

FRANCHISE AGREEMENT
BETWEEN
CITY OF CUPERTINO
AND
RECOLOGY CUPERTINO
FOR
RECYCLABLE MATERIALS, ORGANIC MATERIALS, AND SOLID
WASTE COLLECTION,
RECYCLABLE MATERIALS AND ORGANIC MATERIALS
PROCESSING SERVICES,
AND
TRANSPORT FOR DISPOSAL

DECEMBER 3, 2020

This page intentionally left blank

Table of Contents

RECITALS	1
ARTICLE 1. GRANT AND ACCEPTANCE OF FRANCHISE	2
1.1 GRANT AND ACCEPTANCE OF FRANCHISE	2
1.2 LIMITATIONS TO THE FRANCHISE	2
1.3 OBLIGATIONS OF PARTIES	5
ARTICLE 2. TERM OF AGREEMENT	5
2.1 TERM AND OPTION TO EXTEND	5
2.2 CONDITIONS TO EFFECTIVENESS OF AGREEMENT	5
ARTICLE 3. SCOPE OF AGREEMENT	6
3.1 SUMMARY SCOPE OF SERVICES	6
3.2 USE OF APPROVED FACILITIES.....	7
3.3 SUBCONTRACTING	7
3.4 RESPONSIBILITY FOR MATERIALS	8
3.5 CITY-DIRECTED CHANGES TO SCOPE	8
ARTICLE 4. SCOPE OF SERVICES	9
4.1 RECYCLABLE MATERIALS	9
4.2 ORGANIC MATERIALS	14
4.3 SOLID WASTE.....	18
4.4 ON-CALL, BULKY ITEM, BIN-BY-THE-DAY, AND CITY-WIDE RECYCLING COLLECTION EVENTS..	19
4.5 C&D COLLECTION	19
4.6 SPECIAL EVENTS.....	20
4.7 PUBLIC EDUCATION AND OUTREACH.....	21
4.8 TECHNICAL ASSISTANCE.....	23
4.9 BILLING	24
4.10 CUSTOMER SERVICE PROGRAM	26
4.11 ACCESS TO CUSTOMER SERVICE AND BILLING SYSTEMS.....	32
4.12 SERVICE EXEMPTIONS.....	32
4.13 CONTAMINATION MONITORING.....	34
4.14 SB 1383 INSPECTIONS AND ENFORCEMENT	36
4.15 EDIBLE FOOD RECOVERY PROGRAM	39
4.16 SB 1383 COMPLIANCE APPROACH.....	39
ARTICLE 5. STANDARD OF PERFORMANCE.....	40
5.1 GENERAL.....	40
5.2 OPERATING HOURS AND SCHEDULES	40
5.3 COLLECTION STANDARDS.....	40
5.4 TRANSFER AND PROCESSING STANDARDS	43
5.5 COLLECTION VEHICLE REQUIREMENTS	44
5.6 CONTAINER REQUIREMENTS	46
5.7 PERSONNEL	51
5.8 HAZARDOUS WASTE INSPECTION AND HANDLING	53

5.9	CONTRACT MANAGEMENT	54
5.10	ENVIRONMENTALLY-PREFERABLE PURCHASING	55
5.11	DIVERSION REQUIREMENTS	55
ARTICLE 6. RECORD KEEPING AND REPORTING		56
6.1	RECORD KEEPING	56
6.2	REPORT SUBMITTAL REQUIREMENTS	57
6.3	PERFORMANCE REVIEW AND AUDIT	58
ARTICLE 7. CITY FEES		58
7.1	FRANCHISE FEE	58
7.2	SOLID WASTE FUND OPERATIONS FEE	59
7.3	ADJUSTMENT TO FEES	59
7.4	PAYMENT SCHEDULE AND LATE FEES	59
7.5	PROCUREMENT REIMBURSEMENT FEE	60
7.6	OTHER MONIES DUE TO CITY.....	60
ARTICLE 8. CONTRACTOR'S COMPENSATION		60
8.1	GENERAL.....	60
8.2	CONTRACTOR'S COMPENSATION AND ANNUAL ADJUSTMENTS	61
8.3	EXTRAORDINARY RATE ADJUSTMENTS	64
ARTICLE 9. INDEMNITY, INSURANCE, AND PERFORMANCE BOND.....		65
9.1	INDEMNIFICATION	65
9.2	INSURANCE	67
9.3	PERFORMANCE BOND	68
ARTICLE 10. DEFAULT AND REMEDIES.....		69
10.1	EVENTS OF DEFAULT	69
10.2	OPPORTUNITY TO CURE.....	70
10.3	CITY'S REMEDIES IN THE EVENT OF DEFAULT.....	71
10.4	POSSESSION OF RECORDS UPON TERMINATION	71
10.5	CITY'S REMEDIES CUMULATIVE; SPECIFIC PERFORMANCE.....	72
10.6	PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES	72
10.7	EXCUSE FROM PERFORMANCE	73
10.8	RIGHT TO DEMAND ASSURANCES OF PERFORMANCE	74
10.9	DISPUTE RESOLUTION.....	74
ARTICLE 11. REPRESENTATIONS AND WARRANTIES OF THE PARTIES		75
11.1	CONTRACTOR'S CORPORATE STATUS	75
11.2	CONTRACTOR'S CORPORATE AUTHORIZATION	75
11.3	AGREEMENT WILL NOT CAUSE BREACH	75
11.4	NO LITIGATION	76
11.5	NO ADVERSE JUDICIAL DECISIONS.....	76
11.6	NO LEGAL PROHIBITION.....	76
11.7	CONTRACTOR'S ABILITY TO PERFORM	76
11.8	CONTRACTOR'S INVESTIGATION	76
11.9	STATEMENT AND INFORMATION IN PROPOSAL	76

ARTICLE 12. OTHER AGREEMENTS OF THE PARTIES	77
12.1 RELATIONSHIP OF PARTIES	77
12.2 COMPLIANCE WITH LAW.....	77
12.3 GOVERNING LAW	77
12.4 JURISDICTION	77
12.5 BINDING ON SUCCESSORS.....	77
12.6 ASSIGNMENT.....	77
12.7 NO THIRD PARTY BENEFICIARIES	79
12.8 WAIVER	79
12.9 NOTICE PROCEDURES	79
12.10 REPRESENTATIVES OF THE PARTIES	80
ARTICLE 13. MISCELLANEOUS AGREEMENTS.....	80
13.1 ENTIRE AGREEMENT.....	80
13.2 SECTION HEADINGS.....	80
13.3 REFERENCES TO LAWS	80
13.4 AMENDMENTS	81
13.5 SEVERABILITY	81
13.6 COUNTERPARTS.....	81
13.7 DEFINITIONS.....	81
13.8 EXHIBITS	81

List of Exhibits

- A. Definitions
- B. Direct Services
 - B1. Single-Family Residential Services
 - B2. Multi-Family Residential Services
 - B3. Commercial Services
 - B4. City Services
 - B5. City Facility Service Levels, Locations, and Special Events
- C. Public Education and Outreach Requirements
- D. Reporting Requirements
- E. Rate Adjustment Methodology
 - E1. Multi-Index Rate Adjustment Methodology
 - E2. Cost-Based Rate Adjustment Methodology
- F. Performance Standards and Liquidated Damages
- G. Excerpts of Contractor's Proposal
 - G1. Excerpts of Technical Proposal
 - G2. Cost Basis for Proposal
 - G3. Initial Rates for Collection Services
 - G4. Approved Subcontractors and Affiliates
- H. Minimum Anticipated Positions
- I. Form of Performance Bond
- J. SB 1383 Responsibilities
- K. Guaranty Agreement
- L. Diversion Data

**Franchise Agreement
between
City of Cupertino
and
Recology Cupertino
for Recyclable Materials, Organic Materials, and Solid Waste
Collection, Recyclable Materials and Organic Materials Processing
Services, and Transport For Disposal**

THIS FRANCHISE AGREEMENT ("Agreement") is made and entered into as of [REDACTED], 2020 between the City of Cupertino, California, a political subdivision of the State of California (hereinafter, the "City"), and Recology South Bay (d/b/a Recology Cupertino), a California corporation (hereinafter, "Contractor").

RECITALS

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

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

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

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

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

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

WHEREAS, the City further declares its intent to approve reasonable maximum Rates for the Collection, Processing, Transport, and/or Disposal of Recyclable Materials, Organic Materials, Solid Waste, and C&D, and other services related thereto; and,

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

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

WHEREAS, under Municipal Code Section 6.24.120, the City Council may enter into an exclusive contract with any Person or entity the Council believes is qualified to perform Collection, Processing, Transport, and Disposal service, and such contract shall require the Contractor to render service to all Residential and Commercial Premises within the City in accordance with the Municipal Code, and otherwise under such terms as the City Council deems necessary to protect the best interests of the City;

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

ARTICLE 1.

GRANT AND ACCEPTANCE OF FRANCHISE

1.1 GRANT AND ACCEPTANCE OF FRANCHISE

By the signing of this Agreement the City grants to Contractor and Contractor accepts the exclusive right and franchise, within the corporate limits of the City, to Collect and Transport all Recyclable Materials, Organic Materials, Yard Trimmings, Construction and Demolition Debris, and Solid Waste generated or accumulated within the corporate limits of the City, subject to the limitations described herein and except where otherwise precluded by Federal, State, and local laws and regulations.

1.2 LIMITATIONS TO THE FRANCHISE

The award of this Agreement shall not preclude the activities specified in this Section 1.2 by Persons other than Contractor, provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from the City, which is otherwise required by law. Contractor acknowledges and agrees that the City may permit other Persons besides Contractor to Collect any and all types of materials excluded from the scope of this Agreement without seeking or obtaining approval

of Contractor. If Contractor can produce evidence that other Persons are servicing Collection Containers or are Collecting and Transporting Recyclable Materials, Organic Materials, C&D, and/or Solid Waste in a manner that is not consistent with this Agreement or the Municipal Code, it shall report it to the City Contract Manager along with Contractor's evidence. Contractor shall have primary responsibility to notify the Generator and such Person of Contractor's rights under this Agreement.

A. **Recyclable and Organic Materials.** Collection and Transport of Recyclable Materials and Organic Materials that have been Source Separated from Solid Waste by the Generator and that: (1) Generator sells or donates to any other Person, provided that there is no net payment made by the Generator to such other Person; or, (2) have a value equal to or more than the cost of Collection.

B. **Self-Hauled Materials.** Transport and Disposal by a Property Owner of Recyclable Materials, Organic Materials, and Solid Waste generated in or on the Premises by the Property Owner or a Person leasing or renting the Premises from the Property Owner, using a vehicle such Person owns or controls.

C. **Construction and Demolition Debris (C&D).** Collection and Transport of mixed material Construction and Demolition Debris (C&D) by a licensed construction or demolition contractor as part of a total service offered by that contractor when removal is performed by an employee of the contractor using equipment owned by the contractor, rather than as a hauling service, and consistent with the Municipal Code and other Applicable Law. C&D materials Source Separated for the purpose of Recycling are considered Recyclable Materials. In cases where Contractor does not have the equipment needed for timely removal of C&D materials or due to other extenuating circumstance, a third party hauling service may be used with advance approval of both Contractor and the City Contract Manager.

D. **Donated or Sold Materials.** Collection and Transport of any items that are Source Separated at any Premises by the Generator and sold or donated to other Persons, including youth, civic, or charitable organizations, as provided in Section 1.2.A.

E. **Edible Food.** Collection and Transport of Edible Food from a Generator by other Person(s), such as a Person from a Food Recovery Organization or Food Recovery Service, for the purposes of Food Recovery; or Self-Haul of Edible Food by the Generator to another Person(s), such as a Person from a Food Recovery Organization, for the purposes of Food Recovery, regardless of whether the Generator donates, sells, or pays a fee to the other Person(s) to Collect or receive the Edible Food.

F. **Food Scraps.** Collection and Transport of Food Scraps that are Source Separated by the Generator and used by the Generator or distributed to other Person(s) for lawful use as animal feed, in accordance with 14 CCR Section 18983.1(b)(7). Such Food Scraps may be Self-Hauled by the Generator or Transported by another Person. If Contractor produces evidence to City that use of this exception by Commercial haulers is adversely affecting the value of this franchise, Diversion levels, or compliance with City ordinances, then the Parties shall meet and confer and City will consider in good faith whether to institute a permit system regulating such haulers or take other appropriate action to address the problem.

G. **Materials That Contractor Does Not Divert.** Source Separated materials that Contractor is not required to Collect, Process, and Divert under this Agreement as of the Effective Date that

subsequently, in the City's reasonable judgment, become economically feasible to Divert. In such event, Contractor shall have the exclusive right to Collect, Process, and Divert such materials if Contractor agrees to do so without any change in Rates. If Contractor is unwilling to Collect, Process, and Divert such materials without any change in Rates, the City may provide for Collection, Processing, and Diversion of such materials in any manner it deems appropriate. Such materials may include, but are not limited to, Organic Materials that Contractor would otherwise Dispose. Contractor may not enforce its exclusive franchise rights in a manner that would prevent the Diversion of new material that Contractor is unable or unwilling to Collect, Process, and Divert without any change in Rates.

H. **Beverage Containers.** Collection and Transport of containers delivered for Recycling under the California Beverage Container Recycling and Litter Reduction Act, California Public Resources Code Section 14500, et seq.

I. **Materials Removed by Customer's Contractor as Incidental Part of Services.** Collection and Transport of Recyclable Materials, Organic Materials, Solid Waste, and Bulky Items removed from a Premises by a contractor (e.g., gardener, landscaper, tree-trimming service, Residential clean-out service) as an incidental part of the service being performed, rather than as a separately contracted or subcontracted hauling service, where the removal is performed by such contractor's employees using only equipment owned by the contractor and in compliance with Applicable Law or if such contractor is providing a service that is not included in the scope of this Agreement.

J. **On-site or Community Composting.** Use of Organic Materials Composted or otherwise legally managed at the Premises where it is generated (e.g., backyard Composting or on-site anaerobic digestion) or Collection and Transport of such Organic Materials by the Generator for use at a Community Composting site.

K. **Animal, Grease Waste, and Used Cooking Oil.** Collection and Transport of (i) animal waste and remains from slaughterhouse or butcher shops, (ii) grease, or (iii) used cooking oil in quantities (e.g., from food service establishments).

L. **Horse Manure.** Collection and Transport of horse manure from Residential and Commercial Premises.

M. **Sewage Treatment By-Product.** Collection and Transport of by-products of sewage treatment, including sludge, sludge ash, grit, and screenings, including non-Hazardous material that is greater than fifty percent (50%) liquid (including septic tank pumpings and other liquid wastes).

N. **Excluded Waste.** Collection and Transport of Excluded Waste regardless of its source.

O. **Materials Generated by State and County Facilities.** Collection and Transport of materials generated by State and County facilities located in the City including, but not limited to, the Cupertino Union School District, provided that the Generator has arranged services with other Persons or has arranged services with Contractor through a separate agreement.

This Agreement and scope of this franchise shall be interpreted to be consistent with applicable Federal, State, and local laws and regulations, now and during the Term of the Agreement. If applicable Federal, State, and local laws and regulations limit the ability of the City to lawfully contract for the scope of

services in the manner and consistent with all provisions as specifically set forth herein, Contractor agrees that the scope of the Agreement will be revised and limited as required by such Applicable Law and that the City shall not be responsible for any lost profits or losses claimed by Contractor to arise out of such revisions or limitations.

1.3 OBLIGATIONS OF PARTIES

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

- A. Use their reasonable Commercial efforts to enforce the exclusive nature of the franchise. Contractor may take legal action to protect the exclusive franchise rights granted to it under this Agreement; City shall have no obligation to pursue such enforcement on Contractor's behalf.
- B. Provide timely notice to one another of a perceived failure to perform any obligations under this Agreement and access to information supporting any claim of the other Party's failure to perform.
- C. Provide timely access to the City Contract Manager and Contractor's Contract Manager and complete and timely response to requests of the other Party.
- D. Provide timely notice of matters that may affect either Party's ability to perform under the Agreement.

ARTICLE 2. TERM OF AGREEMENT

2.1 TERM AND OPTION TO EXTEND

The Term of this Agreement shall commence February 1, 2021 (the "Commencement Date") and continue in full force for a period of ten (10) years, through and including January 31, 2031, unless the Agreement is extended in accordance with this Section or terminated pursuant to Section 10.3. Between the Effective Date and Commencement Date, Contractor shall perform all activities necessary to prepare itself to start providing services required by this Agreement on the Commencement Date.

This Agreement may be extended by mutual agreement of the Parties one or more times without amendment for a period of no more than five (5) additional years for a total Term that does not extend beyond January 31, 2036. If the City desires to extend the Agreement, the City shall provide Contractor with a written offer to extend the Agreement at least one (1) year before the expiration of the initial Term and at least one (1) year before the expiration of any extended term. Such offer by the City shall specify the duration of the extension, which shall be in one (1) year increments. Contractor shall respond to City's offer within thirty (30) days stating in writing whether it accepts or declines City's offer. If this Agreement is extended pursuant to this paragraph, then Rates for Rate Period Eleven (11) will be established using the cost-based Rate adjustment methodology described in Exhibit E2.

2.2 CONDITIONS TO EFFECTIVENESS OF AGREEMENT

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

- 194 A. **Accuracy of Representations.** Contractor's representations and warranties made in Contractor's
195 Proposal and Article 11 are true and correct on and as of the Effective Date.
- 196 B. **Furnishings of Insurance and Performance Bond.** Contractor has furnished evidence of the
197 insurance and performance bond required by Article 9 that is satisfactory to the City.
- 198 C. **Permits Furnished.** Contractor has provided the City with copies of all permits necessary for use
199 and operation of all Approved Facilities owned or operated by Contractor or any Subcontractor
200 under the terms of this Agreement.
- 201 D. **Legal Challenge.** There is no litigation pending, or threatened in writing, challenging the award of
202 this Agreement or actions related thereto, or seeking to restrain or enjoin the performance of this
203 Agreement. Notwithstanding anything to the contrary in this Agreement, Contractor shall be
204 entitled to rescind this Agreement upon thirty (30) calendar days' prior written notice to the City
205 if the condition is not satisfied or waived in writing by the City within sixty (60) days after the date
206 the City Council approves this Agreement.

207 **ARTICLE 3.**

208 **SCOPE OF AGREEMENT**

209 **3.1 SUMMARY SCOPE OF SERVICES**

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

- 211 A. Providing a three-Container Collection program for the separate Collection of Recyclable
212 Materials, Organic Materials, and Solid Waste placed for Collection by Customers pursuant to the
213 requirements of Article 4 and Exhibit B;
- 214 B. Collecting C&D placed for Collection by Customers pursuant to the requirements of Article 4 and
215 Exhibit B;
- 216 C. Transporting Collected materials to the appropriate Approved Facilities pursuant to the
217 requirements of Article 4 and Exhibit B;
- 218 D. Ensuring the Processing of Collected Recyclable Materials, Organic Materials, and C&D at the
219 appropriate Approved Facilities pursuant to the requirements of Article 4 and Exhibit B;
- 220 E. Performing all other services required by this Agreement including, but not limited to, Customer
221 billing, public education, Customer service, contamination monitoring, record keeping, and
222 reporting pursuant to Articles 4 and 6 and Exhibits C and D;
- 223 F. Furnishing all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and
224 all other items and services necessary to perform its obligations under this Agreement;
- 225 G. Paying all expenses related to provision of services required by this Agreement including, but not
226 limited to, taxes, regulatory fees (including City fees), and utilities;

H. Performing or providing all services necessary to fulfill Contractor's obligations in full accordance with this Agreement at all times using best industry practice for comparable operations; and,

I. Complying with all applicable Federal, State, and local laws and regulations.

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

3.2 USE OF APPROVED FACILITIES

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 Recyclable Materials, Organic Materials, Solid Waste, and other materials Collected in the City. Such decision by Contractor in no way constitutes a restraint of trade notwithstanding any Change in Law regarding flow control limitations or any definition thereof. The City may direct Contractor's use of a Designated Facility, as further described in this Section 3.2. The City exercise of such right shall not constitute a change in scope under Section 3.5.

It is the City intent that Contractor arrange for Organic Materials and Recyclable Materials Processing, and subcontract for such services at an Approved Recyclable Materials Processing Facility and an Approved Organic Materials Processing Facility. Upon providing Contractor ninety (90) calendar days' prior written notice, the City may direct Contractor to use a Designated Recyclable Materials Processing Facility(ies), subject to the Transfer provisions of Sections 4.1.B and 4.2.B, and with adjustment of Contractor Compensation pursuant to a cost-based Rate adjustment as provided in Exhibit E2. City shall separately contract with such Designated Recyclable Materials Processing Facility(ies) or, if mutually agreed by City and Contractor, Contractor shall contract with such facility(ies).

The City's current, separate contract for Disposal and C&D Processing terminates on November 20, 2023. At any time during the Term, on or after August 20, 2023, the City may provide Contractor ninety (90) calendar days' prior written notice requiring Contractor to use a Designated Disposal Facility(ies) and/or a Designated C&D Processing Facility(ies), subject to the Transfer provisions of Sections 4.3 or 4.5 as applicable, and with adjustment of Contractor Compensation pursuant to a cost-based Rate adjustment as provided in Exhibit E2. City shall separately contract with such Designated Disposal Facility(ies) and/or Designated C&D Processing Facility(ies), or, if mutually agreed by City and Contractor, Contractor shall contract with such facility(ies).

3.3 SUBCONTRACTING

Contractor shall not engage any Subcontractors for Collection or Transportation of Recyclable Materials, Organic Materials, Solid Waste, or C&D Materials, or for Processing of Organic Materials without the prior written consent of the City Contract Manager. As of the Effective Date, the City has approved Contractor's use of those Subcontractors identified in Contractor's Proposal, included herein as Exhibit G4. Upon ten (10) Business Days' prior written notice by the City, Contractor shall provide the City, or permit the City to inspect, a copy of the fully-executed version of any subcontract.

Affiliates may only provide services under this Agreement as Subcontractors. Notwithstanding the foregoing, if Contractor plans to engage an Affiliate as a Subcontractor in the provision of services, other

than those identified in Contractor's Proposal for the limited purposes described in Contractor's Proposal, Contractor shall provide the City Contract Manager with thirty (30) calendar days' prior written notice of its plans and provide an explanation of any potential impacts related to the quality, timeliness, or cost of providing services under this Agreement. Any Affiliate subcontracted by Contractor under this Agreement, including but not limited to the Approved Organic Materials Processing Facility, shall be deemed to be one and the same as Contractor for the purposes of Contractor's obligations under this Agreement and the City shall not accept any excuse from performance on the basis of Contractor's inability to compel the performance of such an Affiliate.

Contractor shall be responsible for ensuring that all Subcontractors (including Affiliates) comply with all material terms of this Agreement that specifically apply to the services subcontracted to them. Subcontractors shall be solely responsible to Contractor throughout the performance of the services under this Agreement. Assignment by Contractor of work to Subcontractors shall not relieve Contractor of any obligation to the City for the work performed.

Notwithstanding any other provision of this Agreement, Contractor shall not be responsible for ensuring the compliance of the Designated Disposal Facility or the Designated C&D Processing Facility with the requirements of this Agreement, nor shall the Contractor be responsible for ensuring the compliance with the requirements of this Agreement of any Designated Recyclable Materials Processing Facility that the City may direct Contractor to use pursuant to Section 3.2.

3.4 RESPONSIBILITY FOR MATERIALS

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

Responsibility for Excluded Waste that has been inadvertently Collected by Contractor shall remain with Contractor if Contractor cannot identify the Generator, and Contractor shall assume all responsibility for its proper Disposal; however, nothing in this Agreement shall be deemed to limit any remedies Contractor or its Affiliates may have against the Generator under applicable Federal, State, and local laws and regulations.

3.5 CITY-DIRECTED CHANGES TO SCOPE

The City may request Contractor to implement modifications to existing services, to provide additional (or reduced) services under this Agreement, or to otherwise modify Contractor's obligations under this Agreement. In such case, Contractor shall present, within thirty (30) calendar days after the City's request, unless an alternate schedule is mutually agreed-upon, a written proposal to provide such modified or additional (or reduced) services or obligations, including the proposed manner of providing the modified or additional (or reduced) services or obligations and the incremental cost (increase or decrease) of the modified or additional (or reduced) services, and any proposed change in Contractor's Compensation. The City and Contractor shall meet and confer to negotiate Contractor's Proposal and, if mutual agreement is reached, shall amend this Agreement, as appropriate, to reflect the mutually agreed-upon terms and

conditions. If the City and Contractor are unable to agree on terms and conditions within ninety (90) calendar days after the City's receipt of Contractor's Proposal for such services, then the cost implications of the modified, additional, or reduced services or obligations under Section 8.3 (Extraordinary Rate Adjustments) will apply, or the City may permit other Persons to provide such services, provided that such services do not conflict with the exclusivity granted to Contractor under Section 1.1. Nothing herein shall prevent the City from soliciting cost and operating information from other Persons in order to inform the City's evaluation of Contractor's Proposal.

At any time during the Term of this Agreement, the City may solicit proposals from other Persons for services not contemplated under (and outside the scope of) this Agreement, including as provided in Section 1.2.G. In the event that contracting with other Persons for such services will reduce Contractor's Compensation under this Agreement, as described in Article 8, Contractor shall be offered the opportunity to match any other Person's proposed pricing and be awarded the added scope of services. Nothing in this Agreement shall prevent the City from contracting with other Persons in the event that Contractor is unable or unwilling to provide such services at or below the cost proposed by the other Person.

City-directed changes in scope include, without limitation, any direction by City to use a different Processing, Transfer, or Disposal Facility from the one then being used by Contractor, except those set forth in Section 3.2, for which a cost-based Rate adjustment under Exhibit E2 is provided.

ARTICLE 4. SCOPE OF SERVICES

Contractor shall perform services described in this Article 4. This Article 4 describes the general requirements for the services to be provided. More specific requirements for how each service shall be provided to each Customer Type are described in Exhibit B. Failure to specifically require an act necessary to perform the service does not relieve Contractor of its obligation to perform such act.

4.1 RECYCLABLE MATERIALS

A. **Collection.** Contractor shall provide Recyclable Materials Collection services as described in Exhibit B, for direct Transport to the Approved Recyclable Materials Processing Facility. Contractor acknowledges that acceptable Recyclable Materials, as described in the definition of "Recyclable Materials" in Exhibit A, may be modified by mutual agreement of the City and Contractor from time to time during the Term of this Agreement.

B. **Transfer.** In the event the City directs Contractor to use a Designated Recyclable Materials Processing Facility as provided in Section 3.2, the Parties will meet and confer, and the City will determine if Transfer will be less expensive than direct Transport to the Designated Recyclable Materials Processing Facility. The City will base its determination on a comparison of the incremental added cost of direct Transport above the agreed distance threshold as described in Exhibit G2, to the cost of Transfer including the Transfer tip fee and hourly Transport costs provided in Exhibit G2, as escalated. If the City requires Contractor to provide for Transfer, Contractor shall Transport Recyclable Materials from the Route to the Approved Transfer Facility, at which time Contractor shall unload Recyclable Materials from Collection vehicles and load Recyclable Materials into large-capacity vehicles and Transport such material to the Designated Recyclable Materials Processing Facility. In the event the City approves use of the Approved

Transfer Facility for Recyclable Materials, any Processing of Recyclable Materials shall be subject to the applicable Processing requirements of Section 4.1.C.

Contractor shall keep or cause its Subcontractor to keep all existing permits and approvals necessary for use and operation of the Approved Transfer Facility under the terms of this Agreement. Upon request, Contractor shall provide copies of facility permits and/or notices of violations (obtained from its Transfer Facility Subcontractor if necessary) to the City Contract Manager. If Contractor is unable to use or operate the Approved Transfer Facility, then Contractor shall be responsible for making other Transportation arrangements. In such event, Contractor shall not be compensated for any additional costs, unless Contractor's inability to use or operate the Approved Transfer Facility was due to a Force Majeure Event, in which case Contractor shall be entitled to recover any additional costs as an "other adjustment" in the next annual Rate adjustment. If Contractor plans to change its Transfer method, Contractor shall obtain written approval from the City prior to making the change.

C. Processing.

1. General. Contractor shall Transport and deliver all Recyclable Materials Collected in the City to the Approved Recyclable Materials Processing Facility or the Designated Recyclable Materials Processing Facility. All tipping fees and other costs associated with Transporting to and Processing of such Recyclable Materials at the Approved Recyclable Materials Processing Facility or the Designated Recyclable Materials Processing Facility and Disposing of the Residue as required in Section 4.1.H below shall be paid by Contractor.

The Approved Recyclable Materials Processing Facility or the Designated Recyclable Materials Processing Facility shall Process Recyclable Paper in a manner deemed not to constitute landfill Disposal pursuant to 14 CCR Section 18983.1(a), which states that landfill Disposal includes final disposition of Organic Waste (including Recyclable Paper) at a landfill or use of Organic Waste (including Recyclable Paper) as Alternative Daily Cover (ADC) or Alternative Intermediate Cover (AIC).

Contractor shall observe and comply with all regulations in effect at the Approved Recyclable Materials Processing Facility or the Designated Recyclable Materials Processing Facility, and cooperate with and take direction from the operator thereof with respect to delivery of Recyclable Materials. In the event that the regulations, requirements, or policies of the Approved Recyclable Materials Processing Facility or the Designated Recyclable Materials Processing Facility are in conflict with the requirements of this Agreement, the requirements of this Agreement shall supersede the regulations in effect at the facility with respect to Contractor's obligations to perform under this Agreement.

Contractor guarantees sufficient capacity at the Approved Recyclable Materials Processing Facility or the Designated Recyclable Materials Processing Facility to Process all Recyclable Materials Collected by Contractor under this Agreement throughout the Term of the Agreement.

2. Contamination. Contractor shall actively work with the Approved Recyclable Materials Processing Facility and/or the Designated Recyclable Materials Processing Facility, as applicable, throughout the Term of this Agreement to ensure that contamination of the Recyclable Materials Collected under this Agreement and delivered to the Processing Facility

390 remains below the limits established by Applicable Law including, without limitation,
391 applicable regulations or regulatory guidance issued pursuant to SB 1383.

392 3. Permits. Contractor shall keep or cause its Subcontractor to keep all existing permits and
393 approvals necessary for use and operation of the Approved Recyclable Materials Processing
394 Facility under the terms of this Agreement. Upon request, Contractor shall provide copies of
395 facility permits and/or notices of violations (obtained from its Processing Facility
396 Subcontractor, if necessary) to the City Contract Manager.

397 D. **Incompatible Materials.**

398 If and to the extent 14 CCR Section 17409.5.8 (Incompatible Materials Limit in Recovered Organic
399 Waste) applies to the Approved Recyclable Materials Processing Facility or the Approved Transfer
400 Facility, Contractor shall ensure that such facilities comply with such code section. Such
401 compliance may be achieved via the alternative pathway set forth in Section 17409.5.9.
402 (Alternatives to Measurement Protocols) or any other means permitted by law. Whether each
403 such facility complies with 14 CCR Section 17409.5.8 shall be determined by the facility's EA (as
404 defined in 14 CCR Section 17402(a)(5)). For convenience, and without limiting the foregoing, the
405 text of 14 CCR Section 17409.5.8 as it exists on the date hereof is as follows:

406 "Section 17409.5.8. Incompatible Materials Limit in Recovered Organic Waste.

407 (a) A transfer/processing facility or operation shall only send offsite that organic waste recovered
408 after processing from the source separated organic waste stream and from the mixed
409 waste organic collection stream that meets the following requirements:

410 (1) On and after January 1, 2022 with no more than 20 percent of incompatible material
411 by weight; and

412 (2) On and after January 1, 2024 with no more than 10 percent of incompatible material
413 by weight.

414 (b) The operator shall measure compliance with Subdivision (a) by using the following protocol:

415 (1) Use the same samples taken to comply with Sections 17409.5.2 and 17409.5.4 and the
416 same total weight of each of those samples.

417 (2) For each sample, remove any incompatible material and determine the weight of the
418 incompatibles in that sample.

419 (3) Then determine a ratio of the incompatible material for each type of organic waste in
420 the mixed waste organic collection stream and the source separated organic
421 waste collection waste stream by dividing the total from Subdivision (b)(2) by the
422 total from Subdivision (b)(1).

423 (4) Multiply the ratio determined pursuant to Subdivision (b)(3) for each type of organic
424 waste by the total weight of all of the same type of organic waste separated after
425 processing and destined for end-use, recovery or further processing.

- 426 (5) Determine the total weight of incompatible materials separated from the mixed waste
427 organic collection stream and from the source separated organic waste stream
428 by adding the sum of all the weights calculated pursuant to Subdivision (b)(4).
- 429 (6) Determine the ratio of incompatible materials by taking the total weight of
430 incompatible materials determined pursuant to Subdivision (b)(5) and dividing by
431 the sum of the outgoing weights of the materials recovered from the mixed waste
432 organic collection stream and from the source separated organic waste stream.
- 433 (7) Determine the percentage of incompatible materials by multiplying the ratio
434 determined pursuant to Subdivision (b)(6) by 100.
- 435 (c) The recovered organic waste stream shall not be subject to Section 17409.5.8(a) if the
436 recovered organic waste is sent to one or more of the following types of facilities that will
437 further process that waste:
- 438 (1) A transfer/processing facility or operation that complies with Section 17409.5.8(a).
- 439 (2) A compostable material handling facility or operation that, pursuant to Section
440 17867(a)(16), demonstrates that the percentage of organic waste in the materials
441 sent to disposal is:
- 442 (A) On and after January 1, 2022, less than 20 percent.
- 443 (B) On and after January 1, 2024, less than 10 percent.
- 444 (3) An in-vessel digestion facility or operation that, pursuant to Section 17896.44.1,
445 demonstrates that the percentage of organic waste in the materials sent to
446 disposal is:
- 447 (A) On and after January 1, 2022, less than 20 percent.
- 448 (B) On and after January 1, 2024, less than 10 percent.
- 449 (4) An activity that meets the definition of a recycling center as described in Section
450 17402.5(d).
- 451 (d) The operator shall conduct a measurement in the presence of the EA when requested.
- 452 (e) If it is determined by the EA that the measurements do not accurately reflect the records, the
453 EA may require the operator to increase the frequency of measurements, revise the
454 measurement protocol, or both to improve accuracy.
- 455 (f) For the purposes of this section 'disposal' has the same meaning as 'Activities that 6 constitute
456 landfill disposal' as defined in Section 18982."
- 457 E. **Alternative Processing Facility.** If Contractor is unable to Process Recyclable Materials at the
458 Approved Recyclable Materials Processing Facility or the Designated Recyclable Materials
459 Processing Facility due to an emergency or sudden and unforeseen closure of the Processing

Facility as provided in Section 10.7. Contractor may use an alternative Processing Facility provided that Contractor provides written notice to the City Contract Manager within forty-eight (48) hours after Contractor becomes aware of such emergency or sudden and unforeseen closure. Pursuant to Exhibit D, the notification shall include the following: (i) name of the applicable Approved Recyclable Materials Processing Facility or Designated Recyclable Materials Processing Facility; (ii) the Recycling and Disposal Reporting System Number of the Approved Recyclable Materials Processing Facility or Designated Recyclable Materials Processing Facility; (iii) the date the Approved Recyclable Materials Processing Facility or Designated Recyclable Materials Processing Facility became unable to Process Recyclable Materials; (iv) description of the emergency or unforeseen closure; (v) the period of time Contractor anticipates the temporary inability of the Approved Recyclable Materials Processing Facility or Designated Recyclable Materials Processing Facility to Process Recyclable Materials; and, (vi) Contractor's proposed action plan to deliver materials to an alternative Processing Facility for Processing or Contractor's request for waiver to Transport the Recyclable Materials to the Designated Disposal Facility for Disposal on a temporary basis.

Upon receipt of notification by Contractor, the City shall evaluate the notification and determine if the City shall require Contractor to use an alternative Processing Facility or allow Contractor to Transport the Recyclable Materials to the Designated Disposal Facility for Disposal on a temporary basis for a time period specified by the City. The City shall notify Contractor of its requirement that Contractor use an alternative Processing Facility for Processing or use the Designated Disposal Facility for Disposal, and the period of time that the City will allow the Recyclable Materials to be redirected. Pursuant to 14 CCR Section 18984.13, the approved Disposal period shall not exceed ninety (90) days after the date the Approved/Designated Processing Facility's emergency or unforeseen closure commenced, without prior receipt of written permission from the City Contract Manager.

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

As appropriate for the type of Recyclable Materials to be delivered to the alternative Processing Facility, the alternative Recyclable Materials Processing Facility shall meet the applicable facility standards in this Agreement, and the Recyclable Materials shall thereafter be sent to: (i) an allowable facility, operation, or used for an activity specified by pursuant to 14 CCR Section 18983.1(b) and not subsequently sent to landfill Disposal; (ii) a Transfer facility; or, (iii) a Disposal Facility.

The performance of Recyclable Materials commodity markets shall not be considered an acceptable basis for the need to use an alternative Processing Facility nor shall it serve as the basis for any adjustment in Contractor's Compensation under this Agreement, other than as specifically contemplated in Exhibit E to this Agreement. In the event that a change in the Processing Facility results in increased costs, the City may identify and direct Contractor to an alternative Processing Facility that results in less cost than Contractor-identified alternative.

Contractor shall be entitled to recover any actual, additional, and demonstrable direct costs (not including overhead or profit) incurred to use an alternative Processing Facility under the circumstances described in this section, as an “other adjustment” in the next annual Rate adjustment.

Except for the emergency conditions described in this section, Contractor shall not change its selection of the Approved Recyclable Materials Processing Facility without the City’s written approval, which may be withheld in the City’s sole discretion. If Contractor proposes to use a Recyclable Materials Processing Facility that is different than the Approved Recyclable Materials Processing Facility, it shall request written approval from the City Contract Manager, which it may grant at its discretion, at least sixty (60) calendar days prior to proposed use of the Processing Facility and obtain City’s written approval no later than ten (10) calendar days prior to use of the Processing Facility.

F. **Separate Handling Requirements.** In accordance with 14 CCR Section 17409.5.6, Contractor shall keep Recyclable Materials separate from other Discarded Material streams and shall Process the materials separately from other Discarded Material streams.

G. **Marketing.** Contractor shall be responsible for ensuring that the Approved Recyclable Materials Processing Facility and/or Designated Recyclable Materials Processing Facility markets Recyclable Materials Collected under this Agreement in a manner that is fully compliant with the requirements of the Agreement, and shall include all such provisions in the Processing Facility subcontract. Contractor’s marketing strategy shall promote the highest and best use of materials presented in the waste management hierarchy established by AB 939. Where practical, the marketing strategy should include use of local, regional, and domestic markets for Recyclable Materials.

H. **Residue Disposal.** Residue from the Processing of Recyclable Materials Collected under this Agreement at the Approved Recyclable Materials Processing Facility, which cannot be marketed, shall be Disposed of by Contractor, or the Processing Facility Subcontractor, or used as ADC or AIC. Residue delivered for Disposal shall not include any Excluded Waste.

4.2 ORGANIC MATERIALS

A. **Collection.** Contractor shall provide Organic Materials Collection services as described in Exhibit B, for direct Transport to the Approved Transfer Facility.

B. **Transfer.** At the Approved Transfer Facility, Contractor shall unload Organic Materials from Collection vehicles and load Organic Materials into large-capacity vehicles and Transport such material to the Approved Organic Materials Processing Facility. Any Processing of Organic Materials at the Approved Transfer Facility shall be subject to the applicable Processing requirements in Section 4.2.C.

Contractor shall keep or cause its Subcontractor to keep all existing permits and approvals necessary for use and operation of the Approved Transfer Facility(ies) under the terms of this Agreement. Upon request, Contractor shall provide copies of facility permits and/or notices of violations (obtained from its Transfer Facility Subcontractor if necessary) to the City Contract Manager. If Contractor is unable to use or operate the Approved Transfer Facility, then Contractor shall be responsible for making other Transportation arrangements. In such event, Contractor

shall not be compensated for any additional costs, unless Contractor's inability to use or operate the Approved Transfer Facility was beyond Contractor's control as provided in Section 10.7, in which case Contractor shall be entitled to recover any additional costs as an "other adjustment" in the next annual Rate adjustment. If Contractor plans to change its Transfer method, Contractor shall obtain written approval from the City prior to making the change.

C. **Processing.**

1. General. Contractor shall Transport and deliver all Organic Materials Collected in the City to the Approved Organic Materials Processing Facility. All tipping fees and other costs associated with Transporting such Organic Materials to the Approved Organic Materials Processing Facility and Disposing of the Residue as required in Section 4.2.H below shall be paid by Contractor.

Subject to the limitations of Section 4.2.H (Residue Disposal), the Approved Organic Materials Processing Facility shall Process Organic Materials in a manner deemed not to constitute landfill Disposal pursuant to 14 CCR Section 18983.1(a), which states that landfill Disposal includes final disposition of Organic Waste (including Organic Materials) at a landfill or use of Organic Waste (including Organic Materials) as Alternative Daily Cover (ADC) or Alternative Intermediate Cover (AIC).

Contractor shall observe and comply with all regulations in effect at the Approved Organic Materials Processing Facility and cooperate with and take direction from the operator thereof with respect to delivery of Organic Materials. In the event that the regulations, requirements, or policies of the Approved Organic Materials Processing Facility are in conflict with the requirements of this Agreement, the requirements of this Agreement shall supersede the regulations in effect at the facility with respect to Contractor's obligations to perform under this Agreement.

Contractor guarantees sufficient capacity at the Approved Organic Materials Processing Facility to Process all Organic Materials Collected by Contractor under this Agreement throughout the Term of the Agreement.

2. Contamination. Contractor shall actively work with the Approved Organic Materials Processing Facility throughout the Term of this Agreement to ensure that contamination of the Organic Materials Collected under this Agreement and delivered to the Processing Facility remains below the limits established by Applicable Law including, without limitation, applicable regulations or regulatory guidance issued pursuant to SB 1383.

3. Permits. Contractor shall keep or cause its Subcontractor to keep all existing permits and approvals necessary for use and operation of the Approved Organic Materials Processing Facility under the terms of this Agreement. Upon request, Contractor shall provide copies of facility permits and/or notices of violations (obtained from its Processing Facility Subcontractor if necessary) to the City Contract Manager.

4. Compostable Plastics. Contractor and the City Contract Manager shall meet annually to discuss the acceptance and Processing of Compostable Plastics. For any period of time during the Term in which Contractor accepts and Processes Compostable Plastics collected through franchises held by Recology or its Affiliates in the City and County of San Francisco, San Mateo

County, or Santa Clara County, the City reserves the rights to require Contractor, at no additional Contractor Compensation, to Collect and Process Compostable Plastic bags used by Customers to contain Organic Materials prior to placement in the Organic Materials Container for Collection. In that event, Contractor shall Collect and Transport such materials for Processing at the Approved Organic Materials Processing Facility, which shall liberate and Process Organic Materials contained in Compostable Plastic bags and which shall be prohibited from Disposing Organic Materials contained in Compostable Plastic bags. Should Contractor cease to accept Compostable Plastics from other franchisees in the City and County of San Francisco, San Mateo County, or Santa Clara County, and is no longer able to accept Compostable Plastics from City Generators, Contractor shall provide the City Contract Manager with at least ninety (90) days' notice.

Pursuant to 14 CCR Sections 18984.1, Contractor shall submit to the City annually the written notification contemplated by 14 CCR Sections 18984.1(a)(1)(A) and 18984.2(a)(1)(C) of whether the Approved Organic Materials Processing Facility has and will continue to have the capabilities to Process and recover Compostable Plastic (including Compostable Plastic bags) when it Processes and recovers Organic Materials.

D. Incompatible Materials.

If and to the extent 14 CCR Section 17409.5.8 (Incompatible Materials Limit in Recovered Organic Waste) applies to the Approved Organic Materials Processing Facility or the Approved Transfer Facility, Contractor shall ensure that such facilities comply with such code section. Such compliance may be achieved via the alternative pathway set forth in Section 17409.5.9. (Alternatives to Measurement Protocols) or any other means permitted by law. Whether each such facility complies with 14 CCR Section 17409.5.8 shall be determined by the facility's EA (as defined in 14 CCR Section 17402(a)(5)). For convenience, and without limiting the foregoing, the text of 14 CCR Section 17409.5.8 as it exists on the date hereof is as set forth in Section 4.1.D above.

E. Alternative Processing Facility. If Contractor is unable to Process Organic Materials at the Approved Organic Materials Processing Facility due to an emergency or sudden and unforeseen closure of the Processing Facility that is outside the control of Contractor and as provided in Section 10.7, Contractor may use an alternative Processing Facility provided that Contractor provides written notice to the City Contract Manager within forty-eight (48) hours after Contractor becomes aware of such emergency or sudden and unforeseen closure. Pursuant to Exhibit D, the notification shall include the following: (i) name of the applicable Approved Organic Materials Processing Facility; (ii) the Recycling and Disposal Reporting System Number of the Approved Organic Materials Processing Facility; (iii) the date the Approved Organic Materials Processing Facility became unable to Process Organic Materials; (iv) description of the emergency or unforeseen closure; (v) the period of time Contractor anticipates the temporary inability of the Approved Organic Materials Processing Facility to Process Organic Materials; and (vi) Contractor's proposed action plan to deliver materials to an alternative Processing Facility for Processing or Contractor's request for waiver to Transport the Organic Materials to the Designated Disposal Facility for Disposal on a temporary basis.

Upon receipt of notification by Contractor, the City shall evaluate the notification and determine if the City shall require Contractor to use an alternative Processing Facility or allow Contractor to

Transport the Organic Materials to the Designated Disposal Facility for Disposal on a temporary basis for a time period specified by the City. The City shall notify Contractor of its requirement that Contractor use an alternative Processing Facility for Processing or use the Designated Disposal Facility for Disposal, and the period of time that the City will allow the Organic Materials to be redirected. Pursuant to 14 CCR Section 18984.13, the approved Disposal period shall not exceed ninety (90) days after the date the Approved Organic Materials Processing Facility's emergency or unforeseen closure commenced, without prior receipt of written permission from the City Contract Manager.

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

As appropriate for the type of Organic Materials to be delivered to the alternative Organic Materials Processing Facility, the alternative Organic Materials Processing Facility shall meet the applicable facility standards in this Agreement, and the Organic Materials shall thereafter be sent to: (i) an allowable facility, operation, or used for an activity specified by pursuant to 14 CCR Section 18983.1(b) and not subsequently sent to landfill Disposal; (ii) a Transfer Facility; or, (iii) a Disposal Facility.

In the event that a change in the Processing Facility results in increased costs, the City may identify and direct Contractor to an alternative Processing Facility that results in less cost than Contractor-identified alternative.

Contractor shall be entitled to recover any actual, additional, and demonstrable direct costs (not including overhead or profit) incurred to use an alternative Processing Facility under the circumstances described in this section, as an "other adjustment" in the next annual Rate adjustment.

Except for the emergency conditions described in this section, Contractor shall not change its selection of the Approved Organic Materials Processing Facility without the City's written approval, which may be withheld in the City's sole discretion. If Contractor proposes to use an Organic Materials Processing Facility that is different than the Approved Organic Materials Processing Facility, it shall request written approval from the City Contract Manager, which it may grant at its discretion, at least sixty (60) calendar days prior to use of the Processing Facility and obtain City's written approval no later than ten (10) calendar days prior to use of the Processing Facility.

F. **Separate Handling Requirements.** In accordance with 14 CCR Section 17409.5.6, Contractor shall keep Organic Materials separate from other Discarded Material streams and shall Process the materials separately from other Discarded Material streams.

G. **Marketing.** Contractor shall be responsible for ensuring that the Approved Organic Materials Processing Facility markets Compost, Mulch, or other products produced from Organic Materials Collected under this Agreement, in a manner that is fully compliant with the requirements of this

Agreement. Contractor's marketing strategy shall promote the highest and best use of materials presented in the waste management hierarchy established by AB 939. Where practical, the marketing strategy should include use of local markets for such products.

- H. **Residue Disposal.** Residue from the Processing of Organic Materials Collected under this Agreement at the Approved Organic Materials Processing Facility, which cannot be marketed, shall be Disposed of by Contractor, or the Processing Facility Subcontractor, or used as ADC or AIC (in which case such Residue shall be considered as Disposed). Residue delivered for Disposal shall not include any Excluded Waste.

4.3 SOLID WASTE

- A. **Collection.** Contractor shall provide Solid Waste Collection services, as described in Exhibit B, for direct Transport to the Designated Disposal Facility.

Contractor acknowledges that the City is committed to Diverting materials from Disposal through the implementation of source reduction, Reuse, Recycling, Composting, and other programs, and that the City may implement new programs, with or without the involvement of Contractor, that may impact the overall quantity or composition of Solid Waste to be Collected by Contractor. Contractor shall not be entitled to any compensation or other relief resulting from a change in Solid Waste volumes or Tonnage or from a change in the composition of Solid Waste.

- B. **Transfer.** In the event the City directs Contractor to use a Designated Disposal Facility as provided in Section 3.2, the Parties will meet and confer, and the City will determine if Transfer will be less expensive than direct Transport to the Designated Disposal Facility. The City will base its determination on a comparison of the incremental added cost of direct Transport above the agreed distance threshold as described in Exhibit G2, to the cost of Transfer including the Transfer tip fee and hourly Transport costs provided in Exhibit G2, as escalated. If the City requires Contractor provide for Transfer, Contractor shall Transport Solid Waste from the Route to the Approved Transfer Facility, at which Contractor shall unload Solid Waste from Collection vehicles and load Solid Waste into large-capacity vehicles and Transport such material to the Designated Disposal Facility.

Contractor shall keep or cause its Subcontractor to keep all existing permits and approvals necessary for use and operation of the Approved Transfer Facility under the terms of this Agreement. Upon request, Contractor shall provide copies of facility permits and/or notices of violations (obtained from its Transfer Facility Subcontractor if necessary) to the City Contract Manager. If Contractor is unable to use or operate the Approved Transfer Facility, then Contractor shall be responsible for making other Transportation arrangements. In such event, Contractor shall not be compensated for any additional costs, unless Contractor's inability to use or operate the Approved Transfer Facility was due to a Force Majeure Event, in which case Contractor shall be entitled to recover any additional costs as an "other adjustment" in the next annual Rate adjustment. If Contractor plans to change its Transfer method, Contractor shall obtain written approval from the City prior to making the change.

- C. **Disposal.** Contractor shall Transport and deliver all Solid Waste Collected in the City to the Designated Disposal Facility. All costs associated with Transporting to and Disposing of such Solid Waste at the Designated Disposal Facility including payment of any gate fees charged at the

Designated Disposal Facility shall be paid by Contractor. Contractor shall observe and comply with all regulations in effect at the Designated Disposal Facility and cooperate with and take direction from the operator thereof with respect to delivery of Solid Waste. In the event that the regulations, requirements, or policies of the Designated Disposal Facility are in conflict with the requirements of this Agreement, the requirements of this Agreement shall supersede the regulations in effect at the facility with respect to Contractor's obligations to perform under this Agreement.

4.4 ON-CALL, BULKY ITEM, BIN-BY-THE-DAY, AND CITY-WIDE RECYCLING COLLECTION EVENTS

Contractor shall provide On-Call, Bulky Item, Bin-by-the-Day, and City-wide Recycling event Collection services as described in Exhibit B and direct Transport to the Approved Processing Facility. City-wide Recycling events (Environmental Days) Collection services shall be provided four (4) times per year, as approved by the City Contract Manager, pursuant to Exhibit B4, Section 3. Contractor shall Transport all On-Call materials, Bulky Items, Bin-by-the-Day material, and City-wide Recycling event materials Collected under this Agreement to the Approved Processing Facility. Except as otherwise specified Contractor shall pay all costs associated with Transporting and Processing On-Call materials, Bulky Items, City-wide Recycling event materials, Environmental Days materials, and Bin-by-the-Day material. Contractor shall observe and comply with all regulations in effect at the Approved Processing Facility and cooperate with and take direction from the operator thereof with respect to delivery of On-Call materials, Bulky Items, Bin-by-the-Day material, and/or City-wide Recycling event material. Notwithstanding any other provision of this Agreement, Contractor shall not be required to provide more than thirty-five (35) On-Call or Bulky Item Collections per Working Day. Subject to that constraint, Contractor shall schedule On-Call and Bulky Item Collections at the earliest Working Day acceptable to the Customer. On-Call and Bulky Item Collections may occur on any Working Day.

4.5 C&D COLLECTION

Contractor shall provide C&D Collection services as described in Exhibit B for direct Transport to the Designated C&D Processing Facility.

A. C&D Recycling Requirements. Contractor shall comply with the following requirements:

1. Comply with the City's Construction and Demolition Debris ordinances and regulations.
2. Educate C&D Customers on the requirement to Source Separate Organic Materials generated during construction and demolition projects and have them Collected separately from other C&D and Transported for Processing to an Approved Facility.
3. Cause any C&D Processor that is a Subcontractor (including Affiliates) of Contractor to comply with CalRecycle and California Building Standards Code including Part 11 California Green Building Standards Code (CALGreen) requirements for the Processing and Recycling of C&D including Organic Waste.
4. Provide in-person site visits at large C&D Collection Sites within the City to train staff on proper sorting for C&D Containers to assist them in achieving Diversion targets as required by California Building Standards Code Part 11 California Green Building Standards Code (CALGreen) requirements.

752 **B. Transfer.** In the event the City directs Contractor to use a Designated C&D Processing Facility as
753 provided in Section 3.2, the Parties will meet and confer, and the City will determine if Transfer
754 will be less expensive than direct Transport to the Designated C&D Processing Facility. The City
755 will base its determination on a comparison of the incremental added cost of direct Transport
756 above the agreed distance threshold as described in Exhibit G2, to the cost of Transfer including
757 the Transfer tip fee and hourly Transport costs provided in Exhibit G2, as escalated. If the City
758 requires Contractor provide for Transfer, Contractor shall Transport C&D material from the Route
759 to the Approved Transfer Facility, at which Contractor shall unload C&D material from Collection
760 vehicles and load C&D material into large-capacity vehicles and Transport such material to the
761 Designated C&D Processing Facility.

762 Contractor shall keep or cause its Subcontractor to keep all existing permits and approvals
763 necessary for use and operation of the Approved Transfer Facility under the terms of this
764 Agreement. Upon request, Contractor shall provide copies of facility permits and/or notices of
765 violations (obtained from its Transfer Facility Subcontractor if necessary) to the City Contract
766 Manager. If Contractor is unable to use or operate the Approved Transfer Facility, then Contractor
767 shall be responsible for making other Transportation arrangements. In such event, Contractor
768 shall not be compensated for any additional costs, unless Contractor's inability to use or operate
769 the Approved Transfer Facility was due to a Force Majeure Event, in which case Contractor shall
770 be entitled to recover any additional costs as an "other adjustment" in the next annual Rate
771 adjustment. If Contractor plans to change its Transfer method, Contractor shall obtain written
772 approval from the City prior to making the change.

773 **4.6 SPECIAL EVENTS**

774 Contractor shall provide Recyclable Materials, Organic Materials, and Solid Waste Collection services for
775 up to eight (8) one-day City-sponsored or hosted special events, examples of which are identified in Exhibit
776 B5, per Rate Period at no cost to the event or the City. The City Contract Manager shall provide Contractor
777 thirty (30) calendar days' advanced notice of the date, time, and location of each of the eight (8) City-
778 sponsored or hosted special events. The City Contract Manager or other parties may, with thirty (30)
779 calendar days' advanced notice, request Contractor provide services at additional events, in which case
780 Contractor may charge for such service consistent with the applicable Rate(s). Contractor shall provide
781 the special event services to additional City-sponsored special events upon thirty (30) calendar days'
782 advance written request by the City Contract Manager to Contractor, in accordance with Exhibit B5.
783 Special event services include:

784 **A. Event Collection Stations.** Contractor shall provide and set-up event Collection stations for
785 Collection of Recyclable Materials, Organic Materials, and Solid Waste at City-sponsored special
786 events. Each event Collection station shall include a separate Container for each of Recyclable
787 Materials, Organic Materials, and Solid Waste, as appropriate. Contractor shall provide a sufficient
788 number of event Collection stations of sufficient capacity to meet the needs of the event as
789 determined by Contractor in cooperation with the event organizer. Contractor shall provide
790 liners/bags for the Containers at the Collection stations if needed and shall line the Containers as
791 a part of the station set-up. Collection stations shall include adequate signs and labeling approved
792 by the City.

793 **B. Collection Station Monitors.** Upon request, Contractor shall provide the number of Collection
794 station monitors who shall be present for the duration of each special event that are necessary to

ensure consistent provision of high quality service. Contractor shall require Collection station monitors to monitor event Collection stations and educate event attendees and vendors about what materials are acceptable in each Collection station Container. The station monitors shall be responsible for removing full bags, re-lining event Containers, and Transporting materials contained in event Collection stations to Drop Boxes or trash enclosures, which will subsequently be Collected by Contractor. Station monitors will also sort materials both at the Collection stations and at the Drop Boxes or trash enclosures to ensure that they are properly separated.

C. **Containers.** Contractor shall provide Containers for the aggregation of material removed from event Collection stations during the course of the event, which may include Drop Boxes. Contractor shall provide Containers in sufficient number of appropriate type(s) for the needs of the event as determined by Contractor in cooperation with the event organizer. Contractor shall service Containers, as agreed-upon with the event organizer, and deliver Collected materials to the appropriate Approved Facility for Processing and/or Disposal.

D. **Public Education Booth.** Upon request of either the City Contract Manager or the event organizer, Contractor shall staff a booth or exhibit at the event for the purpose of educating the public about the services and programs provided by Contractor under this Agreement and the benefits of and opportunities for source reduction, Reuse, Recycling, and Composting.

E. **Reporting.** Within fourteen (14) calendar days after the event, Contractor shall submit a report to the City Contract Manager and event organizer. The report should include, at a minimum: the number of event Collection stations deployed at the event, the number of Collection station monitors, the Tonnage of each material type (i.e., Recyclable Materials, Organic Materials, and Solid Waste) or an estimate based on observed and documented volume Collected, and a description of the public education provided at the event.

F. **Edible Food Recovery.** The City may implement Edible Food Recovery efforts at special events. In the event that such efforts are initiated at an event being serviced by Contractor, Contractor shall support the recovery of Edible Food from special events in accordance with Section 4.15, or otherwise assist the City as reasonably requested.

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

For special events that are not identified in Exhibit B5 or otherwise hosted or sponsored by the City, and are that are otherwise not subject to the requirements of the Agreement, Contractor shall provide the above-described special event services at the request of the event organizer and may negotiate the charges for such services with the event organizer based on the specific needs of the event.

4.7 PUBLIC EDUCATION AND OUTREACH

In general, Contractor shall provide public education and outreach efforts as described in Exhibit C.

A. **Program Objectives.** The City intends to be responsible for overseeing the design, production, distribution, and implementation of a public education and outreach program. Contractor shall be responsible for the printing and distribution of City-approved materials under this program in

835 accordance with this Agreement and pay all costs associated therewith to the extent specified in
836 this Agreement. The City's public education and outreach strategy shall focus on improving
837 Generator understanding of the benefits of and opportunities for source reduction, Reuse,
838 Recycling, and Composting and landfill Disposal reduction and supporting compliance with
839 Applicable Laws, including, but not limited to AB 939, AB 341, AB 1826, and SB 1383.

840 In general, the City-provided public education and outreach aims to: (i) inform Generators about
841 the services that are provided under this Agreement with specific focus on describing the methods
842 and benefits of source reduction, Reuse, Recycling, and Composting; (ii) instruct Generators on
843 the proper method for placing materials in Containers for Collection and setting Containers out
844 for Collection, with specific focus on minimizing contamination of Recyclable Materials and
845 Organic Materials; (iii) clearly define Excluded Waste and educate Generators about the hazards
846 of such materials and their opportunities for proper handling; (iv) discourage Generators from
847 buying products if the product and its packaging are not readily Reusable, Recyclable, or
848 Compostable; (v) inform Generators subject to Food Recovery requirements under SB 1383 of
849 their obligation to recover Edible Food and actions they can take to prevent the creation of Food
850 Waste; (vi) encourage the use of Compost and recovered Organic Waste products; and, (vii)
851 encourage Generators to purchase products/packaging made with Recycled content materials.
852 The cumulative intended effect of these efforts is to reduce generation of Solid Waste and,
853 ultimately, Disposal of Solid Waste by each Generator in the City, and Contractor agrees to
854 support and not undermine or interfere with such efforts.

855 **B. Contractor Public Education Requirements and Support for City Educational Efforts.** Contractor
856 shall print and distribute the City-approved educational materials and conduct outreach, as
857 indicated in Exhibit C. Upon City request, Contractor shall review and comment on the materials
858 within five (5) Working Days after receipt of such request.

859 Contractor acknowledges that it is part of a multi-party effort to operate and educate the public
860 about the regional integrated waste management system. Contractor shall cooperate and
861 coordinate with the City Contract Manager on public education activities to minimize duplicative,
862 inconsistent, or inappropriately timed education campaigns and to ensure that public education
863 and outreach to City residents and businesses is consistent in content, format, and delivery. City-
864 developed outreach materials may be provided to Contractor in non-English languages in
865 response to: shifting demographics within the City; updates to State requirements or Applicable
866 Law; or, any other reason deemed appropriate by the City.

