
**COLLECTION SERVICES AGREEMENT
FOR THE PROVISION OF

RESIDENTIAL AND COMMERCIAL GARBAGE, RECYCLABLE
MATERIALS AND ORGANIC WASTE COLLECTION,
TRANSPORTATION, RECYCLING, AND DISPOSAL SERVICES**

**Executed By and Between the
City of Banning and
USA Waste of California, Inc., dba Waste Management of the
Inland Empire**

**Approval Date: April 27, 2021
Effective Date: July 1, 2021**

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This Collection Services Agreement for the Provision of Residential and Commercial Garbage, Recyclable Materials and Organics Collection, Transportation, Recycling, and Disposal Services ("Agreement") is entered into as of the Effective Date by and between the City of Banning, a general law city and municipal corporation in the State of California, ("City") and USA Waste of California, Inc, a Delaware corporation dba Waste Management of the Inland Empire ("Contractor") on the terms and conditions set forth herein. City and Contractor may be referred to herein individually as a "Party" or collectively as the "Parties".

RECITALS

A. Article XI, § 7 of the California Constitution authorizes cities to protect public health and safety by taking measures in furtherance of their authority over police and sanitary matters; and

B. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989, ("AB 939" or the "Act") (codified at Public Resources Code §§ 4000 *et seq.*) established a solid waste management process which requires cities and other local jurisdictions to implement plans for source reduction, reuse and recycling as integrated waste management practices for solid waste attributed to sources within their respective jurisdictions; and

C. The Act provides that aspects of solid waste handling of local concern include but are not limited to frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location and extent of providing solid waste services; and

D. The Act confers discretion on cities to provide for the delivery of solid waste services to its residents by City itself providing the services or by City conferring the authority to do so on private profit-making entities and when cities confer the authority to provide solid waste services on private profit-making entities; cities are authorized to do so by means which include the award of a nonexclusive, partially exclusive or wholly exclusive franchise, contract, license or otherwise; and

E. Chapter 8.28 of Banning Municipal Code implements Article XI, § 7 of the California Constitution and the Act in the City of Banning and protects public health and safety by authorizing City Council to award one or more franchises, permits or licenses to provide solid waste service; and

F. The City Council has determined, in the exercise of its legislative discretion, that it is in the best interests of City and its residents for City to franchise comprehensive solid waste service to a private enterprise with the special skills, knowledge, facilities and other capabilities to ensure a high level of service and compliance with the existing statutory and regulatory requirements; and

G. The City Council during its regular meeting of April 27, 2021 approved the award of an exclusive franchise agreement for comprehensive solid waste services with Contractor because the City Council determined, in the exercise of its legislative discretion, that Contractor would provide high quality services to Service Recipients; and

H. City and Contractor are mindful of the provisions of the laws governing the safe collection, transport, recycling and disposal of residential and commercial Solid Waste, including AB 939, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 *et. seq.*; the Electronic Waste Recycling Act of 2003 (SB 20, Sher, Chapter 526, Statutes of 2003; SB 50, Sher, Chapter 863, Statutes of 2004; AB 575, Wolke, Chapter 59,

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Statutes of 2011), laws governing Universal Waste, including, but not limited to, Universal Waste Electronics Devices (“UWED”), non-empty aerosol cans, fluorescent tubes, high intensity discharge lamps, sodium vapor lamps, and any other lamp exhibiting a characteristic of a hazardous waste, batteries (rechargeable nickel-cadmium batteries, silver button batteries, mercury batteries, small sealed lead acid batteries [burglar alarm and emergency light batteries], alkaline batteries, carbon-zinc batteries and any other batteries which exhibit the characteristic of a hazardous waste), mercury thermometers, mercury-containing switches; and

I. City and Contractor desire to leave no doubts as to their respective roles and to make it clear that by entering into this Agreement, City is not thereby becoming a “generator” or an “arranger” as those terms are used in the context of CERCLA § 107(a)(3) and that it is Contractor, an independent entity, not City, which will arrange to collect Solid Waste from Single-Family Dwelling (SFD), Multi-Family Dwelling (MFD), City and Commercial Service Units in the City of Banning, transport for recycling and disposal and dispose of Solid Wastes which may contain small amounts of household products with the characteristics of hazardous wastes, collect and compost Organic Waste and collect and recycle Recyclable Materials from SFD, MFD, City, and Commercial Service Units in the City of Banning, and collect and recycle or dispose of Construction and Demolition Materials; and

