentally sound waste management services to all of the residents of the region including the unincorporated areas of Sutter and Yuba Counties and the areas embraced within the corporate limits of Live Oak, Marysville, Wheatland and Yuba CITY as may be amended.

**1.87 RESIDENTIAL, RESIDENTIAL PROPERTY**

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

**1.88 RESIDENTIAL SERVICE WORK DAY**

“Residential Service Work Day” means any day Monday through Friday.

**1.89 RESIDUE**

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

**1.90 REUSABLE 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.

**1.91 SENATE BILL 1383 (CHAPTER 395, STATUTES OF 2016) (SB 1383)**

“SB 1383” means Chapter 395, Statutes of 2016 [Lara, SB 1383] relating to short lived climate pollutants, commonly referred to as “SB 1383”, as amended, supplemented, superseded, and replaced from time to time.

**1.92 SERVICE AREA**

“Service Area” means that area within the municipal corporate limits of the City of Yuba City, California.

**1.93 SERVICE LEVEL**

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

**1.94 SERVICE RECIPIENT**

“Service Recipient” means an individual, agency, organization or company receiving Collection Service pursuant to this Agreement.

**1.95 SINGLE-FAMILY, SINGLE-FAMILY DWELLING (SFD), SINGLE-FAMILY SERVICE UNIT**

“Single-Family,” “Single-Family Dwelling,” “SFD,” or “Single-Family Service Unit” means, notwithstanding any contrary definition in a 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,” “Single-Family Dwelling,” “SFD,” or “Single-Family Service Unit” includes Residential units of a duplex, tri-plex, or four-plex Residential structure provided that the owner or Occupant of each unit

is separately billed for its specific Service Level.

#### **1.96 SLUDGE**

“Sludge” means the accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar disposal appurtenances or any other such waste having similar characteristics or effects.

#### **1.97 SOLID WASTE**

“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 Exempt Waste, Source Separated 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 Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of Household Hazardous Waste in compliance with Sections 41500 and 41802 of the California Public Resources Code as may be amended from time to time. Solid Waste includes salvageable materials only when such materials are included for Collection in a Solid Waste Container.

#### **1.98 SOURCE REDUCTION**

“Source Reduction” means any action which causes a net reduction in the generation of Solid Waste. It includes, but is not limited to, reducing the use of non-recyclable materials, replacing Disposal materials and products with Reusable Materials and products, reducing packaging, reducing the amount of Green Waste generated, and increasing the efficiency of the use of paper, cardboard, glass, metal, plastic, and other materials.

#### **1.99 SOURCE SEPARATED, SOURCE SEPARATION**

“Source Separated” or “Source Separation” means the segregation from Solid Waste, by the Generator, of materials designated for separate Collection for some form of Recycling, Composting, recovery, or reuse. A load of Source Separated materials that contains more than ten (10) percent Solid Waste shall not be considered source separated.

#### **1.100 SPECIAL EVENT COLLECTION SERVICE**

“Special Event Collection Service” means the Collection of Solid Waste and Recyclable Materials as appropriate at CITY-sponsored special events.

#### **1.101 STATE**

“State” means the State of California.

#### **1.102 SUBCONTRACTOR**

“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.

#### **1.103 TERM**

“Term” means the period of this Agreement, including extension periods if granted, as provided for in Article 3.

#### **1.104 TRANSFER STATION**

“Transfer Station” means a facility, selected by the CONTRACTOR and approved by the CITY, or specifically designated by the CITY, designed, operated and legally permitted for the purpose of receiving and transferring Solid Waste, Recyclable Materials including Green Waste and Food Waste, Bulky Items, and/or C&D Debris.

#### **1.105 UNIVERSAL WASTE**

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

#### **1.106 WHITE GOODS**

“White Goods” means discarded refrigerators, ranges, water heaters, freezers, and other similar household appliances.

## **ARTICLE 2: REPRESENTATIONS AND WARRANTIES**

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

### **2.1 CONTRACTOR’S CORPORATE STATUS**

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

### **2.2 CONTRACTOR’S CORPORATE AUTHORIZATION**

CONTRACTOR has the authority to enter into 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.

### **2.3 AGREEMENT WILL NOT CAUSE BREACH**

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

### **2.4 NO LITIGATION**

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

- Materially adversely affect the performance by Party of its obligations hereunder;

- Adversely affect the validity or enforceability of this Agreement; or,
- Have a material adverse effect on the financial condition of CONTRACTOR, or any surety or entity guaranteeing CONTRACTOR'S performance under this Agreement.

## **2.5 NO ADVERSE JUDICIAL DECISIONS**

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

## **2.6 NO LEGAL PROHIBITION**

To the best of 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.

## **2.7 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.

## **2.8 CONTRACTOR'S INVESTIGATION**

CONTRACTOR has made an independent investigation and analysis, the results of which are satisfactory to CONTRACTOR, of the conditions and circumstances surrounding the Agreement, its content and preparation, and the work to be performed by CONTRACTOR under the Agreement. The Agreement accurately and fairly represents the intentions of CONTRACTOR, and CONTRACTOR enters into this Agreement on the basis of that independent investigation and analysis.

## **2.9 STATEMENTS AND INFORMATION IN CONTRACTOR'S PROPOSAL**

The CONTRACTOR'S Proposal and supplementary information submitted by CONTRACTOR for the work to be performed by CONTRACTOR under the Agreement do not contain any untrue statement of a material fact nor omit any material facts relevant to the ability of CONTRACTOR to perform the work under the Agreement.

# **ARTICLE 3: TERM OF AGREEMENT**

## **3.1 INITIAL TERM**

The Term of this Agreement shall be for a ten (10) year period beginning October 1, 2019 and terminating on September 30, 2029.

## **3.2 EXTENSION OF INITIAL TERM**

On or before July 1, 2027 the City Council may approve an offer to the CONTRACTOR in writing for a five (5) year extension of this Agreement for the period October 1, 2029 through September 30, 2034. Provision of such offer shall be at the sole discretion of the CITY Council. CONTRACTOR shall provide written notice to CITY as to whether CONTRACTOR accepts or rejects CITY'S offer within twenty (20) Residential Service Work Days of the date of the offer. If CONTRACTOR fails to provide such notice to CITY within said twenty (20) Residential Service Work Days, CITY'S offer shall be deemed withdrawn and CITY shall have no obligation to extend the

Term of this Agreement beyond September 30, 2029. If the Term of this Agreement is extended, the Maximum Service Rate provisions of Article 10 shall not be subject to negotiation. However, Maximum Service Rates shall be adjusted annually throughout the extended Term as provided in Article 10.

### **3.3 EXTENSION OF SECOND TERM**

On or before July 1, 2032, the City Council may approve an offer to the CONTRACTOR in writing for a second five (5) year extension of this Agreement for the period October 1, 2034 through September 30, 2039. Provision of such offer shall be at the sole discretion of the CITY Council. CONTRACTOR shall provide written notice to CITY as to whether CONTRACTOR accepts or rejects CITY'S offer within twenty (20) Residential Service Work Days of the date of the offer. If CONTRACTOR fails to provide such notice to CITY within said twenty (20) Residential Service Work Days, CITY'S offer shall be deemed withdrawn and CITY shall have no obligation to extend the Term of this Agreement beyond September 30, 2033. If the Term of this Agreement is extended, the Maximum Service Rate provisions of Article 10 shall not be subject to negotiation. However, Maximum Service Rates shall be adjusted annually throughout the extended Term as provided in Article 10.

### **3.4 OTHER PROVISIONS**

The CITY may, at the end of the initial Term or optional extended Terms, as appropriate and at the sole discretion of the CITY Council, either renegotiate the terms and conditions of the Agreement with the current CONTRACTOR or request proposals from qualified contractors to provide Collection Services.

## **ARTICLE 4: GRANT AND ACCEPTANCE OF EXCLUSIVE AGREEMENT**

### **4.1 GRANT AND ACCEPTANCE OF EXCLUSIVE AGREEMENT**

Except as otherwise provided in Article 4.2 of this Agreement, the CONTRACTOR is hereby granted and the CONTRACTOR hereby accepts the exclusive right within the Service Area to collect and transport for Disposal and/or Processing all Solid Waste, Recyclable Materials, Green Waste, Food Waste, Organics Materials, Construction and Demolition Debris, Electronic Waste, Covered Electronic Waste, Brown Goods, White Goods, and Bulky Items. No other services shall be exclusive to the CONTRACTOR.

### **4.2 LIMITATIONS TO THE SCOPE OF EXCLUSIVE AGREEMENT**

The following services and materials shall be excluded from the scope of this Agreement:

- A. Recyclable Materials or Bulky Items.** Recyclable Materials or Bulky Items that are Source Separated from Solid Waste by a Service Recipient for which the waste Generator sells or is otherwise compensated by a collector in a manner resulting in a net payment to the waste Generator;
- B. Self-Hauled Materials.** Solid Waste, Recyclable Materials, Bulky Items, Green Waste, Organic Materials or C&D Debris which is removed from any SFD Service Unit, MFD Service Unit, Commercial Service Unit, or City Service Unit, and which is transported personally by the owner or occupant of such Premises (or by his or her full-time employees) to a Recycling, Processing or Disposal Facility;
- C. Source Separated Materials.** Recyclable Materials, Green Waste, Organic Materials or Bulky Items which are source separated at any Premises by the waste Generator and donated to youth, civic or charitable organizations;



- D. **Beverage Containers.** Containers delivered for Recycling under the California Beverage Container Recycling and Litter Reduction Act, Section 14500, et seq. California Public Resources Code;
- E. **Materials Removed by Customer's Contractor as Incidental Part of Services.** Solid Waste, Recyclable Materials, Organic Materials, Bulky Items and/or C&D removed from a Premise by a company (e.g., gardener, landscaper, tree-trimming service, construction contractor, Residential clean-out service) as an incidental part of the service being performed by the company where the company uses its own Fixed Body Vehicle and employees, and no Drop Box Containers are used for the Collection and transportation of such materials;
- F. **Source Separated White Goods, Bulky Items, etc.** Removal and transportation of White Goods, Bulky Items or other material as part of the services of providing a replacement item when such removal and transportation is provided by the vendor who sold the replacement item;
- G. **Hazardous Waste.** Hazardous Waste regardless of its source; and,
- H. **CONTRACTOR Requested Solid Waste.** SFD Waste, MFD Waste, Commercial Waste, CITY Waste, or C&D Debris that are removed from a Premise by a company through the performance of a service that the CONTRACTOR has requested and received written permission from the Contract Administrator not to provide.

**4.3 EXCLUDED SERVICES**

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 agreement, as set forth in Article 4, without seeking or obtaining approval of CONTRACTOR.

**4.4 EXCLUSIVITY**

In the event CONTRACTOR can produce pictorial evidence or other documentation that other persons are servicing Collection containers or are Collecting Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, or C&D Debris in a manner that is not consistent with the CITY'S Municipal Code or this Agreement, CITY shall cooperate with CONTRACTOR in the efforts of CONTRACTOR to enforce its rights under the CITY Municipal Code or this Agreement.

**4.5 APPLICABLE LAW**

This Agreement and scope of this Agreement 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 consistent with 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 which may be lawfully included herein and that the CITY shall not be responsible for any lost profits or losses claimed by CONTRACTOR to arise out of limitations to the scope or provisions of the Agreement set forth herein. In such an event, it shall be the responsibility of CONTRACTOR to minimize the financial impact of such future judicial interpretations or new laws and the CONTRACTOR may meet and confer with CITY and may petition for a rate adjustment pursuant to Article 10.

**4.6 OBLIGATIONS OF PARTIES**

In addition to the specific performance required under the Agreement, CITY and CONTRACTOR shall:

- A. Use their reasonable efforts to enforce the exclusiveness of this Agreement 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 collecting or allowing others to collect Discarded Materials in a manner that is inconsistent with 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 Contract Administrator and the CONTRACTOR'S designated representative and complete and timely responses to requests of the other Party.
- D. Provide timely notice of matters which may affect either Party's ability to perform under the Agreement.

## **ARTICLE 5: SCOPE OF COLLECTION SERVICES**

### **5.1 SUMMARY SCOPE OF SERVICES**

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

- A. Collecting Solid Waste, Recyclable Materials, Organic Materials and C&D Debris generated by and placed for Collection by Customers of CONTRACTOR'S services pursuant to the requirements of Article 5.
- B. Transporting Collected materials to the appropriate Approved Facilities pursuant to the requirements of Article 6;
- C. Performing all other services required by this Agreement including, but not limited to, Customer billing, public education, Customer service, record keeping, and reporting pursuant to Article 8;
- D. Furnishing all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and all other items and services necessary to perform its obligations under this Agreement;
- E. Paying all expenses related to provision of services required by this Agreement including, but not limited to, taxes, host fees, business and any other license fees, regulatory fees (including CITY fees as applicable), and utilities; paying all expenses related to the operation, permitting, licensing, regulatory fees for all Approved Facilities owned/operated by CONTRACTOR or CONTRACTOR'S Affiliate; paying for all expenses related to Changes in Law at Approved Facilities owned/operated by CONTRACTOR or CONTRACTOR'S Affiliate; and, paying all expenses related to any construction, any land or facility improvements, any repair and/or replacement of equipment and all other expected or unforeseen costs associated with all Approved Facilities owned/operated by CONTRACTOR or CONTRACTOR'S Affiliate.
- F. 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,
- G. Complying with all Applicable Laws.

CONTRACTOR shall perform the work and provide the services pursuant to this Agreement in a thorough and professional manner so that the residents and businesses within the Service Area are provided reliable, courteous, and high-quality service at all times. 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 Article 12.7.

CONTRACTOR shall not knowingly deliver materials collected under this Agreement to facilities that do not comply in all material aspects with Applicable Law, including CalRecycle regulations under Title 14, Chapter 3, Minimum Standards for Solid Waste Handling and Disposal (Article 5.9 – Sections 17380-17386). CONTRACTOR, and not the CITY, must use reasonable efforts to assure that all Disposal, transfer, and Processing facilities to which CONTRACTOR delivers material under this Agreement are properly permitted to receive material collected under this Agreement, except for any other facility that the CITY directs CONTRACTOR to use. Failure to comply with this provision may result in CONTRACTOR being in default under this Agreement.

## **5.2 USE OF APPROVED FACILITIES**

The CONTRACTOR, without constraint and as a free-market business decision in accepting this Agreement, agrees to use the Approved Facilities for the purposes of Processing and/or Disposing of all Solid Waste, Recyclable Materials, Organic Materials, C&D Debris and other materials Collected in the CITY. Such decision by CONTRACTOR in no way constitutes a restraint of trade. If the Contractor or Affiliate owns and/or operates Approved Facility(ies), all expenses associated with permitting, licensing, regulatory compliance, closure and post-closure, etc. and all other costs associated with the operation and ownership of the Approved Facility(ies) is the sole responsibility of the CONTRACTOR.

## **5.3 SUBCONTRACTING**

Except as set forth on Exhibit 3, CONTRACTOR shall not engage any Subcontractors for Collection, transportation, or Processing of Solid Waste, Recyclable Materials, Organic Materials, or C&D services without the prior written consent of the Contract Administrator. If the CONTRACTOR plans to engage other affiliated or related party entities in the provision of services, CONTRACTOR shall provide the 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.

## **5.4 RESPONSIBILITY FOR MATERIALS**

Once Solid Waste, Recyclable Materials, Organic Materials and C&D Debris are placed in the CONTRACTOR'S Containers and at the Collection location, the responsibility for their proper handling shall transfer directly from the Generator to CONTRACTOR, with the exception of Exempt Waste if the CONTRACTOR can identify the Generator. Once Solid Waste, Recyclable Materials, Organic Materials and C&D Debris 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 Exempt Waste. Responsibility for Exempt 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.

## **5.5 CITY-DIRECTED CHANGES TO SCOPE**

The CITY may meet and confer with CONTRACTOR to establish the scope of any additional services or 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 the CITY'S request, a written proposal to provide such modified or additional services. The CITY shall review the CONTRACTOR'S proposal for the change in scope of services. The CITY and CONTRACTOR may 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 adjustment to Maximum Service Rates, before CONTRACTOR implements the change in scope.

## 5.6 SINGLE-FAMILY DWELLING COLLECTION SERVICES

These services shall be governed by the following terms and conditions:

- A. **Conditions of Service.** Subject to the limitations set forth in Article 4, CONTRACTOR shall provide SFD Collection Service to all SFD Service Units in the Service Area whose Solid Waste, Recyclable Materials, and Green Waste is properly containerized in Carts, except as set forth in Articles 5.6.B-E; where the Solid Waste, Recyclable Material and Green Waste Carts have been placed within three (3) feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by the CONTRACTOR and Service Recipient, that will provide safe and efficient accessibility to the CONTRACTOR'S Collection crew and vehicle.
  - 1. **On-Premises Service.** Notwithstanding any term or definition set forth in this Agreement, CONTRACTOR shall provide on-Premises Collection of Solid Waste, Recyclable Materials, and Green Waste to a SFD Service Unit if all adult Service Recipients residing therein have disabilities that prevent them from setting their Solid Waste, Recyclable Material or Green Waste Cart at the curb for Collection and if a request for on-Premises service has been made to and approved by the CONTRACTOR in the manner set forth in its written policy, which policy shall be provided to all residents requesting such on-Premises service. CONTRACTOR shall provide on-Premises Collection Service on the same Residential Service Work Day that curbside Collection would otherwise be provided to the SFD Service Unit. No additional monies shall be due to the CONTRACTOR for the provision of on-Premises service.
  - 2. **Frequency and Scheduling of Service.** Except as set forth in Articles 5.6.D and 5.6.E, SFD Collection Services shall be provided one (1) time per week on a scheduled route basis. SFD Collection Services shall be scheduled so that a SFD Service Unit receives SFD Solid Waste Collection Service, SFD Recycling Service, and SFD Green Waste Collection Service on the same Residential Service Work Day.
  - 3. **Non-Collection.** Except as set forth in Articles 5.6.B-E, CONTRACTOR shall not be required to Collect any Solid Waste, Recyclable Material, or Green Waste that is not placed in a Cart where such Cart is placed out for Collection in the manner required herein. In the event of non-collection, CONTRACTOR shall affix to the Cart a Non-Collection Notice explaining why Collection was not made. CONTRACTOR shall maintain a copy of such notices for a period of three (3) years.
- B. **Container Placement.** CONTRACTOR shall respond to requests to notify Customers regarding appropriate placement of Containers (out of public view).
- C. **SFD Recycling Service.** This service will be governed by the following additional terms and conditions:

1. **Overages.** CONTRACTOR shall Collect Recyclable Materials that will not fit inside the Recycling Cart but have been flattened, bagged and/or bundled and placed beside the Recyclable Materials Cart. CONTRACTOR shall also Collect corrugated cardboard that will not fit inside the Recycling Cart and has been reduced to a size not exceeding three feet by three feet (3' x 3') and placed beside the Cart for Collection.

**D. SFD Green Waste Collection Service.** This service will be governed by the following additional terms and conditions:

1. **Overages.** CONTRACTOR shall Collect Green Waste that will not fit inside the Green Waste Cart but has been bagged or bundled and placed beside the Green Waste Cart.

**E. Curbside Holiday Tree Collection.** CONTRACTOR shall Collect Holiday Trees (without stands, flocking or ornamentation and no greater than six (6) feet in length) that are set at the curb beside the Green Waste Cart from all SFD Service Units as part of the Green Waste Collection Service. CONTRACTOR shall provide this service beginning on the first Residential Service Work Day after December 25<sup>th</sup> until January 15<sup>th</sup>. Service Recipients must

1. Remove all decorations, including tinsel, lights, ornaments or hooks.
2. Set out unflocked trees only.
3. Place the trees next to their organics Collection Cart.
4. Ensure the tree is cut into lengths six feet or less, if applicable.

Trees will be processed at the Approved Organics Processing.

1. **Contaminated Holiday Trees.** Holiday trees that are flocked or contain tinsel or other decorations may be delivered to the Disposal Facility at the discretion of the CONTRACTOR.

**F. Bulky Item Collection Service.** This service will be governed by the following terms and conditions:

1. **Conditions of Service.** The CONTRACTOR shall provide Bulky Item Collection Service to all SFD Service Units in the Service Area whose Bulky Items have been placed within three (3) feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by the CONTRACTOR and Service Recipient, that will provide safe and efficient accessibility to the CONTRACTOR'S Collection crew and vehicle. Except as set forth below in Article 5.6.E.2, CONTRACTOR shall be entitled to charge for Collecting Bulky Items at a rate not exceeding the "Bulky Item Collection" Maximum Service Rate set forth in Exhibit 1, as adjusted under the terms of this Agreement.

2. **Free Bulky Item Collection Service.** Beginning October , 2019 and annually thereafter during the Term of this Agreement, CONTRACTOR shall allow each SFD Customer four (4) free Bulky Item Collection Services with up to five (5) Bulky Items per collection.
  3. **Frequency of Service.** Bulky Item Collection Service shall be provided on the Customer's first SFD Collection Service date following the receipt of the request, with a minimum of 48-hours-notice, or as agreed upon between Customer and CONTRACTOR.
- C. **Free Dump Program.** Beginning October 1, 2019 and annually thereafter during the Term of this Agreement, CONTRACTOR shall allow each SFD Customer to deliver one (1) load in a non-commercial (no more than 1 ton) vehicle or trailer of Solid Waste, Recyclable Materials, Green Waste, Bulky Items or C&D Debris to the designated Transfer Station in lieu of receiving a free Bulky Item Collection Service.
1. **Tires and Freon.** The number of tires delivered to the designated Transfer Station or Collected as part of each Bulky Item Collection shall be limited to four (4) passenger car and light truck tires. In addition, a charge in the amount set forth on Exhibit 1 may be applied to each Freon containing appliance.
- F. **Compost Give-Away.** On or about October 1, 2019 and semi-annually thereafter during the Term of this Agreement, CONTRACTOR shall make available to each SFD Customer a "free Compost" program that provides up to fifty (50) gallons of Compost material for Customer pick-up at the designated Transfer Station or in a manner agreed upon by the CITY and CONTRACTOR.

## 5.7 MULTI-FAMILY DWELLING COLLECTION SERVICES

These services shall be governed by the following terms and conditions:

- A. **Conditions of Service.** The CONTRACTOR shall provide MFD Solid Waste Collection Service to all MFD Service Units in the Service Area whose Solid Waste is properly containerized in Bins or Carts where the Bins or Carts are accessible as set forth herein. The CONTRACTOR shall provide MFD Recycling Collection Service and MFD Green Waste Collection Service to all MFD Service Units, unless MFD Service Unit uses a service listed under Article 4.2, Limitations to the Scope of Exclusive Agreement.
1. **Size and Frequency of Service.** This service shall be provided as deemed necessary and as determined between the CONTRACTOR and the Customer, but such service shall be received no less than one (1) time per week. Service may be provided by Bin or Cart at the option of the Customer. The size of the Container and the frequency (above the minimum) of Collection shall be determined between the Customer and the CONTRACTOR. However, size and frequency shall be sufficient to provide that no MFD Solid Waste need be placed outside the Bin or Cart. The CONTRACTOR shall provide Containers at no additional charge as part of the MFD Collection Service however, Customers may provide their own Compactor provided that the Customer is completely responsible for its proper maintenance and that such Compactor shall be of a type that can be serviced by the CONTRACTOR'S equipment. CONTRACTOR shall

not be required to Collect any MFD Solid Waste that is not placed in a Solid Waste Bin or Cart. In the event of non-collection, CONTRACTOR shall contact the Customer to discuss the reason for the non-collection and shall affix to the Solid Waste Bin or Cart a Non-Collection Notice explaining why Collection was not made.

**B. MFD Solid Waste Collection Service.** This service will be governed by the following additional terms and conditions:

- 1. MFD Solid Waste Overflow.** In the case of overflows of MFD Solid Waste, CONTRACTOR shall adhere to the following procedure:
  - a. On the first occurrence of an overflowing bin in a three-month period, CONTRACTOR shall Collect the overflow material, leave a warning notice at the premises, and mail the warning notice to the MFD Service Unit billing address. The warning notice shall include an explanation of the procedure for overflowing bins and that a charge will be applied after the second occurrence.
  - b. On the second occurrence of an overflowing bin in a three-month period, CONTRACTOR shall Collect the overflow material, contact the MDF Service Unit management and inform them of the situation. A warning notice shall be left at the MDF Service Unit address and mailed to the MDF Service Unit billing address.
  - c. On the third occurrence of an overflow bin in a three-month period, CONTRACTOR shall Collect the overflow material and charge the Customer up to the Container Overflow Maximum Service Rate set forth in Exhibit 1.

**C. MFD Recycling Offer of Service.** MFD Recycling Collection Service. During the Term of this Agreement CONTRACTOR shall offer to provide MFD Recycling Collection Service. Subject to the limitations set forth in Article 4, CONTRACTOR shall offer Recycling Collection Service to all MFD Service Units in the Service Area on a subscription basis at a rate not exceeding the Maximum Service Rate for such service set forth in Exhibit 1. CONTRACTOR shall provide Recycling services to all MFD Service Units requesting such service where such recyclables are properly containerized, and uncontaminated by materials not included in the Recycling program, in Bins or Carts, where the Bins or Carts are accessible as set forth herein. Subject to the limitations set forth in Article 4, CONTRACTOR shall provide and actively promote MFD Recycling Service to all MFD Service Units in the Service Area requesting such service.

- 1. Non-Collection.** CONTRACTOR shall not be required to Collect any cardboard or Recyclable Materials that are not placed in a Bin or Cart Container where such Container is placed out for Collection in the manner required herein. In the event of non-collection, CONTRACTOR shall affix to the Container a Non-Collection Notice explaining why Collection was not made. CONTRACTOR shall maintain a copy of such notices for a period of three (3) years.