867 Contractor shall obtain approval from the City Contract Manager on all Contractor-provided
868 advertising, promotional, or service-related materials used within the City before publication,
869 distribution, and/or release. The City Contract Manager, in their reasonable discretion, shall have
870 the right to deny the use of any materials or content or may request that Contractor include the
871 City identification and contact information on materials and Contractor's approval of such
872 requests shall not be unreasonably withheld.

873 **C. Contractor Website.** Contractor shall maintain a website in accordance with Section 4.10.1.C.

874 **D. Provision of Notices to Non-Compliant Entities.** Contractor shall provide notices to non-
875 compliant entities under this Agreement, in accordance with Section 4.10.3.

- E. **Education Materials for Generators.** Contractor shall provide all Generators with the City-approved public education materials in accordance with Exhibit C (Public Education and Outreach Requirements).
- F. **Education Materials for Commercial Business Owners and Tenants.** Contractor shall provide Commercial business owners and Multi-Family property Owners/managers with the City-approved public education materials in accordance with Exhibit C (Public Education and Outreach Requirements).
- G. **Education Requirements for Commercial Edible Food Generators.** Contractor shall provide Commercial Edible Food Generators with the City-approved educational materials in accordance with Exhibit C (Public Education and Outreach Requirements).
- H. **Food Recovery Organizations and Food Recovery Services Online List.** Contractor shall post on its website an online list of Food Recovery Organizations and Food Recovery Services in accordance with Exhibit C.
- I. **Support of City, County, State, and Federal Policy.** City and Contractor shall meet and confer regarding future extended producer responsibility (EPR) initiatives that are of interest to the City, and shall cooperate in good faith to support such initiatives as mutually agreed.
- J. **Record Keeping and Reporting Requirements.** Contractor shall comply with the public education and outreach record keeping and reporting requirements of Article 6 and Exhibit D.
- K. **Waste Zero Specialist.** Contractor shall provide the City with a Waste Zero Specialist in accordance with Section 5.7.D and Exhibit C.

Sections 4.7.C-H and 4.7.J-K above are intended as cross-references only. In the event of any conflict between the above Sections and the cross-referenced Sections, the latter shall govern.

4.8 TECHNICAL ASSISTANCE

- A. **General.** Provision of Generator technical assistance is a key element in successful implementation of SB 1383 compliance requirements. It is the City's expectation that Contractor, the Subcontractor(s) hired pursuant to Section 4.8.B (if any), and the City shall work in close coordination to provide Generator technical assistance which includes in-person site visits and assessments to each Commercial and Multi-Family account. Contractor staff shall not provide Generator technical assistance without prior City training, or City-approved training by Subcontractor(s) provided under Section 4.8.B, provided such training is provided at no cost to Contractor, and initial training is provided before the Commencement Date. Technical assistance training provided by City may include, but may not be limited to, review of SB 1383 requirements, Generator requirements described under this Agreement, Municipal Code provisions, and best practices for communication with Customers.
- B. **Coordination with City and Third Parties.** By or before July 1, 2021, the City and Contractor shall confer regarding use of a third party(ies) for provision of technical assistance in support of AB 1826 and SB 1383 compliance. The scope of work may also include assistance with SB 1383 compliance reviews as provided in Section 4.8.C, Route reviews, and additional activities or assistance as needed.

C. **SB 1383 Initial On-Site Compliance Reviews.** Beginning on the Commencement Date, Contractor shall conduct an SB 1383 assessment for each Multi-Family and Commercial Customer within the City. Contractor shall follow the compliance review protocol provided in Section 4.14.B as well as noticing procedures provided in Section 4.10.3. During Contractor's interaction with Customer to establish new service to each new Multi-Family and Commercial Customer, Contractor shall conduct a compliance reviews for SB 1383. The assessment shall identify requirements for the regulated entity to subscribe for Collection service under SB 1383 and assess the current level of compliance with those requirements. Contractor shall identify opportunities for reduced Disposal of Recyclable Materials and Organic Materials, including source reduction and Edible Food Recovery.

D. **SB 1383 Ongoing On-Site Compliance Reviews** Beginning July 1, 2022, and annually thereafter, Contractor shall confer with the City Contract Manager, and shall visit some or all non-waived Generators identified by Contractor during the compliance review process described in Section 4.14.A.2 that appear required to enroll in Collection service pursuant to the City Municipal Code but are not subscribed for Recyclable Materials and Organic Materials Collection Service. If the Generator is not subscribed for both services, Contractor's representative shall attempt to resolve any logistical barriers to compliance with City's Collection service requirements and assist the Generators with selecting appropriate Service Levels for Discarded Materials. If Contractor is unable to subscribe said Generators to Discarded Materials Collection Services, Contractor shall submit to City monthly a list of said Generators in accordance with Exhibit D. Contractor shall provide ongoing, on-site training for: (i) Commercial Generators' staff regarding SB 1383 requirements, including, but not limited to: management, kitchen staff, service employees, and janitorial staff; and, (ii) Multi-Family Customers' staff, including but not limited to: the property manager, janitorial staff, maintenance, and any other on-site staff members or contractors that handle Discarded Materials.

Notwithstanding any other provision of this Agreement, Contractor shall not be deemed to have breached any obligation to provide on-site or in-person services at Customer or Generator Premises (e.g. compliance reviews, technical assistance, inspections), if the Customer or Generator refuses or is non-responsive to Contractor's attempts to provide the service, provided that Contractor makes multiple attempts to contact the Customer or Generator (including in writing and by either phone or email if available), documents such attempts and the Customer or Generator's response (if any), and makes such documentation available to City upon request.

4.9 BILLING

Contractor may bill all Customers and shall be solely responsible for collecting billings at Rates not to exceed those set in accordance with Article 8. Billing shall be performed on the basis of services rendered and this Agreement shall create no obligation on the part of any Person on the sole basis of the Ownership of property. Individual contracts between Contractor and a Customer for services provided under this Agreement shall be prohibited.

Contractor shall bill all Single-Family Customers quarterly for services provided. Contractor shall bill Single-Family Customers not earlier than one (1) month nor later than two (2) months into each quarterly billing cycle. Contractor shall bill all Commercial and Multi-Family Customers for scheduled and regularly recurring services on a monthly basis in arrears. Contractor shall bill Commercial and Multi-Family Customers for any on-call and/or non-recurring services no more frequently than monthly and may only

959 bill for services provided during the previous month. As the Rate Period begins in February, quarterly
960 billing shall be as follows (February-March-April, -May-June-July, August-September-October, November-
961 December-January).

962 Contractor shall make the low income Rate available to qualified Single-Family Customers. To qualify, the
963 Customer must: (a) live in a Single-Family Dwelling Unit that is billed separately (not combined with any
964 other Dwelling Unit); and (b) provide Contractor with a copy of the Customer's PG&E bill (or other suitable
965 documentation of a type approved in advance by City) verifying that the Customer is enrolled in PG&E's
966 CARE Program. Contractor may verify eligibility of Customers receiving the low income Rate annually, and
967 shall verify their eligibility at least once every five (5) years. Customers may also be required to promptly
968 notify Contractor if they are no longer enrolled in the CARE Program. If PG&E's CARE program is
969 discontinued or materially changed, the Parties shall negotiate in good faith to determine substitute
970 eligibility criteria and related verification methods that reflect CARE program eligibility requirements
971 before the discontinuation or change.

972 Contractor shall develop and maintain a database of Customer contact information, which shall include
973 an email address for each Customer account, excluding email addresses for Customers who do not provide
974 or specifically decline to provide such information. Contractor shall maintain, and make such database
975 available upon request from the City Contract Manager, in accordance with Section 6.1.

976 Contractor shall bill Customers electronically using paperless invoices as the default billing method,
977 however Contractor shall bill Customers who decline paperless billing or are otherwise unable to provide
978 email contact information by standard mail, using standard (paper) invoices. Contractor's website shall
979 allow Customers to pay their bill(s) electronically. Contractor shall permit Customers the ability to pay
980 their bills through an electronic check or credit card and include the ability for Customer billings to be
981 automatically charged on a recurring basis. Contractor shall prepare, mail, and collect bills from Customers
982 who decline to use such internet-based billing system. Contractor shall make arrangements to allow such
983 Customers to pay bills by cash, check, electronic check, money order, and credit card.

984 Contractor shall provide Customers with bill inserts in accordance with Exhibit C.

985 Contractor shall maintain copies of all billings and receipts, each in chronological order, for the Term of
986 this Agreement, for inspection and verification by the City Contract Manager at any reasonable time but
987 in no case more than thirty (30) calendar days after receiving a request to do so.

988 Contractor shall be responsible for collection of payment from Customers with past due accounts ("bad
989 debt"). Contractor's efforts to obtain payment from delinquent accounts shall include the notice
990 requirements of this Section 4.9, and thereafter may include any other measures consistent with law
991 regulating the collection of debts.

992 Quarterly Customer invoices shall be due sixty (60) calendar days after the invoice date. Monthly
993 Customer invoices shall be issued in the month following the billing period, and shall be due thirty (30)
994 calendar days after the invoice date. In the event that any account becomes more than ten (10) calendar
995 days past due, Contractor shall notify such Customer of the delinquency via written correspondence,
996 instructing the Customer that unpaid bills that become more than forty-five (45) calendar days past due
997 may be assessed a one and one half percent (1.5%) late fee per month. Contractor shall provide a second
998 written notice of delinquency to Customer on any account that becomes more than sixty (60) calendar
999 days past due, and a third written notice of delinquency to any account that becomes more than ninety
1000 (90) calendar days past due. The ninety (90) day delinquency notice shall be sent to the Property Owner

as well as the Customer if those are different. Should any account become more than ninety (90) calendar days past due, Contractor shall notify the City Contract Manager of the address, service level, service frequency, and delinquent billing amount at which point City may take action to enforce Municipal Code provisions relating to subscription and use of Collection service. Contractor may stop service to any account that is over one hundred twenty (120) days past due, and shall not be required to restart service until all amounts due are paid in full. Upon payment in full of the previously delinquent account, Contractor may require a deposit from the Customer not to exceed one (1) month's billings at the Customer's Service Level. Contractor shall provide reports documenting past due accounts in accordance with Exhibit D.

If Contractor fails to invoice a Customer, or otherwise under-charges a Customer for services provided for more than six (6) months, Contractor may not subsequently attempt to collect the under-charged amount for more than six (6) months of service. If Contractor over-charges a Customer, Contractor shall reimburse or credit the Customer for the overcharges. This Agreement also does not prohibit Contractor from reimbursing or crediting a Customer for more than six (6) months of overcharges.

4.10 CUSTOMER SERVICE PROGRAM

4.10.1 Program Requirements

A. **Availability of Representatives.** Contractor shall maintain an office within thirty (30) miles of City Hall. A representative of Contractor who is knowledgeable of the service area, services, and Rates shall be available from 7:30 a.m. to 4:30 p.m. Monday through Friday to communicate with the public and City representatives by telephone. Contractor shall maintain a local or toll-free telephone number, which it shall publicize. Contractor shall also maintain an after-hours telephone number allowing twenty-four (24) hour per day access to Contractor management by the City Contract Manager in the event of an emergency involving Contractor's equipment or services including, but not necessarily limited to, fires, blocked access, or property damage.

B. **Telephone.** The City shall secure, and Contractor shall use, pay all costs incurred by, and maintain during the Term of this Agreement, a toll-free phone number with telecommunications device for the deaf (TDD) capability which shall serve as the primary point of contact between Contractor and the public during normal business hours. Upon expiration or early termination of this Agreement, the City shall retain the control of the toll-free phone number.

Contractor shall maintain a telephone system in operation from 7:30 a.m. to 4:30 p.m. and shall have sufficient equipment in place and staff a representative, or an answering service available to handle the volume of calls experienced on the busiest days and such telephone equipment shall be capable of recording the responsiveness to calls. Multilingual assistance for people speaking the most common non-English language in the City shall be made available, when needed. Contractor's telephone system shall offer Customers who have been placed on-hold to opt to leave a voice message or email, rather than remain on-hold. In the event that Contractor's telephone Customer service performance falls below the performance standards established in Exhibit F, the City Contract Manager may require Contractor to prepare and present a corrective action plan for achieving those performance standards over the next thirty (30) days. Contractor shall prepare and submit such a plan to the City Contract Manager within five (5) Business Days of the City Contract Manager's request. In the event that Contractor's Customer service staffing dedicated to this Agreement is not consistent with the number of staff proposed by Contractor,

1043 Contractor shall include increased staffing in the corrective action plan. The City Contract
1044 Manager shall review the plan within five (5) Business Days of receipt from Contractor and may
1045 approve or request additional information and modifications to the corrective action plan. Once
1046 approved, Contractor shall be required to implement the corrective action plan and achieve the
1047 performance standards within thirty (30) days. If the performance standards are still not achieved
1048 after this time, City shall have the right to exercise all remedies under the Agreement including,
1049 but not limited to, continued assessment of Liquidated Damages and/or termination of the
1050 Agreement consistent with the provisions of Section 10.1.F.

1051 Recording of Contractor's responsiveness to calls shall include, at a minimum, all items included
1052 in the "Service Quality and Reliability" and "Customer Service" performance standards listed in
1053 Exhibit F. An answering machine or voicemail service shall record Customer calls and voice
1054 messages between 4:30 p.m. and 7:30 a.m., but shall be available for Customers to leave a
1055 message at all times. Contractor shall provide a live, not automated, call back on the same day to
1056 all Customers who leave voice messages by 4:30 p.m. on Working Day and shall provide a live call
1057 back by noon of the following Working Day for any voice messages left after 4:30 p.m.

1058 C. **Web Site, Email Access, and Other Online Customer Engagement.** Contractor shall develop and
1059 maintain a website that is accessible by the public and solely dedicated to the operations under
1060 this Agreement in the City. Contractor shall post all City-approved, service-related information on
1061 its website and shall review and update service-related information at least once per quarter or
1062 more frequently as directed by the City Contract Manager. Contractor's website shall include an
1063 online list of Food Recovery Organizations and Food Recovery Services in accordance with Exhibit
1064 C. Contractor's website shall additionally include all Rates allowed to be charged under the
1065 Agreement, including Debris Box and Compactor Rates, all public education and outreach
1066 materials produced and distributed under this Agreement, and provide the public the ability to e-
1067 mail Contractor questions, service requests, including starting service, changing or stopping
1068 existing service, and requesting On-Call, Bulky Item and Bin-by-the-Day Collection service, and/or
1069 Complaints. Contractor shall respond the same day to all Customers who leave e-mail messages
1070 by 4:30 p.m. on a Working Day and shall respond by noon of the following Working Day for any e-
1071 mail messages left after 4:30 p.m. Contractor may respond to Customer e-mails either via e-mail
1072 or phone. Substantive changes to the website shall be pre-approved by the City, and changes
1073 requested by the City shall be made within four (4) hours of the City's request.

1074 D. **Contractor's "Commitment to Customer" Platform.** Contractor has proposed to implement a
1075 software system that is intended to provide more robust tracking of Customer account and service
1076 data, including Complaints. Contractor anticipates implementing such system by January 1, 2023.
1077 At least six (6) months prior to Contractor's implementation of such system in the City, Contractor
1078 shall meet with the City Contract Manager to demonstrate the features, options, and benefits of
1079 the system as well as to provide work flows to the City related to how this system may impact
1080 other interactions between the City, the Contractor, and Customers. Contractor shall also, at their
1081 sole expense, coordinate with the City's third party software vendor responsible for the cloud-
1082 based Generator and SB 1383 data monitoring and reporting to ensure that data can be efficiently
1083 and accurately transferred between the Contractor's proposed system and the City-designated
1084 system. In the event that Contractor is unable to successfully transfer data at the frequency and
1085 quality required by the City, Contractor shall be responsible for primary entry of data into the
1086 City's designated system even if doing so would require double-entry by Contractor. Contractor
1087 has included a cost of one hundred eighteen thousand eight hundred twenty-seven dollars

(\$118,827) per year in Contractor's Proposal for such software system. If the system has not been fully implemented by January 1, 2024, or equivalent functionality provided, the costs associated with such system shall not be allowed to be included in Contractor's forecasted operating expenses for Rate Period Four onwards, until the system has been implemented or equivalent functionality provided. For any Rate Period in which Contractor is unable to include such costs in forecasted operating expenses, it shall be Contractor's burden to demonstrate that any corporate overhead, information technology costs, or other broad category of expenses presented as allowable for Rate Period Four onwards exclude any costs associated therewith.

4.10.2 Service Requests, Complaints

Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all Customer service requests and Complaints. Contractor shall record, in its computer system or a separate log all Complaints, noting the name and address of Complainant, date and time of Complaint, nature of Complaint, and nature and date of resolution. The data fields collected in such system or separate log shall be approved by the City Contract Manager. Contractor shall retain this Complaint log consistent with the requirements of Article 6. Contractor shall record and respond to all Complaints as communicated by the Customer, utilizing a "Customer is always right" approach, shall not challenge or dispute the Customer's assertions or Complaints, and shall at all times prioritize Customer satisfaction. Upon request by the City Contract Manager, Contractor shall compile and submit a summary of the Complaint log.

Contractor shall respond to all Complaints received in accordance with the requirements of this Agreement. Complaints related to missed or incomplete Collections shall be addressed in accordance with Section 4.10.3. Complaints related to repair or replacement of Carts or Bins shall be addressed in accordance with Section 5.6.

4.10.3 Missed Collections, Non-Collection, and Courtesy Collection

A. **Missed Collection Complaints.** When handling Customer Complaints related to missed or incomplete Collections, Contractor shall not question or contest the Customer's claim that the Collection was missed or incomplete, even in cases where the Route driver recorded the Container(s) in question as already "Collected" or "not out", subject to the limitations of Section 4.10.3.F. Missed Collections, regardless of nature, shall be recorded and reported in accordance with Exhibit D.

B. **Schedule for Resolution.** Contractor shall resolve each and every Customer Complaint of a missed or incomplete Collection by returning to the Customer address and completing the Collection as provided in this Section 4.10.3.B. For all Complaints related to missed Collections that are received before 9:00 a.m. on a Working Day, Contractor shall return to the Customer address and Collect the missed materials on the same Working Day on which the missed Collection was reported. For those Complaints related to missed Collections that are received after 9 a.m. on a Working Day, Contractor shall have until the end of the following Working Day to resolve the Complaint. Contractor's failure to comply with this Section 4.10.3 may result in Liquidated Damages, in accordance with Exhibit F.

Notwithstanding the foregoing, Contractor shall not be required to return and complete a Collection in response to a Complaint of missed Collection if: (a) Contractor's driver has left a Non-Collection Notice in accordance with Section 4.10.3.C; or, (b) Contractor's driver coded the Customer as "no set-out" (unless in the case of (b) the Customer is eligible for a courtesy

- 1131 Collection under Section 4.10.3.F).
- 1132 C. **Non-Collection, Courtesy Noticing.** Prior to the Commencement Date, Contractor shall submit to
1133 the City Contract Manager for review and approval:
- 1134 1. A template Non-Collection Notice, for use in instances of acceptable non-Collection of
1135 Discarded Materials, and instances in which Prohibited Container Contaminants are observed
1136 by Contractor. Template should be in printable format as well as digital format for the
1137 purposes of digitally communicating the information.
- 1138 2. A template Courtesy Notice, for use in instances of improper set-out of Discarded Materials,
1139 and/or instances in which Prohibited Container Contaminants are observed by Contractor,
1140 which Contractor, at its sole option, elects to Collect as a courtesy to the Customer. Template
1141 should be in printable format as well as digital format for the purposes of digitally
1142 communicating the information.
- 1143 The Non-Collection Notice shall, at a minimum: (i) inform the Customer of the reason(s) for non-
1144 Collection; (ii) include the date and time the notice was left; (iii) include information on proper
1145 Disposal of Excluded Waste; and, (iv) describe the Rate to Customer for Contractor to return and
1146 Collect the Container after Customer removes the contamination, if applicable. In addition, the
1147 notices shall inform the Customer that Contractor may charge Customer the Rate for such
1148 contamination Processing fee(s).
- 1149 The Courtesy Notice shall, at a minimum: (i) inform the Customer of improper setout of Discarded
1150 Materials and/or the presence of Prohibited Container Contaminants; (ii) include the date and
1151 time of the incident; (iii) include information on the Customer's requirement to properly set out
1152 Containers and/or separate materials into the appropriate Containers, and the acceptable
1153 materials and Prohibited Container Contaminants for Collection in each Container; (iv) inform the
1154 Customer of the courtesy pick-up of the improperly set out and/or contaminated materials on
1155 this occasion and/or issue a Non-Collection Notice in the future; and, (v) shall include
1156 photographic evidence (if available). In addition, the notice shall inform the Customer that
1157 Contractor may charge Customer the Rate for such contamination Processing fee(s).
- 1158 The notice may be left attached to or adhered to the Generator's Container, or at the Premises'
1159 door or gate, at the time the violation is detected by Contractor, or may be delivered by e-mail or
1160 text message within one (1) Working Day after the incident, so long as a record of such
1161 communication is retained by Contractor for City review upon request. For Non-Collection
1162 Notices to Commercial or Multi-Family Customers, if Contractor does not have the Customer's
1163 email address, then Contractor may call the Customer and either speak to the Customer or leave
1164 a voice message to describe the reason for non-Collection, and such call will count as a Non-
1165 Collection Notice so long as Contractor documents the call in its reports to the City.
- 1166 D. **Non-Collection of Discarded Materials.** In the event that Contractor encounters circumstances at
1167 a Customer Premises, including circumstances described in Section 5.3.A, which prevent
1168 Contractor from Collecting Discarded Materials that have been placed for Collection, Contractor
1169 shall provide a Non-Collection Notice clearly explaining Contractor's reason for refusal to Collect
1170 the Discarded Materials. Such reasons may also include: (i) overweight Containers (Cart weight in
1171 excess of 84 lbs. for 24g, 112 lbs. for 32g, 224 lbs. for 64g, 335 lbs. for 96g; Bin weight in excess
1172 of 1,200 lbs.); (ii) Containers overfilled such that the lid is not flush with the body; and, (iii) inability

1173 to access Containers. Contractor shall not be required to Collect Discarded Materials that are
1174 reasonably believed to contain Excluded Waste, pursuant to the requirements of Section 5.8. If
1175 Contractor declines to Collect Discarded Materials (including Cardboard overages) that have been
1176 set out, but does not leave a Non-Collection Notice, it shall be considered a Missed Collection per
1177 this Section 4.10.3.

1178 E. **Courtesy Collection for Improper Set-Out.** In the event that Contractor encounters circumstances
1179 at a Customer Premises that allow for safe Collection of Discarded Materials, but do not otherwise
1180 reflect proper set-out procedures (including, but not limited to over-full Containers, spills not
1181 caused by Contractor, Carts placed too close together, Carts placed in front of one another, Carts
1182 placed too close to parked cars, but excluding overweight Containers, Contractor shall Collect the
1183 material and may leave a Courtesy Notice at the Customer Premises clearly explaining how the
1184 Customer failed to comply with proper set-out procedures.

1185 Contractor may educate the public on proper set-out procedures designed to maximize the
1186 efficiency of Collection (e.g. Carts spaced two (2) feet apart). However, Contractor acknowledges
1187 that such procedures are not practical in all circumstances and failure of the Customer to follow
1188 such procedures does not constitute a reason for non-Collection if the Discarded Materials may
1189 be safely and reasonably serviced. Contractor's Route drivers shall dismount their Collection
1190 vehicles and reposition Containers as necessary to provide Collection service. Contractor may not
1191 require a Customer to set out the Customer's Containers in such a manner that would block
1192 vehicle access to Customer's driveway. Contractor and Customers may mutually agree to
1193 uncommon service locations if necessary for Collection in specific areas.

1194 F. **Courtesy Collections for Admitted Late Set-Outs or Documented No Set-Outs.** In the event that
1195 a Customer: (i) reports that their Container(s) were placed for Collection after Contractor's
1196 Collection vehicle had already passed the Premises for regularly scheduled Collection; or (ii) claims
1197 that Contractor missed the Collection, even though Contractor's driver coded the Customer as
1198 "no set-out"; and in either case requests that Contractor return and Collect their Containers,
1199 Contractor shall return to the Customer Premises and provide a courtesy Collection at no charge
1200 to the Customer, provided that Contractor is not required to provide more than two (2) courtesy
1201 Collections per Customer per calendar year under this paragraph. For Single-Family Customers,
1202 one (1) courtesy Collection represents Collection of up to three (3) Carts (Recyclable Materials,
1203 Organic Materials, Solid Waste) per incident. Contractor shall complete the courtesy Collection by
1204 the end of the following Working Day.

1205 G. **Non-Collection Due to Contamination.** Contractor may refuse to Collect a Recyclable Materials
1206 or Organic Materials Container that contains more than ten percent (10%) by volume of
1207 Prohibited Container Contaminants, provided that Contractor leaves a Non-Collection Notice in
1208 accordance with Section 4.10.3.C of this Agreement. Contractor shall instruct the Customer to
1209 either remove the Prohibited Container Contaminants, or pay the Rate to have the contents of
1210 the contaminated Recyclable Materials or Organic Materials Container Collected as Solid Waste.

1211 H. **Identification of Excluded Waste.** If a Collection vehicle driver observes Excluded Waste in an
1212 uncollected Container, the driver shall affix a Non-Collection Notice to the Container in
1213 accordance with this Section and shall not Collect the Discarded Materials. The Non-Collection
1214 Notice shall list the phone number of a facility that accepts the Excluded Waste or a phone
1215 number of an entity that can provide information on proper Disposal of the Excluded Waste. If a

1216 Collection vehicle driver observes Excluded Waste, including instances in which the Container
1217 with the Excluded Waste has been Collected, the Collection vehicle driver shall record that
1218 observation, which shall include photographic evidence (if available), in the on-board computer
1219 system (if available) or some other system approved by the City Contract Manager, and
1220 immediately inform their Route supervisor. The Route supervisor shall investigate and initiate
1221 applicable action, including providing immediate notification to the applicable Approved
1222 Facility(ies) and/or Designated Facility(ies).

1223 I. **Communications with Customer.** Whenever a Container at the Premises of a Commercial or a
1224 Multi-Family Customer is not Collected, Contractor shall contact the Customer on the scheduled
1225 Collection day to explain why the Container was not Collected. Contractor shall contact such
1226 Customers through the application of a Container tag, by electronic communication, or phone
1227 call, provided that if Contractor does not possess an email address or phone number for the
1228 Customer, Contractor may provide a written communication, which shall include a request for an
1229 email address or phone number for future notifications. Whenever a Container is not Collected
1230 because it contains more than ten percent (10%) by volume of Prohibited Container
1231 Contaminants, a Customer service representative shall contact the Customer to discuss, and
1232 encourage the Customer to adopt proper Discarded Materials preparation and separation
1233 procedures.

1234 J. **Contractor Return for Collection.** Upon request from Customer, Contractor shall Collect
1235 Containers that received Non-Collection Notices within one (1) Working Day after Customer's
1236 request if the request is made at least two (2) Working Days prior to the regularly scheduled
1237 Collection Day. Contractor may charge Customer the Rate for the special pick-up ("return trip pick-
1238 up") per section 4.10.3 K if Contractor successfully notifies Customer of the Rate for this service
1239 at the time the request is made by Customer.

1240 K. **Rates Related to Non-Collection.** Contractor may charge the Customer the Rate for a special pick-
1241 up if the Customer elects to have their corrected or contaminated Recyclable Materials or Organic
1242 Materials Container serviced before the next regular Collection day. If the Customer chooses to
1243 have their contaminated Recyclable Materials or Organic Materials Container Collected as Solid
1244 Waste, Contractor may charge the Customer the Rate for the special pick-up.

1245 Six (6) months after the Commencement Date, Contractor and the City shall meet and confer to
1246 discuss the establishment of a Rate for contamination fees for Customers that do not properly
1247 sort their Discarded Materials. If the City elects to utilize contamination fees, Contractor shall be
1248 required to utilize the following approach for assessment of contamination fees. If Contractor
1249 observes Prohibited Container Contaminants in a Customer's Organic Materials Container or
1250 Recyclable Materials Container on more than two (2) consecutive occasions, Contractor may
1251 impose a contamination fee, in the amount specified by the City, and shall notify the City in its
1252 monthly report of Customers for which contamination fees were assessed. Contractor shall leave
1253 a contamination fee notice on the contaminated Containers, describing the specific material(s) of
1254 issue, explaining how to correct future set-outs, and indicating that the Customer will be charged
1255 a contamination fee on its next bill. The format of the contamination fee notice must be approved
1256 by the City Contract Manager. Contractor shall Collect the contaminated Recyclable Materials or
1257 Organic Materials as Solid Waste and Transport the material to the Approved Facility. Upon City
1258 request, the Parties shall review the amount of revenue generated from contamination fees.

1259 L. **Disposal of Prohibited Container Contaminants.** If Contractor observes a visible Prohibited
1260 Container Contaminant in a Customer's Organic Materials Container or Recyclable Materials
1261 Container, Contractor may Dispose of the Container's contents provided Contractor complies with
1262 the noticing requirements of this Section 4.10.3.

1263 M. **Record of Non-Collection.** The driver shall record the non-Collection event, in the on-board
1264 computer system (if available), by calling it in to Contractor's dispatch, by noting it on the Route
1265 sheet, by keeping a "receipt" of the Non-Collection Notice, or through some other process
1266 approved by the City Contract Manager, and the Customer's computerized account record shall
1267 be updated to note the event. Contractor shall maintain electronic records of all Non-Collection
1268 Notices, listing all taggings, the addresses of the parties involved, the date of the notice, the
1269 reason for the notice, and the date and manner of resolution of each instance. Contractor shall
1270 provide the above detail on a monthly basis as provided in Exhibit D. Contractor shall retain such
1271 records as required by Article 6.

1272 **4.11 ACCESS TO CUSTOMER SERVICE AND BILLING SYSTEMS**

1273 Contractor shall provide read-only access and any necessary training to one (1) or more City employee(s)
1274 (as designated by the City) regarding the use of Contractor information systems as described in this
1275 Section. Contractor shall designate one (1) member of Contractor staff to work directly with such City
1276 employee. Contractor shall provide such City employee with read-only access to Customer service, call
1277 center, and operations information systems in order to validate Contractor performance standards, and
1278 recommend changes to Customer Service Levels to resolve service issues or otherwise address Customer
1279 needs. Contractor shall also provide access to Customer contact information (including email addresses)
1280 for purposes of City-provided public education and outreach activities. In addition, Contractor shall ensure
1281 that the City Contract Manager and any other City staff, as requested by the City, have read-only access
1282 to all service order, billing, and Customer service records in Contractor's internal information systems.
1283 Such read-only access is intended to provide the City the ability to review notes related to Customer
1284 service and/or billing issues.

1285 **4.12 SERVICE EXEMPTIONS**

1286 **4.12.1 General Exemptions**

1287 The Municipal Code permits certain exemptions from the obligation to subscribe to the Collection service
1288 described herein. For the purposes of this Section 4.12, the term "Generators " is based on SB 1383
1289 regulatory language and is inclusive of the terms "Customer" and "Generator" as defined in Exhibit A and
1290 as otherwise used in the Agreement.

1291 **4.12.2 Generator Waivers**

1292 A. **General.** As of the Effective Date, the City provides a Yard Trimming exemption for Single Family
1293 Customers as provided in Exhibit B1, Section 2. The City, in its sole discretion, may amend the
1294 Municipal Code to provide for additional Generator waivers or exemptions. Such amendments
1295 may allow for waivers to address compliance with SB 1383 requirements, pursuant to 14 CCR
1296 Section 18984.11.

1297 B. **Potential SB 1383 Generator Waivers.** Should the City amend the Municipal Code to allow SB
1298 1383 Generator waivers, the City may grant de minimis and/or physical space waivers to

1299 Commercial businesses and/or Multi-Family Generators, and may additionally grant Collection
1300 frequency waivers to Generators pursuant to 14 CCR Section 18984.11.

1301 C. **Contractor Review of Waiver Requests.** Generators may submit requests for de minimis waivers,
1302 physical space waivers, and Collection frequency waivers to the City, and the City may request
1303 Contractor's assistance in reviewing such waivers. Upon the request of the City, and subject to
1304 the consent of the Generator, Contractor shall within seven (7) days after receipt of the City's
1305 request, inspect Generator's Premises to verify the accuracy of the application. Contractor shall
1306 provide documentation of the inspection, including the date of the inspection, Customer name
1307 and address, a description of the Premises, evaluation of each criterion of the relevant waiver
1308 type, and photographic evidence if consented to by the Generator. Contractor shall send this
1309 information and documentation to the City in a timely manner, not to exceed three (3) days after
1310 the date of inspection. The City ultimately retains the right to approve or deny any application,
1311 regardless of the information provided by Contractor. Contractor shall report information
1312 regarding waivers reviewed within the month, if any, in accordance with Exhibit D.

1313 D. **Service Level Updates.** When the City grants a waiver to a Customer, or the Customer's waiver
1314 status changes after a reverification determination, the City shall notify Contractor within seven
1315 (7) days after the waiver approval or status change with information on the Customer and any
1316 changes to Service Level or Collection service requirements for the Customer. Contractor shall
1317 have seven (7) days to modify the Customer's Service Level, Customer account data, and billing
1318 statement, as needed.

1319 E. **Waiver Reverification.** The City intends to be responsible for reverification of waivers at a
1320 minimum of once every five (5) years. Upon request of the City, Contractor shall support the City
1321 in this reverification process by providing requested Customer information. In the event that a
1322 waiver status changes, Contractor shall update the Customer's information and Service Level in
1323 accordance with Section 4.12.2.D above.

1324 **4.12.3 Contractor Service Exemptions**

1325 A. **Disaster Waivers.** In the event of a disaster, and subject to the provisions of Exhibit B4, Section 2,
1326 the City may grant Contractor a waiver of some or all Discarded Materials Collection requirements
1327 under this Agreement and 14 CCR, Division 7, Chapter 12, Article 3 in the disaster-affected areas
1328 for the duration of the waiver, provided that such waiver has been approved by CalRecycle.
1329 Contractor Compensation for any resulting changes in Collection requirements shall be addressed
1330 as in accordance with Exhibit E2.

1331 B. **Illegal Disposal Sites.** Contractor may, but is not required to, separate or recover Organic Waste
1332 that Contractor removes from illegal disposal sites as part of an abatement activity to protect
1333 public health and safety. Contractor shall report the amount of Discarded Materials removed for
1334 Disposal from illegal disposal sites, in accordance with Exhibit D.

1335 C. **Quarantined Waste.** If approved by the City, Contractor may Dispose of, rather than Process,
1336 specific types of Organic Materials and/or Recyclable Materials that are subject to quarantine due
1337 to spread of pathogens or similar concerns, and meet the requirements described in 14 CCR
1338 Section 18984.13(d) for a period of time specified by the City or until the City provides notice that
1339 the quarantine has been removed and directs Contractor to Transport the materials to the
1340 Approved Facilities for such material.

In accordance with Article 6 and Exhibit D, Contractor shall maintain records and submit reports regarding compliance agreements for quarantined Organic Materials and Recyclable Materials that are Disposed of pursuant to this Section 4.12.3.C.

This Section 4.12.3 shall not be deemed to limit Contractor's rights under any other provision of this Agreement.

4.13 CONTAMINATION MONITORING

For the purposes of this Section 4.13, the term "Route" is based on SB 1383 regulatory language as described in 14 CCR Section 18982.31.5. The term "Generator" is based on SB 1383 regulatory language and is inclusive of the terms "Customer" and "Generator" as defined in Exhibit A and as otherwise used in the Agreement. Contractor acknowledges that SB 1383 requires annual contamination monitoring of Discarded Materials, pursuant to 14 CCR Section 18984.5. The standard approach of contamination monitoring involves annual Route reviews, as provided in Section 4.13.1. The performance-based contamination monitoring approach involves waste evaluations, as provided in Section 4.13.2.

4.13.1 Annual Route Reviews

A. **Methodology.** Beginning January 1, 2022, Contractor shall, at its sole expense, conduct Route reviews of Containers for Prohibited Container Contaminants in a manner that: meets the requirements of this Section; is approved by the City; complies with SB 1383; and, results in all Routes being reviewed at least annually.

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

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

Contractor shall develop a specific Route review methodology to accomplish the above Container inspection requirements and such methodology shall comply with the requirements of 14 CCR Section 18984.5(b). Contractor shall submit its proposed Route review methodology for the coming year to the City no later than January 15 of each year describing its proposed methodology for the calendar year and schedule for performance of each Route's annual review. Contractor's proposed Route review methodology shall include not only its plan for Container inspections, but shall also include its plan for prioritizing the inspection of Customers that are more likely to be

1379 out of compliance. The City and/or CalRecycle will review and approve the proposed
1380 methodology. Contractor may commence with the proposed methodology upon approval.

1381 If the City and/or CalRecycle notifies Contractor that the methodology is inadequate to meet the
1382 requirements of 14 CCR Section 18984.5(b), Contractor shall, at its sole expense, revise the
1383 methodology and, after obtaining the City or CalRecycle approval, conduct additional Route
1384 reviews, increased Container inspections, or implement other changes using the revised
1385 procedure. If Contractor's proposed methodology meets the requirements of 14 CCR Section
1386 18984.5(b), but has been deemed inadequate by the City, Contractor shall, at the expense of the
1387 City, revise the methodology and implement the necessary changes using the revised procedure.

1388 The City's Contract Manager may request, and Contractor shall accept, modifications to the
1389 schedule to permit observation of the Route reviews by the City. In addition, Contractor shall
1390 provide an email notice to the City's Contract Manager no less than ten (10) Working Days prior
1391 to each scheduled Route review that includes the specific time(s), which shall be within the City's
1392 normal business hours, and location(s).

1393 B. **Contamination Notification.** Upon identification of Prohibited Container Contaminants in a
1394 Customer's Container, Contractor shall provide the Customer with a notice of contamination in
1395 the form of either a Courtesy Notice or a Non-Collection Notice, pursuant to Section 4.10.3.

1396 C. **Container Contaminant Log.** The driver or other Contractor representative shall record each
1397 event of identification of Prohibited Container Contaminants in a written log or in the on-board
1398 computer system including: date, time, Customer's address, type of Container, and maintain
1399 photographic evidence (if available). Contractor shall allow the City Contractor Manager access to
1400 such records, pursuant to Article 6.

1401 D. **Contaminant Fees Assessment Report:** Additionally, on no less than a daily basis, Contractor shall
1402 update the Customer's account records to note the contaminant event(s) as identified by
1403 driver(s). Contractor shall maintain records and report to the City monthly on contamination
1404 monitoring activities and actions taken, consistent with the submittal timing and content
1405 requirements of Exhibit D. The monthly report shall include, but is not limited to: list of Customers
1406 that were assessed charges, photographic evidence of each contamination event(s) where a fee(s)
1407 was assessed, verification processes to assure accurate fee assessment, date of notification,
1408 form(s) of notification given to Customer, list of efforts made in educating the Customer that was
1409 assessed a fee, list of Customer Complaints in response to fee assessment, and Contractors
1410 response and actions taken in response to Customer Complaints.

1411 E. **Identification of Excluded Waste.** If Contractor's driver observes Excluded Wasted, Contractor's
1412 driver shall follow the applicable procedures specified in Section 4.10.3.H.

1413 F. **Assessment of Contamination Fees.** Contractor may impose contamination fees in accordance
1414 with Section 4.10.3.K.

1415 G. **Communications with Customer.** Contractor shall communicate with Customers in accordance
1416 with Section 4.10.3.I.

1417 H. **Contractor Return for Collection.** Contractor shall return to Customer Premises for Collection of
1418 Discarded Materials in accordance with Section 4.10.3.J.

I. **Disposal of Prohibited Container Contaminants.** Contractor may Dispose of Prohibited Container Contaminants observed in Customer’s Organic Materials Container or Recyclable Materials Container in accordance with Section 4.10.3.L.

J. **Monthly Reporting Requirements.** Contractor shall maintain records and report to the City monthly on contamination monitoring activities and actions taken, in accordance with Exhibit D.

4.13.2 Waste Evaluation Studies

If, at the City’s sole discretion, the City pursues a performance-based compliance approach to SB 1383, as provided in Section 18998.1 of the SB 1383 regulations, then the Parties shall cooperate to conduct the waste evaluations contemplated by Section 18984.5(c). The evaluations shall be conducted by a third party selected and paid for by City or funded by Contractor and the direct cost of such allowed as an “Other Adjustment” in the next Rate adjustment. City and Contractor shall cooperate to obtain quotes for the third party’s services. Contractor shall, at no additional charge, make available space at its Rogers Avenue facility for the evaluations to be conducted, at mutually agreed times.

4.14 SB 1383 INSPECTIONS AND ENFORCEMENT

For the purposes of this Section 4.14, the term “Generators” is based on SB 1383 regulatory language and is inclusive of the terms “Customer” and “Generator” as defined in Exhibit A and as otherwise used in the Agreement.

A. Annual Compliance Reviews

1. **General.** Contractor shall perform Customer compliance reviews described in this Section commencing January 1, 2022, and at least annually thereafter, during a timeframe proposed by Contractor and approved by the City Contract Manager.

2. **Commercial and Multi-Family Generator Compliance Reviews.** Contractor shall complete an annual compliance review of all Multi-Family and Commercial Customers that appear, based on subscribed-for Container volume, to generate two (2) cubic yards or more per week of Solid Waste, including Organic Materials, to determine: (i) whether Multi-Family and Commercial Customers are subscribed to Organic Material and Recyclable Materials Collection service; and, (ii) if not, whether Contractor has information indicating that the Customer is complying with Self-Hauling requirements per 14 CCR Section 18988.3 and the City Municipal Code, including whether a Commercial Premise is complying through Back-Hauling Organic Materials. The compliance review shall mean a “desk” review of records to determine Customers’ compliance with the above requirements and does not require on-site observation of service.

3. **Annual Route Review.** In addition to the targeted “desk” reviews described in Section 4.14.A.2, beginning April 1, 2022 and annually thereafter, Contractor shall conduct annual Route reviews of Commercial, Multi-Family, and Single-Family Generators for compliance with the City’s Discarded Materials Collection program (specifically, whether Generators actually have the Containers they are subscribed or are required to have). Generator compliance Route reviews may be performed concurrently with the contamination monitoring Route reviews, described in Section 4.13.1, provided that Contractor documents a reasonable sampling, based on direction from the City Contract Manager, of Generators for

1459 which compliance with the City's Discarded Materials Collection program during the Route
1460 review was assessed.

1461 4. **Food Recovery Compliance Reviews.** Commencing January 1, 2022 and at least annually
1462 thereafter, Contractor and the City shall meet and confer regarding inspections of Tier One
1463 Commercial Edible Food Generators to assess compliance with the requirements of 14 CCR,
1464 Division 7, Chapter 12, Article 10. Commencing January 1, 2024 and at least annually
1465 thereafter, Contractor and the City shall expand Edible Food Generator compliance reviews
1466 to include inspections of Tier Two Commercial Edible Food Generators.

1467 B. **Compliance Review Process**

1468 1. **Number of Reviews.** Contractor shall conduct Route reviews and inspections of entities
1469 described in this Section at a minimum of once per year, or as directed by the City Contract
1470 Manager, to adequately determine the entities' overall compliance with SB 1383, and City
1471 Municipal Code 6.24 Mandatory Organic Recycling for Business Structures. The City may
1472 require Contractor to prioritize inspections of entities that the City determines are more likely
1473 to be out of compliance.

1474 2. **Non-Compliant Entities.** From January 1, 2022 through December 31, 2023, when compliance
1475 reviews are performed by Contractor pursuant to this Section 4.14, Contractor shall provide
1476 City-approved educational materials, as described in Section 4.10, in response to violations.
1477 Contractor shall provide these educational materials to the non-compliant Customers and
1478 Generators within two (2) Working Days after determination of non-compliance or
1479 immediately upon determination of non-compliance if such non-compliance is determined
1480 during an inspection or Route review. Contractor shall document the non-compliant
1481 Customers and Generators and the date and type of education materials provided and report
1482 such information to the City in accordance with Exhibit D. Beginning January 1, 2024,
1483 Contractor shall document non-compliant Customers and Generators determined through
1484 Contractor's compliance reviews pursuant to this Section 4.14, and shall report all Customers
1485 and Generators with SB 1383 violations to the City in accordance with Exhibit D. The City shall
1486 be responsible for subsequent enforcement action against the Generator or Customer.

1487 3. **Documentation of Inspection Actions.** Contractor shall generate a written or electronic
1488 record and maintain documentation for each inspection, Route review, and compliance
1489 review conducted, including the information described in Exhibit D.

1490 C. **Documentation of Complaints.**

1491 1. **General.** Contractor shall maintain a computer database log of all oral and written SB 1383-
1492 related Complaints received by Contractor from Customers or other Persons in accordance
1493 with Article 6.

1494 2. **SB 1383-Noncompliance Complaints.** For Complaints received in which the Person alleges
1495 that an entity is in violation of SB 1383 requirements, Contractor shall document such
1496 Complaint investigations in accordance with Exhibit D.

1497 **3. Investigation of SB1383-Noncompliance Complaints**

- 1498 a. **Investigation.** Contractor shall assist the City in meeting its obligation to investigate
1499 Complaints by commencing an investigation within thirty (30) calendar days after
1500 receiving a Complaint in the following circumstances: (i) upon Contractor receipt of a
1501 Complaint that an entity may not be compliant with SB 1383 and if the City determines
1502 that the allegations against the entity, if true, would constitute a violation of SB 1383;
1503 and, (ii) upon City request to investigate a Complaint received by the City, in which the
1504 City determines that the allegations against the entity, if true, would constitute a
1505 violation of SB 1383. Contractor is required to investigate Complaints against Customers
1506 and Generators, and not against Food Recovery Organizations, Food Recovery Services,
1507 and other entities regulated by SB 1383.

1508 Contractor shall investigate the Complaint by:

- 1509 i. Reviewing the Service Level of the Customer (if the entity is a Customer of
1510 Contractor);
- 1511 ii. Reviewing the waiver list, if applicable, to determine if the entity has a valid, City-
1512 approved de minimis, space constraint, or Collection frequency waiver;
- 1513 iii. Reviewing the Self-Haul registration list, if applicable, to determine if the entity
1514 has registered and reviewing the entities reported Self-Haul information;
- 1515 iv. Inspecting Premises of the entity identified by the complainant, if warranted; and,
- 1516 v. Contacting the entity to gather more information, if warranted;
- 1517 vi. Affixing a City-approved notice of Complaint on the Customer's Container, in
1518 accordance with Section 4.10.3.

- 1519 b. **Reporting.** Within ten (10) calendar days after completing an investigation of an SB
1520 1383- noncompliance Complaint, Contractor shall submit to the City an investigation
1521 Complaint report that documents the Customer account in question, the nature of the
1522 Complaint, the investigation performed, and the City-approved educational materials
1523 provided to non-compliant Generators if Contractor determines a violation has
1524 occurred.

1525 Contractor shall provide to the City in its monthly report a list of all Customer
1526 Complaints that have not been resolved by Contractor within thirty (30) calendar days
1527 after receiving such Complaints. The Customer Complaint list shall include the
1528 Customer's account information, including Customer's then-current Service Level, the
1529 nature of the Complaint, and Contractor's efforts to resolve the Complaint. The City, or
1530 its designee, shall be responsible for investigating such outstanding Complaints
1531 received by Contractor.

1532 Within three (3) Working Days after the City's or its designee's request, Contractor shall
1533 provide the City or its designee with Customer account information and other
1534 documentation that may be useful in the investigation, such as records of the

1535 Customer's two most recent change(s) in Service Level and other Customer service
1536 records.

1537 **4.15 EDIBLE FOOD RECOVERY PROGRAM**

1538 A. **General.** Pursuant to the requirements of SB 1383, 14 CCR, Division 7, Chapter 12, Article 10, the
1539 City is responsible for developing and implementing a Food Recovery program in the City.
1540 Contractor shall not impede, interfere, or attempt to impede or interfere with the
1541 implementation, expansion, or operation of Food Recovery program efforts in the City. Contractor
1542 acknowledges that the City's Edible Food Recovery program may Divert Edible Food that would
1543 otherwise become Food Scraps from Contractor's Organic Materials Collection program.

1544 B. **Identification of Commercial Edible Food Generators.** Contractor shall assist City in identifying
1545 Tier One and Tier Two Commercial Edible Food Generators for the purpose of the Food Recovery
1546 program. City shall make the final determination as to whether a Customer is a Tier One or Tier
1547 Two Commercial Edible Food Generator. No later than six (6) months after the Commencement
1548 Date, and annually thereafter, Contractor shall identify and provide a list to the City of Commercial
1549 Customers that qualify, or appear to qualify, as Tier One or Tier Two Commercial Edible Food
1550 Generators, as defined by this Agreement. The list shall include, at a minimum: the Customer
1551 name; service address; contact information; apparent Tier One or Tier Two classification (or actual
1552 classification, once determined by City); and, type of business as it relates to the categories of
1553 entities specified under the definitions of Tier One and Tier Two Commercial Edible Food
1554 Generators. Contractor shall be permitted to make reasonable good faith estimates of factual
1555 matters necessary for Tier One/Tier Two classification (such as square footage, number of seats,
1556 etc.) if the Customer fails to provide it. Contractor shall update this information annually; maintain
1557 an up-to-date database; and include this information in Contractor's annual report, in accordance
1558 with Exhibit D. If Commercial Edible Food Generators that do not qualify as Tier One or Tier Two
1559 desire to participate in the Food Recovery program, the City shall provide technical assistance and
1560 maintain documentation.

1561 C. **Edible Food Recovery at Special Events.** Contractor shall support the recovery of Edible Food
1562 from special events in accordance with Section 4.6 and 14 CCR Chapter 12 Section 18991.3.
1563 Contractor acknowledges that efforts to recover Edible Food at the special events may be
1564 conducted by others; and, Contractor agrees not to interfere with such activities.

1565 **4.16 SB 1383 COMPLIANCE APPROACH**

1566 The Agreement assumes use of a "standard" compliance approach pursuant to 14 CCR, Division 7, Chapter
1567 12. The distribution of City and Contractor responsibilities for SB 1383 is further described in Exhibit J.
1568 Exhibit J also contains definitions and other clarifying detail related to SB 1383 requirements.

1569 During the Term of this Agreement, the City may elect to pursue a "performance-based" compliance
1570 approach in accordance with 14 CCR, Division 7, Chapter 12, Article 17, in which case the City Contract
1571 Manager and Contractor shall meet and confer no less than six (6) months prior to the scheduled shift to
1572 a performance-based approach. City's election to pursue a "performance-based" compliance approach
1573 shall be treated as a change in scope under Section 3.5.

1574 **ARTICLE 5.**
1575 **STANDARD OF PERFORMANCE**

1576 **5.1 GENERAL**

1577 Contractor shall at all times comply with applicable Federal, State, and local laws and regulations and
1578 provide services in a manner that is safe to the public and Contractor's employees.

1579 **5.2 OPERATING HOURS AND SCHEDULES**

1580 A. **Hours of Collection.** Unless otherwise authorized by the City Contract Manager, Contractor's days
1581 and hours for Collection operations shall be as follows:

1582 1. **Residential Premises.** Collection from Residential Premises shall only occur between the
1583 hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, unless specifically approved in
1584 advance in writing by the City; except that during weeks in which a Holiday occurs, Contractor
1585 may provide Collection scheduled for a Friday on Saturday.

1586 2. **Commercial Premises.** Collection from Commercial Premises shall occur only between the
1587 hours of 6:00 a.m. and 5:00 p.m., seven (7) days per week, unless specifically approved in
1588 advance in writing by the City Contract Manager. In all areas where Residential properties are
1589 adjacent to Commercial properties or close enough that the Collection vehicle noise disrupts
1590 sleeping residents, Collection services from Commercial Premises shall not start before 8:00
1591 a.m. Monday through Friday or 9:00 a.m. on Saturday and Sunday.

1592 3. **City Facilities.** The Collection schedule for City facilities shall be the same as Commercial
1593 Premises specified in Section 5.2.A.2 above.

1594 B. **Holiday Collection Schedule.** Contractor, at its sole discretion, may choose not to provide
1595 Collection services on a Holiday. In such event, Contractor shall provide Single-Family Collection
1596 services on the day following the Holiday, thereby adjusting subsequent work that week with
1597 normally scheduled Friday Collection Services being performed on Saturday; however, Customer
1598 service days shall be returned to the normal schedule within one (1) week of the Holiday. Multi-
1599 Family, Commercial, and City Collection services shall be adjusted as agreed between Contractor
1600 and the Customer, but must meet the minimum frequency requirement of one (1) time per week.
1601 Contractor shall provide Customers notice of Holiday-related changes in Collection schedules at
1602 least thirty (30) calendar days prior to the change.

1603 **5.3 COLLECTION STANDARDS**

1604 A. **Servicing Containers.** Contractor shall Collect and return each Container to the location where
1605 the Occupant placed the Container for Collection. Contractor shall place the Containers upright
1606 with lids properly secured. All Carts serviced within the public right of way shall be set out with
1607 wheels against the Curb in a location that does not block access to driveways and minimizes
1608 encroachment on bicycle and pedestrian paths.

1609 For Customers other than Single-Family Residential Customers, Contractor shall, without
1610 additional charge to the Customer, open and close gates, pull or push up to three (3) Carts or Bins

per Customer (i.e., one (1) Cart or Bin each of Recyclable Materials, Organic Materials, and Solid Waste) up to twenty-five (25) feet (push up to 25 feet then return) from the location where the Occupant placed the Container for Collection to the Collection vehicle for service. Contractor may charge such Customers at the Rates for any additional Containers that need to be pulled or pushed, with a lower Rate for Carts as provided in Exhibit G3. Container lids shall be closed after servicing and all Bins shall be returned to the Customer's waste enclosure.

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

Under no circumstances shall Contractor be required to push or pull a Cart or Bin up or down stairs, up or down a slope that exceeds seven (7) degrees, or if doing so would pose an unreasonable safety risk to Contractor's driver (e.g., overweight Containers).

B. **Hard-to-Service Areas.** Contractor may request City consider the need to establish specific service standards for hard-to-service conditions, such as private roads, narrow streets, and steep streets where Contractor is otherwise unable to provide service meeting the highest safety standards. Contractor may request City consider the need to establish a modified or new Rate(s) for hard-to-service conditions. In no instance shall Contractor charge such a modified or new Rate without prior City approval as provided in Section 8.2.E.

Private Roads. Contractor may require Customers on private roads to sign road damage liability waivers as a condition to Contractor operating on such private roads. Such waivers shall be made available by Contractor for inclusion in the plan comments during the building permitting process. If Customers on private roads fail to sign such waivers, Contractor may require such Customer to receive service at the nearest paved Public Street.

C. **Litter Abatement, Spills, and Damages.** Contractor shall use due care to prevent damage to roads and avoid spills or leaks of material placed for Collection, fuel, and other vehicle fluids while providing services under this Agreement. If any materials are spilled or leaked by Contractor during Collection and Transport, Contractor shall within two (2) hours notify the City Contract Manager of the spill and shall clean up all spills or leaks before leaving the site of the spill. If Contractor does not clean up litter within eight (8) business hours after notice by the City or Customer, and liquid spillage within two (2) hours after notice by the City, Contractor shall reimburse the City for all reasonable costs incurred by the City in the cleanup of all litter and/or liquid spillage caused by Contractor in the performance of this Agreement. In addition, failure by Contractor to notify City of spills within two (2) hours of Contractor observance, and failure by Contractor to clean up spills, shall result in Liquidated Damages pursuant to Exhibit F. Contractor shall not knowingly Transport any Compactor that is leaking and shall notify the Customer, pursuant to Section 4.10.3, that service of the Compactor cannot be performed. Contractor shall immediately notify the City Contract Manager if any Compactor is not serviced due to leakage. Contractor shall notify the City Contract Manager on the same Business Day of any Contractor vehicle accidents and/or property damage that occurs while Contractor performs services, except damage solely to Contractor's property. Contractor shall initiate its insurance damage claim process within two (2) Business Days from when the incident occurred, and Contractor shall provide a copy of all such claims to the City Contract Manager within two (2) days of submitting

1654 the claim, except damage solely to Contractor's property. Should Contractor fail to timely
1655 complete repairs or replacements required by property damage caused by Contractor and City
1656 initiates corrective actions, Contractor shall reimburse the City for all reasonable costs incurred
1657 by the City in the repairs or replacements necessitated by such property damage.

1658 Spills, leaks, litter, and damage that present an imminent threat to stormwater or safety must be
1659 responded to immediately. Additionally, Contractor shall reimburse the fully-loaded labor cost,
1660 including over-time, for the City's Stormwater Inspector to monitor cleanup of spills in accordance
1661 with the requirements of stormwater pollution prevention regulations. All spills, leaks, and litter
1662 shall be remediated to the satisfaction of the City Contract Manager or his/her designee.

1663 Contractor shall not Transfer loads from one vehicle to another on any public right of way, unless
1664 it is necessary to do so because of mechanical failure, **combustion of material** in the truck, or
1665 accidental damage to a vehicle.

1666 Contractor shall cover all open Drop Boxes at the pickup location before Transporting materials
1667 to the Approved Facility. Contractor shall, at all times, keep loaded material covered so as to
1668 prevent litter, leakage, or spillage from the Collection vehicle. Collection vehicles shall include
1669 hopper shielding to minimize litter while the contents of the individual Containers are being
1670 unloaded and while the truck is traveling along City right of way. In the event of repeated
1671 occurrences of litter emanating from Collection vehicles or resulting from Collection activity, the
1672 City Contract Manager may require Contractor to implement additional mitigations, at
1673 Contractor's sole expense.

1674 Contractor shall conduct public outreach to Customers and staff training on and implementation
1675 of best management practices for litter abatement at no extra charge. Such best management
1676 practices include, without limitation:

1677 1. Closing Container lids and right sizing service: Contractor staff will tag overfull Containers with
1678 Courtesy Notices, in accordance with Section 4.10.3.C, which will serve as outreach and
1679 education to the Customer.

1680 2. Outreach to Customer on importance of bagging lightweight materials such as plastic bags,
1681 film plastics, foam peanuts, and other materials that can easily become litter due to their
1682 lightweight nature.

1683 3. Driver training on litter reduction techniques and litter removal best management practices.

1684 4. Affixing signage to the back and side of Contractor trucks, including a phone number for
1685 residents to report material spills.

1686 D. **Development and Review of Collection Specifications.** Contractor shall work with the City to
1687 maintain standard specifications for Collection Container enclosures at Commercial and Multi-
1688 Family Premises. These specifications shall ensure that the Collection Container enclosures are
1689 built to provide adequate space and suitable configuration to allow Contractor to safely and
1690 efficiently service Recyclable Materials, Organic Materials, and Solid Waste Containers.
1691 Contractor's Operations Manager or other appropriately qualified staff shall, upon request by the
1692 City Contract Manager, provide a review of plans for new Multi-Family and Commercial
1693 development or project design drawings. Contractor shall provide comments and

1694 recommendations resulting from the review in writing within seven (7) Working Days after receipt
1695 of the documents for review. In each review report, Contractor shall comment on the
1696 acceptability of the proposed enclosure arrangements in terms of: i) the adequacy of space for
1697 Recyclable Materials, Organic Materials, and Solid Waste Containers; ii) the accessibility of the
1698 Containers for Collection including whether additional charges (e.g., push/pull) would apply; and,
1699 iii) ease of use by Occupants.

1700 E. **No Commingling of Materials.** Contractor shall not commingle materials that have been Source
1701 Separated with other materials types (for example, Recyclable Materials that have been properly
1702 placed for Collection shall not be combined with Solid Waste or Organic Materials). The foregoing
1703 shall not apply to contaminated Containers of Source Separated materials that are Collected as
1704 Solid Waste in accordance with this Agreement.

1705 F. **Shared Collection Across Jurisdictions.** Except as otherwise approved by the City Contract
1706 Manager or permitted by the last sentence of this paragraph, Contractor shall separately Collect
1707 materials generated in the City by City residents and businesses from: 1) materials generated by
1708 educational institutions located within the City (including public school districts serving City
1709 residents and DeAnza College); and, 2) materials collected from governmental jurisdictions other
1710 than the City that are serviced outside of this Agreement. If such commingling is approved, Tons
1711 collected from outside the City service area shall be subtracted from the reported Tons Collected
1712 in the City service area by use of estimated Tonnages. In order to achieve accurate estimates,
1713 Contractor shall, at least once per year, arrange to collect materials from all approved non-City
1714 service areas independently for a minimum of one week for the purposes of weighing the
1715 materials by stream or shall provide other data or allocation methods that provide the City
1716 reasonable assurance of accuracy. City hereby approves commingling of the material described
1717 in clause (1) above, including from educational institutions located outside City, but serviced on
1718 the same Route, provided that the Tonnages are reasonably allocated and the annual weighing is
1719 done as provided in this paragraph.