J. There are no places within the City limits of the City of Banning where landfills are located, or which are suitable for the siting of a landfill or recovery facilities and therefore Solid Waste must be exported from the City; and

K. City and Contractor agree that it is Contractor, and not City, which will select the landfill or transformation facility destination of the non-recyclable Solid Waste and Construction and Demolition Materials which Contractor will arrange to collect; that City has not, and by this Agreement does not, instruct Contractor on its collection methods, nor supervise Contractor in the collection of waste and nothing in this Agreement or other action of City shall be construed to give rise to any inference that City has any title, ownership or right of possession of such Solid Waste; and

L. Contractor represents and warrants to City that Contractor has the experience and qualifications to conduct recycling and waste diversion programs; to provide City with information sufficient to meet City's reporting requirements to CalRecycle and other agencies under the Act; to meet City's other requirements under the Act; to arrange with persons in charge of day-to-day activities of Service Units in the City of Banning for the collection, safe transport and disposal of Solid Wastes, which may contain small amounts of household products with the characteristics of Hazardous Wastes, in a safe manner which shall minimize the adverse effects of collection vehicles on air quality and traffic; and that Contractor has the ability to indemnify City in accordance with this Agreement; and

M. The City Council of the City of Banning determines and finds pursuant to California Public Resources Code § 40059(a)(1) that the public interest, health, safety and well-being, including the minimization of adverse impacts on air quality and traffic from excessive numbers of collection vehicles; the implementation of measures consistent with the City's Source Reduction and Recycling Component; and in an effort to reduce City's potential CERCLA liability, would be served if Contractor were to be awarded an exclusive Franchise for collection, recycling, diversion and disposal of Solid Waste from Service Units in the City of Banning; and

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N. City and Waste Management Collection & Recycling, Inc. entered into "Franchise Agreement between the City of Banning and Waste Management of Inland Valley, a division of Waste Management Collection & Recycling Inc., on or about July 15, 1993 (as subsequently amended, the "Prior Agreement"). Pursuant to ARTICLE 46 of this Agreement, this Agreement will supersede the Prior Agreement as of July 1, 2021.

OPERATIVE PROVISIONS

Now, therefore, in consideration of the mutual covenants, agreements and other good and valuable consideration contained in this Agreement, the receipt of which is hereby acknowledged, City and Contractor agree as follows:

ARTICLE 1. Definitions

For the purpose of this Agreement, the definitions contained in this ARTICLE apply unless otherwise specifically stated. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender includes the feminine gender. The meaning of terms or words not defined in this ARTICLE will be as commonly understood in the solid waste collection services industry when the common understanding is uncertain. Capitalized terms not otherwise defined shall have those definitions as hereinafter set forth.

1.01 AB 341. AB 341 means State of California Assembly Bill No. 341 approved October 5, 2011, codified in Chapter 12.8 (commencing with Section 42649) of Part 3 of Division 30 of the Public Resources Code, as it may be amended and as implemented by the regulations of CalRecycle.

1.02 AB 939 or Act. AB 939 or the Act means State of California Assembly Bill No. 939 approved September 29, 1989, entitled the California Integrated Waste Management Act of 1989, codified in part at Public Resources Code §§ 40000 and following, as it may be amended and as implemented by the regulations of CalRecycle.

1.03 AB 1826. AB 1826 means State of California Assembly Bill No. 1826 approved September 28, 2014, codified in Chapter 12.9 (commencing with Section 42649.8) of Part 3 of Division 30 of the California Public Resources Code, as it may be amended and as implemented by the regulations of CalRecycle.

1.04 Affiliate. Any person or legal entity that directly or indirectly, controls, or is controlled by, or is under common control with Contractor.

1.05 Agreement. This written document and all amendments hereto.

1.06 Agreement Administrator. The City Manager, or his or her designee, designated to administer and monitor the provisions of this Agreement.

1.07 Agreement Year. Agreement year means each twelve (12) month period from July 1st to June 30th during the term of this Agreement.

1.08 Annual Diversion Report. The annual report submitted by Contractor to City pursuant to Section 17.05, describing the previous Calendar Year's diversion activities, diversion percentages and associated calculations and the description of the diversion activity planned for the upcoming year, if applicable.

