

Attachment A

AGREEMENT

between the

CITY OF CUPERTINO

and

ZANKER ROAD RESOURCE MANAGEMENT, LLC

for

**SOLID WASTE CONSTRUCTION AND DEMOLITION MATERIAL
PROCESSING SERVICES**

June 2025

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**AGREEMENT
BETWEEN THE
CITY OF CUPERTINO
AND
ZANKER ROAD RESOURCE MANAGEMENT, LLC
FOR
SOLID WASTE CONSTRUCTION AND DEMOLITION MATERIAL
PROCESSING SERVICES**

This Agreement is entered into by and between City of Cupertino ("**City**") and Zanker Road Resource Management, LLC ("**Contractor**") (together, the "**Parties**") on the Effective Date.

RECITALS, DETERMINATIONS, AND FINDINGS

This Agreement is entered into with reference to the following facts, circumstances, determinations, and findings made by the Cupertino City Council:

Whereas, the City is responsible for protection of the public health, safety and the environment. City is authorized and required to provide Solid Waste handling services to their citizens under the provisions of the California Integrated Waste Management Act of 1989 ("**Act**"), which is set forth in the California Public Resources Code at Section 40000, *et seq.*, including source reduction, Recycling, Composting, and Recovery activities, and the collection, Transport, and Disposal of Solid Waste within City's boundaries subject to Solid Waste handling jurisdiction, as provided in Section 40057 of the Act.

Whereas, the City adopted the CALGreen Building Codes through adoption of City Municipal Code Section 16.72, which establishes requirements for Diversion of C&D Materials from construction and demolition projects within the City, including mandatory recordkeeping and enforcement provisions.

Whereas, through enactment of the Act, the State of California also recognizes the important health and safety consideration to long-term planning for adequate Disposal needs.

Whereas, this Agreement also advances the objectives of the federal government to encourage environmentally sound Solid Waste management pursuant to the Resource Conservation and Recovery Act of 1976 (“RCRA”), 42, U.S.C. Section 6941 *et. seq.*

Whereas, the GreenWaste Zanker Resource Recovery Facility is intended to be the designated Construction and Demolition Debris Processing Facility for Delivered Materials generated in the City.

Whereas, this Agreement helps the City achieve the following goals:

- Ensuring high quality and cost-effective Construction and Demolition Processing Services that support achieving the City's environmental and regulatory compliance goals while helping to maintain competitive customer rates.
- Establishing Service and performance standards to help assure that the City meets its obligations under law and protects and preserves the health, safety, and financial assets of its citizens; and,

- Giving the City tools to monitor Contractor’s compliance with Service terms, administer Solid Waste management programs, and enforce City rights.

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

ARTICLE 1. DEFINITIONS

Except as otherwise specified in this Agreement, capitalized terms have the meanings defined in Exhibit A, Definitions, which is attached and incorporated by reference herein.

ARTICLE 2. TERMS OF AGREEMENT

2.01 EFFECTIVE DATE

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

2.02 TERM AND EXTENSIONS

The Term of this Agreement commences on _____ (“Commencement Date”) and expires ten (10) years after the Effective Date, unless the Agreement is extended in accordance with this Section or terminated pursuant to Article 7.

At City’s sole discretion, the Term of this Agreement may be extended for up to a total of five (5) years following the expiration date shown above in this Section 2.02. Such extension may be granted in one (1) or more periods specified by City of no less than twelve (12) months in length. If City desires to exercise this option to extend the Term, City shall give Notice to the Contractor eighteen (18) months prior to the expiration date of the current Term, and such Notice shall specify the duration of the desired extension. If the Term of the Agreement is extended, Contractor may request a Rate review as provided under Section 5.04 and City and Contractor shall mutually agree on adjusted Per-Ton Rates.

2.03 SURVIVAL OF CERTAIN PROVISIONS

A. The following five provisions will survive the expiration or termination of this Agreement:

1. All representations and warranties;
2. All Indemnities;

- 65 3. Obligations to pay any due and payable monetary amounts, or claims for those amounts,
66 including Liquidated Damages, any Per-Ton Rates, and payment of any amounts accrued and
67 payable upon termination of the Agreement in accordance with Section 7.02;
- 68 4. Obligations to submit Records and any reports for periods (or portions thereof) concluded
69 prior to the expiration or termination of this Agreement; and
- 70 5. Any other rights and obligations of the Parties stated to survive the expiration or termination
71 of this Agreement.

72 **ARTICLE 3.** 73 **OBLIGATIONS OF CITY**

74 **3.01 FACILITY DESIGNATION**

75 The GreenWaste Zanker Resource Recovery Facility is the designated facility for management of
76 Delivered Materials.

77 **3.02 CITY DIRECTION OF MATERIAL**

78 The City will, at all times, direct the Collection Contractor to deliver the applicable Delivered Material(s) it
79 collects to the Contractor's Facility(ies) specified in this Agreement. The City is not obligated to physically
80 deliver any Delivered Material to the Facility(ies) or pay Contractor any Per-Ton Rates, except as provided
81 for herein.

82 **3.03 NO TONNAGE OBLIGATION OR LIMIT ON WASTE PREVENTION**

83 Neither City nor the Collection Contractor is obligated to deliver any specified quantity or composition of
84 Delivered Materials to the Facility. However, for clarity, all Construction and Demolition Materials
85 collected by Collection Contractor shall be exclusively delivered to Facility as directed under Section 3.02.

86 The City maintains programs to reduce the amount of waste intended for Disposal. It is the City's intent
87 to continue to improve, develop, and enhance existing programs as well as to implement new programs
88 and Services throughout the Term as it deems necessary to meet or exceed mandated Diversion program
89 requirements and goals established by AB 939 and subsequent federal, State, County or local legislation
90 including, but not limited to, the State's seventy-five percent (75%) Recycling goal established in AB 341,
91 the programmatic requirements of AB 1826, the requirements of SB 1383, and the Diversion requirements
92 under CALGreen. In addition, Delivered Material tonnages or composition may be affected by Extended
93 Producer Responsibility Programs established by the City, the County, the State, or other applicable
94 regulatory bodies. Contractor acknowledges that the characterization and quantity of Delivered Materials
95 that are delivered to the Facility will change over the Term and may, over time, be significantly different
96 than that as of the Commencement Date of the Agreement, but the obligation of Contractor to Accept
97 the Delivered Material will continue for the Term of the Agreement so long as it conforms to the
98 definitions and requirements of this Agreement.

99 Nothing in this Agreement shall, in any manner, prevent, penalize, or impede the City from continuing
100 programs, altering programs, or developing new programs that have the effect of reducing or increasing

the amount of Solid Waste or Delivered Materials collected and delivered to the Facility by the Collection Contractor.

ARTICLE 4. OBLIGATIONS OF CONTRACTOR

4.01 ACCEPTANCE OF DELIVERED MATERIALS; LIMITATIONS AND EXCLUSIONS; SUBCONTRACTORS

A. **Acceptance of Delivered Materials.** Contractor shall receive, Accept, and safely and lawfully Process City's Delivered Materials at the Facility in accordance with this Article 4 Obligations of Contractor and Exhibit B-1, Operations Plan, attached hereto and incorporated herein; and Applicable Law. Contractor's failure to take all actions it deems necessary to perform the Services does not relieve Contractor of its obligations to perform such act or the Services.

B. **Scope Limitations and Exclusions.** The award of this Agreement shall not preclude the categories of Recyclable Materials, Organic Materials, C&D Materials, and Solid Waste listed below from being Collected by Persons other than the Collection Contractor and Transferred, Transported, Processed, or Disposed by Persons other than the 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:

1. Self-Hauled Materials. A commercial business Owner or Resident may Dispose of Recyclable Materials, Organic Materials, Solid Waste, and C&D Materials generated in or on their own Premises with their own vehicle so long as they are in compliance with the City's Municipal Code.
2. Donated or Sold Materials. Any items which are Source Separated at any Premises by the Generator and sold or donated to other Persons, including youth, civic, or charitable organizations.
3. Edible Food Recovery. Edible Food which is Collected from a Generator by other Person(s) for the purposes of food recovery; or which is Self-Hauled by the Generator to another Person(s) 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. Contractor shall cooperate with and shall not impede, interfere, or attempt to impede or interfere with the implementation, expansion, or operation of food recovery program efforts in the City.
4. Food Scraps for Animal Feed. Food Scraps that are separated by the Generator and used by the Generator or distributed to other Person(s) for lawful use as animal feed, in accordance with 14 CCR Section 18983.1(b)(7). Food Scraps intended for animal feed may be Self-Hauled by Generator or hauled by another party.
5. Reserved.

- 136 6. Beverage Containers. Containers delivered for redemption value Recycling under the
137 California Beverage Container Recycling and Litter Reduction Act, Section 14500, et seq.
138 California Public Resources Code.
- 139 7. Materials Removed as Incidental Part of Services. Recyclable Materials, Organic Materials,
140 Solid Waste, C&D Materials, or other materials removed from a Premises by a contractor (e.g.,
141 gardener, landscaper, tree-trimming service, construction contractor, Residential clean-out
142 service) as an incidental part of the service being performed.
- 143 8. On-Site and Community Composting. Organic Materials Composted or otherwise legally
144 managed at the site where it is generated (e.g., backyard Composting, on-site anaerobic
145 digestion).
- 146 9. Used Cooking Oil, Manure, Animal Waste, and Grease. Used cooking oil; manure, animal
147 waste, remains from slaughterhouse or butcher shops, animal grease.
- 148 10. Sewage Treatment By-Product. By-products of sewage treatment, including sludge, sludge
149 ash, grit, and screenings.
- 150 11. Unpermitted Waste. Unpermitted Waste regardless of its source.
- 151 12. Excluded Waste. Excluded Waste regardless of its source.
- 152 13. Materials Generated by State and County Facilities. Materials generated by State and County
153 facilities located in the City provided that the Generator self-hauls, has arranged services with
154 other Persons, or has arranged services with the Contractor through a separate agreement.
- 155 14. Dirt. Loose soil or earth from the ground may be collected and otherwise legally handled,
156 managed, diverted, and/or disposed by other Persons.
- 157 15. Extended Producer Responsibility Programs. Materials covered by Extended Producer
158 Responsibility Programs, including but not limited to those implemented pursuant to SB54
159 may be collected and otherwise legally handled, managed, diverted, and/or disposed of by
160 other Persons.
- 161 16. Climate and Disaster Resiliency Debris. Debris generated as result of a wartime, natural,
162 physical, or other disaster that the Collection Contractor is unable to Collect and or Contractor
163 is unable to Process or Dispose within a reasonable timeframe as determined by the City or
164 that the City directs the Collection Contractor or Contractor to not Collect, Process, or Dispose
165 in accordance with Section 4.20 of this Agreement and in accordance with the Collection
166 Agreement. City reserves the right to enter into a third-party agreement to provide disaster
167 debris Collection, Processing, or Disposal services that augment those provided by the
168 Contractor or Collection Contractor.
- 169 C. **Subcontracting.** Contractor is solely responsible for management and oversight of the activities of
170 all Subcontractor(s). Contractor shall be considered to be in breach or default should the activities
171 of any Subcontractor(s) constitute a breach or Event of Default under this Agreement.

Contractor shall not engage a Subcontractor(s) for Processing Services without the prior written consent of City Representative, which may be granted in their sole discretion. As of the Effective Date of this Agreement, City has approved Contractor's use of Subcontractor(s) as proposed by Contractor and approved by City for inclusion in Exhibit B-1 Operations Plan. Following the Effective Date, if the Contractor plans to engage any Affiliate as a Subcontractor in the provision of services, Contractor shall provide City Representative with thirty (30) calendar days written notification of its plans and provide an explanation of any potential impacts related to the quality, timeliness, or cost of providing services under this Agreement. Contractor shall require that all Subcontractors file an insurance certificate with the City describing such Subcontractor's insurance coverage, and name City as an additional insured. The City Representative may waive or excuse these insurance requirements in its sole discretion. Contractor shall require that all Subcontractors comply with all material terms of this Agreement.

4.02 FACILITY SERVICE SPECIFICATIONS

A. *Reserved.*

B. C&D Materials Processing Specifications.

Contractor shall provide C&D Materials Processing Services at the Facility in accordance with the Service standards described in Section 4.19 and the following Service specifications:

1. Operating, managing, and maintaining all Facility areas in accordance with Contractor's Operations Plan contained in Exhibit B-1.
2. Providing, operating, and maintaining all equipment, rolling stock, and supplies necessary for Facility operations and environmental monitoring.
3. Operating, maintaining, and managing storm water drainage and control systems, treatment facilities, buildings, on-site roadways, utilities, and any other required Facility elements.
4. Accepting delivery of City's C&D Materials, subject to the limitations of Section 4.05.
5. Operating and maintaining the scale house and scale system and weighing City's C&D Materials in accordance with Section 4.09.
6. Directing on-site traffic to appropriate unloading areas in accordance with Section 4.08 and providing a safe working environment for Facility users, visitors and employees, including in accordance with Sections 4.10 and 4.11.
7. Safely managing the C&D Materials Accepted at the Facility, including in accordance with Section 4.11.
8. Processing C&D Materials in a manner that maximizes reuse, Recycling, Composting, and Diversion, and is deemed not to constitute landfill Disposal pursuant to 14 CCR Section 18983.1(a), which states that landfill Disposal includes final deposition of Organic Waste at a landfill or use of Organic Waste as Alternative Daily Cover (ADC) or Alternative Intermediate Cover (AIC).

- 208 9. Arranging for post-Processing of Recovered Materials and Transporting Recovered Materials
209 to the Secondary Processing facility(ies), as detailed in the Contractor's Operations Plan
210 contained in Exhibit B-1.
- 211 10. Marketing Recovered Materials in accordance with Section 4.02D, and maintaining complete
212 and accurate marketing Records, including Tonnage of material marketed, price, revenue
213 received, purchaser, and specified end-use if known.
- 214 11. Achieving a Residue level of less than or equal to twenty-five percent (25%) of the commingled
215 C&D Materials and ten percent (10%) of Source Separated C&D Materials delivered by the
216 Collection Contractor and Processed by the Contractor.
- 217 12. Maintaining a Diversion percentage of at least seventy-five percent (75%) for Mixed C&D
218 Materials and ninety percent (90%) for Source Separated C&D Materials. Contractor shall at
219 all times maintain an overall Diversion level of at least sixty five percent (65%), or other
220 percentage required under CALGreen or City's Municipal Code Chapter 16.58 and 16.72, as
221 amended, whichever is more restrictive. In the event CALGreen or other Applicable Law
222 requires a Diversion level greater than that specified in this subsection, Contractor shall
223 comply with the more restrictive Diversion target, which shall not be considered a Change in
224 Law under this Agreement. Contractor shall obtain City-approved C&D Materials diversion
225 processing certification from Third-Party C&D Materials Processing Accreditors to ensure
226 compliance with such Diversion requirements, Applicable Law, and generally accepted
227 Processing and Diversion standards. Contractor shall maintain a Third-Party C&D Materials
228 Processing Accreditor's certification for the Term of the Agreement. Contractor shall maintain
229 Records of any information or documentation required to demonstrate compliance with the
230 California Green Building Standards Code ("CALGreen Code") and with the City-approved
231 Third-Party C&D Materials Processing Accreditor requirements, and shall immediately notify
232 the City of changes to the Contractor's certification status. City may request that
233 documentation related to Contractor's certification by a Third-Party C&D Materials
234 Processing Accreditor be included in the monthly or Annual Report(s), as it pertains to the
235 Services provided under this Agreement. City shall Notify the Contractor of this request within
236 ten (10) Working Days prior to the submittal deadline of the monthly and/or Annual Report
237 where the information is to be included.
- 238 13. Transporting, Disposing of, and tracking Residue in accordance with Section 4.02.E.
- 239 14. Allocating Recovered Materials and Residue Tonnages to City versus to other Facility users, in
240 accordance with Section 4.02.E.
- 241 15. Consistently maintaining staffing levels as provided in Exhibit B.
- 242 16. Complying with Applicable Law related to the management of C&D, including, but not limited
243 to, Diversion of Organic Waste in C&D from Disposal.
- 244 C. ***Reserved***
- 245 D. **Recovered Material Marketing.**

1. Market Arrangements. Contractor shall maintain relationships with vendors, shall monitor market conditions, and shall have the ability to anticipate and react to severe market demand and fluctuations in quantity, composition, and pricing. Contractor shall use both domestic and foreign markets to maintain continued material movement and to obtain the highest market value.
2. Products Marketed. As of the Effective Date, Contractor shall market C&D Materials recovered in the following manner and commodity categories or grades: ADC, Aluminum, Asphalt, Asphalt Roofing (Recycled Asphalt Shingles), Brass, Carpet Padding, Concrete (Class II Baserock, Baserock Plus, Drain Rock, Pea Gravel), Copper, Dirt, Drywall, Ferrous Metals, Pallets, Porcelain, Process Fines, Scrap Metals, Stones and Bricks, Yard Trimmings, and Wood (Cogeneration Fuel, Mulch, Soil Amendment).
3. Highest and Best Use. Contractor's marketing strategy shall promote the highest and best use of materials providing for waste reduction, prevention, reuse, refill, repair, Recovery, and Recycling, as established by Applicable Law, and as provided in the waste management hierarchy established by AB 939 and through Extended Producer Responsibility Programs. Where practical, the marketing strategy should include, in order, preferential use of local, regional, and domestic markets for Recovered Materials.

E. Residue Tracking and Disposal.

1. Residue Tracking and Reporting. Contractor shall develop and use a method of tracking and allocating Residue in such a manner that Contractor can demonstrate its achievement of standards for Residue levels and Diversion levels specified in Section 4.02.B. The Residue level calculation method shall be reviewed and approved by City. At a minimum, Contractor shall separately track and report the following: tons diverted by product type and tons of Residue Disposed. Contractor shall report Residue levels and Diversion levels pursuant to Section 4.14.
2. Residue Disposal. Residue from the Contractor's Processing of Delivered Materials shall be Transported and Disposed of by Contractor at Disposal Facility(ies) selected by Contractor. Residue delivered for Disposal shall not include any Excluded Waste. Contractor shall pay for the Transportation and Disposal costs of all Residue.

4.03 PERMITS

- A. **Securing Permits**. Contractor will obtain and maintain at Contractor's sole cost all Permits required under Applicable Law to perform Services. Contractor will provide City proof of Permits and will demonstrate compliance with the terms and conditions of Permits promptly upon request of City. In its Annual Report or more frequently, as necessary, Contractor will inform City of any Permit-related or regulatory concerns and Contractor's plans to, and status of, securing the issuance, revision, modification, extension, or renewal of Permits. Promptly upon City direction, Contractor will provide City with copies of Permits and any applications or other correspondence that the Contractor submits in connection with securing Permits.
- B. **Complying with Permits**. Contractor will at all times provide Services in compliance with all Permits, including any mitigation measures related to the operation and maintenance of the Facility.

285 Contractor is solely responsible for paying any fines or penalties imposed for noncompliance with
286 or Violation of Permits or failure to obtain Permits.

287 **4.04 OWNERSHIP OF DELIVERED MATERIALS**

288 Once City's Delivered Materials are delivered to the Facility and received and Accepted by Contractor,
289 ownership and the right to possession of City's Delivered Materials will transfer directly from the
290 Collection Contractor or other Person designated to deliver City's Delivered Materials to Contractor. For
291 Solid Waste received at the Facility, Contractor may retain, Recycle, Process, Dispose of, and otherwise
292 use City's Solid Waste in any lawful fashion or for any lawful purpose. Both benefits and Liabilities resulting
293 from ownership and possession will accrue to Contractor.

294 **4.05 REJECTION OF UNPERMITTED AND EXCLUDED WASTE**

295 A. **Inspection.** Contractor shall use Standard Industry Practices to detect and reject Unpermitted
296 Waste and Excluded Waste in a uniform and non-discriminatory manner and will not knowingly
297 Accept Unpermitted Waste or Excluded Waste at the Facility. Contractor will comply with the
298 inspection procedure contained in its Permit requirements and in accordance with its Operations
299 Plan contained on Exhibit B-1. Contractor will promptly modify that procedure to reflect any
300 changes in Permits or Applicable Law.

301 B. **Unpermitted Wastes and Excluded Wastes Handling and Costs.** Contractor will arrange for or
302 provide handling, Transportation, and delivery to a Recycling, Processing, or Disposal Facility
303 permitted in accordance with Applicable Law of all Unpermitted Wastes or Excluded Wastes
304 detected at the Facility that are not delivered by the Collection Contractor. As between Contractor
305 and City, Contractor is solely responsible for making those arrangements or provisions and all costs
306 thereof.

307 C. **Remedies for Rejected Materials.** If Unpermitted Waste or Excluded Wastes are delivered to the
308 Facility, Contractor may reject the Unpermitted Waste or Excluded Wastes and require the
309 Person(s) bringing such Unpermitted Waste or Excluded Wastes to the Facility to remove it.
310 Contractor shall also be entitled to pursue whatever remedies, if any, it may have against Person(s)
311 bringing that Unpermitted Waste to the Facility. If Contractor identifies Unpermitted Waste or
312 Excluded Wastes delivered by Collection Contractor, the Contractor may reject it and require
313 Collection Contractor remove it. Further, City's agreement with the Collection Contractor will
314 require the Collection Contractor to collect, transport, and dispose of that Unpermitted Waste or
315 Excluded Wastes and/or to remediate any contamination resulting there from at Collection
316 Contractor's expense, but Contractor may not require City to take those actions or pay those costs.
317 Nothing in this Agreement will excuse the Contractor from the responsibility of handling
318 Unpermitted Waste or Excluded Wastes that Contractor inadvertently accepts in a lawful manner
319 and of arranging for the disposition of that Unpermitted Waste or Excluded Wastes in accordance
320 with Applicable Law and charge Collection Contractor accordingly.

321 D. **Notification.** If the Contractor rejects Unpermitted Waste or Excluded Wastes delivered by the
322 Collection Contractor, Contractor will immediately Notify the City verbally and then follow verbal
323 notifications with Notice identifying the date and time of occurrence; material type; material weight
324 or volume; characterization of material; the Contractor's reason for rejection of the delivered
325 material; and, the vehicle that delivered the material.

- E. **C&D Contamination Monitoring.** Contractor shall Notify City and the Collection Contractor when there is a consistent pattern of delivered C&D Materials with a non-C&D Materials contamination level of fifteen percent (15%) or more. The data shall include the date and time the loads were delivered, the vehicle identification numbers, photos of the contamination in the loads, and any other related information that may be useful for the Collection Contractor in identifying the types of contaminants and developing strategies to reduce contamination and to target information in the Collection Contractor's education and outreach efforts to City.

4.06 DAYS AND HOURS OF OPERATION

- A. **General.** Contractor will operate the Facility for the receipt of City's Delivered Materials in accordance with the Days and hours of operation set forth in its Permits and as specified below.

1. *Reserved.*

2. At a minimum, Contractor shall receive and Accept C&D Materials at the C&D Materials Processing Facility from Monday through Friday from 6:00 am to 4:45 pm and Saturday 8:00 am to 3:45 pm, except for Holidays.

While Contractor may increase these hours, Contractor may not reduce the hours or total number of hours for acceptance of City's Delivered Materials without the concurrence of City and Collection Contractor, unless reductions are required by a change in a Permit subsequent to the Effective Date.

4.07 EQUIPMENT AND SUPPLIES

Contractor will provide equipment, which may include: scales, truck rubble plates, excavators, front-end loaders, water trucks, Recycling plants with shredders, crushers, magnets, conveyors and sort lines, various screen types (scalping, disc, and/or trommel screens), dust control systems, and safety equipment (PPE), to operate the Facility and provide Services. Contractor will properly protect the equipment and place it in the charge of competent operators. Contractor will repair and maintain all equipment at its own cost and expense.