1720 **5.4 TRANSFER AND PROCESSING STANDARDS**

1721 **5.4.1 Equipment and Supplies**

1722 Contractor shall equip and operate the Approved Processing Facilities in a manner to fulfill Contractor's
1723 obligations under this Agreement. Contractor is solely responsible for the adequacy, safety, and suitability
1724 of the Approved Processing Facilities. Contractor shall modify, enhance, and/or improve the Approved
1725 Processing Facilities as needed to comply with its obligations under this Agreement.

1726 Contractor shall provide all rolling stock, stationary equipment, material storage containers, spare parts,
1727 maintenance supplies, Transfer, Transport, and Processing equipment, and other consumables as
1728 appropriate and necessary to operate the Approved Processing Facilities and provide all services required
1729 by this Agreement. Contractor shall place the equipment in the charge of competent operators.
1730 Contractor shall repair and maintain all equipment at its own cost and expense.

1731 **5.4.2 Scales and Weighing**

1732 Contractor is solely responsible for ensuring accurate weighing of all materials entering and leaving the
1733 Approved Processing Facilities.

1734 A. **Facility Scales.** Contractor shall maintain State-certified motor vehicle scales in accordance with
1735 applicable Federal, State, and local laws and regulations. All scales shall be linked to a centralized
1736 computer recording system at the Approved Processing Facilities to record weights for all
1737 incoming and outgoing materials. Should Contractor's usual scales not be available for whatever
1738 reason, Contractor shall within two (2) Business Days arrange for use of substitute portable scales,
1739 obtain a backup generator for its usual scales, or weigh vehicles at nearby Contractor-Affiliated
1740 facilities. Pending such measures, Contractor shall, as necessary, estimate the Tonnages of
1741 materials delivered to and Transported from the Approved Processing Facilities, on the basis of
1742 delivery vehicle and Transfer trailer volumes, tare weights, and/or other available facility weight
1743 records. These estimates shall take the place of actual weights while scales are inoperable, and
1744 shall be identified as estimates in electronic records and reporting.

1745 B. **Tare Weights.** Where tare weights are used, Contractor shall electronically record the tare weight,
1746 identify vehicle as Contractor owned, and provide a distinct vehicle identification number for each
1747 vehicle. Contractor shall provide the City with a report listing the vehicle tare weight information
1748 upon request. Contractor shall promptly weigh additional or replacement vehicles prior to placing
1749 them into service. Contractor shall check tare weights at least annually, or within fourteen (14)
1750 calendar days after a City request, and shall re-tare vehicles immediately after any major
1751 maintenance or service event. If tare weighs are not used, Contractor shall weigh the loaded and
1752 unloaded weight of the vehicle.

1753 C. **Testing.** Contractor shall ensure that all scales are tested and calibrated in accordance with
1754 applicable Federal, State, and local laws and regulations, but at least every twelve (12) months or
1755 upon City request.

1756 D. **Records.** Contractor shall maintain computerized scale records and reports that provide
1757 information including date of receipt, inbound time, inbound and outbound weights of vehicles,
1758 and vehicle identification number. Contractor shall also maintain computerized scale records and
1759 reports providing historical vehicle tare weights for each vehicle and the date and location for
1760 each tare weight recorded.

1761 E. **Upon-Request Reporting.** If vehicle receiving and unloading operations are recorded on video
1762 cameras at the Approved Processing Facilities, Contractor shall (unless the videos have been
1763 deleted per Contractor's standard practice) make those videos available for City review during the
1764 Approved Processing Facility's operating hours, upon request of the City, and shall provide the
1765 name of the driver of any particular load if available.

1766 5.5 COLLECTION VEHICLE REQUIREMENTS

1767 A. **General.** Contractor shall provide a fleet of Collection vehicles sufficient in number and capacity
1768 to efficiently perform the work required by the Agreement in strict accordance with its terms.
1769 Contractor shall have available sufficient back-up vehicles for each type of Collection vehicle used
1770 to respond to scheduled and unscheduled maintenance, service requests, Complaints, and
1771 emergencies. All such vehicles shall have watertight bodies designed to prevent leakage, spillage,
1772 or overflow. All such vehicles newly-purchased under this Agreement shall meet on-road heavy
1773 duty vehicle emissions requirements for model year 2020, regardless of the actual model year of
1774 Contractor's vehicles. All Collection vehicles shall be registered with the Department of Motor

1775 Vehicles, and comply with all Federal, State, and local laws and regulations. Contractor's vehicles
 1776 shall utilize Recycled motor oil to the extent practicable.

1777 In accordance with Section 5.3 (Collection Standards) and Exhibit F, Collection vehicles shall
 1778 include hopper shielding to minimize litter while the contents of the individual Containers are
 1779 being unloaded and while the truck is traveling along the City right of way.

1780 Beginning February 1, 2022 and every year thereafter, the City and Contractor shall meet and
 1781 confer to discuss available clean technology for Collection vehicles with the intention of lowering
 1782 greenhouse gas emissions in the City and improve air quality in accordance with the goals of the
 1783 City's Climate Action Plan.

1784 B. **Vehicle Age.** Contractor shall replace vehicles in accordance with the vehicle replacement
 1785 schedule included in Contractor's Proposal.

1786 C. **Vehicle Fuel.** All Collection vehicles used by Contractor under this Agreement shall be powered
 1787 by renewable diesel.

1788 D. **Vehicle Capability.** Collection vehicles shall have the capability of carrying and safely Transporting
 1789 empty and full Used Oil Recovery Kits, as well as the capacity to Collect and Transport loose
 1790 Cardboard overages, to ensure that Contractor is capable of complying with Exhibit B. Each vehicle
 1791 shall also include an appropriate spill kit to contain at a minimum the amount of vehicle fluids for
 1792 each truck and tools to begin clean-up in advance of a coordinated spill response service vehicle.
 1793 Quarterly inspections of the spill kit shall be done by Contractor, and driver training shall be done
 1794 at least once every twelve (12) months. Documentation of inspections and training shall be made
 1795 available to the City upon demand.

1796 Collection vehicles shall have appropriate safety markings including, but not limited to, highway
 1797 lighting, flashing and warning lights, clearance lights, and reflective tap striping, in accordance
 1798 with the California Vehicle Code.

1799 E. **Vehicle Appearance.** Collection vehicles shall present a clean appearance while providing service
 1800 under this Agreement, and shall be washed or repainted as necessary to maintain a positive public
 1801 image. Vehicles used in Collection shall be thoroughly washed at a minimum of one (1) time per
 1802 week, and thoroughly steam cleaned on a regular basis so as to present a clean appearance and
 1803 minimize odors. All vehicles shall be painted on a regular schedule, with concurrence of the City
 1804 (not to be unreasonably withheld), to maintain a clean, professional, new-like appearance. The
 1805 City Contract Manager may, at any time, require the painting of any vehicle that has not been
 1806 painted according to the schedule. City Contract Manager may require painting of up to two (2)
 1807 vehicles per year that do not present a satisfactory appearance, regardless of whether they have
 1808 been painted according to the schedule , as long as the vehicles are not scheduled to be replaced
 1809 in the next twelve (12) months. By the end of 2021, Contractor shall repaint Collection vehicles
 1810 used in City bearing the "Norcal" logo and coloring. The vehicles shall be painted in a uniform
 1811 manner and consistent with Contractor colors; although Solid Waste, Recycling, and Organic
 1812 Material vehicles may have different painting schemes. All graffiti shall be removed immediately.
 1813 The City may inspect vehicles at any time to determine compliance with sanitation requirements.
 1814 Contractor shall make vehicles available to the County Health Department for inspection at any
 1815 frequency it requests.

Contractor's name and local telephone number shall be displayed on all vehicles in at least four (4) inch characters. All vehicles shall be equipped with sign board holders or other hardware to allow public education signage of no less than thirty-six (36) by forty-eight (48) inches to be displayed on both sides of the vehicle.

- F. **Inspections.** Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly and that all safety features and functions of the vehicle are working. Vehicles that are not operating properly in any manner or for any reason 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. Contractor shall maintain a maintenance log for all Collection vehicles and shall make the log available upon request for City review. The maintenance log shall at all times be accessible to the City Contract Manager within three (3) calendar days after such a request. The City Contract Manager may inspect vehicles at any reasonable time, within three (3) calendar days after such a request, to determine compliance with sanitation requirements.

- G. **Noise.** All Collection operations shall be conducted as quietly as reasonably possible and shall conform to applicable Federal, State, County, and City noise level regulations, including the City noise ordinance. The City may request Contractor to test any piece of equipment for conformance with the noise limits in response to Complaints and/or when the City Contract Manager believes it is reasonable to do so. At the request of City, all vehicles shall be noise tested, and the results reported to the City. The cost of any noise testing shall be treated as an "other adjustment," unless such test determines that one or more vehicle were out of compliance.

5.6 CONTAINER REQUIREMENTS

- A. **Containers Provided to Customers.** On or before the Commencement Date, Contractor shall provide Customers (including Single-Family, Multi-Family, Commercial, and City facility Customers) with Collection Containers as requested by the Customer to meet its desired Service Level, if the Customer does not already have them. Contractor shall provide Containers to new Customers requesting service initiation, or existing Customers requesting a Used Oil Recovery Kit within five (5) Working Days after Contractor's first receipt of the Customer request.

On the Commencement Date of the Agreement, the Parties understand that a substantial number of Carts in service at Single-Family Customer Premises are Non-Conforming Carts because they: (a) are tan in color; (b) do not say "City of Cupertino" or, (c) have logos or identification for other organizations such as Recology, Norcal, or County of Santa Clara on them. The Contractor shall be responsible for identifying any and all Non-Conforming Carts and exchanging them for new Carts that are compliant with the requirements of this Agreement no later than December 31, 2021. Contractor understands that not all Containers will be set out each week and that some may be set out relatively infrequently. In accordance with Exhibit D, Contractor shall provide written updates to the City Contract Manager at least monthly documenting the planning, out of compliance inventory, production and distribution schedule, and completion date for exchange of the Non-Conforming Carts. Contractor's obligation to exchange Non-Conforming Carts is without respect to the duration of the transition project, number of passes through the City it takes to completely identify and exchange all Containers, or level of effort associated therewith. City reserves the right to independently verify compliance. Contractor's failure to comply with this

paragraph may result in assessment of Liquidated Damages pursuant to Section 10.6 and Exhibit F.

Contractor-provided Containers shall be new or refurbished, and shall comply with the Container standards set forth in this Section.

B. Container Standards

1. All Carts shall be manufactured by injection or rotational molding methods. The Cart handles and handle mounts may be an integrally-molded part of the Cart body or molded as part of the lid. The Cart handles shall provide comfortable gripping area for pulling or pushing the Cart or lifting the lid. Pinch points are unacceptable. Carts provided to Customer shall have a useful life of ten (10) or more years or more as evidenced by a manufacturer's warranty or other documentation acceptable to the City. Container manufacturing specifications shall be made available to the City upon request.

2. Carts shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the Term of this Agreement: maintain its original shape and appearance; be resistant to kicks and blows; require no routine maintenance and essentially be maintenance-free; not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that shall interfere with its intended use; resist degradation from ultraviolet radiation; be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats); the bottoms of Cart bodies must remain impervious to any damage that would interfere with the Cart's intended use after repeated contact with gravel, concrete, asphalt, or any other rough and abrasive surface; all wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended.

3. Carts shall be resistant to common household or Residential products and chemicals; human and animal urine and feces; and, airborne gases or particulate matter currently present in the ambient air of the Service Area.

4. All Bins with a capacity of one (1) cubic yard or more shall meet applicable Federal regulations for Bin safety and be covered with attached lids.

5. Contractor shall obtain the City's written approval of Container material, design, colors, labeling, and other specifications (within the specifications set forth in this Agreement) before acquisition, painting, labeling, or distribution occurs.

6. When purchasing plastic Collection Containers, Contractor shall purchase Containers that contain a minimum of 30% post-consumer Recycled plastic content, to the extent available from Cart manufacturers, unless such requirement is waived by the City Contract Manager. City understands that there is a trade-off between Recycled content and color availability and that City may have to waive the thirty percent (30%) Recycled content requirement in order to maintain City-approved Container colors, in accordance with subsection (C).

7. Container lids shall be designed such that the following requirements are met:

a. Prevents the intrusion of rainwater and vectors;

- 1898 b. Prevents the emissions of odors;
- 1899 c. Enables the free and complete flow of material from the Container during the dump
1900 cycle without interference with the material already deposited in the truck body or the
1901 truck body itself and its lifting mechanism;
- 1902 d. Permits users of the Cart to conveniently and easily open and shut the lid throughout
1903 the serviceable life of the Cart;
- 1904 e. Hinged to the Cart body in such a manner so as to enable the lid to be fully opened, free
1905 of tension, to a position whereby it may rest against the backside of the Cart body;
- 1906 f. Prevents damage to the Container body, the lid itself, or any component parts through
1907 repeated opening and closing of the lid by Generators or in the dumping process as
1908 intended;
- 1909 g. Remains closed in winds up to twenty-five (25) miles per hour from any direction. All
1910 lid hinges must remain fully functional and continually hold the lid in the original
1911 designed and intended positions when either opened or closed or any position between
1912 the two extremes; and,
- 1913 h. Designed and constructed such that it prevents physical injury to the user while opening
1914 and closing the Cart.
- 1915 8. Containers shall be stable and self-balancing in the upright position, when either empty or
1916 loaded to its maximum design capacity with an evenly distributed load, and with the lid in
1917 either a closed or an open position. Containers shall be capable of maintaining upright
1918 position in sustained or gusting winds of up to twenty-five (25) miles per hour as applied from
1919 any direction.
- 1920 9. Containers shall be capable of being easily moved and maneuvered, if applicable, with an
1921 evenly distributed load equal in weight to its maximum design capacity on a level, sloped or
1922 stepped surface.
- 1923 10. All such Containers shall be one hundred percent (100%) Recyclable at the end of their useful
1924 life.
- 1925 11. All Containers shall be designed and constructed to be watertight and prevent the leakage of
1926 liquids.
- 1927 12. Container colors shall be colorfast and resistant to fading as a result of weathering or
1928 ultraviolet degradation.
- 1929 C. **Container Colors.** All Containers newly purchased by Contractor after the Effective Date shall
1930 comply with the Container color requirements specified in this Section 5.6, or as otherwise
1931 specified in 14 CCR Section 18982; 14 CCR, Division 7, Chapter 12, Article 3; or other Applicable
1932 Law. The lids and bodies of Carts shall be uniform for each Container type, as follows:
- 1933 1. Recyclable Materials Cart bodies and lids shall be blue;

- 1934 2. Organic Materials Cart bodies and lids shall be green; and
- 1935 3. Solid Waste Cart bodies and lids shall be grey.
- 1936 Bins shall match the above color scheme, except that all Bin lids may be black/grey.
- 1937 **C&D Bins and Drop Boxes.** Bins and Drop Boxes for Collection of C&D may be in any color,
1938 provided that the colors are consistent with the material-specific Container color requirements,
1939 (green Container for Organic Materials, blue Container for Recyclable Materials, gray Container
1940 for Solid Waste) and provided that the C&D Container colors are consistent for all C&D Containers.
1941 The C&D Container color shall be reviewed and approved by the City. All Bins and Drop Boxes
1942 used for Collection of Source Separated metals or Organic Materials shall have attached lids that
1943 prevent entry of stormwater.
- 1944 Hardware such as hinges and wheels on the Containers may be a different color than specified
1945 above. All Containers shall comply with these color requirements.
- 1946 D. **Container Labeling.** The labeling requirements set forth in this Section 5.6.D shall apply only to
1947 new Containers provided by Contractor to replace existing Containers, or to new Customers, after
1948 July 1, 2021. All labels and other markings on the Containers shall be approved by the City in
1949 advance of ordering of such labels and/or Containers. At a minimum, all Containers shall say "City
1950 of Cupertino," show the capacity (yards or gallons), contain an identifying inventory or serial
1951 number, and shall not be marked with the Franchisee's or other organizations' name or logo.
- 1952 No later than March 1, 2021, the City and Contractor shall meet and confer to finalize Contractor
1953 Container labeling requirements respective to SB 1383. At a minimum, on the lid of each Cart, and
1954 the body of each Bin and Drop Box, Contractor shall label the ultimate destination of such
1955 materials as follows: "LANDFILL" for Solid Waste; "RECYCLE" for Recyclable Materials (including
1956 Cardboard, mixed paper, metal, etc.); and, "COMPOST" for Organic Materials (including Food
1957 Waste, Yard Trimmings, wood waste, etc.). In addition, Containers shall be imprinted or labeled
1958 with text or graphic images that indicate the primary materials accepted and the primary
1959 materials prohibited in that Container. Contractor shall label the Container capacity (in gallons
1960 for Carts, and cubic yards for Bins and Drop Boxes) on the front or side of the body of each Bin or
1961 Drop Box, and on the lid of each Cart. Contractor shall replace Container labels as needed or upon
1962 City direction on a Container-by-Container basis.
- 1963 1. Prior to ordering any Containers or lids with in-mold labels, Contractor shall submit a sample
1964 of its proposed label, proposed location(s) for placement of labels on each type of Container,
1965 and its labeling plan to the City Contract Manager for approval.
- 1966 Contractor shall be prohibited from including Contractor's name and/or logo on any
1967 Containers utilized in the City.
- 1968 E. **Repair and Replacement of Containers; Inventory.** Contractor shall be responsible for repairing
1969 or replacing Containers when Contractor determines the Container is no longer suitable for
1970 service; or when the City or Customer requests replacement of a Container that does not properly
1971 function, leaks, is damaged, or is otherwise not fit for service. Contractor shall be responsible for
1972 acquiring and providing the replacement Containers. Contractor shall repair or replace all
1973 damaged or broken Containers within five (5) Working Days after Customer or City request. Minor

1974 cracks, holes, and other damages to hinges, wheels, axle, hardware, and other component parts
 1975 shall be readily repairable by Contractor personnel. All repairs must restore the Cart to its full
 1976 functionality to meet the design and performance requirements as set for herein.

1977 Contractor shall maintain a sufficient inventory of Containers to accommodate new Customer
 1978 requests for service, requests for change in Service Levels (size, type, or number of Containers)
 1979 from current Customers, and requests for replacement due to damage. Contractor is required to
 1980 keep accurate count/inventory of Containers used, date of purchase, and date of replacement,
 1981 which shall be made available upon request for City review.

1982 Contractor shall provide to Single-Family Customers no less than one (1) free Cart replacement
 1983 per any twelve (12) month period upon Customer request. If Customer requests more than one
 1984 (1) Cart replacement per any twelve (12) month period, Contractor may charge Customers the
 1985 Rate for such additional replacement service. In addition, Single-Family Customers may also
 1986 request one Cart size exchange per Rate Period at no charge beyond what Rate change might
 1987 result from a change to Cart size. All such Containers shall be provided within five (5) Working
 1988 Days after request. Contractor's failure to comply with the Container requirements may result in
 1989 assessment of Liquidated Damages pursuant to Section 10.6 and Exhibit F.

1990 F. **Maintenance, Cleaning, Painting.** All Containers shall be maintained in a safe, serviceable, and
 1991 functional condition and present a clean appearance. Contractor shall repair or replace all
 1992 Containers damaged by Collection operations in accordance with standards specified in Section
 1993 5.6.E, unless damage is caused by Customer's gross negligence, in which case, Contractor may
 1994 charge Customers the Rate for such repair or replacement service. All Containers shall be
 1995 maintained in a functional condition.

1996 Contractor shall steam clean and repaint all Containers as needed (other than Carts) so as to
 1997 present a clean appearance. Upon Customer request, Contractor shall steam clean Multi-Family
 1998 and Commercial Customers' Bins one (1) time per year at no additional charge. Contractor shall
 1999 additionally offer steam cleaning service (or clean Container exchange) to Customers requesting
 2000 such service, and may charge Customers the Rate for such cleaning (or Container exchange)
 2001 service. Contractor shall steam clean Containers at Contractor's corporation yard or facility, or at
 2002 another location other than at a Customer's Premises, as approved by the City Contract Manager.
 2003 All steam cleaning shall use appropriate wash water capture and treatment.

2004 Contractor shall remove graffiti from Containers within forty-eight (48) hours after identification
 2005 by Contractor's employees or notice by the City Contract Manager or Customer if such graffiti
 2006 includes any written or pictorial obscenities, and otherwise within seven (7) calendar days.

2007 Upon request from the City Contract Manager, Contractor shall provide the City with a list of
 2008 Containers and the date each Container was painted and maintained.

2009 G. **City Ownership of Containers at End of Term.** At the end of the Term of this Agreement, all Carts
 2010 and Bins purchased and put into service at Customer Premises during the Term of the Agreement
 2011 shall become property of the City at no cost to the City if such Containers are fully depreciated.
 2012 All Carts and Bins purchased and put into service at Customer Premises during the Term of the
 2013 Agreement that have not been fully depreciated shall be available to the City for purchase, at the
 2014 City's option, at a cost reflecting the net book value.

2015 At its sole discretion, the City may elect not to exercise its purchase option and, in such case, the
2016 Carts and Bins (and any other Contractor-owned Containers and Compactors) shall remain the
2017 property of Contractor at the end of the Term of this Agreement. In such case, Contractor shall
2018 be responsible for outstanding depreciation and for removing all such Containers and Compactors
2019 in service from Customer Premises within fourteen (14) Working Days after the end of the Term,
2020 or within a different timeframe mutually agreed to by the Parties. Contractor shall arrange for
2021 Reuse or Recycling of Containers, and Compactors removed from the City.

2022 **5.7 PERSONNEL**

2023 A. **General.** Contractor shall furnish such qualified personnel as may be necessary to provide the
2024 services required by this Agreement in a safe and efficient manner. Contractor shall designate at
2025 least one (1) qualified employee (Contractor's Contract Manager) as the City's primary point of
2026 contact with Contractor who is principally responsible for Collection operations and resolution of
2027 service requests and Complaints. Contractor's Contract Manager shall be empowered to
2028 negotiate on behalf of and bind Contractor with respect to any changes in scope, dispute
2029 resolution, compensation adjustments, and service- related matters that may arise during the
2030 Term of this Agreement.

2031 Contractor shall use its best efforts to ensure that all employees present a neat appearance and
2032 conduct themselves in a courteous manner. Contractor shall not permit its employees to accept,
2033 demand, or solicit, directly or indirectly, any additional compensation, or gratuity from Customers
2034 or members of the public.

2035 The minimum staffing positions to be provided by Contractor to perform the services described
2036 herein to the City are identified in Exhibit H. Failure to consistently maintain these staffing levels,
2037 by position, during the Term of the Agreement shall be considered a material breach. Contractor
2038 shall not be deemed to be in breach of this paragraph if such positions are unfilled for a period
2039 less than four (4) months due to staff turnover, leave, or other ordinary-course employment
2040 contingencies. If Contractor anticipates that such a position may be unfilled for more than four
2041 (4) months due to such reasons, Contractor may present a corrective action plan to the City
2042 Contract Manager showing how the position will be temporarily filled or covered using other
2043 resources. If the plan demonstrates to the City Contract Manager's reasonable satisfaction that
2044 the position will be adequately filled or covered, then Contractor shall not be in breach of this
2045 paragraph so long as it complies with the plan.

2046 B. **Driver Qualifications.** All drivers must have in effect a valid license of the appropriate class, issued
2047 by the California Department of Motor Vehicles. Contractor shall use the Class II California
2048 Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.

2049 C. **Safety Training.** Contractor shall provide suitable operational and safety training for all of its
2050 employees who operate Collection vehicles or equipment. Contractor shall train its employees
2051 involved in Collection to identify, and not to Collect, Excluded Waste and Prohibited Container
2052 Contaminants. Upon the City Contract Manager's request, Contractor shall provide a copy of its
2053 safety policy and safety training program, the name of its safety officer, and the frequency of its
2054 trainings.

D. **Designated Staff.**

1. Contractor's Contract Manager. Contractor shall designate one (1) qualified full-time employee as Contractor's Contract Manager to serve as the City's primary, day-to-day point of contact with Contractor who is familiar with the Agreement, Collection operations, and resolution of service requests and Complaints. Contractor has named its General Manager as such Person. The Contractor's Contract Manager shall be available to the City Contract Manager through the use of telecommunication equipment at all times that Contractor is providing Collection services. In the event the Contractor's Contract Manager is unavailable due to illness or vacation, Contractor shall designate an acceptable substitute who shall be available and who has the authority to act in the same capacity as the Contractor's Contract Manager. The City understands that the Contractor's Contract Manager is not authorized to negotiate on behalf of, or to bind Contractor except with regard to normal service issues.
2. Field Supervisor. Contractor shall designate one (1) qualified full-time employee as supervisor of field operations. The designated field supervisor will devote at least fifty percent (50%) of his/her time in the City in the field checking on Collection operations, including responding to Customer requests, inquiries, and Complaints.
3. Waste Zero Specialist. Contractor shall provide two (2) full-time Waste Zero Specialists who are solely dedicated to the City and shall not perform any work related to other jurisdictions, proposals, or business functions of Contractor. Contractor shall hire the Waste Zero Specialists in advance of the Commencement Date. The duties of the Waste Zero Specialists will be focused on public education, community outreach, Commercial and Multi-Family site visits, and technical assistance, and will be substantially as proposed by Contractor in Exhibit G, Contractor's Proposal, and in Exhibit C, Public Education and Outreach Requirements, and notwithstanding Section 2 of Exhibit C, may also include performing the route reviews contemplated by Sections 4.13 and 4.14, or other SB1383 compliance-related activities set forth in this agreement. The Waste Zero Specialists shall be full-time, regular, professional positions, compensated in accordance with the wages shown in Contractor's Proposal for such positions. Contractor acknowledges that the Waste Zero Specialist role is not intended to be an internship, or entry-level role. The City shall have the option to participate in the hiring and training process of Contractor's Waste Zero Specialists. The City may also employ corresponding staff member(s) who will work in partnership with Contractor's Waste Zero Specialists and Contractor's Waste Zero Specialists shall cooperate and share information openly with City employees.

In the event that Contractor fails to provide a full-time equivalent Waste Zero Specialist for more than four (4) months, Contractor shall remit to the City as Liquidated Damages eight thousand and twenty-eight dollars (\$8,028) per un-provided employee for every month (in excess of four (4) months) such employee is not provided, prorated on a daily basis for partial months. Such amount shall be adjusted annually by the same percentage used to adjust Rates in accordance with Exhibit E. For example if, for six (6) months, Contractor assigns the dedicated Waste Zero Specialist to another jurisdiction for half of their time, Contractor would remit to the City a minimum of forty eight thousand one hundred sixty-eight dollars (\$48,168), assuming no annual adjustment of the amount has occurred. Contractor shall remit such Liquidated Damages payment within fifteen (15) Business Days after a written request by the City. The intent of this payment is for the City to utilize the funds to separately procure equivalent public education services and ensure the contractually agreed upon levels of technical assistance and outreach to Customers. In the event the Waste Zero Specialist position becomes vacant, Contractor may temporarily provide a qualified substitute (e.g., a

2099 short-term contractor or a Waste Zero Specialist re-assigned from another Recology area)
2100 while it is conducting its hiring process. In that event, the time devoted by the qualified
2101 substitute to the City shall be considered as Waste Zero Specialist time, provided that such
2102 arrangements do not exceed the four (4) month hiring allowance established by this Section.
2103 Should the temporary arrangements be utilized beyond that four (4) month period, the
2104 months of payments to the City shall be counted from the original date of the vacancy.

2105 E. **Key Personnel.** Contractor shall make reasonable efforts to maintain the stability and continuity
2106 of Contractor's staff assigned to perform the services required under this Agreement. Contractor
2107 shall notify the City of any changes in Contractor's key staff to be assigned to perform the services
2108 required under this Agreement and shall obtain the approval of the City Contract Manager (not
2109 to be unreasonably withheld) of all proposed key staff members who are to be assigned to
2110 perform services under this Agreement prior to any such performance.

2111 Notwithstanding the City's approval of Contractor's personnel, Contractor shall not be relieved
2112 from any liability resulting from the work to be performed under this Agreement, nor shall
2113 Contractor be relieved from its obligation to ensure that its personnel maintain all requisite
2114 certifications, licenses, and the like, and Contractor shall ensure that its personnel at all times fully
2115 comply with applicable Federal, State, and local laws and regulations.

2116 At any point during the Term of this Agreement, the City may request, in writing, for good cause,
2117 that any of Contractor's employees be reassigned such that they no longer perform any work
2118 relating to this Agreement, and shall provide a statement describing the reason for such request.
2119 "Good cause" means that the employee was charged with or convicted of a felony, practiced or
2120 attempted to practice a fraud against the City, or engaged in a gross dereliction of duty in
2121 connection with this Agreement. Within twenty-four (24) hours after Contractor's receipt of such
2122 request, or such other time agreed to by the City in writing, Contractor shall remove the identified
2123 employee(s) from performing any work related to this Agreement; the vacated position(s) must
2124 be filled by Contractor with a suitable replacement promptly thereafter, and Contractor shall
2125 immediately fill the vacated position with a temporary replacement if required to perform,
2126 without delay, all services required under this Agreement.

2127 **5.8 HAZARDOUS WASTE INSPECTION AND HANDLING**

2128 A. **Inspection Program and Training.** Contractor shall develop a load inspection program that
2129 includes the following components: (i) personnel and training; (ii) load checking activities; (iii)
2130 management of wastes; and, (iv) record keeping and emergency procedures.

2131 Contractor's load checking personnel, including its Collection vehicle drivers, shall be trained in:
2132 (i) the effects of Hazardous Substances on human health and the environment; (ii) identification
2133 of Prohibited Container Contaminants; and, (iii) emergency notification and response procedures.
2134 Collection vehicle drivers shall inspect Containers before Collection when practical and when
2135 suspicious conditions are observed.

2136 B. **Response to Excluded Waste Identified During Collection.** If Contractor determines that material
2137 placed in any Container for Collection is Excluded Waste or presents a hazard to Contractor's
2138 employees, Contractor shall have the right to refuse to accept such material. Generator shall be
2139 contacted by Contractor in accordance with Section 4.10.3.H. Under no circumstances shall

2140 Contractor's employees knowingly Collect Excluded Waste or remove unsafe or poorly
2141 containerized Excluded Waste from a Collection Container.

2142 If Excluded Waste is found in a Collection Container or Collection area that could possibly result
2143 in imminent danger to people or property, Contractor shall immediately notify the Fire
2144 Department and the City Contract Manager.

2145 C. **Response to Excluded Waste Identified at Processing or Disposal Facility.** Materials Collected by
2146 Contractor will be delivered to the Approved Facilities for purposes of Processing or Disposal. In
2147 the event that load checkers and/or equipment operators at such facility identify Excluded Waste
2148 in the loads delivered by Contractor, such personnel shall remove these materials for storage in
2149 approved, on-site, Excluded Waste storage Container(s). Contractor or the facility operator shall
2150 arrange for removal of the Excluded Wastes at its cost by permitted haulers in accordance with
2151 Applicable Law. Contractor may, at its sole expense, attempt to identify and recover the cost of
2152 Disposal from Generator. If Generator can be successfully identified, Contractor may seek to
2153 recover from Generator the cost of this effort, as well as the cost of Disposal.

2154 **5.9 CONTRACT MANAGEMENT**

2155 The City has designated staff, the City Contract Manager, to be responsible for the monitoring and
2156 administration of this Agreement. Contractor shall designate an employee to serve as Contractor's
2157 Contract Manager, to be capable of binding Contractor to decisions made in the management of the
2158 Agreement and who is responsible for working closely with the City Contractor Manager in the monitoring
2159 and administration of this Agreement.

2160 Contractor's Contract Manager shall meet and confer with the City Contract Manager to implement and
2161 execute the requirements of this Agreement in an efficient, effective, manner that is consistent with the
2162 stated objectives of this Agreement, and to resolve any differences of interpretation.

2163 From time to time the City Contract Manager may designate other agents of the City to work with
2164 Contractor on specific matters. In such cases, those individuals should be considered designates of the
2165 City Contract Manager for those matters to which they have been engaged. Such designates shall be
2166 afforded all of the rights and access granted thereto.

2167 In the event of dispute between the City Contract Manager and Contractor regarding the interpretation
2168 of or the performance of services under this Agreement, the City Contract Manager's determination shall
2169 be conclusive except (i) as to data or records that Contractor deems constitute proprietary information or
2170 trade secrets, which shall be addressed as provided in Section 6.1, and (ii) where such determination
2171 results in a material impact to Contractor's revenue and/or cost of operations. In the event a dispute
2172 between the City Contract Manager and Contractor results in such material impact to Contractor, the
2173 provisions of Section 10.9 shall apply. For the purposes of this section, "material impact" is an amount
2174 equal to or greater than fifty thousand dollars (\$50,000).

2175 The City Contract Manager or their designate shall have the right to observe and review Contractor
2176 operations and Processing Facilities and enter Premises for the purposes of such observation and review,
2177 including review of Contractor's records, during reasonable hours with reasonable notice. In no event
2178 shall Contractor prevent access to such Premises for a period of more than three (3) calendar days after
2179 receiving such a request. The City Contract Manager shall be granted access to Contractor's information
2180 systems and Customer service database in accordance with Section 4.11.

5.10 ENVIRONMENTALLY-PREFERABLE PURCHASING

Contractor shall, prior to the Commencement Date, develop and implement an “Environmentally Preferable Purchasing Policy” for office, breakroom and promotional products. Contractor shall require the purchase of the following items for operations impacting the City of Cupertino:

- Copy Paper: Purchase of 100% post-consumer content (PCC) Recycled content products, including letter, ledger and legal-sized varieties.
- Misc. Paper: Purchase of minimum 50% post-consumer (PCC) Recycled content products, with goal to achieve 100% Recycled content, when available (filing folders, mailing envelopes, paper tablets, notebooks, etc.).
- Paper Towels and Bath Tissue: Purchase minimum 50% Recycled content products, with goal to achieve 100% Recycled content.
- Janitorial: Purchase natural cleaners and detergents as certified by Green Seal or EcoLogo™.

Contractor shall include a summary of their environmentally-preferable purchasing activities in their annual report to the City, as described in Exhibit D.

5.11 DIVERSION REQUIREMENTS

A. **General.** Contractor shall perform services under this Agreement in a manner that supports the City’s environmental goals. This includes, but is not limited to, providing services, education, and outreach to Customers and in the community that promote source reduction, Reuse, Recycling, Composting, and other methods to reduce landfill Disposal. Contractor is expected to suggest opportunities for Customers to reduce their Solid Waste Service Levels and increase the level of Recyclable Materials and Organic Materials service received whenever applicable. Diversion calculations shall be reviewed annually. It is the expectation of the City that Diversion, regardless of how measured, shall increase each year.

B. **Tonnage Diversion.** The Diversion percentage shall be calculated as total Tons Diverted in a calendar year divided by total Tons Collected by Contractor under this Agreement in the calendar year, provided, however, that C&D Collected by Contractor, and materials Collected by Contractor in Drop Boxes as part of special cleanouts, shall be excluded from the Diversion percentage calculation (numerator and denominator). Subject to the foregoing exclusion, “total Tons Diverted” means (a) total Tons Collected by Contractor under this Agreement that is delivered to a Processing Facility for Processing, Recycling, Composting and/or Reuse, excluding Processing Residue that is Disposed, plus (if not already included in clause (a)) (b) total Tons of:

- Mattresses, white goods, Used Motor Oil and Filters, batteries and CFLs, collected by Contractor and sent for Processing;
- Material Diverted through Contractor’s distribution of home Composting kits (calculated as 0.25 Tons per year of Organic Material Diverted for each household that is provided a kit at one of Contractor’s home Composting classes);
- Material Diverted by Contractor through Environmental Days;
- Edible Food donations by third parties, substantiated by Contractor;

2257 Contract Manager, Contractor shall make available to City all data and records: (i) required to be
2258 maintained under this Agreement; (ii) with respect to the matters covered by this Agreement; or,
2259 (iii) necessary for the City to fulfill obligations under Applicable Law in connection with this Agreement
2260 including, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, SB 1383, and other current or
2261 future Federal, State, or local regulations, as amended. Contractor shall permit the City, or its designee,
2262 to audit, examine, and make excerpts or transcripts from such data and records. Contractor shall maintain
2263 adequate record security to preserve records from events that can be reasonably anticipated such as a
2264 fire, theft, and an earthquake. Electronically-maintained data and records shall be protected and backed-
2265 up. To the extent that Contractor utilizes its computer systems to comply with record keeping and
2266 reporting requirements under this Agreement, Contractor shall, on a monthly basis, save all system-
2267 generated reports supporting those record keeping and reporting requirements in a static format (e.g.,
2268 PDF) in order to provide an audit trail for all data required.

2269 If City requests Contractor data or records that constitute proprietary information or trade secrets, then
2270 Contractor may mark such information as “confidential” or “proprietary.” City shall keep any information
2271 so marked confidential to the maximum extent permitted by applicable Federal, State, and local laws and
2272 regulations. If City receives a request for disclosure of such information, under applicable public records
2273 disclosure laws, City shall promptly notify Contractor in writing of such request, prior to any disclosure of
2274 such information by City. Within five (5) days of receiving City's notice, Contractor shall respond to City in
2275 writing, indicating whether the requested information should be disclosed or defended as exempt from
2276 disclosure under such laws. Contractor shall have the right to mount such defense at its own cost,
2277 including by filing suit in a court of competent jurisdiction. If Contractor does file such a suit, City agrees
2278 not to disclose such information except in accord with a judgment or order of the court, an agreement of
2279 the Parties, or as otherwise required by applicable Federal, State, and local laws and regulations.

2280 Eighteen (18) months prior to the termination date of this Agreement, and within ten (10) Working Days
2281 after a request by the City, including periodic requested updates prior to a transition, Contractor shall
2282 provide the City a complete record of their Customer lists, Service Levels, and routing on a computer disk
2283 or other format approved by the City's Contract Manager in software mutually agreed upon by both the
2284 City and Contractor.

2285 The City views its ability to defend itself against Comprehensive Environmental Response, Compensation
2286 and Liability Act (CERCLA), and related litigation, as a matter of great importance. For this reason, the City
2287 needs to be able to prove where Collected Recyclable Materials, Organic Materials, Solid Waste, and C&D
2288 are taken for Transfer, Processing, or Disposal. Contractor shall maintain records that can establish where
2289 Recyclable Materials, Organic Materials, Solid Waste, and C&D Collected were Transferred, Processed, or
2290 Disposed. This provision shall survive the expiration or earlier termination of this Agreement. Contractor
2291 shall maintain these records for a minimum of ten (10) years beyond expiration or earlier termination of
2292 the Agreement. Contractor shall provide these records to the City upon request before the end of the
2293 record retention period in an organized and indexed manner.

2294 **6.2 REPORT SUBMITTAL REQUIREMENTS**

2295 Contractor shall submit monthly reports within forty (40) calendar days after the end of the calendar
2296 month and annual reports no later than sixty (60) calendar days after the end of each calendar year.
2297 Monthly and annual reports shall, at a minimum, include all data and information described in Exhibit D.

2298 Contractor may propose report formats that are responsive to the objectives and audiences for each
2299 report. The format of each report shall be approved by the City Contract Manager, in their sole discretion.
2300 The City Contract Manager may, from time to time during the Term, review and request changes to
2301 Contractor's report formats and content and Contractor shall not unreasonably deny such requests.

2302 Contractor shall submit all reports to the City Contract Manager electronically via e-mail using software
2303 acceptable to the City. The City reserves the right to require Contractor to maintain records and submit
2304 the reports required herein through use of a City-selected web-based software platform or cloud-based
2305 reporting system, at Contractor's expense.

2306 The City reserves the right to require Contractor to modify the structure and/or format of reports and to
2307 provide additional reports or documents as the City Contract Manager reasonably determines to be
2308 required for the administration of this Agreement or compliance with Applicable Law.

2309 **6.3 PERFORMANCE REVIEW AND AUDIT**

2310 The City may conduct, and Contractor shall cooperate with, two (2) performance reviews and detailed
2311 financial audits, at any point during the Term of this Agreement at the City Contract Manager's sole
2312 discretion, to verify Contractor has fulfilled its financial and operational obligations under this Agreement.
2313 The purpose of such review and audit may at City discretion include, without limitation, to review
2314 Complaints, billings and establishment of Rates, Routes, and fee payments to the City, and to determine
2315 if Contractor has met the performance standards described in this Agreement (including, without
2316 limitation, direct services provided to Customers as described in Exhibit B, public education and outreach
2317 required in Exhibit C, recordkeeping and reporting as required in Exhibit D, and performance standards
2318 established in Exhibit F). The City may choose to enlist professional service providers to perform such
2319 review and audit. Contractor may not influence or control the City's selection of professional service
2320 providers nor the specific review items covered by the review. Contractor shall cooperate with the City
2321 and its agents during the review and audit process. If any noncompliance with the Agreement is found,
2322 the City may direct Contractor to correct the inadequacies in accordance with Article 10 of this Agreement.

2323 At the City's sole option, with at least thirty (30) calendar days' prior written notification to Contractor, it
2324 may conduct a public hearing at which Contractor shall be present and shall participate, to review
2325 Contractor's performance and quality of service and provide for evaluation of technological and
2326 regulatory changes. The reports required by Exhibit D to this Agreement regarding Customer Complaints
2327 may be utilized as a basis for review as well as any findings from performance review and/or audits.
2328 Performance and service quality review hearings may be scheduled by the City at its discretion throughout
2329 the Term of the Agreement.

2330 **ARTICLE 7.** 2331 **CITY FEES**

2332 **7.1 FRANCHISE FEE**

2333 Contractor proposed, and the City accepted, Contractor payment of a Franchise Fee to be paid from
2334 Contractor's profit. Contractor shall pay the Franchise Fee in monthly installments in an amount equal to
2335 twelve percent (12%) of Gross Receipts less the Solid Waste Fund Operations Fee paid by Contractor to
2336 the City under Section 7.2 of this Agreement and any other fees paid by Contractor under Section 7.3, if
2337 any. In addition, Contractor has offered, and the City has accepted, the provision of services to City

2338 facilities under Exhibit B4 and City-sponsored or hosted special events under Section 4.6 at no additional
2339 cost as part of the franchise considerations.

2340 **7.2 SOLID WASTE FUND OPERATIONS FEE**

2341 Contractor shall pay a Solid Waste Fund Operations Fee to the City each month. The amount of the Solid
2342 Waste Fund Operations Fee shall be one hundred sixteen thousand three hundred forty-four dollars
2343 (\$116,344) per month in Rate Period One, one hundred nineteen thousand eight hundred thirty-four
2344 dollars (\$119,834) per month in Rate Period Two, and one hundred twenty-three thousand four hundred
2345 twenty-nine (\$123,429) per month in Rate Period Three. In conjunction with the annual Rate adjustment
2346 process, the City shall determine the amount of the Fee for all subsequent Rate Periods under this
2347 Agreement based on its estimated actual costs for programs and services. This fee is to fund the City's
2348 cost to administer the Franchise Agreement and for Solid Waste-related programs and services, including
2349 staffing, public education materials and events, Recyclable Materials and Organic Materials programs,
2350 street sweeping to clean streets after Curbside Collection of debris, and any other programs that the City
2351 implements to facilitate the safe Disposal or Reuse and Recycling of used material. This fee shall be
2352 considered an allowable cost of business not subject to profit mark-up and may be included in the
2353 adjustment of Rates as described in Exhibit E.

2354 **7.3 ADJUSTMENT TO FEES**

2355 The City may set other fees or adjust the fees established in this Article from time-to-time during the Term
2356 of this Agreement and such adjustments shall be included in the adjustment of Rates described in Exhibit
2357 E.

2358 **7.4 PAYMENT SCHEDULE AND LATE FEES**

2359 Within twenty (20) calendar days after the end of each calendar month, during the Term of this
2360 Agreement, and with accompanying documentation in a format approved by the City Contract Manager,
2361 Contractor shall remit to the City the monthly prorated amount of all fees as described in this Article, net
2362 of any City Payments owed Contractor as provided in Sections 8.2.B and 8.2.C. Such fees shall be sent or
2363 delivered to the City Contract Manager. If such remittance is not paid to the City on or before the
2364 twentieth (20th) calendar day following the end of a calendar month, the amount past due shall be subject
2365 to a delinquency penalty of one and one half percent (1.5%), which attaches on the first day of
2366 delinquency. An additional one and one half percent (1.5%) delinquency penalty shall apply for each
2367 additional month the payment remains delinquent.

2368 Each monthly remittance to the City shall be accompanied by a statement listing the amount of each fee
2369 paid; calculation of each fee; and, statement of Gross Receipts that separately identifies revenues used as
2370 basis for payment of each fee, if applicable, by Customer Type for the period collected from all operations
2371 conducted or permitted by this Agreement. The City Contract Manager may, at any time during the Term,
2372 request a detailed calculation of Gross Receipts that may include, but is not necessarily limited to, the
2373 number of Customers charged at each Service Level and Rate for each billing period. Contractor shall
2374 maintain all supporting documents and calculations for each payment made to the City as required by
2375 Article 6.

2376 The City Contract Manager may, at any time during the Term, perform an audit of Contractor's billings
2377 and payment of fees under this Agreement. Contractor shall cooperate with the City Contract Manager in
2378 any such audit. Should the City or its agent perform this review and identify billing errors or other errors

2379 in payment of fees valued at one percent (1%) or more of Gross Receipts for the period reviewed,
2380 Contractor shall, in addition to compensating City for lost fees, reimburse the City's actual cost of the
2381 review.

2382 **7.5 PROCUREMENT REIMBURSEMENT FEE**

2383 Within five (5) Business Days after the Effective Date, Contractor shall pay the City two hundred thousand
2384 dollars (\$200,000) to reimburse the City for the cost of preparing the RFP, reviewing Contractor's Proposal,
2385 and negotiating this Agreement. Such amount shall not be included in the calculation or adjustment of
2386 Rates under this Agreement.

2387 **7.6 OTHER MONIES DUE TO CITY**

2388 Contractor shall retain certification, under the State's Curbside Supplemental Payment program, to
2389 operate a curbside recycling program in the City, and shall submit all required reports to receive monies
2390 under such State program with respect to recyclables collected by Contractor within the City. Each year,
2391 at its discretion, the City may require Contractor to remit such monies to the City. Should City require such
2392 remittance, City may at its discretion, use some or all of such monies as a credit towards any City Payment
2393 due Contractor as provided in Article 8 and Exhibit E. Contractor's failure to maintain such certification
2394 and file such reports, within the timelines and content requirements of the program, shall result in
2395 Contractor's payment of the amount designated by the State for that year directly to the City without the
2396 benefit of Contractor receiving payment from the State program.

2397 **ARTICLE 8.**

2398 **CONTRACTOR'S COMPENSATION**

2399 **8.1 GENERAL**

2400 Contractor's Compensation for performance of all its obligations under this Agreement shall be the sum
2401 of Gross Receipts and City Payments. Contractor's Compensation shall be the full, entire and complete
2402 compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and
2403 supplies, Transfer, Processing and Disposal fees, City Fees, taxes, insurance, bonds, overhead, operations,
2404 profit, and all other things necessary to perform all the services required by this Agreement in the manner
2405 and at the times prescribed. Nothing herein shall obligate the City to provide any compensation to
2406 Contractor beyond City Payments.

2407 If Contractor's actual costs, including fees due to the City, exceed the total of Gross Receipts and City
2408 Payments, Contractor shall not be compensated for the difference. If Contractor's actual costs, including
2409 fees due to the City, are less than the total of Gross Receipts and City Payments, Contractor shall retain
2410 the difference.

2411 Under this Agreement, Contractor shall have the right to charge and collect from Customers up to the
2412 maximum Rates in Exhibit G3 (as adjusted from time to time in accordance with this Agreement) for
2413 provision of services to Customers. Maximum Rates for Rate Period One are based on Contractor's
2414 Proposal. Contractor's proposed costs and operating assumptions for Rate Period One are presented in
2415 Exhibit G2.

2416 The Approved Recyclable Materials Processing Facility shall retain revenues received for the sale of

Recyclable Materials including California Redemption Value revenues. Such revenues have been considered in Contractor's Proposal and City's approval of maximum Rates for services provided under this Agreement. Neither Contractor nor the Approved Recyclable Materials Processing Facility are entitled to funds available through the Department of Resources Recycling and Recovery (CalRecycle) through its "City/County Payment Program" pursuant to Section 14581(a)(3)(A) of the California Beverage Container Recycling and Litter Reduction Act. The City Contract Manager may require Contractor to provide information to assist City in preparing the requests or applications to CalRecycle for disbursement of such monies to the City.

8.2 CONTRACTOR'S COMPENSATION AND ANNUAL ADJUSTMENTS

A. **General.** Table 8-1 summarizes how Contractor's Compensation will be determined for each Rate Period, assuming no circumstances arise which under the provisions of this Agreement would require application of the cost-based methodology in Rate Periods that are designated as index-based years.

Table 8 -1 Default Method for Determining Contractor Compensation for each Rate Period

Rate Period	Default Rate Adjustment Methodology	Agreement Section	City Fees (Section 7.1 & 7.2)	Other City Fees (Section 7.3)
Rate Periods 1, 2 & 3	<i>Fixed Rate and City Fee Increases – Refer to Section 8.2.B and Refer to Table 8-2 Contractor Compensation for Rate Periods One, Two and Three</i>			
Rate Period 4	Cost-Based	Refer to Exhibit E2	Refer to Exhibit E2 Section 2.D	(1)
Rate Periods 5, 6 & 7	Multi-Index	Refer to Exhibit E1	Refer to Exhibit E1 Section 2.E	(1)
Rate Period 8	Cost-Based	Refer to Exhibit E2	Refer to Exhibit E2 Section 2.D	(1)
Rate Periods 9 & 10	Multi-Index	Refer to Exhibit E1	Refer to Exhibit E1 Section 2.E	(1)
If Agreement extended per Section 2.1				
Rate Period 11	Cost-Based	Refer to Exhibit E2	Refer to Exhibit E2 Section 2.D	(1)
Rate Period 12, 13, 14 & 15	Multi-Index	Refer to Exhibit E1	Refer to Exhibit E1 Section 2.E	(1)

(1) The City may set other fees or adjust the fees established in this Article from time-to-time during the Term of this Agreement.

Contractor's Compensation for Rate Period One, Two and Three is as specified in Section 8.2.B. Beginning with Rate Period Four, the City Contract Manager shall be responsible for approving adjustment to the Contractor's Compensation as described in this Article and in Exhibit E.

B. Contractor's Compensation for Rate Periods One, Two, and Three

1. **Maximum Rates for Rate Periods One, Two, and Three.** Maximum Rates for Rate Period One, which are presented in Exhibit G3, together with the City Payments for each such Rate Period, were proposed by Contractor and approved by the City along with the Agreement. Maximum Rates for Rate Period One shall be effective from February 1, 2021 through January 31, 2022.

Maximum Rates for Rate Period Two shall be the Maximum Rates for Rate Period One, as adjusted by the percentage increases set forth in Table 8-2 below. Maximum Rates for Rate Period Two shall be effective from February 1, 2022 through January 31, 2023. Maximum Rates for Rate Period Three shall be the Maximum Rates for Rate Period Two, as adjusted by the percentage increases set forth in Table 8-2 below. Maximum Rates for Rate Period Three shall be effective from February 1, 2023 through January 31, 2024. Contractor shall provide Rate Period Two and Three rate tables for City review to ensure mathematical compliance with the calculation of Contractor Compensation as provided in Table 8-2 of Section 8.2.B.

Table 8 -2 Contractor Compensation for Rate Periods One, Two and Three

Service Sector	Rate Period 1* Rate Adjustment	Rate Period 2 Rate Adjustment	Rate Period 3 Rate Adjustment
Single-Family Residential Services: All Material Streams - Carts	9.7%	9.6%	9.6%
Multi-Family Residential and Commercial: Solid Waste - Carts and Bins	0.1%	4.7%	5.0%
Multi-Family Residential and Commercial: Recyclable Materials - Carts and Bins	24.0%**	58.2%	39.0%
Multi-Family Residential and Commercial: Organic Materials - Carts and Bins	0.1%	4.7%	5.0%
Commercial Drop Boxes: All Material Streams	3.9%	6.5%	5.0%
	Rate Period 1	Rate Period 2	Rate Period 3
Annual City Payment to Recology	\$686,072	\$957,082	\$840,405

* Rate Period One Rate adjustment is relative to the Rates effective November 1, 2020 and as approved by the City under its previous agreement with Contractor.

** Rate Period One establishes a charge for Recyclable Materials Collection service for Multi-Family and Commercial Carts and Bins of 24.0% of the Rate to service Multi-Family Residential and Commercial Solid Waste Carts or Bins of equivalent size.

2. **City Payments for Rate Periods One, Two, and Three.** City shall pay Contractor monthly amounts for Rate Periods One, Two, and Three equal to one-twelfth (1/12th) of the annual City Payment amounts show in Table 8-2 above. Such payment shall be effected by Contractor netting the monthly amount against monthly payments of City Fees.

3. **Changes in Rate Periods One, Two and Three.** Notwithstanding the foregoing or any other provision of this Agreement, if before Rate Period Four City (i) sets other City Fees or adjusts existing City Fees under Section 7.3, (ii) directs or requires Contractor to use a Designated Facility under Section 3.2, or (iii) initiates a change in scope under Section 3.5, then Contractor's Compensation shall be appropriately adjusted to reflect the increased or decreased costs to Contractor, and the parties shall negotiate such adjustment in good faith.

C. **Contractor's Compensation for Subsequent Rate Periods.** Contractor's Compensation for subsequent Rate Periods, beginning with Rate Period Four, shall be adjusted annually in accordance with this Section 8.2 and Exhibit E. For each subsequent Rate Period, calculation of Contractor Compensation shall include City determination of whether a City Payment is necessary, and as applicable, the annualized amount of such City Payment for the given Rate Period. City shall pay the annualized amount of the City Payment to Contractor in equal monthly installments throughout the given Rate Period, one-twelfth (1/12th) of the annual amount each month, and such payments shall be effected by Contractor netting the monthly amount against

2471 monthly payments of City Fees. Regardless of the Rate Period and whether the applicable Rate
2472 adjustment is index-based or cost-based, Contractor may propose that the dollar value of the
2473 calculated adjustment to Contractor's Compensation be adjusted among sector(s) and/or
2474 material stream(s).

2475 Index-based Rate adjustments, which are described in Exhibit E1, involve use of various cost
2476 adjustment factors (such as the percentage change in the consumer price index and changes in
2477 tonnage and tipping fees) to calculate adjustments to the Rates. The index-based Rate Adjustment
2478 will be the default method used to determine Rates in Rate Periods Five, Six, Seven, Nine, and Ten
2479 (and, if the Term is extended, Twelve, Thirteen, Fourteen, and Fifteen). The index-based Rate
2480 adjustment calculations shall be performed in strict conformance to the procedures described in
2481 Exhibit E1.

2482 Cost-based Rate adjustments, which are described in Exhibit E2, involve review of Contractor's
2483 actual costs and revenues and projection of costs and revenues for the coming Rate Period. The
2484 cost-based Rate adjustment will be used in Rate Period Four and Eight (and, if the Term is
2485 extended, Eleven). The cost-based Rate adjustment calculations shall be performed in strict
2486 conformance to the procedures described in Exhibit E2.

2487 Notwithstanding the foregoing, the cost-based methodology described in Exhibit E2 shall be used
2488 to set Rates as provided in Sections 3.2, 8.2.D and 8.3 of the Agreement, and the third paragraph
2489 of Section 1 of Exhibit E1.

2490 D. **Rate Structure.** The City may, at any time during the Term of this Agreement and in its sole
2491 discretion, change the relationship of individual maximum Rates in comparison with other
2492 maximum Rates. Any such changes would occur in conjunction with the annual Rate adjustment
2493 process described in Section 8.2.C or in conjunction with a Rate adjustment resulting from an
2494 extraordinary Rate adjustment in accordance with Section 8.3. Changes to the Rates charged
2495 under the new structure shall be calculated in such a way that the revised Rate structure
2496 generates at least the same amount of total revenue when the current number of accounts at
2497 each Service Level are multiplied by the Rates charged for each Service Level and the total for all
2498 Service Levels are summed. If Contractor can provide evidence reasonably satisfactory to the City
2499 Contract Manager, based on at least six (6) months of data after a change in the Rate structure
2500 under this paragraph, that the change resulted in migration that on an annualized basis resulted
2501 in at least fifty thousand dollars (\$50,000) in lost revenue to Contractor, then Contractor may elect
2502 to have the next annual Rate adjustment be a Cost-Based Adjustment pursuant to Exhibit E2. As
2503 part of such adjustment, in addition to establishing Rates for the next Rate Period, Contractor
2504 shall be entitled to recover the Parties' reasonable good faith estimate of the lost revenue to
2505 Contractor resulting from such migration.

2506 E. **Miscellaneous Rates.** If at any time during the Term of the Agreement, Contractor determines
2507 the need to add a Rate that does not appear on the Rate schedule in Exhibit G3, Contractor may
2508 propose and the City may approve a maximum Rate. For example, if a Customer requires
2509 Collection of Organic Materials in a fifteen (15) cubic yard Compactor five (5) times per week and
2510 the Rate schedule does not include this level of service, Contractor may propose and the City may
2511 approve a Rate for this level of service. City Council shall approve such Rate prior to Contractor
2512 billing any Customer under that rate.

8.3 EXTRAORDINARY RATE ADJUSTMENTS

The City does not guarantee stability in the cost of providing services; changes in facility conditions or availability of facilities; the Service Levels requested by Customers; the quantity or composition of materials subject to this Agreement; the business, legal, policy, or regulatory environment in which Contractor operates; availability of labor; or other similar matters. The Parties acknowledge that these inputs will be impacted during the Term of the Agreement based on a number of unpredictable factors, including the state of the economy; the number of residents and the number and type of businesses; participation levels of Residential and Commercial Customers in Diversion programs; changes in technology; and impacts of new bans or policies on the use and Disposal of materials, product stewardship, and extended producer responsibility. City may be directly or indirectly responsible for such impacts, including through its on-going efforts to increase Diversion. It is understood that Contractor expressly accepts the risk (and reward) for changes in such factors over the Term, unless other provisions of this Agreement provide specific consideration for or alternatives related to such factors.

Except as provided in Section 3.2, the sole potential basis for Contractor to seek an extraordinary Rate adjustment in excess of the annual adjustment described in Section 8.2 shall be either: (A) a Change in Law after the Effective Date; or (B) City-directed change in scope pursuant to Section 3.5, if the Parties do not mutually agree on the Rate adjustment as provided in such section.

In either of the above circumstances, Contractor may petition the City for an extraordinary Rate adjustment to the extent the Change in Law increases Contractor's costs of performing its obligations under this Agreement. However, Contractor shall not request an adjustment under this Section 8.3 unless the total amount requested exceeds fifty thousand dollars (\$50,000) in at least one (1) Rate Period. For purposes of determining whether the threshold is met, Contractor may aggregate the cost of multiple Changes in Law and/or changes in scope.

Contractor shall prepare an application for the extraordinary Rate adjustment. Such submittal shall be prepared in compliance with the procedures described in Exhibit E2 and shall provide all information reasonably requested by the City Contract Manager specific to the nature of the request being made. Contractor shall pay all reasonable costs incurred by the City, including the costs of outside accountants, attorneys, and/or consultants, in order to make a determination of the reasonableness of the requested Rate adjustment. Such costs paid by Contractor shall be recoverable as "other adjustments" in the adjustment granted under this Section 8.3, or if no such adjustment is granted, the earliest possible annual Rate adjustment. The application shall clearly document the reason for the proposed adjustment, include calculation of the proposed Rate adjustments, and provide supporting documentation.

In the event of such an application for extraordinary Rate increase, it is understood that Contractor shall have the burden of demonstrating to the reasonable satisfaction of the City that the failure of the City to adjust Rates will result in Contractor's financial loss or failure to achieve reasonable profitability due to the Change in Law or City-directed change in scope, where reasonable profitability is the profit level determined by applying the Operating Ratio to Forecasted Total Annual Cost of Operations as provided in Exhibit E2. If Contractor meets the above burden, the City shall approve the adjustment of Rates so as to meet such profit level. Contractor will have to demonstrate financial loss or a failure to achieve reasonable profitability by allowing for the City Contract Manager review of financial statements and supporting documentation.

The City Contract Manager 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. Such information may include, but is not necessarily limited to, cost of service information required for the City to conduct analysis to satisfy the requirements of applicable Federal, State, and local laws and regulations related to municipal rate regulation. Contractor's failure to fully cooperate in a timely manner with any reasonable request for information by the City Contract Manager may result in delay in the approval of the request for an extraordinary Rate adjustment.

For purposes of this Section 8.3: (i) the Transfer, Processing, Composting, or Disposal services provided under this Agreement that are performed by any subcontractor or Affiliate of Contractor, shall be deemed to be services performed by Contractor under this Agreement; (ii) the costs incurred by any such subcontractor or Affiliate in performing such services shall be deemed to be costs of Contractor in performing this Agreement; and (iii) any Change in Law or City-directed change in scope affecting any such subcontractor or Affiliate shall be deemed to be a Change in Law or City-directed change in scope affecting Contractor.