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1.09 Applicable Law. All Federal, State, County, and local laws, regulations, rules, orders, judgments, decrees, rulings, permits, approvals, or other requirement of any governmental entity or regulatory or quasi-regulatory authority having jurisdiction over an aspect of the Collection Services, including judicial interpretations thereof, that are in force on the Effective Date including without limitation the Act and all regulations of CalRecycle, and as may be enacted, issued or amended thereafter, until termination or expiration of this Agreement.

1.10 Bins. A metal or plastic container, with a capacity of one (1) cubic yard up to and including six (6) cubic yards, designed or intended to be mechanically dumped into a loader packer type truck, that is approved for Collection Services by City. Bins may also include Compactors that are owned by Commercial Service Units by which the Commercial Collection Service occurs. The specifications for Contractor-provided Bins are set forth in **Exhibit 4**.

1.11 Biohazardous or Biomedical Waste. Any waste which may cause disease or reasonably be suspected of harboring pathogenic organisms; included are waste resulting from the operation of medical clinics, hospitals, and other facilities processing wastes which may consist of, but are not limited to, human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, Sharps, contaminated clothing and surgical gloves.

1.12 Brown Goods. Electronic equipment such as stereos, televisions, computers, VCR's and other similar items collected from SFD Service Units.

1.13 Business. All retail, professional, wholesale and industrial facilities, and other commercial enterprises offering goods or services to the public.

1.14 Business Days. Any day, Monday through Friday, excluding any holidays as defined in Section 3.05.

1.15 Calendar Year. Each twelve (12) month period from January 1 through December 31.

1.16 CalRecycle. CalRecycle means the California Department of Resources Recycling and Recovery, or its successor agency.

1.17 Carts. A heavy plastic receptacle with an approximate capacity of at least thirty-two (32) and not more than one-hundred (100) gallons, having a hinged tight-fitting lid and wheels, that is approved by the Agreement Administrator for use by Service Recipients for Collection Services under this Agreement. The specifications for Contractor-provided Carts are set forth in **Exhibit 4**.

1.18 CERCLA. The Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. sections 9601 and following, as may be amended and regulations promulgated thereunder.

1.19 Change in Laws. Change in Laws means any of the following events or conditions which has a material effect on the performance by the parties of their respective obligations under this Agreement (except for payment obligations), or providing the franchise service or other matters to which Applicable Law applies:

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(1) the enactment, adoption, promulgation, issuance, modification, or written change of or in Applicable Law, including but not limited to new or increased fees and charges imposed by the State of California, the U.S. Federal government, or a local government directly related to the collection, handling, transportation, processing, recycling or disposal of Solid Waste, or the enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation on or after Effective Date of any Applicable Law;

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

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

1.20 City. The City of Banning, California.

1.21 City Collection Service. City Garbage Collection Service, City Organic Waste Collection Service, and City Recycling Service.

- A. City Garbage Collection Service. The Collection of Garbage by Contractor from City Facilities in the Service Area and the delivery of that Garbage to a Disposal Facility.
- B. City Organic Waste Collection Service. The Collection of Organic Waste, by Contractor from City Facilities in the Service Area, the delivery of those Organic Waste materials to an Organic Waste Processing Facility and the processing of those Organic Waste materials, and the disposal of all City Organic Waste Processing Residual including the contents of contaminated containers.
- C. City Recycling Collection Service. The Collection of Recyclable Materials by Contractor from City Facilities in the Service Area, the delivery of those Recyclable Materials to a Materials Recycling Facility and the processing and marketing and marketing of those Recyclable Materials, and the disposal of all City Recyclable Materials Processing Residual including the contents of contaminated containers.

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1.22 City Facility. Any building or other site owned, leased or used regularly and significantly (i.e., more than seventy-five percent (75%) of the Calendar Year) by employees or contractors of City, and excludes those portions of such facilities used exclusively by others.

1.23 City Manager. The City Manager of the City of Banning, or his or her designated representative.

1.24 Collection. The process whereby Solid Waste is removed and transported to a Disposal Facility, Organic Waste Processing Facility or Materials Recycling Facility as appropriate.

1.25 Collection Services. SFD Collection Service, MFD Collection Service, Commercial Collection Service, City Collection Service, and Construction and Demolition Debris and Other Temporary Collection Service.