**D. MFD Green Waste Offer of Service.** MFD Green Waste Collection Service. During the Term of this Agreement CONTRACTOR shall offer to provide MFD Green Waste Collection Service. Subject to the limitations set forth in Article 4, CONTRACTOR shall offer Green Waste Collection Services to all MFD Service Units in the Service Area on a subscription basis at a

rate not exceeding the Maximum Service Rate for such service set forth in Exhibit 1. CONTRACTOR shall provide Green Waste Collection Service to all MFD Service Units requesting such service where such Green Waste is properly containerized, and uncontaminated by materials not included in the Green Waste program, in Bins or Carts, where the Bins or Carts are accessible as set forth herein. Subject to the limitations set forth in Article 4, CONTRACTOR shall provide and actively promote MFD Green Waste Service to all MFD Service Units in the Service Area requesting such service.

1. **Non-Collection.** CONTRACTOR shall not be required to Collect any MFD Green Waste that is not placed in a Bin or Cart. In the event of non-collection, CONTRACTOR shall contact the Customer to discuss the reason for the non-collection and shall affix to the Bin or Cart a Non-Collection Notice explaining why Collection was not made.
- E. **Bulky Item Service.** During the Term of this Agreement, CONTRACTOR shall offer to provide Bulky Item Collection Service to MFD Service Units in the Service Area on a subscription basis at a rate not exceeding the Maximum Service Rate for such service set forth in Exhibit 1. CONTRACTOR will be required to separate and Recycle all commodities that can be feasibly recovered and adhere with the requirements of Section 7.13D of this Agreement.
- G. **Annual Holiday Tree Collection.** Annually, commencing the first collection day after December 25 and ending January 15, the CONTRACTOR shall collect holiday trees from MFDs at no additional charge. CONTRACTOR shall perform Collection of holiday trees on Customers' normal Collection Days at Customers' Collection location for Solid Waste. Trees must be placed within the service enclosure.
- H. **Accessibility.** CONTRACTOR shall Collect all Bins or Carts that are readily accessible to the CONTRACTOR'S crew and vehicles and not blocked. However, CONTRACTOR shall provide "push services" as necessary during the provision of MFD Collection Services. Push services shall include, but not be limited to dismounting from the Collection vehicle, moving the Bins or Carts from their storage location for Collection and returning the Bins or Carts to their storage location. CONTRACTOR shall be entitled to charge for "push services" at a rate not exceeding the Maximum Service Rates for such services set forth in Exhibit 1 .

## 5.8 COMMERCIAL COLLECTION SERVICES

These services will be governed by the following terms and conditions: Commercial Waste must be generated by and at the Commercial Service Unit wherein the Commercial Waste is Collected and does not include items defined herein as Exempt Waste.

- A. **Conditions of Service.** The CONTRACTOR shall provide Commercial Solid Waste Collection Service to all Commercial Service Units in the Service Area whose Solid Waste is properly containerized in Bins, Carts, Compactors, or Drop Box Containers, where the Bins, Carts, Compactors, or Drop Box Containers are accessible as set forth herein.
  1. **Size and Frequency of Service.** This service shall be provided as deemed necessary and as determined between the CONTRACTOR and the Customer, but such service shall be received no less than one (1) time per week. Service may be provided by Bin, Cart, Compactor, or Drop Box Containers at the option of the Customer. The size of the



Container and the frequency (above the minimum) of Collection shall be determined between the Customer and the CONTRACTOR. However, size and frequency shall be sufficient to provide that no Commercial Solid Waste need be placed outside the Bin, Cart, Compactor, or Drop Box Containers. The CONTRACTOR shall provide Containers at no additional charge as part of the Commercial Collection Service however, Customers may provide their own Compactor provided that the Customer is completely responsible for its proper maintenance and that such Compactor shall be of a type that can be serviced by the CONTRACTOR'S equipment.

2. **Non-Collection.** CONTRACTOR shall not be required to Collect any Commercial Solid Waste that is not placed in a Solid Waste Bin, Cart, Compactor or Drop Box Container. In the event of non-collection, CONTRACTOR shall contact the Customer to discuss the reason for the non-collection and shall affix to the Container a Non-Collection Notice explaining why Collection was not made

**B. Commercial Solid Waste Overflow.** In the case of overflows of Commercial Solid Waste, CONTRACTOR shall adhere to the following procedure:

1. On the first occurrence of an overflowing bin in a three-month period, CONTRACTOR shall Collect the overflow material, leave a warning notice at the premises, and mail the warning notice to the Commercial Service Unit billing address. The warning notice shall include an explanation of the procedure for overflowing bins and that a charge will be applied after the second occurrence.
2. On the second occurrence of an overflowing bin in a three-month period, CONTRACTOR shall Collect the overflow material, contact the Commercial Service Unit management and inform them of the situation. A warning notice shall be left at the Commercial Service Unit address and mailed to the MDF Service Unit billing address.
3. On the third occurrence of an overflow bin in a three-month period, CONTRACTOR shall Collect the overflow material and charge the Customer up to the Container Overflow Maximum Service Rate set forth in Exhibit 1.

**C. Commercial Recycling Offer of Service.** Subject to the limitations set forth in Article 4, CONTRACTOR shall offer Recycling services to all Commercial Service Units in the Service Area on a subscription basis at a rate not exceeding the Maximum Service Rate for such service set forth in Exhibit 1. CONTRACTOR shall provide Recycling services to all Commercial Service Units requesting such service where such recyclables are properly containerized, and uncontaminated by materials not included in the Recycling program, in Bins, Carts, Compactors, or Drop Box Containers, where the Bins, Carts, Compactors, or Drop Box Containers are accessible as set forth herein. Subject to the limitations set forth in Article 4, CONTRACTOR shall provide and actively promote Commercial Recycling Service to all Commercial Service Units in the Service Area requesting such service.

1. **Non-Collection.** CONTRACTOR shall not be required to Collect any cardboard or Recyclable Materials that are not placed in a Bin, Cart, Compactor, or Drop Box

Container where such Container is placed out for Collection in the manner required herein. In the event of non-collection, CONTRACTOR shall affix to the Container a Non-Collection Notice explaining why Collection was not made. CONTRACTOR shall maintain a copy of such notices for a period of three (3) years.

- D. Green Waste Offer of Service.** During the Term of this Agreement CONTRACTOR shall offer to Collect Green Waste from Commercial Service Units in the Service Area on a subscription basis at a rate not exceeding the Maximum Service Rate for such service set forth in Exhibit 1. CONTRACTOR shall, subject to the limitations set forth in Article 4, provide this service to all Commercial Service Units in the Service Area requesting such service where such Green Waste is properly containerized in Bins, Carts, Compactors, or Drop Box Containers, where the Bins, Carts, Compactors, or Drop Box Containers are accessible as set forth herein.
- 1. Non-Collection.** CONTRACTOR shall not be required to Collect any Green Waste that is not placed in a Bin, Cart, Compactor, or Drop Box Container where such Container is placed out for Collection in the manner required herein. In the event of non-collection, CONTRACTOR shall affix to the Container a Non-Collection Notice explaining why Collection was not made. CONTRACTOR shall maintain a copy of such notices for a period of three (3) years.
- E. Organic Materials Offer of Service.** During the Term of this Agreement CONTRACTOR shall offer to Collect Organic Materials from Commercial Service Units in the Service Area on a subscription basis at a rate not exceeding the Maximum Service Rate for such service set forth in Exhibit 1. CONTRACTOR shall, subject to the limitations set forth in Article 4, provide this service to all Commercial Service Units in the Service Area requesting such service where such Organic Materials is properly containerized in Bins or Carts, where the Bins or Carts are accessible as set forth herein.
- 1. Non-Collection.** CONTRACTOR shall not be required to Collect any Organic Materials that is not placed in a Bin, Cart, Compactor, or Drop Box Container where such Container is placed out for Collection in the manner required herein. In the event of non-collection, CONTRACTOR shall affix to the Container a Non-Collection Notice explaining why Collection was not made. CONTRACTOR shall maintain a copy of such notices for a period of three (3) years.
- F. Bulky Item Service.** During the Term of this Agreement, CONTRACTOR shall offer to provide Bulky Item Collection Service to Commercial Service Units in the Service Area on a subscription basis at a rate not exceeding the Maximum Service Rate for such service set forth in Exhibit 1. CONTRACTOR will be required to separate and Recycle all commodities that can be feasibly recovered and adhere with the requirements of Section 7.13D of this Agreement.
- G. Electronic Waste Drop-Off.** CONTRACTOR shall provide an electronic waste drop-off service for Commercial Service Units at the Marysville transfer station. The terms and conditions of such service (such as the type and volume of material accepted at no charge, fees for excess material, drop-off hours, appointment requirements, etc.) shall be the same as those made available to commercial customers in the RWMA service area generally.

Acceptable electronic waste includes the following;

- Televisions
- Computer monitors
- Central processing units (CPUs)
- Laptop computers
- Facsimile machines
- Radios
- Computer peripherals (i.e. hard drives, keyboards, scanners, and mice)
- Printers
- Copiers
- Telephones & mobile phones
- Stereos
- Stereo Speakers
- VCRs
- DVD players
- Camcorders
- Microwaves

- H. Universal Waste Drop-Off.** CONTRACTOR shall provide a Universal Waste drop-off service for Commercial Units at the Marysville transfer station and the Household Hazardous Waste Facility (HHWF) located at 134 Burns Drive, Yuba City. The terms and conditions of such service (such as the type and volume of material accepted at no charge, fees for excess material, drop-off hours, appointment requirements, etc.) shall be the same as those made available to commercial customers in the RWMA service area generally, and (for the HHWF) shall be consistent with the facility operating agreement between CONTRACTOR and the RWMA.

Universal waste will include household batteries, fluorescent light bulbs, mercury switches, and other waste as defined by Title 22, Subsections 66273.1 through 66273.9 of the California Code of Regulations or successor regulations.

- I. Accessibility.** CONTRACTOR shall Collect all Bins, Carts, Compactors, or Drop Box Containers, that are readily accessible to the CONTRACTOR'S crew and vehicles and not blocked. However, CONTRACTOR shall provide "push services" as necessary during the provision of Commercial Collection Services. Push services shall include, but not be limited to dismounting from the Collection vehicle, moving the Bins or Carts from their storage location for Collection and returning the Bins or Carts to their storage location. CONTRACTOR shall be entitled to charge the Customer for "push services" at a rate not exceeding the Maximum Service Rate for such service set forth in Exhibit 1.

## 5.9 CITY COLLECTION SERVICES

These services shall be provided to the CITY and will be governed by the following terms and conditions:

- A. Conditions of Service.** CONTRACTOR shall provide CITY Solid Waste Collection Service, CITY Recycling Service, CITY Organic Materials Service, and CITY Container Service to all CITY Service Units and public litter containers where the Bins, Carts, Compactors, Drop Box Containers, and public litter containers are accessible as set forth in Article 5.9.C.
- B. Frequency of Service.** Each service shall be provided at least once every week on a scheduled route basis.
- C. Accessibility.** CONTRACTOR shall Collect all Bins, Carts, Compactors, and Drop Box Containers, that are readily accessible to the CONTRACTOR'S crew and vehicles and not blocked. However, CONTRACTOR shall provide "push services" as necessary during the provision of CITY Collection Services. Push services shall include, but not be limited to, dismounting from the Collection vehicle, moving the Bins or Carts from their storage location for Collection and returning the Bins or Carts to their storage location.

- D. **Bulky Item Service.** During the Term of this Agreement CONTRACTOR shall provide Bulky Item Collection Service to CITY Service Units in the CITY at no charge to the CITY. CONTRACTOR will be required to separate and Recycle all commodities that can be feasibly recovered and adhere with the requirements of Section 7.13D of this Agreement.
- E. **City Clean-Up Service.** CONTRACTOR, in response to a request from the Contract Administrator at least thirty (30) days in advance, shall provide Collection vehicles, Bins and/or Drop Box Containers and staff necessary for temporary clean-up programs at a centralized collection site. CONTRACTOR shall transport and deliver the Collected materials to the Disposal Facility, the Materials Recovery Facility, or such other facility as is appropriate for the disposition of the materials and approved by the Contract Administrator.
- F. **City Self-Haul Service.** CITY employees in CITY vehicles may self-haul Solid Waste, Organic Material, Bulky Items, C&D Debris and other non-Exempt materials generated at CITY facilities, regardless of size, to the designated Transfer Station at no additional charge.
- G. **Special Event Collection Service.** Contractor shall provide event boxes with lids featuring designated opening(s) for bottles and cans, wheeled carts, bins, and/or roll-off boxes to collect solid waste and recyclable materials at "no charge" for City-sponsored events that are open to the public and that do not require paid admission or the purchase of a ticket. Signage indicating "Recycling" will be clearly visible on the designated container. Contractor will assist the venue and event organizers with developing recycling plans and reporting data. When requested by event organizers, solid waste and recycling collection service will be provided for each venue or event. This may include providing numerous carts to distribute throughout the event for use by patrons. Carts to be made available include standard cardboard event boxes with lids (18x18x34 or comparable), 64 and 96-gallon carts. Bins will be made available in sizes including 2, 3, 4, and 6 cubic yards. Debris box service will be made available in container sizes including 10, 20, 30 and 40 cubic yards. Collection frequency will be provided as required by the event organizer.
- H. **Neighborhood Clean-Up Program.** Beginning October 1, 2019 and annually thereafter during the Term of this Agreement, CONTRACTOR shall conduct an annual Neighborhood Clean-Up Program, where residents are permitted to place Bulky Items curbside on a designated day according to designated parameters. The number of tires Collected as part of each Neighborhood Clean-Up shall be limited to four (4) passenger car and light truck tires. The Neighborhood Clean-Up Program will be scheduled on a day mutually agreed upon by CONTRACTOR and CITY.
- I. **CITY Park Leaf Removal Season Drop Boxes** Beginning October 1, 2019 and thereafter during the Term of this Agreement, CONTRACTOR shall provide Drop Boxes at each CITY Park during leaf removal season and remove and appropriately dispose and/or process the contents at no charge to the CITY. The number, location and scheduling of Drop Boxes will be coordinated with the CITY.
- J. **On-Call Service.** Beginning October 1, 2019 and thereafter during the Term of this Agreement, CONTRACTOR shall provide on-call collection of illegally dumped items as requested by the CITY. Within 24 hours of notification by CITY, CONTRACTOR shall Collect the item(s).

CONTRACTOR shall provide a designated contact to the CITY for notification of illegally dumped items. CONTRACTOR will collect item(s) within 24 hours' notice by the City, if notified on a Commercial Service Work Day, otherwise, CONTRACTOR will collect item(s) on the next Commercial Work Day.

- K. CONTRACTOR shall continue to allow City facilities to drop off acceptable HHW at the Recology Yuba-Sutter Household Hazardous Waste Facility located at 134 Burns Drive, Yuba City, CA. The City will be charged for disposal of the hazardous waste at Contractor's cost of disposal.

#### 5.10 DROP BOX COLLECTION SERVICES

The Drop Box Collection Services to be performed by CONTRACTOR shall include the following:

- A. **Collection of Drop Boxes from Service Units within the Service Area.** CONTRACTOR shall respond no later than the second Commercial Work Day after receipt of the request for service and shall provide the appropriate Container for such Collection according to the circumstances; however, no service shall be provided on Sunday. CONTRACTOR shall perform the following services:
  - 1. Provision, maintenance, and replacement of all containers and receptacles required for the provision of all Drop Box Services; and
  - 2. Transport of Drop Box to the Transfer Station, Disposal Facility, Material Recovery Facility (MRF), or Organic Materials Processing Facility as appropriate under this Agreement for separation and processing.
- B. **Rates.** The Maximum Service Rates for Drop Box Service shall be as specified in Exhibit 1.
- C. **Records.** CONTRACTOR will conduct proper record keeping to be sure that the Drop Box materials are Recycled to the extent possible and the amount disposed and amount diverted are properly recorded and reported.
- D. **California Green Building Standards Code.** CITY has adopted the 2013 California Building Standards Code including Part 11 California Green Building Standards Code which provides, among other requirements, 50% diversion from all C&D materials generated at a C&D site.
  - 1. CONTRACTOR shall assist Customers to comply with the requirements of the 2013 California Building Standards Code including Part 11 California Green Building Standards Code which provides, among other requirements, the diversion of 50% of all C&D Debris generated at a C&D site from landfills either by source-separated Recycling or by processing at a facility or facilities that cause not less than 50 percent of those materials to be diverted from landfills. CONTRACTOR agrees to transport all C&D Debris Collected within the Service Area to a C&D materials processing facility for processing and recovery of recyclable materials resulting in a minimum 50% diversion from landfill Disposal. The cost per ton for processing C&D material will be in accordance with the rates set forth in Exhibit 1. CONTRACTOR shall provide Customers with the documentation necessary to demonstrate compliance with the CalGreen C&D

Debris Diversion requirements. Customers shall be responsible for advance coordination relative to diversion activities, and diversion and Disposal reporting.

#### 5.11 BIOSOLIDS HAULING.

- (a) Contractor shall from time to time remove and dispose of Biosolids generated at the Yuba City Wastewater Treatment Facility located at 302 Burns Drive, Yuba City, CA. "Biosolids" means dewatered, treated, non-hazardous sewage sludge, and excludes Exempt Waste.
- (b) The schedule for Biosolids pickups shall be mutually agreed between City and Contractor. The Biosolids shall be transported to and disposed of at the Approved Disposal Facility. City shall be responsible for loading the Biosolids into Contractor's trailers. City shall provide such information and documentation as Contractor may reasonably request to comply with Applicable Law regarding manifesting and the Approved Disposal Facility's waste acceptance requirements.
- (c) Contractor shall invoice City monthly for services provided under this section, and City shall pay undisputed invoices within thirty (30) days of receipt. Contractor's rate for each load shall equal the then-applicable Haul Rate, plus the then-applicable Disposal Rate multiplied by the number of tons of Biosolids in such load. Absent manifest error, the weights determined at the Approved Disposal Facility shall be dispositive. Disposal and Haul Rates shall be as follows:
  - (i) The Disposal Rate shall be \$38.00 as of October 1, 2019, \$51.00 as of October 1, 2020, \$61.00 as of October 1, 2021, and \$76.00 as of October 1, 2022. On October 1, 2023 and each October 1 thereafter, the Disposal Rate shall be adjusted by the annual percentage change in the WST Index, calculated as provided in (iii) below.
  - (ii) The Haul Rate shall be \$375.00/haul as of October 1, 2019. On October 1, 2020 and each October 1 thereafter, the Haul Rate shall be adjusted by the annual percentage change in the WST Index, calculated as provided in (iii) below.
  - (iii) The annual percentage change in the WST Index means the percentage change between the July immediately preceding the October 1 adjustment date, and the previous July. "WST Index" means the Consumer Price Index, All Urban Consumers, Water and Sewer and Trash Collection Services. U.S. City Average, Seasonally Adjusted, Series ID: CUSR0000SEHG, published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor index.
  - (iv) If the Fuel Index exceeds \$4.20/gallon (the "Base Price"), then a fuel surcharge shall be added to the Haul Rate in an amount equal to \$5.00/haul for each \$0.50/gallon that the Fuel Index exceeds the Base Price. The surcharge shall be calculated monthly using the Fuel Index for the day closest to the last day of the month invoiced. "Fuel Index" means the Weekly California No. 2 Diesel Ultra Low Sulfur Retail Price published by the U.S. Energy Information Administration, or its successor index.
  - (v) If any change in Applicable Law (including without limitation any new or

increased governmental or regulatory fees) occurs that increases Contractor's cost of performing its obligations under this Article 5.11, then Contractor may increase the Disposal and/or Haul Rates commensurately, by providing City with thirty (30) days prior written notice of the increase, together with documentation justifying the same. If City objects to the increase, City may terminate this Article 5.11 as provided in (e) below.

- (d) Title to the Biosolids shall transfer to Contractor once the Biosolids are loaded into Contractor's trailer. Contractor reserves the right to refuse to accept any material that cannot be legally disposed of as Biosolids at the Approved Disposal Facility. If Exempt Waste is discovered in any Biosolids tendered to Contractor hereunder, Contractor may either return the material to City, or handle and dispose of the material in compliance with Applicable Law, in which case City shall reimburse Contractor's reasonable costs incurred for such handling and disposal.
- (e) At any time after September 31, 2022, either party may terminate this Article 5.11 in its entirety upon ninety (90) days prior written notice to the other. Such termination shall not affect the remainder of this Agreement.
- (f) Biosolids do not constitute Discarded Materials or any subcategory thereof. Services provided by Contractor under this Article 5.11 do not constitute Collection Services or City Collection Services and are not subject to liquidated damages under Article 12.6. Amounts paid by City to Contractor under this section do not constitute Gross Billings, and no Franchise Fee or other fee shall be payable to City with respect to such amounts.

## 5.12 OTHER SERVICES

- A. **Recycling Coordinator.** CONTRACTOR shall provide a Recycling Coordinator whose time is shared proportionately among the City of Yuba City and the other Regional Waste Management Authority (RWMA) jurisdictions during the Term of the Agreement and whose function during designated hours shall be to serve as a liaison to the CITY and provide services related to the Collection Service Agreement, including but not limited to, public education and outreach. CONTRACTOR will hire and train the Recycling Coordinator prior to the commencement of the Recycling Campaign described in Section 5.11 D.2, to ensure readiness to assist with waste assessments and outreach efforts.

The Recycling Coordinator will perform, at minimum, the following;

1. Conduct site visits to educate Commercial and MFD Service Recipients on diversion goals, contamination concerns, and new programs.
2. Conduct on-site waste assessments to help Commercial and MFD Service Recipients divert more material from solid waste and minimize contamination in the Recycling and Organic Material.
3. Offer comprehensive, multi-faceted outreach to all service recipients, tailored to Residential and Commercial Premises.

4. Coordinate and produce educational events, including educational efforts in local schools
  5. Support local community service organizations
  6. Offer technical assistance to help Commercial and MFD Service Recipients implement services and optimize diversion, including on-site training for employees.
  7. Present to homeowners' associations, business groups, MFD Service Recipients, and environmental organizations.
- B. MFD and Commercial Customer Site Visits.** CONTRACTOR shall conduct site visits upon the request of MFD Customers, Commercial Customers and/or the CITY to review and optimize service levels (Bin size, number of Bins, and frequency of service); options for Recycling and Organics Collection Services; optimal placement of bins; etc. CONTRACTOR shall coordinate the placement of all new and/or replacement Bins with the Customer.
- C. Multiple Languages.** CONTRACTOR shall provide, as requested by the CITY, translated written communication (packets, billing inserts, website content, etc.) to meet the needs of CITY SFD, MFD and Commercial Customers.
- D. New Customer Packets.** An information packet shall be provided to each new Customer throughout the Contract Term. CONTRACTOR may attach these packets to the Carts and Bins upon initial Cart and Bin distribution. This packet shall: describe available services, including available Recycling and Diversion programs; provide instructions for proper use of the Carts and Bins provided (such as how to place Carts or other permitted items for Collection, the types of materials to be placed in each Cart); detail holiday Collection schedules; and provide billing and customer service telephone numbers. This packet shall contain updated information on how to use Containers, when, where and how to place Solid Waste for Collection, and who to contact with service or billing questions, and for Bulky Item Collection. The packet shall also clearly indicate what materials, such as needles, lancets and syringes and other Household Hazardous Wastes (HHW), should not be disposed of in these Containers. This brochure shall include instructions on how Customers should dispose of HHW, such as information on the HHW drop-off facilities and other available programs.
1. **Public Education and Outreach.** CONTRACTOR'S public education and outreach strategy shall focus on improving Customer understanding of the benefits of and opportunities for Source Reduction, reuse, Recycling, and Composting. In general, CONTRACTOR-provided public education and outreach should: (i) inform Customers about the services that are provided under this Agreement with specific focus on describing the methods and benefits of Source Reduction, reuse, Recycling, and Composting; (ii) inform Customers about AB 341 and AB 1826 requirements; (iii) instruct Customers on the proper method for placing materials in Containers for Collection and setting Containers out for Collection with specific focus on minimizing contamination of Recyclable and Organic Materials; and, (iv) clearly define Exempt Waste and educate Customers about the hazards of such materials and their



opportunities for proper handling. CONTRACTOR will provide customer education materials that are attractive, clear, and user-friendly, and tailored to meet the needs of SFD, MFD and Commercial Service Recipients. CONTRACTOR will prioritize using colorful graphics and images to provide visually compelling material that communicates across language barriers. CONTRACTOR'S public education and outreach will include, at minimum, the services described in CONTRACTOR'S PROPOSAL Section 2-G, included as Exhibit 2.

2. **Recycling Campaign.** Beginning on the Commencement Date of this Agreement, CONTRACTOR will conduct a Recycling campaign "Blitz" to foster excitement about upcoming diversion programs and provide education on the new SFD 96-gallon cart service. Commercial and MFD Service Recipients will also receive a waste assessment to help them optimize their subscriptions to diversion services. During this campaign, education materials and diversion tools will be provided, including, organic material sorting brochures, recycling "buddy baskets" for MFD Service Units, and sorting posters for Commercial and MFD Premises. Service Recipients will be invited to select new carts and containers sizes, with a focus on minimizing MSW subscriptions while maximizing diversion services.
3. **Coordination with Contract Administrator.** CONTRACTOR shall cooperate and coordinate with the Contract Administrator to minimize duplicative, inconsistent, or inappropriately timed education campaigns. CONTRACTOR shall allow the Contract Administrator a reasonable opportunity to review, request modifications to, and approve all public education materials including, but not limited to: print, radio, television, or internet media before publication, distribution, and/or release. CITY shall have the right to request that CONTRACTOR include CITY identification and contact information on public education materials and approval of such requests shall not be unreasonably withheld.

- E. **Public Dumping Services.** CONTRACTOR shall provide a site at the Transfer Station for the public to deliver Solid Waste, Recyclable Materials, Organic Materials, Bulky Items and Construction and Demolition Debris at the Transfer Station.
- F. **HHW Drop-Off Services.** CONTRACTOR shall provide HHW drop-off services at Household Hazardous Waste Facility located at 134 Burns Drive, Yuba City, where CITY residents may drop-off HHW, used oil and used oil filters, Covered Electronic Waste (CEW), other electronic waste (e-waste), fluorescent light tubes and bulbs and home-generated sharps at no charge to the resident or the CITY.