4.08 TRAFFIC CONTROL AND DIRECTION

- A. **General.** Contractor shall construct and maintain all roads required to Transport City's Delivered Materials from the Facility site entrance to scale house and to the actual point of unloading at the Processing area of the Facility. Contractor will direct on-site traffic to appropriate unloading areas and provide a safe working environment for Facility users, visitors, and employees. Contractor will provide necessary roadways, signs, and personnel to assist drivers to proper unloading areas. Contractor will maintain all roadways and signs at the Facility in a clean and usable condition. The Contractor will provide and maintain roadways and signs for the convenience of vehicles using the Facility and to facilitate safe and efficient traffic flow at the Facility.

- B. **Vehicle Turnaround Times.** Contractor shall use best industry practices to maintain a Maximum Vehicle Turnaround Time (MVTT) of thirty (30) minutes for Collection Contractor delivery of Delivered Materials to the Facility. Impacts to MVTT which are outside of Contractor's control, such as untarping and unloading time, shall not count towards the thirty (30) minutes. Contractor shall

have a twenty-four (24) hour period to cure this breach before Liquidated Damages will be assessed in accordance with this Section and Section 7.06.

C. **Failure to Meet Maximum Vehicle Turnaround Time.** If Contractor fails to meet after the cure period the Maximum Vehicle Turnaround Time more than five (5) times in one month, it shall pay Liquidated Damages as provided in Section 7.06 and Exhibit E.

D. **Assessment of Liquidated Damages.** The City shall provide Notice of its intent to assess liquidated damages to the Contractor within sixty (60) Days of City becoming aware of the Contractor's failure to meet the Maximum Vehicle Turnaround Time, but in no case greater than one year from the date of Contractor's failure to meet MVTT. The assessment of Liquidated Damages shall be made in accordance with Section 7.06.

E. **Turnaround Time Documentation Requirements.** On or before the Service Commencement Date, Contractor shall, at its own cost, implement and maintain a technology-based vehicle tracking system of recording inbound and outbound vehicle times. Contractor shall, at its discretion and upon City request, provide City with the opportunity to review a reasonable number of scalehouse video recordings of the inbound and outbound vehicles solely for the purpose to calculate average Maximum Vehicle Turnaround Time, if in dispute. Contractor shall make every reasonable effort to resolve disputed turnaround time issues.

4.09 SCALE OPERATION

A. **Maintenance and Operation.** Contractor will maintain at least two (2) State-certified motor vehicle scales at the Facility in accordance with Applicable Law. Contractor will link all scales to a centralized computer recording and billing system that will be compatible with Contractor's systems and account for tracking all incoming and outgoing materials. Contractor will operate those scales during Facility receiving hours established in Section 4.06. If City does not receive such from Collection Contractor or questions the authenticity, Contractor will provide City with copies of its weigh tickets within five (5) Working Days following City's reasonable request therefore.

B. **Vehicle Tare Weights.** When Collection Contractor places new vehicles into Service, Contractor will promptly weigh the new vehicle and determine its unloaded (tare) weight(s). Contractor will record tare weight, hauler name, and vehicle identification number. Within ten (10) Working Days of weighing, Contractor will provide City and Collection Contractor with a report listing vehicle tare weight information. Contractor will have the right to request re-determination of tare weights of vehicles twice each Calendar Year. If there is reasonable suspicion or evidence that tare weights are not accurate, Collection Contractor may request re-determination of tare weights, in which case Contractor will promptly re-determine tare weights for requested vehicles up to four (4) times per Calendar Year. Contractor may update tare weights (at its own initiative) more frequently.

C. **Substitute Scales.** If any scales are inoperable, being tested, or otherwise unavailable, Contractor will use Reasonable Business Efforts to weigh vehicles on the remaining operating scales. To the extent that all the scales are inoperable, being tested, or otherwise unavailable, Contractor will substitute portable scales until the permanent scales are replaced or repaired. Contractor will arrange for any inoperable scale to be repaired as soon as possible and, in any event, within seventy-two (72) hours (excluding Holidays) of the failure of the permanent scale. If repairs to the

permanent scale are projected to take more than twelve (12) hours, Contractor will immediately obtain a temporary substitute scale(s).

- D. **Estimates.** Pending substitution of portable scales or during power outages, Contractor will estimate the Tonnage of City's Delivered Materials delivered to the Facility by utilizing the arithmetic average of each vehicle's recorded Tons of the Delivered Materials delivered on its preceding three (3) deliveries, on the same Day of the week, to the Facility.

All information required by Section 4.09.G will continue to be recorded for each delivery of Delivered Materials to the Facility and each Transported load of Delivered Materials during any period the scales are out of Service.

- E. **Testing.** Contractor will test and calibrate all scales in accordance with Applicable Law, but at least every twelve (12) months. Upon City reasonable request, Contractor will promptly provide City with copies of test results. Contractor will further test and calibrate any or all scales within three (3) Working Days of City direction. If test results indicate that the scale or scales complied with Applicable Law, City will reimburse Contractor the Direct Costs of the tests. If the test results indicate that the scale or scales did not comply with Applicable Law, Contractor will bear the costs thereof and Contractor will at its own cost adjust and correct, consistent with the results of that test, all weight measurements recorded and Per-Ton Rates calculated, charged, and paid, as the case may be, from the date of the test.

- F. **Weighing Standards and Procedures.** Contractor will use the Facility's entry scale(s) located at the scale house to weigh vehicles and charge Per-Ton Rates. Contractor scale house personnel will be responsible for inspecting the Solid Waste delivered to the Facility. Contractor will charge the Per-Ton Rates based on the Tonnage of City's Delivered Materials delivered by the Collection Contractor to the Facility. Contractor will weigh and record inbound weights of all Collection Contractor's vehicles when the vehicles arrive at the Facility and weigh and record outbound weights of vehicles for which Contractor does not maintain tare weight information. Contractor will provide each driver a receipt showing the date, time, and quantity of City's Delivered Materials that the vehicle delivered to the Facility and the Per-Ton Rate charged therefore.

- G. **Records.** Contractor will maintain scale Records and reports that provide information including date of receipt, inbound time, inbound and outbound weights of vehicles, vehicle identification number, jurisdiction of origin of materials received, type of material, hauler identification and/or classification, type, weight, and destination of outbound materials.

4.10 PERSONNEL

Contractor will engage, train, and maintain qualified and competent employees, including managerial, supervisory, clerical, maintenance, and operating personnel, in numbers necessary and sufficient for operation of the Facility and to perform Services.

4.11 SAFETY

The Contractor will perform all Services in a safe manner, in accordance with Applicable Law and insurance requirements provided in Article 6.

4.12 ALTERNATIVE FACILITY(IES)

- A. **Alternative Facility for Reasons other than Uncontrollable Circumstances.** If Contractor does not Process City's Delivered Materials at the Facility for reasons other than Uncontrollable Circumstances, then following City approval given in City's sole discretion, Contractor will: (i) receive, Accept, and Process City's Delivered Materials at another facility owned by it or an Affiliate at a price not to exceed the Per-Ton Rate in effect under this Agreement and pay City for any additional material Transportation costs incurred by City or Collection Contractor in delivering City's Delivered Materials to the other facility, or (ii) arrange for City's Delivered Materials to be Processed at another facility not Owned by it or an Affiliate, in which case Contractor will pay any difference in the per-ton rate charged at that Processing location compared to the Per-Ton Rate plus any additional Transport costs incurred by City or Collection Contractor in delivering the all tons of Delivered Materials to the Processing facility.
- B. **Alternative Facility for Uncontrollable Circumstances.** If Contractor does not Process City's Delivered Materials at the Facility due to Uncontrollable Circumstances, then promptly upon City direction Contractor will, to the extent it is legally able to do so in accordance with Applicable Law, receive, Accept, and Process Delivered Materials at another Processing facility owned by it or an Affiliate at a per-ton rate not to exceed the Per-Ton Rate in effect under this Agreement. Contractor is not obligated to pay for any additional Transport costs incurred by City or Collection Contractor in delivering City's Delivered Materials to the other facility. If City does not so direct Contractor, City may in its sole reasonable discretion terminate this Agreement as provided in accordance with Section 7.02 and 8.12.
- C. **Alternative Facility(ies).** Contractor has proposed and City has approved use of the Alternative Facility(ies) specified in Exhibit A. Contractor is solely responsible for ensuring continued availability of City-approved Alternative Facility(ies) throughout the Term.

4.13 INVOICING AND MONTHLY REPORT

On or before the fifteenth (15th) Day of each month, Contractor shall invoice or otherwise charge Collection Contractor in amounts equal to the then-current Per-Ton Rate pursuant to Article 5 multiplied by Tonnages of City's Solid Waste delivered by the Collection Contractor to the Facility during the previous month. Contractor will simultaneously provide the City a copy of that invoice for the purpose of review before payment. Invoices will only be for tons collected as a result of services covered by the City's agreement with the Collection Contractor and shall not include tons collected from schools, unincorporated areas or any other generators receiving services from the Collection Contractor under separate agreements. Contractor shall work with Collection Contractor and Approved Facility(ies) to determine methodology to ensure correct invoicing. Invoices will be in a form satisfactory to the Collection Contractor, subject to City approval. All undisputed amounts shall be payable by Collection Contractor within thirty (30) Days of receipt of the invoice. For example, for services provided in July, Contractor will invoice Collection Contractor on or before August 15 and payment will be due and payable by Collection Contractor on or before September 15. The Collection Contractor shall, within fifteen (15) Days of receipt of invoice, identify any disputed charges and communicate these to Contractor. Contractor may deliver to Collection Contractor, with a copy to the City a Notice of late payment for a given monthly invoice thirty-five (35) Days after the date of generation of the invoice. Contractor's invoices shall be deemed delinquent if Collection Contractor has not paid within sixty (60) Days of the date of the Notice of late payment. Thereafter, Contractor may suspend receipt and Acceptance of City's Solid Waste deliveries

from the Collection Contractor until the delinquent invoice(s) are paid in full excluding disputed amounts. The delinquent invoice shall bear interest on the unpaid balance at a rate not to exceed one and one-third percent (1 1/3%) per month.

Along with its monthly invoice, Contractor shall provide a report to Collection Contractor, with a copy to the City presenting daily Tonnage received from Collection Contractor by material type, the actual average monthly vehicle Turnaround Time (determined in accordance with Section 4.08), and the number of loads of City Solid Waste in which the actual Turnaround Time was in excess of the Maximum Vehicle Turnaround Time. The City Representative may at any time request changes to Contractor's monthly report format and/or content, and Contractor shall not unreasonably deny such requests.

4.14 REPORTING

A. **General.** Contractor will submit an Annual Report described in this Section no later than forty-five (45) Days after the end of each Rate Period. City shall have the right to inspect all documents upon which the representations contained in said report are based. If Contractor does not submit the Annual Report by the due date, it will pay Liquidated Damages as provided in Section 7.06 and Exhibit E.

If City identifies a material error in an Annual Report or omission of required information that is not corrected after following the process below, City may assess Liquidated Damages in accordance with Section 7.06 and Exhibit E.

If the Contractor identifies an error in an Annual Report it submitted to the City, Contractor shall Notify the City of the error and submit a corrected Annual Report within fifteen (15) Days of the Notice. City agrees to waive Liquidated Damages in the event Contractor self-identifies an error and submits the corrected Annual Report within fifteen (15) Days of Contractor's Notice to the City. If Contractor is late in submitting the corrected Annual Report, the City may assess Liquidated Damages for the late report as provided in Section 7.06 and Exhibit E.

B. **Report Format.** Contractor shall propose Annual Report formats for review and approval by City. City's approval shall not be unreasonably withheld. The City Representative may at any time review and request changes to Contractor's report formats and content, and Contractor shall not unreasonably deny such requests.

Contractor shall submit (via mail and/or e-mail at the City's option) all reports to the City's Representative.

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

C. **Report Content.** Annual reports shall, at a minimum, include the following:

1. Total number of vehicle loads delivered by Collection Contractor vehicles to the Facility for each month in the Rate Period and in total for the most-recently-completed Rate Period.

2. Totals Tons for all vehicle loads delivered by Collection Contractor vehicles to the Facility for each month in the Rate Period and in total for the most-recently-completed Rate Period.

- 522 3. Average Tons per vehicle load delivered by Collection Contractor to the Facility for the most-
523 recently-completed Rate Period.
- 524 4. Date, time, route number, Collection Contractor truck number, and reason for Contractor
525 rejection of any delivered vehicle loads for each month in the Rate Period and in total for the
526 Rate Period.
- 527 5. Tons of material Processed at the Facility for the most-recently-completed Rate Period.
- 528 6. For C&D Materials Processing, the Tons of Delivered Material Diverted at the Facility and
529 Diversion rate for each month in the Rate Period and in total for the Rate Period, listed
530 separately by Recovered Material type. Contractor shall separately report the Tons and
531 Diversion rate for commingled C&D Materials and Source Separated C&D Materials, in
532 addition to overall Diversion rate, in accordance with Section 4.02.B.
- 533 7. Annual Tonnage of Solid Waste Disposed that is not generated within the City's boundaries or
534 generated by organizations with separate waste collection agreements (e.g. schools) within
535 City's boundaries.
- 536 8. Total Annual Residue, and Contractor's allocation of Residue to the City as provided in Section
537 4.02E.
- 538 9. Documentation that Contractor paid all Government Fees and taxes in accordance with
539 Sections 5.05 and 5.06.
- 540 10. List of any Violations received by the Facility during the Rate Period.
- 541 11. Facility capacity status report that identifies the remaining permitted capacity, the aggregate
542 capacity committed to other entities through Contractor's contracts, and the available,
543 uncommitted capacity, and the estimated remaining years of Facility capacity.
- 544 12. Any relevant information related to Extended Producer Responsibility programs as specified in
545 Section 4.22E to be reported to the City.
- 546 13. Other relevant information including, but not limited to, a description of any advances in
547 environmental mitigation measures; any advanced technologies utilized in the course of
548 business; any pilot programs which test advanced technologies; any new third-party
549 certifications for Diversion or other Facility standards; and report on any recent, or pending
550 changes in Facility Permits.

551 **4.15 DUE DILIGENCE**

552 Contractor acknowledges that waste management is a public health and safety concern. It agrees that it
553 will exercise due diligence in performing Service.

4.16 RESERVED

4.17 RIGHT TO ENTER FACILITY AND OBSERVE OPERATIONS

The City and its designated representative(s) may enter, observe, and inspect the Facility accompanied by Facility manager(s) at any time during Facility operations and meet with the Facility manager(s) or their representatives upon at least seventy-two (72) hours advance notice, provided that City and its representatives comply with Contractor's reasonable safety and security rules and do not interfere with the work of the Contractor or its Subcontractors.

4.18 RESERVED

4.19 SERVICE STANDARDS

Contractor will perform Services in accordance with Applicable Law, Standard Industry Practice, and specification and other requirements of this Agreement.

4.20 CLIMATE AND DISASTER RESILIENCY

A. **Climate and Disaster Resiliency Planning.** No less than ninety (90) calendar days prior to the Commencement Date, the Parties shall meet to discuss development of a Climate and Disaster Response Plan to address the role of the Contractor in addressing City's disaster debris management needs related to wartime, natural, physical, or other disaster in, or proximate to the City resulting in the declaration of a State of Emergency by the City Manager, or City Council, or by the Governor, County Board of Supervisors, County Health Office, or County Sheriff.

B. **Disaster Response Protocol.** The Parties shall develop and finalize a Disaster Response Plan prior to the Commencement Date that identifies specific communication and logistical actions, and such other coordination between the Parties and internal to each Party such that Contractor assistance can occur immediately following City declaration of an emergency. The Climate and Disaster Response Plan to be developed by the Parties as provided in this Section shall be included in the Agreement as Exhibit B-2. The Parties shall review the Protocol no less than annually and revise as warranted.

C. **Essential Service.** Contractor acknowledges that it provides an essential service, and that while provision of Disposal service during or following a disaster may be affected by impacts to facilities, equipment, and/or public infrastructure, the Contractor is obligated to take all measures reasonably necessary to provide such service in a timely and effective manner in compliance with this Agreement, Section 8.12.A. notwithstanding. Such measures may include, but are not limited to, a change in Approved Facility(ies) and/or Alternative Facility(ies).

D. **Availability of Contractor's Personnel and Equipment.** In the event of a declaration of an emergency as provided in subsection A., Contractor shall provide, upon City request, reasonable access to equipment, vehicles, and/or personnel normally performing services under this Agreement, for use by the Contractor in conducting emergency operations within the City. These emergency services shall be performed in consultation with the City Representative to ensure appropriate prioritization of services. Neither the Collection Contractor nor the City shall be

required to compensate Contractor for the Contractor's provision of equipment, vehicles, or personnel normally performing services under this Agreement when made available during a declaration of emergency for the Contractor's use in excess of what is otherwise payable to the Contractor pursuant to this Agreement, including but not limited to 4.20.E. below and Article 5.

E. **Contractor Reimbursement for Use of Additional Resources.** In the event of a declaration of an emergency, should the Contractor provide, upon City request, additional equipment, vehicles, and/or personnel beyond that normally performing services under this Agreement, for use by the Contractor in conducting emergency operations under City direction, the Contractor may submit to the City detailed records of specific, additional, and reasonable costs and expenses borne by the Contractor in providing such additional resources. The City shall reimburse the Contractor for such documented, reasonable expenses within ninety (90) Days after the City receives State and/or Federal emergency agency reimbursement specific to these expenses. Should such State and/or Federal reimbursement not occur within five hundred and forty (540) Days after the Contractor's complete submission as verified by the City, Contractor may seek a change in Contractor Compensation under the terms of this Agreement. The Contractor shall promptly cooperate with the City, State and/or Federal reporting and documentation requirements related to a request for reimbursement. The Contractor shall further comply with all applicable Federal, State, or local funding and accounting requirements that may apply to expenses that will be reimbursed upon notice of the same from the City.

F. **Disaster Waivers.** In the event of a disaster, the City may grant the Contractor a waiver of some or all permit, Processing and/or Disposal requirements under this Agreement and 14 CCR, Division 7, Chapter 12, Article 3 in the disaster-affected areas for the duration of the waiver, provided that such waiver has been approved by CalRecycle. Any resulting changes in Processing requirements shall be addressed as a change in scope in accordance with Section 4.23.

4.21 GENERATION, CHARACTERIZATION, AND PILOT STUDIES

The Contractor acknowledges that the City, CalRecycle, other governmental agencies, or Extended Producer Responsibility Programs may wish to perform and/or participate in periodic material generation or characterization studies or pilot programs related to materials covered under this Agreement. The Contractor agrees to reasonably participate and cooperate with the City and its agents and to perform studies and data collection exercises, as reasonably needed, to determine weights, volumes and composition of materials generated and/or Disposed. If the City requires Contractor to participate in such a study or program, Contractor and the City shall mutually agree on the scope of services to be provided by Contractor and the change in Contractor Compensation, if any, that the City will pay to Contractor specifically for such participation. In any event, Contractor shall permit and in no way interfere with, except as to compliance with Applicable Law and safety rules at its Facility, the handling of the subject materials by other Persons for such purposes.

4.22 EXTENDED PRODUCER RESPONSIBILITY PROGRAMS

A. **General.** The City and the Contractor acknowledge that the requirements under the existing Extended Producer Responsibility Programs (including, but not limited to, AB 1201, SB 1383, SB 54, and SB 343) may be applicable to the services provided by the Contractor under this Agreement, and that additional or amended Extended Producer Responsibility Programs may be established in the future. The Contractor further acknowledges that, because the Facility accepts materials from

the public that may be regulated by an Extended Producer Responsibility Program, the Contractor may be uniquely positioned to operate or participate in such programs.

- B. **Change in Scope.** The City may require Contractor's compliance with, and participation in, existing and/or new Extended Producer Responsibility Programs that may include modification to Collection Contractor's allowable materials or Contractor implementation of drop-off program(s) at the Facility, to the extent that doing so is reasonably appropriate and does not violate the permits of the subject Facility.

Any and all such City requests and/or requirements related to any Extended Producer Responsibility Program shall be treated as a change in scope and shall not be treated as a Change in Law; provided, however, that the Contractor shall be expressly precluded from requesting an Extraordinary Rate Adjustment for a change in scope if the Contractor is compensated, in whole or in part, for Processing, Recovery, and/or Diversion cost associated with such participation. Additionally, the Contractor shall be expressly precluded from requesting any Extraordinary Rate Adjustment, as described in this Section, for any materials Contractor represented it was already Recovering and Diverting.

- C. **City Right to Solicit Proposals.** The City may, from time-to-time, request that the Contractor initiate or participate in an Extended Producer Responsibility Program; provided, however, that the Contractor acknowledges and agrees that the City is under no obligation to request any such proposal from the Contractor. Furthermore, the Contractor acknowledges and agrees that, at any time during the Term of this Agreement, the City may solicit proposals from other Persons related to Extended Producer Responsibility Programs and may permit other Persons besides Contractor to provide such services, as provided for in Section 4.01B.15 and that nothing herein shall prevent the City from also soliciting cost and operating information from other Persons in order to inform the City's evaluation of any Contractor-provided proposal.

- D. **City Requested Proposal.** If the City requests an Extended Producer Responsibility Program proposal from Contractor under this Section, the Contractor shall be required seek out and coordinate with the applicable Stewardship Organization designated for the applicable program and shall describe such partnership in its proposal; these requirements are in addition to the requirements provided in Section 4.23. The City's written request for a proposal may also require additional and/or specific information relating to the Extended Producer Responsibility Program, including such information determined by the City Representative (at the City Representative's sole discretion) to be reasonably necessary. The City shall review the proposal and may request additional supporting documentation, calculations, or other information necessary to evaluate the Contractor's proposal for reasonableness and to evaluate Contractor's ability to comply with the requirements of the Extended Producer Responsibility Program.

As such, Contractor shall, by default, accept the City's request to enact the Extended Producer Responsibility program, unless the Contractor can demonstrate significant barriers that would make providing such services impracticable or infeasible. The Contractor shall express any objections or concerns during the meet-and-confer period and Contractor shall provide substantial evidence of such barriers in Contractor's proposal. Such information will be further reviewed by the City.

- E. **Record Keeping and Reporting.** The Contractor acknowledges that, as part of the services provided under this Agreement, the Contractor's participation in any Extended Producer Responsibility

Program may impact the City, subscribers to Collection services, City, and other City service providers. As such, regardless of whether the Contractor is specifically contracted under this Agreement to provide any such Extended Producer Responsibility Programs under this Agreement, the Contractor acknowledges and agrees it has obligations to the City, nonetheless.

Throughout the Term of this Agreement, the Contractor shall maintain records of all funding or other resources the Contractor receives directly or indirectly through an Extended Producer Responsibility Program. The Contractor shall inform and report to the City as part of Contractor's obligations under Section 4.14C and shall calculate and demonstrate the dollar amount that can be attributed to services provided under this Agreement. Any cost savings identified shall be remitted to the City as either a direct payment sent to the City within thirty (30) Days after Contractor's receipt of funds or as a reduction to the Contractor's Per-Ton Rate in accordance with Article 5, at the City Representative's sole discretion. The Contractor shall include copies of invoices or receipts with the applicable Stewardship Organization with its payment or Tipping Fee Application, as appropriate, regardless of whether the City is aware such funding or other resources have been received by the Contractor.

The Contractor shall also maintain all operational and financial records related to Extended Producer Responsibility Programs as provided in Section 8.13 and report such information to the City in accordance with Section 4.14 or as otherwise requested by the City Representative.

4.23 MODIFICATIONS TO SCOPE OF SERVICE

A. **General.** City may direct Contractor to perform additional Services (including, but not limited to, the performance of additional material Recovery activities and Extended Producer Responsibility Programs as provided in Section 4.22) or the Contractor may propose additional Services. Per-Ton Rates will be increased or decreased, in accordance with this Section, to give effect to these adjustments.

B. **Proposal for Modification of Services.** Within sixty (60) Days of City request for a proposal or at any time Contractor chooses to propose additional Services, Contractor will present its proposal to modify existing Services. At a minimum, the proposal will contain a completed description of the following:

1. Methodology to be employed (changes to equipment, labor needs, staffing, etc).
2. Equipment to be utilized (equipment number, types, capacity, age, etc).
3. Labor requirements (changes in number of employees by classification).
4. Provision for program publicity/education/marketing (if appropriate).
5. Estimate of the impact of the Service modification (increased Diversion Tonnage, reduced costs, increased public Service, etc).
6. Five- (5-) year projection of the financial results of the program's operations in a balance sheet and operating statement format including documentation of the key assumption underlying the projections and the support for those assumptions, giving full effect to the savings or costs to existing Services.