1.26 Commercial Collection Service. Commercial Garbage Collection Service, Commercial Organic Waste Collection Service, and Commercial Recycling Service. Commercial Collection Service shall also include Collection from MFD Service Units and City Facilities. Commercial Collection Service specifically includes the following:

A. Commercial Garbage Collection Service. The Collection of Garbage by Contractor from Commercial Service Units in the Service Area and the delivery of that Garbage to a Disposal Facility.

B. Commercial Organic Waste Collection Service. The Collection of Organic Waste, by Contractor from Commercial Service Units in the Service Area, the delivery of those Organic Waste materials to an Organic Waste Processing Facility and the processing of those Organic Waste materials, and the disposal of all Commercial Organic Waste Processing Residual including the contents of contaminated containers.

C. Commercial Recycling Collection Service. The Collection of Recyclable Materials by Contractor from Commercial Service Units in the Service Area, the delivery of those Recyclable Materials to a Materials Recycling Facility and the processing and marketing of those Recyclable Materials, and the disposal of all Commercial Recyclable Materials Processing Residual including the contents of contaminated containers.

1.27 Compactor. Any Bin or Roll-Off Container which has a compaction mechanism, whether stationary or mobile.

1.28 Contractor. USA Waste of California, Inc., a Delaware corporation, doing business as Waste Management of the Inland Empire.

1.29 Contractor Representative. The person, or designee, designated by Contractor to manage the provisions of this Agreement.

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1.30 Construction and Demolition Debris and Other Temporary Collection Service. Temporary Collection and processing of Construction and Demolition Debris and other Solid Waste, and which is placed in a Bin or Roll-Off Container.

1.31 Consumer Price Index (CPI-U). The index published by the U.S. Department of Labor, Bureau of Labor Statistics, Series Id: CUURS49CSA0, CPI for All Urban Consumers, All items in Riverside-San Bernardino-Ontario, CA, not seasonally adjusted. In the event that the forgoing index is no longer available, Contractor and City agree to negotiate in good faith with respect to a substitute index.

1.32 Dispose or Disposal. The final disposition at a Disposal Facility of Garbage collected.

1.33 Disposal Facility. The facility(ies) utilized by Contractor for the disposal of Garbage and other materials as appropriate and acceptable.

1.34 Divert or Diversion. The handling of materials in a manner that counts as diversion under applicable CalRecycle regulations.

1.35 Diversion Compliance. Compliance with Diversion requirements under the Act and applicable CalRecycle regulations. Should there be a Change in Law for Diversion Compliance, Contractor may request a rate adjustment pursuant to Section 25.02.

1.36 Dwelling Unit. Any individual living unit in a single-family dwelling, condominium, or town home (SFD), or MFD Service Unit, or building intended for, or capable of being utilized for, residential living.

1.37 Effective Date. Effective date has the meaning specified in Section 2.01 of this Agreement.

1.38 Emergency Services. "Emergency Services" shall have the meaning ascribed in Section 16.01.

1.39 Exempt Waste. Biohazardous or Biomedical Waste, Hazardous Waste, Sludge, Universal Waste, used cooking FOG (fats, oil, grease, and similar materials), explosives, firearms, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, dead animals, and those wastes under the control of the Nuclear Regulatory Commission. Exempt Waste also includes any material that is prohibited from being collected, transported, or processed by Contractor or disposed of in Class III landfills, or that would, as a result of or upon Collection, transportation, processing and/or Disposal, be a violation of Applicable Law or would present a significant risk to human health or the environment, or requires special handling. Exempt Waste also includes materials containing information (in hard copy or electronic format, or otherwise) which information is protected or regulated under any local, state or federal privacy or data security laws, including, but not limited to the Health Insurance Portability and Accountability Act of 1996, as amended.

1.40 Food Waste Collection Service. The collection, transportation, processing, and marketing of Food Waste, and the Disposal of all Organic Waste Processing Residual.

1.41 Gross Receipts. All revenue amounts received by Contractor for the provision of Collection Services pursuant to this Agreement, calculated in accordance with Generally Accepted Accounting Procedures (GAAP). The term Gross Receipts, for purposes of this Agreement, does not include any revenues generated from

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the sale of Recyclable Material, compost product or energy, or other receipts from state and local government accounts (e.g. grants, cash awards and rebates) resulting from the performance of this Agreement.