ARTICLE 9. INDEMNITY, INSURANCE, AND PERFORMANCE BOND

9.1 INDEMNIFICATION

A. General. Contractor shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless (to the full extent permitted by law) the City and its officers, officials, employees, volunteers, and agents (collectively, "Indemnitees") from and against any and all claims, liability, loss, injuries, damage, expense, and costs (including without limitation costs and fees of litigation, including attorneys' and expert witness fees and costs) (collectively, "Losses") of every kind and description arising out of or in connection with Contractor's performance under this Agreement, or its failure to comply with any of its obligations contained in the Agreement, except to the extent such Losses were caused by the sole negligence or willful misconduct of the City.

B. Excluded Waste. Contractor acknowledges that it is responsible for compliance during the entire Term of this Agreement with all Applicable Laws. Contractor shall not Collect, store, Transport, Process, use, or Dispose of any Excluded Waste except in strict compliance with all Applicable Laws.

In the event that Contractor negligently or willfully mishandles Excluded Waste in the course of carrying out its activities under this Agreement, Contractor shall at its sole expense promptly take all investigatory and/or remedial action reasonably required for the remediation of such environmental contamination. Prior to undertaking any investigatory or remedial action, however, Contractor shall, if practicable, first obtain the City's approval of any proposed investigatory or remedial action. Should Contractor fail at any time to take such action promptly after notice from City, 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 after being billed for those expenses, and any amount not paid within that thirty (30) calendar day period shall thereafter be deemed delinquent and subject to the delinquent fee payment provision of Section 7.4. These obligations are in addition to any defense and indemnity

2596 obligations that Contractor may have under this Agreement. The provisions of this Section shall
2597 survive the termination or expiration of this Agreement.

2598 Notwithstanding the foregoing, Contractor's duties under this Section 9.1.B shall not extend to
2599 any claims arising from the Disposal of Solid Waste at the Designated Disposal Facility, including,
2600 but not limited to, claims arising under CERCLA, unless such claim is a direct result of Contractor's
2601 negligence or willful misconduct or Contractor owns or operates the Designated Disposal Facility.

2602 C. **Environmental Indemnity.** Contractor shall indemnify, defend with counsel reasonably
2603 acceptable to City, and hold harmless (to the full extent permitted by law) the Indemnitees from
2604 and against Losses of every kind and description attributable to the negligence or willful
2605 misconduct of Contractor in handling Excluded Waste.

2606 D. **Related to AB 939, AB 341, AB 1826, and SB 1383.** Contractor's duty to defend and indemnify
2607 herein includes all fines and/or penalties imposed by CalRecycle, if the requirements of AB 939,
2608 AB 341, AB 1826, and/or SB 1383 are not met with respect to the waste stream Collected,
2609 Transported, and/or Processed by Contractor under this Agreement, and such failure is: (i) due to
2610 the failure of Contractor to meet its obligations under this Agreement; or, (ii) due to Contractor
2611 delays in providing information that prevents Contractor or the City from submitting reports to
2612 regulators in a timely manner.

2613 E. **Related to Proposition 218.** Should there be a Change in Law, including, but not limited to, a new
2614 judicial interpretation of Article XIII C and D of the California Constitution (commonly Proposition
2615 218), and such Change in Law directly, materially, and adversely impacts Rates for the services
2616 established in accordance with this Agreement, Contractor agrees to meet and confer with the
2617 City to discuss the impact of such Change in Law on either Party's ability to perform under this
2618 Agreement.

2619 The City shall not be in default of this Agreement if it is determined by a court of competent
2620 jurisdiction that the City lacks the authority to set new maximum Rates or increase maximum
2621 Rates as contemplated under this Agreement, or if a majority protest under Proposition 218
2622 prevents City from doing so. In any such event, Contractor's obligations under this Agreement
2623 shall be reduced so as to reduce Contractor's costs of performing this Agreement by a dollar
2624 amount equivalent to the dollar amount of the Rate adjustment that could not be implemented.
2625 The Parties shall negotiate in good faith to determine the change in Contractor's obligations, and
2626 shall use best efforts to complete such negotiation, and reflect the mutually-agreed changes in a
2627 written amendment to this Agreement, within ninety (90) days after the court decision or majority
2628 protest. The change shall be consistent with the court's decision, if any, the majority protect, if
2629 any, and applicable Federal, State, and local laws and regulations.

2630 Nothing herein is intended to imply that California Constitution, Articles XIIC or XIID, apply to
2631 Rates established for services provided under this Agreement; rather this Section is provided
2632 merely to allocate risk of an adverse judicial interpretation between the Parties.

2633 This provision (i.e., Section 9.1) will survive the expiration or earlier termination of this Agreement
2634 and shall not be construed as a waiver of rights by the City to contribution or indemnity from third
2635 parties.

9.2 INSURANCE

A. **General Requirements.** Contractor shall, at its sole cost and expense, maintain in effect at all times during the Term of this Agreement not less than the following coverage and limits of insurance:

B. **Coverages and Requirements.** During the Term of this Agreement, Contractor shall at all times maintain, at its expense, the following coverages and requirements. The comprehensive general liability insurance shall include broad form property damage insurance.

1. Minimum Coverages. Insurance coverage shall be with limits not less than the following:

Comprehensive General Liability – \$10,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage.

Automobile Liability – \$10,000,000 combined single limit per accident for bodily injury and property damage (include coverage for Hired and Non-owned vehicles).

Workers' Compensation – Statutory Limits/Employers' Liability - \$1,000,000/accident for bodily injury or disease.

Employee Blanket Fidelity Bond – \$500,000 per employee loss covering dishonesty, forgery, alteration, theft, disappearance, and destruction (inside or outside).

2. Additional Insured. The City, its officers, officials, employees, volunteers, and agents shall be named as additional insured on all but the workers' compensation coverage.

3. Said policies shall remain in force through the life of this Agreement and, shall be payable on a "per occurrence" basis unless the City's Risk Manager specifically consents in writing to a "claims made" basis. For all "claims made" coverage, in the event that Contractor changes insurance carriers, Contractor shall purchase "tail" coverage or otherwise provide for continuous coverage covering the Term of this Agreement and not less than three (3) years thereafter. Proof of such "tail" or other continuous coverage shall be required at any time that Contractor changes to a new carrier prior to receipt of any payments due.

4. Contractor shall declare all aggregate limits on the coverage before commencing performance of this Agreement, and the City's Risk Manager reserves the right to require higher aggregate limits to ensure that the coverage limits required for this Agreement as set forth above are available throughout the performance of this Agreement.

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

6. Each insurance policy shall provide or be endorsed to state that coverage shall not be suspended, voided, canceled by either Party, reduced in coverage or in limits except after endeavoring to provide thirty (30) calendar days' prior written notice to the City Contract Manager and ten (10) Business Days for delinquent insurance premium payments).

7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise approved by the City Risk Manager.

- 2673 8. The policies shall cover all activities of Contractor, its officers, employees, agents and
2674 volunteers arising out of or in connection with this Agreement.
- 2675 9. For any claims relating to this Agreement, Contractor's Comprehensive General Liability and
2676 Automobile Liability insurance coverage shall be primary, including as respects the City, its
2677 officers, officials, employees, volunteers, and agents. Any insurance maintained by the City
2678 shall apply in excess of, and not contribute with, insurance provided by Contractor's liability
2679 insurance policy.
- 2680 10. Contractor shall waive all rights of subrogation against the City, its officers, officials,
2681 employees, volunteers, and agents.
- 2682 C. **Endorsements.** Contractor shall provide copies of the following endorsements or other
2683 documentation satisfactory to the City: (1) additional insured endorsement to each liability policy,
2684 explicitly adding each of the additional insureds specified hereunder, (2) waiver of subrogation,
2685 and (3) insurance is primary and not contributing with any other insurance or self-insurance
2686 programs maintained by the City and/or the other additional insureds to each liability policy.
- 2687 D. **Renewals.** During the Term of this Agreement, Contractor shall furnish the City Contract Manager
2688 with certificates or original endorsements reflecting renewals, changes in insurance companies,
2689 and any other documents reflecting the maintenance of the required coverage throughout the
2690 entire Term of this Agreement.
- 2691 E. **Workers' Compensation.** Contractor shall provide workers' compensation coverage as required
2692 by State law, and shall comply with Section 3700 of the State Labor Code.
- 2693 F. **Evidence of Coverage.** Contractor will deliver to the City Contract Manager certificates of
2694 insurance, original endorsements, schedules and other evidence of coverage required by this
2695 Agreement and/or requested by the City at the following times: (1) on or before the Effective
2696 Date; (2) promptly upon renewal of policies; and, (3) within ten (10) days after the City Contract
2697 Manager's request. The certificates and endorsements are to be signed by a Person authorized
2698 by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received
2699 by, and are subject to the approval of, the City Risk Manager.
- 2700 G. **Insurance Coverage Requirements for Subcontractors.** Unless otherwise approved in advance in
2701 writing by the City Contract Manager, Contractor will ensure either: (1) Contractor is maintaining
2702 insurance required by this Section covering the activities of Subcontractors hereunder; or, (2)
2703 Subcontractors are maintaining their own insurance required by this Section covering their
2704 activities hereunder. At the City Contract Manager's request, Contractor will promptly provide
2705 copies of evidence of Subcontractor's coverage.

2706 9.3 PERFORMANCE BOND

2707 Within seven (7) calendar days after the City's notification to Contractor that the City has executed this
2708 Agreement, Contractor shall file with the City a bond, payable to the City, securing Contractor's
2709 performance of its obligations under this Agreement and such bond shall be renewed annually if necessary
2710 so that the performance bond is maintained at all times during the Term. The principal sum of the bond
2711 shall be four million dollars (\$4M) and shall be adjusted to be effective for Rate Period Four (4), Rate
2712 Period Seven (7), and Rate Period Ten (10) so that the bond amount equals three (3) months of the prior

Rate Period's annual Gross Receipts. The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California that has a rating of A or better in the most recent edition of Best's Key Rating Guide, and that has a record of service and financial condition reasonably satisfactory to the City. The bond shall be in the form attached as Exhibit I.

ARTICLE 10. DEFAULT AND REMEDIES

10.1 EVENTS OF DEFAULT

Unless cured as provided in Section 10.2, 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 generally as they become due, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.
- C. **Failure to Maintain Coverage.** Contractor fails to provide or maintain in full force and affect the workers' compensation, liability, or indemnification coverage as required by this Agreement.
- D. **Violations of Regulation.** Contractor violates any orders or filings of any regulatory body having authority over Contractor relative to this Agreement, provided that Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach or default of this Agreement shall be deemed to have occurred 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, required to be provided by Contractor or its Subcontractors, 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 required under this Agreement including payment of City Fees or Liquidated Damages and/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 that violates the terms, conditions, or requirements of this Agreement, or applicable Federal, State, and local laws and regulations and that is not corrected or remedied within the time set forth in the City's 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. The time set forth in the City's notice shall not be less than the applicable period provided for in Section 10.2.

- 2749 I. **False, Misleading, or Inaccurate Statements.** Any representation or disclosure made to the City
2750 by Contractor in connection with or as an inducement to entering into this Agreement, or any
2751 future amendment to this Agreement, which proves to be false or misleading in any material
2752 respect as of the time such representation or disclosure is made, whether or not any such
2753 representation or disclosure appears as part of this Agreement; and, any Contractor-provided
2754 report containing a material misstatement, material misrepresentation, or a material omission of
2755 fact or content explicitly defined by the Agreement, excepting non-numerical typographical and
2756 grammatical errors.
- 2757 J. **Seizure or Attachment.** Any seizure of, attachment of, or levy on, Contractor's operating
2758 equipment used in performance of this Agreement.
- 2759 K. **Criminal Activity.** Contractor, its officers, managers, or employees are found guilty of criminal
2760 activity related directly or indirectly to performance of this Agreement or any other agreement
2761 held with the City.
- 2762 L. **Assignment without Approval.** Contractor transfers or assigns this Agreement without the
2763 expressed written approval of the City unless the assignment is permitted without City approval
2764 pursuant to Section 12.6.
- 2765 M. **Failure to Provide Proposal or Implement Change in Service.** Contractor fails to provide a
2766 proposal in response to a City-directed change in scope (pursuant to Section 3.5) or fails to
2767 implement a mutually-approved, City-directed change in scope.
- 2768 N. **Failure to Achieve Processing Standards.** Contractor fails to achieve the Processing standards
2769 specified in Sections 4.1 and 4.2, including achievement of minimum Organic Waste recovery
2770 rates, which are essential for the City to achieve SB 1383 compliance.

2771 The City shall make reasonable efforts to provide Contractor written notice of default within seven (7)
2772 calendar days after the City's first knowledge of Contractor's default.

2773 **10.2 OPPORTUNITY TO CURE**

2774 Contractor shall be given ten (10) Business Days after written notification by the City to cure any default
2775 which, in the City Contract Manager's sole opinion, creates a potential public health and safety threat.

2776 Contractor shall be given ten (10) Business Days after written notification by City to cure any default
2777 arising under Section 10.1.C, E, F, I, and J; however, the City shall not be obligated to provide Contractor
2778 with a notice and cure opportunity if Contractor has committed the same or similar breach/default, and
2779 City provided Contractor written notification of such breach/default, within the previous twenty-four (24)
2780 month period.

2781 Contractor shall be given thirty (30) calendar days after written notification by the City to cure any other
2782 default (which is not otherwise required to be cured within ten (10) Business Days); however, the City
2783 shall not be obligated to provide Contractor with a notice and cure opportunity if Contractor has
2784 committed the same or similar breach/default, and City provided Contractor written notification of such
2785 breach/default, within the previous twenty-four (24) month period.

Notwithstanding the foregoing, if a breach/default is curable, but Contractor cannot reasonably cure the breach/default within the above-mentioned time frames, then the cure period shall be extended for a reasonable period, provided Contractor promptly commences to cure the breach/default and diligently pursues the cure to completion. However, this paragraph shall not be deemed to limit the first sentence of this Section 10.2.

10.3 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. The 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 Section 10.2 until such time Contractor can provide assurance of performance in accordance with Section 10.8.

C. **Liquidated Damages.** The City may assess Liquidated Damages for Contractor's failure to meet specific performance standards pursuant to Section 10.6 and Exhibit F.

D. **Termination.** In the event that Contractor should default, and subject to the right of Contractor to cure, in the performance of any provisions of this contract, and the default is not cured within the time periods specified in Section 10.2, then the City may, at its option, terminate this Agreement and/or hold a hearing at its City Council meeting to determine whether this Agreement should be terminated. In the event the City decides to terminate this Agreement, the City shall serve twenty (20) calendar days' prior 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 operations authorized hereunder from and after the date of termination.

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

10.4 POSSESSION OF RECORDS UPON TERMINATION

In the event of termination for an event of default, Contractor shall furnish the City Contract Manager 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, to the extent required to enable City to perform or have a third party perform the Collection services contemplated by this Agreement to be performed by Contractor.

10.5 CITY'S REMEDIES CUMULATIVE; SPECIFIC PERFORMANCE

The City's rights to terminate the Agreement under Section 10.3 and to take possession of Contractor's records under Section 10.4 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 that 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 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).

10.6 PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES

A. **General.** The Parties find that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages that shall be incurred by the City as a result of a breach by Contractor of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that exclusive services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and, (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

B. **Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties further acknowledge that consistent, reliable Collection services are of utmost importance to the City and that the City has considered and relied on Contractor's representations as to its quality of service commitment in awarding the Agreement to it. The Parties recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, the City and its residents and businesses will suffer damages, and that it is, and will be, impractical and extremely difficult to ascertain and determine the exact amount of damages that the City will suffer. Therefore, without prejudice to the City's right to treat such non-performance as an event of default under this Section, the Parties agree that the Liquidated Damages amounts established in Exhibit F of this Agreement represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date, including the relationship of the sums to the range of harm to the City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical.

Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in the Performance Standards and Liquidated Damages, Exhibit F.

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

C. **Amount.** The City may assess Liquidated Damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement in the amounts specified in Exhibit F.

D. **Timing of Payment.** Contractor shall pay any Liquidated Damages assessed by the City within ten (10) Business Days after the date the Liquidated Damages are assessed. If they are not paid within the ten (10) Business Day period, the City may proceed against the performance bond required by the Agreement, treat the failure as a breach under Section 10.1, or all of the above.

10.7 EXCUSE FROM PERFORMANCE

The Parties understand and agree herein that the services provided under this Agreement are essential to the protection of public health and safety and that Contractor may be required to perform these services under difficult, adverse, and unforeseen circumstances. Notwithstanding the foregoing, a Party shall be excused from performing their obligations hereunder (except payment obligations, including any obligation to pay Liquidated Damages) to the extent and for the period of time it is prevented from so performing by reason of floods, earthquakes, other acts of nature, fires, epidemic/pandemic, war, civil insurrection, riots, acts of any domestic governmental body (including judicial action), and other events arising after the Effective Date that could not with reasonable diligence be controlled or prevented by the Party affected by the event ("Force Majeure Events"). However, performance shall only be excused in the event that the Party requesting relief from performance can specifically demonstrate that it is prevented from performance of a specific obligation, and shall only be excused from those requirements that it demonstrates it is prevented from performing and only for such time as it is prevented from performing. All other performance obligations shall be required to continue.

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

2908 required to adhere strictly to the specific requirements of this Agreement regarding Routes, Collection
2909 times or similar matters; provided, however, that in no event shall more than seven (7) calendar days
2910 elapse between Collections for any Customer. Any labor action initiated by Contractor, including but not
2911 limited to a lock-out, shall not be grounds for any excuse from performance and Contractor shall perform
2912 all obligations under this Agreement during the pendency of such Contractor-initiated labor action.

2913 The Party claiming excuse from performance shall, within two (2) calendar days after such Party has notice
2914 of such cause (or, if later, has notice of the impossibility or impracticability of performance), give the other
2915 Party notice of the facts constituting such cause and asserting its claim to excuse under this Section.

2916 If either Party validly exercises its rights under this Section, the Parties hereby waive any claim against
2917 each other for any damages sustained thereby.

2918 The partial or complete interruption or discontinuance of Contractor's services caused by one (1) or more
2919 of the events described in this Article shall not constitute a default by Contractor under this Agreement.
2920 Notwithstanding the foregoing, however, if Contractor is excused from performing Collection services
2921 hereunder for any of the causes listed in this Section for a period of thirty (30) calendar days or more, the
2922 City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10)
2923 Business Days' prior written notice to Contractor, in which case the provisions of Section 10.4 shall apply.

2924 **10.8 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE**

2925 The Parties acknowledge that it is of the utmost importance to the City and the health and safety of all
2926 those members of the public residing or doing business within the City who will be adversely affected by
2927 interrupted waste management service, that there be no material interruption in services provided under
2928 this Agreement.

2929 If Contractor: (i) is the subject of any labor unrest including work stoppage or slowdown, sick-out,
2930 picketing or other concerted job action; (ii) appears in the reasonable judgment of the City to be unable
2931 to regularly pay its bills as they become due; or, (iii) is the subject of a civil or criminal judgment or order
2932 entered by a Federal, State, regional or local agency for violation of an applicable Federal, State, and local
2933 laws and regulations, and the City believes in good faith that Contractor's ability to perform under the
2934 Agreement has thereby been placed in substantial jeopardy, the City may, at its sole option and in addition
2935 to all other remedies it may have, demand from Contractor reasonable assurances of timely and proper
2936 performance of this Agreement, in such form and substance as the City believes in good faith is reasonably
2937 necessary in the circumstances to evidence continued ability to perform under the Agreement. If
2938 Contractor fails or refuses to provide satisfactory assurances of timely and proper performance in the
2939 form and by the date required by the City, such failure or refusal shall be an event of default for purposes
2940 of Section 10.1.

2941 **10.9 DISPUTE RESOLUTION**

2942 In the event of dispute between the City Contract Manager and Contractor regarding the interpretation
2943 of or the performance of services under this Agreement which results in a material impact to
2944 Contractor's revenue and/or cost of operations, as defined in Section 5.9, the provisions of Section
2945 10.9 shall apply.A. **Meet and Confer.** In the event of dispute between the Parties regarding
2946 the interpretation of, or the performance of any obligation under, this Agreement which results
2947 in a material impact to Contractor's revenue and/or cost of operations, the City and Contractor

2948 agree that they will promptly meet and confer to attempt to resolve the matter between
2949 themselves.

2950 B. **Mediation.** In the event that the dispute cannot be resolved satisfactorily between the Parties in
2951 accordance with Section 10.9.A, the City and Contractor agree that such dispute shall be
2952 submitted to mandatory, non-binding mediation by a mutually agreed upon independent third
2953 party.

2954 C. **Period of Time.** Insofar as allowed by applicable Federal, State, and local laws and regulations,
2955 the period of time otherwise applicable for filing claims against the City under applicable Federal,
2956 State, and local laws and regulations shall be tolled during the period of time for which meet and
2957 confer or mediation procedures are pending, in accordance with Sections 10.9.A and 10.9.B.

2958 D. **Litigation.** Litigation may be commenced only after efforts to resolve the dispute(s) pursuant to
2959 Sections 10.9.A, 10.9.B, and 10.9.C have failed and any necessary administrative claim(s) to City
2960 have been denied.

2961 **ARTICLE 11.**

2962 **REPRESENTATIONS AND WARRANTIES OF**

2963 **THE PARTIES**

2964 The Parties, by acceptance of this Agreement, represents and warrants the conditions presented in this
2965 Article. Contractor is expected to represent and warrant all of the items in Sections 11.1 through 11.9.
2966 City is expected to represent and warrant all of the items in Sections 11.3 through 11.6.

2967 **11.1 CONTRACTOR'S CORPORATE STATUS**

2968 Contractor is a corporation duly organized, validly existing and in good standing under the laws of the
2969 State. It is qualified to transact business in the State and has the power to own its properties and to carry
2970 on its business as now owned and operated and as required by this Agreement.

2971 **11.2 CONTRACTOR'S CORPORATE AUTHORIZATION**

2972 Contractor has the authority to enter this Agreement and perform its obligations under this Agreement.
2973 The Board of Directors of Contractor (or the shareholders, if necessary) have taken all actions required by
2974 law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement.
2975 The Person signing this Agreement on behalf of Contractor represents and warrants that they have
2976 authority to do so. This Agreement constitutes the legal, valid, and binding obligation of Contractor.

2977 **11.3 AGREEMENT WILL NOT CAUSE BREACH**

2978 To the best of Contractor's and the City's knowledge, after reasonable investigation, the execution or
2979 delivery of this Agreement or the performance by either Party of their obligations hereunder does not
2980 conflict with, violate, or result in a breach: (i) of any applicable Federal, State, and local laws and
2981 regulations; or, (ii) any term or condition of any judgment, order, or decree of any court, administrative
2982 agency or other governmental authority, or any agreement or instrument to which Contractor or the City
2983 is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default
2984 hereunder.

11.4 NO LITIGATION

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

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

11.5 NO ADVERSE JUDICIAL DECISIONS

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

11.6 NO LEGAL PROHIBITION

To the best of Contractor's and City's knowledge, after reasonable investigation, there is no applicable Federal, State, and local laws and regulations in effect on the date that Party signed this Agreement that would prohibit the performance of either its obligations under this Agreement or the transactions contemplated hereby.

11.7 CONTRACTOR'S ABILITY TO PERFORM

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

11.8 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.

11.9 STATEMENT AND INFORMATION IN PROPOSAL

Contractor's Proposal and any supplementary information submitted by Contractor to City 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.

3018 **ARTICLE 12.**
3019 **OTHER AGREEMENTS OF THE PARTIES**

3020 **12.1 RELATIONSHIP OF PARTIES**

3021 The Parties intend that Contractor shall perform the services required by this Agreement as an
3022 independent Contractor engaged by the City and neither as an officer nor employee of the City, nor as a
3023 partner or agent of, or joint venturer with, the City. No employee or agent of Contractor shall be, or shall
3024 be deemed to be, an employee or agent of the City. Contractor shall have the exclusive control over the
3025 manner and means of performing services under this Agreement, except as expressly provided herein.
3026 Contractor shall be solely responsible for the acts and omissions of its officers, employees, Subcontractors
3027 and agents. Neither Contractor nor its officers, employees, Subcontractors, and agents shall obtain any
3028 rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to the
3029 City employees by virtue of their employment with the City.

3030 **12.2 COMPLIANCE WITH LAW**

3031 In the performance of this Agreement, Contractor shall at all times comply with all applicable laws of the
3032 United States, the State, County, and the City and with all applicable regulations promulgated by Federal,
3033 State, regional or local administrative and regulatory agencies, now in force and as they may be enacted,
3034 issued, or amended during the Term.

3035 **12.3 GOVERNING LAW**

3036 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the
3037 State.

3038 **12.4 JURISDICTION**

3039 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the
3040 courts of the County, which shall have exclusive jurisdiction over such lawsuits. With respect to venue,
3041 the Parties agree that this Agreement is made in and will be performed in the County.

3042 **12.5 BINDING ON SUCCESSORS**

3043 The provisions of this Agreement shall inure to the benefit to and be binding on the successors and
3044 permitted assigns of the Parties.

3045 **12.6 ASSIGNMENT**

3046 Neither Party shall assign its rights nor delegate or otherwise transfer its obligations under this Agreement
3047 to any other Person without the prior written consent of the other Party. Any such assignment made
3048 without the consent of the other Party shall be void and the attempted assignment shall constitute a
3049 material breach of this Agreement.

3050 For purposes of this Section, "assignment" shall include, but not be limited to: (i) a sale, exchange or other
3051 transfer of substantially all of Contractor's local, regional, and/or corporate assets dedicated to service
3052 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 stock, or ownership of Contractor to a third party (other than a transfer of shares in Contractor by the owner of such shares to a revocable trust for the benefit of his family or to another owner of shares in Contractor) except that no cumulative sale, exchange, or transfer of shares may exceed twenty percent (20%) during the Term of the Agreement (other than a transfer of shares in Contractor by the owner of such shares to a revocable trust for the benefit of his family or to another owner of shares in Contractor); (iii) any reorganization, consolidation, merger, recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which Contractor or any of its shareholders is a party which results in a change of ownership or control of ten percent (10%) or more of the value or voting rights in the local, regional, and/or corporate stock of Contractor; (iv) divestiture of an Affiliate (e.g., trucking company, materials recovery facility, Transfer station) used by Contractor to fulfill its obligations under this Agreement; and, (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) 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 Section, 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 the 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 Recyclable Materials, Organic Materials, and Solid Waste management operations in a safe, effective, and responsible fashion, at all times in keeping with applicable waste management laws, regulations, and good waste management practices; and, (ii) Contractor's financial resources on a local, regional, and/or corporate level to maintain the required equipment and to support its indemnity obligations to 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 the City's consideration of and consent to an assignment, the City may deny or approve such request in its sole and complete discretion. No request by Contractor for consent to an assignment need be considered by 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. Contractor shall pay the City a transfer fee in the amount of one (1) percent of the Gross Receipts for the most-recently completed Rate Period.

B. Contractor shall pay the City its actual 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. Such payment shall be required regardless of the ultimate determination of the City with regard to the approval or denial of the assignment. Upon submittal of Contractor's request for assignment to the City, Contractor shall submit an initial deposit of one hundred thousand dollars (\$100,000) for this purpose.

C. Contractor shall furnish the City with reviewed 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 Recyclable Materials, Organic Materials, Solid Waste, and C&D management experience on a scale equal to or exceeding the scale of operations conducted by Contractor

3095 under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered
3096 any citations or other censure from any Federal, State or local contractor having jurisdiction over
3097 its waste management operations due to any significant failure to comply with State, Federal or
3098 local waste management laws and that the assignee has provided the City with a complete list of
3099 such citations and censures; (iii) that the proposed assignee has at all times conducted its
3100 operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee
3101 conducts its operations and management practices in accordance with sound waste management
3102 practices in full compliance with all Federal, State, and local laws regulating the Collection,
3103 Transportation, Processing, and Disposal of Recyclable Materials, Organic Materials, Solid Waste,
3104 and C&D including Hazardous Waste; and, (v) that any other information required by the City
3105 demonstrates that the proposed assignee can fulfill the terms of this Agreement in a timely, safe
3106 and effective manner.

3107 E. Contractor shall provide the City with any and all additional records or documentation which, in
3108 the City Contract Manager's sole determination, would facilitate the review of the proposed
3109 assignment.

3110 Under no circumstances shall any proposed assignment be considered by the City if Contractor is in default
3111 at any time during the period of consideration. If, in the City's sole determination, there is any doubt
3112 regarding the compliance of Contractor with the Agreement, the City may require an audit of Contractor's
3113 compliance and the costs of such audit shall be paid by Contractor in advance of the performance of said
3114 audit.

3115 **12.7 NO THIRD PARTY BENEFICIARIES**

3116 This Agreement is not intended to, and will not be construed to, create any right on the part of any third
3117 party to bring an action to enforce any of its terms.

3118 **12.8 WAIVER**

3119 The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be
3120 deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach of
3121 violation of the same or any other provision. The subsequent acceptance by either Party of any monies
3122 which become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach
3123 or violation by the other Party of any provision of this Agreement.

3124 **12.9 NOTICE PROCEDURES**

3125 All notices, requests, and approvals must be sent in writing to the Persons below, which will be considered
3126 effective on: the date of personal delivery; the date confirmed by a reputable overnight delivery service;
3127 the fifth calendar day after deposit in the United States Mail, postage prepaid, registered or certified; or
3128 the next Business Day following electronic submission:

3129 If to City:

3130 City of Cupertino
3131 Attention: City Manager
3132 10300 Torre Avenue
3133 Cupertino, California, 95014

3134

3135 If to Contractor:

3136 Recology Cupertino
3137 Attn: Legal Department
3138 50 California Street, 24th Floor
3139 San Francisco, CA 94111

3140

3141 The address to which communications may be delivered may be changed from time to time by a notice
3142 given in accordance with this Section.

3143 **12.10 REPRESENTATIVES OF THE PARTIES**

3144 References in this Agreement to the "City" shall mean the City's elected body and all actions to be taken
3145 by the City except as provided below. The City may delegate, in writing, authority to the City Contract
3146 Manager and/or to other City officials and may permit such officials, in turn, to delegate in writing some
3147 or all of such authority to subordinate officers. Contractor may rely upon actions taken by such delegates
3148 if they are within the scope of the authority properly delegated to them.

3149 Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as the
3150 Contractor's Contract Manager. The Contractor's Contract Manager shall be the representative of
3151 Contractor in all matters related to the Agreement and Contractor shall inform the City in writing of such
3152 designation and of any limitations upon his or her authority to bind Contractor. The City may rely upon
3153 action taken by Contractor's Contract Manager as actions of Contractor unless they are outside the scope
3154 of the authority delegated to him/her by Contractor as communicated to the City.

3155

3156

ARTICLE 13. **MISCELLANEOUS AGREEMENTS**

3157 **13.1 ENTIRE AGREEMENT**

3158 This Agreement is the entire agreement between the Parties with respect to the subject matter hereof
3159 and supersedes all prior and contemporaneous oral and written agreements and discussions. Each Party
3160 has cooperated in the drafting and preparation of this Agreement and this Agreement shall not be
3161 construed against any Party on the basis of drafting. This Agreement may be amended only by an
3162 agreement in writing, signed by each of the Parties hereto.

3163 **13.2 SECTION HEADINGS**

3164 The article headings and section headings in this Agreement are for convenience of reference only and
3165 are not intended to be used in the construction of this Agreement nor to alter or affect any of its
3166 provisions.

3167 **13.3 REFERENCES TO LAWS**

3168 All references in this Agreement to laws and regulations shall be understood to include such laws as they
3169 may be subsequently amended or recodified, unless otherwise specifically provided herein.

3170 **13.4 AMENDMENTS**

3171 This Agreement may not be modified or amended in any respect except in writing signed by the Parties.

3172 **13.5 SEVERABILITY**

3173 If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable,
3174 the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this
3175 Agreement, which shall be enforced as if such invalid or unenforceable provision had not been contained
3176 herein.

3177 **13.6 COUNTERPARTS**

3178 This Agreement may be executed in counterparts, each of which shall be considered an original.

3179 **13.7 DEFINITIONS**

3180 Unless defined elsewhere in this Agreement, capitalized terms used in this Agreement shall have the
3181 meanings set forth in the definitions contained in Exhibit A. The definitions set forth in Exhibit A shall
3182 govern the interpretation of this Agreement.

3183 **13.8 EXHIBITS**

3184 Each of the Exhibits identified as Exhibit "A" through "L" is attached hereto and incorporated herein and
3185 made a part hereof by this reference. In the event of a conflict between the terms of this Agreement and
3186 the terms of an Exhibit, the terms of this Agreement shall control. In the event of a conflict between
3187 Exhibit G1 and any other Exhibit(s), such other Exhibit(s) shall control.

3188 IN WITNESS WHEREOF, this Agreement is entered into by the Parties hereto in Santa Clara County,
3189 California on the day and year first above written.

3191

A Municipal Corporation "CITY"

The Foregoing Agreement Has been Reviewed and Approval Is Recommended:

APPROVED AS TO FORM:

ATTEST:

Resolution Number ____20-042
Approved by City Council

15838
City Business License #

EXHIBIT A: DEFINITIONS

EXHIBIT A DEFINITIONS

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

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

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

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

“Affiliate” means, with respect to any given Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with such given Person. For purposes of this definition, “control” and its variants mean possession of the power to direct or cause the direction of the management and policies of the other Person, whether through ownership of voting securities or equity interests, representation on its governing body, by contract, or otherwise. Affiliates are not third parties.

“Agreement” means this franchise agreement (including all exhibits and any future amendments) between the City and Contractor for Recyclable Materials, Organic Materials, and Solid Waste Collection, Recyclable Materials and Organic Materials Processing Services, and Transport for Disposal.

“Alternative Daily Cover” or “ADC” has the same meaning as in Section 20690 of Title 27 of the California Code of Regulations.

“Alternative Intermediate Cover” or “AIC” has the same meaning as in Section 20700 of Title 27 of the California Code of Regulations.

“Applicable Law” means all Federal, State, county, City, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, regulatory guidance, or other requirement of any governmental body 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. Applicable Law includes, but is in no way limited to, AB 939, AB 341, AB 1826, and SB 1383, as well as all Environmental Laws.

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

“Approved Organic Materials Processing Facility” means the Blossom Valley Organics – North Composting facility located at 3909 Gaffery Road, Vernalis, CA (as to Commercial and Multi-Family Organic Materials); and, the South Valley Organics Composting facility located at 3675 Pacheco Pass Highway,

EXHIBIT A DEFINITIONS

Gilroy, CA (as to Residential (Single-Family) Organic Materials). Both facilities are owned and operated by a Contractor Affiliate.

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

“Approved Recyclable Materials Processing Facility” means the GreenWaste Recovery Materials Recovery Facility located at 625 Charles Street, San Jose, CA.

“Approved Transfer Facility” means the Rogers Avenue Transfer Station located at 1675 Rogers Avenue, Santa Clara, CA, which is owned and operated by Contractor.

“Back-Haul” means generating and transporting Organic Waste to a destination owned and operated by the Generator using the Generator’s own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).

“Bin” means a Container with capacity of approximately one (1) to eight (8) cubic yards, with a hinged lid, and with wheels (where appropriate), that is serviced by a front end-loading Collection vehicle, including Bins with Compactors attached to increase the capacity of the Bin.

“Bin-by-the-Day” means Bin service for the Collection and Processing of Recyclable Materials and Organic Materials and the Collection and Disposal of Solid Waste. Customers may use Bin-by-the-Day services to Dispose of Bulky Items and oversized Recyclable Materials or Organic Materials that do not fit into a Recyclable Materials Container or an Organic Materials Container. For billing and compensation purposes, all Bin-by-the-Day services are classified as extra services under this Agreement.

“Bulky Item” means discarded appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers and other similar items commonly known as white goods), furniture, tires, carpets, mattresses, E-Waste, bundled and tied Yard Trimmings and/or wood waste, and similar large items that can be handled by two (2) people, weigh no more than two hundred (200) pounds, and require special Collection due to their size or nature, but can be Collected without the assistance of special loading equipment (such as forklifts or cranes) and without violating vehicle load limits. Bulky Items must be generated by the Customer and at the service address wherein the Bulky Items are Collected. Bulky Items do not include abandoned automobiles, large auto parts, trees, Construction and Demolition Debris, or items herein defined as Excluded Waste.

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

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

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

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

EXHIBIT A DEFINITIONS

“Cart” means a plastic Container with a hinged lid and wheels that is serviced by an automated or semi-automated Collection vehicle. A Cart has capacity of twenty-four (24), thirty-two (32), sixty-four (64), or ninety-six (96) gallons (or similar volumes).

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

“City Contract Manager” means the City’s Director of Public Works, who is responsible for the administrative management of this Agreement, or their designee.

“City Fees” means all fees payable to the City, identified and referenced in Article 7 of this Agreement.

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

- A. The enactment, adoption, promulgation, issuance, modification, or written change in any Applicable Law, or administrative or judicial interpretation of any Applicable Law, on or after the Effective Date; or,
- B. The order or judgment of any judicial or quasi-judicial Federal, State, County, City, or local 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 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.

“Collect” or “Collection” (or any variation thereof) means the act of taking possession of Recyclable Materials, Organic Materials, C&D, Solid Waste, Bulky Items, and other material at the place of generation in the City.

“Commencement Date” means the date specified in Section 2.1 of the Agreement.

“Commercial” shall mean of, from, or pertaining to non-Residential Premises including, but not limited to, retail sales, services, wholesale operations, manufacturing, governmental, non-profit, institutional, and industrial operations, but excluding businesses conducted upon Residential property that are permitted under applicable zoning regulations and are not the primary use of the property. Commercial includes a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, governmental body, strip mall, or industrial facility, or as otherwise defined in 14 CCR Section 18982(a)(6), with the exception that Multi-Family is excluded from the definition of Commercial for the purposes of this Agreement, and that the definition of Commercial shall not apply to any governmental body that has the legal right to, and does, procure Solid Waste Collection services outside of this Agreement.

“Commercial Edible Food Generator” includes Tier One Commercial Edible Food Generators and Tier Two Commercial Edible Food Generators, or as otherwise defined in 14 CCR Section 18982(a)(7). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators, or as otherwise specified by 14 CCR Section 18982(a)(7).

EXHIBIT A DEFINITIONS

“Community Composting” means any activity that Composts green material, agricultural material, food material, and vegetative food material, alone or in combination, and the total amount of feedstock and Compost on-site at any one time does not exceed one hundred (100) cubic yards and seven hundred and fifty (750) square feet, as specified in 14 CCR Section 17855(a)(4); or as otherwise defined in 14 CCR Section 18982(a)(8).

“Compactor” means a mechanical apparatus that compresses materials together with the Container that holds the compressed materials or the Container that holds the compressed materials if it is detached from the mechanical compaction apparatus. Compactors include two (2) to eight (8) cubic yard Bin Compactors serviced by front-end loader Collection vehicles and ten (10) to fifty (50) cubic yard Drop Box Compactors serviced by roll-off Collection vehicles.

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

“Compost” or “Composting” (or any variation thereof) means the product resulting from the composting process (as defined in 14 CCR Section 17896.2(a)(4)), as well as the composting process itself, consisting of a controlled biological decomposition of Organic Materials yielding a safe and nuisance-free compost product.

“Compostable Plastics” or “Compostable Plastic” means plastic materials that meet the BPI-certified ASTM D6400 standard for Compostability. Compostable Plastics must be labeled as “Compostable” by the manufacturer. Notwithstanding any other provision, Compostable Plastic is excluded from the definitions of Organic Materials and its subcategories and is a Prohibited Container Contaminant, unless otherwise agreed by City and Contractor.

“Construction and Demolition Debris (C&D)” includes discarded building materials, packaging, debris, and rubble resulting from construction, alteration, remodeling, repair, or demolition operations on any pavements, excavation projects, houses, Commercial buildings, or other structures, excluding Excluded Waste. Construction and Demolition Debris includes rocks, soils, tree remains and other Yard Trimmings that result from land clearing or land development operations in preparation for construction. C&D must be Source-Separated, either by segregating mixed C&D materials from other types of material, or by segregating individual types of C&D materials (e.g., wood-only or metal-only loads).

“C&D Collection Site(s)” means properties where construction and demolition work is performed as evidenced by the City issuance of a land clearing, building, or demolition permit, or from a non-permitted municipal project or as otherwise stated in the City Municipal Code.

“Container(s)” mean Bins, Carts, Compactors, and Drop Boxes.

“Contractor” means Recology South Bay (d/b/a Recology Cupertino), organized and operating under the laws of the State.

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

EXHIBIT A DEFINITIONS

“Contractor’s Contract Manager” means the Person designated by the Contractor to be the City’s primary point of contact, primarily responsible for Collection operations and resolution of service requests and Complaints. Contractor’s Contract Manager may negotiate and bind Contractor with respect to changes in scope, dispute resolution, compensation adjustments, and service-related matters.

“Contractor’s Proposal” means the proposal submitted to the City by Contractor for provision of Recyclable Materials, Organic Materials, and Solid Waste Collection and Processing services and Solid Waste Transport for Disposal and certain supplemental written materials, which are included as Exhibit G, G1, G2, G3, G4, and G5 to this Agreement and are incorporated by reference.

“County” means the County of Santa Clara, a political subdivision of the State of California.

“Courtesy Notices” means the notice provided to Customers as described in Section 4.10.3.

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

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

“Customer Type” means the Customer’s sector category, consisting of Single-Family, Multi-Family, Commercial, Drop Box, and the City.

“Designated C&D Processing Facility” means the Newby Island Sanitary Landfill, owned and operated by Republic Services Inc., to which Contractor Transports C&D for Processing, and/or any C&D Processing Facility(ies) designated by the City during the Term pursuant to Section 3.2 to which Contractor shall Transfer and/or Transport C&D for Processing.

“Designated Disposal Facility” means the Newby Island Sanitary Landfill, owned and operated by Republic Services Inc., to which Contractor Transports Solid Waste for Disposal, and/or any Disposal Facility(ies) designated by the City during the Term pursuant to Section 3.2 to which Contractor shall Transfer and/or Transport Solid Waste or Residue for Disposal.

“Designated Facility(ies)” means any one of or any combination of the Designated C&D Processing Facility, the Designated Recyclable Materials Processing Facility, or the Designated Disposal Facility.

“Designated Recyclable Materials Processing Facility” means a Recyclable Materials Processing Facility(ies) as may be designated by the City during the Term pursuant to Section 3.2 to which Contractor shall Transport Recyclable Materials for Processing in addition to or in lieu of the Approved Recyclable Materials Processing Facility. The City may, at its sole discretion, require that Contractor subcontract to a Designated Recyclable Materials Processing Facility(ies), or may itself directly contract with any Designated Recyclable Materials Processing Facility(ies).

EXHIBIT A DEFINITIONS

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

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

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

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

“Divert” or “Diversion” (or any variation thereof) means to prevent Discarded Materials from Disposal at landfill or transformation facilities (including facilities using incineration, pyrolysis, distillation, gasification, or biological conversion methods) through source reduction, Reuse, Recycling, Composting, anaerobic digestion, or other method of Processing pursuant to the provisions of AB 939.

“Drop Box” means an open-top Container with a capacity of seven (7) to forty (40) cubic yards that is serviced by a roll-off Collection vehicle.

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

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

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

“Environmental Laws” means all Federal and State statutes, and County, City, and regional agency 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. (CERCLA); 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.

EXHIBIT A DEFINITIONS

“Excluded Waste” means Hazardous Substances, Hazardous Waste, Infectious Waste, Designated Waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that Contractor reasonably believes would, as a result of or upon Disposal, be a violation of local, State or Federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be Disposed of in Class III landfills, waste that in Contractor’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or the City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code. Excluded Waste does not include Used Motor Oil and Filters, compact fluorescent bulbs (CFLs), or household batteries when properly placed for Collection by Contractor as set forth in this Agreement. Notwithstanding any other provision, Excluded Waste is excluded from the definitions of Recyclable Materials, Organic Materials, Solid Waste, C&D, and their respective subcategories.

“Extra Bag Tag(s)” are tags approved by the City and provided by Contractor that may be purchased by Single-Family Customers and affixed to a bag provided by Single-Family Customers for the Collection of Discarded Material overages.

“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.

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

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

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

- A. A food bank as defined in Section 113783 of the Health and Safety Code;
- B. A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,
- C. A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

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

EXHIBIT A DEFINITIONS

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

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

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

“Food Waste” means Food Scraps and Food-Soiled Paper, and excludes Excluded Waste. Food Waste is a subset of Organic Materials. Unless collected as Organic Materials, Food Waste must be Source Separated.

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

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

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

“Hauler Route” or **“Route”** means the designated itinerary or sequence of stops for each segment of the Jurisdiction’s Collection service area, or as otherwise defined in 14 CCR Section 18982(a)(31.5).

“Hazardous Substance” means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to: (i) CERCLA; (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and, (vii) California Water Code §13050; (b) any amendments, rules, or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and, (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other Applicable Law currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's (PCBs), petroleum, natural gas, and synthetic fuel products, and by-products.

“Hazardous Waste” means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State in Health and Safety Code §25110.02, §25115, §25117, 22 CCR

EXHIBIT A DEFINITIONS

Section 66261.3, et seq., 14 CCR Section 17402(a)(7), 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. Hazardous Waste includes hazardous wood waste.

“Holidays” are defined as New Year’s Day, Thanksgiving Day, and Christmas Day.

“Household Hazardous Waste” or “HHW” means Hazardous Waste generated at Residential Premises within the City. HHW includes: paint, stain, varnish, thinner, adhesives, auto products such as old fuel, Used Motor Oil and Filters, batteries, household batteries, fluorescent bulbs , tubes, cleaners and sprays, pesticides, fertilizers and other garden products, needles, syringes, and lancets.

“Incompatible Material” or “Incompatibles” mean(s) human-made inert material, including, but not limited to, glass, metal, plastic, and also includes Organic Waste that the receiving end-user, facility, operation, property, or activity is not designed, permitted, or authorized to perform Organic Waste recovery activities on as defined in 14 CCR Section 18983.1(b), or as otherwise defined by 14 CCR Section 17402(a)(7.5).

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

“In-Home Recycling Container” refers to a small, easily portable tote bag with a capacity of at least three (3) gallons to be included by Contractor in the Multi-Family Move-in Kit to facilitate convenient accumulation of Recyclable Materials within a Multi-Family Dwelling Unit.

“Large Event” means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event. If the definition in 14 CCR Section 18982(a)(38) differs from this definition, the definition in 14 CCR Section 18982(a)(38) shall apply to this Agreement.

“Large Venue” means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of 14 CCR, Division 7, Chapter 12 and this Agreement, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of 14 CCR, Division 7, Chapter 12 and this Agreement, a site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to this Agreement.

EXHIBIT A DEFINITIONS

“Liquidated Damages” means the amounts due by Contractor for failure to meet specific quantifiable standards of performance as described in Section 10.6 and Exhibit F.

“Move-in Kit” refers to a pre-prepared and standardized collection of useful items to be given by property managers or Owners of Multi-Family Premises to new Multi-Family Occupants or by Contractor to Single-Family Customers upon move-in to a Multi-Family or Single-Family Dwelling Unit. At a minimum, Multi-Family Move-in Kits shall include a Multi-Family Recycling guide, an In-Home Recycling Container, and stickers or other approved materials that clearly define acceptable materials and Prohibited Container Contaminants in the Recycling and Composting programs. At a minimum, Single-Family Move-in Kits shall include a Single-Family Recycling guide and stickers or other approved materials that clearly define acceptable materials and Prohibited Container Contaminants in the Recycling and Composting programs. All Move-in Kits shall also include information about how to request a kitchen Food Scraps container.

“Multi-Family” means any Residential Premises, other than a Single-Family Premises, with five (5) or more Dwelling Units used for Residential purposes (regardless of whether residence therein is temporary or permanent), including such Premises when combined in the same building with Commercial establishments, that receive centralized or shared Collection service for all units on the Premises, which are billed to one (1) Customer at one (1) address. Customers residing in mixed-use buildings, condominiums, or other structures with five (5) or more Dwelling Units who receive service shall be considered Multi-Family Customers.

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

- A. Meets or exceeds the physical contamination, maximum metal concentration, and pathogen density standards for land applications specified in 14 CCR Section 17852(a)(24.5)(A)(1) through (3).
- B. Was produced at one or more of the following types of facilities:
 - 1. A Compostable material handling operation or facility as defined in 14 CCR Section 17852(a)(12), that is permitted or authorized under 14 CCR, Division 7, other than a chipping and grinding operation or facility as defined in 14 CCR Section 17852(a)(10);
 - 2. A Transfer/Processing Facility or Transfer/Processing operation as defined in 14 CCR Section 17402(a)(30) and (31), respectively, that is permitted or authorized under 14 CCR, Division 7, Chapter 12; or,
 - 3. A Solid Waste landfill as defined in PRC Section 40195.1 that is permitted under 27 CCR, Division 2.

“Municipal Code” means the Municipal Code of the City of Cupertino.

“Non-Compostable Paper” includes, but is not limited to, paper that is coated in a plastic material that will not break down in the Composting process, or as otherwise defined in 14 CCR Section 18982(a)(41).

“Non-Collection Notices” means the notice provided to Customers as described in Section 4.10.3.

EXHIBIT A DEFINITIONS

“Non-Conforming Carts” means Carts in service at Single-Family Customer Premises on the Commencement Date that are either: (a) tan in color; (b) do not say “City of Cupertino;” or, (c) have logos or identification for other organizations such as Recology, Norcal, or County of Santa Clara on them.

“Occupant” means the Person who occupies a Premises.

“On-Call Collection” means Collection services provided by Contractor to Customers upon Customer request including, but not limited to, Collection of additional Discarded Materials beyond those Collected on regular service days, Container steam cleaning service, and return-trip Collection service.

“Organic Materials” means Yard Trimmings, Food Waste, and Food-Soiled Paper, individually or collectively. No Discarded Material shall be considered to be Organic Materials, however, unless it is separated from Recyclable Materials and Solid Waste. Carpets, Non-Compostable Paper, textiles, and Prohibited Container Contaminants shall not be Collected in Organic Materials Containers. Organic Materials are a subset of Organic Waste.

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

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

“Paper Products” include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling; or as otherwise defined in 14 CCR Section 18982(a)(51).

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

“Person(s)” has the same meaning as in Section 40170 of the Public Resources Code, which states, as of the Effective Date of this Agreement, that a Person includes an individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

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

“Printing and Writing Paper” includes, but is not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications; or as otherwise defined in 14 CCR Section 18982(a)(54).

“Process, Processed, or Processing” means the controlled separation, recovery, volume reduction, conversion, Composting, or Recycling of Recyclable Materials, Organic Materials, Solid Waste, C&D, or their respective subcategories including, but not limited to, organized, manual, automated, or mechanical

EXHIBIT A DEFINITIONS

sorting, the use of vehicles for spreading of waste for the purpose of recovery, and/or includes the use of conveyor belts, sorting lines, or volume reduction equipment, or as otherwise defined in 14 CCR Section 17402(a)(20).

“Processing Facility” means any plant or site used for the purpose of Processing Recyclable Materials, Organic Materials, Solid Waste, C&D, or their respective subcategories for the purpose of making such material available for Recycling or Reuse, or the facility for the Processing and/or Composting of Organic Materials.

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

“Property Owner” means the Owner of real property, or as otherwise defined in 14 CCR Section 18982(a)(57).

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

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

“Rate Period” means a twelve (12) month period, commencing February 1 and concluding January 31.

“Recyclable Materials” means those Discarded Materials that are capable of being Recycled in a Commercially reasonable manner by the Approved Recyclable Materials Processing Facility, excluding Excluded Waste. No Discarded Materials shall be considered Recyclable Materials unless such material is separated from Organic Materials and Solid Waste. Recyclable Materials shall initially include, but not be limited to: newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons, telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, gabletop beverage containers, cereal, and other similar food boxes yet excluding paper tissues, paper towels, paper with plastic coating, paper contaminated with food, wax paper, foil-lined paper and cartons, Tyvek non-tearing paper envelopes); corrugated Cardboard; glass containers of any color (including brown, clear, and green glass bottles and jars); aluminum (including beverage containers and small pieces of scrap metal); steel, tin or bi-metal cans; mixed plastics such as plastic containers (no. 1 to 7), except expanded polystyrene (EPS); bottles including containers made of HDPE, LDPE, or PET; clear film plastic (when clean, dry, and contained inside of a plastic bag).

EXHIBIT A DEFINITIONS

“Recyclable Paper” includes, but is not limited to, Paper Products, Printing and Writing Paper, and other Organic Waste that Generators place in the Recyclable Materials Container for the purposes of Collection, Transport, and Recycling by Contractor and that exclude Excluded Waste. Recyclable Paper is a subset of Organic Waste and of Recyclable Materials.

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

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

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

“Residual” or “Residue” means the Solid Waste destined for Disposal, further Transfer/Processing as defined in 14 CCR Section 17402(a)(30) or 14 CCR Section 17402(a)(31), or transformation that remains after Processing has taken place and is calculated in percent as the weight of Residual divided by the total incoming weight of materials.

“Reuse” or any variation thereof, means the use of material in the same or similar form as it was produced, which might otherwise be discarded, or as otherwise defined in 14 CCR Section 17402.5(b)(2).

“Salvageable Material” (or “Salvaged Material”) means an object or material that results from salvaging, where salvaging means the controlled separation of Solid Waste material that does not require further processing for Reuse or Recycling prior to Transfer activities, or as otherwise defined by 14 CCR Section 17402(a)(24).

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

For the purposes of this Agreement, SB 1383 specifically refers to the Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle and adopted on November 10, 2020 that created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.

“Self-Hauler” or “Self-Haul” means a Person who hauls with their vehicle material they have generated (including Discarded Materials, recovered material, or any other material) to another Person, or as otherwise defined in 14 CCR Section 18982(a)(66). Self-Hauling includes occasions where an employee of

EXHIBIT A DEFINITIONS

a Commercial Generator or family member of a Residential Generator hauls materials generated by other Persons at such Premise. Self-Hauler also includes a Person who Back-Hauls waste, as defined in 14 CCR Section 18982(a)(66)(A).

“Service Level” refers to the size of a Customer’s Container, the number of Containers of each type, and the frequency of Collection service.

“Service Opportunity” shall mean each individual scheduled opportunity Contractor has to Collect from a Container at a Customer’s location. For example, a Commercial Customer receiving Recyclable Materials Collection service two (2) times per week from two (2) Containers, Organic Materials Collection service two (2) times per week from (2) Containers, and Solid Waste Collection service two (2) times per week from two (2) Containers would have a total of twelve (12) Service Opportunities each week. Service Opportunities shall be calculated based on the Service Levels presented in Contractor’s most recent quarterly report to the City. A Single-Family Customer with three (3) Carts for Collection of Solid Waste, Recyclable Materials, and Organic Materials would have a total of three (3) Service Opportunities each week.

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

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

“Solid Waste Fund Operations Fee” means the fee paid by Contractor to the City as described in Section 7.2.

“Source Separated” means the segregation, by the Generator, of materials designated for separate Collection for some form of Recycling, Processing, Composting, recovery, or Reuse, such that the materials are segregated from Solid Waste and placed in a Container designated for Collection of that type of material (e.g., Recyclables in an Organic Materials Container would not be considered Source Separated).

“State” means the State of California.

EXHIBIT A DEFINITIONS

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

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

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

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

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

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

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

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

“Tonnage Baseline Diversion Percentage” means the Diversion percentage calculated in accordance with Section 5.11.B for the period February 1, 2021 through December 31, 2021.

“Total Service Opportunities” shall mean the sum of all Service Opportunities in a given time period.

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

EXHIBIT A DEFINITIONS

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

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

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

“Used Motor Oil and Filters” means used oil fluids for vehicles including motor oil, brake, transmission and hydraulic fluids, crankcase and differential oils, lubricating oils for vehicles, and oil filters from automobiles and light trucks.

“Used Oil Recovery Kit” means a kit containing: one (1) reusable plastic jug of at least one (1) gallon capacity with a leak-proof watertight screw-on top to contain Used Motor Oil or used cooking oil; one (1) six (6) mil plastic disposable resealable bag with double track seal of sufficient capacity to accommodate one (1) Used Motor Oil Filter; and, a flyer, brochure, or other informational media approved by the City intended to educate Customers about the Used Motor Oil and Filter Collection program and the benefits resulting from the proper handling of Used Motor Oil and Filters. The Used Oil Recovery Kit is to be provided to Customers by Contractor to recover Used Motor Oil and Filters and used cooking oil from Single-Family residents.

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

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

EXHIBIT B:
DIRECT SERVICES

EXHIBIT B DIRECT SERVICES

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

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

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

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

This page intentionally left blank

EXHIBIT B1:
SINGLE-FAMILY RESIDENTIAL SERVICE

EXHIBIT B1

SINGLE-FAMILY RESIDENTIAL SERVICES

1. RECYCLABLE MATERIALS COLLECTION

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

- Containers:** Carts
- Container Sizes:** 32-, 64-, and 96-gallons (or comparable sizes approved by the City). Standard Container size is 64-gallon. 96-gallon service shall be made available for no additional charge, upon request by Customer.
- Service Frequency:** One (1) time per week on the same day as Organic Materials and Solid Waste Collection services unless the Customer has received a Collection frequency waiver for Recyclable Materials in accordance with Section 4.12.2, in which case service frequency shall be not less than one (1) time per fourteen (14) days.
- Service Location:** Curbside
- Acceptable Materials:** Recyclable Materials
- Prohibited Materials:** Solid Waste, Organic Materials, Excluded Waste
- Additional Service:** Single-Family Customers shall receive one (1) Recyclable Materials Cart standard and may request up to two (2) additional Recyclable Materials Carts at no additional charge unless a Rate has been approved by the City. Contractor shall provide additional Recyclable Materials Carts to Single-Family Customers upon request and may charge the Rate approved by the City for additional Recyclable Materials Cart service at a given Container size.
- Contractor shall allow Single-Family Customers to place unlimited flattened and bundled Cardboard (each bundle no larger than 3' x 3' x 12"), and additional volumes of mixed Recyclable Materials contained in durable Customer-provided Containers adjacent to the Recyclable Materials Cart on their regularly-scheduled Collection day at no additional charge to the Customer. Such Customer-provided Containers shall be Disposed of unless clearly marked otherwise.
- Other Requirements:** Contractor shall accept household batteries and CFLs in the Recyclable Materials program, provided that those batteries and CFLs have been separately packaged in a sealed, clear plastic bag and placed on top of the Recyclable Materials Cart. Other Household Hazardous Waste shall be handled in accordance with Exhibit B1, Section 9.

Contractor may refuse to Collect a Recyclable Materials Container in accordance with Section 4.10.3 of this Agreement

2. ORGANIC MATERIALS COLLECTION

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

- Containers:** Carts

EXHIBIT B1

SINGLE-FAMILY RESIDENTIAL SERVICES

- Container Sizes:** 24-, 32-, 64, 96-gallons (or comparable size approved by the City).
Standard Container size is 96-gallons, or 24- or 32-gallons for Yard Trimmings exempt Customers.
- Service Frequency:** One (1) time per week on the same day as Recyclable Materials and Solid Waste Collection service.
- Service Location:** Curbside.
- Acceptable Materials:** Organic Materials (including Yard Trimmings, Food Waste, and Food-Soiled Paper).
- Prohibited Materials:** Recyclable Materials, Solid Waste, Excluded Waste
- Additional Service:** Single-Family Customers shall receive one (1) Organic Materials Cart standard and may request up to two (2) additional Organic Materials Carts at no additional charge. Contractor shall provide additional Organic Materials Carts to Single-Family Customers upon request and may charge the appropriate Rate approved by the City for additional Organic Material Carts service at a given Container size. Contractor shall allow Single-Family Customers to place additional volumes of Organic Materials contained in durable Customer-provided Containers adjacent to the Organic Material Cart on their regularly-scheduled Collection day at no additional charge to the Customer. Such Customer-provided Containers shall be Disposed of unless clearly marked otherwise. Customer-provided Containers shall be in accordance with Section 5.6.
- Until December 31, 2021 and subject to the provisions of the City's Municipal Code, Single-Family Customers that demonstrate they have no Yard Trimmings for Collection are entitled to a smaller Container for Food Waste service at the City-approved rate for Yard Trimmings exempt service at a given Container size.
- Other Requirements:** Contractor shall provide to each Single-Family Customer upon request a kitchen container designed to contain Food Scraps prior to placement in the Customer's Organic Materials Cart. Contractor shall not be required to provide more than one (1) kitchen container per Single-Family Premises during the Term, unless there is a change in the Premises' occupancy. Kitchen container specifications shall be approved by the City prior to ordering and distribution.
- Contractor may refuse to Collect an Organic Materials Container in accordance with Section 4.10.3 of this Agreement.