The facility will be open from 8 a.m. to 4 p.m. every Saturday except holidays, with no appointment necessary. Disposal limits per customer are;

- 15 gallons or 125 pounds of hazardous waste per tip.
- 20 gallons of used oil.

- There is no volume limit for electronic devices, consumer batteries, and fluorescent light tubes/lamps.
- G. Residential Sharps Drop-Off Program.** CONTRACTOR shall provide a Residential Sharps drop-off program for the collection of Home Generated Sharps. CONTRACTOR shall be responsible to ensure the Home Generated Sharps drop-off program complies with all Applicable Laws and regulations. The Residential Sharps drop-off program at a minimum will allow for Residential Customers (SFD and MFD) to receive specialized Sharps containers and return filled Sharps containers for proper disposal. CONTRACTOR will partner with local pharmacies to distribute and accept Sharp's containers. To receive a Sharps container, Service Recipients may purchase the container at a participating pharmacy or at CONTRACTOR'S local customer service office. Filled containers may only be returned to participating pharmacies. CONTRACTOR may charge Service Recipients at a rate not exceeding the Maximum Service Rate for such service set forth in Exhibit 1.
- H. California Electronic Waste Recycling Act of 2003 Recovery Payments.** The California Electronic Waste Recycling Act of 2003 (California Health and Safety Code commencing with Section 25214.9, California Public Resources Code Section 41516 and California Public Resources Code commencing with Section 42460) provides for per pound Recovery Payments to Authorized Collectors for Covered Electronic Waste (CEW). CONTRACTOR shall maintain its status as an Authorized Collector. CONTRACTOR, in its capacity as an Authorized Collector in the Covered Electronic Waste Recovery and Recycling Payment System, will be designated by the CITY to handle CEW transferred directly to CONTRACTOR by California sources. Such designation is necessary so as to reduce the record keeping requirements established by the regulations promulgated under the California Electronic Waste Recycling Act of 2003.
1. CEW recovery activities provided by CONTRACTOR shall include, but are not limited to, CEW received from the public at the designated Transfer Station, including CEW picked-up at the request of Service Recipients (e.g., Bulky Item Service); Collected through CITY Clean-up Services; recovered from load checking; and, received from the clean-up of illegal dumping activities by the CITY Public Works Department.
  2. CONTRACTOR shall develop and maintain records required pursuant to the California Electronic Waste Recycling Act of 2003, as it may be amended, to support claims to CalRecycle for Recovery Payments for all CEW received and recovered as described above. CONTRACTOR shall provide a site at the Transfer Station where CITY residents and businesses may drop-off CEW from California sources at no extra charge to the resident or business.
- I. Other Services.** CONTRACTOR shall provide additional services and programs, such as pilot programs, special studies, etc., as requested by CITY at a price to be mutually agreed upon between the CONTRACTOR and the Contract Administrator. In the event the CONTRACTOR and the Contract Administrator cannot reach a mutually agreed upon price for the requested service or program, CITY shall have the right to procure the service of other vendors or contractors to provide the requested service.

- J. Emergency Situations.** In the event of a flood, tornado, major storm, earthquake, fire, natural disaster, or other such event, the Contract Administrator may grant the CONTRACTOR a variance from regular routes and schedules. As soon as practicable after such event, the CONTRACTOR shall advise the Contract Administrator when it is anticipated that normal routes and schedules can be resumed. The Contract Administrator shall make an effort through the local news media to inform the public when regular services may be resumed.
- 1. Emergency Service Compensation.** CONTRACTOR shall provide emergency services (i.e., special collections, transport, processing and disposal) at CITY'S request 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 CITY or as soon thereafter as is reasonably practical in light of the circumstances. Emergency services which exceed the scope of work under this Agreement, and which are not compensated by charges to Customers (in accordance with the Maximum Service Rates provided in Exhibit 1), will be billed by CONTRACTOR to CITY in accordance with the Maximum Service Rates on Exhibit 1, and may either be paid by CITY or treated as a City-Directed Change as set forth in Article 5.5 of this Agreement.

## **ARTICLE 6: PROCESSING, DISPOSAL AND DIVERSION REQUIREMENTS**

### **6.1 OWNERSHIP OF SOLID WASTE, RECYCLABLE MATERIALS, ORGANIC MATERIALS AND C&D DEBRIS**

CITY and CONTRACTOR understand and agree that it is CONTRACTOR, and not CITY, who will arrange to Collect Solid Waste, Recyclable Materials, Organic Materials and C&D Debris, that CITY has not, and, by this Agreement does not, instruct CONTRACTOR on its Collection methods, nor supervise the Collection process; nor do the Parties intend to place title to Solid Waste, Recyclable Materials, Organic Materials and C&D Debris Collected by CONTRACTOR in CITY. Rather, the Parties intend that whatever, if any, title in and to the Solid Waste, Recyclable Materials, Organic Materials and C&D Debris that is Collected by CONTRACTOR which otherwise might exist in or with CITY in the absence of this Agreement is hereby transferred to CONTRACTOR; and further that if CONTRACTOR gains title to such Solid Waste, Recyclable Materials, Organic Materials and C&D Debris it is by operation of law and agreement with its Service Recipients and is not the result of this Agreement. At no time does CITY obtain any right of ownership or possession of Solid Waste, Recyclable Materials, Organic Materials and C&D Debris placed for Collection, and nothing in this Agreement shall be construed as giving rise to any inference that CITY has any such rights. CITY and CONTRACTOR agree that, for the purposes of the Uniform Commercial Code and all other laws imposing liability for defective products, it is CONTRACTOR, and not CITY which is to be considered the merchant of goods Recycled pursuant to this Agreement. Subject to the provisions of this Agreement, and unless CITY exercises its rights to direct the location for Disposal and Processing of Solid Waste, Recyclable Materials, Organic Materials and C&D Debris CONTRACTOR shall have the right to retain, Recycle, Process, Dispose of, and otherwise use Solid Waste, Recyclable Materials, Organic Materials and C&D Debris Collected pursuant to the terms hereof in any lawful fashion or for any lawful purpose; and, further, shall have the right to retain any benefit resulting from its right to retain, Recycle, Process, Dispose of, or reuse the Solid Waste, Recyclable Materials, Organic Materials and C&D Debris which it collects.

## **6.2 TRANSPORTATION OF DISCARDED MATERIALS**

CONTRACTOR shall transport all Discarded Materials Collected to the designated Transfer Station, MRF, Organic Materials Processing Facility or Disposal Facility. CONTRACTOR agrees to make all reasonable efforts at the Approved Recycling Facility to separate Recyclable Materials from Non-Recyclable Materials for Diversion from landfill disposal. CONTRACTOR shall maintain accurate records of the quantities of Solid Waste, Recyclable Materials, Organic Materials and C&D Debris transported to the Transfer Station, MRF, Organic Materials Processing Facility or Disposal Facility and will cooperate with CITY in any audits or investigations of such quantities. CONTRACTOR shall cooperate with the operator of any Transfer Station, MRF, Organic Materials Processing Facility or Disposal Facility with regard to operations therein, including, for example, complying with directions from the operator to unload Collection vehicles in designated areas, accommodating to maintenance operations and construction of new facilities, cooperating with its Hazardous Waste exclusion program, and so forth.

## **6.3 TRANSFER OF DISCARDED MATERIALS**

The CONTRACTOR may transfer Solid Waste Collected but not sent to a designated Disposal Facility; Recyclable Materials Collected, but not sent to a designated MRF; and, Organic Materials including Green Waste and Food Waste Collected but not sent to a designated Organic Materials Processing Facility, at the designated Transfer Station. All expenses related to the transfer of Solid Waste will be the sole responsibility of the CONTRACTOR. If the CONTRACTOR or Affiliate owns and/or operates the Transfer Station, all expenses associated with permitting, regulatory compliance, etc. and all other costs associated with the operation and ownership of the Transfer Station is the sole responsibility of the CONTRACTOR.

- A. Status of Transfer Station.** The Approved Transfer Station utilized by the CONTRACTOR shall be designed and constructed in accordance with Applicable Laws. Any such Transfer Station shall have been issued all permits from federal, State, regional, county and city agencies necessary for it to operate as a large volume transfer/processing facility (Title 14, Section 17403.7) and be in full regulatory compliance with all such permits.

## **6.4 DISPOSAL**

The CONTRACTOR shall dispose of Solid Waste Collected, but not sent to a designated Transfer Station, MRF or Organic Material Processing Facility, and Residue at the designated Disposal Facility. All expenses related to the disposal of Solid Waste will be the sole responsibility of the CONTRACTOR. If the CONTRACTOR or Affiliate owns and/or operates the Disposal Facility, all expenses associated with permitting, regulatory compliance, closure and post-closure, etc. and all other costs associated with the operation and ownership of the Disposal Facility is the sole responsibility of the CONTRACTOR.

- A. Status of Disposal Facility.** The Approved Disposal Facility utilized by the CONTRACTOR shall be designed and constructed in accordance with 23 California Code of Regulations Section 2510 et seq. ("Subchapter 15"). Any such Disposal Facility shall have been issued all permits from federal, State, regional, county and city agencies necessary for it to operate as a Class III Sanitary Landfill and be in full regulatory compliance with all such permits.

## **6.5 RECYCLABLE MATERIALS PROCESSING SERVICES**

CONTRACTOR shall deliver all Collected Recyclable Material to a fully permitted Recyclable Material Processing Facility or a fully permitted Transfer Station. All expenses related to Recyclable Material Processing and marketing will be the sole responsibility of CONTRACTOR. CONTRACTOR shall ensure that all Recyclable Material Collected pursuant to this Agreement (except Residue) is diverted from the landfill in accordance with

the Act and any subsequent or other applicable legislation and regulations. CONTRACTOR shall ensure that the Recyclable Material Collected pursuant to this Agreement is not disposed of in a landfill, except as a Residue resulting from Processing. CONTRACTOR must provide end uses for Recyclable Material that maximizes diversion credits for CITY according to regulations established by CalRecycle.

- A. **Status of Recyclable Material Processing Facility(ies).** The Approved Recyclable Material Processing Facility(ies) utilized by the CONTRACTOR shall be designed and constructed in accordance with Applicable Laws. Any such Recyclable Material Processing Facility(ies) shall have been issued all permits from federal, State, regional, county and city agencies necessary for it to accept the CITY'S Recyclable Materials, and be in full regulatory compliance with all such permits.

## 6.6 ORGANIC MATERIALS PROCESSING SERVICES

CONTRACTOR shall deliver all Collected Organic Material to a fully permitted Organic Material Processing Facility or a fully permitted Organic Material Transfer Station. All expenses related to Organic Material Processing and marketing will be the sole responsibility of CONTRACTOR. CONTRACTOR shall ensure that all Organic Material Collected pursuant to this Agreement (except Residue) is diverted from the landfill in accordance with the Act and any subsequent or other applicable legislation and regulations. CONTRACTOR shall ensure that the Organic Material Collected pursuant to this Agreement is not disposed of in a landfill, except as a Residue resulting from Processing. CONTRACTOR must provide end uses for Organic Material that maximizes diversion credits for CITY according to regulations established by CalRecycle. Green Waste may be used as Alternative Daily Cover to the extent that the CITY will get full Diversion credit for its use. However, as of January 1, 2020, the use of Green Waste as ADC does not constitute Diversion through Recycling and shall be considered Disposal pursuant to PRC Section 41781.3. (2)(A). CONTRACTOR is responsible for monitoring how the Organic Material will be Diverted at selected facilities and for selecting alternative facilities if necessary to ensure full Diversion credit. Failure to do so places CONTRACTOR in default. CITY has the option, but not obligation, to direct CONTRACTOR where to deliver the material.

- A. **Status of Organic Material Processing Facility(ies).** The Approved Organic Material Processing Facility(ies) utilized by the CONTRACTOR shall be designed and constructed in accordance with Applicable Laws. Any such Organic Material Processing Facility(ies) shall have been issued all permits from federal, State, regional, county and city agencies necessary for it to accept the CITY'S Organic Materials, and be in full regulatory compliance with all such permits.

## 6.7 MINIMUM DIVERSION REQUIREMENTS

The CITY requires the CONTRACTOR to use its best efforts to achieve a minimum annual diversion rate of thirty percent (30%), or such other amount as may be set by request of the CITY in accordance with the provisions of Article 5.5 of this Agreement, during each Agreement Year beginning October 1, 2018. The annual diversion rate will be calculated as "the tons of materials Collected by CONTRACTOR from the provision of Collection Services in the CITY Service Area under the terms of this Agreement, that are shipped to the Materials Recovery Facility, the Organic Materials Processing Facility, or other recycler or re-user, net of any Residue amounts, divided by the total tons of materials Collected by CONTRACTOR from the provision of Collection Services in the CITY Service Area under the terms of this Agreement in each Agreement Year." As of January 1, 2020, the use of green material as ADC does not constitute diversion through Recycling and shall be considered disposal pursuant to PRC Section 41781.3. (2)(A).

## **6.8 FAILURE TO MEET MINIMUM DIVERSION REQUIREMENTS**

CONTRACTOR'S failure to meet the minimum diversion requirements set forth above in Article 6.7 may result in the imposition of liquidated damages pursuant to Article 12.6. In determining whether or not to assess liquidated damages, the CITY will consider the good faith efforts put forth by the CONTRACTOR to meet the minimum diversion requirements. This consideration will include documentation provided by the CONTRACTOR regarding its activities. The final decision whether or not to assess liquidated damages will remain with the CITY.

## **ARTICLE 7: REQUIREMENTS FOR OPERATIONS, EQUIPMENT AND PERSONNEL**

### **7.1 GENERAL**

CONTRACTOR shall at all times comply with Applicable Laws 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 Solid Waste, Recyclable Materials, Organic Materials, and C&D management practices common to Northern California.

### **7.2 CONTRACTOR'S OFFICE**

The CONTRACTOR shall maintain a publicly accessible office located within the CITY Service Area that provides telephone access to residents and businesses of the CITY and shall be open during normal business hours, which are currently 8:30 a.m. to 4:30 p.m., Monday through Friday, except for Holidays. Office hours may be adjusted at the discretion of CONTRACTOR only after appropriate notification is provided to all Customers and provided that offices are open for business at least eight (8) hours per day Monday through Friday, except for Holidays.

### **7.3 SERVICE STANDARDS**

CONTRACTOR shall perform all Collection Services under this Agreement in a thorough and professional manner. Except for incidents of Excuse from Performance set forth in Article 12.7 herein, Collection Services described in this Agreement shall be performed regardless of difficulty of Collection..

### **7.4 COLLECTION ROUTES, OPERATING HOURS AND SCHEDULES**

- A. Collection Routes.** Beginning not less than ninety (90) days prior to commencement of Collection Services, and continuing during the Term of this Agreement, CONTRACTOR shall prepare and maintain maps precisely defining Collection routes, together with the days and the times at which Collection shall regularly commence. Such maps shall be made available to the CITY for review upon request by the Contract Administrator.
  
- B. Subsequent Collection Route Changes.** In the event of a route change which will change the Collection day for an SFD Service Unit, CONTRACTOR shall notify those Service Recipients in writing of the route change not less than thirty (30) days before the proposed date of implementation.

CONTRACTOR shall also provide the Contract Administrator with a copy of the service change notification.

**C. Hours of Collection.**

Unless otherwise authorized by the Contract Administrator, CONTRACTOR'S days and hours for Collection operations shall be as follows:

1. **SFD Collection.** SFD Collection Services shall only occur between the hours of 5:00 a.m. and 5:00 p.m., Monday through Friday, with no regularly scheduled service on Saturday or Sunday. The hours, days, or both of Collection may be temporarily extended due to extraordinary circumstances or conditions.
2. **MFD, Commercial and CITY Collection.** MFD, Commercial and CITY Collection shall only occur between the hours of 4:00 a.m. and 5:00 p.m., Monday through Sunday. The hours of Collection may be temporarily extended due to extraordinary circumstances or conditions.

**7.5 COLLECTION STANDARDS**

- A. Manner of Collection.** The CONTRACTOR shall provide Collection Service with as little disturbance as possible and shall leave any Cart or Bin in an upright position at the same point it was Collected without obstructing alleys, roadways, driveways, sidewalks or mail boxes.

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 to the Collection vehicle. CONTRACTOR may charge Customers for extra services at the Maximum Service Rates for such services.

- B. Litter Abatement and Spill Prevention.** The CONTRACTOR shall not litter Premises in the process of providing Collection Services or while its vehicles are on the road. The CONTRACTOR shall transport all materials Collected under the terms of this Agreement in such a manner as to prevent the spilling or blowing of such materials from the CONTRACTOR'S vehicle. The CONTRACTOR shall exercise all reasonable care and diligence in providing Collection Services so as to prevent spilling or dropping of any material and shall immediately, at the time of occurrence, clean up such spilled or dropped materials.

1. The CONTRACTOR shall not be responsible for cleaning up unsanitary conditions caused by the carelessness of the Service Recipient; however, the CONTRACTOR shall clean up any materials that are spilled or scattered by the CONTRACTOR or its employees.
2. Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from the CONTRACTOR'S operations or equipment repair shall be covered immediately with an absorptive material and removed from the street surface. When necessary, CONTRACTOR shall apply a suitable cleaning agent to the street surface to provide adequate cleaning. To facilitate such clean-up, CONTRACTOR'S vehicles shall at all times carry sufficient quantities of petroleum absorbent materials along with a broom and shovel. CONTRACTOR shall not be responsible for removing any stain that may remain after application of such absorbents and cleaning agents.
3. CONTRACTOR shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, hot load (combustion of material in the truck), or accidental damage to a vehicle.

4. The above paragraphs notwithstanding, CONTRACTOR shall clean up any spillage or litter caused by CONTRACTOR within two (2) hours upon notice from the CITY.
5. In the event where damage to CITY Streets (other than stains) is the result of a hydraulic oil spill caused by CONTRACTOR, CONTRACTOR shall be responsible for all repairs to return the street to the same condition prior to the spill. CONTRACTOR shall also be responsible for all clean-up activities related to the spill. Repairs and clean-up shall be performed in a manner satisfactory to the Contract Administrator and at no cost to the CITY.

## **7.6 OWNERSHIP OF MATERIALS**

- A. Title to Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, and Construction and Demolition Debris shall pass to CONTRACTOR at such time as said materials are properly containerized, bagged, or bundled and placed at the curb or other point of Collection in the manner as set forth herein or as agreed to by the CONTRACTOR and the Customer. If materials are placed out for Collection without being properly containerized, bagged, or bundled, title shall pass to CONTRACTOR at the time the material is placed in CONTRACTOR'S Collection vehicle. If Collected materials are delivered to a Transfer Station, Materials Recovery Facility, or Organic Material Processing Facility other than one operated by the CONTRACTOR, then title will again transfer from CONTRACTOR to the operator of the non-CONTRACTOR Transfer Station, Materials Recovery Facility, or Organic Material Processing Facility upon such delivery.
- B. Title to any material self-hauled to the Transfer Station, Materials Recovery Facility, Organic Material Processing Facility or Disposal Facility shall pass to CONTRACTOR at the time the material is accepted at these facilities.
- C. Title to material Collected as part of a CITY Clean-up Service or Special Event Collection Service shall pass to CONTRACTOR at the time the material is placed in the Drop Box Container, other Collection Container provided by CONTRACTOR or CONTRACTOR'S Collection vehicle if no Containers are provided by CONTRACTOR.

## **7.7 EXEMPT WASTE**

- A. Under no circumstances shall CONTRACTOR'S employees knowingly Collect Exempt Waste or remove unsafe or poorly containerized Exempt Waste from a Collection Container. If CONTRACTOR determines that material placed in any Container for Collection is Exempt Waste, or other material that may not legally be accepted at the Materials Recovery Facility, Transfer Station, Organic Material Processing Facility or Disposal Facility, 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 for proper disposal service. 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 how the Exempt Waste can be properly disposed or recycled.
- B. If Exempt Waste is found in a Collection Container that poses an imminent danger to people or property, the CONTRACTOR shall immediately notify the appropriate Fire Department and/or other emergency services departments as appropriate, as well as the CITY.
- C. If Exempt Waste is identified at the time of delivery to the Transfer Station, Materials Recovery Facility, Organic Material Processing Facility or Disposal Facility and the generator cannot be



identified, CONTRACTOR shall be solely responsible for handling and arranging transport and disposition of the Exempt Waste.

## **7.8 REGULATIONS AND RECORD KEEPING**

CONTRACTOR shall comply with emergency notification procedures required by applicable laws and regulatory requirements. All records required by laws and regulations shall be maintained at the CONTRACTOR'S facility.

## **7.9 VEHICLE REQUIREMENTS**

- A. General Provisions.** 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. All such vehicles shall have watertight bodies designed to prevent leakage, spillage, or overflow. Hoppers shall be enclosed on top and on all sides to prevent material from leaking, blowing or falling from the vehicles. Each Collection vehicle shall be equipped with a shovel and broom for clean-up of spillage. Collection vehicles shall never be loaded to exceed the manufacturer's recommended weight limit or otherwise operated unsafely or in violation of any Applicable Law. Attached hereto as Exhibit 4 is a vehicle inventory showing the vehicles CONTRACTOR intends to use to provide services under this Agreement commencing October 1, 2019.
- B. Clean Air Vehicles.** To the extent required now or in the future by Applicable Law, CONTRACTOR shall provide its Collection vehicles to be in full compliance with local, State and federal clean air requirements, including, but not limited to, the California Air Resources Control Board regulations, such as those regulations requiring the implementation of "Diesel Particulate Matter Control Measure for On-Road Heavy—Duty Residential and Commercial Solid Waste Collection Vehicle Diesel Engines" as currently codified in CCR Title 13, Section 2020 et seq; the Federal EPA's Highway Diesel Fuel Sulfur regulations; and, any other applicable air pollution control laws. CONTRACTOR has inspected all applicable streets within the Service Area and acknowledges and certifies that all vehicles can safely and effectively operate within the Service Area.
- C. Safety Markings.** All Collection equipment used by CONTRACTOR shall have appropriate safety markings including, but not limited to, highway lighting, flashing and warning lights, clearance lights, and warning flags. All such safety markings shall be in accordance with the requirements of the California Vehicle Code, as may be amended from time to time.
- D. Vehicle Signage and Painting.** Collection vehicles shall be painted and numbered uniquely without repetition and shall have the CONTRACTOR'S name, CONTRACTOR'S customer service telephone number, and the number of the vehicle painted in letters of contrasting color, at least six (6) inches high, on each side and the rear of each vehicle. No advertising shall be permitted other than the name of the CONTRACTOR except promotional advertisement of the Recyclable Materials and Organic Materials programs or such other signage as may be approved by the Contract Administrator in writing. CONTRACTOR shall repaint all vehicles (including vehicle striping if appropriate) during the Term of this Agreement as necessary to maintain a positive public image.
- E. Vehicle Maintenance.** CONTRACTOR shall maintain Collection equipment in a clean condition and in good repair at all times. All parts and systems of the Collection equipment shall operate properly and be properly maintained. CONTRACTOR shall wash all Collection vehicles at least

once a week. 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. The Contract Administrator may inspect vehicles at any reasonable time, and within three (3) calendar days of such a request, to determine compliance with this Agreement and sanitation requirements.

- F. **Vehicle Noise Level.** All Collection operations shall be conducted as quietly as possible and shall conform to applicable Federal, State, County, and CITY noise level regulations. The CITY may request CONTRACTOR to check any piece of equipment for conformance with the noise limits when reasonable to do so.
- G. **Vehicle and Equipment Inventory.** On or before the Effective Date of this Agreement, CONTRACTOR shall provide to the Contract Administrator an inventory of Collection vehicles and major equipment used by CONTRACTOR for Collection or transportation in performance of services under this Agreement. The inventory shall indicate each Collection vehicle by identification number, DMV license number, the age of the chassis and body, type of fuel used, the type and capacity of each vehicle, the number of vehicles, the date of acquisition, the decibel rating, and the maintenance and rebuilt status. CONTRACTOR shall submit to the Contract Administrator an updated inventory annually, or more often at the request of the CITY. Each vehicle inventory shall be accompanied by a certification signed by CONTRACTOR that all Collection vehicles meet the requirements of this Article.
- H. **Vehicle Registration, Licensing and Inspection.** CONTRACTOR shall maintain documentation to verify that each of the CONTRACTOR'S Collection vehicles are in compliance with all registration, licensing and inspection requirements of the California Highway Patrol, the California Department of Motor Vehicles, and any other applicable laws or regulations. Upon written request by the Contract Administrator, copies of such documentation shall be provided to the CITY within ten (10) Residential Service Work Days of the request.
- I. **Reserve Equipment.** The CONTRACTOR shall have available to it, at all times, a reasonable number of reserve Collection equipment which can, to the extent needed to complete the Collection route, be dispatched within one (1) hour of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by the CONTRACTOR to perform the contractual duties.
- J. **Covering of Loads.** All loads not in covered body trucks shall be tarped or restrained to prevent spilling.
- K. **Weight Restrictions.** CONTRACTOR shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions on vehicles. CONTRACTOR acknowledges that CITY may document compliance with this provision of the Agreement through review of scale tickets and records of the Transfer Station, MRF, Organic Materials Processing Facility and Disposal Facility.
- L. **On-Board Video Safety System.** CONTRACTOR shall equip all Collection vehicles with an on-board video safety system such as a DriveCam or similar functionality. The on-board video safety system will serve as an event recorder that is activated by hard stops, collisions, and

similar unexpected driving events. It will include, at minimum, at forward-facing camera to record video ahead of the vehicle and an interior camera to record the view of the driver. CONTRACTOR will implement and maintain a procedure to review, store the images captured by the on-board video safety system. The images will be incorporated into incident reports and used to help coach drivers to improve driver behavior.