1.42 **Household Hazardous Waste (HHW)**. Household products that can catch fire, react, or explode under certain circumstances, or that are corrosive or toxic as household hazardous waste. Products, such as paints, cleaners, oils, batteries, and pesticides can contain hazardous ingredients and require special care in their disposal.

1.43 **Hazardous Waste**. Any material which is defined as a hazardous substances or hazardous waste under California or United States laws or any regulations promulgated pursuant to such law, as such law or regulations may be amended from time to time.

1.44 **Large Items**. Solid Waste that cannot and/or would not typically be accommodated within a Cart including specifically: furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators with and without Freon, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as "white goods"); and bundled residential wastes (including wood waste, tree branches, scrap wood, in the aggregate not exceeding one cubic yard per Collection). For purposes of this Agreement, and notwithstanding any provision hereof to the contrary, Large Items shall specifically include items commonly known in the waste industry as "brown goods" and "e-waste" (including, without limitation all types of electronic waste, stereos, televisions, computers and monitors, cellular phones, VCRs, microwaves and other similar type of equipment and products). Large Items do not include car bodies, Construction and Demolition (C&D) Waste, Hazardous Waste, or (with the exception of appliances/white goods described above) items that cannot safely be loaded and unloaded into a vehicle by one person using equipment of the type which, pursuant to industry standards, would normally be carried in a vehicle used in Collecting Large Items.

1.45 **Materials Recycling Facility (MRF)**. Any facility designed, operated, and legally permitted for the purpose of receiving, sorting, processing, storing, or preparing Recyclable Materials for sale.

1.46 **Multi-family Dwelling (MFD) Collection Service**. MFD Garbage Collection Service, MFD Recycling Service, MFD Organic Waste Collection Service, and MFD Large Item Collection Service. MFD Collection Service specifically includes the following:

- A. **MFD Garbage Collection Service**. The Collection of Garbage by Contractor from MFD Service Units in the Service Area and the delivery of that Garbage to a Disposal Facility.
- B. **MFD Large Item Collection Service**. The periodic on-call Collection of Large Items, by Contractor, from MFD Service Units in the Service Area and the delivery of those Large Items to a Disposal Facility, Materials Recycling Facility or such other facility as may be appropriate under the terms of this Agreement. MFD Large Item Collection Service may include the Collection of Large Items through the use of Roll-Off Containers.
- C. **MFD Organic Waste Collection Service**. The Collection of Organic Waste, by Contractor, from MFD Service Units in the Service Area, the delivery of those Organic Waste materials to an Organic Waste Processing Facility and the processing of those Organic Waste materials, and the disposal of all MFD Organic Waste Processing Residual including the contents of contaminated containers.

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D. **MFD Recycling Service.** The Collection of Recyclable Materials by Contractor from MFD Service Units in the Service Area, the delivery of those Recyclable Materials to a Materials Recycling Facility and the processing and marketing of those Recyclable Materials, and the disposal of all MFD Recyclable Materials Processing Residual including the contents of contaminated containers.

1.47 **Municipal Code.** Municipal Code means the City of Banning Municipal Code.

1.48 **Non-Collection Notice.** A form developed and used by Contractor, as approved by City, to notify Service Recipients of the reason for non-collection of materials set out by the Service Recipient for Collection by Contractor pursuant to this Agreement.

1.49 **Organic Waste Collection Service.** The collection, transportation, processing, and marketing of Organic Waste, as defined in Section 1.70(G), and the Disposal of all Organic Waste Processing Residual.

1.50 **Organic Waste Processing Facility.** Any facility designed, operated and legally permitted for the purpose of receiving, and processing Food Waste, Green Waste, Large Green Waste, and Other Organics.

1.51 **Organic Waste Processing Residual.** Waste materials remaining after the processing of Organic Waste at an Organic Waste Processing Facility that is sent to a Disposal Facility for Disposal.

1.52 **Overage.** Overage means excess Garbage, Organic Waste and Recyclable Materials placed inside a Container that prevents the lid on the Container from being completely closed (i.e., lid remains open greater than 10 inches and results in providing the Customer with excess capacity) or material that is not placed in the Container.