C. **City's Review.** If the City does not review, comment, and approve or disapprove of the modification to the scope of Services within ninety (90) Days of receiving the Contractor's proposal, the proposal will be deemed disapproved. The City and Contractor may mutually agree to extend the time period for review due to the complexity of the scope of Service modification under consideration, the time needed for the review or approval, or for other reasonable reasons.

The City may request the assistance of an independent third party to review the proposal. Contractor shall pay the reasonable costs of that review if the modification to the scope of Services is initiated by the Contractor. City shall pay those costs if the modification to the scope of Services is initiated by the City. The cost of that review will be estimated in advance of the work and provided to the Contractor for comment and agreement to pay. Contractor's refusal to pay the reasonable cost of review of a Contractor-initiated proposal will be grounds for City rejection of that proposal.

Contractor will promptly provide operating and business Records requested by City that are reasonably required to verify the reasonableness and accuracy of the impacts associated with a modification to the scope of Services. Contractor will fully cooperate with City's request and provide City and its agent(s) copies of or access to Contractor's Records.

If Contractor and City cannot agree on terms and conditions of Services within thirty (30) Days of the end of City's review period described in this subsection, City may permit Persons other than Contractor to provide those Services at a location other than the Facility.

D. **Approval of Modification to Scope of Services.** Upon City approval or determination, City will issue a Notice approving the modification to the scope of Service and documenting any change to the Per-Ton Rates, and approved change to Contractor's obligations under this Agreement. The Parties will prepare a written amendment to the Agreement documenting any and all changes resulting from the modification to the scope of Services. No adjustment in Per-Ton Rates, change in Contractor's obligations, or change in scope of Services will become effective absent that City approval or determination.

ARTICLE 5. CONTRACTOR COMPENSATION

5.01 GENERAL

The Contractor will perform all of its Services, obligations, responsibilities, and duties under this Agreement, including paying costs associated with obtaining and complying with all Permits; operating the Facility in full compliance with Applicable Law; constructing the Facility ; monitoring for environmental impacts; and, remedying environmental damage. In consideration of its performance of these duties, the Contractor may charge and collect the Per-Ton Rates from Collection Contractor for each Ton of City's Delivered Materials that Collection Contractor delivers to the Facility, and may charge and collect from Collection Contractor for each Ton of Delivered Materials delivered to the Facility by employees of City. The City is responsible for payment of any and all sums due under this Agreement or consequent to delivery of the Services, with the exception that the Contractor shall invoice the City for payment of any Delivered Materials delivered to the Facility by employees of City performing City duties and for the provision of emergency Services pursuant to Section 4.13.

Contractor Compensation provided for in this Article and Section 4.20.E. shall be the full, entire, and complete compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, operations, profit, Government Fees, and all expenses Contractor deems necessary to perform all the Services required by this Agreement in the manner and at the times prescribed. Except under Section 4.20.E., nothing herein shall obligate City or Collection Contractor to provide any compensation to Contractor beyond Per-Ton Rates.

If Contractor's actual costs, including any fees or payments due to others, are more than the Per-Ton Rate and/or more than gross receipts received under this Agreement, Contractor shall not be compensated for the difference in actual costs and actual Per-Ton Rates or gross receipts except to the extent City grants an extraordinary Rate adjustment request pursuant to Section 5.04 or under Section 4.20.E. If Contractor's actual costs are less than the actual Per-Ton Rates or actual gross receipts, Contractor shall retain the difference.

The Per-Ton Rate(s) approved by City for Rate Period One is presented in Exhibit B-3. The Parties acknowledge that the Per-Ton Rate provided for in this Agreement has been determined on the basis of the exclusive and long-term nature of City's obligations hereunder.

5.02 PER-TON RATE

- A. **General.** The Per-Ton Rate shall have two components: (i) the Contractor Component; and, (ii) the Governmental Fee Component; the sum of which shall equal the total Per-Ton Rate. The "Contractor Component" of the Per-Ton Rate reflects the Contractor's Compensation for the Services provided under this Agreement. The Governmental Fee Component reflects Government Fees and taxes assessed on a per-Ton basis in connection with providing the Services required under this Agreement and represent a pass-through payment to Contractor. The applicable Government Fees and the Governmental Fee Component for the initial Per-Ton Rates are contained in Exhibit B-3.

The Per-Ton Rate for any Delivered Materials delivered to the Facility by an employee of City performing City duties will equal the Per-Ton Rate.

The City shall be responsible for adjusting the Per-Ton Rate as described in this Article 5.

- B. **Per-Ton Rate for Rate Period One.** The Per-Ton Rate for Rate Period One was proposed by Contractor, finalized through negotiation with the City, and approved by City Council on or before the execution of the Agreement. The Per-Ton Rate for Rate Period One will be effective from the Service Commencement Date of this Agreement through February 1, 2027, and is contained in Exhibit B-3.

5.03 PER-TON RATE ADJUSTMENTS

The Per-Ton Rate for all Rate Periods following Rate Period One shall be adjusted annually commencing with the first adjustment that will be effective on February 1, 2027. The Per-Ton Rate adjustment will be performed in accordance with this Section.

- A. **Definitions.** For the purposes of this Section, the following terms are defined as follows:

1. “Annual Percentage Change” means the Average Index Value of an index for the twelve- (12-) month period ending June of the then-current Rate Period minus the Average Index Value for the twelve- (12-) month period ending June of the most-recently completed Rate Period, divided by the Average Index Value for the twelve- (12-) month period ending June of the most-recently completed Rate Period. The Annual Percentage Change shall be rounded to the nearest thousandth (0.000). The first Annual Percentage Change shall allow for an adjustment of the first year Rate Period plus the initial term, from the Commencement Date to the start of Rate Period one. Therefore, the first Annual Percentage Change shall be from November 21, 2025 to February 1, 2027. In no case shall this first Annual Percentage Change be adjusted by more than 6%, nor less than 0%. The amount of the first rate adjustment will reflect the longer duration of the initial rate period relative to the standard 12-month term and will be calculated proportionally for a 14-month period.

2. “Average Index Value” means the sum of the monthly index values during the twelve- (12-) month period ending in June divided by twelve (12) (in the case of indices published monthly) or the sum of the bi-monthly index values divided by six (6) (in the case of indices published bi-monthly).

For example, if the Contractor is preparing its Rate application for Rate(s) to be effective for Rate Period Two (February 2028 – January 2029), the Annual Percentage Change in CPI shall be calculated as follows: [(Average CPI for July 2026 through June 2027) minus (Average CPI for July 2025 through June 2026)] divided by (Average CPI for July 2025 through June 2026)].

3. “CPI” means the All Urban Consumers Index (CPI-U) compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency, using the following parameters:

Area – San Francisco-Oakland-Hayward Metropolitan Area
Item – All Items
Base Period – Current 1982-84=100
Not seasonally adjusted
Periodicity – Bi-monthly
Series ID – CUUSS49BSAO

If said CPI is discontinued, it shall be replaced by the CPI which the City Representative determines most closely approximates the original category as determined by the U.S. Bureau of Labor Statistics.

B. **Contractor Component.** The Contractor Component of the Per-Ton Rate will be adjusted annually on the basis of hundred percent (100%) of the Annual Percentage Change in the CPI; or, five percent (5%), whichever is less, with a minimum adjustment of zero percent.

C. **Governmental Fee Component.** The Governmental Fee Component of the Per-Ton Rate will only be adjusted upward or downward, and Government Fees added or deleted to reflect actual mandated changes in Government Fees which are outside the control of Contractor. Government Fees for Rate Period One are presented in the table in Exhibit B-3.

In making adjustments to the Governmental Fee Component, Contractor shall increase or reduce the Governmental Fee Component for any Government Fee that is imposed, increased, or reduced

to reflect actual changes in the fees. Contractor shall provide documentation demonstrating to the City's satisfaction any change in the governmental fees.

D. **Total Adjusted Per-Ton Rate.** The total adjusted Per-Ton Rate will be calculated as the sum of the adjusted Contractor Component, as calculated in subsection B above, and the adjusted Governmental Fee Component, as calculated in subsection C above.

E. **Adjusted Per-Ton Rate for City-Hauled Solid Waste.** The adjusted Per-Ton Rate for any Delivered Materials delivered to the Facility by an employee of City, performing City duties, will equal the adjusted Per-Ton Rate (determined in accordance with subsection D).

F. **Per-Ton Rate Adjustment Application.** Annually on August 1, Contractor will submit to City Representative an application requesting the adjustment of Per-Ton Rate for the coming Rate Period via email that includes a letter request that summarizes the requested Per-Ton Rate adjustment and editable Microsoft Excel file that presents all supporting schedules, formulas, and calculations. For example, on August 1, 2027, Contractor will submit its Rate adjustment application for the adjustment of Per-Ton Rate to be effective February 1, 2028 (i.e., Rate Period Two). Proposer: Application to be submitted no less than 120 days prior to the effective date for the adjusted rate. Above dates to be filled in based on the actual Commencement Date.

Such application will include the Per-Ton Rate adjustment calculations in accordance with Section 5.03.A through 5.03.E and an updated Per-Ton Rate table.

City will evaluate Contractor's application for mathematical accuracy and consistency with the requirements of the Agreement and may require changes to the application prior to approval on the basis of the application's mathematical inaccuracy or failure to comply with the procedures defined in the Agreement. Upon City Representative's agreement, which shall not be unreasonably withheld, delayed or conditioned, that the calculations are consistent with the requirements of this Agreement and are mathematically accurate, the Per-Ton Rate adjustment (if any) will be approved by City Representative.

G. **No Other Adjustments.** As of the Service Commencement Date, the Per-Ton Rate set forth in Section 5.02 and adjusted in accordance with Sections 5.03 and 5.04 will not be increased thereafter to include any of the following costs of providing Services, even if Contractor's projections and estimates thereof prove inaccurate:

1. Costs incurred due to Contractor's negligence or misconduct
2. Costs incurred due to Permit changes of which Contractor did not provide timely Notice
3. Any fines or penalties imposed on Contractor or the Facility unless due to Excluded Waste delivered to Facility by City or Collection Contractor
4. Cost of remediation and cost recoveries pursuant to Applicable Law, including Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and RCRA, as applicable
5. Costs attributable to changing the classification of the Facility under Applicable Law, unless directed by City in accordance with Section 4.23

6. Costs and expenses related to the handling of Unpermitted Waste

7. Increases in Contractor costs to provide Services including, but not limited to, costs for labor, fuel, equipment, maintenance, and monitoring (except as Contractor's costs are adjusted in Sections 4.20.E., 5.03 and 5.04).

H. **Dispute Resolution.** All disputes arising under this Section will be resolved in accordance with Section 8.17. If a dispute exists, the Per-Ton Rate may be increased retroactively but will not be adjusted until the dispute has been resolved.

5.04 EXTRAORDINARY RATE ADJUSTMENTS

A. **General.** Except as modified under Section 4.23, or as provided in Sections 2.02 and 5.03.B, Contractor acknowledges that it assumes and accepts the risk for changes in cost of providing Services and/or quantities and composition of Delivered Materials delivered to the Facility, and therefore the extraordinary adjustments to Per-Ton Rate shall be limited to a Change in Law, or a City-directed change in scope of Services that has a material, documented impact on the Contractor's cost of providing the Processing Service as specified in Section 8.10. If a Change in Law or City-directed change in scope of Services (pursuant to Section 4.23) occurs, the Contractor may petition City for an adjustment to the Per-Ton Rate in excess of the annual adjustment as described in Section 5.03.

B. **Extraordinary Rate Adjustment Application.** Contractor shall prepare an application for the extraordinary Per-Ton Rate adjustment calculating the net financial effect on its operations (both increases and decreases of costs) resulting from the Change in Law or City-directed change in scope of Services, clearly identifying all assumptions related to such calculations and providing such underlying documentation as is necessary to fully support the assumptions. The application shall provide all information reasonably requested by City Representative specific to the nature of the request being made. City Representative shall evaluate the application for reasonableness. As part of that review, City Representative may request access to the financial statements and accounting Records required to be maintained by the Contractor (pursuant to Section 8.13.D) in order to determine the reasonableness of the Contractor's application. Should the Contractor not grant such access, then City may rely on the Contractor's Proposal for Post-Collection Services (and subsequent, related correspondence) and other information available to it as the basis for making reasonable assumptions regarding what those accounting and financial Records would have shown and, therefore, the reasonableness of the Contractor's application. Alternatively, the City Representative may make a determination of the validity of the request based solely on the information provided by Contractor through the application process. Contractor shall pay all reasonable costs incurred by City, including the reasonable costs of outside accountants, attorneys, and/or consultants, in order to make a determination of the reasonableness of the requested Rate adjustment.

In the event of such an application for extraordinary Per-Ton Rate adjustment, it is understood that City or Contractor, as the case may be, shall have the burden of demonstrating the reasonableness of the requested adjustment.

If the extraordinary Per-Ton Rate adjustment review warrants an increase in the applicable Per-Ton Rate(s) outlined above to compensate Contractor, the adjustment shall cover only Allowable Costs

(defined below) and such Allowable Costs shall be in the proportion of the total volume and type of material that Contractor reasonably projects that City will deliver to the Facility for the Term of this Agreement compared with all other customers of the Facility.

“Allowable Costs” shall include: incremental operating, maintenance, monitoring, reporting, and capital costs, including, but not limited to, the costs of making improvements or modifications, at the Facility necessary to perform under this Agreement, but only to the extent brought about by Change in Law or City-directed change in scope of Services that are not otherwise reflected in the calculations used to adjust the Per-Ton Rate (e.g., Contractor Component and Governmental Fee Components pursuant to Section 5.03). Contractor shall Notify City in writing sixty (60) Days in advance of any request for increase in the Per-Ton Rate pursuant to this Section.

The City shall have a ninety (90) Day review period following receipt of Contractor’s application for the requested Per-Ton Rate adjustment. During this period, City may request, and Contractor shall provide, supporting documentation that justifies the increase. Should the Parties be in dispute over the adjusted Per-Ton Rate at the end of the ninety (90) Day period, no adjustment shall be made, and the dispute shall be subject to Section 8.17 of this Agreement. Upon resolution of the dispute or both Parties’ agreement on the adjustment of the Per-Ton Rate, Contractor shall be entitled to the adjusted Per-Ton Rate retroactively to latter of the end of the sixty (60) Day advanced Notice period or the effective date of the increased Allowable Costs.

5.05 PAYMENT OF GOVERNMENT FEES

Contractor will timely pay any and all Government Fees to the appropriate federal, State, regional, or local governmental entities that levied the Government Fees and will promptly provide City with proof of payments upon City direction.

5.06 PAYMENT OF TAXES

Contractor will timely pay all Government Fees, assessments, or taxes incurred as a result of the Contractor’s provision of Services, including estimated taxes. Contractor will promptly provide City with proof of payments upon City direction.

**ARTICLE 6.
INDEMNITY AND INSURANCE**

6.01 INDEMNIFICATION

A. General. Contractor shall indemnify, defend with counsel reasonably acceptable to City, and hold harmless (to the full extent permitted by law) City and its officers, elected and appointed officials, employees, and agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs (including without limitation costs and fees of litigation, including reasonable attorneys’ and expert witness fees and costs) (collectively, “Damages”) of every nature arising out of Contractor’s performance of this Agreement during the Term of this Agreement, regardless of when the Damages are asserted, or its failure to comply with any of its obligations contained in this Agreement, except to the extent such loss or damage was caused by the gross negligence or willful

misconduct of City or Collection Contractor. The provisions of this Section shall survive the expiration or termination of this Agreement and shall not be construed as a waiver of City's legal or equitable rights as defined herein and permitted under Applicable Law.

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

Contractor shall indemnify, defend with counsel acceptable to the City, protect and hold harmless the City, officers, employees, and agents (collectively, "indemnitees") from and against all claims, damages, injuries, costs, , losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including, without limitation, attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, "Damages") of any kind whatsoever paid, incurred or suffered by, or asserted against, indemnitees arising from or attributable to the negligence and/or willful misconduct of Contractor, in connection with or related to the arrangement for disposal of any Excluded Waste under this Agreement, including, without limitation, damages arising from or attributable to any operations, repair, clean-up or detoxification, or other plan (regardless of whether undertaken due to governmental action). , in connection with or related to the arrangement for disposal of any Excluded Waste under this Agreement, including, without limitation, damages arising from or attributable to any operations, repair, clean-up or detoxification, or other plan (regardless of whether undertaken due to governmental action).

The foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of CERCLA, 42 USC. §9607(e) and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify City from liability.

This provision is in addition to all other provisions in this Agreement and shall survive the expiration or earlier termination of this Agreement. Nothing in this paragraph shall prevent City from seeking indemnification or contribution from Persons or entities other than indemnitees, for any liabilities incurred by City or the indemnitees.

In the event that Contractor negligently or willfully mishandles Excluded Waste in the course of carrying out its activities under this Agreement that causes environmental contamination, Contractor shall at its sole expense promptly take all investigatory and/or remedial action reasonably required for the remediation of such environmental contamination. Prior to undertaking any investigatory or remedial action, however, Contractor shall first obtain City's approval of any proposed investigatory or remedial action, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the above, if DTSC approves an investigation or remedial action plan, it shall be deemed approved by the City. Should Contractor fail at any time to promptly take such action required by DTSC, City may undertake such action at Contractor's sole cost and expense, and Contractor shall reimburse City for all such expenses within thirty (30) calendar days of being billed for those expenses. These obligations are in addition to any defense and indemnity obligations that Contractor may have under this Agreement. The provisions of this Section shall survive the termination or expiration of this Agreement.

989 **C. Regulatory Indemnification.** Contractor's duty to defend and indemnify herein includes all fines
990 and/or penalties imposed by any regulatory agency, if the requirements of Applicable Law, including
991 but not limited to AB 939 (1989), SB 341 (2011), AB 1826 (2014), SB 1383 (2016), SB 343 (2021), SB
992 54 (2022), AB 1201 (2022), and the Advanced Clean Fleets Rule are not met by City with respect to
993 the services provided under this Agreement, and such failure is: (i) due to the failure of Contractor
994 to meet its obligations under this Agreement; or, (ii) due to Contractor delays in providing
995 information that prevents Contractor or City from submitting reports to regulators in a timely
996 manner.

997 Notwithstanding any other provision in this Agreement, Contractor's obligations in this subsection
998 C with respect to such Applicable Law shall be subject to the provisions of Section 40059.1 of the
999 Public Resources Code, and Contractor shall not be liable for any indemnity obligations or penalties
1000 under this Agreement in respect of any such requirements except to the extent that indemnity
1001 obligations by Contractor are enforceable under said Section.

1002 **D. CalPERS Eligibility Indemnification.** Contractor's employees, agents, or Subcontractors providing
1003 service under this Agreement shall not: (i) qualify for any compensation and benefit under the
1004 California Public Employees Retirement System ("CalPERS"); (ii) be entitled to any benefits under
1005 CalPERS; (iii) enroll in CalPERS as an employee of City; (iv) receive any employer contributions paid
1006 by City for CalPERS benefits; or, (v) be entitled to any other CalPERS-related benefit that would
1007 accrue to a City employee. Contractor's employees, agents, or Subcontractors hereby waive any
1008 claims to benefits or compensation described in this Section 9.1. This Section 9.1 applies to
1009 Contractor notwithstanding any other agency, State or Federal policy, rule, regulation, law, or
1010 ordinance to the contrary.

1011 If Contractor's employees, agents, or Subcontractors providing services under this Agreement claim,
1012 or are determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in
1013 CalPERS of the City, Contractor shall indemnify, defend, and hold harmless City for the payment of
1014 any employer and employee contributions for CalPERS benefits on behalf of the employee as well
1015 as for payment of any penalties and interest on such contributions which would otherwise be the
1016 responsibility of the City.

1017 Contractor's Compensation under this Agreement shall be the full and complete compensation to
1018 which Contractor and Contractor's officers, employees, agents, and Subcontractors are entitled for
1019 performance of any work under this Agreement. Neither Contractor nor Contractor's officers,
1020 employees, agents, and Subcontractors are entitled to any salary or wages, or retirement, health,
1021 leave, or other fringe benefits applicable to City employees. The City will not make any Federal or
1022 State tax withholdings on behalf of Contractor. The City shall not be required to pay any workers'
1023 compensation insurance on behalf of Contractor.

1024 Contractor agrees to defend and indemnify the City for any obligation, claim, suit, or demand for
1025 tax, retirement contribution including any contribution to CalPERS, social security, salary or wages,
1026 overtime payment, or workers' compensation payment which the City may be required to make on
1027 behalf of: (i) Contractor; (ii) any employee of Contractor; or, (iii) any employee of Contractor
1028 construed to be an employee of the City, for work performed under this Agreement.

1029 **E. Reserved**

1030 **F. Reserved**

1031 **6.02 INSURANCE**

1032 **A. Policies**

1033 1. Types and Amounts; Deductibles and Self-Insured Retentions. As of the Effective Date,
1034 Contractor will secure and maintain, and enter into agreements to cause its Subcontractors,
1035 if any, to secure and maintain or provide that Subcontractors are insureds under Contractor's
1036 policies, in full force and effect the types and amounts of insurance coverage, together with
1037 related specified deductibles and endorsements, listed in Exhibit C, Insurance, attached
1038 hereto and incorporated herein, or required by Applicable Law, whichever is greater, in form
1039 acceptable to City.

1040 If any third Person makes a claim against Contractor or any Subcontractors exceeding the
1041 amount of any deductibles, self-insured reserves, letters of credit, or bonds guaranteeing
1042 payment thereof, Contractor will promptly Notify the insurer, bond surety, or letter of credit
1043 provider and City thereof.

1044 **B. Insurers.** Contractor will procure insurance from insurers approved by City Risk Manager, an
1045 approved company in California and authorized to do business there, having not less than size
1046 category VIII and a rating of A or better ("A-VIII") by A.M. Best Company, Inc.

1047 **C. Notices to City of Cancellation, etc.** General and Auto Liability policies must bear endorsements in
1048 substantially the form provided in Exhibit C providing that coverage will not be canceled or not
1049 renewed, or otherwise materially decreased below the coverage required in Exhibit C except after
1050 prior written Notice, to City thirty (30) Days in advance, or if the reason for cancellation is non-
1051 payment of premiums, ten (10) Days in advance. Endorsements will contain mere "best effort"
1052 modifiers or relieve the insurer from its responsibility to give City Notice.

1053 **D. Evidence of Coverage.** As of the Effective Date, Contractor will provide certificates of insurance and
1054 original endorsements required under this Agreement, signed by an authorized representative of
1055 the insurance company. Upon City request, Contractor will provide or cause to be provided to City
1056 documentation acceptable to City verifying that the individual signing those documents are
1057 authorized by the insurer to evidence coverage on the insurer's behalf. At that time and thereafter
1058 simultaneously with renewal of the policies, Contractor will file with City a certificate of insurance
1059 and blanket-form endorsements, in form and substance satisfactory to City (including type and
1060 amount of coverage, effective dates and expiration dates) signed or counter-signed by an
1061 authorized representative of the insurer(s), evidencing that the coverage has not lapsed and will
1062 remain in effect at all times during the term of the policy. If Contractor fails to procure and maintain
1063 any insurance required under this Agreement, City may take out and maintain that insurance at
1064 Contractor's expense and Contractor will pay costs to City therefore. This remedy is in addition to
1065 City's right to declare an Event of Default and terminate the Agreement. Upon request of City, the
1066 Contractor will cause its Subcontractors (if any) to provide proper evidence of insurance coverage
1067 required under this Agreement, satisfactory to City. Contractor will maintain procedures to assure
1068 City it is monitoring all insurance requirements under this Agreement, including those of its
1069 Subcontractors.

1070 **E. Contractor Compliance.** Contractor will comply with all requirements of policies and the insurers.
1071 Carrying insurance will not relieve Contractor from any obligations under this Agreement. Nothing
1072 in this Agreement may be construed as limiting in any way the extent to which the Contractor may

1073 be held responsible for payments of damages to Persons or property resulting from Contractor's or
1074 any Subcontractors' performance of Services.