3. SOLID WASTE COLLECTION

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

- Containers:** Carts
- Container Sizes:** 24-, 32-, 64-, and 96-gallons (or comparable sizes approved by the City) as requested by Customer.
- Service Frequency:** One (1) time per week on the same day as Recyclable Materials and Organic Materials Collection service unless the Customer has received a Collection frequency waiver for Solid Waste in accordance with Section 4.12.2, in which case

EXHIBIT B1

SINGLE-FAMILY RESIDENTIAL SERVICES

	service frequency shall be not less than one (1) time per fourteen (14) days.
Service Location:	Curbside
Acceptable Materials:	Solid Waste
Prohibited Materials:	Recyclable Materials, Organic Materials, Excluded Waste
Additional Service:	<p>Contractor shall provide additional Solid Waste Carts to Single-Family Customers upon request and may charge the appropriate Rate approved by the City for additional Solid Waste Cart service at a given Container size.</p> <p>Additional pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, shall be available at the Rate approved by the City for such service.</p> <p>Single-Family Customers may purchase Extra Bag Tags for additional Solid Waste. Solid Waste must be placed in a Customer-provided bag, with the Extra Bag Tag affixed and clearly visible, and placed next to their Solid Waste Container for Collection. Contractor shall Collect all properly placed bags labeled with Extra Bag Tags and Customers shall not be required to schedule such extra service in advance. Contractor shall make Extra Bag Tags readily available to Single-Family Customers through the mail and at Contractor's office at 1675 Rogers Avenue, San Jose, CA 95112. Contractor shall maintain a sufficient inventory of Extra Bag Tags to accommodate additional Solid Waste.</p>

Other Requirements: None

4. USED OIL, FILTER, AND COOKING OIL COLLECTION

Contractor shall Collect Used Motor Oil and Filters and used cooking oil placed in a Contractor-provided Used Oil Recovery Kit or a Customer-provided Container from Single-Family Customers and shall Recycle all Used Motor Oil and Filters and used cooking oil Collected pursuant to this Agreement.

Containers:	Used Oil Recovery Kit
Container Sizes:	Contractor-provided 1-gallon filter bags and, 1-gallon oil jugs (screw-on lids); and/or Customer-provided sealed plastic bag for filters; and/or Customer-provided 1-gallon non-leaking plastic containers with tight-fitting lid or the containers the new oil came in with tight-fitting lid (screw-on lids);
Service Frequency:	Up to one (1) time per week on the same day as Solid Waste Collection service.
Service Location:	Curbside (adjacent to Recyclable Materials Cart)
Acceptable Materials:	Used Motor Oil and Filters, used cooking oil
Prohibited Materials:	Recyclable Materials, Organic Materials, Solid Waste, Excluded Waste
Additional Service:	Not applicable
Other Requirements:	<p>Contractor shall provide a Used Oil Recovery Kit to a Customer within three (3) Working Days of Customer request, at no additional cost to Customer. Upon Collection of Used Motor Oil and Filter from a Customer, Contractor shall leave a clean and empty Used Oil Recovery Kit adjacent to the Recyclable Materials Cart.</p> <p>Contractor shall Recycle the Used Motor Oil and Filters and used cooking oil only with Persons who are authorized by the State of California to Recycle such</p>

EXHIBIT B1

SINGLE-FAMILY RESIDENTIAL SERVICES

materials. In the event the Used Motor Oil and Filter and/or used cooking oil Collected pursuant to this Agreement is contaminated to the extent that the materials require Disposal as a Hazardous Waste, Contractor shall Dispose of such materials, at Contractor's own cost and expense in accordance with Applicable Law.

Contractor shall include in its monthly report, as provided in Exhibit D, the number of instances of any contamination that renders the Used Motor Oil and Filter or used cooking oil unacceptable for Recycling or that requires Disposal as Hazardous Waste.

Contractor shall keep all Used Motor Oil and Filters and used cooking oil Collected pursuant to this Agreement segregated from other materials.

Contractor may refuse to Collect Used Motor Oil and Filter if it is not contained in an approved Used Oil Recovery Kit, provided that Contractor leaves a Non-Collection Notice that explains the reason for non-Collection, and also leaves a clean and empty Used Oil Recovery Kit adjacent to the refused Used Motor Oil and Filter set-out. Contractor may refuse to Collect a Used Motor Oil Recovery Kit that contains liquid other than Used Motor Oil or cooking oil, provided that Contractor leaves a Non-Collection Notice that explains the reason for non-Collection.

5. ON-CALL BULKY ITEM AND BIN-BY-THE-DAY COLLECTION

Contractor shall Collect Bulky Items and other materials described herein from Single-Family Customers. Upon Customer request, Contractor shall provide Bin-by-the-Day service to Single Family Customers at the City-approved Rate for Bin-by-the-Day service at a given Container size. Contractor shall Transport all Collected materials to the appropriate Approved Facility for Reuse, Recycling, Processing, or Disposal.

Containers:	4-, 6-, 7-cubic yards for Bin-by-the-Day service (or comparable sizes approved by the City)
Service Level:	For Bulky Item Collection, up to two-hundred (200) pounds per item; total volume not to exceed two (2) cubic yards.
Service Frequency:	For Bulky Item Collection, up to two (2) times per year. For Bin-by-the-Day, on-call for a period not to exceed seven (7) consecutive calendar days.
Service Location:	Curbside
Acceptable Materials:	For Bulky Item Collection, Bulky Items. For Bin-by-the-Day, Bulky Items, Recyclable Materials, E-Waste, U-Waste, Yard Trimmings, and Solid Waste.
Prohibited Materials:	Food Scraps, Hazardous Waste, abandoned automobiles, trees, Excluded Waste or any single item (e.g., large auto parts, tires, etc.) that exceeds fifty (50) pounds in weight.
Additional Service:	Contractor shall provide up to two (2) Bulky Item Collections per year to Single-Family Customers at no additional cost, and may charge the Rate approved by the City for any additional Bulky Item Collections requested by the Customer.

EXHIBIT B1

SINGLE-FAMILY RESIDENTIAL SERVICES

Single-Family Customers may request Bin-by-the-Day service at the City-approved Rate for Bin-by-the-Day service at a given Container size.

Other Requirements: Contractor shall Collect Yard Trimmings separately from acceptable materials described in this Exhibit B1, Section 5. Upon Customer request, Contractor shall provide separate On-Call Collection service for Yard Trimmings. Contractor shall Collect up to six (6) thirty-two (32) gallon Carts, or the equivalent volume of paper garden bags, of Yard Trimmings per scheduled on-call Yard Trimmings Collection service.

Contractor shall not Dispose of materials Collected through the on-call Bulky Item Collection program unless the materials cannot be reused, Recycled, or Processed.

6. HOLIDAY TREE COLLECTION

Annually, commencing the day after December 25 and four (4) weeks thereafter, Contractor shall Collect holiday trees from Single-Family Customers. Customers are required to place the holiday trees Curbside on the Customer's regularly scheduled Collection day. Holiday trees must be removed from stands, cut into lengths no longer than six (6) feet, and be free of ornaments, garlands, tinsel, or other decorations. Contractor shall not be required to Collect holiday trees that do not meet the aforementioned criteria. In accordance with Section 4.10.3, Contractor shall affix a Non-Collection Notice to any non-Collected holiday tree informing the Customer of the reason(s) for non-Collection. Contractor shall deliver all Collected holiday trees to the Approved Organic Materials Processing Facility for Processing.

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

7. ALTERNATIVE SERVICE LOCATION FOR DISABLED SINGLE-FAMILY CUSTOMERS

Contractor shall allow for Persons that have a disability as defined by the Americans with Disabilities Act (which means Public Law 101-336, 104 Stat. 327, 42 U.S.C. 12101-12213 and 27 U.S.C. 225 and 611, and all Federal rules and regulations relating thereto) that are Occupants of Single-Family Premises to receive Collection services from the back yard or side yard of the Premises at no extra charge to the Customer, provided the household contains no non-disabled adult residents. The City shall review all applications (which shall include statements from physicians) made by Customers to determine conformance with this exemption provision and shall grant exemptions, if applicable. The City shall require recipients of this service to re-verify annually that they meet eligibility requirements. Upon Customer request, Contractor may make such alternative service locations available to Single-Family Customers that do not have a disability (as defined herein) at the Rate approved by the City for alternative location service at a given Container size.

8. CONTAINER SHARING FOR TOWNHOUSE PREMISES

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

EXHIBIT B1

SINGLE-FAMILY RESIDENTIAL SERVICES

9. HOUSEHOLD HAZARDOUS WASTE

Household Hazardous Waste (HHW) shall be handled through the Santa Clara County HHW Drop-Off Program. Contractor is required to promote County HHW Programs in accordance with Exhibit C. Contractor and the City shall encourage use of extended producer responsibility programs such as PaintCare and Med-Project, where appropriate.

10. BACKYARD COMPOST AND WORM BIN DELIVERY

Single-Family residents who complete Compost education workshops provided by the University of California Cooperative Extension (UCCE), or an equitable program as approved by the City Contract Manager, shall be allowed to request and receive one City-approved Compost or vermicompost bin per household at no cost, subject to availability. Up to sixty (60) bins per year shall be purchased by the City and delivered to Contractor for storage and delivery to Single Family residents.

EXHIBIT B2:
MULTI-FAMILY RESIDENTIAL SERVICES

EXHIBIT B2

MULTI-FAMILY RESIDENTIAL SERVICES

1. RECYCLABLE MATERIALS COLLECTION

Contractor shall Collect Recyclable Materials placed in Contractor-provided Containers from Multi-Family Customers and shall Transport all Recyclable Materials to the Approved Recyclable Materials Processing Facility for Processing.

- Containers:** Carts, Bins
- Container Sizes:** 32-, 64-, and 96-gallon Carts (or comparable size approved by the City); and 1-, 2-, 3-, 4-, 5-, 6-, and 8-cubic yard Bins as requested by Customer
- Service Frequency:** Up to six (6) times per week but not less than one (1) time per week (as requested by Customer), unless the Customer has received a Collection frequency waiver for Recyclable Materials in accordance with Section 4.12.2, in which case service frequency shall be not less than one (1) time per fourteen (14) days.
- Service Location:** Curbside or other Customer-selected service location at the Multi-Family Premises.
- Acceptable Materials:** Recyclable Materials
- Prohibited Materials:** Organic Materials, Solid Waste, Excluded Waste
- Additional Service:** Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at the Rate approved by the City for additional Recyclable Materials Container service at a given Container size. Such additional picks-ups can be scheduled equating to up to six (6) days per week total service.
- Other Requirements:** Contractor shall offer to all Multi-Family Dwelling Units personal recycling totes as part of Move-in-Kits designed to contain Recyclable Materials prior to placement in the Recyclable Materials Container. Personal recycling tote specifications shall be approved by the City prior to ordering and distribution.
- Contractor shall accept household batteries and CFLs in the Recyclable Materials program, provided that those batteries and CFLs have been collected by the property manager in a centrally located collection Container, and subsequently packaged in a sealed, clear plastic bag and placed in mutually determined collection location for Collection. The Customer must notify the Contractor in advance according to Contractor's standard procedures before setting out batteries and CFLs (such procedures subject to approval by the City Contract Manager). Other Household Hazardous Waste shall be handled in accordance with Exhibit B2, Section 6.
- Contractor may refuse to Collect a Recyclable Materials Container in accordance with Section 4.10.3 of this Agreement.
- Contractor shall provide Collection service in accordance with Section 5.3.

2. ORGANIC MATERIALS COLLECTION

Contractor shall Collect Organic Materials in Contractor-provided Carts not less than one (1) time per week from Multi-Family Customers and Transport all Organic Materials to the Approved Organic Materials Processing Facility for Processing.

- Containers:** Carts, Bins

EXHIBIT B2

MULTI-FAMILY RESIDENTIAL SERVICES

Container Sizes:	24- 32-, 64-, and 96-gallon Carts (or comparable size approved by the City); and, 1-, 2-, 3-, and 4-cubic yard Bins as requested by Customer.
Service Frequency:	Up to six (6) times per week but not less than one (1) time per week, as requested by the Multi-Family Customer.
Service Location:	Curbside or other Customer-selected service location at the Multi-Family Premises.
Acceptable Materials:	Organic Materials (including Yard Trimmings, Food Waste, and Food-Soiled Paper).
Prohibited Materials:	Recyclable Materials, Solid Waste, Excluded Waste
Additional Service:	Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at Rate approved by the City for additional Organic Material Container service at a given Container size. Such additional picks-ups can be scheduled equating to up to six (6) days per week total service.
Other Requirements:	<p>Contractor will contact each building's Owner or property manager to inform them of the availability of kitchen containers for Food Scraps. Upon request by the building's Owner or Property Manager, Contractor shall provide to all Multi-Family Dwelling Units in the building, kitchen containers designed to contain Food Scraps prior to placement in the Customer's Organic Materials Container. Contractor shall not be required to provide more than one (1) kitchen container per Multi-Family Dwelling Unit during the Term, unless there is a change in the unit's occupancy. Kitchen container specifications shall be approved by the City prior to ordering and distribution.</p> <p>Contractor shall provide Collection service in accordance with Section 5.3.</p> <p>Contractor may refuse to Collect an Organic Materials Container in accordance with Section 4.10.3 of this Agreement.</p>

3. SOLID WASTE COLLECTION

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

Containers:	Carts, Bins
Container Sizes:	24-, 32-, 64-, and 96-gallon Carts (or comparable size approved by the City); and 1-, 2-, 3-, 4-, 5-, 6-, and 8-cubic yard Bins as requested by Customer.
Service Frequency:	Up to six (6) times per week but not less than one (1) time per week, as requested by Customer, unless the Customer has received a Collection frequency waiver for Solid Waste in accordance with Section 4.12.2, in which case service frequency shall be not less than one (1) time per fourteen (14) days.
Service Location:	Curbside or other Customer-selected service location at the Multi-Family Premises.
Acceptable Materials:	Solid Waste
Prohibited Materials:	Recyclable Materials, Organic Materials, Excluded Waste

EXHIBIT B2

MULTI-FAMILY RESIDENTIAL SERVICES

Additional Service: Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at the Rate approved by the City for additional Solid Waste Container service at a given Container size. Such additional picks ups can be scheduled equating to up to three (3) days per week total service.

Other Requirements: Contractor shall provide Collection service in accordance with Section 5.3.

4. ON-CALL BULKY ITEM AND BIN-BY-THE-DAY COLLECTION

Contractor shall Collect Bulky Items from Multi-Family Customers upon request made by the property manager. Multi-Family Customers may request Bin-by-the-Day service through the property manager at a City-approved Rate. Contractor shall Transport all Collected materials to the appropriate Approved Facility for Processing or Disposal.

Containers: 4-, 6-, 7-cubic yards for Bin-by-the-Day service (or comparable sizes approved by the City).

Service Level: For Bulky Item Collection, up to two-hundred (200) pounds per item; total volume does not exceed two (2) cubic yards.

Property managers shall schedule on-call Bulky Item and Bin-by-the Day pickups for their Occupants.

Service Frequency: For Bulky Item Collection, up to two (2) times per year per Multi-Family Dwelling Unit at no additional charge.

For Bin-by-the-Day, on-call for a period not to exceed seven (7) consecutive calendar days.

Service Location: Curbside or other agreed-upon service location at the Multi-Family Premises.

Acceptable Materials: For Bulky Item Collection: Bulky Items

For Bin-by-the-Day Service: Recyclable Materials, E-Waste, U-Waste, Yard Trimmings, and Solid Waste

Prohibited Materials: Food Scraps, Hazardous Waste, abandoned automobiles, trees, Excluded Waste or any single item (e.g., large auto parts, etc.) that exceeds fifty (50) pounds in weight.

Additional Service: Contractor shall provide up to two (2) Bulky Item Collections per year to each Multi-Family Dwelling Unit at no additional cost, and may charge the Rate approved by the City for additional Bulky-Item service.

Multi-Family Customers may request Bin-by-the-Day service at a City-approved Rate.

Other Requirements: Contractor shall Collect Yard Trimmings separately from acceptable materials described in this Exhibit B2, Section 4. Upon Customer request, Contractor shall provide separate On-Call Collection service for Yard Trimmings. Contractor shall Collect up to six (6) thirty-two (32) gallon Carts, or the equivalent volume of paper garden bags, of Yard Trimmings per scheduled on-call Yard Trimmings Collection service. Contractor shall Transport Yard Trimmings to the Approved Organic Materials Processing Facility. Contractor shall not Dispose of materials Collected through the on-call Bulky Item Collection program unless the materials cannot be Reused, Recycled, or Processed. Contractor shall Process and Dispose of Bulky Items Collected from Customers in accordance with the following hierarchy: (1)

EXHIBIT B2

MULTI-FAMILY RESIDENTIAL SERVICES

Reuse as is (where energy efficiency is not compromised); (2) disassemble for Reuse or Recycling; (3) Recycle or Compost; and if none of the other options are practicable, (4) Dispose.

5. HOLIDAY TREE COLLECTION

Annually, commencing the day after December 25 and four (4) weeks thereafter, or as otherwise approved by the City Contract Manager, Contractor shall Collect holiday trees from Multi-Family Customers at a mutually agreed upon time, date, and designated Collection location, as arranged by Contractor and each Multi-Family property owner or manager. Contractor shall offer each Multi-Family property owner or manager the option to receive holiday tree Collection service in Bins or Drop Boxes, provided by Contractor for such service. Contractor shall also offer each Multi-Family property owner or manager the option to receive un-containerized holiday tree Collection service Curbside, or from designated location at the Multi-Family Premises mutually agreed upon between Contractor and the property owner or manager.

Holiday trees must be removed from stands; cut into lengths no longer than six (6) feet; and, be free of ornaments, garlands, tinsel, or other decorations. Contractor shall not be required to Collect holiday trees that do not meet the aforementioned criteria and/or are not placed at the agreed upon Collection location and time period. In accordance with Section 4.10.3, Contractor shall affix a Non-Collection Notice to any non-Collected Bin or Drop Box intended for the Collection of holiday trees. Contractor shall deliver all Collected holiday trees to the Approved Organic Materials Processing Facility for Processing.

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

6. HOUSEHOLD HAZARDOUS WASTE

Household Hazardous Waste (HHW) shall be handled through the Santa Clara County HHW Drop-Off Program. Contractor is required to promote County HHW Programs in accordance with Exhibit C. Contractor and the City shall encourage use of extended producer responsibility programs such as PaintCare and Med-Project, where appropriate.

EXHIBIT B3:
COMMERCIAL SERVICES

EXHIBIT B3 COMMERCIAL SERVICES

1. RECYCLABLE MATERIALS COLLECTION

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

- Containers:** Carts, Bins, Drop Boxes, and Compactors
- Container Sizes:** 32-, 64-, and 96-gallon Carts (or comparable size approved by the City); 1-, 2-, 3-, 4-, 5-, 6-, and 8- cubic yard Bins; 2-, 3-, and 4-cubic yard Bin Compactors, and, 8-, 16, 20-, 25-, 30-, and 40- cubic yard Drop Boxes; or Customer owned Compactors as requested by Customer.
- Service Frequency:** Up to six (6) times per week (Monday through Saturday), but not less than one (1) time per week, as requested by Customer unless the Customer has received a Collection frequency waiver for Recyclable Materials in accordance with Section 4.12.2, in which case service frequency shall be not less than one (1) time per fourteen (14) days. Seven (7) day Collection service (Monday through Sunday) shall be available if Customer gives at least one (1) week advanced notice to Contractor.
- Service Location:** Curbside or other Customer-selected service location at the Commercial Premises.
- Acceptable Materials:** Recyclable Materials
- Prohibited Materials:** Organic Materials, Solid Waste, Excluded Waste
- Additional Service:** Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at the Rate approved by the City for additional Recyclable Materials Container service at a given Container size. Such additional picks-ups can be scheduled equating to up to six (6) days per week total service.
- Other Requirements:** Contractor may refuse to Collect a Recyclable Materials Container in accordance with Section 4.10.3 of this Agreement.

Contractor shall provide Collection service in accordance with Section 5.3.

2. ORGANIC MATERIALS COLLECTION

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

- Containers:** Carts, Bins, Compactors
- Container Sizes:** 24-, 32-, 64-, and 96-gallon Carts (or comparable size approved by the City); 1-, 2-, 3-, and 4-cubic yard Bins; and Customer-owned Compactors as requested by Customer.
- Service Frequency:** Up to six (6) times per week, but not less than one (1) time per week, as requested by Customer. Seven (7) day Collection service (Monday through Sunday) shall be available if Customer gives at least one (1) week advanced notice to Contractor.
- Service Location:** Curbside or other Customer-selected service location at the Commercial

EXHIBIT B3 COMMERCIAL SERVICES

Premises.

Acceptable Materials: Organic Materials (including Yard Trimmings, Food Scraps, and Food-Soiled Paper).

Prohibited Materials: Recyclable Materials, Solid Waste, Excluded Waste

Additional Service: Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at the Rate approved by the City for additional Organic Materials Container service at a given Container size. Such additional picks-ups can be scheduled equating to up to six (6) days per week total service.

Other Requirements: Contractor may refuse to Collect an Organic Materials Container in accordance with Section 4.10.3 of this Agreement.

Contractor shall provide Collection service in accordance with Section 5.3.

3. SOLID WASTE COLLECTION

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

Containers: Carts, Bins, Drop Boxes, Compactors.

Container Sizes: 24-, 32-, 64-, and 96-gallon Carts (or comparable size approved by the City); 1-, 2-, 3-, 4-, 5-, 6-, and 8- cubic yard Bins; 2-, 3-, and 4-cubic yard Bin Compactors, and, 8-, 16-, 20-, 25-, 30-, and 40- cubic yard Drop Boxes; or Customer owned Compactors as requested by Customer.

Service Frequency: Up to six (6) times per week but not less than one (1) time per week, and unless a waiver has been granted pursuant to Section 4.12.2, as requested by Customer.

Service Location: Curbside or other Customer-selected service location at the Commercial Premises.

Acceptable Materials: Solid Waste

Prohibited Materials: Recyclable Materials, Organic Materials, Excluded Waste

Additional Service: Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at the Rate approved by the City for additional Solid Waste Container service at a given Container size. Such additional picks-ups can be scheduled equating to up to six (6) days per week total service.

Other Requirements: Contractor shall provide Collection service in accordance with Section 5.3.

4. BIN-BY-THE-DAY SERVICE

Upon Customer request, Contractor shall Collect Recyclable Materials, Organic Materials, Solid Waste, and other materials described herein from Commercial Customers. Contractor shall Transport all Collected materials to the appropriate Approved Facility for Reuse, Processing, or Disposal. Contractor shall provide such service to Commercial Customers at the Rate approved by the City for Bin-by-the-Day service at a given Container size.

Containers: 1-, 2-, 3-, 4-, 5-, 6-, and 8- cubic yard Bins.

EXHIBIT B3 COMMERCIAL SERVICES

- Service Frequency:** On-call for a period not to exceed seven (7) consecutive calendar days.
- Service Location:** Curbside or other agreed-upon service location at the Commercial Premises; additional charges may apply if the service location is greater than twenty-five (25) feet from the nearest point that a Collection vehicle can access from a paved surface.
- Acceptable Materials:** Recyclable Materials, E-Waste, U-Waste, Yard Trimmings, and Solid Waste
- Prohibited Materials:** Food Scraps, Hazardous Waste, abandoned automobiles, trees, Excluded Waste or any single item (e.g., large auto parts, etc.) that exceeds two-hundred (200) pounds in weight.
- Other Requirements:** Contractor shall provide the service to the Customer within one (1) Working Day of the Customer's requested service date, as mutually agreed upon by the Customer and Contractor.

5. COMMERCIAL CONTAINER SHARING

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

6. CONSTRUCTION & DEMOLITION MATERIAL COLLECTION

- A. **General.** Contractor shall Collect C&D from Customers that directly subscribe to its Collection services. Contractor shall charge Customers for C&D Collection services at City-approved Rates.
- B. **Acceptable Material.** Contractor may Collect C&D from construction, remodeling, repair, or demolition operations. C&D may be Source-Separated mixed materials or Source Separated individual materials (e.g., wood-only or metal-only loads). C&D may contain only de minimis amounts of Solid Waste generated at the C&D Collection Sites.
- C. **Transport and Processing.** Contractor shall Deliver C&D to the Designated C&D Processing Facility for Processing.
- D. **Container Types and Collection Frequency.** Contractor shall offer Customers various size Drop Boxes for Collection of C&D, subject to review and approval by the City Contract Manager. C&D Containers shall conform to all requirements of Section 5.6 of this Agreement. After the Drop Box has been delivered, Contractor shall provide requested Collection of C&D materials within two (2) Working Days of a Customer request.
- E. **Education Information.** Contractor shall provide Customers with City-approved educational information on best practices for C&D Recycling and Reuse and proper separation of materials for Collection as described in Section 4.7. As directed by the City, Contractor shall label or install signs on Bins and Drop Boxes identifying allowable and non-allowable materials for Collection in the C&D Containers. Signs shall be a minimum size of one (1) foot by two (2) feet and lettering on

EXHIBIT B3 COMMERCIAL SERVICES

signs shall be a minimum of three (3) inches high. Signs shall be affixed to the front and both sides of each Bin and Drop Box.

- F. **Record Keeping and Reporting.** Contractor shall submit C&D Tonnage information and other data pursuant to Exhibit D of the Agreement.

**EXHIBIT B4:
CITY SERVICES**

EXHIBIT B4 CITY SERVICES

1. COMMERCIAL CUSTOMER SERVICES TO CITY FACILITIES

Contractor shall Collect Recyclable Materials, Organic Materials, and Solid Waste from City facilities in the same manner as those services are provided to Commercial Customers. Contractor shall initially provide service to all existing City facilities at the locations and Service Levels set forth in Exhibit B5. City may change Service Levels to the facilities identified in Exhibit B5, and/or may add service to any future City facilities. Contractor shall provide such changed or added service at no cost to City, provided that the total cost of servicing all City facilities does not exceed by more than ten percent (10%) the total cost of servicing the City facilities identified in Exhibit B5 at the Service Levels identified in Exhibit B5. Such cost comparison shall be calculated using the Rates in effect at the time the comparison is made. Any services provided in excess of the aforementioned cap shall be charged to City at the then-applicable Rates. If such amounts are not paid by City, Contractor shall be entitled to recover them as an “other adjustment” in the next annual Rate adjustment. The two hundred sixty (260) temporary Drop Box hauls provided for in Exhibit B5, and the eight (8) City-sponsored or hosted special events provided for in Section 4.6, are excluded from the aforementioned cost comparison and cap.

2. EMERGENCY SERVICES

Contractor shall provide emergency services (i.e., special collections, Transport, Processing, and Disposal) at the request of the City Contract Manager in the event of major accidents, disruptions, or natural calamities guided by the City of Cupertino’s Disaster Debris Plan, as it may be adopted and amended from time to time during the Term of this Agreement. Contractor shall be capable of providing emergency services within twenty-four (24) hours of notification by the City Contract Manager or as soon thereafter as is reasonably practical in light of the circumstances. For any services that exceed the scope of services under this Agreement, Contractor shall be entitled to compensation at the emergency service Rates set forth in Exhibit E to of this Agreement. The City shall have discretion in the method of such compensation between direct payments by the City and allowing such costs to be included in the adjustment of Rates for the following Rate Period. The City reserves the right to engage third-party haulers for the purpose of providing additional services to address emergencies.

3. CITY-WIDE RECYCLING EVENTS

Contractor shall provide four (4) free City-Wide Recycling Events (Environmental Days) per year, including the staffing, Disposal, and Transportation of all acceptable Recyclable Materials delivered by residents as requested by the City Contract Manager. The City and Contractor shall mutually agree on the location for the event(s). If not paid directly by City, Contractor shall be entitled to recover the agreed cost on a pass-through basis as an “other adjustment” in the next annual Rate adjustment. Contractor shall procure all necessary permits for the events and shall handle all Recyclable Materials received in a manner that will ensure the maximum amount practicable will be Recycled, Composted, or otherwise Diverted from the landfill.

- A. Shredding.** Contractor shall accept at least three (3) 12” x 12” x 16” boxes (or equivalent volume) per household of sensitive documents for destruction and shredding on site at the event. Contractor shall provide, or contract with another firm to provide, a modern, high-volume mobile shredder for this service.
- B. Accepted Recyclable Materials.** Contractor shall accept from residents of the City, and keep separate for Recycling, the following materials:

EXHIBIT B4 CITY SERVICES

1. E-waste, such as computer monitors, TVs, computers, VCRs, and other computer related electronics;
2. U-Waste, such as compact fluorescent bulbs, fluorescent tube bulbs, batteries, and mercury thermometers;
3. Clean (unpainted and untreated) dimensional lumber;
4. Scrap metal items that do not exceed forty (40) pounds in weight and are not more than three (3) feet long in any dimension;
5. White goods, such as washers, dryers, water heaters, refrigerators, ranges, and dishwashers that do not contain Freon;
6. Up to one covered pickup truck full of Residential C&D per household;
7. Up to thirty (30) gallons per household of concrete, asphalt, rock, and dirt;
8. Usable functioning appliances, furniture, housewares, or toys (to be donated to a non-profit service organization);
9. Usable textiles (to be donated to a non-profit service organization); and,
10. All other Recyclable Materials.

C. Accepted Compostable Materials. Contractor shall accept from residents of the City, and keep separate for Composting, the following materials:

1. Unpainted and untreated wood; and,
2. Yard Trimmings.

D. Non-Acceptable Materials. Contractor shall not be required to accept the following materials during City-Wide Recycling events:

1. Tree branches which are more than six (6) inches in diameter;
2. More than thirty (30) gallons per household of concrete, asphalt, rock, and dirt;
3. More than one (1) pickup truck full of Residential C&D per household;
4. Tires;
5. Hazardous materials including Used Motor Oil and Filters; and,
6. Any other materials not included in the list above.

EXHIBIT B4 CITY SERVICES

4. COATS FOR KIDS

For Residential Customers, Contractor shall run its “Coats for Kids” program in the fall or winter of every year as directed by the City. Contractor shall promote this program in accordance with Exhibit C. Contractor shall launder the coats and donate them to local non-profit organizations to keep children and adults in need warm through the winter months. Contractor shall submit to the City a summary report of the “Coats for Kids” program in the annual report in accordance with Exhibit D.

5. PROVISION OF COMPOST AND MULCH PRODUCT

- A. Bulk Compost.** Contractor shall make available to the City bulk Compost produced from Organic Materials Collected from Single-Family Customers (among other sources) at an Approved Processing Facility for use by residents and for use in City parks and facilities. Contractor shall provide one thousand (1,000) cubic yards per Agreement year at no additional cost to the City or Customers, and an additional one thousand (1,000) cubic yards per Agreement year at a twenty-five percent (25%) discount off market price. The City will notify Contractor as to the City’s needs for delivery of finished Compost throughout the Agreement year. Contractor shall deliver Compost within five (5) Business Days of a request of the City to City facilities, parks, and/or other City-approved locations within City limits and Contractor shall be entitled to recover it on a pass-through basis as an “other adjustment” in the next annual Rate adjustment. If the City does not take delivery of Compost made available by Contractor within thirty (30) calendar days of the end of the Agreement year, Contractor’s obligation to provide Compost for said Agreement year shall be deemed to be satisfied. Any of the bulk Compost allotment that is not requested by the City during the Agreement year shall not carry over into the next Agreement year. In accordance with Exhibit D, Contractor shall provide the City with Compost lab results. The Compost will be “Certified Compost” under the U.S. Composting Council’s Seal of Testing Assurance (STA) program.
- B. Bulk Mulch.** If the Approved Organic Materials Processing Facility produces Mulch that meets the requirements of 14 CCR Section 18993.1(f)(4), then City may opt to receive Mulch instead of Compost (or a combination of Mulch and Compost), subject to the same volume and pricing limits stated in this Exhibit B4, Section 5.A above. The Mulch shall be for use in City parks and facilities. The City will notify Contractor as to the City’s needs for delivery of finished Mulch throughout the Agreement year. Contractor shall deliver Mulch within five (5) Business Days upon request of the City to any accessible location within City limits, and the cost of delivery shall either be paid by City, or Contractor shall be entitled to recover it on a pass-through basis as an “other adjustment” in the next annual Rate adjustment. If the City does not take delivery of Mulch made available by Contractor within thirty (30) calendar days of the end of the Agreement year, Contractor’s obligation to provide Mulch for said Agreement year shall be deemed to be satisfied. Any of the bulk Mulch allotment that is not requested by the City during the Agreement year shall not carry over into the next Agreement year.
- C. SB 1383 Procurement.** Contractor agrees that all Compost or Mulch provided through this Agreement shall comply with the requirements of SB 1383, 14 CCR Section 18993.1(f)(1) (as to Compost) and 18993.1(f)(4) (as to Mulch).

In the event that the City does not use its free allocation of bulk Compost under Section A, Contractor shall act as the City’s broker for the remaining material and make reasonable commercial efforts to either: (a) sell that Compost (or an equivalent volume of Mulch) to other

EXHIBIT B4 CITY SERVICES

potential users on the City's behalf (in which case Contractor may retain the proceeds); or, (b) donate that Compost (or an equivalent volume of Mulch) to a non-profit user selected by Contractor, or to any other recipient mutually-agreed with City.

6. NEWS MEDIA RELATIONS.

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

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

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

7. WASTE GENERATION, CHARACTERIZATION, AND PILOT STUDIES.

Contractor acknowledges that the City, CalRecycle, or other governmental agencies may wish to perform generation and characterization studies periodically with respect to materials covered under this Agreement. Contractor agrees to cooperate with the City and its agents that may perform studies and data collection exercises, as needed, to determine weights, volumes, and composition of materials generated, Disposed, Diverted or otherwise Processed. Contractor shall assist the City and its agents in such efforts at no additional compensation, provided such assistance does not interfere with Contractor's operations and is at no or de minimis cost to Contractor. Such assistance shall include allowing the City and its agents to perform generation and characterization studies at the Approved Transfer Facility at no additional compensation, at mutually agreed times. Contractor shall work with the City's agents to provide a waste characterization plan for the City's approval that details methods, proposes material types to study, dates and times of studies, and number of sites to study in each sector.

If the City requires Contractor to directly participate in the study by conducting, managing, analyzing, and/or providing a report of the results, Contractor and the City shall mutually agree on the scope of services to be provided by Contractor and the amount of compensation, if any, that the City will pay to Contractor for such participation. In any event, Contractor shall permit and in no way interfere with the Collection and handling of the subject materials by City or other City-approved Persons for such purposes.

Contractor acknowledges that the County, in coordination with the City, is required by SB 1383 to conduct Organic Waste and Edible Food capacity planning studies. Contractor shall provide information to the City as reasonably requested by City for the City's participation in such capacity planning studies. This information may include, but is not limited to, providing information regarding existing and potential new or expanded capacity in Contractor's operations for the Collection, Transport, or Processing of Recyclable Materials and Organic Materials; and any other information reasonably requested by the City or County

EXHIBIT B4 CITY SERVICES

for purposes of the study. Contractor shall respond to any request for information from the City within thirty (30) days, unless another timeframe is otherwise specified or authorized by the City.

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

This page intentionally left blank

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

EXHIBIT B5

CITY FACILITY SERVICE LEVELS, LOCATIONS, AND SPECIAL EVENTS

Contractor shall Collect Recyclable Materials, Organic Materials, and Solid Waste, from City facilities in the same manner as those services are provided to Commercial Customers, and shall provide designated personnel in accordance with Section 5.7.D of this Agreement. Contractor shall provide service to all existing City facilities identified in this Exhibit as well as any future City facilities established after the Commencement Date. Contractor shall provide these services at no additional cost to the City, subject to Section 1 of Exhibit B4.

FACILITY NAME	ADDRESS	SERVICE LEVEL/ FREQUENCY TRASH	SERVICE LEVEL/ FREQUENCY RECYCLING	SERVICE LEVEL/ FREQUENCY GREEN WASTE	DROP BOX ON-CALL
City Hall and Community Hall	10300 Torre Ave.	1-3yd 3x/week	1-4yd 1x/week	1-3yd 1x/wee	
Blackberry Farm	21975 San Fernando Ave	4-3yd 2x/week	3- 4yd 1x/week	1-4yd On-Call 15-96Gal Cart/1x/week	
Library	10400 Torre Ave.	1-3yd 3x/week	1-4yd 5x/week	1-3yd 1x/week	
Quinlan Community Center	10185 Stelling Rd. North	1x 4yd 3x/week	1-4yd 3x/week	1-4yd 2x/week	
Senior Center	21251 Steven Creek Blvd	1-3yd 3x/week	1-3yd, 1x/week	1-2yd 2x/week	
Sports Center	21111 Stevens Creek Blvd.	1-1.5yd, 3x/week	1-1.5yd 3x/week	1-1.5yd 1x/week	
All City parks					2-40 yds for leaf season
Public Works Service Center	10555 Mary Ave	1-3yd 3x/week	2- 4yd 1x/week	1-1.5yd, 1x/week	2-8yd,1-26yd,1-40yd, 2-16yd
Traffic Operations Center	10981 Franco Ct.	2-1.5yd, 1x/week	None currently	None currently	
Stocklmeir Property	22120 Stevens Creek Blvd	1-96Gal Cart /x/week	1-64Gal Cart 1/x/week	1x 96Gal Cart 1/x/week	
City of Cupertino	10301 Byrne Ave	1- 32Gal Cart 1/x/week	1-64Gal Cart 1x/week	1-96Gal Cart 1/x/week	
McClellan Ranch Preserve and	22221 McClellan Rd.		2-64 gallon 1x/week		1-16yd, 1-20yd-city owned

EXHIBIT B5

CITY FACILITY SERVICE LEVELS, LOCATIONS, AND SPECIAL EVENTS

FACILITY NAME	ADDRESS	SERVICE LEVEL/ FREQUENCY TRASH	SERVICE LEVEL/ FREQUENCY RECYCLING	SERVICE LEVEL/ FREQUENCY GREEN WASTE	DROP BOX ON-CALL
Environmental Education Center					
Monta Vista Recreation Center	22601 Voss Ave.	1- 6yd, 1x/week	1-4yd 1x/week	None currently	
Compost Site	1200 Stevens Canyon Rd.	1- 3yd 1x/week seasonally end of March – mid Nov	1 -3yd, 1x/week	None currently	

In addition to regular scheduled Collection services, Contractor shall provide, upon request, two hundred sixty (260) temporary Drop Box Collection services per year to all City facilities (including but not limited to those listed above) at no additional cost to the City. Contractor shall deliver Drop Boxes within one (1) Working Day of the City's request. Contractor shall Collect, empty, and return Drop Boxes within one (1) Working Day of the City's request. Contractor shall remove and not return Drop-Boxes within one (1) Working Days of the City's request. Contractor shall deliver Source Separated Yard Trimmings Collected from City facilities, parks, and clean-up operations in such Drop Boxes to the Approved Organic Materials Processing Facility.

Contractor shall provide special event services pursuant to Section 4.6 of the Agreement. Listed below are the current and planned City facilities and special events to receive Collection services. Contractor acknowledges that the list of special events is subject to change per City direction but will not exceed the annual number of special events provided in Section 4.6.

City of Cupertino Anticipated Special Events*					
Event Name	Estimated Annual Date	Location	Container Size / Type	Container Number	Other Services/ Specifications
National River Clean Up	May & September	Creekside Park	96 gallon	3-MSW,3-RYC and 1-ORG	None
4 th of July	July 3rd	Creekside Park	FEL	1-6yd MSW, 1-6yd RYC and 1-3yd ORG	Addition Clear Stream Trios as needed
Earth Day/Arbor Day	April	City Hall	FEL	1-3yd MSW,1-4yd RYC and 1-3yd ORG	Use existing FEL bins on site. May add additional bins if needed along with Clear Stream Trios

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

EXHIBIT C

PUBLIC EDUCATION & OUTREACH PLAN

1. General Administration

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

- A. Prior to the Commencement Date and by November 1 of each following year during the Term of this Agreement, Contractor shall develop and submit an annual public education plan to promote the programs designed by the City and performed by Contractor under this Agreement. Each public education plan shall specify the target audience for services provided, include upcoming promotions for ongoing and known special events, identify program objectives, individual tasks, public education materials to be distributed, opportunities for expanded partnerships, a timeline for implementation, and an itemized description of how Contractor's annual public education budget (described in subsection (F) of this Exhibit C-1) will be spent. The City Contract Manager shall be permitted to provide input on each annual public education plan, and the plan shall not be finalized or implemented without approval of the City Contract Manager, not to be unreasonably withheld or delayed. Each plan's implementation success shall be measured according to the deadlines identified and products distributed. Contractor shall meet with the City Contract Manager to present and discuss the plan, review the prior year's activities (including sponsorships and services provided to City-sponsored events) and determine whether community activities and the provision of services to the City reflect the needs of City staff and the City Council. The City Contract Manager shall be allowed up to thirty (30) calendar days after receipt to review the plan and request reasonable modifications. The City Contract Manager may request, and Contractor shall not unreasonably deny, reasonable modifications to be completed prior to approving the plan. Contractor shall have up to fifteen (15) Business Days to revise the plan in response to any requested changes by the City Contract Manager. Any further delays may result in Liquidated Damages as identified in Exhibit F.
- B. Upon request from the City Contract Manager, City Contract Manager and Contractor's Contract Manager shall meet up to one (1) time per month to discuss services, outreach, and educational campaigns and request changes or adaptations to the annual public education plan. The City will be responsible, in its sole discretion and subject to budgetary constraints, for preparing all public education materials contemplated by this Exhibit C, at City's cost, and shall request that materials be reviewed by Contractor prior to production. If requested, Contractor shall review and comment on the materials ten (10) Business Days of request from the City.
- C. All City facilities shall receive any and all public education and outreach materials and services provided to the Commercial sector. Contractor shall provide all printed public education materials to City offices and facilities to have available for the public that visits those facilities and shall replenish the materials as requested by the City Contract Manager.
- D. Bill inserts shall be designed and produced by the City; and Contractor shall be responsible for printing and distributing the billing inserts to all Customers. Contractor shall provide electronic bill inserts (or separate email attachments) to Customers who are billed electronically, and paper bill inserts to Customers who receive paper bills. For Customers receiving electronic bills, Contractor agrees to distribute brochures, newsletters, or other information developed by the

EXHIBIT C

PUBLIC EDUCATION & OUTREACH PLAN

City as attachments to Customer invoices. Electronic bill inserts/attachments must be readily available for the Customer to view upon receipt of the invoice (attachments shall not be provided as links). Upon City request for billing inserts, Contractor shall comply with such request during its next billing cycle for the targeted Customer group, if specified. Contractor shall perform this service with no additional requirement for compensation.

- E. Contractor shall develop a website specific to its operations in the City, with a section specific to City programs and Customers, that will be used to post educational materials for download, highlight program successes, and provide Diversion statistics. Contractor's City-specific website shall also include links to relevant web pages of the City's website where further information can be found.
- F. Notwithstanding any other provision, Contractor shall only be required to pay forty four thousand two hundred ninety-three dollars (\$44,293) per Agreement year in out-of-pocket printing, shipping, mailing, and signage costs for City-approved public education and outreach materials, increased annually by CPI-U. City or Contractor shall be entitled to recover above reimbursement amount on a pass-through basis as an "other adjustment" in the next annual Rate adjustment.

2. Public Education and Outreach Team

To best achieve the highest possible level of public education and awareness, Contractor shall employ at least one (1) full-time Waste Zero Specialist staff member to coordinate and implement all public education and outreach activities required by this Agreement. Contractor's Waste Zero Specialist shall spend one hundred percent (100%) of their time implementing public education, technical support, and outreach activities required by this Agreement, as provided in Section 4.7.

A. Waste Zero Specialist.

Contractor's Waste Zero Specialist shall, at a minimum, perform the following tasks:

1. Meet no less than monthly with the City Contract Manager upon the request of the City Contract Manager and be readily available to discuss issues related to providing service as described in the Agreement;
2. Work to coordinate City program and educational activities with Contractor activities;
3. Increase efforts to promote Recycling in the community and particularly in local schools by visiting each school at minimum two (2) times per school year, recognizing that waste generated by schools in the City affects the City's Diversion;
4. Upon City request, organize City staff ride-alongs with Contractor's Collection drivers;
5. Prepare proposals and presentations to City entities;
6. Participate and represent Contractor in community activities;
7. Oversee Customer satisfaction of all program services, as described in Exhibit B to the Agreement;

EXHIBIT C

PUBLIC EDUCATION & OUTREACH PLAN

8. Coordinate and produce the annual education and outreach plan required by Section 1 of this Exhibit C to the Agreement;
9. Coordinate implementation of the annual public education plan;
10. Perform annual visits to confirm adequate service and proper sorting as required by Recycling and Organic Materials Processing laws and regulations for every Customer, other than Single-Family Customers, by conducting "Diversion opportunity assessments" of Customer locations and facilities;
11. Manage follow-up Diversion opportunity assessments for businesses to conduct a more comprehensive investigation and educational process after the initial review;
12. Provide all Customers with appropriate educational information necessary to make informed, environmentally-forward decisions relative to waste reduction, Reuse, and Diversion activities.
13. Maximize the opportunity for initial and sustained program success by seeking to identify a "champion" (ideally a senior manager) at each Commercial and Multi-Family Premises who will serve as a primary contact and advocate for Diversion programs within the Customer's organization;
14. Assist in planning service needs for special events and Large Venues with a focus on reducing the Disposal to landfill of materials resulting from such events or venues; and,
15. Assist in creating and distributing reports as required under this Agreement and/or requested by the City Contract Manager, as described in Article 6 and Exhibit D.
16. Educate and inform about SB 1383 and food rescue/donation.
17. Attend Santa Clara County RWRC Technical Advisory Committee meetings monthly and California Resource Recovery Association annual conference.

3. Curbside Supplemental Payments

Contractor shall apply for the State's Curbside Supplemental Payment program in accordance with Section 7.6.

4. Sector-Specific Activities

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

EXHIBIT C PUBLIC EDUCATION & OUTREACH PLAN

Public Education and Outreach | All Sectors

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

The following tables present examples of general public education and outreach materials that Contractor shall produce for the benefit of all Customer types that receive Collection service from Contractor.

Activity	Description	Distribution/Frequency
Truck-Side Advertising	Implement a City-wide truck-side advertising campaign to educate the public about Contractor's programs under this Agreement. Campaign content and messaging shall be created by the City. Contractor shall produce and install truck-side signage for each side of each vehicle it operates in performing services under this Agreement.	Quarterly.
SB 1383 Mandatory Recyclable Materials and Organic Materials Outreach	<p>Commencing January 1, 2022, distribute City-produced outreach materials that include, at a minimum, the following information:</p> <ol style="list-style-type: none">1. Information on the Generator's requirements to properly Source Separate Recyclable Materials, Organic Materials, and Solid Waste and place such materials in appropriate Containers pursuant to this Agreement, SB 1383, and all other Applicable Law.2. Information on methods for the prevention of Source Separated Recyclable Materials and Source Separated Organic Materials generation; managing Source Separated Organic Materials on Generator's Premises through Composting or other landfill Disposal reduction activities allowed under 14 CCR Sections 18983.1 and 18983.2; sending Source Separated Organic Materials to Community Composting operations; and any other local requirements regarding Discarded Materials.3. Information regarding the methane reduction benefits of reducing the Disposal of Source Separated Organic Materials, and the method(s) that Contractor uses to recover Source Separated Organic Materials.	At least annually.

EXHIBIT C

PUBLIC EDUCATION & OUTREACH PLAN

Activity	Description	Distribution/Frequency
	<p>4. Information regarding how to recover Source-Separated Recyclable Materials and Source-Separated Organic Materials, and information related to recovering Source Separated Yard Trimmings from Multi-Family and Commercial Generators</p> <p>5. Information related to the public health and safety and environmental impacts associated with the Disposal of Source Separated Organic Materials.</p> <p>6. Information regarding the City's Edible Food recovery program.</p> <p>7. Information regarding Self-Hauling requirements, if applicable.</p> <p>8. Any other Federal, State, or local requirements to properly separate Discarded Materials or other necessary actions by Generators, including applicable requirements of the Municipal Code, AB 341, AB 1826, and SB 1383.</p>	

EXHIBIT C

PUBLIC EDUCATION & OUTREACH PLAN

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

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

Activity	Description	Distribution/Frequency
Environmental Services Guide	Distribute a City-designed “how-to” guide on (including but not limited to) proper Recycling, Organics disposal, handling and Disposal of Household Hazardous Waste, E-Waste, and U-Waste directly to Single-Family residents. This guide shall include information on Collection methodologies, set-out instructions, set-out schedule, contact information, and acceptability and necessary preparation of materials for all Single-Family programs described in Exhibit B1. Contractor may arrange for distribution to each Dwelling Unit a flyer, door hanger, or other public education piece by coordinating with the Owner or property manager of the Premises.	Annually to each Single-Family and Townhouse Customer, and thereafter to all new Customers.
Move-In Kits	Distribute Move-in Kits for new residents.	As needed.
Neighborhood Group & HOA Visits	Visit homeowner associations and other neighborhood groups and associations to promote and explain the Recycling programs included in this Agreement.	At City Contract Manager or Customer request.
Quarterly Bill Insert	Produce and Distribute a City-designed quarterly bill inserts that creatively informs Residential Customers about such topics as availability of Bulky Item pick-ups, home Composting, proper handling of Household Hazardous Waste, E-Waste, U-Waste, Coats for Kids, and other environmental conservation topics, statistics, trends, and facts about programs performed under this Agreement (e.g., material Collected, Tonnage, year over year increase/decrease, markets for material Collected, what each material is Recycled into, and the importance of buying Recycled). Contractor’s annual public education plan shall define a theme for each quarterly bill insert.	One (1) time per quarter included in each mailed Customer bill and downloadable from electronic Customer bills.
Corrective Action Notices	Produce and distribute a Single-Family Customer oriented Non-Collection Notice and Courtesy Notice for use in instances where the Customer includes Prohibited Container Contaminants in a Container or fails to properly prepare or set-out Containers.	As needed.

EXHIBIT C

PUBLIC EDUCATION & OUTREACH PLAN

Activity	Description	Distribution/Frequency
Seasonal Program Notifications	Provide written notification to all Single-Family Customers advertising holiday tree Collections pursuant to Exhibit B1, Section 6, and any other seasonal or periodic program(s). The notification shall inform Customers of the schedule, acceptable materials and Prohibited Container Contaminants, and set-out requirements for the program.	At least fourteen (14) calendar days prior to event via direct mail.
Website	Contractor shall prepare a “Single-Family Customer” section of its website where it will present Customers with “how-to” information for participating in Contractor-provided programs, including proper Container set-outs, and provide Single-Family Customers with links to click on for additional resources. All other Single-Family educational materials specified in this Section shall be posted on this section of Contractor’s website in PDF and/or video format. The website shall also publish the current Rates charged to Single-Family Customers within the City.	At least thirty (30) calendar days prior to Commencement Date. Updated no less than quarterly.

EXHIBIT C

PUBLIC EDUCATION & OUTREACH PLAN

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

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

Description	Purpose	Distribution/Frequency
Environmental Services Guide	Distribute a City-designed "how-to" guide on (including but not limited to) proper Recycling, Organics disposal, handling and Disposal of Household Hazardous Waste, E-Waste, and U-Waste directly to Multi-Family Customers. This guide shall include information on Collection methodologies, set-out instructions, pick-up schedule, contact information, and acceptability and necessary preparation of materials for all Single-Family programs described in Exhibit B2. Contractor may arrange for distribution to each Dwelling Unit a flyer, door hanger, or other public education piece by coordinating with the Owner or property manager of the Premises.	Annually to each Multi-Family Dwelling Unit, and thereafter to all new Customers.
Technical Assistance: Diversion Opportunity Assessments	<p>Visit in person and offer Diversion opportunity assessments at least one (1) time annually to each and every Multi-Family Customer to meet with the property manager or Owner of Multi-Family Premises to promote Recyclable Materials and Organic Materials Collection and replenish Move-in Kits as needed by each Multi-Family Premises.</p> <p>Additionally, upon City or Customer request, Contractor shall perform complete walk-throughs of each facility/complex and discuss the internal and external layout with property manager; identify areas of generation, Collection, noting areas for improved infrastructure, placement, or educational materials. Contractor shall also identify major components of the waste stream by location and identify special wastes or Source-Separated materials potential. Contractor shall then make recommendations for waste reduction, contamination prevention, and Service Level or frequency modification. Finally, Contractor shall coordinate with Customer service and operations to implement Service Level changes, as needed.</p>	Offer in-person meetings to each and every Multi-Family Customer conducted one (1) time per year, plus follow-up meetings with individual Customers, as needed or requested.
Move-In Kits	Produce and Distribute Move-in Kits for property managers and Owners of Multi-Family Premises to provide to new Occupants.	Distributed during technical assistance Diversion opportunity assessments.

EXHIBIT C

PUBLIC EDUCATION & OUTREACH PLAN

Description	Purpose	Distribution/Frequency
Workshops	Offer and respond to requests for on-site or online meetings and workshops. Contractor shall conduct workshops for Customers (when requested) that will show property managers and residents, in a hands-on interactive format, how to use the Recyclable Materials and Organic Materials program and will provide resources for additional information and support.	At Customer's request.
Holiday Tree Collection Notification	Produce and distribute a City-designed written notification to each Multi-Family property manager/Owner advertising the availability of holiday tree Collection services. The notification shall inform managers of the schedule, accepted and prohibited materials, Collection method options, and set-out requirements for the program. The notification shall include Contractor contact information for Multi-Family Customers to contact to discuss schedule and designated Collection location. The format and content of the notification shall be approved by the City Contract Manager.	At least fourteen (14) calendar days prior to event via direct mail, e-mail, or in-person.
Website	Contractor shall prepare a "Multi-Family Customer" section of its website where it will present "how-to" information for participating in Contractor-provided programs including proper Container set-outs, and provide Multi-Family Customers with links to click on for additional resources. All other Multi-Family educational materials specified in this Exhibit shall be posted on this section of Contractor's website in PDF and/or video format. The website shall also publish the current Rates charged to Multi-Family Customers within the City. The website shall also provide property managers of Multi-Family Premises with an opportunity to request "Diversion opportunity assessments", additional Move-in Kits, workshops, or additional education materials to provide to Occupants.	At least thirty (30) calendar days prior to Commencement Date. Updated no less than quarterly.

EXHIBIT C

PUBLIC EDUCATION & OUTREACH PLAN

Description	Purpose	Distribution/Frequency
SB 1383 Educational Materials for Employees/ Occupants	Commencing January 1, 2022, Contractor shall provide Multi-Family property managers/Owners with City-produced public education materials, required by 14 CCR Section 18984.10, for their distribution to all employees, Contractors, Occupants, and Customers of the property or business. The public education materials shall include, at a minimum, information about Organic Materials recovery requirements and proper sorting of Discarded Materials. Multi-Family property managers/Owners may request these materials more frequently if needed to comply with the SB 1383 requirement to provide information to new Occupants before or within fourteen (14) days of occupancy. In this case, the Multi-Family property manager/owner may request delivery of materials by contacting Contractor's Customer service department no later than two (2) weeks in advance of the date that the materials are needed.	One (1) time annually; or more frequently upon Customer request.

EXHIBIT C

PUBLIC EDUCATION & OUTREACH PLAN

Public Education and Outreach | Commercial Education and Outreach Activities

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

Description	Purpose	Distribution/Frequency
Environmental Services Guide	Produce and Distribute a City-designed “how-to” guide on (including but not limited to) proper Recycling, Organics disposal, handling and Disposal of Hazardous Waste, E-Waste, and U-Waste directly to Commercial Customers. This guide shall include information on Collection methodologies, set-out instructions, set-out schedule, contact information, and acceptability and necessary preparation of materials for all Commercial programs described in Exhibit B3.	By direct mail annually to each Commercial Customer, and thereafter to all new Customers.
“How-to” Flyer: Recyclable Materials	Prepare and distribute a City-designed “how-to” brochure explaining the Recyclable Materials Collection programs for each general business type (restaurants, office/Commercial buildings, strip malls, and large Commercial businesses). Include waste reduction messaging and encourage reusable foodware.	One (1) time at beginning of the Agreement (20-30 days prior to contract start date) via direct mail. Thereafter, distributed during Diversion opportunity assessments.
“How-to” Flyer: Organic Materials	Prepare and distribute a City-designed flyer describing the Organic Materials Collection services available and how to prepare Organic Materials for Collection for each general business type (restaurants, office/Commercial buildings, strip malls, and large Commercial businesses). Include information on food donation laws (e.g., Good Samaritan Law) and organizations that accept donations if known.	One (1) time at beginning of the Agreement (20-30 days prior to contract start date) via direct mail. Thereafter, distributed during Diversion opportunity assessments.

EXHIBIT C

PUBLIC EDUCATION & OUTREACH PLAN

Description	Purpose	Distribution/Frequency
Technical Assistance: Diversion Opportunity Waste Assessments	<p>Visit in person and offer Diversion opportunity assessments at least one (1) time annually to each and every Commercial Customer to promote Recyclable Materials and Organic Materials Collection and replenish Recycling guides and Recyclable Materials and Organic Materials posters as needed by each Customer. Provide inside Containers (e.g., 32 gallon “slim jims”) with labels upon request to assist with Diversion (to be provided to Customers at cost).</p> <p>Additionally, Contractor shall perform complete walk-throughs of each facility/complex and discuss the internal and external layout with property manager; identify areas of generation, Collection, noting areas for improved infrastructure, placement, or educational materials. Contractor shall also identify major components of the waste stream by location and identify special wastes or sourced separated materials potentials. Contractor shall then make recommendations for waste reduction, contamination prevention, and Service Level or frequency modification. Finally, Contractor shall coordinate with Customer service and operations to implement Service Level changes, as needed.</p>	Offer one (1) time annually during in-person meetings with Commercial Customer, plus follow-up meetings with individual Customers, as required or requested.
Recyclable Materials and Organic Materials Posters	Produce and Distribute City-produced (during Diversion opportunity assessments) laminated Recyclable Materials and Organic Materials posters that provide graphic illustrations of acceptable materials and Prohibited Container Contaminants within each program.	Distributed during Diversion opportunity assessments.
Quarterly Bill Inserts	Produce and distribute City-designed quarterly bill inserts that creatively inform Commercial Customers about such topics as: cost savings available from source reduction, Reuse, and Recycling; tips for overcoming common operational challenges businesses have with Recyclable Materials and Organic Materials programs; the environmental benefits of buying Recycled-content products and statistics, trends, and facts about programs performed under this Agreement (e.g., Collected, Tonnage, year over year increase/decrease, markets for material Collected, what each material is Recycled into) as appropriate. Contractor’s annual public education plan shall define a theme for each quarterly insert.	One (1) time per quarter via direct mail to each Commercial Customer in the City.

EXHIBIT C

PUBLIC EDUCATION & OUTREACH PLAN

Description	Purpose	Distribution/Frequency
Program Announcements	On each bill, Contractor shall include a brief statement to Commercial Customers providing service-related announcements such as messages about new services, the proper handling of Household Hazardous Waste, waste reduction, etc.	Included in Customer bill.
Corrective Action Notices	Produce a Commercial and Multi-Family Customer oriented Non-Collection Notice and Courtesy Notice for use in instances where the Customer includes prohibited materials in a Container or fails to properly prepare or set-out Containers.	As needed.
SB 1383 Educational Materials for Employees/ Occupants	Commencing January 1, 2022, Contractor shall provide Commercial property managers/Owners with City-produced public education materials, required by CCR Section 18984.10, for their distribution to all employees, Contractors, Occupants, and Customers of the property or business. The public education materials shall include, at a minimum, information about Organic Waste recovery requirements and proper sorting of Discarded Materials. Commercial Customers may request these materials more frequently if needed to comply with the SB 1383 requirement to provide information to new Occupants before or within fourteen (14) days of occupancy. In this case, the Commercial property manager/Owner may request delivery of materials by contacting Contractor's Customer service department no later than two (2) weeks in advance of the date that the materials are needed.	One (1) time annually; or more frequently upon Customer request.

EXHIBIT C

PUBLIC EDUCATION & OUTREACH PLAN

Description	Purpose	Distribution/Frequency
SB 1383 Commercial Edible Food Generator Education	<p>Commencing January 1, 2022, Contractor shall provide Customers that are Commercial Edible Food Generators with City-produced educational materials that contain the following:</p> <ol style="list-style-type: none"> 1. Information about the City's Edible Food Recovery program; 2. Information about the Commercial Edible Food Generator requirements under 14 CCR, Division 7, Chapter 12, Article 10; 3. Information about Food Recovery Organizations and Food Recovery Services operating within the City, and where a list of those Food Recovery Organizations and Food Recovery Services can be found; and, 4. Information about actions that Commercial Edible Food Generators can take to prevent the creation of Food Waste 	One (1) time annually.

EXHIBIT C

PUBLIC EDUCATION & OUTREACH PLAN

Public Education and Outreach | Schools

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

Description	Purpose	Distribution/Frequency
Educational Materials	Contractor shall produce and distribute educational materials designed by the City that are geared towards younger audiences, such as educational videos, activity books, and Recycling posters. Contractor shall provide schools with copies of materials upon request for classroom use.	As mutually agreed by City, Contractor, and the school district. Costs of this activity will be treated as a pass-through cost and added to annual Rate adjustments.
Technical Assistance: Diversion Opportunity Assessment	Offer on-going technical assistance to schools subscribing to Contractor's services, including performing annual waste assessments, communicating with waste brokers where such arrangements exist, calculating Diversion rates, encouraging Reusables, and communicating the results to the City to improve existing school Recyclable Materials and Organic Materials programs. The annual waste assessments shall include a specific assessment of Food Waste generated on the school Premises; potential for source reduction and Diversion of Food Waste; and identification of Food Recovery education and programs that may be established, both internally (e.g., lunch share tables) and externally (e.g., partnerships with local Food Recovery Organizations and Services).	Offered to schools Upon Request.
Presentation	Present curriculum to teach children how to Recycle, Compost, and reduce waste at school and at home.	At City or organization request

EXHIBIT C

PUBLIC EDUCATION & OUTREACH PLAN

Public Education and Outreach | Special Events

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

Description	Purpose	Distribution/Frequency
Event Exhibit	Contractor shall staff an exhibit booth and distribute promotional and educational materials at special events. Contractor shall provide visual displays, copies of educational materials (including all guides, flyers, and brochures produced for this Agreement), and Recyclable Materials and Organic Materials Diversion education activities appropriate to a variety of age groups. Display components will be professionally designed and created and shall be scalable to be appropriate for a variety of booth or display configurations. Materials will include those pertaining to the programs provided under this Agreement as well as general information on “green” and/or sustainable behaviors.	All special events listed in Exhibit B7 of this Agreement. Other events at Customer request.