#### 7.10 CONTAINER REQUIREMENTS

- A. SFD Carts.** CONTRACTOR will provide each SFD with wheeled Carts for automated collection of Solid Waste, Recyclable Materials and Green Waste. Customers may add additional Carts for Solid Waste , Recyclable Materials and Green Waste Collection as provided in Sections 7.10.F, G and H. Customers will be required to place the Cart(s) curbside for collection. Solid waste collection service is mandatory for all service locations.
- B. Distribution of Carts and Bins.** CONTRACTOR shall distribute Carts and Bins to new Service Units that are added to CONTRACTOR'S Service Area during the Term of this Agreement. The distribution shall be completed within three (3) Residential Service Work Days of receipt of notification from the CITY or the Service Unit.
- C. Replacement of Carts and Bins.**
1. CONTRACTOR'S employees shall take care to prevent damage to Carts or Bins by unnecessary rough treatment. However, any Cart or Bin damaged by the CONTRACTOR shall be replaced by the CONTRACTOR, at the CONTRACTOR'S expense, within three (3) Residential Service Work Days after notification by the CITY or the Service Recipient, at no cost or inconvenience to the Service Recipient or to the CITY.
  2. Upon notification to the CONTRACTOR by the CITY or a Service Recipient that the Service Recipient's Cart(s) or Bin(s) are faulty or have worn out, or have been stolen or damaged beyond repair through no fault of the Service Recipient, the CONTRACTOR shall deliver a replacement Cart(s) or Bin(s) to such Service Recipient within three (3) Residential Service Work Days. There shall be no charge to the Service Recipient for the delivery or replacement of the Cart(s) or Bin(s).  
  
In those instances where the CONTRACTOR can demonstrate that a Cart(s) or Bin(s) was damaged or stolen as the result or product of negligence on the part of the Service Recipient, CONTRACTOR shall be entitled to bill the Service Recipient the cost of the Cart(s) or Bin(s) plus the delivery charge in an amount not exceeding the applicable Maximum Service Rates set forth in Exhibit 1 to this Agreement.
  3. The CONTRACTOR shall maintain records documenting all Cart and Bin replacements occurring on a monthly basis. Such information shall be provided to the Contract Administrator upon written request.
- D. Repair of Carts and Bins.** CONTRACTOR shall be responsible for repair of Carts and Bins in the Service Area including but not be limited to, hinged lids, wheels and axles. Within three (3) Residential Service Work Days of notification by the CITY or a Service Recipient of the need for such repairs, the CONTRACTOR shall repair the Cart or Bin, or if necessary, remove the Cart or Bin for repairs and deliver a replacement Cart or Bin to the Service Recipient.

- E. Cart or Bin Exchange.** Upon notification to the CONTRACTOR by the CITY or a Service Recipient that a change in the size or number of Carts or Bins is required, the CONTRACTOR shall deliver such Carts or Bins to such Service Recipient no later than the Service Recipient's next regularly scheduled Collection day. Each SFD Service Unit shall be entitled to receive one (1) free Solid Waste Cart exchange; one (1) free Recycling Cart exchange; and one (1) free Green Waste Cart exchange per Agreement Year during the Term of this Agreement. Each MFD, Commercial or CITY Service Unit shall be entitled to receive one (1) free Solid Waste Cart or Bin exchange, and to the extent such Carts or Bins are provided by the CONTRACTOR under the terms of this Agreement, one (1) free Recycling Cart or Bin exchange, one (1) free Organics Material Cart or Bin exchange per Agreement Year during the Term of this Agreement. Accordingly, CONTRACTOR shall be entitled to charge for exchanges in excess of the limit set forth above per Agreement Year, at a rate not exceeding the "Cart or Bin Exchange" Maximum Service Rate as set forth in Exhibit 1, as adjusted under the terms of this Agreement.
- F. Additional Solid Waste Capacity.** Upon notification to the CONTRACTOR by the CITY or a Service Recipient that additional Solid Waste capacity is requested, the CONTRACTOR shall comply by delivering a larger Cart, an additional Cart, larger Bin or an additional Bin, to such Service Recipient within ten (10) Residential Service Work Days. CONTRACTOR shall be entitled to charge for the cost of the additional Solid Waste capacity in an amount not exceeding the applicable Maximum Service Rate for the larger capacity or Additional Cart or Bin as set forth in Exhibit 1, as adjusted under the terms of this Agreement.
- G. Additional Recycling Capacity.** CONTRACTOR shall provide one additional Recycling Cart to SFD Service Units requesting an additional Cart within ten (10) Residential Service Work Days of the request at no additional cost provided that the additional capacity is used by the SFD Service Unit for the purposes of setting out additional Recyclable Materials that are generated by and at the SFD Service Unit for regular weekly Recyclable Material Collection Service. CONTRACTOR shall be entitled to charge for any additional Recycling Carts beyond the first additional Cart for a fee set forth in the Maximum Service Rates.
- 1. Pickup of Under-utilized Additional Recyclable Carts.** If CONTRACTOR'S vehicle driver reports, and CONTRACTOR'S customer service representative enters into the Customer's account records, that the Customer does not set out an additional Recyclable Cart more than once a month for two (2) consecutive months, then CONTRACTOR may leave a notice stating that CONTRACTOR will pick up the Customer's unused or under-utilized additional Recyclable Cart unless the Customer sets out that additional Cart at least every other week.
- H. Additional Green Waste Capacity.** CONTRACTOR shall provide one additional Green Waste Cart to SFD Service Units requesting an additional Cart within ten (10) Residential Service Work Days of the request at no additional cost provided that the additional capacity is used by the SFD Service Unit for the purposes of setting out additional Green Waste Materials that are generated by and at the SFD Service Unit for regular weekly Green Waste Collection Service. CONTRACTOR shall be entitled to charge extra for any additional Green Waste Carts beyond the first additional Cart for a fee set forth in the Maximum Service Rates.
- 1. Pickup of Under-utilized Additional Green Waste Carts.** If CONTRACTOR'S vehicle driver reports, and CONTRACTOR'S customer service representative enters into Customer's account records, that Customer does not set out an additional Green

Waste Cart more than once a month for two (2) consecutive months, then CONTRACTOR may leave a notice stating that CONTRACTOR will pick up the Customer's unused or under-utilized additional Green Waste Cart unless Customer sets out that additional Cart at least every other week.

- I. **Ownership of Carts.** Ownership of Carts shall rest with the CONTRACTOR, except that, in the case of the termination of this Agreement prior to the expiration of the initial Term or optional extension Terms due to the default of the CONTRACTOR as set forth in Article 12 of this Agreement, the CITY shall have the right to take possession of the Carts and retain such possession under the terms and conditions described in Article 12. Upon the receipt of written notice from the CITY, CONTRACTOR shall submit to the Contract Administrator an inventory of Carts, including their locations.
- J. **Ownership of Bins.** Ownership of Bins distributed by the CONTRACTOR shall rest with the CONTRACTOR except in the case of the termination of the Agreement prior to the expiration of the initial Term or optional extension Terms due to the default of the CONTRACTOR as set forth in Article 12 of this Agreement. Under such circumstances, the CITY shall have the right to take possession of the Bins and retain such possession under the terms and conditions described in Article 12. Upon the receipt of written notice from the CITY, CONTRACTOR shall submit to the Contract Administrator an inventory of Bins, including their locations.
- K. **Ownership of Drop Box Containers.** Ownership of Drop Box Containers distributed by the CONTRACTOR shall rest with the CONTRACTOR except in the case of the termination of the Agreement prior to the expiration of the initial Term or optional extension Terms due to the default of the CONTRACTOR. Under such circumstances, the CITY shall have the right to take possession of the Containers and retain such possession under the terms and conditions described in Article 12. Upon the receipt of written notice from the CITY, CONTRACTOR shall submit to the Contract Administrator an inventory of Drop Box Containers, including their locations.
- L. **New Service Units.**
  - 1. **Purchase and Distribution of Carts and Bins.** The CONTRACTOR shall be responsible for the purchase and distribution of fully assembled and functional Carts and Bins to new Service Units that are added to CONTRACTOR'S Service Area during the Term of this Agreement. The distribution shall be completed within three (3) Residential Service Work Days of receipt of notification from the CITY or the Service Unit.
  - 2. **Collection Services.** CONTRACTOR shall provide Collection Services described in this Agreement to new Service Units on the next regularly scheduled Collection day following delivery of the Carts or Bins.
- M. **Annual Inspection and Cleaning.** Once each Agreement Year, at no charge to the CITY, MFD or Commercial Service Unit, CONTRACTOR shall provide, upon request or as deemed necessary, the cleaning of Bins. In the event a Customer requests CONTRACTOR to provide Bin cleaning more than one (1) time per Agreement Year, CONTRACTOR shall have the right to charge the Customer an amount not exceeding the Maximum Service Rate for Bin Cleaning set forth in Exhibit 1.

### 7.11 LABOR AND EQUIPMENT

CONTRACTOR shall provide and maintain all labor, equipment, tools, facilities, and personnel supervision required for the performance of CONTRACTOR'S obligations under this Agreement. CONTRACTOR shall at all times have sufficient backup equipment and labor to fulfill CONTRACTOR'S obligations under this Agreement. No compensation for CONTRACTOR'S services or for CONTRACTOR'S supply of labor, equipment, tools, facilities or supervision shall be provided or paid to CONTRACTOR by CITY or by any Service Recipient except in accordance with this Agreement.

### 7.12 HOLIDAY SERVICE

CONTRACTOR shall provide normal Collection Services without regard to any CITY Holidays.

### 7.13 DISPOSAL AND PROCESSING

- A. **Solid Waste.** Except as set forth below, all Solid Waste Collected as a result of performing Collection Services shall be transported to the Transfer Station or the Disposal Facility and eventually disposed of at the Disposal Facility. In the event the Disposal Facility is closed on a Commercial Service Work Day, the CONTRACTOR shall transport and dispose of the Solid Waste at such other legally permitted disposal facility as is approved by CITY. Notwithstanding any other provision of this Agreement, if a Disposal Facility other than the designated Disposal Facility is used, and it is not owned/operated by the CONTRACTOR or its Affiliate (it being understood that such other Disposal Facility would need to be selected by CONTRACTOR and approved by CITY, or specifically designated by CITY), then CONTRACTOR'S obligations hereunder will not include the landfilling of the Solid Waste (which will be the responsibility of the Disposal Facility operator).
- B. **Recyclable Materials.** All Recyclable Materials Collected as a result of performing Collection Services shall be delivered to the Materials Recovery Facility (MRF). In the event the MRF is closed on a Commercial Service Work Day, the CONTRACTOR shall transport and deliver the Recyclable Material to such other legally permitted MRF as is approved by CITY. CONTRACTOR shall ensure that all Recyclable Materials Collected pursuant to this Agreement that are expressly listed in Article 1.80 (including those materials added by CONTRACTOR to such list from time to time), except Residue resulting from processing, are diverted from the Disposal Facility in accordance with current and subsequent legislation and regulations. Notwithstanding any other provision of this Agreement, if a MRF other than the designated Transfer Station is used that is not owned/operated by the CONTRACTOR or its Affiliate (it being understood that such other MRF would need to be selected by CONTRACTOR and approved by CITY, or specifically designated by CITY), then CONTRACTOR'S obligations hereunder will not include processing and marketing of Recyclable Materials (which will be the responsibility of the MRF operator).
- C. **Organic Materials.** All Organic Materials, including Green Waste and Food Waste Collected as a result of performing Collection Services shall be delivered to the designated Organic Materials Processing Facility. In the event the facility is closed on a Commercial Service Work Day, the CONTRACTOR shall transport and deliver the Organic Materials to such other legally permitted Organic Materials Processing Facility as is approved by CITY. CONTRACTOR shall ensure that all Organic Materials Collected pursuant to this Agreement, except Residue resulting from processing, is diverted from the Disposal Facility in accordance with current and subsequent legislation and regulations. Notwithstanding any other provision of this

Agreement, if an Organic Materials Processing Facility other than the designated Organic Materials Processing Facility is used that is not owned/operated by the CONTRACTOR or its Affiliate (it being understood that such other Organic Materials Processing Facility would need to be selected by CONTRACTOR and approved by CITY, or specifically designated by CITY), then CONTRACTOR'S obligations hereunder will not include processing and marketing of Organic Materials (which will be the responsibility of the Organic Facility operator).

- D. Bulky Items.** All Bulky Items Collected as a result of performing Collection Services shall be delivered to the designated Approved Facility.
1. CONTRACTOR shall cause to be processed and/or disposed all Bulky Items Collected from Service Units pursuant to this Agreement in accordance with the following hierarchy:
    - Reuse as is (where energy efficiency is not compromised);
    - Disassemble for reuse or recycling;
    - Recycle (through participation of charitable organizations); or
    - Disposal.
  2. Bulky Items Containing Freon. In the event CONTRACTOR Collects Bulky Items that contain Freon, CONTRACTOR shall handle such Bulky Items in a manner such that the Bulky Items are not subject to regulation as Hazardous Waste under applicable state and federal laws or regulations.
  3. CONTRACTOR will work with Habitat for Humanity's ReStore to facilitate reuse of Bulky Items collected under this Agreement.

#### **7.14 SOLID WASTE - IMPROPER PROCEDURE**

Except as set forth below, the CONTRACTOR shall not be required to Collect Solid Waste if the Service Recipient does not segregate the Solid Waste from Exempt Waste. If Solid Waste is contaminated through commingling with Exempt Waste, the CONTRACTOR shall, if practical, separate the Solid Waste from the contaminants. The Solid Waste shall then be Collected and the contaminants shall be left in the Solid Waste Cart or Bin along with a Non-Collection Notice explaining why the contaminant(s) is not considered Solid Waste. However, in the event the Solid Waste and contaminants are commingled to the extent that they cannot easily be separated by the CONTRACTOR or the nature of the contaminants renders the entire Solid Waste Cart or Bin contaminated, the CONTRACTOR may; 1) Collect the Solid Waste and leave a Non-Collection Notice that contains instructions on the proper procedures for setting out Solid Waste or; 2) leave the Solid Waste Cart or Bin un-emptied along with a Non-Collection Notice that contains instructions on the proper procedures for setting out Solid Waste. On the third (3<sup>rd</sup>) time that CONTRACTOR finds that a Service Unit has set out contaminated Solid Waste, CONTRACTOR may leave the Solid Waste Cart or Bin un-emptied along with a Non-Collection Notice that contains instructions on the proper procedures for setting out Solid Waste and reduce the service at that Service Unit to the minimum level available by exchanging the Solid Waste Container without the authorization of the Customer.

#### **7.15 RECYCLING - IMPROPER PROCEDURE**

Except as set forth below, the CONTRACTOR shall not be required to Collect Recyclable Materials if the Residential or Commercial Service Recipient does not segregate the Recyclable Materials from Solid Waste, Green Waste, Exempt Waste or Construction and Demolition Debris. The first (1<sup>st</sup>) time in any Agreement Year Recyclable Materials are contaminated through commingling with Solid Waste, Green Waste, Exempt Waste or Construction and Demolition Debris, the CONTRACTOR shall contact the Customer to discuss the

contamination and shall Collect the Container and cause the material contained therein to be disposed or processed in the most appropriate manner. On the second (2<sup>nd</sup>) time in that same Agreement Year that CONTRACTOR finds that a Service Unit has set out contaminated Recyclable Materials, CONTRACTOR shall contact the Customer to discuss the contamination and shall Collect the Container and cause the material contained therein to be disposed or processed in the most appropriate manner. On the third (3<sup>rd</sup>) or any subsequent time in that same Agreement Year that CONTRACTOR finds that a Service Unit has set out Contaminated Recyclable Materials, CONTRACTOR may, without the authorization of the Customer, remove the Recycling Cart(s) or Bin(s) and stop Collecting Recyclable Materials from that Residential or Commercial Service Unit. Alternatively, on the 3<sup>rd</sup> and any subsequent time CONTRACTOR finds that a Service Unit has set out Contaminated Recyclable Materials, CONTRACTOR may begin to charge the Customer a contamination charge as set forth in Exhibit 1 each time the Recyclable Materials are Contaminated.

- A. **Recycling - Changes to Work.** Should changes in law arise that necessitate any additions or deletions to the work described herein including the type of items included as Recyclable Materials, the parties shall negotiate any necessary cost changes and adjustment in Maximum Service Rates pursuant to Article 5.5 and shall enter into an Agreement amendment covering such modifications to the work to be performed and the adjustment to Maximum Service Rates before undertaking any changes or revisions to such work.

#### **7.16 ORGANIC MATERIALS - IMPROPER PROCEDURE**

Except as set forth below, the CONTRACTOR shall not be required to Collect Organic Materials if the Service Recipient does not segregate the Organic Materials from Solid Waste, Recyclable Materials, Exempt Waste or Construction and Demolition Debris. The first (1<sup>st</sup>) time in any Agreement Year Organic Materials are contaminated through commingling with Solid Waste, Recyclable Materials, Exempt Waste or Construction and Demolition Debris, the CONTRACTOR shall contact the Customer to discuss the contamination and shall Collect the Container and cause the material contained therein to be disposed or processed in the most appropriate manner. On the second (2<sup>nd</sup>) time in any Agreement Year that CONTRACTOR finds that a Service Unit has set out contaminated Organic Materials, CONTRACTOR shall contact the Customer to discuss the contamination and shall Collect the Container and cause the material contained therein to be disposed or processed in the most appropriate manner. On the third (3<sup>rd</sup>) or any subsequent time in that same Agreement Year that CONTRACTOR finds that a Service Unit has set out Contaminated Organic Materials, CONTRACTOR may, without the authorization of the Customer, remove the Organic Materials Cart(s) and Bin(s) and stop Collecting Organic Materials from that Service Unit.. Alternatively, on the 3<sup>rd</sup> and any subsequent time CONTRACTOR finds that a Service Unit has set out Contaminated Organic Materials, CONTRACTOR may begin to charge the Customer a contamination charge as set forth in Exhibit 1 each time the Organic Materials are Contaminated.

#### **7.17 COMMINGLING OF MATERIALS**

- A. **Solid Waste, Recyclable Materials, and Organic Materials.** CONTRACTOR shall not commingle Solid Waste Collected pursuant to this Agreement with any Recyclable Materials or Organic Materials separated for Collection pursuant to this Agreement prior to delivery to the Transfer Station, MRF, Organic Materials Processing Facility or Disposal Facility as appropriate, without the express prior written authorization of the Contract Administrator.
- B. **Solid Waste Material Collected in the Service Area.** CONTRACTOR shall not commingle any Solid Waste Collected pursuant to this Agreement with any other material Collected by CONTRACTOR outside the CITY Service Area prior to delivery to the Transfer Station, MRF,



Organic Materials Processing Facility or Disposal Facility as appropriate, unless CONTRACTOR has provided documentation that is satisfactory to the Contract Administrator explaining how the commingled material will be allocated.

- C. **Recyclable Materials Collected in the Service Area.** CONTRACTOR shall not commingle Recyclable Materials Collected pursuant to this Agreement with any other material Collected by CONTRACTOR outside the CITY Service Area prior to delivery to the Transfer Station, MRF, or Disposal Facility as appropriate, unless CONTRACTOR has provided documentation that is satisfactory to the Contract Administrator explaining how the commingled material will be allocated.
- D. **Organic Materials Collected in the Service Area.** CONTRACTOR shall not commingle Organic Materials Collected pursuant to this Agreement with any other material Collected by CONTRACTOR outside the CITY Service Area prior to delivery to the Transfer Station, Organic Material Processing Facility or Disposal Facility as appropriate, unless CONTRACTOR has provided documentation that is satisfactory to the Contract Administrator explaining how the commingled material will be allocated.
- E. **Material Separation.** Solid Waste, Recyclable Materials, Organic Materials, Bulky Items and C&D Debris shall not be mixed together in CONTRACTOR'S Collection equipment unless such material has been deemed contaminated in which case it shall be Collected as Solid Waste. Each category of material Collected shall be kept separated according to type or classification except for such material that has been deemed contaminated in which case it shall be classified as Solid Waste.

#### 7.18 PERSONNEL

- A. **General Personnel Requirements.** The CONTRACTOR shall employ and assign qualified personnel to perform all services set forth herein. The CONTRACTOR shall be responsible for ensuring that its employees comply with all applicable laws and regulations and meet all federal, state and local requirements related to their employment and position.

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

CONTRACTOR shall use its best efforts to assure that all employees who interact with Customers 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 members of the public.

CONTRACTOR shall designate at least one (1) qualified employee as the CITY'S primary point of contact with CONTRACTOR who is principally responsible for Collection operations and resolution of service requests and complaints.

- B. **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.
- C. **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, Exempt Waste. Upon the 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.

#### **7.19 HAZARDOUS WASTE INSPECTION AND HANDLING**

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

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

- B. Response to Exempt Waste Identified During Collection.** If CONTRACTOR determines that material placed in any Container for Collection is Exempt 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 tag at least two (2) inches by six (6) inches in size, which indicates the reason for refusing to Collect the material and lists the phone number of a facility that accepts the Exempt Waste or a phone number of an entity that can provide information on proper Disposal of the Exempt Waste. Under no circumstances shall CONTRACTOR'S employees knowingly Collect Exempt Waste or remove unsafe or poorly containerized Exempt Waste from a Collection Container. Prior to the Commencement Date of this Agreement, the tag that will be used to notice Customers of reason for non-Collection shall be reviewed and approved by the Contract Administrator. If Exempt 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 Exempt Waste Identified at Disposal or Processing 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 Exempt Waste in the loads delivered by CONTRACTOR, such personnel shall remove these materials for storage in approved, on-site, Exempt Waste storage Container(s). CONTRACTOR shall arrange for removal of the Exempt Wastes at its cost by permitted haulers 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.

## **ARTICLE 8: BILLING, CUSTOMER SERVICE, RECORD KEEPING, AND REPORTING**

### **8.1 BILLING AND COLLECTION**

The CONTRACTOR shall be solely responsible for the billing and collection of payments for all Collection Services, including billing of CITY for any services provided in excess of those CITY Collection Services specified in Article 5.9. The CONTRACTOR shall charge Service Recipients an amount which shall not exceed the Maximum Service Rates attached in Exhibit 1 to this Agreement as adjusted under the terms of this Agreement. The CITY or Contract Administrator shall have the right to review the format of all Customer bills. CONTRACTOR shall be entitled to set rates for all services provided pursuant to this Agreement, provided that such rates do not exceed the Maximum Service Rates set forth in Exhibit 1, as adjusted under the terms of this Agreement. Unless otherwise expressly provided, all references to Exhibit 1 in this Agreement shall be deemed to refer to such exhibit as adjusted from time to time in accordance with the provisions of this Agreement.

- A. Partial Month Service.** If, during a month, a Service Unit is added to or deleted from CONTRACTOR'S Service Area, the CONTRACTOR'S billing shall be pro-rated by dividing the monthly rate for the service provided to the Service Unit by four (4), and multiplying the result by the number of actual weeks in the month that service was provided to the Service Unit.
- B. Billing Inserts.** CITY may provide educational and other material to CONTRACTOR for inclusion in the invoices provided by CONTRACTOR to SFD, MFD and Commercial Customers for Collection Services. CONTRACTOR may charge the CITY for the insertion and any extra postage charges for educational or other materials provided for distribution in the invoices.

### **8.2 DELINQUENT SERVICE ACCOUNTS**

The CONTRACTOR may take such action as is legally available to Collect or cause collection of such past due amounts, including discontinuing any or all service and/or removing Carts, Containers or Bins. However, CONTRACTOR may not discontinue providing Recycling, Green Waste, or Solid Waste Collection Services to an SFD Service Unit or a MFD Service Unit if a lien process exists to Collect delinquent accounts and the CITY cooperates with the CONTRACTOR to timely lien the delinquent accounts, unless the CITY has approved a collection service exemption for the subject property in accordance with the provisions set forth in the CITY Municipal Code. CONTRACTOR may submit to CITY annually prior to August 10th a list of delinquent accounts along with such other information as may be required by CITY. Following receipt of all necessary information from CONTRACTOR, CITY will assist CONTRACTOR in collecting the delinquent accounts for the prior twelve-month period ending March 31st by placing liens against the delinquent parcels, subject to the terms of the CITY ordinance. Upon collection of any such delinquent accounts by CITY, all amounts so Collected shall be accounted for and remitted to CONTRACTOR, except CITY shall retain any administrative handling charge portion of such collections.

### **8.3 LOW-INCOME SENIOR CITIZEN MAXIMUM SERVICE RATES**

CONTRACTOR shall provide SFD Collection Services to qualified low-income senior citizens at rates not exceeding the Maximum Service Rates for such services specified in Exhibit 1 upon request. The difference between the low-income senior citizen rates paid to CONTRACTOR and the standard, undiscounted Maximum Service Rates for the equivalent services shall be deducted from the CONTRACTOR'S franchise fee payments to the CITY. The qualification requirements for the low-income senior citizen rates include all of the following: (i) head of household; (ii) minimum of 62 years of age; and, (iii) an adjusted gross income for the household at or

below one hundred-fifty (150) percent of the current Federal Poverty Guidelines for the 48 Contiguous States and the District of Columbia for the applicable size of family unit.

- A. To demonstrate conformity with the qualification requirements, CONTRACTOR shall require applicants to complete an application form provided by CONTRACTOR and provide copies of photo identification showing proof of age and the first and second pages of Form 1040, U.S. Individual Income Tax Return for the previous calendar year, or other suitable documentation to verify household income.
- B. Eligibility shall be granted for a specified period not to exceed two (2) years after which CONTRACTOR shall require applicant to re-certify as to their continued eligibility. CONTRACTOR shall require approved applicants to provide notification if and when their eligibility qualification status changes.

#### **8.4 NON-DISCLOSURE**

CONTRACTOR will not disclose to any Person other than the CITY any information identifying an individual Customer, the composition or contents of a Customer's Discarded Material, or a Customer's trade secrets unless upon the authority of a law, or pursuant to written authorization of the Customer.

#### **8.5 NO MARKETING**

CONTRACTOR will not market or distribute mailing lists with the name or address of Customers. CONTRACTOR'S obligations under this subsection are in addition to any other privacy rights accorded Customers under Applicable Law.