1075 **ARTICLE 7.**
1076 **DEFAULT BY CONTRACTOR AND TERMINATION**

1077 **7.01 EVENTS OF DEFAULT**

1078 All provisions of the Agreement are considered material. Each of the following shall constitute an event
1079 of default.

1080 **A. Fraud or Deceit.** Contractor, its Affiliates, or any other Person employed by or with an ownership
1081 interest in Contractor, its Affiliates, or attempts to practice, any fraud or deceit upon the City.

1082 **B. Insolvency or Bankruptcy.** Contractor becomes insolvent, unable, or unwilling to pay its debts, or upon
1083 entry of an order for relief in favor of Contractor in a bankruptcy proceeding.

1084 **C. Failure to Maintain Coverage.** Contractor fails to provide or maintain in full force and effect the
1085 Workers' Compensation, liability, or any other insurance coverage as required by this Agreement.

1086 **D. Violations of Regulation.** Contractor receives any material violation notices, citations, orders or
1087 filings of any regulatory body having authority over Contractor relative to this Agreement that are
1088 not corrected, provided that Contractor may contest any such orders or filings by appropriate
1089 proceedings conducted in good faith, in which case no breach or default of this Agreement shall be
1090 deemed to have occurred.

1091 **E. Violations of Applicable Law.** Contractor has been found by a court of proper jurisdiction to be in
1092 material violation of Applicable Law (other than criminal law) directly related to the performance
1093 of this Agreement, provided that Contractor may contest any such allegation or finding by
1094 appropriate proceedings conducted in good faith, in which case no breach or default of this
1095 Agreement shall be deemed to have occurred.

1096 **F. Failure to Perform Direct Services.**

1097 **1. General.** Contractor fails to Accept Delivered Materials at the Approved Facility(ies) or ceases
1098 to provide Processing Services as required under this Agreement for a period of two (2)
1099 consecutive Working Days or more, for any reason within the control of Contractor.

1100 **2. Suspension or Termination of Service.** There is any termination or suspension of the
1101 transaction of business by Contractor related to this Agreement lasting more than two (2)
1102 calendar days.

1103 **3. Labor Unrest.** Pursuant to Section 7.07, Contractor fails to perform services as required under
1104 this Agreement for more than two (2) Working Days due to labor unrest, including but not
1105 limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job
1106 action conducted by the Contractor's employees or directed at the Contractor or an Affiliate;
1107 or any labor action initiated by Contractor, including but not limited to a lock-out.

- 1108 **4. Facility Disruption.** The Contractor is unable to use any of the Approved or Alternative
1109 Facilities under this Agreement for more than thirty (30) Days in a consecutive twelve (12)
1110 month period.
- 1111 **G. Failure to Use Approved Facilities.** Except in emergency, Contractor fails to deliver City Delivered
1112 Materials to the appropriate Approved Processing or Disposal Facility for each material type.
- 1113 **H. Failure to Pay or Report.** Contractor fails to make any payments to City required under this
1114 Agreement including payment of City Reimbursements or Liquidated Damages, or Contractor fails
1115 to pay Approved Facility operators as provided under this Agreement, and/or refuses to provide
1116 City with required information, reports, and/or records in a timely manner as provided for in the
1117 Agreement.
- 1118 **I. Acts or Omissions.** Any other act or omission by Contractor which violates the terms, conditions,
1119 or requirements of this Agreement, or Applicable Law and which is not corrected or remedied within
1120 the time set in the written notice of the violation or, if Contractor cannot reasonably correct or
1121 remedy the breach or violation within the time set forth in such notice, if Contractor should fail to
1122 commence to correct or remedy such violation within the time set forth in such notice or as agreed
1123 with such regulatory body and diligently effect such correction or remedy thereafter.
- 1124 **J. False, Misleading, or Inaccurate Statements.** Any representation or disclosure made to the City by
1125 Contractor in connection with or as an inducement to entering into this Agreement, or any future
1126 amendment to this Agreement, which proves to be false or misleading in any material respect as of
1127 the time such representation or disclosure is made, whether or not any such representation or
1128 disclosure appears as part of this Agreement; and, any Contractor-provided report containing a
1129 material misstatement, misrepresentation, data manipulation, or an omission of fact or content
1130 explicitly defined by the Agreement, excepting non-numerical typographical and grammatical
1131 errors.
- 1132 **K. Seizure or Attachment.** There is a seizure of, attachment of, or levy on some or all of Contractor's
1133 operating equipment, including without limitation its equipment, maintenance, or office facilities,
1134 or Approved Facility(ies), owned/operated by Contractor, by Affiliates, and/or by Subcontractors,
1135 or any part thereof.
- 1136 **L. Criminal Activity.** Contractor, its officers, managers, or employees are found guilty of Criminal
1137 Activity related directly or indirectly to performance of this Agreement or any other agreement held
1138 with the City.
- 1139 **M. Assignment without Approval.** Contractor transfers or assigns this Agreement without the express
1140 written approval of the City unless the assignment is permitted without City approval pursuant to
1141 Section 8.05.
- 1142 **N. Failure to Perform Any Obligation.** Contractor fails to perform any material obligation established
1143 under this Agreement.
- 1144 City shall provide Contractor written notice of default within seven (7) calendar days of the City's
1145 first knowledge of the Contractor's default.

7.02 RIGHT TO TERMINATE UPON EVENT OF DEFAULT

Contractor shall be given three (3) Business Days from written notification by City to cure any default which, in the City Representative's sole opinion, creates a potential public health or safety threat.

Contractor shall be given three (3) Business Days from written notification by City to cure any default arising under subsections C, E, F.1, F.2, I, J, and K in Section 7.01.

Contractor shall be given thirty (30) calendar days from written notification by City to cure any other default (which is not required to be cured within three (3) Business Days); provided, however, that the City shall not be obligated to provide Contractor with a notice and cure opportunity if the Contractor has committed the same or similar breach/default within a twenty-four (24) month period.

7.03 CITY'S REMEDIES IN THE EVENT OF DEFAULT

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

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

B. Suspension of Contractor's Obligation. City may suspend Contractor's performance of its obligations if Contractor fails to cure default in the time frame specified in Section 7.02 until such time the Contractor can provide assurance of performance in accordance with Section 7.08.

C. Liquidated Damages. City may assess Liquidated Damages for Contractor's failure to meet specific performance standards pursuant to Section 7.06 and Exhibit E.

D. Termination. In the event that Contractor should default, and subject to the right of the Contractor to cure, in the performance of any provisions of this Agreement, and the default is not cured for any default within three (3) Business Days if the default creates a potential public health or safety threat or arises under Section 7.01.C., E, F.1, F.2, I, J, or K, or otherwise thirty (30) calendar days after receipt of written notice of default from the City, then the City may, at its option, terminate this Agreement. In the event City decides to terminate this Agreement, the City shall serve upon Contractor twenty (20) calendar days written notice of its intention to terminate. In the event 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 City upon a failure of Contractor to perform its obligations under this Agreement.

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

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

7.04 POSSESSION OF RECORDS UPON TERMINATION

In the event of termination for an event of default, the Contractor shall furnish City Representative with immediate access to Records related to its services under this Agreement.

7.05 CITY'S REMEDIES CUMULATIVE; SPECIFIC PERFORMANCE

City's rights to terminate the Agreement under Section 7.02 and to access the Contractor's Records under Section 7.04 are not exclusive, and City's termination of the Agreement and/or the imposition of Liquidated Damages shall not constitute an election of remedies. Instead, these rights shall be in addition to any and all other legal and equitable rights and remedies which City may have.

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

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

1222 Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in
1223 Exhibit E, Performance Standards and Liquidated Damages.

1224 Before assessing Liquidated Damages, City shall give Contractor notice of its intention to do so. The
1225 notice will include a brief description of the incident(s) and non-performance. City may review (and
1226 make copies at its own expense) all information provided by Contractor relating to incident(s)
1227 and/or non-performance. City may, within thirty (30) Business Days after issuing the notice, request
1228 a meeting with Contractor. City may present evidence of non-performance in writing and through
1229 testimony of its employees and others relevant to the incident(s) and non-performance. City
1230 Representative shall provide Contractor with a written explanation of their determination on each
1231 incident(s) and non-performance prior to authorizing the assessment of and non-performance prior
1232 to authorizing the assessment of Liquidated Damages under this Section 7.06. Within ten (10)
1233 Business Days of receipt of such notice of intention to assess Liquidated Damages, or within forty
1234 (40) Business Days if the intended assessment results in a material impact, as defined in Section
1235 8.10, no Liquidated Damages may be imposed on Contractor until Contractor has been given a
1236 reasonable opportunity to respond to allegations and to meet and confer with the City
1237 Representative. The City Representative's decision shall be final subject to Contractor's ability to
1238 pursue judicial relief in accordance with Section 8.17.

1239 **C. Amount.** City may assess Liquidated Damages for each Working Day or event, as appropriate, that
1240 Contractor is determined to be liable in accordance with this Agreement in the amounts specified
1241 in Exhibit E. Liquidated Damages shall be subject to annual adjustment on each July 1 equal to the
1242 Annual Percentage Change in the CPI-U as defined in Article 5.

1243 **D. Timing of Payment.** Contractor shall pay any Liquidated Damages assessed by City within thirty (30)
1244 Business Days of the date the Liquidated Damages are assessed. If they are not paid within the thirty
1245 (30) Business Day period after written notice to Contractor and a ten (10) day period to cure, City
1246 may proceed against the performance bond required by the Agreement, order the termination of
1247 the rights or granted by this Agreement, or all of the above.

1248 **7.07 EXCUSE FROM PERFORMANCE**

1249 **A. General.** Notwithstanding any other provision in this Agreement, each Party shall be excused from
1250 performing its respective obligations hereunder and from any obligation to pay Liquidated Damages
1251 if it is prevented from so performing by reason of floods, earthquakes, other acts of nature, war,
1252 civil insurrection, riots, banking shutdown, supply chain disruption, pandemic, acts of any local,
1253 State, or Federal government (including judicial action), and other similar catastrophic events which
1254 are beyond the control of and not the fault of the Party claiming excuse from performance
1255 hereunder (each a "Force Majeure Event").

1256 **B. Third Party Labor Unrest.** Performance is excused to the limited extent that: In the case of labor
1257 unrest or job action directed at a third party over whom Contractor has no control, the inability of
1258 Contractor to provide services in accordance with this Agreement due to the unwillingness or failure
1259 of the third party to: (i) provide reasonable assurance of the safety of Contractor's employees while
1260 providing such services; or, (ii) make reasonable accommodations with respect to point of delivery,
1261 time of Acceptance, or other operating circumstances to minimize any confrontation with pickets
1262 or the number of Persons necessary to perform Transfer, Transport, Processing, or Disposal
1263 services. The foregoing excuse shall be conditioned on Contractor's cooperation in performing

Transfer, Transport, Processing, and/or Disposal services at different times and in different locations (as provided for in Section 4.12). If the Collection Contractor is unable to use any of the Approved or Alternative Facilities under this Agreement for more than thirty (30) Days in a consecutive twelve (12) month period for any reason, including, but not limited to third-party labor unrest, and such inability prevents Contractor from performing its obligations under this Agreement through the use of Alternative Facilities as provided for in Section 4.12, such circumstance shall be considered an event of default in accordance with Section 7.01.F.

C. Contractor Labor Unrest. In the event of labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by the Contractor's employees or directed at the Contractor or an Affiliate, the Contractor shall not be excused from performance and such event shall not be considered a Force Majeure event under this Section. Contractor may direct Delivered Materials to an Alternative Facility as provided in Section 4.12. In such case, Contractor shall continue to provide consistent, reliable, and uninterrupted levels of performance during the pendency thereof. Any labor action initiated by Contractor, including but not limited to a lock-out, shall not be grounds for any excuse from performance and Contractor shall perform all obligations under this Agreement during the pendency of such Contractor-initiated labor action. In the event that any labor unrest related to Contractor's operations or facility(ies) causes those facilities to be partially or completely inaccessible by the Collection Contractor and thereby creates increased costs for the City and/or Collection Contractor related to delivery to Alternative Facilities, Contractor shall be liable for any and all such reasonable costs. In the event of such increased costs, City shall make a determination of the allowable costs under the Collection Agreement with the City as well as any direct costs incurred by the City during the pendency of such disruption. Contractor shall pay to City or, at City's direction, Collection Contractor the amount of such increased reasonable costs as determined by the City within forty-five (45) calendar days of receiving the City's determination.

D. Notice. The Party claiming excuse from performance shall, within two (2) business days after such Party has notice of such cause, give the other Party notice of the facts constituting such cause and asserting its claim to excuse under this Section. If either Party validly exercises its rights under this Section, the Parties hereby waive any claim against each other for any damages sustained thereby.

E. Default and Termination. The partial or complete interruption or discontinuance of Contractor's services caused by one (1) or more Force Majeure Events shall not constitute a default by Contractor under this Agreement, except as otherwise specified in Section 7.01.F.4. Notwithstanding the foregoing, however, if Contractor is excused from performing its obligations hereunder for any of the causes listed in this Section for a period of thirty (30) calendar days or more, City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) Business Days' notice to Contractor provided Contractor does not fully resume performance of its obligations hereunder within such ten (10) Business Days, in which case the provisions of Section 7.04 shall apply.

7.08 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE

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

If Contractor: (i) is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing, or other concerted job action; (ii) appears in the reasonable judgment of City to be unable to regularly pay its bills as they become due; or, (iii) is the subject of a civil or criminal judgment or order entered by a Federal, State, regional, or local agency for violation of an Applicable Law, and City believes in good faith that Contractor's ability to perform under the Agreement has thereby been placed in substantial jeopardy, City may, at its sole option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance as City believes in good faith is reasonably necessary in the circumstances to evidence continued ability to perform under the Agreement. If Contractor fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by City, such failure or refusal shall be an event of default for purposes of Section 7.01.

7.09 COOPERATION AND DISPUTES BETWEEN CONTRACTORS

Contractor shall fully comply with its obligations to provide services under this Agreement including Acceptance of Delivered Materials by the Collection Contractor in a manner that meets the requirements of this Agreement and Applicable Law. Collection Contractor shall also fully comply with its obligations to deliver Delivered Materials to the approved Facility(ies). In the event of disputes between the Collection Contractor and the Contractor, either party may provide written notice of the dispute to the City and any other party involved in the dispute. If Contractor initiates a written notice of dispute, such notice shall include a summary of the dispute, the section(s) of the Agreement or agreements the asserted dispute arises from, an estimate of the financial implications to Contractor asserted, and a proposed resolution. Contractor agrees to timely meet and confer directly with the Collection Contractor or Approved Facility(ies) in good faith to resolve the dispute for thirty (30) calendar days following the initial notice to the City and the other involved party. A longer period may be established if mutually agreed upon between the parties. If at the end of the thirty (30) day period, Contractor and the Collection Contractor or Contractor and Approved Facility(ies) have met and conferred in good faith but have not resolved the dispute, either party to the dispute may notify the City and the City shall facilitate the dispute resolution procedure in accordance with Section 8.17 as well as any applicable provisions of the involved party's contract with the City. In the event of a dispute, Contractor shall continue performance of Contractor's obligations under this Agreement and shall attempt to continue to resolve that dispute in a cooperative manner, including but not limited to negotiating in good faith.

7.10 ACTS NECESSARY TO PERFORM SERVICE

The City's failure to specifically require an act necessary to perform any of the services required under this Agreement and comply with Applicable Law does not relieve Contractor of its obligation to perform such act, or the service(s) dependent on such act, or to comply with Applicable Law at all times throughout the Term of this Agreement. Further, any suggestions or recommendations, whether verbal or in writing, made by the City to Contractor shall not be relied upon by Contractor to the extent such suggestions or recommendations may compromise or inhibit Contractor's performance under this Agreement or ability to comply with Applicable Law. Contractor assumes liability and responsibility for actions and inactions to perform services under this Agreement in accordance with Applicable Law and expressly waives any claims against the City or use of City's actions or inactions as a legal defense for Contractor's failure to perform or comply with Applicable Law in the performance of this Agreement except with respect to Excluded Waste.

In the event of any ambiguity as to the interpretation of the Agreement or the requirements of Contractor under this Agreement, Contractor shall be responsible for seeking clarity and approval from the City prior to engaging in actions to resolve ambiguities not otherwise explicitly stated in the Agreement. To the extent that the Contractor engages or fails to engage in performing an act in violation of this Agreement or Applicable Law and fails to obtain explicit written permission from the City in advance, the Contractor shall be solely liable and the City shall not be responsible for any payment, compensation adjustments, or administrative support arising from Contractor's actions or inactions. To the extent the Contractor's non-compliance results in increased costs to the City, City shall notify the Contractor, identifying the dollar value of such cost impacts, and Contractor shall, within forty-five (45) calendar days of written notice from the City, remit such costs to the City in the form of a direct payment sent or delivered to the City or paid to the City via an electronic payment method. The City retains the right to pursue any remedies specified in this Article in the event of non-compliance, at the City Representative's sole discretion.

ARTICLE 8. OTHER AGREEMENTS OF THE PARTIES

8.01 RELATIONSHIP OF PARTIES

The Parties intend that Contractor will perform the Services required by this Agreement as an independent contractor engaged by City and not as an officer or employee of City nor as a partner or joint venturer with City. No employee or agent of Contractor will be or will be deemed to be an employee or agent of City. Contractor will have the exclusive control over the manner and means of conducting Services, and all Persons performing those Services, except for City's right to change the scope of Services in accordance with Section 4.20. Contractor is solely responsible for the acts and omissions of its officers, employees, Subcontractors, and agents, none of whom is deemed an officer, employee, Subcontractor, or agent of City. Neither Contractor nor its officers, employees, Subcontractors, and agents will obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits that accrue to City employees, and Contractor expressly waives any claim it may have or acquire to those benefits.

8.02 COMPLIANCE WITH LAW

A. **Compliance.** Contractor will perform, and will cause any contractors or Subcontractors to perform, all Services in accordance and compliance with Applicable Law, whether or not referenced specifically in the text of this Agreement and regardless of whether specified Service obligations may be stated less stringently than Applicable Law. If any provision of this Agreement is more stringent than Applicable Law, Contractor must comply with that provision.

The Contractor acknowledges that City, by this Agreement, has stated necessary and reasonable rules and regulations regarding aspects of Solid Waste handling Services covered by this Agreement. Contractor agrees to comply with any and all of those rules and regulations, subject to the definition of "Uncontrollable Circumstances" in Section 8.12 and subject to possible adjustments in the Per-Ton Rates for Uncontrollable Circumstances, including Changes in Law.

B. **Referenced Provisions.** Reference in this Agreement, including Exhibit A, to particular provisions or requirements of Applicable Law will not be construed to limit Contractor's obligation to comply with all provisions of Applicable Law. Those references are deemed to include reference to implementing rules and regulations. The references are intended to facilitate Contractor's satisfaction of its

performance obligations and City’s administration and specific enforcement of this Agreement, and may not be construed to imply lack of obligation to comply with other provisions or requirements of Applicable Law not referred to or cited in this Agreement. If any Applicable Law specifically referenced or cited in this Agreement is modified, amended, or repealed, that reference or citation will be deemed to refer to that amendment or modification, or to any re-codified or substituted Applicable Law.

C. **Permits.** Contractor will obtain and maintain all Permits in accordance with Section 4.02.

D. **Fines and Penalties.** Contractor is solely responsible for timely payment of any and all fines and penalties imposed on Contractor related directly or indirectly to the Services provided under the Agreement. Contractor will not seek reimbursement from City, Collection Contractor, residents, or businesses for any such fines and penalties except if due to Excluded Waste delivered by City or Collection Contractor.

8.03 GOVERNING LAW AND VENUE

This Agreement will be governed by, construed and enforced in accordance with the laws of the State of California, without giving effect to the State’s conflict of laws rules. Venue will be in the Santa Clara County Superior Court, and no other place. Contractor waives any right it may have pursuant to Code of Civil Procedure section 394, to file a motion to transfer any action arising from or relating to this Agreement to a venue outside of the County.

8.04 FURTHER ASSURANCES

Contractor will promptly execute and deliver any instruments and perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Agreement.

8.05 ASSIGNMENT

A. **Assignment by Contractor.**

1. Permitted Assignments. Subject to the terms and conditions of this Section 8.05, Contractor shall have the right to Assign this Agreement to any other company that is owned and controlled by Zanker Road Resource Management, LLC or its Affiliates, provided that such company is qualified to do business in California, and assumes in writing all of Contractor’s obligations under this Agreement prior to or concurrently with such Assignment. Contractor shall not otherwise Assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any other Person.

2. Assignment Defined. For the purpose of this Section when used in reference to Contractor, “Assign” and “Assignment” shall be as defined in Exhibit A.

Contractor acknowledges that this Agreement involves rendering a vital service to City’s residents and businesses, and that City has selected Contractor to perform the Services specified herein based on (i) effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations, and best management practices, and (ii) Contractor’s obligations to City under this Agreement. The City has relied on each of these

1427 factors, among others, in choosing Contractor to perform the Services to be rendered by
1428 Contractor under this Agreement.

1429 3. Contractor Request for Assignment. If Contractor requests City's consideration of and consent
1430 to an Assignment, City may reasonably deny or approve such requests except as to Section
1431 8.05.A.1., which shall be approved. No request by Contractor for consent to **any** Assignment
1432 need be considered by City unless and until Contractor has met the following requirements:

1433 a. Contractor shall undertake to pay City its reasonable expenses for attorney's fees and
1434 investigation costs necessary to investigate the suitability of any proposed assignee,
1435 and to review and finalize any documentation required as a condition for approving any
1436 such Assignment.

1437 b. Contractor shall furnish City with audited financial statements of the proposed
1438 assignee's operations for the immediately preceding three (3) operating years.

1439 c. Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has
1440 at least ten (10) years of Solid Waste management experience on a scale equal to or
1441 exceeding the scale of operations conducted by Contractor under this Agreement; (ii)
1442 that in the last five (5) years, the proposed assignee has not suffered any significant
1443 citations or other censure from any federal, State, or local agency having jurisdiction
1444 over its Solid Waste management operations due to any significant failure to comply
1445 with State, federal, or local Environmental Laws and that the assignee has provided City
1446 with a complete list of such citations and censures; (iii) that the proposed assignee has
1447 at all times conducted its operations in an environmentally safe and conscientious
1448 fashion; (iv) that the proposed assignee conducts its Solid Waste management practices
1449 in accordance with sound Solid Waste management practices in full compliance with all
1450 federal, State, and local laws regulating the collection and Disposal of Solid Waste
1451 including Unpermitted Waste; and, (v) of any other information required by City to
1452 ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe,
1453 and effective manner.

1454 d. Under no circumstances shall City be obligated to consider any proposed Assignment
1455 by City if Contractor is in default at any time during the period of consideration.

1456 **8.06 BINDING ON SUCCESSORS**

1457 The provisions of this Agreement will inure to the benefit of and be binding on the successors and
1458 permitted assigns of the Parties.

1459 **8.07 PARTIES IN INTEREST**

1460 Nothing in this Agreement, whether expressed or implied, is intended to confer any rights on any Persons
1461 other than the Parties to it and their representatives, successors, and permitted assigns. There are no
1462 intended third-party beneficiaries.

1463 **8.08 SERVICES PERFORMED AT CONTRACTOR'S SOLE EXPENSE**

1464 Contractor will perform Services solely for the Contractor Compensation expressly provided for herein.

8.09 NOTICES AND COMMUNICATION

All Notices, requests, and approvals must be sent in writing to the Persons below, which will be considered effective on: the date of personal delivery; the date of delivery confirmed by a reputable overnight delivery service; the fifth (5th) Day after deposit in the United States Mail, postage prepaid, registered or certified; or the next Working Day following electronic submission: If to City:

City of Cupertino
Attention: City Manager
10300 Torre Avenue
Cupertino, California, 95014

CC: Director of Public Works

If to Contractor:

Zanker Road Resource Management, LLC
Attention: CEO and General Counsel
610 E. Gish Rd.
San Jose, CA 95112

Parties may change their address upon Notice to the other Party.