1.53 **Prior Agreement.** The Franchise Agreement between the City of Banning and Waste Management of Inland Valley, a division of Waste Management Collection & Recycling Inc., for the Collection, Transportation, Recycling and Disposal of Solid Waste with a term commencing July 15, 1993, as amended July 1, 2001, June 14, 2002, December 12, 2006, June 28, 2011 and September 4, 2018.

1.54 **Public Agency.** The federal government or any federal department or agency, this state, another state or any state department or agency, a county, county board of education, county superintendent of schools, city, public corporation, public district, regional transportation commission of this state or another state, a federally recognized Indian tribe, or any joint powers authority formed by any of these agencies.

1.55 **Rebuilt Vehicle.** For purposes of this Agreement, "rebuilt" means, at a minimum, replacement of all worn parts and reconditioning or replacement of hydraulic systems, transmissions, differentials, electrical systems, engines, and brake systems. In addition, the rebuilt vehicle must be repainted, and its tires must have at least eighty-five percent (85%) of tread remaining.

1.56 **Recyclable Materials Collection Service.** The collection, processing and marketing of Recyclable Material and the disposal of all Recyclable Materials Processing Residual.

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1.57 **Recyclable Materials Processing Residual.** Waste material remaining after the processing of Recyclable Materials at a Recyclable Materials Processing Facility that is sent to a Disposal Facility for Disposal.

1.58 **Residual or Residuals.** Residual or Residuals means waste material remaining after the processing of Organic Waste at an Organic Waste Processing Facility or Recyclable Materials at a Recyclables Processing Facility that is sent to a Disposal Facility for disposal.

1.59 **Roll-Off Collection Service.** The collection of Roll-Off Containers containing Solid Waste on a permanent or temporary basis.

1.60 **Roll-Off Container.** A metal container with a capacity of ten or more cubic yards that is normally loaded onto a motor vehicle and transported to an appropriate facility.

1.61 **SB 1383.** SB 1383 means State of California Senate Bill 1383, approved September 19, 2016, codified in Chapter 13.1 (commencing with Section 42652) of Part 3 of Division 30 of the California Public Resources Code, as it may be amended and as implemented by the regulations of CalRecycle, together with Sections 39730.5 through 39730.8 of the California Health and Safety Code, as they may be amended.

1.62 **Schedule of Service Rates.** The rate schedule setting forth the rates, fees, and charges that Contractor may charge for services provided pursuant to this Agreement. The initial Schedule of Service Rates is attached hereto as **Exhibit 1**, and may be adjusted in accordance with the provisions of this Agreement.

1.63 **Service Area.** The entire area within the corporate limits of the City of Banning, as those limits may be adjusted from time to time by annexation or similar process as allowed under California law.

1.64 **Service Rate.** The amount that Contractor agrees to charge Service Recipients for Collection Services, as listed in the Schedule of Service Rates.

1.65 **Service Recipient.** An individual, Business, or City receiving SFD, MFD, Commercial, or City Collection Services. When used in this Agreement, "Customer" shall have the same meaning.

1.66 **Service Unit.** SFD Service Units, MFD Service Units, City Facilities, or Commercial Service Units. Service Unit specifically includes the following:

- A. **City Facilities.** City Facility(ies) that utilize a Bin, Cart, or Roll-Off Container(s) for the accumulation and set-out of Solid Waste. City Facilities are listed in **Exhibit 3**, and as may be modified by written agreement of City and Contractor.
- B. **Commercial Service Unit.** Business(es), and mixed-use dwellings that utilize a Bin, Cart, Compactor, or Roll-Off Container for the accumulation and set-out of commercial Solid Waste.
- C. **Multi-Family Dwelling Service Unit (MFD).** Five or greater Dwelling Units in the Service Area receiving services by means of a Cart or Bin, or any combination of Carts, Bins, or

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Roll-off Containers, or 1 - 4 Dwelling Units in the Service Area receiving services by means of a Bin or Roll-off Container, for the accumulation and set out of residential Solid Waste.

- D. SFD Service Unit. Any Single-Family Dwelling Unit (SFD) in the Service Area utilizing a Cart, or any combination of 2 – 4 Dwelling Units receiving services by means of Carts, for the accumulation and set out of residential Solid Waste.

1.67 Sharps. Medical devices that have acute rigid corners, edges or protuberances capable of cutting or piercing, including but not limited to hypodermic needles, hypodermic needles with syringes, needles with attached tubing, or acupuncture needles.