#### **8.6 CUSTOMER SERVICE STAFFING AND HOURS**

The CONTRACTOR shall maintain a publicly accessible office located within the CITY Service Area that provides telephone access to residents and businesses of the CITY and is staffed by trained and experienced Customer Service Representatives (CSRs). Such office shall be equipped with sufficient telephones so that all Collection Service related calls received during normal business hours are answered by an employee within five (5) rings; shall have responsible persons in charge during Collection hours; and shall be open during normal business hours, which are currently 8:30 a.m. to 4:30 p.m., Monday through Friday, except for Holidays. Office hours may be adjusted at the discretion of CONTRACTOR only after appropriate notification is provided to all Customers and provided that offices are open for business at least eight (8) hours per day Monday through Friday, except for Holidays. The CONTRACTOR shall provide either a telephone answering service or a mechanical device to receive Service Recipient inquiries during those times when the office is closed. Calls received after normal business hours shall be addressed the next morning the office is open.

#### **8.7 CONTRACTOR'S CUSTOMER SERVICE**

All service inquiries and complaints shall be directed to the CONTRACTOR. A representative of the CONTRACTOR shall be available to receive the complaints during normal business hours. All service complaints will be handled by the CONTRACTOR in a prompt, courteous, and efficient manner.

- A. **Response Requirement.** For those complaints related to missed Collections that are received by 2:00 p.m. on a Residential Service Work Day, the CONTRACTOR will return to the Customer address and Collect the missed materials before leaving the Service Area for the day. For those complaints related to missed Collections that are received after 2:00 p.m. on a Residential Service Work Day, the CONTRACTOR shall have until the end of the following Residential Service Work Day to resolve the complaint. For those complaints related to repair or

replacement of Carts or Bins, the CONTRACTOR shall resolve the complaint according to the requirements described in Article 7.10 C.

- B. **Missed Collections.** CONTRACTOR agrees that it is in the best interest of the CITY that all Solid Waste, Recyclable Materials and Organic Materials be Collected on the scheduled Collection day. Accordingly, missed Collections will normally be Collected as set forth above regardless of the reason that the Collection was missed. However, in the event a Customer requests missed Collection service more than two (2) times during the Term of this Agreement CONTRACTOR shall contact the Customer to determine an appropriate resolution to that situation.
- C. **Emergency Contact.** The CONTRACTOR shall provide the Contract Administrator with an emergency phone number where the CONTRACTOR can be reached outside of the required office hours.
- D. **Multilingual/TDD Service.** CONTRACTOR shall at all times maintain the capability of responding to telephone calls in English, Spanish and one (1) other language as may be directed by CITY. CONTRACTOR shall also at all times maintain the capability of responding to telephone calls through Telecommunications Device for the Deaf (TDD) Services.
- E. **Service Recipient Calls.** During office hours, CONTRACTOR shall maintain a telephone answering system capable of accepting at least seven (7) incoming calls at one (1) time. CONTRACTOR shall document calls regarding inquiries, service requests and complaints through the use of the CONTRACTOR'S ticket report system.
- F. **Response to Calls.** All incoming calls shall be answered by a Customer Service Representative within five (5) rings. Customers shall not be placed "on-hold" in excess of one and one half (1.5) minutes.
- G. **Website.** CONTRACTOR shall develop and maintain a website dedicated to services provided in the CITY that is accessible by the public. The web site shall include answers to frequently asked questions; rates for Collection Services; Recyclable Materials and Organic Materials specifications; proper Household Hazardous Waste disposal procedures; and other related topics. CITY shall arrange for the CITY'S website to include an e-mail link to CONTRACTOR and a link to CONTRACTOR'S website. The CONTRACTOR'S website shall provide the public the ability to e-mail complaints to CONTRACTOR and request services or service changes.
- H. **Yuba CITY Customer Engagement Program.** CONTRACTOR shall participate in the CITY'S "yc311" customer engagement program. Customers shall have the ability to contact CONTRACTOR through the City's yc311 app for services such as missing Carts, to report illegal dumping, etc.
- I. **Hazardous Waste Referrals.** CONTRACTOR shall provide information regarding the Collection of Hazardous Waste to those Service Recipients requesting such information. The information shall at a minimum include the name and phone number of those companies or agencies in the CITY Service Area that are legally permitted to Collect and transport Hazardous Waste.
- J. **Automated Billing Payment.** In an effort to reduce paper waste, CONTRACTOR shall make available to all Customers an automated billing and payment system at no additional charge. This system should be website based and allow Customers to view and pay bills through CONTRACTOR'S website. Through the CONTRACTOR'S website, Customers may request to cease paper billing and receive all bills through e-mail and/or CONTRACTOR'S website. CONTRACTOR will ensure that the electronic billing and payment website conforms to industry-standard practices for electronic commerce security. CONTRACTOR must ensure that these Customers are compiled in a list to ensure that billing inserts are mailed directly.

CONTRACTOR shall promote the website-based billing and payment system on all paper bills sent to Customers.

## 8.8 RECORD KEEPING

- A. **Accounting Records.** CONTRACTOR shall maintain full, complete and separate financial, statistical and accounting records, pertaining to cash, billing, and provisions of all Collection Services provided under this Agreement, prepared on an accrual basis in accordance with generally accepted accounting principles. Such records shall be subject to audit, copy, and inspection. Gross Billings derived from provision of the Collection Services, including revenues from the sale of Recyclable Materials, including CRV revenue or revenue from the sale of Composted material, whether such services are performed by the CONTRACTOR or by an approved Subcontractor(s) as set forth in Exhibit 3, shall be recorded as revenues in the accounts of the CONTRACTOR. These records shall be maintained separate from CONTRACTOR'S records for services provided outside the Service Area. CONTRACTOR shall maintain and preserve all cash, billing and disposal records for a period of not less than eight (8) years following the close of each of the CONTRACTOR'S fiscal years.
- B. **Agreement Materials Records.** CONTRACTOR shall maintain records of the quantities of (i) SFD, MFD, Commercial and CITY Solid Waste and Construction and Demolition Debris Collected and Disposed under the terms of this Agreement; (ii) Recyclable Materials, by type, Collected, purchased, Processed, sold, donated or given for no compensation, and Residue Disposed; (iii) Green Waste Collected, Processed, sold, donated or given for no compensation, and Residue Disposed; (iv) Organic Materials Collected, Processed, sold, donated or given for no compensation, and Residue Disposed; and, (v) C&D Debris Collected, Processed, sold, donated or given for no compensation, and Residue Disposed.

## 8.9 REPORTING REQUIREMENTS

Quarterly reports shall be submitted to the Contract Administrator no later than forty-five (45) calendar days after the end of the reporting quarter and annual reports shall be submitted to the Contract Administrator no later than November 15th after the end of each preceding Agreement Year. Quarterly and annual reports shall be submitted in hard copy or provided electronically via e-mail if acceptable to the CITY.

- A. **Quarterly Reports.** Quarterly reports to the CITY shall be on a calendar quarter basis and shall include:
1. **Solid Waste Data.** Quarterly reporting of Solid Waste disposal data and certain types of diversion data is governed by State law, and while the CITY currently is a member of a regional agency as defined by State law that allows for the reporting of this data on a regional basis, CONTRACTOR shall continue to report these data specific to the CITY.
  2. **Recycling, Green Waste and Organic Materials Data and Alternative Daily Landfill Cover Diversion from the designated Transfer Station, MRF, Organic Materials Processing Facility and Disposal Facility.** The CITY is a member of the RWMA regional agency, and as long as the CITY remains a member of this regional agency, data regarding Recycling, Green Waste, Organic Materials and Alternative Daily Cover diversion from the designated Transfer Station, MRF, Organic Materials Processing Facility and Disposal Facility will be reported in aggregate for all of the regional agency member jurisdictions. Furthermore, these aggregate data may include tonnage from Beale Air Force Base in Yuba County because these materials may be commingled at the processing facilities and are also pertinent to the computation of the State-mandated diversion requirement per the Act. Therefore, CONTRACTOR shall report on

a region-wide basis, the amount of diversion calculated as follows:

- The amount of Recyclable Materials by specific material type, shipped by CONTRACTOR to Recycling markets during the quarter, minus contaminants or Residue disposed, and minus the amount of materials received at any co-located buy-back centers or through other programs such as the Kiwanis and other newspaper collection projects during the quarter, by specific material type. The materials from each of these activities shall be separately identified.
- The amount of Green Waste and Organic Materials Diverted to the Organic Materials Processing Facility(ies) minus contaminants or Residue Disposed.
- The amount of Green Waste and Organic Materials Diverted to other end uses minus contaminants or Residue Disposed.

Should the CITY's membership in the RWMA discontinue at any time during the term of the Agreement, CONTRACTOR shall comply with changes to the reporting requirements as directed by the CITY.

3. **Disposal and Diversion Data Solely Attributable to CITY.** In addition to reporting on a region-wide basis, CONTRACTOR shall also report to the CITY on a calendar quarter basis, the disposal data and the types and amounts of diversion as provided in Article 6.7 of this Agreement that are solely attributable to the CITY.
  4. **Public Education and Information Activities.** CONTRACTOR shall report on all public education and information activities undertaken during the period, including distribution of printed materials, ads, other notices, non-collection notification tags, community information and events, school visits, tours and other activities related to the provision of Collection Services. CONTRACTOR shall provide all programs and services set forth in this Agreement related to AB 341 and AB 1826 compliance, commencing immediately upon signing this Agreement, including required outreach and education, including development, printing and distribution of CITY-approved materials; documentation and reporting of outreach and education; offer of Recycling and Organic/Food Waste Services as required per AB 341 and AB 1826; and, documentation of Customers required to be offered services per AB 341 and AB 1826 and list of Customers in compliance (including Customer name, weekly yards of MSW service and weekly yards of Recycling and/or organics/food waste services); all as more fully described elsewhere in this Agreement.
  5. **Customer Base Data.** CONTRACTOR shall provide customer base data consisting of the number of SFD, MFD, and Commercial Service Units and C&D Services billed and CITY Collection Services provided including service type, Container size, number of Containers, and frequency of Collection.
- B. Annual Account Data Report.** annual account data report to the CITY shall include the number of SFD, MFD, Commercial and CITY Service Units, Bulky Item Collection Service and C&D Debris Collection Service accounts serviced with the number of Solid Waste, Recycling, Green Waste and Organic Materials Carts, Bins, Compactors and Drop Box Containers serviced for each category.
- C. Additional Reporting.** The CONTRACTOR shall furnish the CITY with any additional reports as may reasonably be requested by CITY regarding CONTRACTOR'S operations hereunder, such reports to be prepared within a reasonable time following the reporting period.

**8.10 AB 341 AND AB 1826 COMPLIANCE**

CONTRACTOR shall identify those MFD and Commercial Customers who appear based on subscribed-for container volume to be required to comply with AB 341, AB 1826, or other Applicable Laws, but who have not subscribed Recyclable Materials or Organic Materials Collection service. An updated list of such Customers shall be included in CONTRACTOR's quarterly reports to CITY. CONTRACTOR shall prioritize such Customers for outreach to inform them of their compliance obligation and encourage them to subscribe for service. CONTRACTOR shall provide CITY with such information as CITY may reasonably request regarding CONTRACTOR's operations in order for COUNTY to prepare any report required under such statutes.

**8.11 RIGHT TO AUDIT**

The CITY reserves the right to conduct audits of CONTRACTOR'S payments, operations and financial records. The CONTRACTOR shall cooperate with the CITY in connection therewith, including permitting CITY employees or agents, designated by the Contract Administrator, to ride in the Collection vehicles subject to the provision of an appropriate waiver, to inspect records consistent with the terms of this Agreement and to review and inspect all other information and facilities necessary to conduct the audits. The CONTRACTOR shall have no responsibility or liability for the salary, wages, benefits or worker compensation claims of any Person designated by the Contract Administrator to conduct such audits. The scope of the audit, and auditing party, will be determined by CITY and the scope may include, but is not limited to, Customer Service Levels and billing, tonnage, and verification of diversion rate.

If inaccuracies in CONTRACTOR's payments to CITY are found, CITY may expand the scope of the audit and recover from the CONTRACTOR any additional audit costs resulting from the expanded scope.

**ARTICLE 9: FRANCHISE FEES**

**9.1 FRANCHISE FEE**

The exclusive franchise granted to CONTRACTOR by this Agreement is a special privilege to use public streets and rights-of-way to provide Collection Services within the municipal limits of the City of Yuba City. In consideration of the grant of such exclusive franchise, CONTRACTOR shall pay CITY a franchise fee. The franchise fee shall be a percentage of CONTRACTOR'S Gross Billings billed each month under the terms of this Agreement. For purposes of calculating franchise fees, Gross Billings shall specifically include revenue billed by the CONTRACTOR for the provision of Collection Services by the CONTRACTOR. However, revenue received by the CONTRACTOR from the sale of recyclable materials and from related California Redemption Value (CRV) payments shall not be considered as Gross Billings for purpose of the calculation of franchise fees. The franchise fee percentage shall be thirteen and thirty-eight one-hundredths percent (13.38%) unless otherwise adjusted by the CITY. The CITY and CONTRACTOR believe that the franchise fee bears a reasonable relationship to the value of the exclusive franchise granted to CONTRACTOR by this Agreement, taking into account the scope of the franchise, the geographic size of the City of Yuba City, and the number of rate payers within the municipal limits of the City of Yuba City.

**9.2 CONTRACTOR'S PAYMENTS TO CITY**

CONTRACTOR shall make payment to the CITY of the fee set forth in Article 9.1. Payment to the CITY shall be due quarterly on the twentieth (20<sup>th</sup>) day of the month following each three-month period (quarter) during which revenues are billed. Each such payment shall be accompanied by an accounting that sets forth CONTRACTOR'S Gross Billings during the preceding quarter. In the event CONTRACTOR begins invoicing



Customers for Residential Collection Services on a monthly basis, fee payments shall be due on the twentieth (20<sup>th</sup>) day of the month following the month the revenues are billed. CONTRACTOR shall conduct regular billing audits not less than annually, of all Commercial Customers, SFD and MFD in order to ensure the accuracy of the CONTRACTOR'S payments to the CITY. CONTRACTOR shall provide a copy of said audit upon request to the CITY. The CITY maintains the right to engage a third party for an independent audit of the results of the Gross Billing audit.

- A. **CITY Fee Audit.** No acceptance by CITY of any payment shall be construed as an accord that the amount is the correct amount, nor shall such acceptance of payment be construed as a release of any claim CITY may have against CONTRACTOR for any additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to independent audit and recompilation by CITY. If, after an audit, such recompilation indicates an underpayment, CONTRACTOR shall pay to CITY the amount of the underpayment plus interest at the Wall Street Journal Prime Rate. If the underpayment is in excess of five (5) percent of the total fees due for the period of the audit, the CONTRACTOR shall reimburse CITY for all reasonable costs and expenses incurred in connection with the audit and recompilation within ten (10) Residential Service Work Days of receipt of written notice from CITY that such is the case. If, after an audit, such recompilation indicates an overpayment, CITY shall notify the CONTRACTOR in writing of the amount of the overpayment. CONTRACTOR may offset the amounts next due following receipt of such notice by the amount specified herein.

### **9.3 FREE (NON-CITY SERVICE) SERVICES**

CONTRACTOR shall document any free services provided (e.g., to employees) and provide payment to the CITY of any franchise fees that would have been collected on those accounts.

### **9.4 CHANGES IN FEES**

In the event that the CITY changes the percentage or amount of the franchise fee, or imposes a new CITY fee, CITY shall adjust the Maximum Service Rates to pass through any such changes in fees prior to the time that the new fee becomes effective.

### **9.5 RWMA SURCHARGE FEES**

CITY shall be solely responsible for any surcharge or other fees payable to the RWMA and for otherwise discharging CITY's obligations as a member of the RWMA. CONTRACTOR shall calculate and pay the RWMA surcharge fee by deducting said fee from the franchise fee funds otherwise payable to the CITY. Under no circumstances shall CONTRACTOR be required to pay the RWMA surcharge fee from its own funds. If in any period the franchise fee funds are not sufficient to pay the RWMA surcharge fee in full, the CITY shall pay the RWMA the difference. CITY shall indemnify, defend (with counsel reasonably acceptable to CONTRACTOR) and hold harmless CONTRACTOR from and against any and all claims, demands, damages, liabilities, costs and expenses (including but not limited to reasonable attorneys' fees and costs) arising out of CITY's performance of or failure to perform its obligations under the RWMA Joint Powers Agreement or otherwise as a member of the RWMA. However, the CITY shall not indemnify, defend and hold harmless CONTRACTOR arising from its negligent calculation and payment of the RWMA surcharge fee on behalf of the CITY.

## **ARTICLE 10: CONTRACTOR COMPENSATION AND MAXIMUM SERVICE RATES**

### **10.1 CONTRACTOR COMPENSATION**

The Maximum Service Rates set forth in Exhibit 1, as more fully defined as CONTRACTOR Compensation in this Article, shall be the maximum amount that CONTRACTOR may charge Customers, as full, entire and complete compensation due pursuant to this Agreement for all labor, equipment, materials and supplies, fees due to CITY, taxes, insurance, bonds, letters of credit, overhead, disposal, transfer, processing, profit and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed. CONTRACTOR shall impose no other charges for services provided under this Agreement to Customers unless approved in advance in writing by CITY.

### **10.2 INITIAL SERVICE RATES**

The Service Rates the CONTRACTOR may charge Customers through the Rate Year ending September 30, 2019 shall not exceed the Maximum Service Rates set forth as Exhibit 1.

### **10.3 SCHEDULE OF FUTURE ADJUSTMENTS**

Beginning with the Rate Year starting October 1, 2020 and ending on September 30, 2021 and for all subsequent Rate Years, the Maximum Service Rates shown in Exhibit 1 may be adjusted upon request as described in Article 10.5. The CONTRACTOR shall submit its request in writing directly to CITY staff or via certified mail, on or before May 31, 2020 and each succeeding Rate Year, which request shall be based on the method of adjustment described in Article 10.5. All future CPI adjustments will become effective October 1. Failure to submit a written request by May 31 of each Rate Year shall result in CONTRACTOR waiving the right to an increase for the subsequent Rate Year (i.e. the Rate Year starting in the same calendar year as the missed May 31 submittal deadline). Missed rate adjustments may not be added to rate adjustment applications in ensuing Rate Years. Notwithstanding CONTRACTOR'S failure to submit a timely rate adjustment request, the CITY may approve a decrease in Service Rates for any Rate Year if the rate adjustment calculation described in this Article would result in a rate decrease.

### **10.4 METHOD OF FUTURE ADJUSTMENTS**

If timely requested pursuant to Article 10.4, CONTRACTOR may request an adjustment to the Maximum Service Rates according to the method described below, subject to review and approval of the CITY. Rate adjustments shall be based on changes to the Consumer Price Index (CPI) for all urban consumers, CUURS49BSA0, not seasonally adjusted, all items index—San Francisco-Oakland-Hayward, CA as published by the Bureau of Labor Statistics (BLS). The percent changes in the CPI shall be computed using the current and prior year April values for this index. If this index is discontinued, it will be replaced by the index that most closely approximates the discontinued index, which index shall be approved by the CONTRACT ADMINISTRATOR.

CONTRACTOR shall submit its application for a CPI adjustment under this section. Except as provided in Articles 5.5, 9.4, and 10.5, the CPI adjustment under this section shall be the sole basis for regular adjustments to approved rates. The annual CPI adjustment to rates shall never be less than 0 percent or greater than 3.0% Any percentage amount calculated which is lower or higher than these thresholds shall be carried forward and included in future rate adjustments; provided, however, that the total amount of any future adjustment remain within the above range.

The following table provides example calculations for the adjustment of the unit rate for a 3 cubic yard bin collected once per week, denoted as 3-1-1, at the end of the first, second and third years of the agreement.

		End of First Year Rate Adjustment	End of Second Year Rate Adjustment	End of Third Year Rate Adjustment
A	Beginning of Year Index	100	102	106
B	End of Year Index	102	106	107
C	Percent Change in Index (B/A)-1X100	2.00%	3.92%	0.94%
D	Prior Year Carried Forward Percent (From Row H)	0.00%	<b>0.00%</b>	0.92%
E	Total Percent Adjustment (C +D)	2.00%	3.92%	1.86%
F	Allowed Percent Range Change	0.0% to 3.0%	0.0% to 3.0%	0.0% to 3.0%
G	Allowed Percent Change If E between 0% and 3% then E, Else if E < 0% then 0%, Else if E >3% then 3%.	2.00%	3.00%	1.86%
H	Carried Forward Percent (Amount of E <0.0% or > 3.0%)	0.00%	0.92%	0.00%
I	Beginning Year Maximum Service Rate for 3-1-1	\$242.84	\$247.70	\$255.13
	New Maximum Service Rate for 3-1-1 (I X (1+ G))	\$247.70	\$255.13	\$259.89

### 10.5 EXTRAORDINARY RATE ADJUSTMENTS

It is understood that the CONTRACTOR accepts the risk for ordinary-course changes in the cost of providing services and the Service Levels requested by Customers and therefore the extraordinary adjustments to Maximum Service Rates shall be limited to:

- A. A Change in Law that increases or decreases CONTRACTOR’s costs or revenues associated with providing Collection of Discarded Materials under the terms of this Agreement. Such costs, except for those fees set forth in items B. – D. below, shall not include costs of owning or operating any Approved Facility, regardless of its location, or costs relating to the closed Recology Yuba-Sutter landfill in Marysville; or
- B. A change to the business license fee (“host fee”) payable by CONTRACTOR to the City of Marysville for each ton of Solid Waste delivered to the Marysville Transfer Station, or a change to the host fee payable by the Ostrom Road Landfill operator to the County of Yuba for each ton of Solid Waste delivered to the Ostrom Road Landfill; or
- C. The addition of a new fee, deletion of an old fee or increase or decrease in a then-existing fee, payable to an RWMA Member Agency, or to the RWMA by an RWMA Member Agency; or
- D. The addition of a new fee, deletion of an old fee, or increase or decrease in a then-existing fee, payable to any governmental authority, that is either paid directly by CONTRACTOR, or that is paid by

an Approved Facility or third party and passed through to CONTRACTOR, but excluding any fees relating to the closed Recology Yuba-Sutter landfill in Marysville.

If any event set forth in items A. – D. of this Section 10.5 occurs or is reasonably expected to occur, either Party may request an extraordinary adjustment to the Maximum Service Rates in excess of the annual adjustment described in Section 10.4 in order to cover the change in CONTRACTOR's costs and/or revenues resulting from the event.

CONTRACTOR shall prepare a proposal for the extraordinary rate increase. Such submittal shall provide all information reasonably requested by Contract Administrator specific to the nature of the request being made. If CONTRACTOR initiates the request for the extraordinary rate adjustment, CONTRACTOR shall pay all reasonable third party costs incurred by CITY, including the costs of outside accountants, attorneys, and/or consultants, in order to make a determination of the reasonableness of the requested extraordinary rate adjustment. If the adjustment is granted, such costs, exceeding twenty-five thousand dollars (\$25,000) in total for all Participating Member Agencies shall be recoverable on a pass-through basis as part of the increase (amortized as necessary over the remaining Agreement term at the time of the adjustment so that there is no windfall to CONTRACTOR). The proposal shall clearly document the reason for the proposed adjustment, include calculation of the proposed rate adjustments, and provide supporting documentation.

In the event CONTRACTOR initiates the request for extraordinary rate increase, it is understood that the CONTRACTOR shall have the burden of demonstrating to the reasonable satisfaction of the CITY that the request is justified (i.e. that an event set forth in items A. – D. above has or will increase CONTRACTOR's reasonable and necessary costs (or decrease revenues) of performing Collection Services under this Agreement).

The Contract Administrator shall have the right to request any other information that they, in their sole but 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 Contract Administrator may result in either the denial of or a delay in the approval of the request for an extraordinary rate increase.

## **10.6 SUBMITTAL OF REQUEST**

A request for an extraordinary rate adjustment shall be conducted as provided in this section. CONTRACTOR is obligated to meet requirements of this section whether the process is CITY-initiated or CONTRACTOR-initiated.

A. The Party initiating an extraordinary rate adjustment shall provide notice to the other Party, citing the applicable provisions of this Article and providing a complete written summary of the reason for the extraordinary rate adjustment, and its impact on CONTRACTOR's Collection obligations and revenues.

B. If a notice of extraordinary rate adjustment is issued by the CITY, within thirty (30) calendar days of receiving the CITY's notice, the CONTRACTOR shall prepare and submit a proposal in accordance with the proposal format specified in Section 10.6.D

C. If a notice of extraordinary adjustment is issued to CITY by the CONTRACTOR, the CONTRACTOR's notice shall include a proposal in accordance with the proposal format specified in Section 10.7.D, and shall be submitted by the April 1 preceding the October 1 on which CONTRACTOR

wishes the adjustment to occur. In the event the proposal is not submitted in a timely manner as required in this section, CITY is under no obligation to consider the proposal and may request that CONTRACTOR resubmit the proposal for consideration in the next Agreement Year.

- D. For any proposal submitted under this section, CONTRACTOR shall to the extent applicable:
1. Describe the circumstance warranting an extraordinary rate adjustment. If CONTRACTOR is responding to a CITY request for an adjustment, the description shall be based on the information provided by CITY under Section 10.6.A above.
  2. Submit a work plan for implementing a change in CONTRACTOR's Collection obligations including to the extent appropriate, changes in operating methods and labor needs, and implementation schedule.
  3. Identify the capital and/or operating cost of modifying the CONTRACTOR's Collection obligations to support any requested change in Maximum Service Rates. The CONTRACTOR shall include detailed documentation supporting its cost proposal, including cost substantiation.
  4. For the purposes of analyzing cost impacts of changes in scope, the CONTRACTOR's profit from operations shall be calculated using profit percentage of twelve and three-tenths percent (12.3%) multiplied by the actual reasonable and necessary costs net of government fees.
  5. Provide draft language changes to the provisions of this Agreement, as CONTRACTOR deems appropriate and necessary to effect any change in Maximum Service Rates or CONTRACTOR's Collection obligations.
- E. The Party that initiated the extraordinary rate adjustment may withdraw its notice and its request for the extraordinary rate adjustment at any time.
- F. After CONTRACTOR's submission of the information provided above, on or before April 1, each Party shall use best efforts to complete its evaluation of the request and, if the request is granted, approval of any associated Agreement amendments and adjustments to the Maximum Service Rates, by October 1.