EXHIBIT C

PUBLIC EDUCATION & OUTREACH PLAN

5. Food Recovery Online List

A. **Food Recovery Organizations and Food Recovery Services Online List.** On or before February 1, 2022, the City shall develop a list of Food Recovery Organizations and Food Recovery Services operating within the City. Contractor will maintain the list on Contractor's City-specific website, and the City will update the list annually. The online list shall contain information as described in this Exhibit C.

B. **Education Materials for Food Recovery Organizations and Food Recovery Services Online List.**

Minimum Content Requirements. The online list shall include, at a minimum, the following information about each Food Recovery Organization and each Food Recovery Service located within the City:

- Name and physical address;
- Contact information;
- Collection service area; and,
- An indication of types of Edible Food the Food Recovery Service or Food Recovery Organization can accept for Food Recovery.

This page intentionally left blank

EXHIBIT D: REPORTING REQUIREMENTS

EXHIBIT D

REPORTING REQUIREMENTS

OVERVIEW

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed, in accordance with this Exhibit and Article 6. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

- A. Determine and set Rates and evaluate the financial efficacy of operations.
- B. Evaluate past and expected progress towards achieving Diversion goals and objectives.
- C. Provide concise and comprehensive program information and metrics for use in fulfilling reporting requirements under Applicable Law.
- D. Determine needs for adjustment to programs.
- E. Evaluate Customer service and Complaints.
- F. Determine Customer compliance with AB 341, AB 1826, Cupertino Municipal Code 6.24 Mandatory Organic Recycling for Business Structures, SB 1383, and any subsequent State-mandated or local Recycling requirements.

1. MONTHLY REPORT CONTENT

In accordance with Section 6.2, monthly reports shall be submitted by Contractor to the City and shall include the following information as well as a year-to-date summary page that includes the data submitted from the monthly report(s) submitted in the calendar year prior to the submittal of the current monthly report. Contractor shall report the information included in the following subsections.

A. Tonnage Report

- 1. Tonnage delivered to each Approved Facility by Customer Type, subtotalling and clearly identifying material type Tons, including Bulky Item materials, that are Diverted and those that are Disposed. For unweighed material (e.g., those listed in item 2 below), or material commingled with non-Cupertino material, a reasonable estimation/allocation methodology may be used, provided that it has been approved in writing in advance by the City Contract Manager.
- 2. Tons collected from regular accounts (as opposed to collected from C&D projects or special cleanouts) shall be reported in the appropriate section of the report by Customer Type, regardless of Container type (e.g., Drop Boxes or Compactors that are part of regularly subscribed Commercial service will be shown in the Commercial section of the Tonnage report).
- 3. Units of Used Motor Oil and Filters, E-Waste, U-Waste, and Bulky Items Collected by Customer Type, categorized by On-Call Collection or City-wide Recycling events.
- 4. If and to the extent available from the Approved Recyclable Materials Processing Facility, Recyclable Materials Tonnage marketed (by commodity and including average commodity value for each) and Processing Residue Tonnage Disposed.

EXHIBIT D

REPORTING REQUIREMENTS

5. Copies of all statements and invoices for the month from each Approved Facility, documenting materials accepted by Processing contamination tier, as applicable, provided, however, that statements and invoices from the Approved Recyclable Materials Processing Facility may be made available for inspection by the City, instead of copies being provided.
- B. **Diversion Report.** Contractor shall report the Diversion level for each month and the cumulative year-to-date Diversion level, where Diversion level shall be calculated as provided in Section 5.11.A.
1. Contractor shall report the monthly Diversion Rate by Customer Type and in aggregate for all Customer Types under this Agreement.
- C. **Revenue Report.** Provide a statement detailing Gross Receipts pursuant to this Agreement.
- D. **Customer Subscription and Collection Report**
1. A summary of Customer subscription data, including the number of accounts; the number of Customers subscribing to each Service Level listed separately by Customer Type and Discarded Material type.
 2. Number of On-Call Collection, Bulky Item Collection, and Bin-by-the-Day Collection events by Customer Type.
 3. Number of Customers subscribing to each City-approved service exemption by Customer Type; including the total number of de minimis waivers, physical space constraint waivers, and Collection frequency waivers granted in the month in accordance with Section 4.12, including the Customer name and address for each waiver.
 4. The number of waivers reviewed and number of reverification inspections performed by Contractor pursuant to Section 4.12.2 of this Agreement in the month, if any, including a copy of documentation for each waiver review and reverification inspection.
 5. Number of Extra Bag Tags used by Customers.
 6. Number of incidences of contamination that renders the Used Motor Oil and Filter or used cooking oil unacceptable for Recycling or that requires Disposal as a Hazardous Waste.
- E. **Customer Service Report**
1. Number of Customer calls listed separately by Complaints. For Complaints, list the number of calls separately by category (e.g., missed pickups, scheduled cleanups, billing concerns, damage claims, etc.). These Complaints and inquiries shall be documented and reported separately from SB 1383 noncompliance Complaints or other regulatory noncompliance Complaints.
 2. Number of missed or incomplete Collections reported in total, and per one thousand (1,000) Service Opportunities in the City, presented in a graph format.

EXHIBIT D

REPORTING REQUIREMENTS

3. Number of new service requests for each Customer Type and program.
4. Number of events of Discarded Materials being tagged with Non-Collection Notices summarized by the reason for tagging (e.g., inclusion of non-Recyclable or non-Compostable materials, improper set-out, Hazardous Waste, etc.), presented in a graph format.
5. Number of courtesy Collections summarized by the reason for leaving a Courtesy Notice (e.g., inclusion of non-Recyclable or non-Compostable materials, improper set-out, Hazardous Waste, etc.), presented in a graph format.
6. Beginning on January 1, 2022, record of SB 1383 non-compliance Complaints received, including the following information:
 - a. Total number of Complaints received and total number of Complaints investigated.
 - b. Copies of documentation recorded for each Complaint received, which shall at a minimum include the following information: (i) The Complaint as received; (ii) The name and contact information of the complainant, if the Complaint is not submitted anonymously; (iii) The identity of the alleged violator, if known; (iv) A description of the alleged violation; including location(s) and all other relevant facts known to the complainant; (v) Any relevant photographic or documentary evidence submitted to support the allegations in the Complaint; and, (vi) The identity of any witnesses, if known.
 - c. Copies of all Complaint reports submitted to the City, pursuant to Section 4.10.2 of this Agreement.
 - d. Documentation of any follow-up inspections and/or outreach, if any, conducted upon City request pursuant to Section 4.10.2 of this Agreement, which shall include at a minimum: (i) The date Contractor investigated the Complaint; (ii) documentation of the findings of the investigation; and (iii) Any photographic or other evidence collected during the investigation. This reporting element can be met by use of a City-approved shared cloud-based documentation software such as Recyclist.

F. Education and Outreach

Items 1 through 4 below are required under SB 1383 and shall be included in the SB 1383 report as described in this Exhibit D, Section 1.G.12 below.

1. A record of the date and to whom the information was disseminated or direct contact made, in the form of a list that includes: the Generator's name or account name, the type of education or outreach received; the distribution date, and the method of distribution.
2. The number of Organic Waste Generators and Commercial Edible Food Generators that received information and the type of education and outreach used.

EXHIBIT D

REPORTING REQUIREMENTS

3. For any mass distribution through mailings or bill inserts, provide a record of the date, a copy of the information distributed, and the type and number of accounts that received the information.
4. A copy of all electronic media, including the dates posted or sent of: social media posts, e-mail communications, or other electronic messages.
5. Dates, times, and group or event names of any site visits, meetings, and events attended in the month. This reporting element can be met by use of a City-approved shared cloud-based documentation software such as Recyclist.

G. SB 1383 Related Reporting

Beginning January 1, 2022 and monthly thereafter, Contractor will report on the following items.

1. The number of Route reviews conducted, pursuant to Section 4.13 of this Agreement.
2. Description of Contractor's process for determining the level of contamination during Route reviews.
3. A record of each inspection and contamination incident, which shall include, at a minimum:
 - a. Name and address of the Customer;
 - b. The date the contaminated Container was observed;
 - c. The staff who conducted the inspection;
 - d. The total number of violations found and a description of what action was taken for each;
 - e. Copies of all notices to Customers with Prohibited Container Contaminants; and,
 - f. Photographic documentation.
4. Documentation of the total number of Containers Disposed of due to observation of Prohibited Container Contaminants;
5. Summary report of Courtesy Notices Non-Collection Notices, and/or contamination Processing fee assessment notices issued. Each notice shall include the date of issuance, Customer name, and service address.
6. A list of all Customers assessed contamination Processing fees, pursuant to Section 4.13 of this Agreement, reported separately by Customer Type, and including the Customer name, Customer address, and reason for the assessment of the contamination Processing fee; the total number of instances contamination Processing fees were assessed in the month; and, the total amount of fees collected in the month.

EXHIBIT D

REPORTING REQUIREMENTS

7. Assessment documentation and notes for Multi-Family and Commercial Customer compliance reviews, including a list of Generators for which Contractor is unable to setup Collection service, as noted in Section 4.8 C of this Agreement.
8. Results of the waste evaluation studies conducted pursuant to Section 4.13.2 of this Agreement.
9. Summary of all loads of Recyclable Materials that were rejected at the Approved Recyclable Materials Processing Facility or the Designated Recyclable Materials Processing Facility, including: the date and time the load was rejected at the facility; Contractor's truck number; the reason for rejection; the materials in the load that required the load to be landfilled; Contractor's Disposal method; and, final destination for the rejected load.
10. Summary of all loads of Organic Materials that were rejected at the Approved Transfer Facility and Approved Organic Materials Processing Facility, including: the date and time the load was rejected at the Approved Facility; Contractor's truck number; the reason for rejection; the materials in the load that required the load to be landfilled; Contractor's Disposal method; and, final destination for the rejected load.
11. Any other information reasonably requested by the City or specified in contamination monitoring provisions of this Agreement.
12. SB 1383-related public education and outreach materials described in this Exhibit D, Section 1.F.1 through 1.F.4 above.

H. C&D Collection. In accordance with Section 4.5 and Exhibit B3, Contractor shall separately document the following information:

1. Tonnage of C&D Collected;
2. Tonnage of C&D delivered to the Designated Disposal Facility; and,
3. Calculation of the Diversion level, including C&D Transported to a City-Approved Facility other than the Designated Disposal Facility (Tons of C&D Recycled, Reused, or salvaged divided by Total Tons of C&D Collected).

Upon City direction, Contractor shall utilize a cloud-based C&D software system to track and report such C&D data. Contractor shall provide each Customer with documentation necessary for the Customer to meet the requirements of the City's C&D ordinance.

I. Non-Conforming Carts Status. In accordance with Section 5.6, Contractor shall document the status of exchanging Non-Conforming Carts.

2. QUARTERLY REPORT CONTENT

A. Tonnage Allocation. On a quarterly basis, Contractor shall report the Tonnage attributed to the City that was taken to landfills other than the Designated Disposal Facility as Residual from Organic Material screening or Processing at any Contractor facility. The report shall include

EXHIBIT D

REPORTING REQUIREMENTS

Contractor's methodology, including how often it is reviewed and updated, for estimating what percentage of the jurisdictionally commingled non-Compostable Tonnage that was landfilled is attributable to the City and reported to CalRecycle through the Disposal Reporting System (DRS).

- B. Claims.** On a quarterly basis, Contractor shall submit to City all claims against Contractor specific to the services provided under the Agreement, that have been filed, settled, or that are under review.

3. BIANNUAL REPORT CONTENT

On April 1 and October 1 of each year of this Agreement, and at other times upon City request, Contractor shall provide the City with copies of laboratory results on the quality of the Compost materials produced from the Organic Materials Collected in the City in the prior three months, and on the Organic Materials provided to the City as required in Exhibit B4, Section 5 of this Agreement.

4. ANNUAL REPORT CONTENT

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

- A. Summary Assessment.** Provide a summary assessment of the programs performed under this Agreement from Contractor's perspective relative to the financial and physical status of the program. The physical status assessment shall reflect how well the program is operating in terms of efficiency, economy, and effectiveness in meeting all the goals and objectives of this Agreement, particularly Contractor's Diversion goals as provided in Section 5.11. Provide recommendations and plans to improve, and highlight significant accomplishments and problems.

B. Collection and Processing Report

1. The total Tonnage amount of Discarded Materials, listed separately by Discarded Material type, removed by Contractor from illegal Disposal sites as part of an abatement activity, listing each Collection event separately by date, location, and Tonnage Collected, pursuant to Section 4.2.B of the Agreement.
2. Number of Containers at each Service Level by Customer Type and program. Summarizing the total gallons of Cart service, cubic yards of Bin service, and pulls and cubic yards or Tons of Drop Box and Compactor service by Customer Type. Report should calculate the average volume of service received per: Single-Family Dwelling Unit (separately identifying Dwelling Units in a duplex, triplex, or fourplex); Multi-Family Dwelling Unit; and, Commercial Customer.
3. A record of all compliance agreements for quarantined Organic Waste that are Disposed of, including the name of Generator, date issued, location of final disposition, and the amount of quarantined Organic Waste that was required to be Disposed at a landfill, pursuant to Section 4.2.C of the Agreement.
4. Written notification as to whether the Approved Organic Materials Processing Facilities have and will continue to have the capabilities to Process and recover Compostable Plastic, in accordance with Section 4.2.C of the Agreement.

EXHIBIT D

REPORTING REQUIREMENTS

5. Summary report of the “Coats for Kids” program.

C. Education and Outreach Report

1. A summary of the status of the annual education plan of the reporting year, including activities conducted and the quantitative and/or qualitative results of those activities.
2. The annual public education plan required by Exhibit C of the Agreement for the upcoming then-current calendar year. For example, Contractor submittal of a 2021 annual report in February 2022 shall include Contractor submittal of the annual public education plan for calendar year 2022.

D. Commercial Edible Food Generator Report

Commercial Customer list including contact information for each Commercial Customer designated by City as either a Tier One Commercial Edible Food Generator, Tier Two Commercial Edible Food Generator, or non-covered Edible Food Generator.

E. Vehicle Inventory

1. A list of all vehicles used in performing services under this Agreement, including the license plate number, VIN, make, model, model year, purchase date, engine overhaul/rebuild date (if applicable), and mileage at January 31.
2. The results of any Collection vehicle pilot programs conducted by Contractor and approved by the City.
3. Description of the use of electric vehicles in pilot programs as well as in regular collection service by Contractor in other jurisdictions and Contractor’s recommendation on feasibility of use of such technology in Cupertino.

F. Temporary Equipment or Operations Failure: If Contractor is granted a Processing Facility temporary equipment or operational failure waiver, in accordance with Section 4.1 and 4.2 of the Agreement, Contractor shall include the following documents and information:

1. The number of days the Processing Facility temporary equipment waiver or operation failure waiver was in effect;
2. Copies of any notifications sent to the City pursuant to Sections 4.1 and 4.2 of the Agreement, and copies of City notices to Contractor pursuant to Sections 4.1 and 4.2 of the Agreement;
3. Documentation setting forth the date of issuance of the waiver, the timeframe for the waiver; and,
4. A record of the Tons of Recyclable Materials and/or Organic Materials redirected to an alternative facility or Disposed at an Approved Facility or Designated Disposal Facility as a result of the waiver, recorded by Collection vehicle or transfer vehicle number/load, date, and weight.

EXHIBIT D

REPORTING REQUIREMENTS

- G. Environmentally-Preferable Purchasing Report.** In accordance with Section 5.10, provide the type of Recycled content paper and other items purchased, a summary of any other source reduction strategies implemented during the year, and the quantified results of the source reduction strategy.

5. ADDITIONAL REPORTS

- A. Upon Incident Reporting.** The City reserves the right to request additional reports or documents in the case of unforeseen events or additional requirements imposed upon the City. Contractor shall provide the requested reports, documents, or information within ten (10) Business Days upon receipt of the request or within a timeframe determined by the City Contract Manager, which shall not to exceed ten (10) days.
- B. AB 901 Reporting.** At the City's option, the City may require that Contractor provide the City copies of Contractor's AB 901 reports on a regular basis (such as monthly, quarterly, or annually) or within ten (10) Business Days of the request.
- C. Delinquent Accounts.** In accordance with Section 4.9 and at the City's option, the City may require that Contractor provide a list of Customers that are forty-five (45) or more calendar days past due and include the following information for each delinquent account: name; service address; contact information; number of days the account is delinquent; and method(s) Contractor has used to attempt collection of the bad debt including date of such attempt(s).
- D. Reviewed Financials.** After the end of each year, Contractor shall submit to the City a copy of its reviewed financial statements for such year as provided in Exhibit E. Contractor shall not be required to submit reviewed financials in Rate Year 2 and Rate Year 3.
- E. Customized Reports.** The City reserves the right to request Contractor to prepare and provide customized reports from records Contractor is required to maintain; or require a specified format or submission system, such as the use of a web-based software platform.
- F. Recyclable Materials and Organic Materials Markets.** Contractor shall provide, if and to the extent available from the Approved Recyclable Materials Processing Facility, an assessment describing such facility's marketing of Recyclable Materials, including: 1) quantities and dates of Recyclable Materials marketed during the prior year; 2) actual prior year and estimated coming year per unit or per Ton market values for each, including adjustments on previously reported market values; and, 3) brokers, markets, and end uses for each.
- G. Subcontractor Insurance Certificates.** Copies of insurance certificates from Subcontractors, as provided Section 3.3.

EXHIBIT E:
RATE ADJUSTMENT METHODOLOGY

EXHIBIT E

RATE ADJUSTMENT METHODOLOGY

1. GENERAL

The Rates for Rate Period One are as specified in Table 8-2 of Section 8.2 and Exhibit G3 of this Agreement. Subject to the terms herein, and beginning with Rate Period Four, the City shall adjust all Rates on an annual basis for each Rate Period in accordance with Exhibit E1 or E2, as provided in Article 8 and otherwise in this Agreement.

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

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

2. DEFINITIONS

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

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

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

For example, if Contractor is calculating the Total Calculated Costs in July 2024 to be effective for Rate Period Five (February 2025 through January 2026), the Annual Percentage Change for the CPI-U would be calculated as follows:

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

EXHIBIT E

RATE ADJUSTMENT METHODOLOGY

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

- B. **“Average Index Value”** means the sum of the monthly index values during the applicable twelve- (12) month period divided by twelve (12) (in the case of indices published monthly) or the sum of the bi-monthly index values during the applicable twelve- (12) month period divided by six (6) (in the case of indices published bi-monthly).
- C. **“City Payments”** means: 1) those annual amounts, payable by City to Contractor monthly, as are specified in Article 8.2 for Rate Periods One, Two and Three; and 2) for subsequent Rate Periods, such annual amounts payable by City to Contractor monthly as the City agrees to pay during the Rate adjustment process for such Rate Period, to reduce the Rate increase that would otherwise occur in that Rate Period. Such payments shall be effected by netting the monthly amount of the City Payment against the monthly amount of City Fees payable by Contractor to City.
- E. **“CPI-U”** means the Consumer Price Index, All Urban Consumers, all items, not seasonally adjusted San Francisco Bay Area compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.
- F. **“Disposal Cost”** means the cost of Disposing of Solid Waste at the Designated Disposal Facility where the per-Ton tipping fee (cost) is the then-applicable contractual amount as confirmed by the City.
- G. **“ECI”** means the Employment Cost Index, Total Compensation, Private Industry, Service-Providing Industries, seasonally adjusted, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.
- H. **“Fuel Index”** means the Consumer Price Index, All Urban Consumers, Motor Fuel, San Francisco-Oakland-Hayward, not seasonally adjusted, series ID: CUURS49BSETB, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.
- I. **“Motor Vehicle Maintenance and Repair Index” or “MVI”** means the Consumer Price Index, All Urban Consumers, Motor Vehicle Maintenance and Repair, not seasonally adjusted U.S. city average, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.
- J. **“Total Calculated Costs”** means the total amount to be used as a basis for determining the Rate Adjustment Factor. The Total Calculated Costs do not reflect or in any way guarantee the Gross Receipts that are to be generated by Rates or retained by Contractor.
- K. **“Total Rate Adjustment Factor”** means the Total Rate Adjustment Factor as calculated in Section 3 of Exhibit E1 for index-based adjustments, or as calculated in Section 4 of Exhibit E2 for cost-based adjustments.

Table 1 below provides additional information about the four (4) indices defined above.

EXHIBIT E

RATE ADJUSTMENT METHODOLOGY

TABLE 1*

	CPI-U	Fuel Index	ECI	Motor Vehicle Maintenance and Repair
Description	Consumer Price Index - All Urban Consumers	Consumer Price Index - All Urban Consumers	Employment Cost Index - Total Compensation for Private Industry Workers in Service-Providing Industries.	Consumer Price Index – All Urban Consumers, Motor Vehicle Maintenance and Repair
Series ID	CUUSS49BSA0	CUURS49BSETB	CIS201S000000000I	CUUR0000SETD
Adjusted	Not seasonally adjusted	Not seasonally adjusted	Seasonally adjusted	Not seasonally adjusted
Area	San Francisco-Oakland-Hayward	San Francisco-Oakland-Hayward	N/A	U.S. City average
Item	All items	Motor fuel	Total compensation	Motor vehicle maintenance and repair
Base Period	1982-84=100	1982-84=100	Dec. 2005=100	1982-84=100
Periodicity	Bi-monthly	Monthly	Quarterly	Monthly

* All indices published by the U.S. Bureau of Labor Statistics.

3. COST OF RATE ADJUSTMENT PROCESS

The City may incur costs, including consulting and legal fees, when determining adjustments to the Rates in accordance with this Exhibit and may require Contractor to pay for such costs within sixty (60) calendar days of receipt of the City's invoice for such costs. Contractor may recover such costs through the Rates by treating the costs as an allowable Pass-Through Cost. Notwithstanding the foregoing, Contractor shall only be required to reimburse City's costs to the extent such costs have been included as allowable Pass-Through Costs in the Rate adjustment with respect to which the costs were incurred, and such Rate adjustment has been approved by the City Council. Regardless of Contractor's payment of costs associated with said review, the City shall retain full and unimpeded discretion in selection of its agents to ensure, at a minimum, that no conflict of interest arises in the review of Contractor's request. The City retains the right to select its agents on the basis of their qualifications and experience and without regard to cost.

This page intentionally left blank

EXHIBIT E1:
MULTI-INDEX RATE ADJUSTMENT METHODOLOGY

EXHIBIT E1

MULTI-INDEX RATE ADJUSTMENT METHODOLOGY

1. GENERAL

The purpose of this attachment is to describe and illustrate the method by which the City will calculate the annual adjustment to Rates to reflect changes in various cost indices and changes to Processing and Disposal Costs based on Tonnages of materials Collected and changes in tipping fees. This index-based adjustment process shall be used to determine Rates for Rate Periods Five, Six, Seven, Nine, and Ten (and, if the Term is extended, Twelve, Thirteen, Fourteen, and Fifteen). However, the cost-based methodology described in Exhibit E2 shall be used to set Rates in lieu of the index adjustment to set Rates provided in Exhibit E1, as provided in Sections 3.2, 8.2 and 8.3 of the Agreement, and the third paragraph below.

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

The annual increase in Total Calculated Costs calculated pursuant to this Exhibit E1 may not exceed five percent (5%). In the event that Total Calculated Costs for the coming Rate Period as calculated under this Exhibit E1 exceeds by more than five percent (5%) Total Calculated Costs for the then-current Rate Period, then Contractor may elect to either: i) accept an increase in Contractor Compensation based on an increase in Total Calculated Costs of five percent (5%); or, ii) require that a cost-based Rate adjustment be performed under the procedures described in Exhibit E2.

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

2. ADJUSTMENT OF TOTAL CALCULATED COSTS

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

A. Total Annual Cost of Operations

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

For example, in Rate Period Five when calculating the Labor-Related Costs for Rate Period Three, the Labor-Related Costs of Rate Period Four shall be multiplied by one (1) plus the Annual Percentage change in the ECI.

2. **Vehicle-Related Costs (excluding Fuel).** The Vehicle-Related Costs component of Total Calculated Costs for the then-current Rate Period is multiplied by one (1) plus the Annual Percentage Change in the Motor Vehicle Maintenance and Repair Index.

EXHIBIT E1

MULTI-INDEX RATE ADJUSTMENT METHODOLOGY

3. **Fuel Costs.** The Fuel Cost component of Total Calculated Costs for the then-current Rate Period is multiplied by one (1) plus the Annual Percentage Change in the Fuel Index.
 4. **Other Costs.** The Other Costs component of the Total Calculated Costs for the then-current Rate Period is multiplied by one (1) plus the Annual Percentage Change in the CPI-U.
 5. **Direct Depreciation.** Direct Depreciation for Containers and equipment is nine hundred and five thousand, eight hundred and fifty-three dollars (\$905,853.00) per year in Rate Periods Two through Ten, and is not annually adjusted. If the Agreement is extended beyond Rate Period Ten, direct depreciation shall be as set forth in Exhibit G2 (Capital Plan), unless Parties mutually agree to a different amount.
 6. **Allocated Costs (Labor, Vehicle, Fuel, and Other Costs).** The Allocated Costs (Labor, Vehicle, Fuel, and Other Costs) component for the then-current Rate Period is multiplied by one (1) plus the Annual Percentage Change in the CPI-U.
 7. **Allocated Depreciation.** The Allocated Depreciation shall be thirty five thousand, three hundred and eleven dollars (\$35,311.00) per year in Rate Periods Two through Ten, and is not annually adjusted. These costs shall be zero (0) for all subsequent Rate Periods unless Parties mutually agree to a different amount.
 8. **Total Annual Cost of Operations.** The Total Annual Cost of Operations for the coming Rate Period equals the sum of the costs calculated in this Exhibit E1, Section 2.A.1-7 above.
- B. Profit.** Profit for the coming Rate Period shall be calculated by dividing the Total Annual Cost of Operations for the coming Rate Period (the value calculated in Section 2.A.8 above) by an operating ratio of seventy-two and one-half percent (72.5%) and subtracting from the result the Total Annual Cost of Operations for the coming year.

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

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

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

Recyclable Materials Processing Costs = Per-Ton Recycling Materials Processing fee at the Approved Recyclable Materials Processing Facility for the coming Rate Period x Total Tons of Recyclable Materials Collected for the most-recently completed twelve- (12) month period.

If the City approves a change in the Approved Recyclables Material Processing Facility or the Designated Recyclables Material Processing Facility, the Recyclable Materials Processing Cost shall adjust by the actual change in the costs, as specified in the Recyclable Materials Processing contract.

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

EXHIBIT E1

MULTI-INDEX RATE ADJUSTMENT METHODOLOGY

Residential Organic Materials Processing Costs

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

Commercial Organic Materials Processing Costs

Commercial Organic Materials Processing Cost = [(Per-Ton Commercial Organic Materials Processing Cost for the then-current Rate Period - All regulatory fees identified on Form 7 of Exhibit G2, (Contractor's Proposal) and included in the then-current per-Ton cost) x (1 + Annual Percentage Change in the CPI-U) + (Then-current per-Ton regulatory fees)] x (Total Tons of Commercial Organic Materials Collected for the most-recently completed twelve- (12) month period). Residential Organic Materials Processing Costs and Commercial Organic Materials Processing Costs shall be inclusive of transfer costs.

If the City approves a change in the Approved Organic Materials Processing Facility, the Processing Costs shall adjust to the then-current tip fee at the new Approved Organic Materials Processing Facility.

3. **Disposal & C&D Processing Costs.** The Disposal Costs and C&D Processing Costs shall be calculated as follows:

Disposal Costs = Per-Ton Disposal fee at the Designated Disposal Facility for the coming Rate Period x Total Tons of Solid Waste Collected for the most-recently completed twelve- (12) month period.

C&D Processing Costs = Per-Ton Processing fee at the Designated C&D Processing Facility for the coming Rate Period x Total Tons of C&D Collected for the most-recently completed twelve- (12) month period.

If the City approves a change in the Designated Disposal Facility or the Approved Disposal Facility, or the Designated C&D Processing Facility or the Approved C&D Processing Facility the Disposal Costs or C&D Processing Costs (as the case may be) shall adjust to the then-current tip fee at the new facility.

4. **Interest Expense.** The Interest Expense amount is three hundred twenty six thousand, six hundred and fifty-five dollars (\$326,655) in Rate Periods Two through Ten, is not annually adjusted, and shall be zero (0) in any subsequent Rate Period unless Parties mutually agree to a different amount.
5. **Direct Lease Costs.** The Direct Lease Costs amount is zero (0) in Rate Periods Two through Ten, is not annually adjusted, and shall be zero in any subsequent Rate Period unless Parties mutually agree to a different amount.

EXHIBIT E1

MULTI-INDEX RATE ADJUSTMENT METHODOLOGY

6. **Allocated Lease Costs.** The Allocated Lease Costs amount is one hundred eighty thousand dollars (\$180,000) in Rate Periods Two through Ten (including interest costs for Allocated General and Administrative of \$0, Allocated Vehicle Maintenance costs of \$0, and Allocated Container Maintenance of \$0), is not annually adjusted, and shall remain unadjusted in any subsequent Rate Period unless Parties mutually agree to a different amount.
 7. **Total Pass-Through Costs.** Total Pass-Through Costs for the coming Rate Period are the sum of the amounts in this Exhibit E1, Section 2.C.1-6 above.
- D. Total Calculated Costs before City Fees/Reimbursements.** The Total Calculated Costs before City Fees/Reimbursements shall be the sum of the Total Annual Cost of Operations, Profit, and Total Pass-Through Costs for the coming Rate Period.
- E. City Fees/Reimbursements**
1. **Franchise Fee.** Franchise Fees for the coming Rate Period shall equal twelve percent (12%) of projected Gross Receipts for the coming Rate Period less any other City Fees. While the Franchise Fee is calculated based on Gross Receipts less any other City Fees for the purposes of this formula, it shall be paid out of Contractor's profit.
 2. **Solid Waste Fund Operations Fee.** The Solid Waste Fund Operations Fee payment for the coming Rate Period shall equal the total Solid Waste Fund Operations Fee paid to the City in the most-recently completed twelve- (12) month period multiplied by one (1) plus the Annual Percentage Change in the CPI-U, or such other amount as is determined by City in accordance with Section 7.2.
 3. **Other City Fees.** The amount for the coming Rate Period of any other fees established by City under Section 7.3.
 4. **Rate Application Review Costs.** The amount that Contractor is required to pay City to reimburse City for City's costs, including consulting and legal fees, associated with determination of Rates for the coming Rate Period.
 5. **Total City Fees/Reimbursements.** The Total City Fees/Reimbursements for the coming Rate Period shall equal costs calculated in this Exhibit E1, Section 2.E.1-4 above; provided, however, that any adjustment in any such fee, whether pursuant to the relevant index or as the result of the decision of the City, shall be pass-through fees (excluded from the calculation of profit) and reflected in the Total City Fees/Reimbursements.
- F. Other Adjustments.** From time to time during the Term of the Agreement, it may be necessary to make other adjustments to the compensation calculations, either as mutually agreed or as required under various provisions of this Agreement. For example, if the City elects to roll-under a negative Rate adjustment to a future year, the dollar value of that negative adjustment shall be reflected as an adjustment. In such case, the adjustment would be a reduction to the Total Calculated Costs. Amounts that Contractor is entitled to recover under this Agreement shall be reflected as a positive adjustment that increases Total Calculated Costs.

EXHIBIT E1

MULTI-INDEX RATE ADJUSTMENT METHODOLOGY

- G. Total Calculated Costs.** The Total Calculated Costs for the coming Rate Period shall equal the sum of the Total Annual Cost of Operations, Profit, Total Pass-Through Costs, Total City Fees/Reimbursements, and Other Adjustments (if applicable), for the coming Rate Period.

3. TOTAL RATE ADJUSTMENT FACTOR

The Total Rate Adjustment Factor shall equal: (i) the Total Calculated Costs for the coming Rate Period divided by (ii) the amount obtained by subtracting the City Payments for the then-current Rate Period from the Total Calculated Costs for the then-current Rate Period. The Total Rate Adjustment Factor shall be rounded to the nearest thousandth.

4. ADJUSTMENT OF RATES

City may, as part of the Rate adjustment process for the coming Rate Period, do either or both of the following:

- A. Agree to make a City Payment in the coming Rate Period, so as to reduce the Rate increase that would otherwise occur in that Rate Period; and/or,
- B. Request a change in the relationship of individual Rates in comparison with other Rates, which may include changing the relationship of Rates across sector(s) and/or material stream(s). Section 8.2.D (Rate Structure) shall apply to any change under this subsection 4.B. If City wishes to do this, then City may request the Contractor to resubmit its Rate application by sector(s) and/or material type(s), so as to enable City to address over/under-funding of particular sector(s) and/or material type(s).

If City does either 4.A or 4.B above, then Rates shall be adjusted such that projected Gross Receipts for the coming Rate Period at the adjusted Rates, plus any City Payments that City agrees to make for that coming Rate Period, equal or exceed Total Calculated Costs for the coming Rate Period.

If City does neither 4.A nor 4.B above, then each then-current Rate shall be multiplied by the Total Rate Adjustment Factor, to calculate the effective Rate for the coming Rate Period. The adjustment to each Rate shall be rounded to the nearest cent.

5. EXAMPLES

The following examples illustrates the index-based adjustment method for determining Rates for Rate Period Five. The dollar amounts shown are hypothetical amounts for Total Calculated Costs for Rate Period Four (February 1, 2024 through January 31, 2025) and the adjustment factors are based on assumed changes in the various indices between the Average Index Values for the twelve (12) months ending January 2023 and for the twelve (12) months ending January 2024. Example A depicts a standard index-based adjustment, wherein the calculated Total Calculated Costs increased greater than zero percent (0%) and less than five percent (5%) over the prior Rate Period. Example B depicts an index-based adjustment wherein the calculated Total Calculated Costs resulted in a decrease from the prior Rate Period.

A. Example A

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

EXHIBIT E1

MULTI-INDEX RATE ADJUSTMENT METHODOLOGY

Most-Recently Completed Rate Period = Rate Period Three (February 1, 2023 through January 31, 2024)

Then-current Rate Period = Rate Period Four (February 1, 2024 through January 31, 2025)

Coming Rate Period = Rate Period Five (February 1, 2025 through January 31, 2026)

Solid Waste Disposal Cost per Ton for the coming Rate Period = \$52.27 per Ton (C&D Processing Cost assumed to be same as Solid Waste Disposal Cost)

Recyclable Materials Processing Costs per Ton for the coming Rate Period = \$39.78 per Ton

Residential Organic Materials Processing Costs per Ton for the then-current Rate Period = \$98.65 per Ton

Commercial Organic Materials Processing Costs per Ton for the then-current Rate Period = \$134.20 per Ton

Annual Percentage Change in the ECI = 0.018

Annual Percentage Change in the CPI-U = 0.040

Annual Percentage Change in the Motor Vehicle Maintenance and Repair Index = 0.031

Annual Percentage Change in the Fuel Index = 0.075

Solid Waste Fund Operations Fee – Directed by City to increase by CPI-U for Rate Period 5

Last twelve (12) months of Gross Receipts = \$18,600,000

Rate Period 4 City Payment = \$279,544

Tonnages for the most-recently completed twelve- (12) month period:

Solid Waste – 18,000 Tons

Recyclable Materials – 8,000 Tons

Residential Organic Materials – 9,300 Tons

Commercial Organic Materials – 5,200 Tons

C&D – 2,500 Tons

EXHIBIT E1

MULTI-INDEX RATE ADJUSTMENT METHODOLOGY

Note: All values presented in this table are hypothetical and used for illustrative purposes only.

TABLE 1A
Example A Calculation of Total Calculated Costs for Rate Period Five

	Rate Period Four	Adjustment Index	Adjustment Factor	Rate Period Five
Processing Tip Fee Adjustment (per Ton)				
Solid Waste Disposal Tip Fee	\$ 50.26	N.A.	N.A.	\$ 51.77
Recyclables Material Processing Rebate	\$ 38.25	N.A.	N.A.	\$ 39.40
Residential Organic Materials Processing Tip Fee	\$ 98.65	CPI-U	1+0.040	\$ 102.60
Commercial Organic Materials Processing Tip Fee	\$ 134.20	CPI-U	1+0.040	\$ 139.57
C&D Processing Tip Fee*	\$ 50.26	N.A.	N.A.	\$ 51.77
Annual Cost of Operations				
Labor-related Costs	\$ 4,443,290	ECI	1+0.018	\$ 4,523,269
Vehicle-related Costs (excluding fuel)	\$ 643,477	MVI	1+0.031	\$ 663,425
Fuel Costs	\$ 383,049	Fuel Index	1+0.075	\$ 411,778
Other Costs	\$ 353,725	CPI-U	1+0.040	\$ 367,874
Direct Depreciation	\$ 905,853	N.A.	N.A.	\$ 905,853
Allocated Costs (Labor, Vehicle, Fuel, and Other Costs)	\$ 3,312,841	CPI-U	1+0.040	\$ 3,445,355
Allocated Costs (Depreciation and Start-Up)	\$ 35,311	N.A.	N.A.	\$ 35,311
Total Annual Cost of Operations	\$10,077,545			\$ 10,352,864
Profit (assuming operating ratio of .725)				
	\$ 3,822,517			\$ 3,926,948
Pass Through Costs				
Solid Waste Disposal Costs	\$ 881,109	Tip Fee x Tons	18,000 x \$51.77	\$ 931,787
Recyclable Materials Processing Costs	\$ 308,522	Tip Fee x Tons	8,000 x \$39.40	\$ 315,186
Residential Organic Materials Processing Costs	\$ 913,425	Tip Fee x Tons	9,300 x \$102.60	\$ 954,179
Commercial Organic Materials Processing Costs	\$ 694,383	Tip Fee x Tons	5,200 x \$139.57	\$ 725,749
C&D Processing Costs	\$ 127,475	Tip Fee x Tons	2,500 x \$51.77	\$ 129,415
Reusable Materials Handling Costs	\$ -	Tip Fee x Tons	0 x \$0.00	\$ -
Interest Expense	\$ 326,655	N.A.	N.A.	\$ 326,655
Direct Lease Costs	\$ -	N.A.	N.A.	\$ -
Allocated Lease Costs	\$ 180,000	N.A.	N.A.	\$ 180,000
Total Pass-Through Costs	\$ 3,431,569			\$ 3,562,971
Total Calculated Costs before City Reimbursements	\$17,331,632			\$ 17,842,783
Cost Reimbursements to City				
Solid Waste Fund Operations Fee	\$ 1,547,912	CPI-U**	1+0.040	\$ 1,609,829
Total Reimbursements to City	\$ 1,547,912			\$ 1,609,829
Total Calculated Costs	\$18,879,544			\$ 19,452,611
Gross Operating Margin	\$ 3,822,517			\$ 3,926,948
Franchise Fee	\$ 2,284,235	N.A.	N.A.	\$ 2,313,732
Net Profit Margin	\$ 1,538,282			\$ 1,613,217
Other Adjustments (City Payments)	\$ (279,544)			\$ (171,514)

*Newby currently charges the same rate for Solid Waste Disposal and C&D Processing. If the City designates a new facility(ies) for disposal and processing, there may be two separate tip fees.

**The Solid Waste Fund Operations Fee may be increased by the CPI-U or at the City's discretion.

EXHIBIT E1

MULTI-INDEX RATE ADJUSTMENT METHODOLOGY

2. Example Calculation of the Rate Adjustment Factor and Adjusted Rate for Rate Period Five

Rate Adjustment Factor = $\$19,452,611 / (\$18,879,544 - \$279,544) = 1.046$

Proposed City Payment as detailed in Exhibit E1 Section 4.A = \$171,514

City does not propose resubmission of individual Rates that address over/under-funding of particular sector(s) and/or material type(s) as detailed in Exhibit E1 Section 4.B.

Rate Adjustment Factor considering City Payment = $(\$19,425,611 - \$171,514) / (\$18,879,544 - \$279,544) = 1.037$

32-gallon Single-Family Rate for Rate Period Five = $\$45.41 \times 1.037 = \47.07 , which shall be effective February 1, 2025.

B. Example B

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

Most-Recently Completed Rate Period = Rate Period Three (February 1, 2023 through January 31, 2024)

Then-current Rate Period = Rate Period Four (February 1, 2024 through January 31, 2025)

Coming Rate Period = Rate Period Five (February 1, 2025 through January 31, 2026)

Solid Waste Disposal Cost per Ton for the coming Rate Period = \$52.27 per Ton (C&D Processing Cost assumed to be same as Solid Waste Disposal Cost)

Recyclable Materials Processing Costs per Ton for the coming Rate Period = \$39.78 per Ton

Residential Organic Materials Processing Costs per Ton for the then-current Rate Period = \$98.65 per Ton

Commercial Organic Materials Processing Costs per Ton for the then-current Rate Period = \$134.20 per Ton

Annual Percentage Change in the ECI = (0.018)

Annual Percentage Change in the CPI-U = (0.040)

Annual Percentage Change in the Motor Vehicle Maintenance and Repair Index = 0.031

Annual Percentage Change in the Fuel Index = (0.075)

Solid Waste Fund Operations Fee – Directed by City to remain flat for Rate Period 5

Last twelve (12) months of Gross Receipts = \$18,600,000

Rate Period 4 City Payment = \$279,544

Tonnages for the most-recently completed twelve- (12) month period:

Solid Waste – 18,000 Tons

Recyclable Materials – 8,000 Tons

Residential Organic Materials – 9,300 Tons

Commercial Organic Materials – 5,200 Tons

C&D – 2,500 Tons

EXHIBIT E1

MULTI-INDEX RATE ADJUSTMENT METHODOLOGY

Note: All values presented in this table are hypothetical and used for illustrative purposes only.

TABLE 2A
Example B Calculation of Total Calculated Costs for Rate Period Five

	Rate Period Four	Adjustment Index	Adjustment Factor	Rate Period Five
Processing Tip Fee Adjustment (per Ton)				
Solid Waste Disposal Tip Fee	\$ 50.26	N.A.	N.A.	\$ 51.77
Recyclables Material Processing Rebate	\$ 38.25	N.A.	N.A.	\$ 39.40
Residential Organic Materials Processing Tip Fee	\$ 98.65	CPI-U	1+ -0.040	\$ 94.71
Commercial Organic Materials Processing Tip Fee	\$ 134.20	CPI-U	1+ -0.040	\$ 128.83
C&D Processing Tip Fee*	\$ 50.26	N.A.	N.A.	\$ 51.77
Annual Cost of Operations				
Labor-related Costs	\$ 4,443,290	ECI	1+ -0.018	\$ 4,363,310
Vehicle-related Costs (excluding fuel)	\$ 643,477	MVI	1+0.031	\$ 663,425
Fuel Costs	\$ 383,049	Fuel Index	1+ -0.075	\$ 354,321
Other Costs	\$ 353,725	CPI-U	1+ -0.040	\$ 339,576
Direct Depreciation	\$ 905,853	N.A.	N.A.	\$ 905,853
Allocated Costs (Labor, Vehicle, Fuel, and Other Costs)	\$ 3,312,841	CPI-U	1+ -0.040	\$ 3,180,327
Allocated Costs (Depreciation and Start-Up)	\$ 35,311	N.A.	N.A.	\$ 35,311
Total Annual Cost of Operations	\$10,077,545			\$ 9,842,123
Profit (assuming operating ratio of .725)				
	\$ 3,822,517			\$ 3,733,219
Pass Through Costs				
Solid Waste Disposal Costs	\$ 881,109	Tip Fee x Tons	18,000 x \$51.77	\$ 931,787
Recyclable Materials Processing Costs	\$ 308,522	Tip Fee x Tons	8,000 x \$39.40	\$ 315,186
Residential Organic Materials Processing Costs	\$ 913,425	Tip Fee x Tons	9,300 x \$94.71	\$ 880,780
Commercial Organic Materials Processing Costs	\$ 694,383	Tip Fee x Tons	5,200 x \$128.83	\$ 669,922
C&D Processing Costs	\$ 127,475	Tip Fee x Tons	2,500 x \$51.77	\$ 129,415
Reusable Materials Handling Costs	\$ -	Tip Fee x Tons	0 x \$0.00	\$ -
Interest Expense	\$ 326,655	N.A.	N.A.	\$ 326,655
Direct Lease Costs	\$ -	N.A.	N.A.	\$ -
Allocated Lease Costs	\$ 180,000	N.A.	N.A.	\$ 180,000
Total Pass-Through Costs	\$ 3,431,569			\$ 3,433,746
Total Calculated Costs before City Reimbursements	\$17,331,632			\$ 17,009,087
Cost Reimbursements to City				
Solid Waste Fund Operations Fee	\$ 1,547,912	N.A.**		\$ 1,547,912
Total Reimbursements to City	\$ 1,547,912			\$ 1,547,912
Total Calculated Costs	\$18,879,544			\$ 18,556,999
Gross Operating Margin	\$ 3,822,517			\$ 3,733,219
Franchise Fee	\$ 2,284,235	N.A.	N.A.	\$ 2,284,235
Net Profit Margin	\$ 1,538,282			\$ 1,448,984
Other Adjustments (City Payments)	\$ (279,544)			\$ -

*Newby currently charges the same rate for Solid Waste Disposal and C&D Processing. If the City designates a new facility(ies) for disposal and processing, there may be two separate tip fees.

**The Solid Waste Fund Operations Fee may be increased by the CPI-U or at the City's discretion.

EXHIBIT E1

MULTI-INDEX RATE ADJUSTMENT METHODOLOGY

2. Example Calculation of the Rate Adjustment Factor and Adjusted Rate for Rate Period Five

Total Calculated Costs = \$18,556,999 < (\$18,879,544-\$279,544); Adjusted Total Calculated Costs = \$18,600,000 (Total Calculated Costs less City Payments from prior Rate Period)

Rate Adjustment Factor = \$18,600,000 / \$18,600,000 = 1.00

No City Payment is proposed as clarified in Exhibit E1 Section 4.A as Total Calculated Costs for the coming Rate Period < Total Calculated Costs less City Payment from the then-current Rate Period.

32-gallon Single-Family Rate for Rate Period Five = \$45.41 x 1.00 = \$45.41, which shall be effective February 1, 2025 (i.e., NO RATE ADJUSTMENT).

NOTE: Except if requested by the City, the rates will not change from prior Rate Period. The City may request Contractor resubmit individual Rates that address over/under-funding of particular sector(s) and/or material type(s), as described in Exhibit E1 Section 4.B, where rates still generating the same total rate revenue.

Subsequent Rate Period Adjustment. \$18,600,000 - \$18,556,999 = \$43,001 cost savings to be applied as an "Other Adjustment" in the subsequent Rate Period adjustment calculations as an offset to Contractor's Total Calculated Costs.

3. OTHER

If an index described in Exhibit E is discontinued, the successor index with which it is replaced shall be used for subsequent calculations. If no successor index is identified by the Bureau of Labor Statistics, the index which is most comparable shall be used.

EXHIBIT E2:
COST-BASED RATE ADJUSTMENT METHODOLOGY

EXHIBIT E2

COST-BASED RATE ADJUSTMENT METHODOLOGY

1. GENERAL

The Parties shall use the cost-based Rate adjustment method described in this Exhibit to determine Rates for the Rate Periods specified in Section 8.2, or in the event of a change in scope (under the circumstances described in Section 3.5) or Change in Law, or pursuant to Section 3.2 or 8.2 or the third paragraph of Section 1 of Exhibit E1.¹ The cost-based adjustment involves review of Contractor's actual cost of operations and operational statistics (e.g., staffing levels, routes, route hours, Customers and their service levels) to determine the Actual Allowable Total Annual Cost of Operations for the most-recently completed Rate Period, the Forecasted Total Calculated Costs for the coming Rate Period, and the Contractor's Compensation.

The intent of performing the cost-based adjustment is to examine the actual impact of changes in inflation or deflation, the number of Customers, and the Service Level of Customers.

The Forecasted Total Annual Cost of Operations calculated pursuant to this Exhibit E2 for the coming Rate Period (adjusted per the first paragraph of Section 2 of this Exhibit E2, if applicable) may not exceed by more than five percent (5%) the Total Annual Cost of Operations for the then-current Rate Period.

In the event that the cost-based adjustment calculated in accordance with this Exhibit E2 results in a negative Rate Adjustment Factor, the City reserves the right to "roll-under" the Rate reduction, such that there is no Rate adjustment in the Rate Period for which the negative Rate Adjustment Factor was calculated, but the calculated Rate reduction may be deferred to the following Rate Period, as a credit against future Rate increases.

A. Contractor's Rate Application. Contractor's Rate application for any Rate Period where Rates shall be adjusted using the cost-based methodology described in this Exhibit E2 shall include the information described in this Section 1.A. With the exception of the information identified in Section 1.A.1, and 1.A.2 below, all other items listed may be requested by the City Contract Manager at any time during the Term of the Agreement and Contractor shall comply with that request in a timely fashion.

- 1. Financial Statements.** Within one hundred twenty (120) calendar days after the close of the Agreement year, Contractor shall deliver to the City one (1) hard copy of the reviewed consolidated financial statements of Contractor for the preceding Agreement year. Financial statements shall include a supplemental combining schedule showing Contractor's results of operations, including the specific revenues and expenses in connection with the operations provided for in this Agreement separate from others included in such financial statements. The financial statements and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) consistently applied and fairly reflecting the results of operation and Contractor's financial condition. Annual financial statements shall be reviewed, in accordance with Generally Accepted Auditing Standards (GAAS) by a Certified Public Accountant (CPA) licensed (in good standing) to practice public accounting in the State as determined by the State Department of Consumer Affairs Board of Accountancy.

¹ Exhibit E2 dates (such as providing for use of 12 months of tonnage ending in October) assume use of the Exhibit E2 for an annual Rate adjustment; dates for use of data should be adjusted as necessary to accommodate any off-schedule adjustment.

EXHIBIT E2

COST-BASED RATE ADJUSTMENT METHODOLOGY

- 2. Financial Statement Reconciliation.** Contractor shall provide a schedule that clearly and accurately ties the amounts shown in Contractor's Rate application to Contractor's financial statements. Such schedule shall include any and all allocation factors and methodologies used to report cost and operating information for services provided to the City under this Agreement separately from Contractor obligations related to other public or private entities. Such statement of reconciliation shall include:
- a. General explanation of the various allocation methodologies used for each Rate application line item.
 - b. Specific examples of each type of allocation used showing how an entry is reported in the general ledger and ties to the Rate application.
 - c. Statement indicating whether there have been any changes in allocation methods used since the last Rate application. If any allocation methods have changed clearly identify those changes.
- 3. Operational Information.**
- a. Routes by Line of Business:
 - i. Number of routes per day.
 - ii. Types of vehicles.
 - iii. Crew size per route.
 - iv. Number of full time equivalent (FTE) routes.
 - v. Number of accounts and cubic yards scheduled per route.
 - vi. Total route hours per Line of Business per year.
 - vii. Average cost per route.
 - b. Personnel:
 - i. Organizational chart.
 - ii. Job classifications and number of employees (e.g., administrative, Customer service representatives, drivers, supervisors, educational staff).
 - iii. Union wages by job classification.
 - iv. Number of FTE positions for each job classification.
 - v. Number of hours per job classification per year.

EXHIBIT E2

COST-BASED RATE ADJUSTMENT METHODOLOGY

- c. Productivity Statistics:
 - i. Average Number of accounts per route per day by Line of Business.
 - ii. Average number of setouts per route per day by Line of Business.
 - iii. Average Tons per route per day by vehicle type (i.e., side-loader, front-loader, roll-off).
 - iv. Average cubic yards of Collection scheduled per route.
 - d. Vehicles:
 - i. List of Collection vehicles including year purchased and mileage.
 - ii. Average age of mobile equipment with oldest and newest.
 - e. Operational Changes:
 - i. Number of routes.
 - ii. Staffing.
 - iii. Supervision.
 - iv. Collection services.
- 5. Variance Analysis.** Provide the following variance analysis for each Line of Business. For any variances greater than five percent (5%) annually, Contractor shall provide sufficient rationale to support variance:
- a. Variance analysis comparing current Rate Period to each of the prior Rate Periods of Agreement.
 - b. Variance analysis comparing current Rate Period to each of the future projected Rate Periods.
- 6. Projections. Provide the following projection data:**
- a. Provide support for the basis for projected Gross Receipts and line item expenses, clearly indicate the supporting calculations and assumptions.
 - b. Provide support for the most recent twelve (12) months of Tonnage data for Rate Period, ending in the May preceding the August 1 Rate application due date. Clearly indicate the supporting calculations and assumptions.

EXHIBIT E2

COST-BASED RATE ADJUSTMENT METHODOLOGY

2. FORECASTING TOTAL CALCULATED COSTS

The Total Calculated Costs for the coming Rate Period shall be forecasted in the manner described in this Section, assuming no change in operations between the most-recently completed Rate Period and the coming Rate Period. If there is or is reasonably expected to be a change in operations directed by the City or resulting from a Change in Law (e.g., a change in a Designated Facility as described in Section 3.2 that affects Contractor's labor, vehicle-related and fuel costs, or change in scope as described in Section 3.5), then notwithstanding any other provision, appropriate adjustments shall be made to forecasted cost and revenue line items so that they reflect reasonable good faith estimates of the cost and revenue impacts of the change, and such cost and revenue impacts shall be excluded from Forecasted Total Annual Cost of Operations for the coming Rate Period in determining whether the five percent (5%) cap set forth in Section 1 of this Exhibit E2 has been met.

A. Forecasting Total Annual Cost of Operations

1. Determine Actual Allowable Total Annual Cost of Operations. The City or its designated representative(s) shall review Contractor's financial statements, books, and records to determine Contractor's "Actual Allowable Total Annual Cost of Operations" for the most-recently completed Rate Period. Such cost shall be Contractor's costs to perform all the obligations of Contractor under this Agreement (excluding the costs of Disposal and processing fees and of payments to City) in the manner required by this Agreement, and shall be divided into the following cost categories:

- a. Actual labor-related costs
- b. Actual vehicle-related costs (excluding fuel and depreciation)
- c. Actual fuel costs
- d. Actual other costs (as defined on Form 6E of Exhibit G2)
- e. Direct Container and equipment depreciation costs (in the amount specified in Exhibit E1)
- f. Actual allocated costs (labor, vehicle, general and administrative, and other costs)
- g. Actual allocated costs (depreciation and start-up) (in the amount stated in Exhibit E1)

2. Non-Allowable Costs. The following list of non-allowable costs shall be deducted from Contractor's actual costs when determining the Actual Allowable Total Annual Cost of Operations.

- a. Labor, equipment, fuel, and start-up costs for personnel, vehicles, and facilities that are not specified in the proposal forms contained in Exhibit G2 and that cannot be demonstrated to have been incurred as part of the performance of services under this Agreement.
- b. Payments to directors and/or Owners of Contractor unless the amount paid is

EXHIBIT E2

COST-BASED RATE ADJUSTMENT METHODOLOGY

reasonable compensation for services actually rendered. Reasonableness shall be determined based on available market pricing for similar services and shall be in the sole discretion of the City.

- c. Travel expenses and entertainment (above five thousand dollars (\$5,000) annually in total) expenses, unless authorized in advance by the City.
- d. Payments to repair damage to public or private property for which Contractor is legally liable.
- e. Fines or penalties of any nature.
- f. Liquidated Damages assessed under this Agreement.
- g. Federal or State income taxes.
- h. Cash donations or value of in-kind services provided to charitable, political, youth, civic, or other community organizations, unless such donations or in-kind services are expressly provided for under this Agreement, or have been previously approved in writing as an allowable expense by the City Contract Manager.
- i. Depreciation or interest expense for Collection vehicles, Containers, other equipment, offices and other facilities if such items are leased as specified in Exhibit G2.
- j. Attorney's fees and other expenses incurred by Contractor in any court proceeding in which the City and Contractor are adverse Parties.
- k. Attorney's fees and other expenses incurred by Contractor arising from any act or omission in violation of this Agreement.
- l. Attorneys' fees and other expenses incurred by Contractor in any court proceeding in which Contractor's own negligence, violation of law or regulation, or wrong doing are in issue and occasion, in whole or in part, the attorneys' fees and expenses claimed; and attorneys' fees and expenses incurred by Contractor in a court proceeding in which the legal theory or statute providing a basis of liability against Contractor also provides for separate potential liability for the City derived from the action of its citizens or Rate payers (such as in a CERCLA lawsuit) unless Contractor is found not liable in such claims and such claims arise from acts or occurrences within the Term of the Agreement.
- m. Payments to Related-Party Entities for products or services, in excess of the cost to the Related-Party Entities for those products or services. Approved Facilities that are operated by Related-Party Entities or Affiliates of Contractor and have a stipulated tipping fee in Contractor's Proposal shall not be subject to this limitation and only the tipping fee and any contemplated adjustments thereto shall be allowable expenses.
- n. Goodwill.

EXHIBIT E2

COST-BASED RATE ADJUSTMENT METHODOLOGY

- o. Unreasonable profit-sharing distributions.
 - p. Replacement costs for Containers that need to be replaced because the useful life of such Container was less than the Term.
 - q. Administrative costs greater than the administrative costs presented in Contractor's Proposal (i.e., each of the items listed as General & Administrative on Form 6F of Exhibit G2) adjusted annually by one (1) plus the Annual Percentage Change in the CPI-U.
 - r. Bad debt write-offs in excess of two percent (2%) of annual Gross Receipts.
- 3. Forecast Total Annual Cost of Operations.** Forecasted Total Annual Cost of Operations for the coming Rate Period shall be calculated based on Actual Allowed Total Cost of Operations for the most-recently completed Rate Period determined in accordance with Sections 2.A.1 and 2.A.2 above. The forecasts shall be performed in the following manner:
- a. **Forecasted labor-related costs** shall be calculated for the coming Rate Period by (i) multiplying the allowed labor-related costs, both direct and allocated, for the most-recently completed Rate Period by one (1) plus the Annual Percentage Change in the CPI-U, and (ii) multiplying the result of step one once more by one (1) plus the Annual Percentage Change in the CPI-U.
 - b. **Forecasted vehicle-related costs** (excluding fuel and depreciation costs) shall be calculated for the coming Rate Period by (i) multiplying the allowed vehicle-related costs, both direct and allocated, for the most-recently completed Rate Period by one (1) plus the Annual Percentage Change in the Motor Vehicle Maintenance and Repair Index, and (ii) multiplying the result of step one once more by one (1) plus the Annual Percentage Change in the Motor Vehicle Maintenance and Repair Index.
 - c. **Forecasted fuel costs** shall be calculated for the coming Rate Period by (i) multiplying the allowed fuel costs, both direct and allocated, for the most-recently completed Rate Period by one (1) plus the Annual Percentage Change in the Fuel Index, and (ii) multiplying the result of step one once more by one (1) plus the Annual Percentage Change in the Fuel Index.
 - d. **Forecasted other costs** shall be calculated for the coming Rate Period by (i) multiplying the allowed other-related costs, both direct and allocated, for the most-recently completed Rate Period by one (1) plus the Annual Percentage Change in CPI-U, and (ii) multiplying the result of step one once more by one (1) plus the Annual Percentage Change in the CPI-U.
 - e. **Forecasted direct depreciation expense** shall be the amount specified in Exhibit G2 for vehicles, Containers, and facilities. Direct depreciation expense is a fixed cost and is not subject to inflation.
 - f. **Forecasted allocated labor-related, vehicle-related, general and administrative, and other costs** shall be calculated for the coming Rate Period by (i) multiplying the allowed

EXHIBIT E2

COST-BASED RATE ADJUSTMENT METHODOLOGY

other-related costs for most-recently completed Rate Period by one (1) plus the Annual Percentage Change in CPI-U, and (ii) multiplying the result of step one once more by one (1) plus the Annual Percentage Change in CPI-U.