8.10 REPRESENTATIVES OF THE PARTIES

References in this Agreement to “City” shall mean the City of Cupertino and all actions to be taken by the City except as provided below. City may delegate, in writing, authority to the City Representative and/or to other City officials and may permit such officials, in turn, to delegate in writing some or all of such authority to subordinate officers. Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

Contractor shall, by the Effective Date, designate in writing the Contractor’s Contract Manager. The Contractor’s Contract Manager shall be the representative of Contractor in all matters related to the Agreement and Contractor shall inform the City in writing of such designation and of any limitations upon their authority to bind Contractor. The City may rely upon action taken by Contractor’s Contract Manager as actions of Contractor unless they are outside the scope of the authority delegated to them by Contractor as communicated to the City.

In the event of dispute between the City Representative and the Contractor regarding the interpretation of or the performance of services under this Agreement, the City Representative’s determination shall be conclusive except where such determination results in a material impact to the Contractor’s revenue and/or cost of operations. In the event of a dispute between the City Representative and the Contractor results in such material impact to the Contractor, the provisions of Section 8.17 shall apply. For the purposes of this Section 8.10, “material impact” is an amount equal to or greater than fifty thousand dollars (\$50,000) per year.

8.11 DUTY OF CONTRACTOR NOT TO DISCRIMINATE

In the performance of all work and Services under this Agreement, Contractor will not discriminate against any Person on the basis of that Person's race, color, religion (including religious dress and grooming practices), sex/gender (including pregnancy, childbirth, breastfeeding, or related medical conditions), sex stereotype, gender identity/gender expression/transgender (including whether or not the Person is transitioning or has transitioned), sexual orientation, national origin, ancestry, age (40 and above), physical or mental disability, medical condition, genetic information/characteristics, marital status/registered domestic partner status, military or veteran status, or any other basis protected by federal, State, or local law or ordinance or regulation. Contractor will not discriminate based on the perception that anyone has any of these characteristics or is associated with a Person who has or is perceived as having any of these characteristics. Contractor will comply with all Applicable Law regarding nondiscrimination, including those prohibiting discrimination in employment.

8.12 FORCE MAJEURE

A. **Performance Excused.** Neither Party is deemed in breach or default of its duties, obligations (other than a payment obligation at the time due and owing), responsibilities, or commitments under this Agreement to the extent that the breach or default is due to an Uncontrollable Circumstance, *provided* the Party exerted Reasonable Business Efforts to prevent the occurrence and mitigate the effects of the Uncontrollable Circumstance.

1. Uncontrollable Circumstance(s) means any act, event, or condition, whether affecting (i) Services or (ii) either Party, that is beyond the reasonable control of the Party relying thereon and not the result of willful or negligent action or inaction of that Party (other than the contesting in good faith or the failure in good faith to contest that action or inaction), which materially and adversely affects the ability of either Party to perform any obligation under this Agreement, comprised of:

a. an act of nature, including landslide, lightning, earthquake, fire, flood, (other than reasonably anticipated weather conditions for the geographic area of City), explosion, banking shutdown, supply chain disruption, pandemic, sabotage, terrorism, acts of a public enemy, war, blockade or insurrection, riot, or civil disturbance.

b. the failure of any appropriate federal, State, or local public agency, or private utility having operational jurisdiction in the area in which the Facility is located to provide and maintain utilities, services, water, sewer, or power transmission lines thereto.

c. a Change in Law other than a Change in Law excluded in item 2 below.

d. strikes, work stoppages, or other labor disputes or disturbances of Persons other than Contractor or any Affiliates performing Services.

2. Uncontrollable Circumstances *excludes*, without limitation:

a. either Party's own breach of its obligations under this Agreement.

b. adverse changes in the financial condition of either Party or any Change in Law with respect to any taxes based on or measured by net income, or any unincorporated business, payroll, franchise, or employment taxes.

- 1542 c. strikes, work stoppages, or other labor disputes or disturbances of Contractor or any
1543 Affiliates performing Services, or Contractor's or Affiliates' inability to hire adequate
1544 numbers of personnel who are competent and skilled in the work to which they are
1545 assigned, or the organization of any Contractor's or any Affiliates' employees under a
1546 collective bargaining agreement.
- 1547 d. the failure of the Contractor to secure patents, licenses, trademarks, and the like necessary
1548 for Services.
- 1549 e. as to the Contractor, the failure of any Service assets to perform in accordance with any
1550 warranties, unless caused by Uncontrollable Circumstances or defect.
- 1551 f. Changes in Law mandated by State or federal Applicable Law.
- 1552 B. **Notice.** The Party experiencing an Uncontrollable Circumstance and relying thereon will give Notice
1553 thereof as soon as is reasonable given the Uncontrollable Circumstance to the other Party, including
1554 describing performance under this Agreement for which it seeks to be excused; the expected
1555 duration of the Uncontrollable Circumstance; the extent Services may be curtailed; any requests or
1556 suggestions to mitigate the adverse effects of the Uncontrollable Circumstance; or, any consequent
1557 adjustment of the Per-Ton Rates in accordance with Sections 5.03 or 5.04.
- 1558 C. **City's Rights.** Notwithstanding that Contractor's failure to timely and fully provide Services due to
1559 Uncontrollable Circumstances does not constitute an Event of Default, following the continuance
1560 of the failure for twenty (24) hours, City may, in its sole discretion, secure alternative services.
1561 Following the continuance of that failure for thirty (30) Days unless an alternative is agreed, City
1562 may terminate the Agreement in accordance with Section 7.02.
- 1563 D. **Use of Alternative Facility.** Contractor shall use an alternative facility in accordance with Section
1564 4.12 if Uncontrollable Circumstances prevent it from using the Facility for all or a portion of City's
1565 Solid Waste. If, as a result of Uncontrollable Circumstances, the Collection Contractor is unable to
1566 deliver all City's Solid Waste at the Facility for one (1) month or more or if City has incurred ten
1567 thousand dollars (\$10,000) or more in additional Transportation costs to arrange for delivery of
1568 City's Solid Waste to an alternative facility, City may, in its sole discretion, suspend or terminate the
1569 Agreement in accordance with Section 7.02, but is not obligated to do so.

1570 **8.13 MAINTENANCE OF RECORDS**

- 1571 A. **Location of Records.** Contractor will maintain Records at the Facility, or at an alternative location
1572 as approved by City.
- 1573 B. **Contractor's Accounting Records.** In order to effectuate the adjustments to the Per-Ton Rates
1574 contemplated by Sections 5.03 and 5.04, Contractor must maintain accurate, detailed financial and
1575 operational information in a consistent format and to make that information available to City in a
1576 timely fashion. This Section is intended to effectuate these requirements. Contractor will maintain
1577 accurate and complete accounting Records containing the underlying financial and operating data
1578 relating to and showing the basis for computation of all costs associated with providing Services.
1579 The accounting Records will be prepared in accordance with Generally Accepted Accounting
1580 Principles (GAAP), which will be consistently applied. The Parties acknowledge that the Contractor's

accounting procedures may not produce accounting Records that separate the financial and operational data related to specific Services provided to City, but rather the accounting Records are consolidated financial and operational data for all Services provided by Contractor or at Contractor's Facility.

- C. **Retention of Records.** Contractor will retain all Records required to be maintained by this Agreement for a minimum of five (5) years following the end of the Term.

Contractor will retrieve Records specifically directed to be retained in accordance with this Agreement and make them available to City within ten (10) Days of City's direction.

Contractor will retrieve Records that are material, in the sole opinion of City, to determining the cost of compliance with changes in Government Fees or regulations; verifying payment of Government Fees or taxes; determining cost impact related to modifications to scope of Services or new waste management programs or economic incentives; or determining an adjustment to the Per-Ton Rate as provided for in this Agreement, and make them available to City within ten (10) Days of City's direction. If Contractor is not required to maintain those Records under this Agreement, then City and Contractor will meet and confer in good faith to reach agreement on reasonable assumptions that are necessary to make determinations at issue.

- D. **Delivery of Financial Information.** The Parties agree that Contractor shall submit financial information that provides sufficient information, in City's opinion, for performance of the review necessary for determination as to whether an extraordinary adjustment to the Per-Ton Rate(s) is warranted as provided in Section 5.04.

8.14 RIGHT TO INSPECT RECORDS

Upon reasonable Notice and without interference with Contractor's operations, City, its auditors, and other agents selected by City, will have the right, at its sole cost, during regular business hours as described in Section 4.06, to conduct on-site inspections of Records and to make and retain copies of any Records that are reasonably necessary to: (1) determine the cost of compliance with changes in Government Fees or regulations (in accordance with Section 5.03); (2) verify payment of Government Fees or taxes (in accordance with Sections 5.05 and 5.06); (3) determine cost of modifications to scope of Services (in accordance with Section 4.20); (4) determine cost of new programs or economic incentives (in accordance with Section 4.20); or, (5) verify Contractor's reported aggregate Facility capacity commitments (in accordance with Section 4.14.C). Contractor will cooperate with City, its auditors, and other agents selected by City; will make those Records available to City; and, will provide City copies of those Records (which City may retain) at City's request (with the exception that Contractor is not obligated to provide copies of agreements with entities related to the review of the aggregate Facility capacity under Item 5 of this Section). If City so requests, Contractor will make specified personnel available to assist City Representatives in accessing Records.

8.15 COMPILATION OF INFORMATION FOR STATE LAW PURPOSES

Contractor will compile information on amounts of Solid Waste delivered to the Facility and Disposed and other information, which City may reasonably request in order to meet its obligations under the Act and other State regulations.

8.16 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE

A. If Contractor:

1. is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing, or other concerted job action that affects Contractor's performance under this Agreement.
2. appears in the judgment of City to be unable to regularly pay its bills as they become due.
3. is the subject of a civil or criminal proceeding brought by a federal, State, regional, or local agency for Violation of an Applicable Law with respect to Services.
4. is, in the City's reasonable opinion, in substantial jeopardy of non-performance under this agreement, or
5. if City disagrees with Contractor's estimate of Facility capacity required to meet Contractor's warranty in accordance with Section 9.01 or of remaining capacity, considering Contractor's obligations to both City and other Persons, as contained in the Annual Report or otherwise, then following dispute resolution in accordance with Section 8.17 that concludes either of Contractor's estimates is erroneous, at its option and in addition to all other remedies it may have, City may demand from Contractor written assurances of timely and proper performance of this Agreement. Assurances include procuring a bond or letter of credit guarantying or in size sufficient to cover payment of losses and related investigations, claim administration, and defense expenses. If Contractor fails or refuses to provide reasonable assurances by the date required by City no less than fifteen (15) Days after Notice, that failure or refusal will constitute an Event of Default in accordance with Section 7.01.

8.17 DISPUTE RESOLUTION

In the event of dispute between the City and the Contractor regarding the interpretation of or the performance of services under this Agreement which results in a material impact to the Contractor's revenue and/or cost of operations, as defined in Section 8.10, the provisions of this Section 8.17 shall apply. The representatives of the Parties who have primary responsibility for operation and administration of this Agreement will engage in best efforts to resolve the dispute informally. If the Parties are unable to resolve a dispute informally, the Party seeking redress may submit an informal written claim to the City, specifying the nature of the claim, the applicable provisions of the Agreement, a summary narrative of the events leading to the claim, and the remedy sought to resolve the claim. Within 30 days thereafter, the City Representative will arrange to meet and confer in person or by videoconference with Contractor's General Counsel and COO, in a further attempt to informally resolve the claim. If, within 30 days following the initial attempt to meet and confer, the claim is not resolved, the Parties agree to submit the dispute to mediation with an experienced third-party neutral in an effort to resolve the claim by compromise, with each Party to share equally in the mediator's fees and each Party to bear its own legal fees, if any. City and Contractor will mutually agree to a mediator. Mediation will be scheduled to ensure the mutual availability of the selected mediator and all of the individuals that each Party requires to represent its interests. The Mediation shall be completed within sixty (60) days of the written requests of a Party unless both Parties agree to extend the timeframe. To the maximum extent permitted by law, all offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts, or attorneys, or by the mediator or any employees of the mediation services, are confidential, privileged, and inadmissible for any purpose, including impeachment,

in any arbitration or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled until the end of the sixty (60) Day period referred to above. The Parties will take such action, if any required to effectuate such tolling. Good faith compliance with the informal dispute resolution provisions set forth in this Section is a condition precedent to filing a claim pursuant to the California Government Code or to otherwise initiating legal proceedings with regard to the dispute. The provisions of this Section will survive expiration or termination of the Agreement.

8.18 CRIMINAL ACTIVITY OF CONTRACTOR

A. **Notice of Convictions or Pleas.** The Contractor will immediately Notify City upon the occurrence of any Convictions or Pleas with respect to Contractor or Contractor's Contract Manager.

B. **Contractor Cure.** Upon the occurrence of any Convictions or Pleas, the Contractor will :

1. as soon as permitted under Applicable Law, remove from office the offending Contract Manager who is an individual, or, with respect to a Contract Manager that is the Contractor or an Affiliate, the individual or individuals responsible for the Criminal Activity.
2. immediately eliminate the participation by that Contract Manager who is an individual or, with respect to a Contract Manager that is the Contractor or Affiliate the individual or individuals responsible for the Criminal Activity, in any position of influence related to the Services.
3. replace the offending Contract Manager in their capacity as Contract Manager relative to this Agreement.
4. not hire or transfer from any Affiliate any employee, officer, or director of an Affiliate who is the subject of any Criminal Activity to a position as Contract Manager and will not allow its Affiliates to do so.

C. **City Remedies.** The City, in its sole discretion, may terminate the Agreement upon thirty (30) Days' Notice to the Contractor, or may impose those other sanctions (which may include financial sanctions, temporary suspensions, or any other condition deemed appropriate short of termination) as it will deem proper, if the following events are continuing at the end of those thirty (30) Days:

1. the Contractor or any Affiliate fails to comply with their obligation under subsection B.
2. the Criminal Activity concerns and is related to this Agreement.

Contractor must be given the opportunity to present to City Representative evidence in mitigation during the preceding thirty (30) Day Notice period and City will consider that evidence.

8.19 COOPERATION AND DISPUTES BETWEEN CONTRACTOR AND COLLECTION CONTRACTOR

Contractor will fully comply with its obligations to provide Service to the Collection Contractor and cooperate to its fullest extent with the Collection Contractor and City. In the event of disputes between Contractor and Collection Contractor, Contractor will attempt to resolve the dispute directly with the Collection Contractor. As a last resort, Contractor may request assistance from City in resolving the dispute. In the event of a dispute, Contractor will continue performance of Contractor's obligations under this Agreement and will attempt to continue to resolve that dispute in a cooperative manner, including, but not limited to, negotiating in good faith.

ARTICLE 9. REPRESENTATIONS AND WARRANTIES

9.01 MADE BY CONTRACTOR

By acceptance of this Agreement, Contractor represents and warrants that:

- A. **Existence and Powers.** Contractor is a limited liability company duly organized in Delaware and validly existing, and in good standing under the laws of the State of California, is qualified to transact business in the State and has full legal right, power, and authority to enter into and perform its obligations under this Agreement.
- B. **Due Authorization and Binding Obligation.** Contractor has the authority to enter into and perform its obligations under this Agreement. Contractor has taken all actions required by law or otherwise necessary to authorize the execution of this Agreement. The Person(s) signing this Agreement on behalf of Contractor have authority to do so, and this Agreement constitutes the legal, valid, and binding obligation of Contractor enforceable against Contractor under its terms.
- C. **Truth and Accuracy of Information.** The information supplied by Contractor in all written submittals made in connection with Contractor's Services, including Contractor's Proposal and any other supplementary information submitted to the City, and which the City has relied on in awarding and entering this Agreement, is true, accurate, and complete, and does not contain material omissions or misleading statements. Contractor will inform the City Representative of any change in that information within one (1) week of discovering any untruth or inaccuracy.
- D. **Contractor's Due Diligence.** Contractor has made an independent investigation and examination (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed hereunder. Relying solely upon its own investigation, advice, and counsel, Contractor has taken such matters into consideration in entering this Agreement to provide Services in exchange for the Per-Ton Rates provided for under the terms of this Agreement.
- E. **Ability to Perform.** Contractor possesses the business, professional, and technical expertise to Process, and Divert Delivered Materials, and Contractor possesses the equipment, facilities, and employee resources required to perform its obligations under this Agreement.
- F. **Voluntary Use of Facilities.** Contractor, without constraint and as a free-market business decision in accepting this Agreement, agrees to use the Facility(ies) it has proposed, or other location

1732 approved by City, for the purposes of Processing, and Divert all Delivered Materials and for Disposal
 1733 of Residue. Such decision by Contractor in no way constitutes a restraint of trade notwithstanding
 1734 any Change in Law regarding flow control limitations or any definition thereof.

1735 G. **No Warranty Regarding Volumes or Material Types.** Contractor recognizes that City expressly
 1736 disclaims any warranties, either express or implied, as to the quantity, composition, volume, type,
 1737 merchantability or fitness for any particular purpose of Delivered Materials as delivered and
 1738 Accepted, and Processed by Contractor. Contractor acknowledges that the quantity and
 1739 composition of Delivered Materials will vary over the Term.

1740 H. **Capacity.** Contractor warrants that as of the Commencement Date it has Processing capacity at the
 1741 Facility(ies) to Process all Delivered Materials delivered to the Facility(ies). Contractor shall maintain
 1742 such capacity throughout the Term.

1743 I. **Permits and Approvals.** Contractor warrants that all licenses, Permits, qualifications, and approvals
 1744 that are legally required or otherwise necessary for Contractor to perform its obligations under this
 1745 Agreement shall be secured on or before the Commencement Date of this Agreement. Contractor
 1746 further warrants that it shall, at its sole cost and expense, keep in effect or obtain at all times during
 1747 the Term all licenses, Permits, and approvals that are legally required for Contractor to perform its
 1748 obligations under this Agreement.

1749 J. **Covenant Not to Sue.** For the Term of this Agreement, Contractor agrees that neither Contractor,
 1750 its officers, employees, agents, Subcontractors, nor its Affiliates, will file any lawsuit against City
 1751 that alleges any claims related to, arising out of, or in connection with City's Request for Proposals
 1752 process for the Contractor's Services, including the award of any agreement or contract thereunder.

1753 K. **Iran Contracting Act Certification.** Contractor represents and warrants that it is in compliance with
 1754 and has completed all requirements necessary to comply with the Iran Contracting Act (Public
 1755 Contract Code Sec. 2200).

1756 L. **No Default.** Contractor shall not be in breach or default under this Agreement or any other
 1757 agreement with the City.

1758 M. **Compliance with Laws.**

1759 1. Contractor shall not discriminate against, or engage in the harassment of, any City employee or
 1760 volunteer or any employee of Contractor or applicant for employment because of an
 1761 individual's race, religion, color, sex, gender identity, sexual orientation, ethnic or national
 1762 origin, ancestry, citizenship status, uniformed service member status, marital status, family
 1763 relationship, pregnancy, age, cancer or HIV/AIDS-related medical condition, genetic
 1764 characteristics, and physical or mental disability (whether perceived or actual). This
 1765 prohibition shall apply to all of Contractor's employment practices and to all of Contractor's
 1766 activities as a provider of Services to the City.

1767 2. Contractor shall comply with all federal, State and City laws, statutes, ordinances, rules and
 1768 regulations and the orders and decrees of any courts or administrative bodies or tribunals in
 1769 any manner affecting the performance of the Agreement.

1770 **9.02 RESERVED**

1771 **9.03 RESERVED**

1772 **ARTICLE 10.**
1773 **MISCELLANEOUS PROVISIONS**

1774 **10.01 EXHIBITS**

1775 If any provisions contained in the text of Articles 1 through 10 are inconsistent or conflict with any Exhibits
1776 to this Agreement, then the provisions of the text will govern.

1777 **10.02 INTEGRATION**

1778 This Agreement contains the entire agreement between the Parties with respect to the rights and
1779 responsibilities of the Parties under this Agreement, including the enforcement and administration of this
1780 Agreement. This Agreement, including any subsequent amendments hereto pursuant to Section 10.05,
1781 completely and fully supersedes all prior understandings and agreements between the Parties with
1782 respect to those rights and responsibilities.

1783 **10.03 SECTION HEADINGS**

1784 Any captions or headings following the Exhibit, Section, subsection, paragraph, and Article numbers and
1785 preceding the operative text of this Agreement is for convenience of reference only and do not control or
1786 affect the scope, intent, meaning, construction, interpretation, or effect of this Agreement.

1787 **10.04 INTERPRETATION AND CONSTRUCTION**

1788 A. **Drafting.** This Agreement must be interpreted and construed reasonably and neither for nor against
1789 either Party, regardless of the degree to which either Party participated in its drafting. Contractor
1790 acknowledges that it determined to participate in the procurement of this Agreement upon its own
1791 choice and initiative and, during the course of that procurement, City solicited Contractor's
1792 comments, exceptions, and proposals with respect to provisions in the Agreement. The Parties have
1793 negotiated this Agreement at arm's length and with advice of their respective attorneys, and no
1794 provision herein is construed against City solely because it prepared this Agreement in its executed
1795 form.

1796 B. **Gender and Plurality.** Words of any gender include correlative words of any other genders. Words
1797 importing the singular number mean and include the plural number, and vice versa, unless the
1798 context demands otherwise.

1799 C. **Font.** Any underlined, italicized, bold-faced, upper captioned, or other font style are for ease of
1800 reading and contract administration only and do not imply relative importance or unimportance of
1801 any provision of this Agreement.

D. **References to Parts.** References to Sections and Articles refer to Sections and Articles of this Agreement, unless specified otherwise. References to Exhibits refer to Exhibits attached to this Agreement. Reference to “subsections” refers to the subsection contained in the same Section in which the reference occurs, unless otherwise provided.

E. **Examples.** Examples are for purpose of illustration only. If any example is ambiguous or is inconsistent or conflicts with the text that it illustrates, the text governs.

F. **Specifics No Limitation on Generalities.** The mention of any specific duty or Liability imposed upon the Contractor may not be construed as a limitation or restriction of any general Liability or duty imposed upon the Contractor by this Agreement or Applicable Law.

10.05 AMENDMENT

The Parties may change, modify, supplement, or amend this Agreement only upon written agreement duly authorized and executed by both Parties. . However, the Plans attached to this agreement as Exhibits B-1 and B-2 may be modified or edited by the City Representative and Contractor Representative, upon their mutual agreement and evidenced in writing, unless the Agreement or Applicable Law specifically requires approval by City Council.

10.06 SEVERABILITY

A. If any clause, sentence, provision, subsection, Section, or Article of this Agreement or Exhibit to this Agreement (an “Agreement Provision”) is ruled unconstitutional, illegal, invalid, non-binding, or unenforceable by any court of competent jurisdiction, then the Parties will:

1. promptly meet and negotiate a substitute for those Agreement Provision and any related amendments, deletions or additions to other provisions of this Agreement which together effect the Parties’ original intent to the greatest extent allowable under Applicable Law.

2. if necessary or desirable to accomplish preceding item (1), apply to the court that made that ruling for a judicial construction of the substituted Agreement Provision and any amendments, deletions, or additions to this Agreement. Contractor will pay City half of the reasonable Direct Costs of that application within twenty (20) Days of City’s request if Contractor or a third Person other than City instituted proceedings resulting in the ruling.

B. If the unconstitutional, illegal, invalid, non-binding, or unenforceable Agreement Provision does not affect any of the remaining provisions of this Agreement, such Agreement Provision or portion thereof will be excluded from the Agreement and the remaining provisions of the Agreement will remain in full force and effect.

10.07 COSTS OF ENFORCING AGREEMENT

If City initiates legal action, files a complaint or cross-complaint, or pursues arbitration, appeal, or other proceedings to enforce its rights or a judgment in connection with this Agreement, the prevailing party will be entitled to reasonable attorney fees and costs.

10.08 AUTHORITY

City warrants that the officers listed below have been duly authorized by City to execute this Agreement on behalf of City. Contractor warrants that the individuals listed below have been duly authorized by the Contractor to execute this Agreement on behalf of the Contractor.