#### **10.7 CITY REVIEW**

The initiator of the request for an extraordinary rate adjustment shall bear the burden of justifying by substantial evidence its entitlement to any adjustment in Maximum Service Rates under Section 10.5. If CONTRACTOR submits a proposal for an extraordinary rate adjustment, CITY shall review the proposal provided by CONTRACTOR in accordance with Section 10.6 as well as any other information it deems necessary to determine, what, if any adjustment is justified. Once all of the requested information has been received and reviewed CITY shall determine if CONTRACTOR has demonstrated that the extraordinary rate adjustment is justified to the reasonable satisfaction of CITY. In the event CITY determines that an extraordinary rate adjustment is justified, it shall not unreasonably withhold consent to such extraordinary rate adjustment.

## **ARTICLE 11: INDEMNIFICATION, INSURANCE AND PERFORMANCE BOND**

### **11.1 INDEMNIFICATION OF THE CITY**

- A. GENERAL.** CONTRACTOR shall defend, with counsel reasonably acceptable to the CITY, indemnify and hold harmless, to the fullest extent allowed by law, CITY, its officers, officials, employees, volunteers, agents and assignees (collectively, "Indemnitees"), from and against any and all causes of action, claims, costs (including but not limited to reasonable attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or enforcing this indemnity which fees and costs shall be reasonable if incurred by CITY and reimbursed by CONTRACTOR), loss, damages (including but not limited to special and consequential damages), liability, penalties (including attorneys' fees for the adverse party), forfeitures, demands, proceedings or suits, in law or in equity, of every kind and description (including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) arising out of or in any way connected with the performance of this Agreement by CITY, its agents, directors or employees, or by CONTRACTOR, its agents, directors or employees, whether such claims, liens, demands, damages, losses or expenses are based upon a contract or upon a claim for personal injury, death or property damage or upon any other legal or equitable theory whatsoever to include without limitation, claims arising or resulting from or made by third parties alleging: (i) the negligence or willful misconduct of the CONTRACTOR, its agents, employees and/or Subcontractors, in exercising the privileges granted to it by this Agreement; (ii) the failure of the CONTRACTOR, its agents, employees and/or Subcontractors in the performance of this Agreement to comply in all respects with the provisions and requirements of this Agreement, applicable laws, ordinances and regulations, and/or applicable permits and licenses; (iii) the acts of CONTRACTOR, its agents, employees and/or Subcontractors in performing services under this Agreement for which strict liability is imposed by law; and, (iv) claims that arise out of or result from the performance of this Agreement by the CITY, its agents, directors or employees or CONTRACTOR, its agents, directors or employees, whether such claims, liens, demands, damages or losses or expenses are based upon a contract or upon a claim for personal injury, death or property damage or upon any other legal or equitable theory, whatsoever. Notwithstanding this defense obligation, CONTRACTOR shall not be required to indemnify CITY from loss or liability to the extent such loss arises from the sole negligence or willful misconduct of the CITY, its agents, directors and employees, at such time that such sole negligence or willful misconduct has been finally determined by a court of competent jurisdiction. CONTRACTOR shall provide the CITY with a defense until such determination has been made (i.e., until a court of competent jurisdiction has determined that the loss or liability arises from the sole negligence or willful misconduct of CITY, CONTRACTOR shall provide a defense as to such loss or liability).
- B. CALRECYCLE Indemnification.** In addition, CONTRACTOR'S duty to defend and indemnify herein includes payment of all fines and/or penalties imposed by CalRecycle (subject to the restrictions set forth in Public Resources Code Section 40059.1) resulting from CITY/COUNTY'S failure to meet the requirements of AB 939, AB 341 and/or AB 1826 with respect to the waste stream Collected under this Agreement, where 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 or RWMA from submitting reports required by AB 939, AB 341 and/or AB 1826 in a timely manner. The provisions of this section shall survive the termination or expiration of this Agreement.

- C. **Exempt 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 Exempt Waste except in strict compliance with all Applicable Laws.

In the event that CONTRACTOR negligently or willfully mishandles Exempt 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, however, CONTRACTOR shall first obtain the Contract Administrator's approval of any proposed investigatory or remedial action. Should CONTRACTOR fail at any time to promptly take such action, the CITY may undertake such action at CONTRACTOR'S sole cost and expense, and CONTRACTOR shall reimburse the 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 this Agreement. These obligations are in addition to any defense and indemnity obligations that CONTRACTOR may have under this Agreement. The provisions of this Article shall survive the termination or expiration of this Agreement.

Notwithstanding the foregoing, CONTRACTOR'S duties under this subsection shall not extend to any claims arising from the Disposal of Solid Waste at the Approved 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 or CONTRACTOR owns or operates the Approved Disposal Facility.

- D. **Environmental Indemnity.** CONTRACTOR shall defend, indemnify, and hold the 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 Exempt Waste.
- E. **Related to Propositions 218 and 26.** Should there be a change in Applicable 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 and Proposition 26), which impacts the CITY'S ability to set or change Rates for the Collection services established in accordance with this Agreement, CONTRACTOR agrees to meet and confer with the CITY to discuss the impact of such change in Applicable Law or new judicial interpretation on either Party's ability to perform under this Agreement.

The CITY shall not be in default of this Agreement, if it is determined by a court of competent jurisdiction, that CITY lacks the authority to set Rates or increase Rates for charges related to providing Collection services under this Agreement. Should a court of competent jurisdiction determine that the CONTRACTOR cannot charge and/or increase its Rates to cover any amounts incorporated into the Rates under this Agreement, CONTRACTOR shall reduce (and/or not increase) the Rates it charges Customers correspondingly, and shall be relieved from the obligation to pay such amounts, providing said amounts 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. If the amounts disallowed by the court are related to the cost of providing service hereunder, then CONTRACTOR's obligations hereunder shall be reduced so that they are commensurate with the rates that CONTRACTOR can legally charge. In such case, CONTRACTOR shall present a written proposal to provide such modified

services. The CITY and CONTRACTOR may 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.

Nothing herein is intended to imply that California Constitution, Articles XIIC or XIID, 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., Article 11.1 A - E) will survive the expiration or earlier termination of this Agreement and shall not be construed as a waiver of rights by the CITY or Indemnity from third parties.

## **11.2 EVALUATION OF LIABILITY**

The CONTRACTOR'S obligation to defend, hold harmless, and indemnify under Article 11 shall not be excused because of the CONTRACTOR'S inability to evaluate an Indemnitee's liability or because the CONTRACTOR evaluates such liability and determines that the Indemnitee is not liable to the claimant. Within twenty (20) days of receiving written notice from the CITY of a claim for which the CITY is entitled to indemnity, the CONTRACTOR shall confirm to the CITY in writing that CONTRACTOR will provide a defense to the claim and shall take appropriate actions to provide such defense.

## **11.3 HAZARDOUS SUBSTANCES INDEMNIFICATION**

The CONTRACTOR shall indemnify, defend with counsel acceptable to the CITY, and hold harmless the CITY, its officers, officials, employees, agents, assigns and any successor or successors to the CITY'S interest from and against all claims, damages (including but not limited to special, consequential and natural resources damages) injuries, hazardous materials response, remediation and removal costs, losses, demands, liens, liabilities, causes of action, suits (including citizen's suits), legal or administrative proceedings, interest, fines, charges, penalties (including attorneys' fees for the adverse party), and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against CITY or its officers, officials, employees, agents, assigns, or contractors arising or resulting from any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning: (i) any Hazardous Substance or hazardous wastes at any facility owned or operated by CONTRACTOR or an Affiliate of CONTRACTOR where CONTRACTOR transports, stores, or causes to be disposed Solid Waste pursuant to this Agreement; (ii) CONTRACTOR'S discharge of a pollutant in violation of the State Porter-Cologne Water Quality Act or federal Clean Water Act; (iii) CONTRACTOR'S violation of any State or federal air quality rule, law or regulation; (iv) CONTRACTOR'S violation of any other State or federal environmental law, including the Resource Conservation and Recovery Act or its State law corollary; or (v) CONTRACTOR'S discharge of any Hazardous Substance or Hazardous Waste that causes injury to Person(s) or property(ies), in each of clauses (ii) through (v), during the Term of this Agreement and subject to Article 11. The foregoing indemnity is intended to operate as an agreement to indemnify, defend, insure, protect and hold CITY harmless from liability, pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, and other applicable State and federal Environmental Laws.

## **11.4 SEPARATE COUNSEL**

CITY may elect to have and consult separate legal counsel from CONTRACTOR at any time during the pendency of any claim at its sole discretion. CITY shall be responsible for paying its separate counsel unless: (i) CITY reasonably determines and notifies CONTRACTOR that separate counsel is required to represent CITY during



the resolution of any claim; or (ii) a court of competent jurisdiction rules that CONTRACTOR has refused to satisfy its obligations under this Article 11. Notwithstanding the preceding sentence or the first sentence of Article 11.1, with respect to a particular claim, if CONTRACTOR confirms to CITY in writing CONTRACTOR'S obligation to indemnify and defend CITY, without reserving a right to later seek reimbursement from CITY with respect to such claim, CITY shall not object to the counsel representing it being the same counsel that represents CONTRACTOR in the defense of such claim and shall, if permitted by law, provide such written conflict-of-interest waiver as may be required for such joint representation. If CONTRACTOR provides the aforementioned confirmation, but the CITY declines to consent to such joint representation, CITY may retain its own counsel at its own expense, CITY shall have no right of defense or reimbursement of defense costs with respect to such claim (but CITY shall still be entitled to indemnity), CITY shall reasonably cooperate with CONTRACTOR in the defense and settlement of such claim. If CONTRACTOR does not provide the aforementioned confirmation, or if CONTRACTOR provides such confirmation and CITY is prohibited by law from providing such waiver, then CONTRACTOR shall reimburse CITY for the reasonable attorneys' fees and costs of CITY'S separate counsel with respect to such claim.

#### **11.5 CONSIDERATION**

It is specifically understood and agreed that the consideration inuring to the CONTRACTOR for the execution of this Agreement consists of the promises, payments, covenants, rights and responsibilities contained in this Agreement.

#### **11.6 OBLIGATION**

The execution of this Agreement by the CONTRACTOR shall obligate the CONTRACTOR to comply with the foregoing indemnification provisions; however, the collateral obligation of providing insurance must also be fully complied with as set forth in Article 11.11 below.

#### **11.7 SUBCONTRACTORS**

The CONTRACTOR shall require all Subcontractors performing Collection Services under the terms of this Agreement to enter into an agreement containing the provisions set forth in this Article 11 in their entirety and Subcontractor shall fully indemnify the CITY in accordance with this Agreement. Such agreement, however, will not relieve CONTRACTOR of its obligations under this Article 11, unless CITY expressly agrees in writing to so relieve CONTRACTOR.

#### **11.8 EXCEPTION**

Notwithstanding any other provision of this Article 11, CONTRACTOR'S obligation to indemnify, hold harmless and defend under this Article 11 does not extend to any loss, liability, penalty, damage, cause of action, suit, forfeiture, claim, demand, proceeding, injury, cost, lien, interest, fine, charge or expense (i) as to which CONTRACTOR is precluded by law from indemnifying the Indemnitee, (ii) which arose or resulted from the sole negligence or willful misconduct of any Indemnitee; (iii) pertaining to any Indemnitee's actual or alleged violation of Article XIII C or XI D of the California Constitution; or (iv) pertaining to the process by which CONTRACTOR was selected, the exclusive franchise hereunder was granted, or this Agreement was entered into or approved by CITY, or CITY'S authority to do any of the same.

#### **11.9 DAMAGE BY CONTRACTOR**

If CONTRACTOR'S employees or Subcontractors cause any injury, damage or loss to CITY property, including but not limited to CITY streets or curbs, other than normal wear and tear from routine operations and as set forth in Article 5, CONTRACTOR shall reimburse CITY for CITY'S cost of repairing such injury, damage or loss.

Such reimbursement is not in derogation of any right of CITY to be indemnified by CONTRACTOR for any such injury, damage or loss. With the prior written approval of CITY, CONTRACTOR may repair the damage at CONTRACTOR'S sole cost and expense.

#### **11.10 SURVIVAL**

CONTRACTOR'S indemnity obligations shall survive the expiration or termination of this Agreement and continue until such obligations have been fully satisfied by the resolution of all claims for which indemnity obligations are owed to the CITY.

#### **11.11 INSURANCE**

- A. General.** CONTRACTOR shall, at its sole cost and expense, procure, maintain and keep in full force and effect during the life of this Agreement commercial general liability insurance in an amount not less than One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000.00) for each occurrence, including damage to rented Premises, personal and advertising ("ADV") injury, with a general aggregate and Products/Completed Operations Aggregates ("Comp/OP AGG") liability coverage of not less than Two Million Dollars (\$2,000,000.00). CONTRACTOR'S self-insured retention for commercial general liability shall be no more than Seven Hundred and Fifty Thousand Dollars (\$750,000.00). CONTRACTOR shall procure, maintain and keep in full force and effect during the life of this Agreement, automobile liability insurance for owned, leased, hired or borrowed automobiles in an amount not less than One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000.00) combined single limit bodily injury and property damage for each accident. CONTRACTOR'S self-insured retention for automobile liability shall be no more than Seven Hundred and Fifty Thousand Dollars (\$750,000.00). CONTRACTOR shall provide and maintain the required MCS-90 endorsement to the automobile liability policy for hazardous material/waste transporters. CONTRACTOR shall procure, maintain and keep in full force and effect during the life of this Agreement an umbrella and/or excess policies that covers general liability and automobile liability in an amount not less than Thirty Million Dollars (\$30,000,000.00). CONTRACTOR shall procure, maintain and keep in full force and effect during the life of this Agreement workers' compensation coverage in an amount not less than the State statutory limits and employers' liability insurance in an amount not less than One Million Dollars (\$1,000,000.00), both subject to no more than One Million Dollars (\$1,000,000.00) self-insured retention. CONTRACTOR shall procure, maintain and keep in full force and effect during the life of this Agreement Pollution and Remediation Legal Liability insurance in an amount not less than Fifteen Million (\$15,000,000.00), with a self-insured retention of no more than Two Hundred and Fifty Thousand Dollars (\$250,000.00). Said Pollution and Remediation Legal Liability insurance shall be on a claims-made form and shall be retroactive to the date CONTRACTOR first began providing services in CITY as the exclusive franchisee for solid waste collection services. Said Pollution and Remediation Legal Liability insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of this Agreement. If pollution liability insurance coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the contract effective date, the CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years after completion of this Agreement. CONTRACTOR shall procure, maintain and keep in full force and effect during the life of this Agreement any other insurance required by law. The limits of insurance herein shall not limit the liability of CONTRACTOR.
- B. Policy(ies).** The policy or policies shall be issued by an insurer licensed to do business in the State of California. Minimum insurance company ratings as determined by the most current

edition of the Best's Key Rating Guide/Property-casualty/United States should be A- (Secure Best's Rating) and VIII (Financial Size Category).

- C. **Self-Insurance.** For the self-insured layers, upon request by CITY, CONTRACTOR shall provide an annual statement to CITY advising that CONTRACTOR has sufficient assets to fund its workers' compensation, general liability, automobile liability and Pollution and Remediation Legal Liability cost obligations for the past three years and that sufficient assets are available to fund no less than 65% confidence level actuarially estimated workers' compensation, general liability, automobile liability and Pollution and Remediation Legal Liability loss costs for the next 12 months. Said annual statement shall be accompanied by statistical information to illustrate the accuracy of the comments and shall be prepared by a Fellow of the Actuarial Society.
- D. **Additional Requirements.** The type and amount of coverage, including the amount of the self insured retentions, required hereunder may be amended in the future to limits reasonably required by the CITY (such amendment to be considered a City-Directed Change and handled pursuant to Article 5.5). CONTRACTOR shall provide the CITY an endorsement to its insurance policies specifically naming the CITY, its officers, officials, agents, independent contractors, employees and volunteers as additional insureds under the commercial general liability and automobile liability policies, providing coverage for claims that arise out of the work or operations performed by or on behalf of CONTRACTOR or that in any way concerns this Collection Service Agreement and include coverage for the additional insureds for both ongoing and completed operations so long as the liability of an additional insured arises out of the work of the named insured, or so long as an additional insured's liability arises out of the named insured's performance of this Agreement. CONTRACTOR shall not utilize an omnibus endorsement, but shall provide an endorsement that specifically names CITY, its officers, officials, agents, independent contractors, employees and volunteers as additional insureds under the policy. The additional insured endorsement shall not be an omnibus endorsement, but shall specifically and directly name each additional insured. Such additional insured endorsement will explicitly include coverage for the additional insureds for both ongoing and completed operations so long as the liability of an additional insured arises out of the work of the named insured, or so long as an additional insured's liability arises out of the named insured's performance of this Agreement. The additional insured endorsement shall not contain any provisions which limit or restrict coverage for the additional insureds beyond the extent set forth in this Agreement. The coverage provided to the CITY shall be equal and identical to the coverage of the CONTRACTOR under "Proof of Insurance." Upon commencement of the Agreement, the CITY shall receive, at a minimum, the declarations page and additional insured endorsements. Upon request of the CITY, CONTRACTOR shall provide a certified copy of the entire policy.

Furthermore, the commercial general liability policy will contain a separation of insureds provision specifying that the policy will apply separately to CITY and each additional insured against whom claim is made or suit is brought. Upon request from CITY, CONTRACTOR shall provide CITY a copy of all policies of insurance (including all endorsements) within ten (10) Business days following receipt of a written request from CITY for the same. The required insurance Policy Endorsement shall be filed by CONTRACTOR with the CITY Clerk prior to the commencement of CONTRACTOR'S operations under this Agreement, which Endorsement shall reflect the coverage as set forth herein. Following the binding of any policy of insurance, CONTRACTOR shall deliver a new Policy Endorsement from the insurance company to the CITY Clerk. The general liability, Pollution and Remediation Legal Liability, excess liability, umbrella liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insureds.** The CITY, its officers, officials, employees, agents, independent contractors, and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONTRACTOR; and 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 shall be provided in the form of an Additional Insured endorsement (CG 20 10 11 85 or reasonable equivalent) to CONTRACTOR'S insurance policy.
  2. **Primary Insurance.** For any claims related to this Agreement CONTRACTOR'S insurance coverage shall be primary insurance as respects the CITY, its officers, officials, agents, independent contractors, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or volunteers shall be excess of CONTRACTOR'S insurance and shall not contribute with it.
  3. **Notification of Cancellation.** CONTRACTOR is required to notify the CITY by certified mail, return receipt requested, of the cancellation of any insurance coverage or policy immediately upon receiving notice of cancellation.
  4. **Waiver of Any Rights of Subrogation or Recovery.** CONTRACTOR waives any right of subrogation or recovery against the CITY which might arise because of any workers' compensation payments CONTRACTOR makes for injury in connection with work performed by CONTRACTOR under this Agreement. The workers' compensation coverage placed in excess of the CONTRACTOR Retained Limit shall be endorsed with a Waiver of Subrogation endorsement.
- E. **Subcontractors.** Any Subcontractor(s), independent contractor(s) or any type of agent(s) performing or hired to perform any term or condition of this Agreement on behalf of CONTRACTOR, or as may be allowed by this Agreement, hereinafter referred to as "SECONDARY PARTIES," shall comply with each term and condition of this Agreement, including each term and condition of Article 11.11 entitled "INSURANCE." Furthermore, CONTRACTOR shall be responsible for the SECONDARY PARTIES' acts, omissions and satisfactory performance of the terms and conditions of this Agreement. All Subcontractors, independent contractors and agents to CONTRACTOR are disclosed on Exhibit 3, attached hereto.
- F. **Thirty Day Notice.** Except for the pollution liability policy, which is written on a claims-made basis, each insurance policy required by this clause shall be occurrence-based or an alternate form as approved by the CITY and endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been received by CITY.
- G. **Proof of Insurance.** Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the CITY.
- Office of the City Clerk  
City of Yuba City  
1201 Civic Center Blvd  
Yuba City CA, 95993
- H. **Modification of Insurance Requirements.** The insurance requirements provided in this Agreement may be modified or waived by the CITY, in writing, upon the request of CONTRACTOR if the CITY determines such modification or waiver is in the best interest of CITY considering all relevant factors, including exposure to CITY.

- I. **Rights of Subrogation.** All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against CITY with the express intention of the Parties being that the required insurance coverage protects both Parties as the primary coverage for any and all losses covered by the above-described insurance. CONTRACTOR shall ensure that any companies issuing insurance to cover the requirements contained in this Agreement agree that they shall have no recourse against CITY for payment or assessments in any form on any policy of insurance. The clauses 'Other Insurance Provisions' and 'Insured Duties in the Event of an Occurrence, Claim or Suit' as it appears in any policy of insurance in which CITY is named as an additional insured shall not apply to CITY.
- J. **Failure to Obtain Insurance.** The failure of CONTRACTOR to obtain and maintain any required insurance shall not relieve CONTRACTOR of any liability under this Agreement (and CONTRACTOR may be answerable to the CITY for damages or any other remedy on account of such breach) nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of CONTRACTOR concerning indemnification.
- K. **No Limitation of Liability.** The coverage types and limits required pursuant to this Agreement shall in no way limit the liability of CONTRACTOR.

**11.12 PERFORMANCE BOND**

Unless waived by CITY in writing, CONTRACTOR shall furnish to the CITY, and keep current, a performance bond in a form with language that is acceptable to the CITY, for the faithful performance of this Agreement and all obligations arising hereunder in an amount of equal to two (2) months Gross Billings from the provision of Collection Services within the CITY. In the event the performance bond is waived by the CITY and CONTRACTOR takes any action, or allows any action to be taken, which falls under the provisions of Article 13.10 entitled "ASSIGNMENT," waiver of the performance bond as set forth in Article 11.12 herein, is automatically and immediately rescinded and CONTRACTOR shall have ten (10) calendar days to obtain the performance bond required herein and provide proof of such performance bond to the CITY.

- A. **Requirements.** The performance bond shall be executed by a surety company that is: acceptable to the CITY; an admitted surety company licensed to do business in the State of California; has an "A:VII" or better rating by A.M. Best or Standard and Poor's; and included on the list of surety companies approved by the Treasurer of the United States.
- B. **Letter of Credit.** As an alternative to the performance bond discussed in Article 11.12, with CITY'S approval, CONTRACTOR may deposit with CITY an irrevocable letter of credit in an amount as set forth in Article 11.12. If allowed, the letter of credit must be issued by an FDIC insured banking institution chartered to do business in the State of California, in the CITY'S name, and be callable at the discretion of the CITY.

**ARTICLE 12: DEFAULT AND REMEDIES**

**12.1 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 Provide and Maintain Bonds/Letter of Credit and Coverage.** CONTRACTOR fails to provide or maintain the performance bond or letter of credit, if required by this Agreement, or if 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 unless and until the regulatory body or court determines CONTRACTOR violated such order or filing.
- 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 the CITY as required under this Agreement including payment of CITY fees or Liquidated Damages or refuses to provide the CITY with required information, reports, and/or records in a timely manner as provided for in the Agreement.
- H. **Acts or Omissions.** Any other act or omission by CONTRACTOR which violates the terms, conditions, or requirements of this Agreement, the Act, as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if CONTRACTOR cannot reasonably correct or remedy the breach within the time set forth in such notice, if CONTRACTOR should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.
- I. **False, Misleading, or Inaccurate Statements.** Any representation or disclosure made to the CITY by CONTRACTOR in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement; and, any CONTRACTOR-provided report containing a misstatement, misrepresentation, data manipulation, or an omission of fact or content explicitly defined by the Agreement, excepting non-numerical typographical and grammatical errors.
- J. **Seizure or Attachment.** There is a seizure of, attachment of, or levy on, some or all of CONTRACTOR'S operating equipment, including without limits its equipment, maintenance or office facilities, Approved Facility (ies), or any part thereof.
- K. **Suspension or Termination of Service.** There is any termination or suspension of the transaction of business by CONTRACTOR related to this Agreement, including without limit, due to labor unrest including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action lasting more than two (2) calendar days.

- L. **Criminal Activity.** CONTRACTOR, its officers, managers, or employees are found guilty of criminal activity related directly or indirectly to performance of this Agreement or any other agreement held with the CITY.
- M. **Assignment without Approval.** CONTRACTOR transfers or assigns this Agreement without the expressed written approval of the CITY unless the assignment is permitted without approval of the CITY pursuant to Article 13.10 of this Agreement.
- 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 Article 5.5.
- O. **Failure to Perform Any Obligation.** CONTRACTOR fails to perform any obligation established under this Agreement.

## 12.2 RIGHT TO TERMINATE UPON EVENT OF DEFAULT

CITY may terminate this Agreement immediately upon written notice to CONTRACTOR in the event CONTRACTOR defaults under Article 12.1.0 entitled, "Failure to Provide and Maintain Bonds/Letters of Credit and Coverage." CONTRACTOR shall be given ten (10) Business Days from written notification by the CITY to cure any default which, in the CITY'S sole opinion, creates a potential public health and safety threat. CONTRACTOR shall be given ten (10) Business Days from written notification by the CITY to cure any default arising under subsections E, F, I, J, and K in Article 12.1 provided, however, that the CITY shall not be obligated to provide CONTRACTOR with a notice and cure opportunity if the CONTRACTOR has committed the same or similar breach/default within a twenty-four (24) month period. CONTRACTOR shall be given thirty (30) calendar days from written notification by the CITY to cure any other default (which is not required to be cured within ten (10) Business Days); however, 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.