- g. Forecasted allocated depreciation and start-up expense** shall be the amount specified in Section 2.A.7 of Exhibit E1 for vehicles, Containers, and facilities.
- h. Forecasted Total Annual Cost of Operations** for the coming Rate Period shall equal the sum of the following costs, which shall have been calculated in accordance with the procedures in this Exhibit E2, and shall be subject to the five percent (5%) cap described in Section 1 of this Exhibit E2:
 - i. Forecasted labor-related costs
 - ii. Forecasted vehicle-related costs (excluding fuel and depreciation costs)
 - iii. Forecasted fuel costs
 - iv. Forecasted other costs
 - v. Forecasted direct depreciation expense
 - vi. Forecasted allocated labor-related, vehicle-related, general and administrative, and other costs
 - vii. Forecasted allocated costs for depreciation and start-up

- B. Forecast Profit.** Contractor shall be entitled to Profit on Forecasted Total Annual Cost of Operations. Profit shall be calculated using an operating ratio of seventy-two and one-half percent (72.5%) as proposed by Contractor and described in Exhibit G2. Profit shall be calculated using the following formula:

Profit = (Forecasted Total Annual Cost of Operations / Operating Ratio) – Forecasted Total Annual Cost of Operations

For example:

- 1. Assuming an operating ratio of 72.5
- 2. Assuming a Forecasted Total Annual Cost of Operations of \$1,000,000
- 3. Profit = (\$1,000,000 / 0.725) – \$1,000,000 = \$379,310.35

- C. Forecast Pass-Through Costs.** Pass-Through Costs for the coming Rate Period shall be forecasted in the following manner:

- 1. Forecasted Recyclable Materials Processing costs** shall be calculated in the manner described in Section 2.C.1 of Exhibit E1.

EXHIBIT E2

COST-BASED RATE ADJUSTMENT METHODOLOGY

2. **Forecasted Residential Organic Materials Processing costs** shall be calculated in the manner described in Section 2.C.2 of Exhibit E1.
 3. **Forecasted Commercial Organic Materials Processing costs** shall be calculated in the manner described in Section 2.C.2 of Exhibit E1.
 4. **Forecasted Disposal costs** shall be calculated in the manner described in Section 2.C.3 of Exhibit E1.
 5. **Forecasted Interest Expense.** Interest Expense is three hundred twenty six thousand, six hundred and fifty-five dollars (\$326,655) per year and shall not be adjusted over the Term of the Agreement. See Section 2.C.4 of Exhibit E1.
 6. **Forecasted Direct Lease Costs.** Direct Lease Costs are zero dollars (\$0) per year and shall not be adjusted over the Term of the Agreement, unless the Parties mutually agree to a different amount for any Rate Period after Rate Period Ten.
 7. **Forecasted Allocated Lease Costs.** Allocated Lease Costs are one hundred eighty thousand dollars (\$180,000) per year and shall not be adjusted over the Term of the Agreement.
- D. Forecast City Fees/Reimbursements.** The City Fees/Reimbursements shall be calculated in the manner described in Section 2.E of Exhibit E1.
- E. Other Adjustments.** Other Adjustments shall be determined in the manner described in Section 2.F of Exhibit E1.
- F. Forecasted Total Calculated Costs** for the coming Rate Period shall equal the sum of Forecasted Total Annual Cost of Operations, Forecasted Profit, Forecasted Pass-Through Costs, Forecasted City Fees/Reimbursements, and Other Adjustments (if applicable), each determined as provided above. Such Forecasted Total Calculated Costs shall become the Total Calculated Costs for the coming Rate Period, for purposes of future index-based adjustments under Exhibit E1.

3. PROJECTED GROSS RECEIPTS

Projected Gross Receipts at then-current Rates shall reflect projected annual Gross Receipts from all Customers based on then-current Rates and then-current Customer Service Levels, inclusive of all Rates and special charges authorized under this Agreement. For the purposes of determining Customer Service Levels for on-call services (e.g., drop-box service provided less than weekly, Bin rentals) and special charges (e.g., push charges, lock/unlock charges), the prior twelve (12) months of billing activity (ending in the May preceding the August 1 Rate application due date) for such services and special charges shall be used.

Contractor shall also calculate projected Gross Receipts by sector(s) and/or material stream(s) based on then-current Rates and then-current Customer Service Levels, inclusive of all Rates and special charges authorized under this Agreement.

EXHIBIT E2

COST-BASED RATE ADJUSTMENT METHODOLOGY

4. TOTAL RATE ADJUSTMENT FACTOR

The Total Rate Adjustment Factor shall equal the Forecasted Total Calculated Costs for the coming Rate Period divided by the projected Gross Receipts calculated in accordance with Section 3 of this Exhibit E2. The Total Rate Adjustment Factor shall be rounded to the nearest thousandth.

5. ADJUSTMENT OF RATES

City may, as part of the Rate adjustment process for the coming Rate Period, do either or both of the following:

- A. Agree to make a City Payment in the coming Rate Period, so as to reduce the Rate increase that would otherwise occur in that Rate Period; and/or,
- B. Request a change in the relationship of individual Rates in comparison with other Rates, which may include changing the relationship of Rates across sector(s) and/or material stream(s). Section 8.2.D (Rate Structure) shall apply to any change under this subsection 5.B. If City wishes to do this, then City may request the Contractor to resubmit its Rate application by sector(s) and/or material type(s) so as to enable City to address over/under-funding of particular sector(s) and/or material type(s).

If City does either 5.A or 5.B above, then Rates shall be adjusted such that projected Gross Receipts for the coming Rate Period at the adjusted Rates, plus any City Payments that City agrees to make for that coming Rate Period, equal or exceed Forecasted Total Calculated Costs for the coming Rate Period.

If City does neither 5.A nor 5.B above, then each then-current Rate shall be multiplied by the Total Rate Adjustment Factor to calculate the effective Rate for the coming Rate Period. The adjustment to each Rate shall be rounded to the nearest cent.

This page intentionally left blank

**EXHIBIT F:
PERFORMANCE STANDARDS AND LIQUIDATED
DAMAGES**

EXHIBIT F

PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

The City wishes to establish standards of performance under the Agreement in each of the “Performance Areas” listed below. The City Contract Manager may monitor Contractor’s performance in each of those areas based on the “Overall Performance Indicator” listed below for each area. In the event that Contractor fails to meet the performance standard established for any “Overall Performance Indicator,” the City Contract Manager may review Contractor’s performance relative to the “Specific Performance Measures” within that performance area. In the event that the City Contract Manager determines that Contractor has failed to meet the performance standard established for any “Specific Performance Measure,” the City may in its sole discretion assess Liquidated Damages pursuant to Section 10.6 of the Agreement. Liquidated Damages, if assessed, shall only be assessed for the number of events, days, or other measure in excess of the acceptable performance level.

1. DEFINED TERMS

Exhibit F relies on the terms “Complaint,” “Service Opportunity,” and “Total Service Opportunities,” as defined in Exhibit A.

2. PERFORMANCE AREA NO. 1: SERVICE QUALITY AND RELIABILITY

Overall Performance Indicator: Contractor’s service quality and reliability shall be considered acceptable by the City if the total number of calls and emails (including, without limitation: Complaints, inquiries, billing questions, service requests, and compliments) received by Contractor from Customers served under this Agreement does not exceed one (1) per one thousand (1,000) Total Service Opportunities in any calendar quarter. If the number exceeds this level, the City may in its sole discretion assess Liquidated Damages for the specific performance measures identified in the following table.

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Missed Collections	Each Service Opportunity where Contractor fails to Collect a Container from a Customer who properly placed said Container for Collection.	Less than one (1) per one thousand (1,000) Service Opportunities	\$50/Event
Failure to Correct Missed Collections	Each “Missed Collection” as defined above that is not Collected pursuant to Section 4.10.3.B.	Less than (1) per one hundred (100) missed Collections	\$50/Event
Failure to Return Container to Location of Setout	Failure to properly return empty Carts or Bins to the Collection location, or to place Carts upright.	Less than (1) per one thousand (1,000) Service Opportunities	\$50/Event

EXHIBIT F

PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Failure to Clean-Up Spillage	Pursuant to Section 5.3.C, each failure by Contractor to clean up: (1) any items or materials spilled during the Collection of a Container; (2) any fluids spilled or leaked from a Container or Collection vehicle prior to leaving the Collection location; or, failure by Contractor to notify the City within two (2) hours of an observed spill.	Less than one (1) per one thousand (1,000) Service Opportunities	\$100/Event
Damage to Property	Each event of damage to either public or private property as a result of Collection activity, including without limitation Curbs, sidewalks, landscapes, Container enclosures and gates, signs, light fixtures, and overhead wires and cables.	Less than one (1) per one thousand (1,000) Service Opportunities	\$250/Event
Excessive Noise	Each Complaint received that is related to noise during Collection activity.	Less than one (1) per one thousand (1,000) Service Opportunities	\$250/Event
Discourteous Behavior	Each Complaint received that is related to the discourteous behavior of Contractor's employees.	Less than one (1) per one thousand (1,000) Service Opportunities	\$250/Event
Inaccurate Billing	Each Complaint received where Contractor billed a Customer in error. Inaccurate billing may include, but is not limited to: (i) either over- or under-charging of the Customer relative to the approved maximum Rates for services; (ii) charging the Customer a Rate that is not the same as other Customers with the same Service Level; (iii) charging a Customer for an increased Service Level prior to providing the service; and, (iv) not charging a Customer for reduced Service Level within seven (7) days of the date Customer requested the change, regardless of whether or not Contractor delivers the appropriate Containers or modifies the Service Level within that timeframe.	Less than one (1) per one thousand (1,000) bills issued	\$100/Event

EXHIBIT F

PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

3. PERFORMANCE AREA NO. 2: CUSTOMER SERVICE

Overall Performance Indicator: The level of Customer service provided by Contractor shall be considered acceptable if the total number of Complaints received by the City regarding Contractor does not exceed one (1) per one thousand (1,000) Total Service Opportunities in any calendar quarter. If the number exceeds this level, the City may in its sole discretion assess Liquidated Damages for the specific performance measures identified in the following table.

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Failure to Commence Service	Any failure by Contractor to deliver a Container and begin providing Collection to a Customer, at the Service Level requested by said Customer, within seven (7) calendar days of receiving such request. This may include a new Customer receiving new service or an existing Customer requesting a change in or addition to existing Service Levels. This may also include delivering Used Oil Recovery Kits to Customers upon request.	Less than one (1) per one hundred (100) service requests	\$50/Event
Failure to Replace Container or Remove Graffiti	Any failure by Contractor to replace or repair a damaged Container within seven (7) calendar days of receiving such a request from a Customer, or any failure by Contractor to remove graffiti from Containers within two (2) Working Days following identification by Contractor or notice by the City or Customer if such graffiti includes any written or pictorial obscenities, and otherwise within five (5) Business Days.	No acceptable failure level	\$100/Event
Failure to Resolve Complaint	Any failure by Contractor to resolve or remedy a Complaint within seven (7) calendar days of receiving such Complaint.	Less than one (1) per one hundred (100) Complaints	\$250/Event

EXHIBIT F

PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Failure to Answer Phones; Respond to Emails	Any failure by Contractor during normal business hours to answer a Customer telephone call within four rings, or to respond to a Customer email. A call is not considered to be answered if the Customer does not speak with a live operator. A call is considered to be answered if the Customer hangs-up or abandons the call following a hold time of less than three (3) minutes.	Less than one (1) per one thousand (1,000) calls received under this Agreement Less than one (1) per one thousand (1,000) emails received under this Agreement	\$50/Event
Excessive Call Center Hold Time	Each occurrence of a call being placed “on hold” for more than two (2) minutes.	Less than one (1) per one thousand (1,000) calls received under this Agreement	\$50/Event
Unauthorized Hours of Operation	Each occurrence of Contractor Collecting from Customers during unauthorized hours.	Less than one (1) per one thousand (1,000) Service Opportunities	\$250/Event

4. PERFORMANCE AREA NO. 3: OUTREACH

Overall Performance Indicator: Contractor’s performance shall be considered acceptable if service meets the requirements of Section 4.7, Exhibit C, and the following table.

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Failure to Perform Public Outreach Activities	Each failure by Contractor to develop, produce, and distribute a public outreach document or perform a community outreach activity in the form and manner required under Exhibit C to this Agreement.	No acceptable failure level	\$500/Document or Activity
Failure to Provide Targeted Technical Assistance	Each individual failure to provide targeted technical assistance to a Commercial or Multi-Family Customer, or to a City facility in the manner required under Exhibit C to this Agreement.	No acceptable failure level	\$50/Customer

EXHIBIT F

PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Delay in Annual Outreach Plan	Failure to submit the initial annual outreach plan by the Commencement Date or November 1, or to submit a revised plan within 15 Business Days after receiving the City Contract Manager's comments, as required by Exhibit C, Section 1.A.	No acceptable failure level	\$250/Day

5. PERFORMANCE AREA NO. 4: DIVERSION

Overall Performance Indicator: Contractor's Diversion performance, as provided in Section 5.11, shall be considered acceptable if (based on twelve (12) months of Collected Tonnage report data for any calendar year after 2021) the Diversion percentage is less than the Tonnage Baseline Diversion Percentage. The City may assess Liquidated Damages for the specific performance measures identified in the following table.

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Failure to Maintain Contractor's Minimum Required Diversion Level by Weight	Failure to meet Tonnage Baseline Diversion Percentage specified in Section 5.11.B in any calendar year after 2021.	No acceptable failure level	\$100/Ton of material that would have needed to be Diverted instead of landfilled to meet the requirement for the given calendar year

6. PERFORMANCE AREA NO. 5: FACILITIES

Overall Performance Indicator: Contractor's performance relative to facilities shall be considered acceptable when one hundred percent (100%) of all material types Collected by Contractor shall be Delivered to the appropriate Approved Facility (including Designated Facility(ies)) as required under Sections 4.1, 4.2 and 4.3 of this Agreement. If Contractor fails to meet this level of performance, the City may assess Liquidated Damages for the specific performance measures identified in the following table.

EXHIBIT F

PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Delivery to Non-Approved Facility	Each individual occurrence of delivering materials to a facility other than the Approved Facility designated for each material type under Sections 4.1, 4.2, and 4.3 of this Agreement.	No acceptable failure level	\$100/Ton
Disposal of Material Targeted for Diversion	Each individual occurrence of Disposal rather than Processing of Recyclable Materials, Organic Materials, or C&D set out for Collection by the Customer, unless the contamination level in the Container exceeds the acceptable contamination level specified in this Agreement.	No acceptable failure level	\$500/Ton
Mixing Material Types During Collection	Each individual Container that is Collected by Contractor in a vehicle intended or designated for the purpose of Collecting a different material type (e.g., Recyclable Materials Collected in Solid Waste vehicle, Solid Waste Collected in Organic Materials vehicle, etc.). This item does not apply to collection in a Solid Waste vehicle of Containers with a contamination level that exceeds the acceptable contamination level specified in this Agreement.	No acceptable failure level	\$100/Container

7. PERFORMANCE AREA NO. 6: REPORTING

Overall Performance Indicator: Contractor's reporting shall be considered acceptable if Reports required under Exhibit D and record requests allowed under Article 6 to this Agreement are received, complete, and accurate within seven (7) calendar days after the date due or date requested. If Contractor fails to meet this level of performance, the City may in its sole discretion assess Liquidated Damages for the specific performance measures identified in the following table.

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Late Report	Each occurrence of a report, as required under Exhibit D to this Agreement, being submitted after the due date. Reports shall be considered late until they are submitted in a complete and accurate format.	Less than seven (7) calendar days after report due date	\$250/Day

EXHIBIT F

PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Failure to Maintain or Provide Access to Records	Each occurrence of the City Contract Manager requesting information required to be maintained by Contractor where Contractor fails to provide such information.	Less than seven (7) calendar days after due date	\$500/Event
Misleading/ Inaccurate Reporting	Each occurrence of Contractor providing materially or intentionally misleading or inaccurate information or reporting to the City under or in regard to this Agreement. Typographical, cell reference, mathematical, and/or logic errors shall not be considered legitimate excuses from this requirement, nor shall ignorance.	No acceptable failure level	\$500/Event

8. PERFORMANCE AREA NO. 7: SB 1383

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
1.	Failure to Provide Recyclable Material and Organic Material Collection Services to every Customer Exceptions noted below table	For each occurrence of failing to provide Customers with the three- Container system, including Recyclable Material and Organic Materials. This item shall not apply to missed pickups, which is covered under Performance Area No. 1.	No acceptable failure level	\$500/Customer
2.	Failure to Conduct Route reviews and contamination monitoring	Failure to conduct Route reviews as required by Section 4.13.1 of this Agreement.	No acceptable failure level	\$150/Route review
3.	Failure to Issue contamination notices, if permitted by City	Failure to issue contamination notices as required by Section 4.13.1 of this Agreement.	No acceptable failure level	\$500/Route/Day

EXHIBIT F

PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
4.	Commingling with Non-City Materials	Commingling of materials Collected inside and outside the City during Collection, except as provided in Section 5.3.F and except for service to the Creston Drive area until the area is fully annexed.	No acceptable failure level	\$1,000/Event
5.	Failure to Comply with Container Labeling and Colors	For each occurrence of Contractor's failure to comply with Container labeling and color requirements pursuant to Section 5.6 of this Agreement, and not corrected within two (2) Business Days of notice by City.	No acceptable failure level	\$50 / Container / occurrence
6.	Failure to Conduct Compliance Tasks	For each failure to conduct any compliance review, or cooperate in conducting waste evaluations pursuant to Sections 4.13 and 4.14, and/or failure to conduct any other SB 1383-related inspection required by this Agreement.	No acceptable failure level	\$250 / occurrence.
7.	Failure to Conduct Follow-Up Inspections	For each failure to conduct an SB 1383 noncompliance complaint investigation as required by Section 4.14.C of this Agreement.	No acceptable failure level	\$250 / occurrence.

The City shall not assess Liquidated Damages for Exhibit F.8, item 1, above, under the following circumstances:

- A. City has granted the Customer a waiver pursuant to Section 4.12.2 of this Agreement;
- B. Contractor documents that Customer is compliant with the Cupertino Municipal Code and 14 CCR, Division 7, Chapter 12, Article 7;

EXHIBIT F

PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

- C. Contractor documents to the City that the Customer is being provided Recyclable Material and/or Organic Material Collection services from a City-permitted, or non-exclusively franchised, recycler or discarded materials service provider;
- D. Contractor documents that Customer is sharing Recyclable Materials and/or Organic Materials Collection services with another Customer in a manner approved by the City;
- E. The City has failed to adopt a mandatory Recyclable Materials and Organic Materials ordinance;
- F. The Customer does not subscribe for service; or,
- G. The Customer refuses to accept the service or the required Containers.

9. PERFORMANCE AREA NO. 8: COMPLIANT CONTAINERS

Overall Performance Indicator: Contractor's Container replacement services shall be considered acceptable by the City if Contractor replaces Containers in accordance with Section 5.6. If Contractor fails to meet this level of performance, the City may in its sole discretion assess Liquidated Damages for the specific performance measures identified in the following table.

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Failure to Correct Non-Conforming Carts	Each occurrence after December 31, 2021 in which a Non-Conforming Cart (as defined in Exhibit A and Section 5.6) is still in service.	No acceptable performance level	\$250/Non-Conforming Cart not exchanged within two (2) Business Days after notice by City for the first fifty (50) Non-Conforming Carts identified by City; thereafter, \$250/Non-Conforming Cart.

By placing designee's initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of Liquidated Damage provisions at the time that the Agreement was made.

Contractor
Initial Here: _____

City
Initial Here: _____

This page intentionally left blank

EXHIBIT G:
EXCERPTS OF CONTRACTOR'S PROPOSAL

EXHIBIT G1:
EXCERPTS OF TECHNICAL PROPOSAL

EXHIBIT G2:
COST BASIS FOR PROPOSAL

Proposer Name: Recology

Note to Recology: Input data in yellow shaded areas only.

A. Primary Contact Information

1. Name	John Zirelli
2. Title	General Manager
3. Phone	(408)368-1776
4. Fax	
5. E-mail	jzirelli@recology.com

B. Support Facilities

1. Address of collection vehicle parking, maintenance, washing, and route staff parking facility(ies)	1675 Rogers Ave, San Jose, CA
2. Address of administrative office	1675 Rogers Ave, San Jose, CA
3. Address of billing office	1675 Rogers Ave, San Jose, CA
4. Address of customer service office	1675 Rogers Ave, San Jose, CA

C. Vehicle Manufacturer and Specifications (Body Capacity, GVWR, Load Capacity)

1. Residential Collection Vehicles	Autocar, 28yd Heil
2. Commercial Collection Vehicles	Autocar, 40yd Heil
3. Drop Box Vehicles	Autocar, NorCal Hoist

D. Container Manufacturer, Sizes Offered, and Specifications

1. Carts	Toter (24, 32, 64, 96)
2. Bins	Consolidated Fabricators (1, 1.5, 2, 3, 4, 6, 8)
3. Drop Boxes	Consolidated Fabricators (8, 16, 20, 26, 30, 40)

E. Recyclable Materials Processing and Handling

1. Name of processing site	Greenwaste Recovery - Charles Street
2. Owner's name	Greenwaste Recovery, Inc.
3. Operator's name	Greenwaste Recovery, Inc.
4. Address of processing site	625 Charles St, San Jose, CA
5. Hauling method (e.g. direct haul, transfer haul, Pod haul)	Direct Haul
6. Name and address of transfer location (if applicable)	

F. Reusable Materials Handling

1. Name of processing site	Hope Services
2. Owner's name	Hope Services
3. Operator's name	Hope Services
4. Address of processing site	460 E. Middlefield Road, Mountain View, CA
5. Hauling method (e.g. direct haul, transfer haul, Pod haul)	Transfer
6. Name and address of transfer location (if applicable)	1675 Rogers Ave, San Jose, CA

G. Organics Processing and Handling Facility #1

1. Name of processing site	Recology South Valley Organics
2. Owner's name	Recology, Inc.
3. Operator's name	Recology South Valley Organics
4. Address of processing site	3675 Pacheco Pass Hwy, Gilroy, CA
5. Hauling method (e.g. direct haul, transfer haul, Pod haul)	Transfer
6. Name and address of transfer location (if applicable)	1675 Rogers Ave, San Jose, CA

H. Organics Processing and Handling Facility #2

1. Name of processing site	Recology Blossom Valley Organics - North
2. Owner's name	Recology, Inc.
3. Operator's name	Recology Blossom Valley Organics - North
4. Address of processing site	3909 Gaffery Rd, Vernalis, CA
5. Hauling method (e.g. direct haul, transfer haul, Pod haul)	Transfer
6. Name and address of transfer location (if applicable)	1675 Rogers Ave, San Jose, CA

I. Other Processing and Handling (Optional)*

1. Name of processing site	
2. Owner's name	
3. Operator's name	
4. Address of processing site	
5. Hauling method (e.g. direct haul, transfer haul, Pod haul)	
6. Name and address of transfer location (if applicable)	

* Insert Rows as Needed to Reflect Additional Facility and/or Subcontractor Information.

Operating Statistics
Proposer Name: Recology

City of Cupertino Future Services

Note to Recology: Input data in yellow shaded areas only.

REPORT FOR 12-MONTH PERIOD													
From February 1, 2021 to January 31, 2022													
1	Residential Cart Service (Form 6A)			Commercial Cart Service (Form 6B)			Commercial Bin Service (Form 6C)			Roll-Off (Form 6D)		Other (Form 6E)	
	Solid Waste	Recyclable Materials	Organic Materials	Solid Waste	Recyclable Materials	Organic Materials	Solid Waste	Recyclable Materials	Organic Materials	All Material Types	Bulky Items/Reusable Materials	Other (Specify)	TOTAL
# of weekly accounts (customers)													
2	3.8	3.9	3.0	0.2	0.8	0.043	2.3	1.7	0.9	2.1	1.0		19.6
3	8.0	8.1	8.1	8.0	8.4	8.1	9.1	8.6	8.0	8.0	8.0		
4	7,925	8,474	6,255	333	1,660	91	5,347	3,779	1,895	4,451	2,080	0	42,289
# of routes per													
5	3.81	3.88	2.97	0.16	0.76	0.043	2.26	1.69	0.91	2.14	1.00		19.6
6							1.4	0.3	0.3	0.71			2.7
7													0.0
# of persons per route per													
8	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0		
9													
10													
# of route hours/day/route per													
11	8.0	8.4	8.1	8.0	8.4	8.1	9.1	8.6	8.0	8.0	8.0		
12							8.0	8.0	8.0	8.0			
13													
# of route hours per year per:													
14	7,925	8,474	6,255	333	1,660	91	5,347	3,779	1,895	4,451	2,080		42,289
15							582	125	125	295			1,127
16													0
17	7,925	8,474	6,255	333	1,660	91	5,930	3,904	2,020	4,747	2,080	0	43,416
18	3.81	4.07	3.01	0.16	0.80	0.04	2.85	1.88	0.97	2.28	1.00	0.00	20.87
19	Total # of cart setouts per day for all routes												
20	638	2,347	2,068										
21	12,156	11,736	10,339										
22	13,972	13,972	13,972										
23	87%	84%	74%										
24	# of lifts or pulls per week for all routes												
25	# of lifts or pulls per year for all routes												
26	# of lifts or pulls per route hour												
# of regular collection vehicles (from Form 4)													
27	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
29	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
30	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
# of regular collection vehicles (from Form 4)													
# of spare collection vehicles (from Form 4)													
# of lifts or pulls per route hour													
# of regular collection vehicles (from Form 4)													
31	7,520	4,890		360	380		6,150	2,200		3,250			17,280.0
32			8,010			116				480			7,950.0
33			0						2,600	1,000			9,126.0
34										2,500			5,100.0
35										2,500			2,500.0
36													0.0
37													0.0
38													0.0
39	7,520	4,890	8,010	360	380	116	6,150	2,200	2,600	9,730	0	0	41,956
40													0.0
41	0	4,890	8,010	0	380	116	0	2,200	2,600	6,480	0	0	24,676
Net Diverted (Line 32 + 33 + 34 + 35 + 36 + 37 + 38 - 40)													58.8%

Notes for Form 2:

- Line 1 - Should equal the number of customer serviced on a weekly basis
- Line 2 - Data to be input by Recology. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6E.
- Line 3 - Identify number of hours per day each regular route employee will work each day (including breaks, pre- and post-route checks, etc., excludes casual/pool personnel).
- Line 4 - Should equal Line 2 * Line 3 * 260 days. Total should tie to total payroll hours.
- Lines 5, 6, and 7 - Information is to be reported for collection routes only and does not include any support (e.g., container delivery routes, cleanup routes, missed pickup routes etc.)
- Lines 8, 9, and 10 - Data to be input by Recology. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6E.
- Lines 11, 12, and 13 - Identify number of hours per day each route will take to complete (including collection time and hauling time to transfer station, landfill, or processing site).
- Line 14 - Should equal Line 5 * Line 11 * 260 days
- Line 15 - Should equal Line 6 * Line 12 * 52 weeks
- Line 16 - Should equal Line 7 * Line 13 * 52 weeks
- Line 17 - Should equal Line 14 + Line 15 + Line 16
- Line 18 - Should equal Line 17 / 2,080 hours
- Line 19 - Data to be input by Recology. Data should reflect the assumptions used for the basis of the costs proposed in Form 6A
- Line 20 - Should equal Line 19 / Line 18
- Line 21 - Should equal Line 19 * 5 days
- Line 22 - Data to be input by Recology. Data should reflect the assumptions used for the basis of the costs proposed in Form 6A.
- Line 23 - Should equal Line 21 / Line 22
- Line 24 - Data to be input by Recology. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6B - 6E.
- Line 25 - Data to be input by Recology and should equal Line 24 * 52 weeks. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6B - 6E.
- Line 26 - Should equal Line 25 / Line 17
- Line 27 - No input needed by Recology, data linked to Form 4 - Capital. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6E.
- Line 28 - No input needed by Recology, data linked to Form 4 - Capital. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6E.
- Line 29 - No input needed by Recology, data linked to Form 4 - Capital. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6E.
- Line 30 - Should equal Line 27 + Line 28 + Line 29
- Lines 31 - 38 - Data to be input by Recology. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6E.
- Line 39 - Should equal the sum of Line 31 + Line 32 + Line 33 + Line 34 + Line 35 + Line 36 + Line 37 + Line 38
- Line 40 - Data to be input by Recology. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6E.
- Line 41 - Should equal Line 32 + Line 33 + Line 34 + Line 35 + Line 36 + Line 37 + Line 38 - Line 40

Pulls = pull and return etc.
Full Time Equivalent (FTE) = 40 hours per week, 2,080 hours per year

Proposed Labor Requirements

City of Cupertino Future Services

Proposer Name: Recology

Note to Recology: Input data in yellow shaded areas only.

Route Personnel Headcount (include fraction of employee)	# of Regular Personnel	# of Casual/Pool	Total	Hourly Rate	Benefits Cost/Hour
Residential Cart Solid Waste (6A)	3.8	1.0	4.8		
Residential Cart Recyclable Materials (6A)	3.9	1.0	4.9		
Residential Cart Organic Materials (6A)	3.0	0.7	3.7		
Commercial Cart Solid Waste (6B)	0.2	0.0	0.2		
Commercial Cart Recyclable Materials (6B)	0.8	0.2	1.0		
Commercial Cart Organic Materials (6B)	0.0	0.0	0.1		
Commercial Bin Solid Waste (6C)	2.3	0.6	2.8		
Commercial Bin Recyclable Materials (6C)	1.7	0.4	2.1		
Commercial Bin Organic Materials (6C)	0.9	0.2	1.1		
Roll-Off (6D)	2.1	0.5	2.7		
HHW (6E)	0.0	0.0	0.0		
Bulky (6E)	1.0	0.3	1.3		
Stinger			0.0		
Subtotal Route Personnel	19.6	4.9	24.5		

Other Personnel Headcount (include fraction of employee)	Notes	# of Employees	Hourly Rate	Benefits Cost/Hour
Executive Management (CEO, CFO, COO, etc.)				
General Manager		0.6		
Operations Manager		0.6		
Municipal Relations Manager				
Route Supervisor		1.1		
Dispatcher		0.6		
Container Distribution		0.6		
Container Maintenance/Welder		1.1		
Maintenance Supervisor		0.6		
Maintenance Personnel		2.8		
Controller				
Safety Specialist				
Staff Accountant				
Office Manager		0.6		
Human Resources				
Accounting Clerk		0.6		
Billings Clerk				
Accounts Receivable Clerk				
Collection Clerk				
Financial & Reporting Analyst		0.75		
Benefits Coordinator				
Customer Service Supervisor				
Customer Service Representatives		1.1		
Sales Coordinator				
Recycling Manager				
Waste Zero Specialist		2.0		
Contract Manager				
Other (specify): _____				
Other (specify): _____				
Subtotal Other Personnel		12.8		
	Total All Personnel	37.3		

* Note: Redacted for personal privacy; information on file with City

Capital Requirements
Proposer Name: Recology

City of Cupertino Future Services

Note to Recology: Input data in yellow shaded areas only.

	Quantity									Total Capital Cost Over Contract Term (in 2022 dollars)	Average Price		
	New			Used			Total						
	Actual	Spare	Total	Actual	Spare	Total	Actual	Spare	Total				
Vehicles													
Collection Vehicles													
Residential Cart Solid Waste			0			0	0	0	0		N/A		
Residential Cart Recyclable Materials			0			0	0	0	0		N/A		
Residential Cart Organic Materials			0			0	0	0	0		N/A		
Commercial Cart Solid Waste			0			0	0	0	0		N/A		
Commercial Cart Recyclable Materials			0			0	0	0	0		N/A		
Commercial Cart Organic Materials			0			0	0	0	0		N/A		
Commercial Bin Solid Waste			0			0	0	0	0		N/A		
Commercial Bin Recyclable Materials			0			0	0	0	0		N/A		
Commercial Bin Organic Materials			0			0	0	0	0		N/A		
Roll-Off			0			0	0	0	0		N/A		
HHW			0			0	0	0	0		N/A		
Bulky Items/Reusable Materials			0			0	0	0	0		N/A		
Subtotal	0	0	0	0	0	0	0	0	0	\$0			
Other Vehicles													
Pickup Trucks			0			0	0	0	0		N/A		
Container Distribution			0			0	0	0	0		N/A		
Mobile Service Truck			0			0	0	0	0		N/A		
Stinger			0			0	0	0	0		N/A		
Other (specify): _____			0			0	0	0	0		N/A		
Other (specify): _____			0			0	0	0	0		N/A		
Subtotal	0	0	0	0	0	0	0	0	0	\$0			
Total Vehicle Cost									\$0				
Containers													
Carts													
Solid Waste 35-gallon			0			0	0	0	0		N/A		
Solid Waste 64-gallon			0			0	0	0	0		N/A		
Solid Waste 96-gallon			0			0	0	0	0		N/A		
Recyclable Material 32-gallon			0			0	0	0	0		N/A		
Recyclable Material 64-gallon			0			0	0	0	0		N/A		
Recyclable Material 96-gallon			0			0	0	0	0		N/A		
Organic Materials 32-gallon			0			0	0	0	0		N/A		
Organic Materials 64-gallon			0			0	0	0	0		N/A		
Organic Materials 96-gallon			0			0	0	0	0		N/A		
Subtotal	0	0	0	0	0	0	0	0	0	\$0			
Bins													
1 cubic yard			0			0	0	0	0		N/A		
1.5 cubic yards			0			0	0	0	0		N/A		
2 cubic yards			0			0	0	0	0		N/A		
3 cubic yards			0			0	0	0	0		N/A		
4 cubic yards			0			0	0	0	0		N/A		
5 cubic yards			0			0	0	0	0		N/A		
6 cubic yards			0			0	0	0	0		N/A		
Subtotal	0	0	0	0	0	0	0	0	0	\$0			
Drop Boxes													
7 cubic yards			0			0	0	0	0		N/A		
20 cubic yards			0			0	0	0	0		N/A		
30 cubic yards			0			0	0	0	0		N/A		
40 cubic yards			0			0	0	0	0		N/A		
Subtotal	0	0	0	0	0	0	0	0	0	\$0			
Foodwaste Pails			0			0	0	0	0		N/A		
Other (specify): _____			0			0	0	0	0		N/A		
Other (specify): _____			0			0	0	0	0		N/A		
Subtotal	0	0	0	0	0	0	0	0	0	\$0			
Total Container Cost									\$0				
Other													
Offices	Description												
Processing Site(s)													
Transfer Station													
Corporation Yard/Maintenance													
Container Storage Yard													
Shop Equipment													
Fueling Equipment													
Computer and Office Equipment													
Other (specify): _____													
Other (specify): _____													
Total Other Cost									\$0				
Total Capital Cost										\$0			

Summary of Proposed Costs
Proposer Name: Recology

Note to Recology: No data input required on this Form 5; costs are pulled automatically from Forms 6A through 6D.

RATE PERIOD 1 From February 1, 2021 to January 31, 2022	Residential Cart Service (Form 6A)			Commercial Cart Service (Form 6B)			Commercial Bin Service (Form 6C)			Roll-Off (Form 6D)	Other (Form 6E)		TOTAL	
	Solid Waste	Recyclable Materials	Organic Materials	Solid Waste	Recyclable Materials	Organic Materials	Solid Waste	Recyclable Materials	Organic Materials	All Material Types	Bulky Items/ Reusable Materials	Other (Specify)		
Cost of Operations Labor-Related Costs Vehicle-Related Costs Fuel Costs Other Costs Direct Depreciation Total Allocated Costs - Labor, Vehicle, Fuel & Other Total Allocated Costs - Depreciation & Start-Up Total Cost of Operations	\$742,162	\$784,524	\$584,033	\$31,167	\$153,670	\$8,456	\$527,709	\$356,854	\$186,341	\$437,884	\$194,793	\$0	\$4,007,593	
	\$110,795	\$112,831	\$86,368	\$4,653	\$22,101	\$10,962	\$65,721	\$49,145	\$26,492	\$62,231	\$29,080	\$0	\$580,379	
	\$64,228	\$69,433	\$50,838	\$2,697	\$13,600	\$736	\$44,546	\$31,119	\$15,357	\$36,076	\$16,858	\$0	\$345,489	
	\$61,820	\$62,956	\$48,190	\$2,596	\$12,332	\$1,323	\$36,670	\$27,421	\$14,782	\$34,723	\$16,226	\$0	\$319,039	
	\$192,461	\$177,682	\$136,009	\$7,327	\$34,804	\$1,969	\$103,495	\$77,392	\$41,719	\$98,000	\$34,994	\$0	\$905,853	
	\$418,319	\$418,319	\$418,319	\$31,673	\$149,698	\$173,304	\$433,558	\$323,301	\$173,304	\$358,559	\$89,640	\$0	\$2,987,993	
	\$4,944	\$4,944	\$4,944	\$324	\$1,769	\$2,048	\$5,124	\$3,821	\$2,048	\$4,237	\$1,059	\$0	\$35,311	
	\$1,594,729	\$1,630,689	\$1,328,701	\$80,487	\$387,974	\$198,798	\$1,216,823	\$869,054	\$460,042	\$1,031,711	\$382,650	\$0	\$9,181,656	
	\$604,897	\$618,537	\$503,990	\$30,530	\$147,162	\$75,406	\$461,553	\$329,641	\$174,499	\$391,338	\$145,143	\$0	\$3,482,697	
Pass-Through Costs Disposal Costs Recyclable Processing Costs Organics Processing Costs - Facility #1 Organics Processing Costs - Facility #2 C&D Processing Costs Reusable Materials Processing Costs Other Processing Costs Interest Expense Direct Lease Costs Total Allocated Costs - Lease Total Pass-Through Costs	\$340,882	\$0	\$0	\$16,319	\$0	\$0	\$278,780	\$0	\$0	\$147,323	\$0	\$0	\$783,302	
	\$0	\$168,705	\$0	\$0	\$13,110	\$0	\$0	\$75,900	\$0	\$16,560	\$0	\$0	\$274,275	
	\$0	\$0	\$712,730	\$0	\$0	\$10,322	\$0	\$0	\$0	\$88,980	\$0	\$0	\$812,031	
	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$314,704	\$302,600	\$0	\$0	\$617,304	
	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$113,325	\$0	\$0	\$113,325	
	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
	\$64,054	\$65,231	\$49,932	\$2,690	\$12,777	\$723	\$37,995	\$28,412	\$15,316	\$35,978	\$13,547	\$0	\$326,655	
	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
	\$25,200	\$25,200	\$25,200	\$1,908	\$9,018	\$10,440	\$26,118	\$19,476	\$10,440	\$21,600	\$5,400	\$0	\$180,000	
	\$430,136	\$259,136	\$787,862	\$20,917	\$34,905	\$21,485	\$342,893	\$123,788	\$340,460	\$726,365	\$18,947	\$0	\$3,106,893	
Total Costs before Cost Reimbursements*	\$2,629,762	\$2,508,361	\$2,620,552	\$131,934	\$570,041	\$295,689	\$2,021,269	\$1,322,483	\$975,001	\$2,149,414	\$546,740	\$0	\$15,771,247	
Cost Reimbursements Solid Waste Operations Fund Fee (net of disposal))	---	---	---	---	---	---	---	---	---	---	---	---	\$1,394,128	
	---	---	---	---	---	---	---	---	---	---	---	---	\$0	
Total Cost Reimbursements	---	---	---	---	---	---	---	---	---	---	---	---	\$1,394,128	
	---	---	---	---	---	---	---	---	---	---	---	---	\$17,165,375	
Total Proposed Costs														
Profit (Includes Franchise Fees) Less: Franchise Fee Net Profit Margin	---	---	---	---	---	---	---	---	---	---	---	---	\$3,482,697	
	---	---	---	---	---	---	---	---	---	---	---	---	\$1,740,683	
	---	---	---	---	---	---	---	---	---	---	---	---	\$1,742,014	
*Amounts tie to Forms 6A through 6E.														

Collection Cost Proposal
Proposer Name: Recology

City of Cupertino Future Services

Note to Recology: No data input required on Form 6; costs are pulled from Forms 6A-6E.

SUMMARY (Total Costs from Forms 6A through 6E)	Rate Period One From February 1, 2021 to January 31, 2022
---	---

Labor-Related Costs (include regular & pool personnel)	
Regular Wages	\$1,641,333
Overtime Wages	\$436,351
Holiday Wages	\$169,366
Vacation Wages	\$214,267
Sick Leave Wages	\$87,809
Workers Compensation Insurance Premiums	\$216,294
Workers Compensation Claims	\$0
Health & Welfare	\$804,688
Pension/ Retirement Benefits	\$240,121
Payroll Taxes	\$197,363
Other (Please List)	\$0
Total Labor Related-Costs	\$4,007,593
Vehicle-Related Costs (do not include depreciation)	
Tires & Tubes	\$72,824
Parts & Supplies (fluid, oil, etc.)	\$240,229
Outside Repairs	\$145,749
Taxes & Licenses	\$78,203
On-Board Computer Operational Costs	\$43,374
Other (Please List)	\$0
Total Vehicle-Related Costs	\$580,379
Fuel Costs	\$345,489
Other Costs	
Liability & Property Damage Insurance	\$245,418
Equipment Insurance	\$0
Training & Safety Programs	\$22,236
Uniforms	\$19,040
Towing	\$32,346
Total Other Costs	\$319,039
Direct Depreciation	
Container Depreciation	\$163,863
Route Vehicle Depreciation	\$724,005
Other Depreciation	\$17,985
Total Direct Depreciation	\$905,853
Allocated Costs - Labor, Vehicle, Fuel & Other Costs	
From General and Administrative (6F)	\$2,008,046
From Vehicle Maintenance (6F)	\$973,379
From Container Maintenance (6F)	\$6,569
Total Allocated Costs - Labor, Vehicle, Fuel & Other Costs	\$2,987,993
Allocated Costs - Depreciation and Start-Up Costs	
From General and Administrative (6F)	\$35,311
From Vehicle Maintenance (6F)	\$0
From Container Maintenance (6F)	\$0
Total Allocated Costs - Depreciation and Start-Up Costs	\$35,311
Total Cost of Operations	\$9,181,656
Gross Operating Ratio (% Operating Ratio; i.e. 90%):	72.5 % \$3,482,697

Collection Cost Proposal
Proposer Name: Recology

City of Cupertino Future Services

Note to Recology: No data input required on Form 6; costs are pulled from Forms 6A-6E.

SUMMARY (Total Costs from Forms 6A through 6E)		Rate Period One From February 1, 2021 to January 31, 2022
Pass-Through Costs		
Disposal Cost	\$ 45.33 /ton	\$783,302
Recyclables Processing Costs	\$ 34.50 /ton	\$274,275
Organics Processing Costs - Facility #1	\$ 88.98 /ton	\$812,031
Organics Processing Costs - Facility #2	\$ 121.04 /ton	\$617,304
C&D Processing Costs	\$ 45.33 /ton	\$113,325
Reusable Materials Handling Costs	\$ - /ton	\$0
Other Processing Costs: _____ (specify)	\$ -	\$0
Interest Expense		\$326,655
Direct Lease Costs		
Route Vehicles		\$0
Other (Please List)		\$0
Total Direct Lease Costs		\$0
Allocated Lease Costs		
From General and Administrative (6F)		\$180,000
From Vehicle Maintenance (6F)		\$0
From Container Maintenance (6F)		\$0
Total Allocated Lease Costs		\$180,000
Total Pass-Through Costs		\$3,106,893
Total Cost Before Cost Reimbursements		\$15,771,247
Cost Reimbursements to City		
Solid Waste Operations Fee	\$ 1,394,128.00	
	\$ -	
Total Reimbursements to City	\$ 1,394,128.00	
Total Proposed Cost		\$17,165,375
Gross Operating Margin		\$3,482,697
Less: Franchise Fee		\$1,740,683
Net Profit Margin		\$1,742,014

Detailed Collection Cost Proposal Information
Proposer Name: Recology

Form 6A

City of Cupertino Future Services

Note to Recology: Input data in yellow shaded areas only.

		Rate Period One From February 1, 2021 to January 31, 2022			
RESIDENTIAL CART COSTS		Recyclable			Subtotal
		Solid Waste	Materials	Organic Materials	
Labor-Related Costs (include regular & pool personnel)					
Regular Wages		\$318,665	\$324,520	\$248,408	\$891,592
Overtime Wages		\$51,386	\$78,993	\$45,159	\$175,538
Holiday Wages		\$32,882	\$33,487	\$25,633	\$92,002
Vacation Wages		\$41,600	\$42,364	\$32,428	\$116,392
Sick Leave Wages		\$17,048	\$17,361	\$13,290	\$47,699
Workers Compensation Insurance Premiums		\$41,993	\$42,765	\$32,735	\$117,494
Workers Compensation Claims					\$0
Health & Welfare		\$156,230	\$159,101	\$121,786	\$437,117
Pension/ Retirement Benefits		\$46,619	\$47,476	\$36,341	\$130,437
Payroll Taxes		\$35,737	\$38,458	\$28,253	\$102,449
Other (Please List)					\$0
Total Labor Related-Costs		\$742,162	\$784,524	\$584,033	\$2,110,719
Vehicle-Related Costs (do not include depreciation)					
Tires & Tubes		\$13,865	\$14,120	\$10,808	\$38,794
Parts & Supplies (fluid, oil, etc.)		\$45,739	\$46,579	\$35,654	\$127,972
Outside Repairs		\$27,750	\$28,260	\$21,632	\$77,641
Taxes & Licenses		\$15,183	\$15,462	\$11,836	\$42,481
On-Board Computer Operational Costs		\$8,258	\$8,410	\$6,438	\$23,106
Other (Please List)					\$0
Total Vehicle-Related Costs		\$110,795	\$112,831	\$86,368	\$309,994
Fuel Costs					
		\$64,228	\$69,433	\$50,838	\$184,499
Other Costs					
Liability & Property Damage Insurance		\$47,648	\$48,523	\$37,143	\$133,314
Equipment Insurance					\$0
Training & Safety Programs		\$4,317	\$4,396	\$3,365	\$12,079
Uniforms		\$3,697	\$3,765	\$2,882	\$10,343
Towing		\$6,158	\$6,272	\$4,801	\$17,231
Total Other Costs		\$61,820	\$62,956	\$48,190	\$172,966
Direct Depreciation					
Container Depreciation		\$31,814	\$32,398	\$24,800	\$89,012
Route Vehicle Depreciation		\$142,662	\$145,284	\$111,209	\$399,155
Other Depreciation - 24 Gallon Solid Waste Carts		\$17,985			\$17,985
Total Direct Depreciation		\$192,461	\$177,682	\$136,009	\$506,152
Allocated Costs - Labor, Vehicle, Fuel & Other Costs					
From General and Administrative (6F)		\$281,126	\$281,126	\$281,126	\$843,379
From Vehicle Maintenance (6F)		\$136,273	\$136,273	\$136,273	\$408,819
From Container Maintenance (6F)		\$920	\$920	\$920	\$2,759
Total Allocated Costs - Labor, Vehicle, Fuel & Other Costs		\$418,319	\$418,319	\$418,319	\$1,254,957
Allocated Costs - Depreciation and Start-Up Costs					
From General and Administrative (6F)		\$4,944	\$4,944	\$4,944	\$14,831
From Vehicle Maintenance (6F)		\$0	\$0	\$0	\$0
From Container Maintenance (6F)		\$0	\$0	\$0	\$0
Total Allocated Costs - Depreciation and Start-Up Costs		\$4,944	\$4,944	\$4,944	\$14,831
Total Cost of Operations		\$1,594,729	\$1,630,689	\$1,328,701	\$4,554,118
Profit (Enter % Operating Ratio; i.e. 95%):	72.5 %	\$604,897	\$618,537	\$503,990	\$1,727,424

Detailed Collection Cost Proposal Information
Proposer Name: Recology

Form 6A

City of Cupertino Future Services

Note to Recology: Input data in yellow shaded areas only.

		Rate Period One From February 1, 2021 to January 31, 2022			
RESIDENTIAL CART COSTS		Solid Waste	Recyclable Materials	Organic Materials	Subtotal
Pass-Through Costs	per ton				
Disposal Cost	\$ 45.33	\$340,882	\$0	\$0	\$340,882
Recyclables Processing Costs	\$ 34.50	\$0	\$168,705	\$0	\$168,705
Bulky Items/Reusable Materials Handling Costs	\$ -	\$0	\$0	\$0	\$0
Other Processing Costs: _____ (specify)	\$ -	\$0	\$0	\$0	\$0
Organics Processing Costs - Facility #1	\$ 88.98	\$0	\$0	\$712,730	\$712,730
Organics Processing Costs - Facility #2	\$ 121.04	\$0	\$0	\$0	\$0
C&D Processing Costs	\$ 45.33	\$0	\$0	\$0	\$0
Interest Expense		\$64,054	\$65,231	\$49,932	\$179,217
Direct Lease Costs					
Route Vehicles					\$0
Other (Please List)					\$0
Total Direct Lease Costs		\$0	\$0	\$0	\$0
Allocated Lease Costs					
From General and Administrative (6E)		\$25,200	\$25,200	\$25,200	\$75,600
From Vehicle Maintenance (6E)		\$0	\$0	\$0	\$0
From Container Maintenance (6E)		\$0	\$0	\$0	\$0
Total Allocated Lease Costs		\$25,200	\$25,200	\$25,200	\$75,600
Total Pass-Through Costs		\$430,136	\$259,136	\$787,862	\$1,477,133
Total Cost		\$2,629,762	\$2,508,361	\$2,620,552	\$7,758,675

Detailed Collection Cost Proposal Information

Form 6B

City of Cupertino Future Services

Proposer Name: Recology

Note to Recology: Input data in yellow shaded areas only.

Rate Period One From February 1, 2021 to January 31, 2022				
COMMERCIAL CART COSTS	Solid Waste	Recyclable Materials	Organic Materials	Subtotal
Labor-Related Costs (include regular & pool personnel)				
Regular Wages	\$13,382	\$63,566	\$3,596	\$80,544
Overtime Wages	\$2,158	\$15,473	\$654	\$18,285
Holiday Wages	\$1,381	\$6,559	\$371	\$8,311
Vacation Wages	\$1,747	\$8,298	\$470	\$10,515
Sick Leave Wages	\$716	\$3,401	\$192	\$4,309
Workers Compensation Insurance Premiums	\$1,764	\$8,377	\$474	\$10,614
Workers Compensation Claims				\$0
Health & Welfare	\$6,561	\$31,164	\$1,763	\$39,488
Pension/ Retirement Benefits	\$1,958	\$9,299	\$526	\$11,783
Payroll Taxes	\$1,501	\$7,533	\$409	\$9,443
Other (Please List)				\$0
Total Labor Related-Costs	\$31,167	\$153,670	\$8,456	\$193,292
Vehicle-Related Costs (do not include depreciation)				
Tires & Tubes	\$582	\$2,766	\$1,565	\$4,913
Parts & Supplies (fluid, oil, etc.)	\$1,921	\$9,124	\$5,162	\$16,207
Outside Repairs	\$1,165	\$5,535	\$3,132	\$9,833
Taxes & Licenses	\$638	\$3,029	\$171	\$3,838
On-Board Computer Operational Costs	\$347	\$1,647	\$932	\$2,926
Other (Please List)				\$0
Total Vehicle-Related Costs	\$4,653	\$22,101	\$10,962	\$37,716
Fuel Costs	\$2,697	\$13,600	\$736	\$17,034
Other Costs				
Liability & Property Damage Insurance	\$2,001	\$9,505	\$538	\$12,043
Equipment Insurance				\$0
Training & Safety Programs	\$181	\$861	\$49	\$1,091
Uniforms	\$155	\$737	\$42	\$934
Towing	\$259	\$1,228	\$695	\$2,182
Total Other Costs	\$2,596	\$12,332	\$1,323	\$16,251
Direct Depreciation				
Container Depreciation	\$1,336	\$6,346	\$359	\$8,041
Route Vehicle Depreciation	\$5,991	\$28,458	\$1,610	\$36,059
Other Depreciation				\$0
Total Direct Depreciation	\$7,327	\$34,804	\$1,969	\$44,100
Allocated Costs - Labor, Vehicle, Fuel & Other Costs				
From General and Administrative (6F)	\$21,285	\$100,603	\$116,467	\$238,355
From Vehicle Maintenance (6F)	\$10,318	\$48,766	\$56,456	\$115,540
From Container Maintenance (6F)	\$70	\$329	\$381	\$780
Total Allocated Costs - Labor, Vehicle, Fuel & Other Costs	\$31,673	\$149,698	\$173,304	\$354,675
Allocated Costs - Depreciation and Start-Up Costs				
From General and Administrative (6F)	\$374	\$1,769	\$2,048	\$4,191
From Vehicle Maintenance (6F)	\$0	\$0	\$0	\$0
From Container Maintenance (6F)	\$0	\$0	\$0	\$0
Total Allocated Costs - Depreciation and Start-Up Costs	\$374	\$1,769	\$2,048	\$4,191
Total Cost of Operations	\$80,487	\$387,974	\$198,798	\$667,259
Profit (Enter % Operating Ratio; i.e. 95%):	72.5 %	\$30,530	\$147,162	\$75,406
				\$253,098

Detailed Collection Cost Proposal Information
Proposer Name: Recology

Form 6B

City of Cupertino Future Services

Note to Recology: Input data in yellow shaded areas only.

		Rate Period One From February 1, 2021 to January 31, 2022			
COMMERCIAL CART COSTS		Solid Waste	Recyclable Materials	Organic Materials	Subtotal
Pass-Through Costs	per ton				
Disposal Cost	\$ 45.33	\$16,319	\$0	\$0	\$16,319
Recyclables Processing Costs	\$ 34.50	\$0	\$13,110	\$0	\$13,110
Bulky Items/Reusable Materials Handling Costs	\$ -	\$0	\$0	\$0	\$0
Other Processing Costs: _____ (specify)	\$ -	\$0	\$0	\$0	\$0
Organics Processing Costs - Facility #1	\$ 88.98	\$0	\$0	\$10,322	\$10,322
Organics Processing Costs - Facility #2	\$ 121.04	\$0	\$0	\$0	\$0
C&D Processing Costs	\$ 45.33	\$0	\$0	\$0	\$0
Interest Expense		\$2,690	\$12,777	\$723	\$16,190
Direct Lease Costs					
Route Vehicles					\$0
Other (Please List)					\$0
Total Direct Lease Costs		\$0	\$0	\$0	\$0
Allocated Lease Costs					
From General and Administrative (6F)		\$1,908	\$9,018	\$10,440	\$21,366
From Vehicle Maintenance (6F)		\$0	\$0	\$0	\$0
From Container Maintenance (6F)		\$0	\$0	\$0	\$0
Total Allocated Lease Costs		\$1,908	\$9,018	\$10,440	\$21,366
Total Pass-Through Costs		\$20,917	\$34,905	\$21,485	\$77,307
Total Cost		\$131,934	\$570,041	\$295,689	\$997,663

Detailed Collection Cost Proposal Information
Proposer Name: Recology

Form 6C

City of Cupertino Future Services

Note to Recology: Input data in yellow shaded areas only.				
Rate Period One From February 1, 2021 to January 31, 2022				
COMMERCIAL BIN COSTS	Solid Waste	Recyclable Materials	Organic Materials	Subtotal
Labor-Related Costs (include regular & pool personnel)				
Regular Wages	\$189,024	\$141,350	\$76,195	\$406,569
Overtime Wages	\$111,671	\$48,459	\$20,533	\$180,664
Holiday Wages	\$19,505	\$14,586	\$7,862	\$41,953
Vacation Wages	\$24,676	\$18,452	\$9,947	\$53,075
Sick Leave Wages	\$10,113	\$7,562	\$4,076	\$21,751
Workers Compensation Insurance Premiums	\$24,910	\$18,627	\$10,041	\$53,578
Workers Compensation Claims				\$0
Health & Welfare	\$92,672	\$69,299	\$37,356	\$199,327
Pension/ Retirement Benefits	\$27,654	\$20,679	\$11,147	\$59,480
Payroll Taxes	\$27,485	\$17,839	\$9,184	\$54,507
Other (Please List)				\$0
Total Labor Related-Costs	\$527,709	\$356,854	\$186,341	\$1,070,904
Vehicle-Related Costs (do not include depreciation)				
Tires & Tubes	\$8,225	\$6,150	\$3,315	\$17,690
Parts & Supplies (fluid, oil, etc.)	\$27,131	\$20,288	\$10,936	\$58,356
Outside Repairs	\$16,461	\$12,309	\$6,635	\$35,405
Taxes & Licenses	\$9,006	\$6,735	\$3,630	\$19,371
On-Board Computer Operational Costs	\$4,899	\$3,663	\$1,975	\$10,536
Other (Please List)				\$0
Total Vehicle-Related Costs	\$65,721	\$49,145	\$26,492	\$141,358
Fuel Costs	\$44,546	\$31,119	\$15,357	\$91,023
Other Costs				
Liability & Property Damage Insurance	\$28,264	\$21,135	\$11,393	\$60,792
Equipment Insurance				\$0
Training & Safety Programs	\$2,561	\$1,915	\$1,032	\$5,508
Uniforms	\$2,193	\$1,640	\$884	\$4,716
Towing	\$3,653	\$2,732	\$1,473	\$7,857
Total Other Costs	\$36,670	\$27,421	\$14,782	\$78,873
Direct Depreciation				
Container Depreciation	\$18,871	\$14,112	\$7,607	\$40,590
Route Vehicle Depreciation	\$84,624	\$63,281	\$34,112	\$182,016
Other Depreciation				\$0
Total Direct Depreciation	\$103,495	\$77,392	\$41,719	\$222,606
Allocated Costs - Labor, Vehicle, Fuel & Other Costs				
From General and Administrative (6F)	\$291,367	\$217,271	\$116,467	\$625,105
From Vehicle Maintenance (6F)	\$141,237	\$105,320	\$56,456	\$303,013
From Container Maintenance (6F)	\$953	\$711	\$381	\$2,045
Total Allocated Costs - Labor, Vehicle, Fuel & Other Costs	\$433,558	\$323,301	\$173,304	\$930,162
Allocated Costs - Depreciation and Start-Up Costs				
From General and Administrative (6F)	\$5,124	\$3,821	\$2,048	\$10,992
From Vehicle Maintenance (6F)	\$0	\$0	\$0	\$0
From Container Maintenance (6F)	\$0	\$0	\$0	\$0
Total Allocated Costs - Depreciation and Start-Up Costs	\$5,124	\$3,821	\$2,048	\$10,992
Total Cost of Operations	\$1,216,823	\$869,054	\$460,042	\$2,545,919
Profit (Enter % Operating Ratio; i.e. 95%): <u>72.5</u> %	\$461,553	\$329,641	\$174,499	\$965,693

Detailed Collection Cost Proposal Information
Proposer Name: Recology

Form 6C

City of Cupertino Future Services

Note to Recology: Input data in yellow shaded areas only.

		Rate Period One From February 1, 2021 to January 31, 2022			
COMMERCIAL BIN COSTS		Solid Waste	Recyclable Materials	Organic Materials	Subtotal
Pass-Through Costs	per ton				
Disposal Cost	\$ 45.33	\$278,780	\$0	\$0	\$278,780
Recyclables Processing Costs	\$ 34.50	\$0	\$75,900	\$0	\$75,900
Bulky Items/Reusable Materials Handling Costs	\$ -	\$0	\$0	\$0	\$0
Other Processing Costs: _____ (specify)	\$ -	\$0	\$0	\$0	\$0
Organics Processing Costs - Facility #1	\$ 88.98	\$0	\$0	\$0	\$0
Organics Processing Costs - Facility #2	\$ 121.04	\$0	\$0	\$314,704	\$314,704
C&D Processing Costs	\$ 45.33	\$0	\$0	\$0	\$0
Interest Expense		\$37,995	\$28,412	\$15,316	\$81,723
Direct Lease Costs					
Route Vehicles					\$0
Other (Please List)					\$0
Total Direct Lease Costs		\$0	\$0	\$0	\$0
Allocated Lease Costs					
From General and Administrative (6F)		\$26,118	\$19,476	\$10,440	\$56,034
From Vehicle Maintenance (6F)		\$0	\$0	\$0	\$0
From Container Maintenance (6F)		\$0	\$0	\$0	\$0
Total Allocated Lease Costs		\$26,118	\$19,476	\$10,440	\$56,034
Total Pass-Through Costs		\$342,893	\$123,788	\$25,756	\$492,437
Total Cost		\$2,021,269	\$1,322,483	\$660,297	\$4,004,049

Detailed Collection Cost Proposal Information
Proposer Name: Recology

Form 6D

City of Cupertino Future Services

Note to Recology: Input data in yellow shaded areas only.