10.09 COUNTERPARTS

This Agreement, including dated signatures on amended Exhibits and attachments to those Exhibits, may be executed in counterparts, each of which will be deemed to be an original.

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed as of the latter of the date written below.

ZANKER ROAD RESOURCE MANAGEMENT, LLC

CITY OF CUPERTINO

By: _____
(print name)

By: _____
(print name)

Date:

Date:

ATTEST:

ATTEST:

By: _____
Corporate Officer (print name)

By: Kirsten Squarcia
City Clerk

APPROVED AS TO FORM:

Cupertino City Attorney

EXHIBIT A: DEFINITIONS

AB 341 means California Assembly Bill 341, the California Jobs and Recycling Act of 2011 (Chesbro, Chapter 476, Statutes of 2011) as amended, supplemented, superseded, and replaced from time to time, and all implementing regulations.

AB 939 means California Assembly Bill 939 (Sher, Chapter 1095, Statutes of 1989) the California Integrated Waste Management Act of 1989 (California Public Resources Code Sections 40000 et seq.), as amended, supplemented, superseded, and replaced from time to time, and all implementing regulations.

AB 1201 means California Assembly Bill 1201 (Ting, Chapter 504, Statutes of 2021) amending Sections 42356, 42356.1, and 42357 of, and amending the heading of Chapter 5.7 (commencing with Section 42355) of Part 3 of Division 30 of, the California Public Resources Code, relating to solid waste, as amended, supplemented, superseded, and replaced from time to time, and all implementing regulations.

AB 1826 means California Assembly Bill 1826, the Organic Waste Recycling Act of 2014 (Chesbro, Chapter 727, Statutes of 2014) modifying Division 30 of the California Public Resources Code), as amended, supplemented, superseded, and replaced from time to time, and all implementing regulations.

Accept, Accepted, or Acceptance (or any variation thereof) means and refers to Delivered Materials that have been Transported to the Facility or an Alternative Facility and have been received by the Contractor for Processing, in accordance with Permits and Applicable Law.

Act means the California Integrated Waste Management Act of 1989 set forth in PRC Section 40000, *et seq.*

Advanced Clean Fleets Rule means 13 CCR Sections 2013, 2013.1, 2013.2, 2013.3, 2013.4, 2014, 2014.1, 2014.2, 2014.3, 2015, 2015.1, 2015.2, 2015.3, 2015.4, 2015.5, 2015.6, and 2016 as amended, supplemented, superseded, and replaced from time to time.

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

Agreement means this Agreement between City and Contractor, including all exhibits, schedules, and attachments, which are incorporated in this Agreement by reference, as this Agreement may be amended and supplemented.

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

Alternative Facility(ies) means the Facility proposed by Contractor and approved by City to Accept and Process City's Delivered Materials should the Facility be unable to Accept Delivered Material as provided in Section 4.12 of the Agreement.

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

Annual Report means the report described in Section 4.14.

Applicable Law means all Federal, State, County, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, Transportation, Processing, and Disposal of Recyclable Materials, Organic Materials, C&D Debris, disaster debris, and Solid Waste that are in force on the Effective Date and as may be enacted, issued, or amended during the Term of this Agreement. The Parties acknowledge that, as of the date of this Agreement, the Governor has recently signed legislation or taken executive actions including, but not limited to, AB 1201, SB 54, SB 343, and the Advanced Clean Fleets Rule, for which development of regulatory requirements or related rule making is in process as of the Effective Date.

Approved Facility(ies) means the GreenWaste Zanker Resource Recovery Facility located at 675 and 705 Los Esteros Rd., San Jose, CA 95134, the GreenWaste San Jose Material Recovery Facility located at 625 Charles St., San Jose, CA 95112, and Potrero Hills Landfill located at 3675 Potrero Hills Ln., Suisun City, CA 94585 proposed by Contractor and approved by City to Accept and Process or Dispose of City's Delivered Materials under this Agreement.

Assign (Assignment) means:

1. selling, exchanging, or otherwise transferring effective control of management of the Contractor (through sale, exchange, or other transfer of outstanding stock or otherwise);
2. issuing new stock or selling, exchanging, or otherwise transferring twenty percent (20%) or more of the then outstanding common stock of the Contractor;
3. any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction which results in a change of Ownership or change of control of Contractor;
4. any Assignment by operation of law, including insolvency or bankruptcy, making Assignment for the benefit of creditors, writ of attachment of an execution, being levied against Contractor, appointment of a receiver taking possession of any of Contractor's tangible or intangible property, or transfer occurring in the event of a probate proceeding;
5. any combination of the forgoing (whether or not in related or contemporaneous transactions) which has the effect of any that transfer or change of Ownership or change of control of Contractor.

Calendar Year means a successive period of twelve (12) months commencing on January 1 and ending on December 31.

CALGreen means the California the California Green Building Standards Code, as originally adopted under Cupertino Municipal Code Section 16.58.010, as it may be amended.

CCR means California Code of Regulations.

CERCLA means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9600 *et. Seq.*).

Change in Law means the occurrence of any event or change in Applicable Law as follows:

1. the adoption, promulgation, repeal, modification, amendment, or other change in Applicable Law or change in judicial or administrative interpretation thereof occurring after the Effective Date, *other than* laws with respect to taxes based on or measured by net income, or any unincorporated business, payroll, franchise taxes levied by any tax board (other than franchise fees levied by City) or employment taxes; or,
2. any order or judgment of any federal, State, or local court, administrative agency, or governmental body issued after the Effective Date:
 - a. the order or judgment is not also the result of the willful misconduct or negligent action or inaction of the Party relying thereon or of any third party for whom the Party relying thereon is directly responsible; and,
 - b. the Party relying thereon, unless excused in writing from so doing by the other Party, will make or have made, or will cause or have caused to be made, Reasonable Business Efforts to contest the order or judgment (it being understood that contesting in good faith an order or judgment will not constitute or be construed as a willful misconduct or negligent action of the Party); or
3. the imposition by a governmental authority or agency of any new or different material conditions in connection with the issuance, renewal, or modification of any Permit after the date of this Agreement; or
4. the failure of a governmental authority or agency to issue or renew, or delay in the issuance or renewal of, or the suspension, interruption, or termination of, any Permit after the date of this Agreement; *provided* the failure to issue or the suspension or termination of any Permit is not the result of negligent action or inaction of the Party relying thereon or any third party for whom the Party relying thereon is directly responsible.

City means the City of Cupertino acting through its City Council or its authorized officers or employees.

City Reimbursements means all fees payable to the City identified and referenced in Article 7 of this Agreement. Contractor acknowledges that City Reimbursements are a cost of doing business not eligible for profit in the City. Both Parties acknowledge that all City Reimbursements are an allowable cost of business similar to any license or permit required by the Contractor to perform the services required under this Agreement and will be recovered by Contractor through the Per-Ton Rates.

City Representative means the City's Director of Public Works, who is responsible for the administrative management of this Agreement, or their designee.

Clean Wood means wood that is not painted, stained, coated, pressure treated, or chemical treated. Clean Wood may include dimensional lumber, pallets, crates, chop sticks, toothpicks, stir sticks, and wooden utensils. Clean Wood excludes creosote, lumber treated with chromated copper arsenate (CCA), melamine coated furniture, and manufactured wood products such as plywood, particle board, oriented strand board, medium density fiberboard and Treated Wood Waste as defined by CalRecycle and DTSC. Clean Wood is a subset of Organic Materials.

Closure means closure of the Facility or portions of the Facility in accordance with Applicable Law, including all planning, design, regulatory approvals, plan implementation, construction, and monitoring.

Collection Agreement means the Agreement for the collection of City's discarded materials between the City and Recology Cupertino, dated December 3, 2020, as it may be amended or replaced.

Collection Contractor means the Person that City directs pursuant to the Collection Agreement to Collect and deliver Delivered Materials to the Facility.

Commencement Date means November 21, 2025, the date that C&D Material Processing Services provided by the Contractor will commence.

Compost, Composted, or Composting means a controlled biological decomposition of Organic Waste yielding a safe and nuisance-free Compost Product.

Compost Product means the product resulting from the controlled biological decomposition of Organic Wastes that are Source Separated from the Solid Waste stream, or which are separated at a centralized facility; or as otherwise defined in 14 CCR Section 17896.2(a)(4).

Compostable Paper means paper products that are directed or approved by the City for Collection or Processing as Organic Waste.

Construction and Demolition Materials, C&D Materials 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 Unpermitted Waste. Construction and Demolition Materials includes rocks, soils, tree remains and other Yard Trimmings that result from land clearing or land development operations in preparation for construction. For purposes of clarity, putrescible wastes are not included in Construction and Demolition Materials.

Contract Manager means the Person designated by the Contractor to be the City's primary point of contact related to this Agreement and associated Services provided. Contractor's Contract Manager may negotiate and bind Contractor with respect to changes in scope, dispute resolution, compensation adjustments, and Service-related matters.

Contractor means Zanker Road Resource Management, LLC, a limited liability company organized in Delaware and operating under the laws of the State of California.

Contractor Compensation means the monetary compensation received by Contractor in return for providing services in accordance with this Agreement as described in Article 5.

Contractor Component has the meaning provided in Section 5.02.

Conviction means a criminal conviction, permanent mandatory or prohibitory injunction, or a final judgment or order from a court or regulatory agency of competent jurisdiction with respect to Criminal Activity.

County means the County of Santa Clara.

Criminal Activity means any of the following:

1. Any criminal offense in connection with obtaining, attempting to obtain, procuring, or performing a public or private agreement related to Recyclable Materials, Organic Waste, Yard Trimmings, or Solid Waste services of any kind (including Collection, Transport, Transfer, Processing, Composting, or Disposal), including this Agreement.
2. Bribery or attempting to bribe a public officer or employee of a local, State, or federal agency.
3. Fraud, embezzlement, extortion, racketeering, false claims, false statements, forgery, falsification, or destruction of Records, obstruction of justice, knowingly receiving stolen property, theft, or misprision (failure to disclose) of a felony.
4. Unlawful disposal of Hazardous Materials, Designated Waste, or Unpermitted Waste.
5. Violation of antitrust laws, including laws relating to price-fixing, bid-rigging and sales and market allocation, and of unfair and anti-competitive trade practice laws, including with respect to inflation of waste collection, hauling, or disposal rates or fees.

Day means calendar day.

Delivered Materials means C&D Materials, either individually or collectively, to be delivered to the Facility under this Agreement by Collection Contractor, or by Stewardship Organizations or Extended Producer Responsibility Program participants. Delivered Materials do not include Excluded Waste.

Designated Waste means non-Hazardous Material that may pose special Disposal problems because of its potential to contaminate the environment. Designated Waste 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 or pursuant to applicable Permits. Designated Waste consists of those substances classified as Designated Waste by the State, in CCR Title 23, Section 2522.

Direct Costs means the sum of:

1. payroll costs directly related to the Contractor's performance, or supervision of any obligation pursuant to the provisions of this Agreement, comprised of compensation and fringe benefits, including vacation, sick leave, Holidays, retirement, workers compensation insurance, federal and State unemployment taxes, and all medical and health insurance benefits, plus
2. the costs of materials, Services, direct rental costs and supplies, plus
3. the reasonable costs of any payments to Subcontractors necessary to and in connection with the performance under or administration and enforcement of this Agreement; plus
4. any other cost or expense which is directly or normally associated with the task performed.

Such Direct Costs are to be substantiated by (i) a certificate signed by the principal financial officer of the Contractor or the authorized representative of City or their designee, as the case may be, setting forth the amount of the cost and the reason why the cost is properly chargeable to City or the Contractor, as the case may be, and representing that the cost is an arm's length and competitive price, if there are competitive prices, for the Service or materials supplied; and, (ii) if City or the Contractor requests, as the case may be, additional back-up documentation as may be available to reasonably substantiate any Direct Cost, including invoices from suppliers and Subcontractors. Direct Costs exclude Non-Allowable Costs.

Disaster Response Plan means the plan provided for in Section 4.20 and Exhibit B-2.

Disposal (or Dispose or other variation thereof) means the final disposition of Solid Waste in accordance with this Agreement at the Facility.

Diversion (Divert) means to divert from landfill Disposal or transformation through source reduction, reuse, Recycling, Composting, or other means within the meaning of the Public Resources Code Section 41780.

Edible Food means food intended for human consumption, as defined in 14 CCR Section 18982(a)(18). For the purposes of this Agreement, Edible Food is not Solid Waste or Food Scraps if it is recovered as intended. 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 portion of the California Health and Safety Code.

Effective Date means the date on which this Agreement is fully executed by both Parties.

Event of Default has the meaning provided in Section 7.01.

Excluded Waste(s) means Hazardous Substances, Hazardous Waste, Infectious Waste, Designated Waste, Unpermitted Waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that Contractor reasonably believes would, as a result of or upon Disposal, be a violation of local, State, or Federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be Disposed of in Class III landfills, waste that in Contractor's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance, or otherwise create or expose Contractor or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code. Excluded Waste does not include Used Motor Oil and Filters, latex paint in its original container, or Household Batteries when properly placed for Collection by a Generator as set forth in the Collection Agreement.

Extended Producer Responsibility Program or EPR Program means an environmental program or policy codified, enforced, and/or monitored by local, State, or Federal governments in which a producer's, distributor's, or retailer's administrative, financial, operational, and/or physical responsibility for a product is extended to the post-consumer stage of a product's life cycle. Extended Producer Responsibility Programs may be implemented by individual producers, collective industry organizations such as a producer responsibility organization or Stewardship Organization, or other regulated entities specified under the program. Such programs may cover individual products or categories of products, using one (1) or more funding mechanisms, as defined in the regulation(s) establishing the program.

Facility (Facilities) means GreenWaste Zanker Resource Recovery Facility located at 675 and 705 Los Esteros Rd., San Jose, CA 95134 as proposed by Contractor and approved by City.

Food Scraps means discarded food that will decompose and or/putrefy including: (i) all kitchen and table food; (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs; (iii) fruit waste, grain waste, dairy waste, meat, and fish waste; and, (iv) vegetable trimmings, houseplant trimmings, and other organic waste common to the occupancy of Residential dwellings and some commercial kitchen operations.

Generator means any Person whose act or process produces Solid Waste, C&D, Organic Waste, Recyclable Materials, or Unpermitted Waste or other material that becomes part of the overall waste stream.

Goods and Services means all goods and services used in providing Services, including labor, leases, subleases, equipment, supplies, and capital related to furnishing Services; insurance, bonds, or other credit support if the insurer is an Affiliate or a captive of Contractor or any Affiliate; and, legal, risk management, general, and administrative services.

Government Fees are fees or taxes imposed by governmental entities upon the Facility without regard to the specific site characteristics or operational history of those facilities, and may include franchise fees, regulatory fees, mitigation fees, surcharges, governmental impositions, and/or taxes. "Government Fees" are not amounts imposed upon the Facility in connection with the repair, remediation, improvement, addition, or expansion of the Facility.

Governmental Fee Component has the meaning provided in Section 5.02.

Hazardous Substances, Hazardous Waste are materials that by reason of their quality, concentration, composition, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious illness or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise mismanaged; or any waste that is regulated as a hazardous waste, toxic waste, hazardous chemical substance or mixture, or asbestos under Applicable Law, and:

1. "Hazardous Waste" pursuant to Section 40141 of the California Public Resources Code; regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the California Health and Safety Code; all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by Sections 25110.02, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste Control Act), California Health and Safety Code Section 25100 et seq., including 23 CCR Sections 2521 and 2522; and
2. materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended (including amendments thereto made by the Solid Waste Disposal Act Amendments of 1980), and
3. materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as amended, and related federal, State, and local laws and regulations, including the California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq.; and
4. materials regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq., and
5. materials regulated under any future additional or substitute federal, State, or local laws and regulations pertaining to the identification, transportation, treatment, storage, or disposal of toxic substances or hazardous waste, and

6. Any substance the presence of which at the Facility is prohibited by Applicable Law.

If two (2) or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste adopt conflicting definitions of “hazardous waste”, for purposes of collection, transportation, Processing, and/or disposal, the broader, more restrictive definition is employed for purposes of this Agreement.

Holidays are defined as Easter, Thanksgiving, Christmas, New Year's Day.

Indemnities or **Indemnification** means all defense, hold harmless, and indemnification requirements under this Agreement.

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 the California Health and Safety Code Section 25117.5.

Liabilities means all liabilities, including:

1. Actions;
2. Awards, judgments, and damages, both: (i) actual damages, whether in contract or in tort, damage for injury to or death of any Person, and damage to property; ;
3. Contribution or Indemnity claimed by Persons other than the Parties;
4. Injuries, losses, debts, liens, liabilities,
5. Costs,
6. Interest,
7. Fines, charges, penalties, forfeitures, and
8. Expenses such as attorney’s and expert witness fees, and costs incurred in connection with defending against any of the foregoing or in enforcing Indemnities.

Liquidated Damages means the amounts due by Contractor for failure to meet specific quantifiable standards of performance as described in Section 7.06 and Exhibit E.

Maximum Vehicle Turnaround Time means a thirty (30) minute average monthly vehicle Turnaround Time. The average monthly vehicle Turnaround Time shall be calculated by summing the actual vehicle Turnaround Time for each load of City’s Delivered Materials delivered by the Collection Contractor in a given month divided by the number of loads of City’s Delivered Materials delivered by the Collection Contractor in the given month.

Municipal Code means the City of Cupertino Municipal Code.

Non-Allowable Costs include the following:

1. fines, penalties, assessments, and other amounts paid for Violations or noncompliance with Applicable Law or in settlement of claims or allegations of noncompliance with Applicable Law;
2. any costs of Indemnifications, including Indemnification, Liabilities, or any mediation, arbitration, or judicial proceeding, whether formal or informal;
3. any contributions or donations to any Person (including charitable, non-profit, service or other community groups, and elected officials), including cash, property, and services in kind;
4. lobbying costs, whether cash, property, or services in kind, such as:
 - a. costs incurred in any direct or indirect attempt to influence the outcome of any federal, State, or local election, referendum, initiative, or similar process by citizen electorate or vote upon resolutions, ordinances, or other action items by elected officials (including members of a city council or a county board of supervisors), through cash contributions, endorsements, publicity, or other Action;
 - b. establishing, administering, contributing to, or paying the expense of a candidate, political party, campaign, political action committee, or other Person or organization established for the purpose of influencing the outcomes of elections or vote, including votes on resolutions, ordinances, or other actions by elected bodies such as a city council or a county board of supervisors;
 - c. attempts to influence (i) the introduction of federal, State, or local legislation, or (ii) the enactment or modification of any pending federal, State, or local legislation through communication with any member of employee of Congress, a State legislature, or local governing body, or by preparing, distributing, or using publicity;
 - d. legislative liaison activities when those activities are carried on in support of, or in knowing preparation for, an effort to engage in unallowable activities;

Notice (or Notify) means a notice given in accordance with Section 8.09.

Operations Plan(s) means the plan(s) submitted by the Contractor with its proposal, attached hereto as Exhibit B-1.

Organic Material(s) means Yard Trimmings, Food Scraps, Compostable Paper, and Clean Wood, individually or collectively. Organic Materials may also include manure from herbivores (horses, cows, goats, sheep, rabbits, etc.). No Discarded Material shall be Organic Material unless it is separated from Recyclable Materials and Solid 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.

Ownership has the meaning provided under the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986 *except* that (1) ten percent (10%) is substituted for fifty percent (50%) in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; (2) Section 318(a)(5)(C) is disregarded; (3)

ownership interest of less than ten percent (10%) is disregarded; and, (4) percentage interests is determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

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

Per-Ton Rate means the per-unit Contractor Compensation owed Contractor by Collection Contractor for each Ton of Delivered Materials as payment for all Processing Services, provided under this Agreement. Initial Per-Ton Rates are provided in Exhibit B-3. Beginning in Year Two, Per-Ton Rates are adjusted annually as provided in Article 5.

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

Person(s) includes an individual, firm, association, organization, partnership, corporation, trust, joint venture, the United States, the State, local governments, municipalities, special purpose districts, and other entities.

Pleas means the Contractor or any of its Contract Managers has pled “guilty” or entered a plea of “*nolo contendere*” or “no contest” to Criminal Activity occurring within City or relating to this Agreement.

PRC means the California Public Resources Code.

Premises means any land or building in the City where C&D Materials or Solid Waste are generated or accumulated.

Process, Processing means the controlled separation, Recovery, volume reduction, conversion, or Recycling of Solid Waste and other discarded materials including, but not limited to, organized, manual, automated, or mechanical sorting, cleansing, treating or reconstituting or use of other methods, for the purpose of making such material available for Recycling or reuse and/or marketing as a Recyclable Materials, Organic Material, or C&D product.

Rate Period means a twelve- (12-) month period, commencing February 1 and concluding January 31 with the exception of the first year which will be November 21, 2025 to January 31, 2027 as noted in 5.03.

RCRA means the Resource Conservation and Recovery Act (42 U.S.C. Section 6900 *et. seq.*).

Reasonable Business Efforts means those efforts a reasonably prudent business Person would expend under the same or similar circumstances in the exercise of that Person’s business judgment, intending in good faith to take steps calculated to satisfy the obligation that that Person has undertaken to satisfy.

Records means all non-privileged ledgers, book of account, invoices, vouchers, canceled checks, logs, correspondence, evidencing Per-Ton Rates, Tonnage of Solid Waste and other materials handled, satisfaction of Contractor’s obligations under this Agreement and performance of the terms of this Agreement, damages payable under this Agreement, and Events of Defaults, including, but not limited to, those Records described in Sections 4.02, 4.03, 4.04, 4.09, 4.13, 4.14, 4.17, 8.13, 8.14, 8.15, and 10.01.

Recover (or any variation thereof) means the picking, pulling, sorting, separating, classifying, and recovery of Recyclable Materials, Organic Materials, or other discarded materials from Solid Waste whether by

manual or mechanical means, after Acceptance of those materials and before marketing of Recovered Materials, including Recycling, material reuse and recovery, mulching, Composting, or land application.

Recovered Materials means Recyclable Materials, Organic Waste, or other materials that are Recovered.

Recyclable Materials means materials that are reused, remanufactured, or processed. Recyclable Materials includes, but is not limited to, those materials accepted under the City's Collection Agreement.

Recycle or Recycling (or any variation thereof) means the process of sorting, cleansing, treating, and reconstituting, at a C&D Materials Processing Facility or a Secondary 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 does not include any thermal or chemical conversion methods.

Regulatory Agency means any federal, State, or local governmental agency that regulates Transfer, Transportation, and Disposal of Solid Waste, including California Department of Transportation, California Department of Motor Vehicles, EDD, U.S. Immigration and Naturalization Services, California Air Resources Board, regional water quality management districts, California Department of Toxic Substances, CIWMB, the Local Enforcement Agency, federal and State Environmental Protection Agencies, and other federal or State health and safety department, applicable to Services.

Residue means those materials which, after Processing, are Disposed rather than Recovered due to either the lack of markets for materials or the inability or infeasibility of the Processing Facility to capture and Recover the materials.

SB 54 means California Senate Bill 54, the Plastic Pollution Prevention and Packaging Producer Responsibility Act (Allen, Chapter 75, Statutes of 2022), amending Section 41821.5 of the California Public Resources Code to add Chapter 3 (commencing with Section 42040) to Part 3 of Division 30, as amended, supplemented, superseded, and replaced from time to time, and all implementing regulations.

SB 343 means California Senate Bill 343, the Environmental Advertising: Recycling Symbol: Recyclability: Products and Packaging Act (Allen, Chapter 507, Statutes of 2021) amending Sections 17580, 17580.5 of the California Business and Professions Code, amending Sections 18015 and 42355.5 of, and adding Section 42355.51 to, the California Public Resources Code, as amended, supplemented, superseded, and replaced from time to time, and all implementing regulations.

SB 1383 means Senate Bill 1383 (Lara, Chapter 395, Statutes of 2016) adding Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the California Health and Safety Code, and adding Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the California Public Resources Code, 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 implementing regulations developed by CalRecycle and adopted on November 3, 2020 that created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.