## 12.3 CITY'S REMEDIES IN THE EVENT OF DEFAULT

Upon CONTRACTOR'S default, the CITY has the following remedies in the event of CONTRACTOR default:

- A. **Waiver of Default.** The CITY may waive any event of default or may waive CONTRACTOR'S requirement to cure a default event if the 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.** The CITY may suspend CONTRACTOR'S performance of its obligations if CONTRACTOR fails to cure default in the time frame specified in Article 12.2 until such time the CONTRACTOR can provide assurance of performance in accordance with the terms of this Agreement.
- C. **Liquidated Damages.** The CITY may assess Liquidated Damages for CONTRACTOR'S failure to meet specific performance standards pursuant to Article 12.6.
- D. **Termination.** In the event that CONTRACTOR should default and subject to the right of the CONTRACTOR to cure, in the performance of any provisions of this Agreement, and the default is not cured for any default within ten (10) calendar days if the default creates a potential public health and safety threat or arises under Article 12.1. E, F, I, J, or K, or otherwise thirty (30) calendar days after receipt of written notice of default from the CITY, then the CITY may, at their option, terminate this Agreement and/or hold a hearing at its governing body meeting to determine whether this Agreement should be terminated. In the event CITY decides to terminate this Agreement, the CITY shall serve twenty (20) calendar days written notice of its

intention to terminate upon CONTRACTOR. In the event the CITY exercises its right to terminate this Agreement, the CITY may, at its option, upon such termination, either directly undertake performance of the services or arrange with other Persons to perform the services with or without a written agreement. This right of termination is in addition to any other rights of the CITY upon a failure of CONTRACTOR to perform its obligations under this Agreement.

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

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

#### **12.4 POSSESSION OF RECORDS UPON TERMINATION**

In the event of termination for an event of default, the CONTRACTOR shall furnish the Contract Administrator with immediate access to all of its business records, including without limitation, proprietary CONTRACTOR computer systems, related to its Customers, Collection routes, and billing of accounts for Collection services.

#### **12.5 CITY'S REMEDIES CUMULATIVE; SPECIFIC PERFORMANCE**

The CITY'S rights to terminate the Agreement under Article 12.3, and to take possession of the CONTRACTOR'S records under Article 12.4 are not exclusive, and the CITY'S termination of the Agreement and/or the imposition of Liquidated Damages shall not constitute an election of remedies. Instead, these rights shall be in addition to any and all other legal and equitable rights and remedies, including but not limited to termination, which the CITY may have.

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

#### **12.6 PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES**

- A. **General.** CONTRACTOR acknowledges and agrees that one of CITY'S primary goals in entering into this Agreement is to ensure that the provided Collection Services are of the highest quality; that Service Recipient satisfaction remains at the highest level; that maximum diversion levels are achieved in consideration of economic benefit; that fees for service remain competitive; and, that materials Collected are put to the highest and best use to the extent feasible.
- B. **Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties further acknowledge that consistent and reliable Collection Service is of utmost importance to CITY and that CITY has considered and relied on CONTRACTOR'S representations as to its quality of service commitment in entering into this Agreement with it. The Parties further 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 CITY'S 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. Therefore, without prejudice to CITY'S right to treat such non-performance as an event of default under Article 12, the Parties agree that the liquidated damages amount defined below represent reasonable estimates 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, Customers and the community as a whole that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their 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 the liquidated damage provisions at the time that this Agreement was made.

CITY Initial Here \_\_\_\_\_ CONTRACTOR Initial Here \_\_\_\_\_

**C. Procedure for Assessing Liquidated Damages.**

1. CITY may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representatives, investigation of Customer complaints or self-reporting by CONTRACTOR.
2. Prior to assessing liquidated damages, and within thirty (30) days of becoming aware of such violation, CITY shall give CONTRACTOR notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. CONTRACTOR may review, and make copies at its own expense of all information in the possession of CITY relating to incident(s)/non-performance. CONTRACTOR shall not be liable to pay liquidated damages with respect to any violation or incident of non-performance that occurs more than thirty (30) days before notice is given to CONTRACTOR except in those instances where CITY determines to its satisfaction that CONTRACTOR knowingly perpetrated the violation or incident of non-performance. CONTRACTOR may, within ten (10) working days after receiving notice, request a meeting with CITY to present evidence regarding the accuracy of the facts related to the incident. If a meeting is requested, it shall be held by the Contract Administrator or his/her designee. CONTRACTOR may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. The Contract Administrator or designee will provide CONTRACTOR with a written explanation of his or her determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of the Contract Administrator or designee may be appealed to the CITY. The decision of the CITY shall be final and CONTRACTOR shall have been deemed to have exhausted its administrative remedies and can thereafter challenge such ruling in court pursuant to California Code of Civil Procedure Section 1094.6. CONTRACTOR shall not be liable to pay liquidated damages with respect to any violation or incident of substandard performance as described in Article 12.7 entitled "Excuse from Performance" herein or occurring after termination of this Agreement or while CITY (or any third party authorized by CITY) is performing interim Collection Services except for items 3., 4., 5., 10., 12., or 17., in the tables below occurring after termination of this Agreement.
3. CONTRACTOR shall pay any Liquidated Damages assessed by the CITY within ten (10) Business Days of the date the Liquidated Damages are assessed. If they are not paid within the ten (10) Business Day period, CITY may proceed against the performance bond required by the Agreement, order the termination of the rights granted by this Agreement, or all of the above.

**D. CONTRACTOR agrees to pay (as Liquidated Damages and not as a penalty) the following amounts:**

LIQUIDATED DAMAGES		
Item		Amount
1.	Failure or neglect to resolve a Customer complaint relating to missed Collection within the time set forth in Article 8.7, or failure to initially respond to any other type of Customer complaint within one (1) Work Day.	\$100.00 per incident per Service Recipient.
2.	Failure to clean up spillage or litter caused by CONTRACTOR within the time set forth in Article 7.5.	\$300.00 per incident per location.
3.	Failure to repair damage to customer property caused by CONTRACTOR or its personnel.	\$500.00 per incident per location in addition to the reasonable cost of repair if not paid by CONTRACTOR prior to the assessment of this liquidated damage.
4.	Failure to repair, or reimburse CITY for, damage to CITY property, other than normal wear and tear from routine operations, caused by CONTRACTOR or its personnel, as provided in Article 11.9.	\$500.00 per incident in addition to the reasonable cost of repair if not paid by CONTRACTOR prior to the assessment of this liquidated damage.
5.	Failure to maintain or timely submit to CITY all quarterly and annual reports by the deadlines set forth in Article 8.9.	\$250.00 per incident per day for each day after the report(s) are due.
6.	Failure or neglect to complete at least ninety percent (90%) of a route within the CITY (i.e., collect at least 90% of properly set out Carts or Bins on the route) on the regular scheduled Collection Service day unless addressed in Article 12.7, Excuse for Performance, herein.	\$1,000.00 for each route not completed.
7.	Failure to notify Customers of changes in route days as required by Article 7.4.	\$50.00 per Customer per day to a maximum of \$1,000.00 per occurrence.
8.	Failure to repair or replace damaged Carts or Bins within the time required by Article 7.10.	\$100.00 per incident per day to a maximum of \$500.00 per occurrence.
9.	Failure to deliver or exchange Carts or Bins within the time required by Article 7.10.C.	\$100.00 per incident per day to a maximum of \$500.00 per occurrence.
10.	Failure to maintain or timely submit to CITY or CITY's designated agent all documents and reports required under the provisions of this Agreement.	\$250.00 per incident per day.
11.	Failure to display CONTRACTOR'S name and customer service phone number on Collection vehicles for a period exceeding thirty (30) calendar days.	\$100.00 per incident per day.

LIQUIDATED DAMAGES		
Item		Amount
12.	Failure to meet the minimum diversion requirements set forth in Article 6.7 (as may be amended pursuant to Article 5.5). (Calculated per Agreement Year.)	Shortfall of 0.001 to 2 percentage points: \$5,000.00 per Agreement Year. Shortfall of 2.001 to 4 percentage points: \$10,000.00 per Agreement Year. Shortfall of 4.001 or greater percentage points: \$15,000.00 per Agreement Year.
13.	Commingling Solid Waste with Recyclable Materials in Collection Vehicles.	\$1,000.00 per incident.
14.	Disposal of Recyclable Materials or Organic Materials in the Disposal Facility except as provided in this Agreement.	\$1,000.00 per load.
15.	Failure to deliver any Collected materials to the CITY approved Disposal Facility, Materials Recovery Facility, Transfer Station, or Organic Materials Processing Facility, as appropriate, except as otherwise expressly provided in this Agreement.	\$5,000.00 first failure \$25,000.00 each subsequent failure.
16.	Ceasing a program or part of a program for longer than thirty (30) days without written permission of the Contract Administrator, unless otherwise permitted under this Agreement.	\$1,000 per day beginning with the 31 <sup>st</sup> day.
17.	Failure to report non-CITY materials separately in the MRF diversion figures.	\$5,000 per incident

#### 12.7 EXCUSE FROM PERFORMANCE

The Parties shall be excused from performing their respective obligations hereunder and from any obligation to pay Liquidated Damages to the extent and for the period of time they are prevented from so performing by reason of floods, earthquakes, other acts of nature, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the Party claiming excuse from performance hereunder. In the case of labor unrest or job action directed at a third party over whom CONTRACTOR has no control, the inability of CONTRACTOR to provide services in accordance with this Agreement due to the unwillingness or failure of the third party to: (i) provide reasonable assurance of the safety of CONTRACTOR'S employees while providing such services; or, (ii) make reasonable accommodations with respect to Container placement and point of Delivery, time of Collection, or other operating circumstances to minimize any confrontation with pickets or the number of Persons necessary to make Collections shall, to that limited extent, excuse performance. The foregoing excuse shall be conditioned on CONTRACTOR'S cooperation in performing Collection services at different times and in different locations. Further, in the event of labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by the CONTRACTOR'S employees or directed at the CONTRACTOR, or a subsidiary, the CONTRACTOR shall not be excused from performance. In

such case, CONTRACTOR shall continue to provide a reasonably satisfactory level of performance during the pendency thereof, but the CONTRACTOR shall not be required to adhere strictly to the specific requirements of this Agreement regarding routes, Collection times or similar matters; provided, however, that in no event shall more than seven (7) calendar days elapse between pickups for Residential and Commercial Customers.

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 Article. If either Party validly exercises its rights under this Article, 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, however, if CONTRACTOR is excused from performing its obligations hereunder for any of the causes listed in this Article for a period of thirty (30) calendar days or more, the 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 Article 12.3 shall apply.

#### **12.8 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE**

The Parties acknowledge that it is of the utmost importance to the CITY and the health and safety of all those members of the public residing or doing business within the CITY who will be adversely affected by interrupted waste management service, that there is 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 the CITY believes in good faith that CONTRACTOR'S ability to perform under the Agreement has thereby been placed in substantial jeopardy, the CITY may, at their 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 the 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 the CITY, such failure or refusal shall be an event of default for purposes of Article 12.1.

### **ARTICLE 13: OTHER AGREEMENTS OF THE PARTIES**

#### **LEGAL REPRESENTATION**

It is acknowledged that each Party was, or had the opportunity to be, represented by counsel in the preparation of and contributed equally to the terms and conditions of this Agreement and, accordingly, the rule that a contract or Agreement shall be interpreted strictly against the party preparing the same shall not apply herein due to the joint contributions of both Parties.

#### **13.2 FINANCIAL INTEREST**

CONTRACTOR warrants and represents that no elected official, officer, agent or employee of the CITY has a financial interest, directly or indirectly, in this Agreement or the compensation to be paid under it and, further, that no CITY employee who acts in the CITY as a "purchasing agent" as defined in the appropriate Article of

California Statutes, nor any elected or appointed officer of the CITY, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of the CONTRACTOR and, further, that no such CITY employee, purchasing agent, CITY elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in the CONTRACTOR. Material interest means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of the CONTRACTOR.

### **13.3 CONTRACTOR NOT OFFICER, EMPLOYEE OR AGENT**

- A. CONTRACTOR IS INDEPENDENT CONTRACTOR.** It is understood and agreed, and it is the intention of the Parties hereto, that CONTRACTOR is an independent contractor, and is not an officer, employee, or agent of CITY for any purpose whatsoever. CITY shall have no right to and shall not control the manner and method by which the franchise services are performed by CITY herein, except as otherwise provided in this Agreement. CONTRACTOR shall be entirely and solely responsible for its acts and the acts of its agents, employees, Subcontractors engaged in the performance of services hereunder. CONTRACTOR shall have no claim under this Agreement or otherwise against CITY for vacation pay, sick leave, retirement benefits, social security, workers' compensation, disability, or unemployment insurance benefits or other employee benefits of any kind. The Parties acknowledge that CITY shall not withhold from CONTRACTOR'S compensation any funds for income tax, FICA, disability insurance, unemployment insurance, or similar withholding and CONTRACTOR is solely responsible for the timely payment of all such taxes and related payments to the State and federal government for itself and its employees, agents, and Subcontractors who might render services in connection with this Agreement. CONTRACTOR shall inform all entities or persons who perform any services pursuant to this Agreement of the provisions of this Article.
- B. CONTRACTOR RESPONSIBILITY TO AND FOR ITS OFFICERS, AGENTS EMPLOYEES, CONTRACTORS AND SUBCONTRACTORS.** CONTRACTOR shall be solely responsible for the acts and omissions of its officers, agents, employees, Contractors, and Subcontractors, if any. Neither CONTRACTOR nor its officers, employees, agents, Contractors, or Subcontractors shall obtain any right to retirement benefits, workers' compensation benefits, or any other compensation or benefits which accrue to CITY employees and CONTRACTOR expressly waives any claim it may have or acquire to such compensation or benefits.

### **13.4 CONTRACTOR'S USE OF SUBCONTRACTOR**

The use of a Subcontractor to perform services under this Agreement shall not constitute delegation of CONTRACTOR'S duties provided that CONTRACTOR has received prior written authorization from the Contract Administrator to subcontract such services and the Contract Administrator has approved a Subcontractor who will perform such services. CONTRACTOR shall be responsible for directing the work of CONTRACTOR'S Subcontractors and any compensation due or payable to CONTRACTOR'S Subcontractor shall be the sole responsibility of CONTRACTOR. The Contract Administrator shall have the right to require the removal of any approved Subcontractor for reasonable cause. The Subcontractors listed in Exhibit 3 to this Agreement are hereby approved by the CITY.

### **13.5 COMPLIANCE WITH LAW**

CONTRACTOR shall at all times, at its sole cost, comply with all Applicable Laws, permits and licenses of the United States, 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. Nothing contained in this Agreement shall require any Party to perform any act or function contrary to law, or limit the laws with which the Party must comply.

- A. **PERMITS AND LICENSES.** CONTRACTOR shall obtain, at its own expense, all permits, licenses and approvals required by law or ordinance, and shall maintain such permits, licenses and approvals in full force and effect throughout the Term of this Agreement. CONTRACTOR shall provide proof of such permits, licenses or approvals and shall demonstrate compliance with the terms and conditions of such permits, licenses and approvals upon the request of the Contract Administrator.
- B. **NOTICE OF AMENDMENT TO CITY MUNICIPAL CODE.** CITY shall provide written notice to CONTRACTOR of any planned amendment of the CITY Municipal Code that would substantially affect CONTRACTOR'S obligations or the performance of CONTRACTOR'S services pursuant to this Agreement. Such notice shall be provided at least thirty (30) calendar days prior to the CITY Council's approval of such an amendment..

**13.6 GOVERNING LAW**

The law of the State of California shall govern the rights, obligations, duties and liabilities of CITY and CONTRACTOR under this Agreement and shall govern the interpretation of this Agreement.

**13.7 LITIGATION**

In the event of any litigation arising out of this Agreement, the prevailing Party in such action shall be entitled to recover its reasonable costs and expenses including, without limitation, reasonable attorneys' fees and costs paid or incurred in good faith. The "prevailing Party," for purposes of this Agreement, shall be deemed to be that Party who obtains substantially the result sought, whether by settlement, dismissal or judgment.

**13.8 JURISDICTION**

The Parties agree that any litigation between CITY and CONTRACTOR concerning or arising out of this Agreement shall be filed and maintained exclusively in the Superior Courts of the State of California, County of Sutter (Sutter County Superior Court) to the fullest extent permissible by law. Each Party consents to service of process in any manner authorized by California law.

**13.9 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.

**13.10 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 Article, "assignment" shall include, but not be limited to: (i) a sale, exchange or other transfer of substantially all of CONTRACTOR's local, regional, and/or corporate assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of ten (10) percent or more of the local, regional, and/or corporate assets, stock, or other ownership interests 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 (20) percent 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 which results in a change of ownership or control of ten (10) percent or more of the value or voting rights in the local, regional, and/or corporate stock or other ownership interests of CONTRACTOR; (iv) divestiture of an Affiliate (e.g., trucking company, materials recovery facility, transfer station, etc.) used by CONTRACTOR to fulfill its obligations under this Agreement; and, (iv) any combination of the foregoing (whether or not in related or contemporaneous transactions) which 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 Article, the term "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant to the assignment.

CONTRACTOR acknowledges that this Agreement involves rendering a vital service to CITY'S residents and businesses, and that the CITY has selected CONTRACTOR to perform the services specified herein based on: (i) CONTRACTOR's experience, skill, and reputation for conducting its Solid Waste, Recyclables, Organic Materials and C&D Debris 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 the CITY under this Agreement. The 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 consideration of and consent to an assignment, the CITY may deny or approve such request in their complete discretion. No request by CONTRACTOR for consent to an assignment need be considered by the 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 written consent of an assignment, CONTRACTOR shall pay the CITY a transfer fee in the amount of one (1) percent of the Gross Billings for the most-recently completed Rate Year.
- B. CONTRACTOR shall undertake to pay the CITY its reasonable expenses for attorneys', consultants', accountants' fees, staff time, and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment.
- C. CONTRACTOR shall furnish the CITY with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years.
- D. CONTRACTOR shall furnish the CITY with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste, Recyclable Materials, Organic Materials and C&D Debris 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 agency. 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 Solid Waste, Recyclable Materials, Organic Materials and C&D Debris, including Hazardous Waste; and, (v) that any other information required by the 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'S sole determination, would facilitate the review of the proposed assignment.

Under no circumstances shall any proposed assignment be considered by the 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, the CITY may require an audit of the CONTRACTOR's compliance before agreeing to an assignment, and the costs of such audit shall be paid by CONTRACTOR in advance of the performance of said audit.

### **13.11 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.

### **13.12 WAIVER**

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

### **13.13 TRANSITION TO NEXT CONTRACTOR**

**Requirements in Event of Transition.** In the event CONTRACTOR is not awarded an Agreement to continue to provide Collection Services following the expiration or early termination of this Agreement, CONTRACTOR shall cooperate fully with CITY and any subsequent contractors to assure a smooth transition of services described in this Agreement. Unless otherwise agreed by CITY and CONTRACTOR, such cooperation shall consist of: (a) providing the following information to the subsequent contractor: routing information, route maps, vehicle fleet information (if the subsequent contractor buys CONTRACTOR'S vehicle fleet), a list of Service Recipients' contact information and their respective Service Levels, and a complete inventory of all Carts and Bins (if the subsequent Contractor buys CONTRACTOR'S Carts and Bins); and (b) providing adequate labor and equipment to complete performance of all Collection Services required under this Agreement. The CONTRACTOR shall not be eligible for the recovery of any costs associated with these transition activities. However, if CONTRACTOR is requested to provide additional transition services outside the scope of this Collection Service Agreement CONTRACTOR shall be compensated for such services at an amount to be agreed upon between CITY and CONTRACTOR prior to the provision of those services.

### **13.14 CONTRACTOR'S RECORDS**

- A. **Maintenance of Financial Records.** CONTRACTOR shall maintain any and all letters, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to Service Recipients for a minimum period of five (5) years, or for any longer period required by law, from the date of final payment to CONTRACTOR pursuant to this Agreement.
- B. **Maintenance of Performance Records.** CONTRACTOR shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of five (5) years, or for any longer period required by law, from the date of termination or completion of this Agreement.



- C. **Availability of Records.** Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at any time during regular business hours upon written request by the Contract Administrator, the CITY Attorney, CITY Auditor, CITY Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at the CITY offices when it is practical to do so. Otherwise, unless an alternative site is mutually agreed upon, the records shall be available at CONTRACTOR'S address indicated for receipt of notices in this Agreement.
- D. **Provision of Requested or Demanded Records.** Where CITY has reason to believe that such records or documents may be lost or discarded due to the dissolution, disbandment or termination of CONTRACTOR'S business, CITY may, by written request or demand of any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in CITY Hall. Within ten (10) Business Days after receiving CITY'S written request or demand, CONTRACTOR shall provide CITY all requested records and documents. The CITY shall make those records and documents available to CONTRACTOR, CONTRACTOR'S representatives, or CONTRACTOR'S successor-in-interest at CITY Hall during regular operating hours.

**13.15 NOTICE PROCEDURES**

Except as provided herein, whenever either Party desires to give notice to the other, it must be given by written notice addressed to the Party for whom it is intended, at the place last specified as the place for giving of notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective persons and places for giving of notice:

**As to the CITY:**

City Manager  
 City of Yuba City  
 1201 Civic Center Blvd  
 Yuba City CA 95993

*with a copy to:*  
 Attn.: City Attorney  
 2440 Tulare Street, Suite 410  
 Fresno, CA 93721

**As to the CONTRACTOR:**

Recology Yuba-Sutter  
 Attn: General Manager  
 3001 North Levee Road  
 Marysville, CA 95901

*with a copy to*  
 Recology Inc.  
 Attn: Legal Department  
 50 California Street, 24<sup>th</sup> Floor  
 San Francisco, CA 94111

- A. Notices shall be effective when received at the address as specified above. Changes in the respective address to which such notice is to be directed may be made by written notice only. Facsimile transmission is acceptable notice, effective when received, however, facsimile transmissions received (i.e. printed) after 4:30 p.m. or on weekends or Holidays, will be deemed received on the next Business Day. Receipt is deemed to have taken place within three (3) Residential Service Work Days of notice mailed by U.S. Postal Service return receipt requested. The original of items that are transmitted by facsimile equipment must also be mailed as required herein.
- B. Notice by CITY to CONTRACTOR of a Collection or other Service Recipient problem or complaint may be given to CONTRACTOR orally by telephone at CONTRACTOR'S local office with confirmation sent as required above by the end of the Residential Service Work Day.

## **ARTICLE 14: MISCELLANEOUS AGREEMENTS**

### **14.1 ENTIRETY OF AGREEMENT**

This Agreement and the Exhibits attached hereto constitute the entire Agreement and understanding between the Parties hereto, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the Parties hereto.

### **14.2 SEVERABILITY**

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

### **14.3 RIGHT TO REQUIRE PERFORMANCE**

The failure of the CITY at any time to require performance by the CONTRACTOR of any provision hereof shall in no way affect the right of the CITY thereafter to enforce same. Nor shall waiver by the CITY of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

### **14.4 NON-DISCRIMINATION**

In the performance of all work and services under this Agreement, CONTRACTOR shall not discriminate against any Person on the basis of such person's race, sex, color, national origin, religion, marital status, age, disability or sexual orientation. CONTRACTOR shall comply with all applicable local, State and federal laws and regulations regarding nondiscrimination, including those prohibiting discrimination in employment.

### **14.5 ALL PRIOR AGREEMENTS SUPERSEDED**

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, contracts and understandings applicable to the matters contained in this Agreement and the Parties agree that there are no commitments, agreements, contracts or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations, agreements or contracts, whether oral or written.

### **14.6 HEADINGS**

The article headings and section headings in this Agreement are for convenience of reference only and are not to be considered in any interpretation of this Agreement.

### **14.7 EXHIBITS**

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

### **14.8 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.

**14.9 EFFECTIVE DATE**

This Agreement shall become effective at such time as it is properly executed by the CITY and the CONTRACTOR and the CONTRACTOR shall begin Collection Services, as covered herein, as of October 1, 2018.

**14.10 AMENDMENTS**

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

IN WITNESS WHEREOF, the CITY and the CONTRACTOR have executed this Agreement on the day and year first written above.

CITY OF YUBA CITY

Shon Harris 8/28/19  
Shon Harris, Mayor Date

RECOLOGY YUBA-SUTTER

Michael J. Sangiacomo 9/16/19  
Signature Date  
Michael J. Sangiacomo, President & CEO  
Name, Title

The foregoing Agreement has been reviewed and approval is recommended: \_\_\_\_\_

Resolution No. 18-72 Approved by City Council 10/2/18

APPROVED AS TO FORM:

Shannon L. Chaffin 10/1/19  
Shannon L. Chaffin Date  
City Attorney, City of Yuba City

**Recology**

Reviewed by:

BB

Legal

**14.9 EFFECTIVE DATE**

This Agreement shall become effective at such time as it is properly executed by the CITY and the CONTRACTOR and the CONTRACTOR shall begin Collection Services, as covered herein, as of October 1, 2018.

**14.10 AMENDMENTS**

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

IN WITNESS WHEREOF, the CITY and the CONTRACTOR have executed this Agreement on the day and year first written above.