Rate Period One	
From February 1, 2021 to January 31, 2022	
ROLL-OFF COSTS	All Material Types Subtotal
Labor-Related Costs (include regular & pool personnel)	
Regular Wages	\$178,988 \$178,988
Overtime Wages	\$48,378 \$48,378
Holiday Wages	\$18,469 \$18,469
Vacation Wages	\$23,366 \$23,366
Sick Leave Wages	\$9,576 \$9,576
Workers Compensation Insurance Premiums	\$23,587 \$23,587
Workers Compensation Claims	\$0
Health & Welfare	\$87,751 \$87,751
Pension/ Retirement Benefits	\$26,185 \$26,185
Payroll Taxes	\$21,584 \$21,584
Other (Please List)	\$0
Total Labor Related-Costs	\$437,884 \$437,884
Vehicle-Related Costs (do not include depreciation)	
Tires & Tubes	\$7,788 \$7,788
Parts & Supplies (fluid, oil, etc.)	\$25,690 \$25,690
Outside Repairs	\$15,587 \$15,587
Taxes & Licenses	\$8,528 \$8,528
On-Board Computer Operational Costs	\$4,639 \$4,639
Other (Please List)	\$0
Total Vehicle-Related Costs	\$62,231 \$62,231
Fuel Costs	\$36,076 \$36,076
Other Costs	
Liability & Property Damage Insurance	\$26,763 \$26,763
Equipment Insurance	\$0
Training & Safety Programs	\$2,425 \$2,425
Uniforms	\$2,076 \$2,076
Towing	\$3,459 \$3,459
Total Other Costs	\$34,723 \$34,723
Direct Depreciation	
Container Depreciation	\$17,869 \$17,869
Route Vehicle Depreciation	\$80,131 \$80,131
Other Depreciation	\$0
Total Direct Depreciation	\$98,000 \$98,000
Allocated Costs - Labor, Vehicle, Fuel & Other Costs	
From General and Administrative (6F)	\$240,965 \$240,965
From Vehicle Maintenance (6F)	\$116,805 \$116,805
From Container Maintenance (6F)	\$788 \$788
Total Allocated Costs - Labor, Vehicle, Fuel & Other Costs	\$358,559 \$358,559
Allocated Costs - Depreciation and Start-Up Costs	
From General and Administrative (6F)	\$4,237 \$4,237
From Vehicle Maintenance (6F)	\$0 \$0
From Container Maintenance (6F)	\$0 \$0
Total Allocated Costs - Depreciation and Start-Up Costs	\$4,237 \$4,237
Total Cost of Operations	\$1,031,711 \$1,031,711
Profit (Enter % Operating Ratio; i.e. 95%): <u>72.5</u> %	\$391,338 \$391,338

Detailed Collection Cost Proposal Information Form 6D
Proposer Name: Recology

City of Cupertino Future Services

Note to Recology: Input data in yellow shaded areas only.

Rate Period One		
From February 1, 2021 to January 31, 2022		
ROLL-OFF COSTS	All Material Types	Subtotal
Pass-Through Costs		
Disposal Cost per ton		
\$ 45.33	\$147,323	\$147,323
Recyclables Processing Costs	\$16,560	\$16,560
Bulky Items/Reusable Materials Handling Costs	\$0	\$0
Other Processing Costs: _____ (specify)	\$0	\$0
Organics Processing Costs - Facility #1	\$88,980	\$88,980
Organics Processing Costs - Facility #2	\$302,600	\$302,600
C&D Processing Costs	\$113,325	\$113,325
Interest Expense	\$35,978	\$35,978
Direct Lease Costs		
Route Vehicles		\$0
Other (Please List)		\$0
Total Direct Lease Costs	\$0	\$0
Allocated Lease Costs		
From General and Administrative (6F)	\$21,600	\$21,600
From Vehicle Maintenance (6F)	\$0	\$0
From Container Maintenance (6F)	\$0	\$0
Total Allocated Lease Costs	\$21,600	\$21,600
Total Pass-Through Costs	\$423,765	\$423,765
Total Cost	\$1,846,814	\$1,846,814

Detailed Collection Cost Proposal Information

City of Cupertino Future Services

Proposer Name: Recology

Note to Recology: Input data in yellow shaded areas only.

Rate Period One From February 1, 2021 to January 31, 2022			
OTHER COSTS	Bulky Items/ Reusable Materials	Other (Specify)	Subtotal
Labor-Related Costs (include regular & pool personnel)			
Regular Wages	\$83,639		\$83,639
Overtime Wages	\$13,487		\$13,487
Holiday Wages	\$8,631		\$8,631
Vacation Wages	\$10,919		\$10,919
Sick Leave Wages	\$4,475		\$4,475
Workers Compensation Insurance Premiums	\$11,022		\$11,022
Workers Compensation Claims			\$0
Health & Welfare	\$41,005		\$41,005
Pension/ Retirement Benefits	\$12,236		\$12,236
Payroll Taxes	\$9,380		\$9,380
Other (Please List)			\$0
Total Labor Related-Costs	\$194,793	\$0	\$194,793
Vehicle-Related Costs (do not include depreciation)			
Tires & Tubes	\$3,639		\$3,639
Parts & Supplies (fluid, oil, etc.)	\$12,005		\$12,005
Outside Repairs	\$7,283		\$7,283
Taxes & Licenses	\$3,985		\$3,985
On-Board Computer Operational Costs	\$2,168		\$2,168
Other (Please List)			\$0
Total Vehicle-Related Costs	\$29,080	\$0	\$29,080
Fuel Costs	\$16,858		\$16,858
Other Costs			
Liability & Property Damage Insurance	\$12,506		\$12,506
Equipment Insurance			\$0
Training & Safety Programs	\$1,133		\$1,133
Uniforms	\$970		\$970
Towing	\$1,616		\$1,616
Total Other Costs	\$16,226	\$0	\$16,226
Direct Depreciation			
Container Depreciation	\$8,350		\$8,350
Route Vehicle Depreciation	\$26,644		\$26,644
Other Depreciation			\$0
Total Direct Depreciation	\$34,994	\$0	\$34,994

Detailed Collection Cost Proposal Information

City of Cupertino Future Services

Proposer Name: Recology

Note to Recology: Input data in yellow shaded areas only.

		Rate Period One From February 1, 2021 to January 31, 2022		
OTHER COSTS		Bulky Items/ Reusable Materials	Other (Specify)	Subtotal
Allocated Costs - Labor, Vehicle, Fuel & Other Costs				
From General and Administrative (6F)		\$60,241	\$0	\$60,241
From Vehicle Maintenance (6F)		\$29,201	\$0	\$29,201
From Container Maintenance (6F)		\$197	\$0	\$197
Total Allocated Costs - Labor, Vehicle, Fuel & Other Costs		\$89,640	\$0	\$89,640
Allocated Costs - Depreciation and Start-Up Costs				
From General and Administrative (6F)		\$1,059	\$0	\$1,059
From Vehicle Maintenance (6F)		\$0	\$0	\$0
From Container Maintenance (6F)		\$0	\$0	\$0
Total Allocated Costs - Depreciation and Start-Up Costs		\$1,059	\$0	\$1,059
Total Cost of Operations		\$382,650	\$0	\$382,650
Profit (Enter % Operating Ratio; i.e. 95%):	72.5 %	\$145,143	\$0	\$145,143
Pass-Through Costs				
Disposal Cost	per ton \$ 45.33	\$0	\$0	\$0
Recyclables Processing Costs	\$ 34.50	\$0	\$0	\$0
Bulky Items/Reusable Materials Handling Costs	\$ -	\$0	\$0	\$0
Other Processing Costs: _____ (specify)	\$ -	\$0	\$0	\$0
Organics Processing Costs - Facility #1	\$ 88.98	\$0	\$0	\$0
Organics Processing Costs - Facility #2	\$ 121.04	\$0	\$0	\$0
C&D Processing Costs	\$ 45.33	\$0	\$0	\$0
Interest Expense		\$13,547		\$13,547
Direct Lease Costs				
Route Vehicles				\$0
Other (Please List)				\$0
Total Direct Lease Costs		\$0	\$0	\$0
Allocated Lease Costs				
From General and Administrative (6F)		\$5,400	\$0	\$5,400
From Vehicle Maintenance (6F)		\$0	\$0	\$0
From Container Maintenance (6F)		\$0	\$0	\$0
Total Allocated Lease Costs		\$5,400	\$0	\$5,400
Total Pass-Through Costs		\$18,947	\$0	\$18,947
Total Cost		\$546,740	\$0	\$546,740

Detailed Collection Cost Proposal Information
Proposer Name: Recology

City of Cupertino Future Services

Note to Recology: Input data in yellow shaded areas only.				
Rate Period One				
From February 1, 2021 to January 31, 2022				
PROPOSED ALLOCATED COST	General and Administrative	Vehicle Maintenance	Container Maintenance	Subtotal
Labor-Related Costs (include non-route personnel only)				
Regular Wages	\$569,984	\$378,845		\$948,829
Overtime Wages	\$7,056	\$107,714		\$114,770
Holiday Wages	\$16,131	\$30,990		\$47,121
Vacation Wages	\$54,287	\$39,933		\$94,220
Sick Leave Wages		\$16,003		\$16,003
Workers Compensation Insurance Premiums	\$10,052	\$42,427		\$52,479
Workers Compensation Claims				\$0
Health & Welfare	\$137,192	\$162,936		\$300,128
Pension/ Retirement Benefits	\$48,367	\$46,575		\$94,942
Payroll Taxes	\$43,120	\$43,922		\$87,042
Other (Please List)				\$0
Total Labor Related-Costs	\$886,189	\$869,343	\$0	\$1,755,533
Vehicle-Related Costs				
Tires & Tubes				\$0
Parts & Supplies (fluid, oil, etc.)		\$94,035	\$6,569	\$100,604
Taxes & Licenses				\$0
Other (Please List)				\$0
Total Vehicle-Related Costs	\$0	\$94,035	\$6,569	\$100,604
Fuel Costs				\$0
Other Costs				
Liability & Property Damage Insurance				\$0
Equipment Insurance				\$0
Rent - Truck & Container Yard	\$51,039			\$51,039
Utilities	\$20,295			\$20,295
Building Maintenance, Janitorial, Security	\$37,304			
Telephone	\$82,036			\$82,036
Postage	\$5,392			
Bank Fees	\$25,855			
Billing Services	\$26,848			
Non-vehicle Related Supplies	\$13,978			\$13,978
Non-vehicle Related Taxes & Licenses	\$31,500			\$31,500
Training & Safety Programs	\$2,354			\$2,354
Ongoing, Annual Public Education & Outreach Efforts	\$52,738			\$52,738
Uniforms				\$0
Professional Services - Accounting, Legal, Engineering	\$35,000	\$10,000		
Bad Debt	\$65,784			\$65,784
Performance Bond	\$15,200			\$15,200
Regional Accounting (GL Accounting, AR, Accounting Mgr, Controller)	\$77,087			
Regional Management (HR, Safety, Environmental, Group Mgr)	\$96,612			
Corporate Finance	\$58,289			
C2C	\$118,827			
Corporate Information Technology	\$153,225			
Corporate Environmental Compliance	\$13,105			
Corporate Human Resources	\$52,783			
Corporate Legal	\$25,160			
Corporate Administration	\$48,376			\$48,376
Travel & Meals (Most is travel for mileage reimbursements)	\$13,070			
Other (Please List)				\$0
Total Other Costs	\$1,121,857	\$10,000	\$0	\$383,300
Total Labor, Vehicle, Fuel, and Other Costs	\$2,008,046	\$973,379	\$6,569	\$2,239,436
Depreciation (non-route specific) and Start-Up Costs				
Vehicle Depreciation (non-route vehicles)				\$0
Other Depreciation				\$0
Initial Public Education & Outreach Efforts	\$18,911			\$18,911
Procurement Cost Reimbursement				\$0
Start-up Costs - 1383 Container Labeling (Year 4 to 10 recovery)	\$16,400			\$16,400
Total Depreciation and Start-Up Costs	\$35,311	\$0	\$0	\$35,311
Lease Costs				
Facility Costs: 30% of 1675 Rogers Ave Building and Property	\$180,000			\$180,000
Other Lease Costs: _____ (describe)				\$0
Total Lease Costs	\$180,000	\$0	\$0	\$180,000

Detailed Collection Cost Proposal Information
Proposer Name: Recology

City of Cupertino Future Services

		Note to Recology: Input data in yellow shaded areas only.			
		Rate Period One			
		From February 1, 2021 to January 31, 2022			
PROPOSED ALLOCATED COST		General and Administrative	Vehicle Maintenance	Container Maintenance	Subtotal
Total Costs to be Allocated		\$2,223,357	\$973,379	\$6,569	\$2,454,747
Labor, Vehicle, Fuel, & Other Costs Allocated Out	Percentage				
To Residential Cart Solid Waste (6A)	14.00%	\$281,126	\$136,273	\$920	\$418,319
To Residential Cart Recyclable Materials (6A)	14.00%	\$281,126	\$136,273	\$920	\$418,319
To Residential Cart Organic Materials (6A)	14.00%	\$281,126	\$136,273	\$920	\$418,319
To Commercial Cart Solid Waste (6B)	1.06%	\$21,285	\$10,318	\$70	\$31,673
To Commercial Cart Recyclable Materials (6B)	5.01%	\$100,603	\$48,766	\$329	\$149,698
To Commercial Cart Organic Materials (6B)	5.80%	\$116,467	\$56,456	\$381	\$173,304
To Commercial Bin Solid Waste (6C)	14.51%	\$291,367	\$141,237	\$953	\$433,558
To Commercial Bin Recyclable Materials (6C)	10.82%	\$217,271	\$105,320	\$711	\$323,301
To Commercial Bin Organic Materials (6C)	5.80%	\$116,467	\$56,456	\$381	\$173,304
To Roll-Off (6D)	12.00%	\$240,965	\$116,805	\$788	\$358,559
To HHW (6E)	0.00%	\$0	\$0	\$0	\$0
To Bulky Item Service (6E)	3.00%	\$60,241	\$29,201	\$197	\$89,640
Total Labor, Vehicle, Fuel & Other Costs Allocated Out	100.00%	\$2,008,046	\$973,379	\$6,569	\$2,987,993
Depreciation and Start-Up Costs Allocated Out					
To Residential Cart Solid Waste (6A)	14.00%	\$4,944	\$0	\$0	\$4,944
To Residential Cart Recyclable Materials (6A)	14.00%	\$4,944	\$0	\$0	\$4,944
To Residential Cart Organic Materials (6A)	14.00%	\$4,944	\$0	\$0	\$4,944
To Commercial Cart Solid Waste (6B)	1.06%	\$374	\$0	\$0	\$374
To Commercial Cart Recyclable Materials (6B)	5.01%	\$1,769	\$0	\$0	\$1,769
To Commercial Cart Organic Materials (6B)	5.80%	\$2,048	\$0	\$0	\$2,048
To Commercial Bin Solid Waste (6C)	14.51%	\$5,124	\$0	\$0	\$5,124
To Commercial Bin Recyclable Materials (6C)	10.82%	\$3,821	\$0	\$0	\$3,821
To Commercial Bin Organic Materials (6C)	5.80%	\$2,048	\$0	\$0	\$2,048
To Roll-Off (6D)	12.00%	\$4,237	\$0	\$0	\$4,237
To HHW (6E)	0.00%	\$0	\$0	\$0	\$0
To Bulky Item Service (6E)	3.00%	\$1,059	\$0	\$0	\$1,059
Total Depreciation and Start-Up Costs Allocated Out	100.00%	\$35,311	\$0	\$0	\$35,311
Lease Costs Allocated Out					
To Residential Cart Solid Waste (6A)	14.00%	\$25,200	\$0	\$0	\$25,200
To Residential Cart Recyclable Materials (6A)	14.00%	\$25,200	\$0	\$0	\$25,200
To Residential Cart Organic Materials (6A)	14.00%	\$25,200	\$0	\$0	\$25,200
To Commercial Cart Solid Waste (6B)	1.06%	\$1,908	\$0	\$0	\$1,908
To Commercial Cart Recyclable Materials (6B)	5.01%	\$9,018	\$0	\$0	\$9,018
To Commercial Cart Organic Materials (6B)	5.80%	\$10,440	\$0	\$0	\$10,440
To Commercial Bin Solid Waste (6C)	14.51%	\$26,118	\$0	\$0	\$26,118
To Commercial Bin Recyclable Materials (6C)	10.82%	\$19,476	\$0	\$0	\$19,476
To Commercial Bin Organic Materials (6C)	5.80%	\$10,440	\$0	\$0	\$10,440
To Roll-Off (6D)	12.00%	\$21,600	\$0	\$0	\$21,600
To HHW (6E)	0.00%	\$0	\$0	\$0	\$0
To Bulky Item Service (6E)	3.00%	\$5,400	\$0	\$0	\$5,400
Total Lease Costs Allocated Out	100.00%	\$180,000	\$0	\$0	\$180,000
Total Allocated Out		\$2,223,357	\$973,379	\$6,569	\$3,203,304

Disposal/Processing Cost Proposal

City of Cupertino Future Services

Proposer Name: Recology

Please provide all costs as \$/Ton effective for Rate Period One (February 1, 2021 through January 31, 2022).

Include processing residue disposal costs in "Disposal/Processing Cost"

Note to Recology: Input data in yellow shaded areas only.

Disposal/Processing Costs	Rate Period One (February 1, 2021 through January 31, 2022)					
	Solid Waste - Newby Island	Recyclable Materials - Greenwaste Recovery	Organic Materials (Facility 1) - South Valley Organics	Organic Materials (Facility 2) - Blossom Valley Organics North	C&D - Newby Island	Bulky Items/ Reusable Materials Handling
Disposal/Processing Cost (\$/ton)	\$45.33	\$34.50	\$71.50	\$90.00	\$45.33	\$0.00
Disposal/Processing Facility Regulatory Fees & Taxes (list separately)						

Total Regulatory Fees (\$/ton)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total Disposal/Processing Cost (\$/ton)	\$45.33	\$34.50	\$71.50	\$90.00	\$45.33	\$0.00
Processor Fee and Curbside Supplemental Revenues from CRV (\$/ton)						
(show as a negative value)						
Revenues from the Sale of Materials (\$/ton)						
(show as a negative value)						
Net Disposal/Processing Cost (\$/Ton)*	\$45.33	\$34.50	\$71.50	\$90.00	\$45.33	\$0.00

* If the net is a revenue, net processing cost/ton is to show as a negative amount.

Transfer Costs (If applicable)	Rate Period One (February 1, 2021 through January 31, 2022)					
	Solid Waste - Newby Island	Recyclable Materials - Greenwaste Recovery	Organic Materials (Facility 1) - South Valley Organics	Organic Materials (Facility 2) - Blossom Valley Organics North	C&D - Newby Island	Bulky Items/ Reusable Materials Handling
Transfer Station Cost (\$/Ton)**			\$16.96	\$30.52		
Transfer Station Regulatory Fees & Taxes (list separately)						
City of San Jose LEA Fee			\$0.52	\$0.52		

Total Regulatory Fees (\$/ton)	\$0.00	\$0.00	\$0.52	\$0.52	\$0.00	\$0.00
Total Transfer Cost (\$/ton)	\$0.00	\$0.00	\$17.48	\$31.04	\$0.00	\$0.00

** Transfer station fee to include all transfer facility-related costs and the long-haul transportation costs from the transfer station to the processing facility.

Total Disposal/Processing Costs	Rate Period One (February 1, 2021 through January 31, 2022)					
	Solid Waste - Newby Island	Recyclable Materials - Greenwaste Recovery	Organic Materials (Facility 1) - South Valley Organics	Organic Materials (Facility 2) - Blossom Valley Organics North	C&D - Newby Island	Bulky Items/ Reusable Materials Handling
Total Net Disposal/Processing Costs Including Transfer	\$45.33	\$34.50	\$88.98	\$121.04	\$45.33	\$0.00

Collection Vehicle Transport Costs

City of Cupertino Base Services

Proposer Name: Recology

Note to Recology: Input data in yellow shaded areas only.

	Residential Cart Collection			Multi-Family & Commercial Cart			Multi-Family & Commercial Bin			Roll-Off		Other		Average
	Solid Waste	Recyclables	Organic Materials	Solid Waste	Recyclables	Organic Materials	Solid Waste	Recyclables	Organic Materials	Roll-Off	Recyclables	Roll-Off	As Needed	As Needed
TruckType	ASL	ASL	ASL	ASL	MSL	ASL	FEL	FEL	FEL	Roll-Off	Roll-Off	Roll-Off		N/A
Collection vehicle transport rate (\$ per hour) (Total Cost-Form6/Total Hours-Form2)	\$291.70	\$291.70	\$291.70	\$291.70	\$291.70	\$291.70	\$291.70	\$291.70	\$291.70	\$291.70	\$291.70	\$291.70		\$291.70
Average tons per load (tons)	7.4	4.0	7.2	7.4	4.0	7.2	8.2	3.5	8.7	2.7	1.8	5.7		5.7

Recology: If using more than one truck type for one or more material types, copy rows 8-10 and complete

EXHIBIT G3:
INITIAL RATES FOR COLLECTION SERVICES

**Residential Rate Schedule
City of Cupertino
February 1, 2021**

Single Family Dwelling

Curbside	24 gallon	\$31.45
Curbside	32 gallon	\$33.45
Curbside	64 gallon	\$64.38
Curbside	96 gallon	\$95.30
Curbside	Add'l Cart	\$30.92
Walk-up	24 gallon	\$48.06
Walk-up	32 gallon	\$50.06
Walk-up	64 gallon	\$97.59
Walk-up	96 gallon	\$145.10
Walk-up	Add'l Cart	\$47.53

Additional Organics/YW Toter: No Charge

YW Exempt Residents Are Entitled To A 32g Organics cart: No Charge

Hillside

Roadside	24 gallon	\$51.70
Roadside	32 gallon	\$53.70
Roadside	64 gallon	\$104.82
Roadside	96 gallon	\$156.00
Roadside	Add'l Cart	\$51.17

Duplex/Multiple Units & Yardwaste Exempt

Curbside	24 gallon	\$26.69
Curbside	32 gallon	\$28.69
Curbside	64 gallon	\$54.84
Curbside	96 gallon	\$81.01
Curbside	Add'l Cart	\$26.16
Rear	24 gallon	\$40.97
Rear	32 gallon	\$42.97
Rear	64 gallon	\$83.43
Rear	96 gallon	\$123.87

Senior Citizens

Front/Back Yard	24 gallon	\$15.20
Front/Back Yard	32 gallon	\$17.20
Yard Waste Exempt	24 gallon	\$12.95
Yard Waste Exempt	32 gallon	\$14.95
Hillside	24 gallon	\$24.80
Hillside	32 gallon	\$26.80

Additional Charges

Extra Bag Tag	\$8.99
10 Bag Tags	\$85.56
Extra Can (1-Time)	\$15.49
Dirty Cart Exchange	\$35.00

24 HR Container Service

Bin By The Day	4 Yard	\$199.99
Bin By The Day	6 Yard	\$244.93
Bin By The Day	7 Yard	\$267.40

Late Charge Fee

1.2% Per Month Delinquent
(Not compounded)

Multi-Family Garbage Rate Schedule
City of Cupertino
February 1, 2021

Front Loader Containers					
1.5 CY	1XWK	\$180.23	1.5 CY	4XWK	\$720.99
1.5 CY	2XWK	\$360.51	1.5 CY	5XWK	\$901.25
1.5 CY	3XWK	\$540.74	1.5 CY	6XWK	\$1,081.46
		Extra P/U	\$55.90		
2 CY	1XWK	\$216.34	2 CY	4XWK	\$865.15
2 CY	2XWK	\$432.55	2 CY	5XWK	\$1,081.46
2 CY	3XWK	\$648.91	2 CY	6XWK	\$1,297.73
		Extra P/U	\$69.86		
3 CY	1XWK	\$288.39	3 CY	4XWK	\$1,153.59
3 CY	2XWK	\$576.77	3 CY	5XWK	\$1,441.96
3 CY	3XWK	\$865.15	3 CY	6XWK	\$1,730.34
		Extra P/U	\$76.40		
4 CY	1XWK	\$360.51	4 CY	4XWK	\$1,441.96
4 CY	2XWK	\$720.99	4 CY	5XWK	\$1,802.48
4 CY	3XWK	\$1,081.46	4 CY	6XWK	\$2,162.93
		Extra P/U	\$95.25		
6 CY	1XWK	\$504.68	6 CY	4XWK	\$2,018.74
6 CY	2XWK	\$1,009.37	6 CY	5XWK	\$2,523.43
6 CY	3XWK	\$1,514.05	6 CY	6XWK	\$3,028.13
		Extra P/U	\$132.56		
8 CY	1XWK	\$648.93	8 CY	4XWK	\$2,595.51
8 CY	2XWK	\$1,297.73	8 CY	5XWK	\$3,244.39
8CY	3XWK	\$1,946.67	8CY	6XWK	\$3,893.29
		Extra P/U	\$171.45		

Bin Pushout Service			
1XWK	\$63.47	4XWK	\$254.17
2XWK	\$127.26	5XWK	\$317.26
3XWK	\$190.54	6XWK	\$381.59

* Pushout service only applies if containers are moved more than 25ft.

Cart Pushout Service per set of 3 carts: Garbage, Recycle, Organic

1XWK	\$15.00	4XWK	\$60.00
2XWK	\$30.00	5XWK	\$75.00
3XWK	\$45.00	6XWK	\$90.00

* Pushout service only applies if containers are moved more than 25ft. Rate includes up to 50ft. More than 50ft add an addition 10% for each addition 10ft.

Key Service
 \$70.67

Special Services **\$117.81**
 Steam Clean and Re-Delivery of Bin
 (Shall be provided once per year w/o charge)
 Furnishing Chains (One Time Only)

Front Load Compactor Per Cubic Yard
 \$50.91

**Commercial Garbage Rate Schedule
City of Cupertino
February 1, 2021**

Front Loader Containers

1.5 CY	1XWK	\$180.23	1.5 CY	4XWK	\$720.99
1.5 CY	2XWK	\$360.51	1.5 CY	5XWK	\$901.25
1.5 CY	3XWK	\$540.74	1.5 CY	6XWK	\$1,081.46
		Extra P/U			\$55.90
2 CY	1XWK	\$216.34	2 CY	4XWK	\$865.15
2 CY	2XWK	\$432.55	2 CY	5XWK	\$1,081.46
2 CY	3XWK	\$648.91	2 CY	6XWK	\$1,297.73
		Extra P/U			\$69.86
3 CY	1XWK	\$288.39	3 CY	4XWK	\$1,153.59
3 CY	2XWK	\$576.77	3 CY	5XWK	\$1,441.96
3 CY	3XWK	\$865.15	3 CY	6XWK	\$1,730.34
		Extra P/U			\$76.40
4 CY	1XWK	\$360.51	4 CY	4XWK	\$1,441.96
4 CY	2XWK	\$720.99	4 CY	5XWK	\$1,802.48
4 CY	3XWK	\$1,081.46	4 CY	6XWK	\$2,162.93
		Extra P/U			\$95.25
6 CY	1XWK	\$504.68	6 CY	4XWK	\$2,018.74
6 CY	2XWK	\$1,009.37	6 CY	5XWK	\$2,523.43
6 CY	3XWK	\$1,514.05	6 CY	6XWK	\$3,028.13
		Extra P/U			\$132.56
8 CY	1XWK	\$648.93	8 CY	4XWK	\$2,595.51
8 CY	2XWK	\$1,297.73	8 CY	5XWK	\$3,244.39
8CY	3XWK	\$1,946.67	8CY	6XWK	\$3,893.29
		Extra P/U			\$171.45

Bin Pushout Service

1XWK	\$63.47	4XWK	\$254.17
2XWK	\$127.26	5XWK	\$317.26
3XWK	\$190.54	6XWK	\$381.59

* Pushout service only applies if containers are moved more than 25ft.

Cart Pushout Service per set of 3 carts: Garbage, Recycle, Organic

1XWK	\$15.00	4XWK	\$60.00
2XWK	\$30.00	5XWK	\$75.00
3XWK	\$45.00	6XWK	\$90.00

* Pushout service only applies if containers are moved more than 25ft. Rate includes up to 50ft. More than 50ft add an addition 10% for each addition 10ft.

Commercial Garbage Cart

32 gallon increments \$28.65

Key Service

\$70.67

Special Services

\$121.62

Steam Clean and Re-Delivery of Bin
(Shall be provided once per year w/o charge)
Furnishing Chains (One Time Only)

Front Load Compactor Per Cubic Yard

\$50.91

Return Trip Fee \$15.00

Commercial/Multi Family Organic Rate Schedule
City of Cupertino
February 1, 2021

Front Loader Containers

1.5 CY	1XWK	\$180.23	1.5 CY	4XWK	\$720.99
1.5 CY	2XWK	\$360.51	1.5 CY	5XWK	\$901.25
1.5 CY	3XWK	\$540.74	1.5 CY	6XWK	\$1,081.46
		Extra P/U	\$55.90		
2 CY	1XWK	\$216.34	2 CY	4XWK	\$865.15
2 CY	2XWK	\$432.55	2 CY	5XWK	\$1,081.46
2 CY	3XWK	\$648.91	2 CY	6XWK	\$1,297.73
		Extra P/U	\$69.86		
3 CY	1XWK	\$288.39	3 CY	4XWK	\$1,153.59
3 CY	2XWK	\$576.77	3 CY	5XWK	\$1,441.96
3 CY	3XWK	\$865.15	3 CY	6XWK	\$1,730.34
		Extra P/U	\$76.40		
4 CY	1XWK	\$360.51	4 CY	4XWK	\$1,441.96
4 CY	2XWK	\$720.99	4 CY	5XWK	\$1,802.48
4 CY	3XWK	\$1,081.46	4 CY	6XWK	\$2,162.93
		Extra P/U	\$95.25		
6 CY	1XWK	\$504.68	6 CY	4XWK	\$2,018.74
6 CY	2XWK	\$1,009.37	6 CY	5XWK	\$2,523.43
6 CY	3XWK	\$1,514.05	6 CY	6XWK	\$3,028.13
		Extra P/U	\$132.56		
8 CY	1XWK	\$648.93	8 CY	4XWK	\$2,595.51
8 CY	2XWK	\$1,297.73	8 CY	5XWK	\$3,244.39
8CY	3XWK	\$1,946.67	8CY	6XWK	\$3,893.29
		Extra P/U	\$171.45		

Bin Pushout Service

1XWK	\$63.47	4XWK	\$254.17
2XWK	\$127.26	5XWK	\$317.26
3XWK	\$190.54	6XWK	\$381.59

* Pushout service only applies if containers are moved more than 25ft.

Cart Pushout Service per set of 3 carts: Garbage, Recycle, Organic

1XWK	\$15.00	4XWK	\$60.00
2XWK	\$30.00	5XWK	\$75.00
3XWK	\$45.00	6XWK	\$90.00

* Pushout service only applies if containers are moved more than 25ft. Rate includes up to 50ft. More than 50ft add an addition 10% for each addition 10ft.

Organic Cart

32 gallon increments \$28.65

Key Service

\$70.67

Special Services \$121.62
 Steam Clean and Re-Delivery of Bin
 (Shall be provided once per year w/o charge)
 Furnishing Chains (One Time Only)

Organic Compactor Per Cubic Yard

\$50.91

Return Trip Fee \$15.00

Commercial/Multi Family Recycle Rate Schedule
City of Cupertino
February 1, 2021

Front Loader Containers

1.5 CY	1XWK	\$43.26	1.5 CY	4XWK	\$173.04
1.5 CY	2XWK	\$86.52	1.5 CY	5XWK	\$216.30
1.5 CY	3XWK	\$129.78	1.5 CY	6XWK	\$259.55
		Extra P/U			\$13.42
2 CY	1XWK	\$51.92	2 CY	4XWK	\$207.64
2 CY	2XWK	\$103.81	2 CY	5XWK	\$259.55
2 CY	3XWK	\$155.74	2 CY	6XWK	\$311.46
		Extra P/U			\$16.77
3 CY	1XWK	\$69.21	3 CY	4XWK	\$276.86
3 CY	2XWK	\$138.42	3 CY	5XWK	\$346.07
3 CY	3XWK	\$207.64	3 CY	6XWK	\$415.28
		Extra P/U			\$18.34
4 CY	1XWK	\$86.52	4 CY	4XWK	\$346.07
4 CY	2XWK	\$173.04	4 CY	5XWK	\$432.60
4 CY	3XWK	\$259.55	4 CY	6XWK	\$519.10
		Extra P/U			\$22.86
6 CY	1XWK	\$121.12	6 CY	4XWK	\$484.50
6 CY	2XWK	\$242.25	6 CY	5XWK	\$605.62
6 CY	3XWK	\$363.37	6 CY	6XWK	\$726.75
		Extra P/U			\$31.81
8 CY	1XWK	\$155.74	8 CY	4XWK	\$622.92
8 CY	2XWK	\$311.46	8 CY	5XWK	\$778.65
8CY	3XWK	\$467.20	8CY	6XWK	\$934.39
		Extra P/U			\$41.15

Bin Pushout Service

1XWK	\$63.47	4XWK	\$254.17
2XWK	\$127.26	5XWK	\$317.26
3XWK	\$190.54	6XWK	\$381.59

* Pushout service only applies if containers are moved more than 25ft.

Cart Pushout Service per set of 3 carts: Garbage, Recycle, Organic

1XWK	\$15.00	4XWK	\$60.00
2XWK	\$30.00	5XWK	\$75.00
3XWK	\$45.00	6XWK	\$90.00

* Pushout service only applies if containers are moved more than 25ft. Rate includes up to 50ft. More than 50ft add an addition 10% for each addition 10ft.

Recycle Cart

32 gallon increments \$6.88

Key Service

\$70.67

Special Services \$121.62

Steam Clean and Re-Delivery of Bin

(Shall be provided once per year w/o charge)

Furnishing Chains (One Time Only)

Return Trip Fee \$15.00

Debris Box Service Rate Schedule
City of Cupertino
February 1, 2021

Description	16DO	20DO	26DO	30DO	40DO
Allowed Tons	3	4	4	5	6
Base Rates	\$ 597.23	\$ 666.78	\$ 913.91	\$ 1,080.60	\$ 1,152.74
Add'l Tons	\$ 111.09	\$ 111.09	\$ 111.09	\$ 111.09	\$ 111.09
Processor	Newby	Newby	Newby	Newby	Newby

Source Separated Recycling	08DOR	08DOR	08DO	16DOR-40DOR	16DOR-40DOR
	Clean Dirt	Clean Concrete Asphalt	Mix rock, dirt & concrete	Clean Wood	Sheet Rock
Allowed Tons			6		
Haul Rate	\$ 535.05	\$ 535.05	\$ 930.44	\$ 535.05	\$ 535.05
Recycling Process Rate per ton	\$ 51.84	\$ 51.84	\$ 51.84	\$ 51.84	\$ 51.84

*Note: Source Separated Recycling Loads will
be charged the regular box rate if contaminated
or mixed*

Other Miscellaneous Rates

Description	Code	Amount
Daily Rental Rate For Boxes Beyond 7 Days	RENT	\$ 28.40
Weekly Rental Rate For Boxes Beyond 7 Days	RENT	\$ 180.50
Trip Charge For Empty Debris Box/Compactor (No Dump)	TRIP	\$ 107.01
Dry Run, Scheduled Service Bin Empty	TRIP	\$ 214.02
Relocate Container After Initial Delivery	RELOC	\$ 107.01
Same Day Cancellation (No Dump)	CANCL	\$ 71.35
Steam Clean after exchange bring back to yard	TRIP	\$ 214.02

Garbage, Organic, and Recycling Compactor Rates

Description	Amount	Processor	Dirty
Garbage Compactor Rates Per Yard Per Pull	\$ 50.35	Newby	N/A
Organic Compactor Rates Per Yard Per Pull	\$ 50.35	Recology	\$ 62.94
Mixed Recycling Compactor Rates Per Pull	\$ 484.56	GW Recovery	\$ 608.71
Mixed Recycling Compactor Rates Per Ton	\$ 75.02	GW Recovery	\$ 107.14

EXHIBIT G4:
APPROVED SUBCONTRACTORS AND AFFILIATES

EXHIBIT G4

APPROVED SUBCONTRACTORS AND AFFILIATES

In accordance with Section 3.3 of the Agreement, the City has approved the following Subcontractors and Affiliates to manage the specified services and otherwise assist Contractor in the performance of the requirements of this Agreement.

Approved Facility/Subcontractor/Affiliate	Services
GreenWaste Recovery	Recyclables Processing
Recology Blossom Valley Organics – North	Commercial/Multi-Family Organics Processing
South Valley Organics	Residential (Single-Family) Organics Processing
Toter Inc	New Cart rollout
Keith Day Trucking	Transfer of Organics from Rogers Ave. to Processing facilities; hauling of compost and mulch for City
Clean Earth	E-Waste and U-Waste Recycling
Viking Shred	Document shredding for Environmental Days
Simms Metal	White goods/metal Recycling
Safety Klean	Used Motor Oil and Filters Recycling
Sequential Recycling	Used cooking oil Recycling

This page intentionally left blank

EXHIBIT H:
MINIMUM ANTICIPATED POSITIONS

EXHIBIT H

MINIMUM ANTICIPATED POSITIONS

Positions detailed in this Exhibit H are the minimum anticipated positions needed for the provision of Recyclable Materials, Organic Materials, and Solid Waste Collection services and other related services in the City.

Table 1 represents management positions classified as salary, exempt.

Table 2 represents non-management positions classified as hourly, non-exempt.

Table 1: Management Positions

Position	Classification	FTE
General Manager	Management, Exempt	0.6
Operations Manager	Management, Exempt	0.6
Route Supervisor	Management, Exempt	1.1
Dispatcher	Management, Exempt	0.6
Container Distribution	Management, Exempt	0.6
Container Maintenance / Welder	Management, Exempt	1.1
Maintenance Supervisor	Management, Exempt	0.6
Maintenance Personnel	Management, Exempt	2.8
Office Manager	Management, Exempt	0.6
Accounting Clerk	Management, Exempt	0.6
Financial & Reporting Analyst	Management, Exempt	0.75
Customer Service Representatives	Management, Exempt	1.1
Waste Zero Specialists	Management, Exempt	2.0
Total Management Positions		12.8

Table 2: Non-Management Positions

Position	Classification	FTE
Route Personnel – Cart Solid Waste	Non-Management, Non-Exempt	4.8
Route Personnel – Cart Recyclables	Non-Management, Non-Exempt	4.9
Route Personnel – Cart Organics	Non-Management, Non-Exempt	3.7
Route Personnel – COM Cart Solid Waste	Non-Management, Non-Exempt	0.2
Route Personnel – COM Cart Recyclables	Non-Management, Non-Exempt	1.0
Route Personnel – COM Cart Organics	Non-Management, Non-Exempt	0.1
Route Personnel – COM Bin Solid Waste	Non-Management, Non-Exempt	2.8
Route Personnel – COM Bin Recyclables	Non-Management, Non-Exempt	2.1
Route Personnel – COM Bin Organic Materials	Non-Management, Non-Exempt	1.1
Route Personnel – Roll-Off	Non-Management, Non-Exempt	2.7
Route Personnel – Bulky	Non-Management, Non-Exempt	1.3
	Non-Management, Non-Exempt	
	Non-Management, Non-Exempt	
24.5		

This page intentionally left blank

EXHIBIT I:
FORM OF PERFORMANCE BOND

EXHIBIT I

FORM OF PERFORMANCE BOND

PERFORMANCE BOND Annual Form

Travelers Casualty and Surety Company of America
One Tower Square, Hartford, CT 06183

Bond No. _____

KNOW ALL BY THESE PRESENTS, That we _____,
as Principal, and Travelers Casualty and Surety Company of America, of Hartford, Connecticut, authorized to do
business in the State of _____, as Surety, are held and firmly bound unto
_____, as Obligor, in the maximum penal sum of
_____ Dollars (\$ _____), lawful money of the United States of
America, for which payment well and truly to be made we bind ourselves, our heirs, executors and assigns, jointly and
severally, firmly by this Bond.

WHEREAS, the Principal has entered, or is about to enter, into a written agreement with the Obligor entitled
_____, for the purpose of
_____ (hereinafter referred to as the Contract), which
Contract is hereby referred to and made a part hereof;

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall well and truly perform its obligations
as set forth in the Contract, then this Bond shall be void; otherwise to remain in full force and effect pursuant to its terms.

Notwithstanding anything to the contrary in the Contract, this Bond is subject to the following express conditions:

1. This Bond shall be effective for the definite period of _____ to _____ (annual period).
This Bond may be extended, at the sole option of the Surety, by continuation certificate for additional periods from
the expiry date hereof. However, neither: (a) the Surety's decision not to issue a continuation certificate, nor (b) the
failure or inability of the Principal to file a replacement bond or other security in the event the Surety exercises its
right to not renew this Bond, shall itself constitute a loss to the Obligor recoverable under this Bond or any extension
thereof.
2. The Contract has a term ending _____ ("Contract Expiration Date"). Regardless of the
number of years this Bond is in force or the number of continuation certificates issued, this Bond shall not be
extended beyond the Contract Expiration Date.
3. Regardless of the number of years this Bond is in force or the number of continuation certificates issued, the liability
of the Surety shall not be cumulative in amounts from period to period and shall in no event exceed the amount set
forth above, or as amended by rider.
4. No action, suit or proceeding shall be brought against the Surety on this instrument unless such action, suit or
proceeding is brought within one year from termination or expiration of this Bond. If the provisions of this paragraph
are prohibited by law, the minimum period of limitation available to the Surety as a defense under applicable law
shall apply.
5. Any notice made under this Bond shall be made in writing to the Surety at the following address: Travelers Casualty
and Surety Company of America, One Tower Square, Hartford, CT 06183, Attn: Bond Claim.
6. If any conflict or inconsistency exists between the Surety's obligations or undertakings as described in this Bond
and as described in the Contract, then the terms of this Bond shall prevail.

SIGNED, SEALED AND DATED this _____ day of _____, _____

By: _____
_____, Principal

Travelers Casualty and Surety Company of America

By: _____
_____, Attorney-in-Fact

S-5025D (8/19)

This page intentionally left blank

EXHIBIT J:
SB 1383 RESPONSIBILITIES

EXHIBIT J

SB 1383 RESPONSIBILITIES

The following table provides guidance regarding the allocation of broad responsibility between the Contractor and the City with regard to SB 1383 compliance. The table is based on the draft regulations issued for formal review by CalRecycle on April 20, 2020, and assumes use of the standard approach to compliance. The table is not intended to be inclusive of detailed requirements for compliance addressed in the body of the Agreement and does not relieve Contractor of or expand those specific obligations. The below table may contain terms that are specific to SB 1383 or may have capitalized terms with different meanings than this Agreement. In the event of any conflict between this exhibit on the one hand, and the body of the Agreement, any other exhibit, or SB 1383 on the other hand, the latter shall govern.

Topic/ Ref. #	SB 1383 Requirement	City Responsibility	Contractor Responsibility
Collection			
1.	Commencing January 1, 2022, provide Collection Containers to Generators that comply with color requirements when replacing Containers or by January 1, 2036, whichever comes first (§18984.7).	The City is to review, comment on, and approve Container colors.	Contractor to provide Containers to the City and its Customers that comply with SB 1383 requirements. Container colors shall be as such: green for Organic Materials; blue for Recyclable Containers; gray for Solid Waste Containers.
2.	Commencing January 1, 2022, clearly label or imprint all new Containers or lids to include language or graphic materials indicating primary materials that are accepted and rejected in each Container (§18984.8).	The City is to review, comment on, and approve Container labels.	In accordance with Section 5.6, Contractor to place City-approved labels on all new or refurbished Containers; labels should include text and/or graphic images that indicate primary materials that are accepted and primary materials that are not accepted for each Container type. Labels shall be placed on new Containers before or at time of initial Container delivery to Customer or to the City. By the end of Agreement Term, every Customer Container shall have SB 1383-compliant labels.
Contamination Monitoring			
3.	Commencing April 1, 2022, conduct Route reviews such that all Hauler Routes are inspected annually. During each Route review, inspect randomly selected Containers for contaminants and determine Organic Waste Generator compliance (Organic Waste Generators must subscribe to collection service or self-haul Organic Materials; commercial Organic Waste Generators are also required to provide color-compliant Containers to their Customers).	<p>The City is to review, comment on, and approve Route review plan and methodology provided by Contractor.</p> <p>The City is to review, comment on, and approve content and design of notices to be distributed by Contractor to noncompliant Generators.</p>	<p>Contractor shall develop a plan and methodology, to be approved by the City, for conducting annual Route reviews such that an adequate number of Containers are inspected on all Routes annually.</p> <p>The number of Containers that must be inspected per Route shall be based on guidelines provided below, as referenced in Section 18984.5. The draft regulations do not specify what an "adequate" number of Containers per Route review entails; however, Section 18984.5 determines adequacy for a different type of contamination study based on Route populations. As such, these guidelines will be utilized for Route reviews.</p>

EXHIBIT J

SB 1383 RESPONSIBILITIES

Topic/ Ref. #	SB 1383 Requirement	City Responsibility	Contractor Responsibility
	<p>If contamination is found during Route reviews or if inspected Generators are out of compliance, notify such Generators of recycling requirements (§18984.5.b; 18995.1; 18984.9).</p> <p>“Route review(s)” means a visual inspection of Containers along a Hauler Route for the purpose of determining contamination, and may include mechanical methods such as the use cameras (§18982).</p> <p>“Hauler Route” means the designated itinerary or sequence of stops for each segment of the jurisdictions collection services.</p>		<ol style="list-style-type: none"> 1. For Routes with less than 1,500 Generators the study shall include a minimum of 25 samples; 2. For Routes with 1,500-4,000 Generators the study shall include a minimum of 30 samples; 3. For Routes with 4,001-7,000 Generators the study shall include a minimum of 35 samples; 4. For Routes with more than 7,000 Generators the study shall include a minimum of 40 samples. <p>In the event that Contractor identifies contamination, Contractor shall be responsible for affixing a City-approved notice on to Customer's Containers, documenting the location or account where contamination was present.</p> <p>Contractor shall provide monthly reports to the City summarizing the results of each Route review and recording, at a minimum, each contamination location, corresponding photographic evidence, and date of Customer contamination identified.</p>

EXHIBIT J

SB 1383 RESPONSIBILITIES

Topic/ Ref. #	SB 1383 Requirement	City Responsibility	Contractor Responsibility
Enforcement & Penalties			
4.	Commencing January 1, 2022, conduct annual compliance reviews of commercial Solid Waste accounts that produce over two (2) cubic yards of Solid Waste per week, including organics waste (§18995.1.a).	<p>The City shall, if applicable, provide Contractor with a list of commercial accounts that have received City-approved organics collection waivers.</p> <p>The City shall approve format and content of all compliance reports provided by Contractor.</p> <p>The City shall receive Contractor's report, review and clarify as needed, and report to the State.</p> <p>The City shall follow-up with Contractor-indicated commercial accounts that may Back-Haul Organic Materials.</p>	<p>Annually, Contractor shall review all Commercial garbage accounts that produce over two (2) cubic yards of Solid Waste per week and that produce organics waste to ensure compliance with organics Generator requirements described in Section 18984.9.a (subscription to organics recycling service).</p> <p>Following each compliance review, Contractor shall provide the City with a report of results, including addresses, and service level information in a format accepted and approved by the City.</p> <p>Additionally, Contractor shall provide to the City, in quarterly reports, a list of Commercial Customers that may be Back-Hauling Organic Materials. The list shall include account information including addresses and service levels.</p>
5.	From January 1, 2022 through December 31, 2023, provide educational materials to regulated entities not in compliance with SB 1383, as determined by compliance review of Commercial accounts (§18995.1.a).	The City is to develop content and design of compliance notices for Customers.	Contractor shall produce and distribute City-developed compliance notices to all noncompliant Customers of Contractor annually.
6.	<p>Commencing January 1, 2022, conduct inspections of Tier One Commercial Edible Food Generators for compliance with Section 18991.3. Beginning January 1, 2024, conduct inspections of Tier Two Commercial Edible Food Generators for compliance with Sections 18991.3 (§18995.1.a.2).</p> <p><i>See Item 16 for outreach requirements related to Edible Food.</i></p>	The City and Contractor will meet and confer annually to determine how to share this inspection requirement.	The City and Contractor will meet and confer annually to determine how to share this inspection requirement.
7.	Commencing January 1, 2022, conduct inspections of Edible Food recovery	The City is to conduct inspections of Food Recovery Services and organizations.	None.

EXHIBIT J

SB 1383 RESPONSIBILITIES

Topic/ Ref. #	SB 1383 Requirement	City Responsibility	Contractor Responsibility
	<p>organizations and services for compliance with Sections 18991.5.</p> <p><i>See Item 16 for outreach requirements related to Edible Food.</i></p>		
8.	<p>Commencing January 1, 2022, investigate written Complaints received within ninety (90) days of receiving Complaint; provide method for Customer who made Complaint to determine results of Complaint; maintain records of all Complaints and responses; take enforcement action if it is determined that a violation has occurred (§18995.3).</p>	<p>The City is to investigate and maintain records of all SB 1383-related Complaints received by Contactor that have not been resolved within thirty (30) days of receiving Customer Complaint. Upon resolving the Complaint, Contractor shall notify the Customer who made the Complaint.</p> <p>From January 1, 2022 to December 31, 2023, if, upon investigation, the City discovers a violation has occurred, the City shall provide educational materials to noncompliant Customers.</p> <p>Commencing January 1, 2024, if, upon investigation, the City discovers a violation has occurred, the City shall take enforcement action against noncompliant Customers.</p>	<p>Contractor to investigate and resolve written Complaints made by Customers alleging SB 1383 violations within thirty (30) days of receiving Customer Complaint. Upon resolving the Complaint, Contractor shall notify the Customer who made the Complaint.</p> <p>From January 1, 2022 to December 31, 2023, if, upon investigation, Contractor discovers a violation has occurred, Contractor shall provide City-approved educational materials to noncompliant Customers.</p> <p>Commencing January 1, 2024, if, upon investigation, Contractor discovers a violation has occurred, Contractor shall provide the City, in monthly reports, with a list of such noncompliant Customers.</p> <p>Contractor shall maintain all compliant records, including documentation of resolution.</p> <p>Contractor to provide the City, in monthly reports, a list of Customer Complaints that have not been resolved within thirty (30) days. The Complaints list shall include Customer account information including the nature of the Complaint. Such Complaints shall be discussed during the monthly Franchise Roundtable Meeting.</p>
9.	<p>Commencing January 1, 2024, take enforcement actions, including issuing notices of violations within sixty (60) days of determining a violation has occurred, following up at least every ninety (90) days to issue further notices if compliance is not achieved, grant</p>	<p>The City is to issue penalties to noncompliant Generators based on Contractor-led inspections and monthly reports submitted by Contractor that identify noncompliant Generators.</p>	<p>Contractor to maintain records of noncompliant Generators and report via monthly reports to the City on issuance of noncompliant notices (e.g., contamination tags issued, Route review results, commercial account review).</p>

EXHIBIT J

SB 1383 RESPONSIBILITIES

Topic/ Ref. #	SB 1383 Requirement	City Responsibility	Contractor Responsibility
	<p>compliance deadline extensions if applicable, and impose penalties equivalent to or greater than those outlined in Articles 14 and 16 of SB 1383 (§18995.4).</p> <p>Impose penalties on non-compliant entities (§18997.2).</p>		
Education & Outreach			
10.	By February 1, 2022, and annually thereafter, provide Generators with information on properly separating materials, Organic Waste prevention, on-site recycling, Community Composting, methane reduction benefits, how to Recycle Organic Waste, a list of approved haulers, and information related to food recovery (§18985.1.a).	<p>The City is to develop content and design of outreach materials and distribute outreach materials to all Customers annually.</p> <p>The City is to provide outreach materials to Contractor for website posting.</p>	<p>Contractor to post City-developed educational material on its website annually or as requested by the City. Contractor shall post material on its website within one week of the City's initial request and review and make updates/changes to website on a monthly basis to ensure accuracy of information.</p> <p>Contractor to disseminate City-approved educational materials as requested by the City.</p>
11.	Translate educational materials required into any non-English language spoken by a substantial number of the public provided Organic Waste collection services by the jurisdiction (§18985.1.e).	<p>The City is to translate City-developed outreach materials and translate such materials as needed.</p> <p>The City is to provide translated outreach materials to Contractor for website posting.</p>	Contractor to post City-developed educational material that has been translated by the City on its website annually or as requested by the City. Contractor shall post material on its website within one week of the City's initial request.

EXHIBIT J

SB 1383 RESPONSIBILITIES

Topic/ Ref. #	SB 1383 Requirement	City Responsibility	Contractor Responsibility
Record Keeping & Reporting			
12.	<p>By April 1, 2022, file an initial compliance report that includes copies of adopted ordinances, items required for the annual report under Section 18994.2.b, and contact information for the responsible Party for compliance-related issues (§18994.1).</p> <p>Commencing August 1, 2022, submit an annual report relative to compliance with SB 1383; the first report is due October 1, 2022 for the period of January 1, 2022 to June 30, 2022 (§18994.2).</p>	<p>The City is to compile and submit relevant documentation for the initial compliance report and the annual report.</p> <p>The City shall compile documentation that details the City's: hauler oversight; CALGreen building standard utilization; edible food recovery program; Organic Waste recycling and edible food recovery capacity planning; and, Organic Waste product procurements.</p>	<p>No later than February 1, 2022, and within two weeks of the City request, Contractor shall supply the City with reports documenting Organic Waste collection services; contamination monitoring; education and outreach efforts; and, the monitoring and enforcement program.</p>
13.	<p>Maintain all implementation records in a central location (physical or electronic) that can be made available to or accessed by CalRecycle within ten Business Days (§18981.1, 18984.4.a, 18984.6, 18984.14, 18985.3, 18988.4, 18991.2, 18993.2, 18995.2).</p>	<p>The City is to maintain all implementation records including: ordinances, enforceable mechanisms, contracts, or agreements; waiver and exemption records; hauler program records; edible food recovery program records; and organic waste procurement records.</p>	<p>Contractor shall enter required data including documentation of organic waste collection services; contamination monitoring; education and outreach efforts; and, monitoring and enforcement into a City-designated reporting platform (e.g., Recyclist, Microsoft Excel, a database) within five (5) Business Days of any change affecting data within any required reporting category and within one (1) Business Days of notification from CalRecycle request to review implementation record.</p> <p>In the event such information is not entered into a shared electronic platform, Contractor shall convey data to the City within the required period.</p>
Organic Materials Procurement			
14.	<p>Procure a quantity of recovered organic waste that meets or exceeds the organic waste product procurement target as determined by the CalRecycle (CalRecycle will confirm and provide notice of annual procurement requirements to jurisdictions every five years) (§18993.1).</p>	<p>The City is to procure a quantity of Compost and Mulch from Contractor annually.</p> <p>The exact quantity for procurement shall be determined by the Parties.</p>	<p>Contractor to Transport Organic Materials collected from Customers to the Approved Facility.</p> <p>Contractor shall, at the City's option, procure fuels derived from organics disposal (biofuels) to power collection vehicles.</p>

EXHIBIT J

SB 1383 RESPONSIBILITIES

Topic/ Ref. #	SB 1383 Requirement	City Responsibility	Contractor Responsibility
15.	Procure Paper Products, and printing and writing paper consistent with the requirements of Section 22150-22154 of the Public Contracts Code. These Paper Products shall be Recyclable (as defined in 16 C.F.R. 260.12). Jurisdiction shall require all businesses that it purchases Paper Products and printing/writing paper from to certify minimum percentage of postconsumer material in the Paper Products (§18993.3).	The City is to update Environmentally Preferable Purchasing Policy with requirements set forth in SB 1383.	Contractor to develop or update existing Purchasing Policy to meet minimum SB 1383 paper procurement requirements.
Edible Food Recovery			
16.	Commencing January 1, 2022, annually provide Tier One and Tier Two Edible Food Generators with information about the food recovery program, Generator requirements, Food Recovery Organizations and services, and edible food source-reduction information (§18985.2).	The City is to develop and distribute annual outreach materials for Commercial Edible Food Generators businesses.	Contractor to post City-developed educational material on its website annually or as requested by the City. Contractor shall post material on its website within one week of the City's initial request and review and make updates/changes to website on a monthly basis to ensure accuracy of information.

This page intentionally left blank

EXHIBIT K:
GUARANTY AGREEMENT

EXHIBIT K

GUARANTY AGREEMENT

THIS GUARANTY (the "Guaranty") is given as of the [____] day of [____], 2020, by Recology Inc., ("Guarantor"), to the CITY OF CUPERTINO ("CITY").

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

- A. Recology South Bay (d/b/a Recology Cupertino) ("Contractor") is a corporation organized under the laws of the State of California, all of the issued and outstanding stock of which is owned by Guarantor.
- B. Guarantor is a corporation organized under the laws of the State of California.
- C. Contractor and City have negotiated a Franchise Agreement for Recyclable Materials, Organic Materials, and Solid Waste Collection, Recyclable Materials and Organic Materials Processing Services, and Transport For Disposal (such agreement, as it may be amended, modified or waived from time to time, the "Agreement"), under which Contractor is to provide specified services to City. A copy of this Agreement is attached hereto and incorporated herein by this reference.
- D. It is a requirement of the Agreement, and a condition to City's entering into the Agreement, that Guarantor guaranty Contractor's performance of the Agreement.
- E. Guarantor is providing this Guaranty to induce City to enter into the Agreement.

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

- 1. Guaranty of the Agreement.** Guarantor hereby irrevocably and unconditionally guarantees to City the complete and timely performance, satisfaction and observation by Contractor of each and every term and condition of the Agreement which Contractor is required to perform, satisfy or observe. In the event that Contractor fails to perform, satisfy or observe any of the terms or conditions of the Agreement, Guarantor will promptly and fully perform, satisfy or observe them in the place of the Contractor. Guarantor hereby guarantees prompt payment to City of each and every sum due from Contractor to City under the Agreement, as and when due from time to time, and the prompt performance of every other task and duty required to be performed by the Contractor under the Agreement.
- 2. Guarantor's Obligations Are Absolute.** The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited and, with respect to any payment obligation of Contractor under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditioned upon the genuineness, validity, regularity or enforceability of the Agreement.
- 3. Waivers and Subordination.** The Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under Section 1 hereof for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the Contractor; (2) any amendment, modification or waiver of any provision of the Agreement or the extension of its Term; (3) the actual or purported rejection of the Agreement by a trustee in bankruptcy, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (4) any waiver, extension, release or modification with respect to any of the obligations of the

EXHIBIT K

GUARANTY AGREEMENT

Agreement guaranteed hereunder or the impairment or suspension of any of City's rights or remedies against Contractor; or (5) any merger or consolidation of the Contractor with any other organization, or any sale, lease or transfer of any or all the assets of the Contractor.

The Guarantor hereby waives any and all rights, benefits and defenses under California Civil Code Sections 2809, 2815, 2819, 2845, 2849 and 2850, and all other rights permitted to be waived by Section 2856(a) including, without limitation, the right to require City to (a) proceed against Contractor, (b) proceed against or exhaust any security or collateral City may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agree that City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Contractor or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral City may hold now or hereafter hold. City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Contractor or any other guarantor or pledgor without impairing City's rights and remedies in enforcing this Guarantee.

The Guarantor hereby waives and agrees to waive at any future time at the request of City, to the extent now or then permitted by applicable law, any and all rights which the Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of the Guarantor hereunder: (a) at any time or from time to time, without notice to the Guarantor, the time for Contractor's performance of or compliance with any of its obligations under the Agreement is extended, or such performance or compliance is waived; (b) the Agreement is modified or amended in any respect; (c) any other indemnification with respect to Contractor's obligations under the Agreement or any security therefore is released or exchanged in whole or in part or otherwise dealt with; (d) any assignment of the Agreement is effected which does not require City's approval; or (e) any termination or suspension of the Agreement arising by reason of a default by Contractor.

The Guarantor hereby expressly waives diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Contractor prior to such avoidance or recovery, or (b) payment in full of any obligations then outstanding.

The Guarantor expressly subordinates and waives its rights to subrogation, reimbursement, contribution or indemnity with respect to performance by Guarantor of the obligations of Contractor guaranteed hereby, until such time as City receives payment or performance in full of all such obligations.

EXHIBIT K

GUARANTY AGREEMENT

- 4. Term.** This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed by Contractor, and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by City of any performance bond or other collateral to assure the performance of Contractor's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by City against Contractor arising out of the Agreement based on Contractor's failure to perform which has not been settled or discharged.
- 5. No Waivers by City.** No delay on the part of City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of City to take other or further action without notice or demand. No modification or waiver by City of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by City and by Guarantor, nor shall any waiver by City be effective except in the specific instance or matter for which it is given.
- 6. Attorney's Fees.** In addition to the amounts guaranteed under this Guaranty, Guarantor agrees to pay actual attorney's fees and all other costs and expenses incurred by City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.
- 7. Governing Law; Jurisdiction.** This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws rules for all purposes, including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any action brought by City to enforce this Guaranty may be brought in any court of the State of California and Guarantor consents to personal jurisdiction over it by such courts. Guarantor appoints the following person as its agent for service of process in California:
- Roxanne L. Frye
Recology Inc.
50 California Street, 24th Floor
San Francisco, CA 94111
- 8. Severability.** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity shall have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.
- 9. Binding on Successors.** This Guaranty shall inure to the benefit of City and its successors and shall be binding upon Guarantor and its successors, including a successor entity formed by a merger or consolidation, a transferee of substantially all of its assets, and its shareholders in the event of its dissolution or insolvency.

EXHIBIT K

GUARANTY AGREEMENT

10. Authority. Guarantor represents and warrants that it has the corporate power to give this guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Articles of Incorporation and by-laws, and that the person signing this Guaranty on its behalf has authority to do so.

11. Notices. Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To City: City of Cupertino
 Attention: City Manager
 10300 Torre Avenue
 Cupertino, California, 95014,

To Guarantor: Recology Inc.
 Attn: Legal Department
 50 California Street, 24th Floor
 San Francisco, CA 94111

The parties may change the address to which notice is to be sent by giving the other party notice of the change as provided in this Section.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty on the day and year first above written.

By: _____
Michael J. Sangiacomo
Chief Executive Officer

By: _____
Cary Chen
Corporate Secretary

EXHIBIT L:
DIVERSION DATA

[illegible]