Secondary Processing Facility means any downstream facility that receives Delivered Materials and further Processes such material to recover additional material for Recycling and/or to prepare the material for use in a final product and/or for marketing as an input for a new product. A Secondary Processing Facility includes any downstream facility that receives Delivered Materials for further Processing prior to final decomposition into a Compost product or to ready the material for sale as Mulch. A Secondary Processing Facility may be the same/initial facility at which Delivered Materials were received or Processed or any additional facility(ies) such materials are Transported to.

Self Haul means the collection and Transportation of Solid Waste or C&D Materials by Persons other than the Collection Contractor, including the Generator thereof and the owner or occupant of residential or commercial Premises located in City where materials were generated.

Service or Services mean all obligations of Contractor under and in accordance with this Agreement.

Solid Waste means and includes all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, rubbish, ashes, industrial wastes, dewatered, treated, or chemically-fixed sewage sludge which is not Hazardous Waste, demolition and construction wastes, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid wastes, biosolids, and other discarded solid and semisolid wastes, as defined in California Public Resources Code §40191 as that section may be amended from time to time. For the purposes of this Agreement, “Solid Waste” does not include abandoned vehicles and parts thereof, Hazardous Waste, or low-level radioactive waste, medical waste, Recyclable Materials, Construction and Demolition Materials, or Organic Waste.

Source Separated means the segregation, by the Generator, of materials by material type designated for separate Collection for Recycling, Composting, recovery, or reuse.

Standard Industry Practice means (1) the then-current development and operations practices and standards of the California Solid Waste management industry with respect to Recovery, Diversion, Transfer, Transport, and Disposal services that are in full compliance with Applicable Law, and (2) the then-current development, operations, Closure, and Post-Closure practices and Solid Waste Association of North America (or any successor organization) Manager of Facility Operations standards in meeting Contractor’s obligations under this Agreement for Recovery, Diversion, and Disposal services.

State means the State of California.

Stewardship Organization means a Person(s) that is approved or designated under Applicable Law or by a relevant governing body, including, but not limited to, CalRecycle, the California Air Resources Board, the County, or the City, to manage, coordinate, fund, or otherwise oversee one or more Extended Producer Responsibility Programs, and that is selected by the City. The applicable Stewardship Organization for each Extended Producer Responsibility Program under this Agreement shall be designated or approved by the City Representative, at their sole discretion.

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. Notwithstanding any other provision in this Agreement, Vendors providing materials, supplies, or professional services to Contractor shall not be considered Subcontractors for any purpose under this Agreement (except as explicitly provided in Section 4.01C of this Agreement).

Term is defined in Section 2.02.

Third-Party C&D Materials Processing Accreditor means a City-approved private, non-profit, or government entity that reviews, assesses, verifies, and accredits a C&D Materials Processing Facility(ies) on its ability to ensure effective diversion of C&D Materials from landfills, by providing a certification after assessment, and requiring regular re-certification.

Ton (or any variation thereof) means a unit of weight equal to 2,000 pounds.

Transfer (or **Transferring** or other variations thereof) means transferring collected material from Collection vehicles to larger long-haul vehicles.

Transport (or Transportation) means the act of conveying Delivered Materials from one (1) location to another.

Turnaround Time means the duration of time for each vehicle (i.e., load) of City's Delivered Materials delivered by Collection Contractor that elapses from the vehicle's arrival time upon entry to the Facility property until the vehicle's departure time when it exits the Facility property.

Uncontrollable Circumstances has the meaning provided in Section 8.12.

Unpermitted Waste means wastes or other materials that the Facility may not receive under their Permits, including:

1. All materials that the Facility is not permitted to accept, *excluding* white goods with chlorinated fluorocarbons and capacitors removed, and other materials that Contractor accepts and safely handles, Recycles, or Disposes.
2. Friable asbestos, unless otherwise approved by applicable regulatory agencies, consisting of materials that can be crumbled with pressure and are therefore likely to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which may be a Hazardous Material if it contains more than one percent (1%) asbestos.
3. Hazardous Materials.
4. Untreated Infectious Waste or untreated medical wastes (as defined by Chapter 6.1, Division 20 of the State Health and Safety Code) that have disease transmission potential and are classified as Hazardous Wastes by the State Department of Health Services, including untreated pathological and surgical wastes, untreated medical clinic wastes, untreated wastes from biological laboratories, syringes, needles, blades, tubing, bottles, drugs, patient care items such as linen or personal or food service items from contaminated areas, chemicals, personal hygiene wastes, and carcasses used for medical purposes or with known infectious disease.
5. Liquid wastes that are not spadeable including cannery and food Processing wastes, landfill leachate and gas condensate, boiler blowdown water, grease trap pumpings, oil and geothermal field wastes, septic tank pumpings, rendering plant byproducts, and those liquid wastes that may be Hazardous Wastes.
6. Radioactive wastes under Chapter 7.6 (commencing with Section 25800) of Division 20 of the State Health and Safety Code, and any waste that contains a radioactive material, the storage or disposal of which is subject to any other State or federal regulation.

This definition will be promptly amended to reflect any applicable changes in Permits or Applicable Law.

Violation means any Notice, assessment, or determination of non-compliance with Applicable law from any Regulatory Agency to Contractor, whether or not a fine or penalty is included, assessed, levied, or attached.

Working Days (or Work Day or other variations thereof) means Days during which City offices are open to do business with the public.

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 Waste) resulting from normal yard and landscaping maintenance. Yard Trimmings are a subset of Organic Waste.

EXHIBIT B: CONTRACTOR'S PLANS AND RATE PERIOD ONE RATES

B-1 OPERATIONS PLAN

See Exhibit B-1 Operations Plan attached.

B-2 DISASTER PLAN

See Exhibit B-2 Disaster Plan attached.

B-3 RATE PERIOD ONE PER-TON RATES

Following are the initial Rate Period One Per-Ton Rates as described in Article 5.

Per-Ton Rate for Rate Period One
(Effective November 21, 2025)

	Per-Ton Rate
Contractor Component	
Total Contractor Component Mixed C&D Processing	\$90.56
Governmental Fee Component	
1. City of San Jose Solid Waste Enforcement Fee	\$0.22
2. County Solid Waste Enforcement Fee	\$1.22
Total Governmental Fee Component	\$1.44
Total Per-Ton Rate	\$92.00

	Per-Ton Rate
Contractor Component	
Total Contractor Component Inerts C&D Processing	\$64.29
Governmental Fee Component	
1. City of San Jose Solid Waste Enforcement Fee	\$0.22
2. County Solid Waste Enforcement Fee	\$1.22
Total Governmental Fee Component	\$1.44
Total Per-Ton Rate Inerts C&D	\$65.00

* All government taxes and fees are assessed on a per-Ton basis for all Tons delivered unless otherwise noted, and the amounts shown above are the fees as of the Effective Date.

EXHIBIT C: INSURANCE

- A. **General Liability** Insurance Services Office form number GL 0002 covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001). \$10,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage. An excess liability policy may be used to obtain required limit.

The Commercial General Liability Business policy must contain blanket-form endorsements in substantially the following form, or the policy form must include:

1. Thirty (30) Days' prior written Notice shall be given to the City in the event of cancellation, reduction in coverage below the requirements of this Exhibit, or non-renewal of this policy. Such Notice shall be sent to:

City of Cupertino
Attention: Public Works Director
10300 Torre Avenue
Cupertino, California 95014

2. The City, its officers, employees, and agents are additional insureds on this policy. The City requires form CG2010 1004.
3. This policy will be considered primary insurance as respects any other valid and collectible insurance maintained by the City, including any self-insured retention or program of self-insurance, and any other such insurance will be considered excess insurance only.
4. Inclusion of the City as an insured shall not affect City's rights as respects any claim, demand, suit, or judgment brought or recovered against the Contractor. This policy shall protect Contractor and City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Contractor's Liability as set forth in the policy beyond the amount shown or to which the Contractor would have been liable if only one (1) Party had been named as an insured.

- B. **Automobile Liability** Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto", and endorsement CA 0025 (occurrence form).

\$10,000,000 combined single limit per accident for bodily injury and property damage. An excess liability policy may be used to obtain required limit.

The Automobile Liability policy must contain the same endorsements as required for Comprehensive General Liability and CA 99 48 Broadened Auto Pollution Liability and MCS 90 upset and overturn coverage.

- C. **Workers Compensation and Employers Liability Insurance.** Workers' compensation limits as required by State Labor Code Section 2700. Employers Liability Insurance in the amount of \$1,000,000 per accident.

The Workers' Compensation policy must contain a blanket-form endorsement in substantially the following form:

EXHIBIT D: GUARANTY AGREEMENT

The insurer must waive all rights of subrogation against City, its officers, employees, and volunteers for losses arising from work performed by the Contractor for City, except for the sole negligence of City.

- D. **Environmental Impairment Liability** in the amount of \$10,000,000 covering Liability arising from the release of pollution at the Facility. The Environmental Impairment Liability policy must contain the same endorsements as required for Comprehensive General Liability.

EXHIBIT E: PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES

The following table lists the events that constitute breaches of the Agreement's standard of performance warranting the imposition of Liquidated Damages. The table describes the incident(s) or event(s) that trigger Liquidated Damages, the methods by which occurrences will principally be tracked by Contractor or City, and the dollar amounts of Liquidated Damages that the City may assess for Contractor's failure to meet the performance requirements specified in this Agreement. In the event that the City Representative determines that Contractor has failed to meet the performance standard by this Agreement and described below, the City may assess Liquidated Damages pursuant to Section 7.06 of the Agreement.

Event of Non-Performance	Definition	Liquidated Damage Amount
Failure to meet vehicle turnaround guarantees specified in Section 4.08.	Contractor shall operate the Approved Facilities such that vehicle turnaround times do not exceed the maximum vehicle turnaround time identified in Section 4.08.B	For Collection Contractor vehicles: \$100 per vehicle delayed.
Failure to receive vehicles during operating hours specified in Section 4.06.	Failure of the Contractor to open the Approved Facility to the Collection Contractor during operating days and hours specified in Section 4.06.	\$1,000 per hour that the Approved Facility is not open to receive the Collection Contractor.
Failure of Contractor to separately receive, store, Transfer, or otherwise manage different streams of materials received at the Approved Facility(ies) in a manner that does not result in contamination.	Failure of Contractor to separately receive, store, Transfer, or otherwise manage Recyclable Materials, Yard Waste, Food Scraps, Organic Materials, or C&D Debris that were Source Separated by the Generator or Person delivering the material and that were delivered to the Approved Facility in a manner that does not result in contamination.	\$100 per Ton for each Ton of material that has been combined, mixed, or contaminated with another material stream rather than separately managed, where the total Tons per incident shall be the combined Tonnage of the two (2) or more material streams or contaminants that were combined or mixed.
Failure of Contractor to achieve regulatory compliance performance standards of Section 4.03.	For each material Notice of Violation that any part of Contractor's Approved Facility(ies) receives from any regulatory body related to Contractor responsibilities as it pertains to operation of the Approved Facility(ies) as outlined in this Agreement and more fully specified in Section 7.01.D.	\$5,000 per month or portion thereof until the uncontested, material Notice of Violation is resolved.
Failure of Contractor to perform required SB 1383 material sampling or to properly conduct the sampling, sorting, or measurements.	Failure of Contractor to perform the SB 1383 material sampling, sorting, or measurements required under SB 1383.	\$500 per sample not collected in a given quarter or per sample in which the sampling, sorting, or measurements were not properly conducted.
Timeliness of submissions of reports to the City.	Failure to submit any report on time to the City (any report shall be considered late until such time as a materially correct and complete report is received by the City).	\$500 per day for each day a report is late.

Failure to make Records available upon request.	Failure of Contractor to make reports and Records collected and retained by the Contractor accessible to the City or its authorized representatives within ten (10) Business Days of making a reasonable records request.	\$500 per day for each day that the requested Records are not available to the City.
Failure of the Contractor to notify the City of intent to use Subcontractor(s).	Failure of Contractor to notify the City anytime that a Subcontractor is used to perform any obligations of the Agreement.	\$1,000 per incident that the Contractor fails to notify the City of its intent to use a Subcontractor.
Failure of Contractor to provide an accurate written response to information requested by the City.	Failure of Contractor to provide a complete and accurate written response to the City's reasonable request within the timeframe specified in the Agreement (which shall not be less than ten (10) Business Days if no timeframe is specified in the Agreement).	\$500 per day for each day that the requested information is late.
Contractor Failure to Accept City Delivered Materials at any Approved Facility under this Agreement	Inability of Contractor to Accept City-Delivered Materials at the appropriate Approved Facility for that material type for any reason other than an event of force majeure, and without prior arrangement for use of an Alternate Facility.	\$500/Ton
Failure to report use of any Secondary Processing Facility	Failure of Contractor to report use of any Secondary Processing Facility used to Process, Recycle, or Compost City Delivered Materials	\$500/Load of material Delivered to a Secondary Processing Facility without prior notice to, and approval by, the City.
Delivery to Non-Approved Facility	Each individual occurrence of delivering City-Delivered Materials to a facility other than the Approved Facility(ies) designated for each material type under Article 4 of this Agreement.	\$500 per failure
Disposal of materials Collected for Diversion	Each individual occurrence of Disposal of Delivered C&D Materials without Processing.	\$1,000/Load

Failure to Provide Adequate Capacity	Failure to provide adequate primary and alternate capacity to accept and Process City Delivered Materials.	\$1,000/Day
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By placing Designee's initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of Liquidated Damage provisions at the time that the Agreement was made.

Contractor

City

Initial Here: _____ Initial Here: _____

Exhibit B-1 Construction and Demolition Debris Processing Operations Plan

City of Cupertino

GreenWaste Proposal for Construction and Demolition Debris Processing and Solid Waste Disposal

Additional information about RCI and GreenWaste's Facilities can be found online at:
<https://www.recyclingcertification.org>

evaluators to verify the accuracy and reliability of the recycling/diversion rates, and implements a rigorous set of protocols, guidelines, and tools to professionally audit and certify the diversion reports of C&D recyclers throughout the nation. RCI increases certainty and builds confidence in the C&D recycling marketplace for municipalities, the public,

construction project owners, architects, and the environmental community.

Facility Documents

GreenWaste has provided the following attachments:

- » [Appendix C Solid Waste Facility Permit GreenWaste Zanker Resource Recovery Facility Site 1](#)
- » [Appendix D Solid Waste Facility Permit GreenWaste Zanker Resource Recovery Facility Site 2](#)
- » [Appendix E List of Current Contracts](#)
- » [Appendix F RCI Certification GreenWaste Zanker Resource Recovery Facility](#)

Operations Conditions

Operations Information

GreenWaste has completed all operational information required on Form 4.b. of Attachment A.

Operations Plan

In addition to the information provided in the technical proposal form (Attachment A), below is an Operations Plan describing GreenWaste's plan to provide C&D materials processing services in accordance with the RFP, Article 4 of the Draft Agreement, and Applicable Law:

a. Material Receipt and Acceptance

GreenWaste ensures to meet the requirements of Sections 4.01, 4.03, and 4.19 of the Draft Agreement, including but not limited to receiving, accepting, and safely processing C&D materials.

- » Acceptance of Delivered Materials. GreenWaste will receive, accept, and safely and lawfully process the City's Delivered Materials at the Zanker facility. GreenWaste understands that its failure to take all actions it deems necessary to perform the Services does not relieve GreenWaste of its obligations to perform such act or the Services.
- » Scope Limitations and Exclusions. GreenWaste understands that the award of this Agreement will not preclude the categories of Recyclable Materials, Organic Materials, C&D Materials, and Solid Waste listed in section 4.01 of the Draft Agreement from being Collected by Persons other than the Collection Contractor and Transferred, Transported, Processed, or Disposed by Persons other than GreenWaste, provided that nothing in the Agreement is intended to or will be construed to excuse any Person from obtaining any authorization from the City, which is otherwise required by law.
- » Securing Permits. GreenWaste currently has and will maintain all Permits required under Applicable Law to perform Services. GreenWaste will provide City proof of Permits and will demonstrate compliance with the terms and conditions of Permits promptly upon request of City. In its Annual Report or more frequently, as necessary, GreenWaste will inform City of any Permit-related or regulatory concerns and GreenWaste's plans to, and status of,

securing the issuance, revision, modification, extension, or renewal of Permits. Promptly upon City direction, GreenWaste will provide City with copies of Permits and any applications or other correspondence that GreenWaste submits in connection with securing Permits.

- » Complying with Permits. GreenWaste will at all times provide Services in compliance with all Permits, including any mitigation measures related to the operation and maintenance of the Facility. GreenWaste is solely responsible for paying any fines or penalties imposed for noncompliance with or Violation of Permits or failure to obtain Permits.
- » Service Standards. GreenWaste will perform Services in accordance with Applicable Law, Standard Industry Practice, and specifications and other requirements of this Agreement.

b. Load Checking/Unpermitted Waste

Below are GreenWaste's procedures for identifying and addressing unpermitted waste in accordance with Draft Agreement section 4.05.

- » Inspection. GreenWaste will use Standard Industry Practices to detect and reject Unpermitted Waste and Excluded Waste in a uniform and non-discriminatory manner and will not knowingly Accept Unpermitted Waste or Excluded Waste at the Facility. All inbound material is weighed and inspected upon entry of the facility at the scale house. Scale house weighmasters are trained to inspect and classify material based off material description codes. Weighmasters will reject loads containing unpermitted waste. GreenWaste will comply with the inspection procedure contained in its Permit requirements and in accordance with the Operations Plan. GreenWaste will promptly modify that procedure to reflect any changes in Permits or Applicable Law.
- » Unpermitted Wastes and Excluded Wastes Handling and Costs. GreenWaste will arrange for or provide handling, Transportation, and delivery to a Recycling, Processing, or Disposal Facility permitted in accordance with Applicable Law of all Unpermitted Wastes or Excluded Wastes detected at the Facility that are not delivered by the Collection Contractor. GreenWaste understands it is solely responsible for making those arrangements or provisions and all costs thereof.
- » Remedies for Rejected Materials. If GreenWaste identifies Unpermitted Waste or Excluded Wastes delivered by Collection Contractor, GreenWaste may reject it and require Collection Contractor remove it. Further, the City's agreement with the Collection Contractor will require the Collection Contractor to collect, transport, and dispose of that Unpermitted Waste or Excluded Wastes and/or to remediate any contamination resulting there from at Collection Contractor expense, but GreenWaste may not require City to take those actions or pay those costs. GreenWaste understands nothing in the Agreement will excuse GreenWaste from the responsibility of handling Unpermitted Waste or Excluded Wastes that GreenWaste inadvertently accepts in a lawful manner and of arranging for the disposition of that Unpermitted Waste or Excluded Wastes in accordance with Applicable Law.
- » Notification. If GreenWaste rejects Unpermitted Waste or Excluded Wastes delivered by the Collection Contractor, GreenWaste will immediately Notify the City verbally and then follow verbal notifications with Notice identifying the date and time of occurrence; material type; material weight or volume; characterization of material; GreenWaste's reason for rejection of the delivered material; and the vehicle that delivered the material.

- » C&D Contamination Monitoring. GreenWaste will Notify City and the Collection Contractor each time a load of C&D Materials has a contamination level of fifteen percent (15%) or more. The contamination Notice will include the date and time the load was delivered, the vehicle identification number, and photos of the contamination in the load, and any other related information that may be useful for the Collection Contractor in identifying the types of contaminants and developing strategies to reduce contamination and to target information in the Collection Contractor's education and outreach efforts to City.

c. Safety

GreenWaste ensures to provide all services in a safe manner, in accordance with Applicable Law and the insurance requirements of Draft Agreement Article 6. GreenWaste has policies which include an Injury and Illness Prevention Program ("IIPP"), Life Saving Rules ("LSRs"), Heat Illness Prevention Program (both indoor and outdoor), Workplace Violence Prevention, Energy Isolation ("LOTO"), Confined Space Entry, Yellow Iron Policy, Hot Work etc. to ensure the safety of our employees. LSRs apply to all levels of the GreenWaste organization. When GreenWaste and visitors are at GreenWaste facilities or property, they must comply with these rules in addition to their own company's safety policies as well as applicable laws and regulations. GreenWaste ensures work procedures and training are followed to safely complete tasks. These policies are meant to work with and meet or exceed all applicable local, state, and federal laws in which GreenWaste operates and where the employee is performing work.



At GreenWaste, safety is a core value embedded in our commitment to integrity and teamwork. We focus on ensuring that our operations and facilities are safe for both our employees and our customers. Our dedication to safety is reflected in our compliance with all relevant federal, state, and local laws and regulations, including Occupational Safety and Health Administration ("OSHA") and CalOSHA.

Under the leadership of our CEO, who champions our safety culture, and our VP of Safety, who guides the success of our safety program, we are continuously evaluating and optimizing our safety initiatives. Safety is a standalone KPI for all employees, and our safety culture encourages active participation, suggestions, and solutions to address potential safety concerns or risks from

all levels of management and staff. Our investment in safety reinforces our position as a responsible and trusted partner.

At GreenWaste, we have implemented a wide range of injury prevention strategies and programs. These include the development of Life Saving Rules, the “Good Catch” program for reporting near misses, communication strategies for distributing safety talks and lessons learned, and the implementation of a robust root cause analysis process. We have clear and concise safety policies, procedures, and manuals, and we utilize technology such as AI-powered cameras, Radio Frequency Identification (“RFID”) proximity sensors, radar detection, and infrared camera systems for fire detection and suppression.

Our operational safety improvements include working with manufacturers on materials that offer more resistance to cuts and punctures and adjusting work schedules to accommodate extreme weather conditions such as heavy rain or high heat. Through these initiatives, we promote best management practices to create a safe and comfortable working environment for our valued team members.

- » Injury Prevention. GreenWaste takes a proactive approach to injury prevention, placing the safety of our employees as our top priority. We have established written policies and procedures that include our Injury and Illness Prevention Plan (IIPP), Life Saving Rules, Heat Illness Prevention, Energy Isolation (LOTO), Confined Space Entry, Personal Protective Equipment (PPE), and Hot Work, among others. Safety inspections are conducted periodically at our various sites to identify and eliminate potential hazards or risks. PPE is worn to minimize exposure to hazards that can cause serious workplace injuries and illnesses. We continue to collaborate with manufacturers, vendors, and employees to optimize the use and effectiveness of PPE.

GreenWaste employs two state-of-the-art technology systems to avoid collisions between people and heavy equipment, SensorZone and Vision Track. SensorZone is a tag-based proximity warning system utilizing RFID technology. The system creates a configurable detection zone around a machine, triggering an alarm if the zone is breached by a tag-wearing worker. The unique triple alert system warns the operator, the worker, and those in the surrounding area, fostering shared responsibility for site safety and promoting positive behavioral change. With its cloud-based insights platform, SensorZone provides real-time information on site safety, allowing GreenWaste to understand key safety leading indicators and identify areas for improvement.

Vision Track utilizes visual cameras and AI technology to identify pedestrians and sounds an audible alert to both the driver (interior alarm) and the pedestrian (exterior speaker).

- » Safety and Incident Reporting. In the event of an injury or illness, GreenWaste utilizes the Safety Incident Management System (“SIMS”) to report and track incidents in compliance with company, regulatory, and industry requirements, including CalOSHA. This system enables us to actively learn from every incident, identify underlying root causes, and prevent future safety incidents. SIMS solutions also establish a consistent and practical approach to safety across the company, providing real-time actionable insights to improve overall safety performance. When an event, incident, or near miss has the potential for a Serious Injury or Fatality (“SIF”) or life-altering injury or illness, TapRoot Cause Analysis is used to

improve performance by analyzing and addressing problems to prevent major accidents and equipment failures. LSRs are designed to inform GreenWaste employees about potential hazards in our operations and the essential rules to prevent injuries and accidents. These rules were developed based on an extensive analysis of potential hazards at all operations. By adhering to these rules, we work to ensure the safety and well-being of our employees, helping to guarantee that everyone can return home unharmed. Employee engagement and accountability are key components of our safety culture. If any employee has a question about the rules, they are encouraged and expected to speak up.