CITY OF YUBA CITY  
Shirley Harris 10/15/19  
Mayor Date

RECOLOGY YUBA-SUTTER  
Michael J. Sangiacomo 10/15/19  
Signature Date  
Michael J. Sangiacomo, President & CEO  
Name, Title

Cary Chen 10/15/19  
Signature Date  
Cary Chen, Corporate Secretary  
Name, Title

The foregoing Agreement has been reviewed and approval is recommended: \_\_\_\_\_

Resolution No. 18-072 Approved by City Council 10/2/18

APPROVED AS TO FORM:  
Shannon L. Chaffin  
City Attorney, City of Yuba City

11/4/17  
Date

**Recology**  
Reviewed by:  
BC  
Legal

## 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 Francisco

On 10-15-2019 before me, Hana Nguyen, Notary Public  
(insert name and title of the officer)

personally appeared Michael J. Sangiacomo  
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 

(Seal)



# 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 Francisco )

On 10-15-2019 before me, Hana Nguyen, Notary Public  
(insert name and title of the officer)

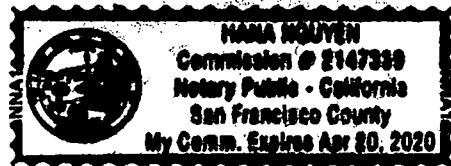
personally appeared Cary Chen  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) 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 

(Seal)



## **EXHIBIT 1 - MAXIMUM SERVICE RATES**

(as of October 1, 2019)

(see attached)

## EXHIBIT 1 - MAXIMUM SERVICE RATES

(as of October 1, 2019)

### RECOLOGY YUBA-SUTTER SOLID WASTE SERVICES FOR CITY OF YUBA CITY RESIDENTIAL (SFD) COLLECTION SERVICES

	Container Type/Size or Service Type	Total 10/1/19 Proposed Monthly Rate
<b>Basic SFD Cart Service</b>		
<b>1</b>	1-32G MSW, 1-64G Recycling, 1-96G -Organics	\$29.02
<b>2</b>	1-64G MSW, 1-64G Recycling, 1-96G -Organics	\$29.54
<b>3</b>	1-96G MSW, 1-64G Recycling, 1-96G -Organics	\$30.05
<b>Low Income Senior</b>		
<b>4</b>	1-32G MSW, 1-64G Recycling, 1-96G -Organics	\$21.69
<b>Additional Carts</b>		
<b>5</b>	MSW: 32G 2nd or more carts - each addl cart	\$12.85
<b>6</b>	MSW: 64G 2nd or more carts - each addl cart	\$14.38
<b>7</b>	MSW: 96G 2nd or more carts - each addl cart	\$15.93
<b>8</b>	Recycling: 3rd or more carts - each addl cart	\$4.11
<b>9</b>	Organic Material 3rd or more carts - each addl cart	\$15.93
<b>Bulky Item Collection</b>		
<b>10</b>	Up to four (4 ) collection event per year with up to five (5) bulky items each Event.	
<b>11</b>	Additional collection event after four (4) events	\$61.65
<b>12</b>	Additional bulky items after five (5) items per event	\$12.33
<b>Carts Exchange or Replacement</b>		
<b>13</b>	Cart Exchange - greater than one (1) per year	\$20.55
<b>14</b>	Cart Replacement (due to customer negligence)	\$77.06



## EXHIBIT 1 - MAXIMUM SERVICE RATES

(as of October 1, 2019)

### RECOLOGY YUBA-SUTTER SOLID WASTE SERVICES FOR CITY OF YUBA CITY COMMERCIAL AND MUTLI-FAMILY (MFD)

	Container Type/Size or Service Type	Total 10/1/19 Proposed Monthly Rate
	<b>1 cubic yard bin</b>	
<b>1</b>	1 Time per Week	\$128.32
<b>2</b>	2 Time per Week	\$256.65
<b>3</b>	3 Time per Week	\$384.98
<b>4</b>	4 Time per Week	\$513.31
<b>5</b>	5 Time per Week	\$641.63
<b>6</b>	6 Time per Week	\$769.96
<b>7</b>	Addl Pickup	\$34.88
	<b>1.5 cy bin</b>	
<b>8</b>	1 Time per Week	\$171.70
<b>9</b>	2 Time per Week	\$343.41
<b>10</b>	3 Time per Week	\$515.10
<b>11</b>	4 Time per Week	\$686.80
<b>12</b>	5 Time per Week	\$858.51
<b>13</b>	6 Time per Week	\$1,030.20
<b>14</b>	Addl Pickup	\$38.67
	<b>2 cubic yard bin</b>	
<b>15</b>	1 Time per Week	\$206.14
<b>16</b>	2 Time per Week	\$412.30
<b>17</b>	3 Time per Week	\$618.44
<b>18</b>	4 Time per Week	\$824.59
<b>19</b>	5 Time per Week	\$1,030.73
<b>20</b>	6 Time per Week	\$1,236.89
<b>21</b>	Addl Pickup	\$46.53
	<b>3 cubic yard bin</b>	
<b>22</b>	1 Time per Week	\$249.52
<b>23</b>	2 Time per Week	\$499.03
<b>24</b>	3 Time per Week	\$748.52
<b>25</b>	4 Time per Week	\$998.04
<b>26</b>	5 Time per Week	\$1,247.55
<b>27</b>	6 Time per Week	\$1,497.07
<b>28</b>	Addl Pickup	\$54.23

## EXHIBIT 1 - MAXIMUM SERVICE RATES

(as of October 1, 2019)

### RECOLOGY YUBA-SUTTER SOLID WASTE SERVICES FOR CITY OF YUBA CITY COMMERCIAL AND MUTLI-FAMILY (MFD)

	Container Type/Size or Service Type	Total 10/1/19 Proposed Monthly Rate
	<b>4 cubic yard bin</b>	
<b>29</b>	1 Time per Week	\$299.98
<b>30</b>	2 Time per Week	\$599.94
<b>31</b>	3 Time per Week	\$899.92
<b>32</b>	4 Time per Week	\$1,199.88
<b>33</b>	5 Time per Week	\$1,499.87
<b>34</b>	6 Time per Week	\$1,799.84
<b>35</b>	Addl Pickup	\$61.91
	<b>5 cubic yard bin</b>	
<b>36</b>	1 Time per Week	\$310.73
<b>37</b>	2 Time per Week	\$621.46
<b>38</b>	3 Time per Week	\$932.19
<b>39</b>	4 Time per Week	\$1,242.92
<b>40</b>	5 Time per Week	\$1,553.65
<b>41</b>	6 Time per Week	\$1,864.37
<b>42</b>	Addl Pickup	\$65.82
	<b>6 cubic yard bin</b>	
<b>43</b>	1 Time per Week	\$319.95
<b>44</b>	2 Time per Week	\$639.90
<b>45</b>	3 Time per Week	\$959.85
<b>46</b>	4 Time per Week	\$1,279.81
<b>47</b>	5 Time per Week	\$1,599.75
<b>48</b>	6 Time per Week	\$1,919.71
<b>49</b>	Addl Pickup	\$69.79
	<b>7 cubic yard bin</b>	
<b>50</b>	1 Time per Week	\$357.93
<b>51</b>	2 Time per Week	\$715.87
<b>52</b>	3 Time per Week	\$1,073.81
<b>53</b>	4 Time per Week	\$1,431.74
<b>54</b>	5 Time per Week	\$1,789.68
<b>55</b>	6 Time per Week	\$2,147.61
<b>56</b>	Addl Pickup	\$77.48

## EXHIBIT 1 - MAXIMUM SERVICE RATES

(as of October 1, 2019)

### RECOLOGY YUBA-SUTTER SOLID WASTE SERVICES FOR CITY OF YUBA CITY COMMERCIAL AND MUTLI-FAMILY (MFD)

	Container Type/Size or Service Type	Total 10/1/19 Proposed Monthly Rate
	<b>8 cubic yard bin</b>	
<b>57</b>	1 Time per Week	\$408.38
<b>58</b>	2 Time per Week	\$816.75
<b>59</b>	3 Time per Week	\$1,225.13
<b>60</b>	4 Time per Week	\$1,633.50
<b>61</b>	5 Time per Week	\$2,041.88
<b>62</b>	6 Time per Week	\$2,450.25
<b>63</b>	Addl Pickup	\$85.15
	<b>2 cubic yard compactor</b>	
<b>64</b>	1 Time per Week	\$457.55
<b>65</b>	2 Time per Week	\$915.08
<b>66</b>	3 Time per Week	\$1,372.64
<b>67</b>	4 Time per Week	\$1,830.18
<b>68</b>	5 Time per Week	\$2,287.73
<b>69</b>	6 Time per Week	\$2,745.26
<b>70</b>	Addl Pickup	\$114.38
	<b>3 cubic yard compactor</b>	
<b>71</b>	1 Time per Week	\$686.33
<b>72</b>	2 Time per Week	\$1,372.65
<b>73</b>	3 Time per Week	\$2,058.97
<b>74</b>	4 Time per Week	\$2,745.27
<b>75</b>	5 Time per Week	\$3,431.60
<b>76</b>	6 Time per Week	\$4,117.92
<b>77</b>	Addl Pickup	\$171.58
	<b>4 cubic yard compactor</b>	
<b>78</b>	1 Time per Week	\$915.09
<b>79</b>	2 Time per Week	\$1,830.19
<b>80</b>	3 Time per Week	\$2,745.27
<b>81</b>	4 Time per Week	\$3,660.37
<b>82</b>	5 Time per Week	\$4,575.46
<b>83</b>	6 Time per Week	\$5,490.57
<b>84</b>	Addl Pickup	\$228.77

## EXHIBIT 1 - MAXIMUM SERVICE RATES

(as of October 1, 2019)

### RECOLOGY YUBA-SUTTER SOLID WASTE SERVICES FOR CITY OF YUBA CITY COMMERCIAL AND MUTLI-FAMILY (MFD)

	Container Type/Size or Service Type	Total 10/1/19 Proposed Monthly Rate
	<b>5 cubic yard compactor</b>	
<b>85</b>	1 Time per Week	\$1,143.85
<b>86</b>	2 Time per Week	\$2,287.75
<b>87</b>	3 Time per Week	\$3,431.60
<b>88</b>	4 Time per Week	\$4,575.46
<b>89</b>	5 Time per Week	\$5,719.35
<b>90</b>	6 Time per Week	\$6,863.22
<b>91</b>	Addl Pickup	\$285.96
	<b>6 cubic yard compactor</b>	
<b>92</b>	1 Time per Week	\$1,372.65
<b>93</b>	2 Time per Week	\$2,745.27
<b>94</b>	3 Time per Week	\$4,117.92
<b>95</b>	4 Time per Week	\$5,490.57
<b>96</b>	5 Time per Week	\$6,863.22
<b>97</b>	6 Time per Week	\$8,235.85
<b>98</b>	Addl Pickup	\$343.17
	<b>32 gallon cart</b>	
<b>99</b>	1 Time per Week	\$29.74
<b>100</b>	2 Time per Week	\$59.48
<b>101</b>	3 Time per Week	\$89.22
<b>102</b>	4 Time per Week	\$118.96
<b>103</b>	5 Time per Week	\$148.68
<b>104</b>	6 Time per Week	\$178.43
<b>105</b>	Addl Pickup	\$15.41
	<b>96 gallon cart</b>	
<b>106</b>	1 Time per Week	\$59.65
<b>107</b>	2 Time per Week	\$119.31
<b>108</b>	3 Time per Week	\$178.98
<b>109</b>	4 Time per Week	\$238.62
<b>110</b>	5 Time per Week	\$298.29
<b>111</b>	6 Time per Week	\$357.94
<b>112</b>	Addl Pickup	\$15.41

## EXHIBIT 1 - MAXIMUM SERVICE RATES

(as of October 1, 2019)

### RECOLOGY YUBA-SUTTER RECYCLING SERVICES FOR CITY OF YUBA CITY COMMERCIAL AND MUTLI-FAMILY (MFD)

	Container Type/Size or Service Type	Total 10/1/19 Proposed Monthly Rate
	<b>1 cubic yard recycling bin</b>	
<b>1</b>	1 Time per Week	\$64.17
<b>2</b>	2 Time per Week	\$128.32
<b>3</b>	3 Time per Week	\$192.48
<b>4</b>	4 Time per Week	\$256.65
<b>5</b>	5 Time per Week	\$320.82
<b>6</b>	6 Time per Week	\$384.98
<b>7</b>	Addl Pickup	\$17.43
	<b>1.5 cy recycling bin</b>	
<b>8</b>	1 Time per Week	\$85.85
<b>9</b>	2 Time per Week	\$171.70
<b>10</b>	3 Time per Week	\$257.55
<b>11</b>	4 Time per Week	\$343.41
<b>12</b>	5 Time per Week	\$429.25
<b>13</b>	6 Time per Week	\$515.10
<b>14</b>	Addl Pickup	\$19.34
	<b>2 cubic yard recycling bin</b>	
<b>15</b>	1 Time per Week	\$103.07
<b>16</b>	2 Time per Week	\$206.14
<b>17</b>	3 Time per Week	\$309.22
<b>18</b>	4 Time per Week	\$412.30
<b>19</b>	5 Time per Week	\$515.38
<b>20</b>	6 Time per Week	\$618.44
<b>21</b>	Addl Pickup	\$23.26
	<b>3 cubic yard recycling bin</b>	
<b>22</b>	1 Time per Week	\$124.75
<b>23</b>	2 Time per Week	\$249.52
<b>24</b>	3 Time per Week	\$374.27
<b>25</b>	4 Time per Week	\$499.03
<b>26</b>	5 Time per Week	\$623.78
<b>27</b>	6 Time per Week	\$748.52
<b>28</b>	Addl Pickup	\$27.12

## EXHIBIT 1 - MAXIMUM SERVICE RATES

(as of October 1, 2019)

### RECOLOGY YUBA-SUTTER RECYCLING SERVICES FOR CITY OF YUBA CITY COMMERCIAL AND MUTLI-FAMILY (MFD)

	Container Type/Size or Service Type	Total 10/1/19 Proposed Monthly Rate
	<b>4 cubic yard recycling bin</b>	
<b>29</b>	1 Time per Week	\$149.99
<b>30</b>	2 Time per Week	\$299.98
<b>31</b>	3 Time per Week	\$449.97
<b>32</b>	4 Time per Week	\$599.94
<b>33</b>	5 Time per Week	\$749.93
<b>34</b>	6 Time per Week	\$899.92
<b>35</b>	Addl Pickup	\$30.96
	<b>5 cubic yard recycling bin</b>	
<b>36</b>	1 Time per Week	\$155.37
<b>37</b>	2 Time per Week	\$310.73
<b>38</b>	3 Time per Week	\$466.09
<b>39</b>	4 Time per Week	\$621.46
<b>40</b>	5 Time per Week	\$776.82
<b>41</b>	6 Time per Week	\$932.19
<b>42</b>	Addl Pickup	\$32.91
	<b>6 cubic yard recycling bin</b>	
<b>43</b>	1 Time per Week	\$159.97
<b>44</b>	2 Time per Week	\$319.95
<b>45</b>	3 Time per Week	\$479.92
<b>46</b>	4 Time per Week	\$639.90
<b>47</b>	5 Time per Week	\$799.88
<b>48</b>	6 Time per Week	\$959.85
<b>49</b>	Addl Pickup	\$34.89
	<b>7 cubic yard recycling bin</b>	
<b>50</b>	1 Time per Week	\$178.97
<b>51</b>	2 Time per Week	\$357.93
<b>52</b>	3 Time per Week	\$536.91
<b>53</b>	4 Time per Week	\$715.87
<b>54</b>	5 Time per Week	\$894.84
<b>55</b>	6 Time per Week	\$1,073.81
<b>56</b>	Addl Pickup	\$38.73

## EXHIBIT 1 - MAXIMUM SERVICE RATES

(as of October 1, 2019)

### RECOLOGY YUBA-SUTTER RECYCLING SERVICES FOR CITY OF YUBA CITY COMMERCIAL AND MUTLI-FAMILY (MFD)

	Container Type/Size or Service Type	Total 10/1/19 Proposed Monthly Rate
	<b>8 cubic yard recycling bin</b>	
<b>57</b>	1 Time per Week	\$204.19
<b>58</b>	2 Time per Week	\$408.38
<b>59</b>	3 Time per Week	\$612.56
<b>60</b>	4 Time per Week	\$816.75
<b>61</b>	5 Time per Week	\$1,020.94
<b>62</b>	6 Time per Week	\$1,225.13
<b>63</b>	Addl Pickup	\$42.58
	<b>2 cubic yard recycling compactor</b>	
<b>64</b>	1 Time per Week	\$228.78
<b>65</b>	2 Time per Week	\$457.54
<b>66</b>	3 Time per Week	\$686.32
<b>67</b>	4 Time per Week	\$915.09
<b>68</b>	5 Time per Week	\$1,143.86
<b>69</b>	6 Time per Week	\$1,372.63
<b>70</b>	Addl Pickup	\$57.19
	<b>3 cubic yard recycling compactor</b>	
<b>71</b>	1 Time per Week	\$343.17
<b>72</b>	2 Time per Week	\$686.32
<b>73</b>	3 Time per Week	\$1,029.49
<b>74</b>	4 Time per Week	\$1,372.64
<b>75</b>	5 Time per Week	\$1,715.80
<b>76</b>	6 Time per Week	\$2,058.96
<b>77</b>	Addl Pickup	\$85.80
	<b>4 cubic yard recycling compactor</b>	
<b>78</b>	1 Time per Week	\$457.55
<b>79</b>	2 Time per Week	\$915.09
<b>80</b>	3 Time per Week	\$1,372.64
<b>81</b>	4 Time per Week	\$1,830.18
<b>82</b>	5 Time per Week	\$2,287.73
<b>83</b>	6 Time per Week	\$2,745.28
<b>84</b>	Addl Pickup	\$114.38

## EXHIBIT 1 - MAXIMUM SERVICE RATES

(as of October 1, 2019)

### RECOLOGY YUBA-SUTTER RECYCLING SERVICES FOR CITY OF YUBA CITY COMMERCIAL AND MUTLI-FAMILY (MFD)

	Container Type/Size or Service Type	Total 10/1/19 Proposed Monthly Rate
	<b>5 cubic yard recycling compactor</b>	
<b>85</b>	1 Time per Week	\$571.92
<b>86</b>	2 Time per Week	\$1,143.88
<b>87</b>	3 Time per Week	\$1,715.80
<b>88</b>	4 Time per Week	\$2,287.73
<b>89</b>	5 Time per Week	\$2,859.67
<b>90</b>	6 Time per Week	\$3,431.61
<b>91</b>	Addl Pickup	\$142.98
	<b>6 cubic yard recycling compactor</b>	
<b>92</b>	1 Time per Week	\$686.32
<b>93</b>	2 Time per Week	\$1,372.64
<b>94</b>	3 Time per Week	\$2,058.96
<b>95</b>	4 Time per Week	\$2,745.28
<b>96</b>	5 Time per Week	\$3,431.61
<b>97</b>	6 Time per Week	\$4,117.92
<b>98</b>	Addl Pickup	\$171.58
	<b>96 gallon recycling cart</b>	
<b>99</b>	1 Time per Week	\$29.83
<b>100</b>	2 Time per Week	\$59.65
<b>101</b>	3 Time per Week	\$89.48
<b>102</b>	4 Time per Week	\$119.31
<b>103</b>	5 Time per Week	\$149.16
<b>104</b>	6 Time per Week	\$178.98
<b>105</b>	Addl Pickup	\$7.71



## EXHIBIT 1 - MAXIMUM SERVICE RATES

(as of October 1, 2019)

### RECOLOGY YUBA-SUTTER ORGANICS SERVICES FOR CITY OF YUBA CITY COMMERCIAL AND MUTLI-FAMILY (MFD)

	Container Type/Size or Service Type	Total 10/1/19 Proposed Monthly Rate
	<b>1 cubic yard organics bin</b>	
<b>1</b>	1 Time per Week	\$128.32
<b>2</b>	2 Time per Week	\$256.65
<b>3</b>	3 Time per Week	\$384.98
<b>4</b>	4 Time per Week	\$513.31
<b>5</b>	5 Time per Week	\$641.63
<b>6</b>	6 Time per Week	\$769.96
<b>7</b>	Addl Pickup	\$34.88
	<b>2 cubic yard organics bin</b>	
<b>8</b>	1 Time per Week	\$206.14
<b>9</b>	2 Time per Week	\$412.30
<b>10</b>	3 Time per Week	\$618.44
<b>11</b>	4 Time per Week	\$824.59
<b>12</b>	5 Time per Week	\$1,030.73
<b>13</b>	6 Time per Week	\$1,236.89
<b>14</b>	Addl Pickup	\$46.53
	<b>3 cubic yard organics bin</b>	
<b>15</b>	1 Time per Week	\$249.52
<b>16</b>	2 Time per Week	\$499.03
<b>17</b>	3 Time per Week	\$748.52
<b>18</b>	4 Time per Week	\$998.04
<b>19</b>	5 Time per Week	\$1,247.55
<b>20</b>	6 Time per Week	\$1,497.07
<b>21</b>	Addl Pickup	\$54.23
	<b>96 gallon organics cart</b>	
<b>22</b>	1 Time per Week	\$59.65
<b>23</b>	2 Time per Week	\$119.31
<b>24</b>	3 Time per Week	\$178.98
<b>25</b>	4 Time per Week	\$238.62
<b>26</b>	5 Time per Week	\$298.29
<b>27</b>	6 Time per Week	\$357.94
<b>28</b>	Addl Pickup	\$15.41

## EXHIBIT 1 - MAXIMUM SERVICE RATES

(as of October 1, 2019)

### RECOLOGY YUBA-SUTTER SOLID WASTE SERVICES FOR CITY OF YUBA CITY DEBRIS BOX & ON-CALL SERVICES

	Container Type/Size or Service Type	Total 10/1/19 Proposed Monthly Rate
	<b>Drop-Box Service (Per Haul Rate)</b>	
1	9 Yard Concrete	\$357.05
2	15 Yard Debris Box	\$355.82
3	20 Yard Debris Box	\$357.05
4	25 Yard Debris Box	\$357.67
5	30 Yard Debris Box	\$358.59
6	40 Yard Debris Box	\$360.44
	<b>Compactor Service (Per Haul Rate)<sup>2</sup></b>	
7	15 Yard Compactor	\$414.59
8	25 Yard Compactor	\$423.84
9	27 Yard Compactor	\$425.69
10	30 Yard Compactor	\$428.46
11	34 Yard Compactor	\$432.15
12	35 Yard Compactor	\$433.09
13	40 Yard Compactor	\$437.70
	<b>Disposal/Processing (Per Ton Rate)</b>	
14	Solid Waste Disposal	\$71.59
15	Recycling Materials	\$77.06
16	Green Waste	\$56.41
17	Organic Materials	\$56.41
18	C&D Materials	\$82.20
19	OCC	\$51.37
20	Clean Wood	\$30.82
21	Clean Concrete	\$10.27
	<b>Temporary Bin (Includes disposal)</b>	
22	7 cubic yards	\$190.08
	<b>On-Call Bulky Item Collection Commercial and MFD</b>	
23	Per collection event and up to five (5) bulky items per collection event.	\$61.65
24	Each additional bulky item after five (5) bulky items per collection event.	\$12.33
	<b>Debris Box Demurrage<sup>3</sup></b>	
25	Per day after 7 days	\$20.55

## EXHIBIT 1 - MAXIMUM SERVICE RATES

(as of October 1, 2019)

### RECOLOGY YUBA-SUTTER SOLID WASTE SERVICES FOR CITY OF YUBA CITY OTHER SERVICES

	Container Type/Size or Service Type	Total 10/1/19 Proposed Monthly Rate
	<b>Container Push Charge</b>	
<b>1</b>	1 Time per Week	\$4.88
<b>2</b>	2 Time per Week	\$9.77
<b>3</b>	3 Time per Week	\$14.64
<b>4</b>	4 Time per Week	\$19.52
<b>5</b>	5 Time per Week	\$24.15
<b>6</b>	6 Time per Week	\$29.29
	<b>Locked Enclosure Access Charge</b>	
<b>7</b>	1 Time per Week	\$4.88
<b>8</b>	2 Time per Week	\$9.77
<b>9</b>	3 Time per Week	\$14.64
<b>10</b>	4 Time per Week	\$19.52
<b>11</b>	5 Time per Week	\$24.15
<b>12</b>	6 Time per Week	\$29.29
<b>13</b>	<b>Container Lock Charge</b>	\$28.26
<b>14</b>	<b>Bin Exchange (more than (1) time per year<sup>2</sup></b>	\$77.06
<b>15</b>	<b>Container Cleaning more than one (1) time per year<sup>3</sup></b>	\$123.30
<b>16</b>	<b>Container Overflow<sup>4</sup> (per yard)</b>	\$34.88
<b>17</b>	<b>Sharps Drop-Off Container</b>	\$15.41
<b>18</b>	<b>Freon Containing Appliance (per item)</b>	\$16.44
<b>19</b>	<b>Ammonia Containing Appliance (per item)</b>	\$49.32

## **EXHIBIT 2: CONTRACTOR'S PROPOSAL**

(see Franchise Agreement dated October 2018)

### **EXHIBIT 3: LIST OF APPROVED SUBCONTRACTORS**

None.

Recology Yuba Sutter  
Truck Fleet Plan 2019  
For Yuba City Contract

Truck Number	Truck Type	Model Year	Description	In Service Date	Age Years
<b>Commercial Routes</b>					
11516	FL	19	Frontloader	01/01/19	0.7
11528	FL	19	Frontloader	02/01/19	0.7
New	FL	19	Frontloader	to arrive late 2019	0.0
<b>Rolloff Routes</b>					
12386	RO	17	Rolloff	09/01/16	3.1
New	RO	19	Rolloff	to arrive late 2019	0.0
<b>Residential Routes</b>					
13378	SA1	15	15 AUTOCAR CHASSIS	09/01/15	4.1
13379	SA1	15	15 AUTOCAR CHASSIS	09/01/15	4.1
13398	SA1	17	17 AUTOCAR CHASSIS	02/01/17	2.7
13399	SA1	17	17 AUTOCAR CHASSIS	02/01/17	2.7
13439	SA1	18	18 AUTOCAR CHASSIS	01/01/18	1.7
13440	SA1	18	18 AUTOCAR CHASSIS	01/01/18	1.7
13584	SA1	19	19 AUTOCAR CHASSIS	12/01/18	0.8
13585	SA1	19	19 AUTOCAR CHASSIS	01/01/19	0.7
13586	SA1	19	19 AUTOCAR CHASSIS	12/01/18	0.8
New	SA1	20	Automated Side Loader	to arrive late 2019	0.0
<b>Bulky/Container Service</b>					
09107	CT	19	Container Truck	02/01/19	0.7
05344	SPF	19	Van	02/01/18	0.0
Average Age					1.4