- » Employee Engagement. At GreenWaste, we value our employees' voices and have created multiple engagement platforms to ensure their ideas and views are heard. The Good Catch Program allows employees to report good catches or near misses, either anonymously or by name. Employees can submit reports via QR code or a form, which are then entered into our online system for appropriate teams to address and prevent safety incidents. Training and development are crucial to ensuring that employees understand their responsibilities and job duties while performing their tasks safely and efficiently. We offer in-house training, safety videos, and certified external trainers to teach employees how to perform their daily functions correctly. Employees are always encouraged to speak up if they are uncertain about a task. We also have RedFlag, an anonymous hotline, which encourages employees to report concerns or misconduct without fear of retaliation, fostering a safer and more transparent workplace.
- » Communication and training. SafeTV is an employee engagement platform that provides health and safety moments, HR news, and other helpful information. It includes custom announcements and videos with company-wide messaging, and content is updated weekly to ensure employees have access to the latest information.
- » Potential Hazard Identification and Continuous Improvement. We use ProcessMap software to document inspections that identify potential hazards, including unsafe conditions or acts. Findings are shared with other sites to correct potential hazards, thereby making the workplace safer.

d. Traffic Control and Direction

GreenWaste will construct and maintain roads, leading from the facility entrance to the scale house and then to the designated point of unloading. Employees will direct on-site traffic to the appropriate unloading areas. Traffic will be directed in accordance with GreenWaste's existing safety policies, to ensure a safe working environment for all users, visitors, and employees of the Zanker facility. GreenWaste will facilitate safe and efficient traffic flow through the use and maintenance of existing roadways and signs, as well as designated personnel. GreenWaste will use commercial efforts to maintain a Maximum Vehicle Turnaround Time ("MVT") of thirty (30) minutes for Collection Contractor's delivery of Delivered Materials to the Zanker facility. Impacts to MVT which are outside of GreenWaste's control, such as untarpping and unloading time, will not count towards the thirty (30) minutes.

e. Scale Operation

GreenWaste ensures to comply with the requirements of Draft Agreement Section 4.09; maintaining motor vehicles scales and associated equipment and software, obtaining vehicle tare weights for collection company vehicles with periodic updating, arranging for use of substitute scales, testing and calibrating scales, weighing and recording weights for all inbound vehicles delivering materials, weighing and recording weights for all outbound vehicles transporting recovered materials to market or secondary processing, and residue to the approved disposal facility, paying disposal rates, and maintaining scale records.

- » Maintenance and Operation. GreenWaste will maintain at least two (2) State-certified motor vehicle scales at the Zanker facility in accordance with Applicable Law. GreenWaste will link all scales to a centralized computer recording and billing system that will be compatible with GreenWaste's systems and account for tracking all incoming and outgoing materials. GreenWaste will operate those scales during the Zanker facility's receiving hours established in the Draft Agreement.
- » Vehicle Tare Weights. When Collection Contractor places new vehicles into Service, GreenWaste will promptly weigh the new vehicle and determine its unloaded (tare) weight. GreenWaste will record tare weight, hauler name, and vehicle identification number. Within ten (10) Working Days of weighing, GreenWaste will provide City and Collection Contractor with a report listing vehicle tare weight information. GreenWaste will have the right to request re-determination of tare weights of vehicles twice each Calendar Year. If there is reasonable suspicion or evidence that tare weights are not accurate, Collection Contractor may request re-determination of tare weights, in which case GreenWaste will promptly re-determine tare weights for requested vehicles up to four (4) times per Calendar Year. GreenWaste may update tare weights (at its own initiative) more frequently.
- » Substitute Scales. If any scales are inoperable, being tested, or otherwise unavailable, GreenWaste will use Reasonable Business Efforts to weigh vehicles on the remaining operating scales. To the extent that all the scales are inoperable, being tested, or otherwise unavailable, GreenWaste will substitute portable scales until the permanent scales are replaced or repaired. GreenWaste will arrange for any inoperable scale to be repaired as soon as possible and, in any event, within seventy-two (72) hours (excluding Holidays) of the failure of the permanent scale. If repairs to the permanent scale are projected to take more than twelve (12) hours, GreenWaste will immediately obtain a temporary substitute scale(s).
- » Estimates. Pending substitution of portable scales or during power outages, GreenWaste will estimate the Tonnage of City's Delivered Materials delivered to the Zanker facility by utilizing the arithmetic average of each vehicle's recorded Tons of the Delivered Materials delivered on its preceding three (3) deliveries, on the same Day of the week, to the Zanker facility. All information required by Section 4.09.G of the Draft Agreement will continue to be recorded for each delivery of Delivered Materials to the Zanker facility and each Transported load of Delivered Materials during any period the scales are out of Service.

- » Testing. GreenWaste tests and calibrates all scales in accordance with Applicable Law, but at least every twelve (12) months. Upon City request, GreenWaste will promptly provide City with copies of test results. GreenWaste will further test and calibrate any or all scales within three (3) Working Days of City direction. If test results indicate that the scale or scales complied with Applicable Law, City will reimburse GreenWaste the Direct Costs of the tests. If the test results indicate that the scale or scales did not comply with Applicable Law, GreenWaste will bear the costs thereof and will at its own cost adjust and correct, consistent with the results of that test, all weight measurements recorded and Per-Ton Rates calculated, charged, and paid, as the case may be, from the date of City's direction.
- » Weighing Standards and Procedures. GreenWaste will use the Zanker facility's entry scale(s) located at the scale house to weigh vehicles and charge Per-Ton Rates. GreenWaste scale house personnel will be responsible for inspecting the Solid Waste delivered to the Zanker facility. GreenWaste will charge the Per-Ton Rates based on the Tonnage of City's Delivered Materials delivered by the Collection Contractor to the Zanker facility. GreenWaste will weigh and record inbound weights of all Collection Contractor's vehicles when the vehicles arrive at the Zanker facility and weigh and record outbound weights of vehicles for which GreenWaste does not maintain tare weight information. GreenWaste will provide each driver with a receipt showing the date, time, and quantity of City's Delivered Materials that the vehicle delivered to the Zanker facility and the Per-Ton Rate charged, therefore.
- » Records. GreenWaste will maintain scale Records and reports that provide information including date of receipt, inbound time, inbound and outbound weights of vehicles, vehicle identification number, jurisdiction of origin of materials received, type of material, hauler identification and/or classification, type, weight, and destination of outbound materials.

f. Material Processing

All material will enter the Facility via the Inbound Scales. Once the material is weighed, material is then directed to a designated tipping floor area based on material classification. Materials such as dirt, inerts, Construction and Demolition Material, furniture, appliances, e-waste, tires, as well as landscape and gardening debris will receive a material classification. The Facility Scale House operators are trained on material description codes to identify incoming materials. There is a second point of Quality control that verifies material was identified correctly before tipping. We will designate specific areas for each type of material to prevent contamination and facilitate streamlined processing and accurate diversion reporting.

The Advanced C&D Processing System at Site 2 will be the operation primarily used to process the City's materials, and in case of breakdown of the line, materials may be directed over to the Demolition Recycling Operation at Site 1.

What follows are procedures for material processing at the Advanced C&D Processing System

- » All material will enter the Zanker facility via the scale houses. Once the material is classified as mixed C&D and weighed, the material is then directed to a designated location on the tipping floor area for the Advanced C&D Processing System.

- » After customers have disposed of their load, the materials will be pushed with a wheeled loader to a pre-sort excavator near the start of the Advanced C&D Processing System and will remove large pieces of metal, concrete, and non-recyclable products, such as carpeting and fabric. After material is pre-sorted, the excavator then loads the material into a Komptech Terminator 5000 SE Shredder at the rate of 60 tons per hour.
- » These shredded materials are conveyed to a Komptech 10300 Ballistic Separator where the materials will be separated into three fractions. The smaller fraction from the ballistic separator 5-inch minus, will travel up a conveyor and past a belt magnet to remove the ferrous metals. Materials larger the 5 inches remain on the top of the ballistic separator and are separated into 2D (two dimensional) and 3D (three dimensional) stream of materials.
- » The 2D materials will drop to a transfer conveyor where recoverable materials such as wood, papers, metals, etc. can be recovered by sorters. The operation uses a positive sort, thus only removing commodities that have a market. Residuals are conveyed to the end of the line, where they fall into a bunker. These materials are then directed for disposal.
- » The 5-inch minus fraction will then fall onto a debris roll screen, removing the 2 inch minus fraction. These 2" minus materials are then conveyed to a trommel screen where the 1/4" minus is removed. These materials will fall into a bunker below, then the fines will be marketed to farmers within California as a soil amendment. The 2"x5" fraction (mainly wood waste and concrete) are then conveyed into a larger Air Drum Separator that divides the material by density.
- » The Air Drum Separator separates the lights from the heavies. The lighter material will fall off the end of the conveyor belt into a bunker and will be used as alternative daily cover. The heavier materials from the air separator that consist of concrete, brick, tile, asphalt, glass, rock, and ceramics will fall into a bunker below the air separator and then are directed to the Zanker Concrete Crushing Operation to be reprocessed and made into a base rock product. A second, larger Air Drum Separator divides material by density. The lighter fraction consisting of wood, insulation, roofing felt, etc. drops on a conveyor and is directed to a bunker and will be used as alternative daily cover.

What follows are procedures for material processing at the Demolition Recycling Operation:

- » All material will enter the Zanker facility via the scale houses. Once the material is classified as mixed C&D and weighed, the material is then directed to a designated location on the tipping floor area for the Demolition Recycling System.
- » Prior to loading the in-feed conveyor, an excavator will remove large pieces of metal, concrete, and non-recyclable products, such as carpeting and fabric. An Excavator operator will then feed the material into a hopper which conveys the materials into a large finger screen that removes the five inch minus fraction materials.
- » The larger materials pass over the screen and head up to a sorting station, where concrete, metals and residuals are removed. The remaining material on the sort line is lumber, which is directed to facility's wood recycling operations.

- » The smaller fraction from the large finger screen five inch minus materials are conveyed past a magnet that removes ferrous metals, and into a debris roll screen, which removes the two inch minus fraction.
- » This material is then transported to a stockpile, where they are shipped to another landfill to use as cover material.
- » The larger fraction of materials from the debris roll screen, mainly wood waste and concrete, are then conveyed into two Nihot Air Separators that separate the material by density. The Demolition Recycling Operation has 4 Nihot Air Separators to ensure proper separation.
- » The lighter material from the separation, usually wood waste, falls on another conveyor and in front of sorting stations, where employees remove contamination, such as plastics. This leaves mainly wood waste on the conveyors.
- » The heavier materials, mainly concrete, fall on a sorting conveyor. This conveyor passes in front of an employee, who removes non-wanted items, thus the concrete is clean enough to be used in our base rock production.

The commodities produced from materials recovered from Construction and Demolition Debris and inerts are approximately 95% (by weight) marketed locally, thus marketing efforts are focused on final users of the products rather than brokers. GreenWaste's markets the following products recovered from processing activities:

Product	Domestic	Export	Notes
Wood Wastes - Cogeneration Fuel	100%	0%	Remaining after mulch production
Wood Wastes - Soil Amendments	100%	0%	Produced from 100 percent recycled wood and tree trimmings
Wood Wastes - Mulch	100%	0%	Produced from recovered wood
Asphalt Shingles - Cleaned	100%	0%	Working to develop specifications to use in new roads
Carpet/Carpet Pad	100%	0%	Non-contaminated and dry PCC and carpet pad
Processed Fines	100%	0%	Screened from ADC materials Contain high ratio of gypsum
Sand, Gravel and Base Rock	100%	0%	Produced from crushed concrete and asphalt concrete products
Screened Soil	100%	0%	Used in soil blends at the materials yard
Tires	100%	0%	Recycled into other rubberized products

Regarding carpet please note, to be recycled, it must be brought into the Zanker facility in the following conditions:

- » Carpet must be dry.
- » Carpet must be free of debris.
- » Carpet must have tack strips, nails, trash, and dirt removed.
- » Carpet must be cut into manageable sections.
- » Carpet must be separated from pad.
- » Carpet must be rolled.
- » Carpet pad must be rolled or folded.
- » Carpet tile must be stacked.

Other end markets include ADC, Aluminum, Brass, Copper, Dirt, Drywall, Ferrous Metals, Lab Glass, Pallets, Porcelain, Scrap Metals, Stones and Bricks.

What follows are materials categorized as residue. Non-recyclable items may include pressure-treated wood, laminated wood, painted wood, sawdust, insulation, PVC pipes, film plastics and other packing materials, asphalt roofing, roofing felt, roofing insulation, fiberglass insulation, vinyl flooring, ceiling tiles, stucco, soil, asphalt, windows, doors, carpeting, carpet padding, furniture, cabinets, sinks, furniture and Styrofoam, crushed materials, mattresses, rubber tiles, ground rubber materials, textiles and linen, couches, chairs, desks, office partitions, signs, foam board, cabinets, wet materials, Visqueen, composite type materials and or materials contained in trash bags.

g. Post-Processing

After the initial processing, GreenWaste further refines wood chips and fines. The wood chips are colored with a non-toxic dye, safe for children and pets, to create a variety of mulches available at the GreenWaste Zanker Landscape Materials Yard. These mulches are ideal for both residential and commercial landscaping, offering an environmentally friendly and safe option for all applications. GreenWaste also blends wood fines with compost, organic matter, and specific nutrients to create a range of soil amendments tailored to various needs. These products are designed for Bay Area farmers looking to enrich their fields, contractors seeking sustainable landscaping solutions, and residential gardeners aiming to enhance their gardens' health and vitality. GreenWaste provides sustainable products that improve soil quality and contribute to a circular economy, turning waste into valuable resources for the community.

h. Disposal and Residue

- » Diversion Tracking. At our facility, we determine and track the overall diversion rate through a systematic process that begins with the weighing of all incoming and outbound trucks at the scale house. Each incoming load is assigned a material description classification, which is linked to a specific processing line. Each processing line has a pre-established diversion rate that reflects its efficiency in diverting material from disposal. We closely monitor the performance of each processing line by tracking the amount of residue generated at each stage. This data is then compiled and reported monthly, detailing the incoming tonnage and the outbound residue. These monthly reports are submitted to the Recycling Certification

Institute (RCI), an independent third party that verifies the accuracy of our diversion rates. By maintaining detailed records of both incoming materials and outbound residues, we ensure that our diversion rates are accurate and that we are effectively tracking end markets. This rigorous approach allows us to optimize our operations and uphold our commitment to responsible waste management.

- » Residue Disposal. GreenWaste will transport and dispose of residue with acceptable levels of prohibited contaminants in accordance with Section 4.02 of the Draft Agreement. Residue from GreenWaste's Processing of Delivered Materials will be Transported and Disposed of by GreenWaste at Disposal Facility(ies) selected by GreenWaste. Residue delivered for Disposal will not include any Excluded Waste. GreenWaste will pay for the Transportation and Disposal costs of all Residue.

i. Recovered Material Marketing

GreenWaste ensures to market C&D Materials that are delivered for Processing. GreenWaste's marketing strategy will promote the highest and best use of materials presented in the waste management hierarchy established by AB 939. Where commercially reasonable, the marketing strategy will include the use of local, regional, and domestic markets for C&D Materials. GreenWaste will use and build on its existing network of vendors to sell commodities and achieve the highest market value for each commodity. GreenWaste will remove contamination and market the cleanest possible outbound products, ensuring the highest quality end products. GreenWaste maintains complete and accurate marketing records, including tonnage of marketed material, price, revenue received, purchasers and specified end-uses.

j. Alternative Facility

GreenWaste will utilize alternative facilities, if needed, in accordance with the requirements and limitations in Draft Agreement Section 4.12.

- » Alternative Facility for Reasons other than Uncontrollable Circumstances. If GreenWaste does not process City's Delivered Materials at the Zanker facility for reasons other than Uncontrollable Circumstances, then following City approval given in City's sole discretion, GreenWaste will: (i) receive, Accept, and process City's Delivered Materials at another facility owned by it or an Affiliate at a price not to exceed the Per-Ton Rate in effect under the Draft Agreement and pay City for any additional Transportation costs incurred by City or Collection Contractor in delivering City's Delivered Materials to the other facility, or (ii) arrange for City's Delivered Materials to be processed at another facility not Owned by it or an Affiliate, in which case GreenWaste will pay any difference in the per-ton rate charged at that processing location compared to the Per-Ton Rate plus any additional Transport costs incurred by City or Collection Contractor in delivering the all tons of Delivered Materials to the processing facility.
- » Alternative Facility for Uncontrollable Circumstances. If GreenWaste does not process City's Delivered Materials at the Zanker facility due to Uncontrollable Circumstances, then promptly upon City direction GreenWaste will, to the extent it is legally able to do so in accordance with Applicable Law, receive, Accept, and process Delivered Materials at another processing facility owned by it or an Affiliate at a per-ton rate not to exceed the Per-Ton Rate in effect under this Agreement. GreenWaste is not obligated to pay for any additional Transport costs incurred by City or Collection Contractor in delivering City's

Delivered Materials to the other facility. GreenWaste understands that if City does not so direct GreenWaste, City may in its sole discretion terminate this Agreement as provided in accordance with Section 7.02 of the Draft Agreement

- » Alternative Facility(ies). In the event of Contract Award, GreenWaste understands it will propose, and City will approve use of the Alternative Facility(ies). GreenWaste understands it will be solely responsible for ensuring continued availability of City-approved Alternative Facility(ies) throughout the Term of the agreement.

k. Allocation Method

GreenWaste will allocate recovered materials and disposal/residue tonnages to the City versus to other facility users as provided in Draft Agreement Section 4.02.E. GreenWaste is able to track specific jurisdiction's data through Green Halo, which enables GreenWaste to track the generation, diversion, and disposal of waste materials.

- » Residue Tracking and Reporting. GreenWaste will develop and use a method of tracking and allocating Residue in such a manner that GreenWaste can demonstrate its achievement of standards for Residue levels and Diversion levels specified in Section 4.02.B of the Draft Agreement. The Residue level calculation method will be reviewed and approved by City. At a minimum, GreenWaste will separately track, and report tons diverted by product type and tons of Residue Disposed. GreenWaste will report Residue levels and Diversion levels pursuant to Section 4.14. of the Draft Agreement.

Diversion

a. Diversion Information

GreenWaste is committed to exceeding CALGreen requirements by consistently achieving a diversion rate of over 65% and meticulously maintaining records that can be provided to the City upon request. GreenWaste takes pride in our rigorous tracking and verification processes for diversion and tonnage data, ensuring accuracy and transparency, as described in the **Operations Plan h. Disposal and Residue** section above. Over the past three years, GreenWaste has monitored operations and made adjustments aimed at increasing our diversion rate, which have resulted in measurable improvements. We have completed a rigorous recertification process for both of our GreenWaste Zanker Resource Recovery Facilities (Site 1 and Site 2) through the Recycling Certification Institute. This certifies not only our facilities as a whole, but also the individual processing lines, allowing us to offer diversion reporting for both source-separated C&D materials and commingled C&D materials processed at these locations. Additionally, GreenWaste is dedicated to finding sustainable end uses for processed C&D materials. This includes identifying the types and total tons of materials that are used as ADC or Alternative Intermediate Cover ("AIC"), as outlined in Section 3.2 of the Draft Agreement. Please refer to **Operations Plan – f. Materials Processing** section above for details on end markets.

*12-month average ADC tonnage from
the Demolition Recycling Operations:*

49,557

b. Diversion Rates

GreenWaste has included the following in Sheet 4.a. of Attachment A:

- » The Zanker facility's overall facility diversion rate (including ADC/AIC), as well as its diversion rate in which material used as ADC and AIC is considered disposal and not included as diversion, as further described in Section 3.2 of the Draft Agreement.
- » The certification body that has certified both of the reported C&D diversion rates described above.

Expansion and/or Permit Modifications

The Zanker facility has no proposed or planned facility changes, expansion plans and/or permit modification processes that impact the services outlined in response to this RFP.

Additional Features

GreenWaste is offering the City of Cupertino Bulky item processing services at the rate proposed on [Appendix L C&D Materials Processing Services Pricing Sheet](#). Bulky Items will be processed through the DM Reduction System at Zanker Resource Recovery Facility - Site 2. In the event the City brings in material that is classified as Bulky Items, those materials will be processed through the DM Reduction System and receive a diversion rate of 40% with ADC and 9% without ADC. The diversion rate will vary as inbound material composition determines the diversion rate. The current 12-month diversion rate is 47.15% with ADC and 17.73% Without ADC

DM Reduction System: This processing line processes bulky items like furniture and white goods using the DM Reduction System. Appliances like refrigerators are removed on the tip pad and are processed by certified recyclers for Freon and mercury removal. Remaining bulky items are processed in an electric SSI Shredder. The shredded material undergoes separation through magnets and a trommel screen, producing 1" minus ADC materials and 4" minus fines. The heavies (glass, metals, wood) are marketed as ADC, while lights (paper, plastic) are disposed of in a landfill or further processed for maximum recovery. Materials larger than 4 inches go to a sort line where recoverable items are weighed and sent to recyclers. Residuals are sent to a nearby landfill. All processed materials are recorded to meet Recycling Certifications Institutes' 3rd party certification requirements, with a current diversion rate of 40%.

Other Technical Information

Regulatory Compliance

GreenWaste has provided, [Appendix G Regulatory Compliance Attachment](#), which includes a list of contact names for regulatory agencies that monitor compliance for the Zanker facility, with applicable local, State, and federal laws and regulations, including the name(s) of the regulatory agency, contact person's title, and telephone number.

Exhibit B-2 Disaster Plan

Emergency Services

GreenWaste has implemented a comprehensive Disaster Preparedness Plan to address major accidents, disruptions and natural calamities that may affect its facilities, including the Zanker facility and the GreenWaste MRF. The plan is designed to ensure continuity of operations, protect personnel, and minimize disruptions to the City and surrounding cities during disaster events. GreenWaste's disaster response procedures are designed to ensure that even in the face of significant disruptions, the company can continue to provide essential services and support the City and surrounding cities during their recovery efforts.

Facility Protection and Preparedness

GreenWaste takes proactive steps daily to protect its facilities from potential disasters. These actions include:

- » Conducting preventive maintenance routines to ensure equipment reliability.
- » Performing regular site inspections and addressing all open items promptly.
- » Keeping facility records and manuals up to date and readily accessible.
- » Ensuring all door locks are serviceable.
- » Verifying the integrity of facility fencing and gates.
- » Ensuring facility lights and surveillance cameras are in working order.

Response to Facility Damage

In the event that a disaster damages a facility, the GreenWaste Crisis Management Team ("CMT") will be immediately notified by phone or through local authorities. The CMT's ability to respond will be adapted to the scale of the disaster, and all reasonable efforts will be made to implement the Disaster Preparedness Plan. Coordination with State Emergency Centers and local authorities will be essential in gaining access to the facilities, with waivers and direction provided based on the type of disaster.

After notification of the disaster, the CMT will conduct a thorough damage assessment as soon as it is safe. The assessment will guide the development of a response plan, including whether to deploy additional teams or logistics support. Depending on the severity of the damage, GreenWaste may:

- » Move critical operations to an alternative location.
- » Focus on restoring equipment to working order if the facility is stable.
- » Reroute circuits to bypass the facility if it is unusable.
- » Prohibit access to the facility if it is determined to be unsafe or destroyed.

Security measures will be coordinated with federal, state, and local authorities to protect the facility from loitering, vandalism, and theft after a disaster. If necessary, GreenWaste may contract an outside security firm for additional support.

Handling Disaster Materials

Should the City or surrounding cities deliver disaster materials to the Zanker facility, GreenWaste is prepared to accept and handle these materials in accordance with established practices. All disaster materials will be transferred to a landfill for disposal, and GreenWaste may subcontract with additional disposal facilities depending on the volume of materials received.

Documentation and Continuous Improvement

All phases of the facility recovery operation will be meticulously documented and reported through the GreenWaste SIMS Portal, powered by ProcessMAP. This includes incident claims, timelines, response actions, investigation details, root causes, and corrective action items. Reports will be used to assess the effectiveness of the response plan and identify opportunities for improvement in disaster preparedness.