1.68 Single Family Dwelling (SFD) Collection Service. SFD Garbage Collection Service, SFD Recycling Service, SFD Organic Waste Collection Service, SFD Large Item Collection Service, SFD Tire Collection Service, and SFD Used Oil Collection Service. SFD Collection Service specifically includes the following:

- A. SFD Garbage Collection Service. The Collection of Garbage by Contractor from SFD Service Units in the Service Area and the delivery of that Garbage to a Disposal Facility.
- B. SFD Large Item Collection Service. The periodic on-call Collection of Large Items, by Contractor, from SFD Service Units in the Service Area and the delivery of those Large Items to a Disposal Facility, Materials Recycling Facility or such other facility as may be appropriate under the terms of this Agreement. SFD Large Item Collection Service does not include the Collection of Large Items through the use of Roll-Off Containers.
- C. SFD Organic Waste Collection Service. The Collection of Organic Waste by Contractor from SFD Service Units in the Service Area, the delivery of those Organic Waste materials to an Organic Waste Processing Facility, the processing of those Organic Waste materials, and the disposal of all SFD Organic Waste Processing Residual including the contents of contaminated containers.
- D. SFD Recycling Service. The Collection of Recyclable Materials by Contractor from SFD Service Units in the Service Area, the delivery of those Recyclable Materials to a Materials Recycling Facility and the processing and marketing of those Recyclable Materials, and the disposal of all SFD Recyclable Materials Processing Residual including the contents of contaminated containers.
- E. SFD Tire Collection Service. The Collection of up to four tires per month by Contractor, from SFD Service Units in the Service Area, delivery of those tires to a Materials Recycling Facility and the processing and marketing of those Recyclable Materials.
- F. SFD Used Oil Collection Service. The Collection of used oil filters and up to two gallons of used oil per month by Contractor from SFD Service Units in the Service Area, and delivery to persons authorized by the State of California to recycle oil.

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

1.70 Solid Waste. The materials described in Public Resources Code Section 40191, including Garbage, Recyclable Materials, Organic Waste, Construction and Demolition Debris, and Large Items. Solid Waste does not include Exempt Waste. Solid Waste specifically includes the following:

- A. Construction and Demolition Debris. Used or discarded materials resulting from construction, remodeling, repair or demolition operations on any type of structure.
- B. Food Waste. Food scraps and trimmings and other putrescible waste that results from food production, preparation, storage, consumption or handling. Food Waste includes but is not limited to meat, fish and dairy waste, fruit and vegetable waste, grain waste, and also including compostable food soiled paper products, unless compostable food soiled paper products are not accepted by the Organic Waste Processing Facility.
- C. Garbage. All putrescible and non-putrescible solid, semi-solid, and associated liquid waste, as defined in California Public Resources Code Section 40191, attributed to normal activities of a Service Unit, and generated by and at the Service Unit wherein the Garbage is Collected.
- D. Green Waste. Any vegetative matter resulting from normal yard and landscaping maintenance that fits into the provided Cart (except for Holiday Trees) and does not weigh more than fifty (50) pounds. Green Waste includes plant debris, such as grass clippings, leaves, pruning, weeds, branches, brush, and other forms of organic waste and must be generated by and at the Service Unit where the Green Waste is Collected.
- E. Large Green Waste. Oversized Green Waste such as tree trunks and branches with a diameter of not less than six (6) inches and not more than two (2) feet and a length of not more than five feet in its longest dimension, which are attributed to the normal activities of a Service Unit. Large Green Waste must be generated by and at the Service Unit where the Large Green Waste is Collected, and is Collected by means of Large Item Collection.
- F. Large Items. Those materials including furniture; carpets; mattresses; White Goods; Brown Goods; Large Green Waste which are attributed to the normal activities of an SFD Service Unit. Large Items must be generated by and at the SFD Service Unit wherein the Large Items are Collected.
- G. Organic Waste. Food Waste, Green Waste, Large Green Waste, and Other Organics, either separately or commingled with each other, that has been separated at the source of generation from Garbage and Recyclable Materials.

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- H. **Other Organics.** Other Organics means food-soiled paper and paper products, compostable food wares and compostable food packaging, stable materials, manure, and natural fiber textiles. Other Organics includes other compostable materials as may be determined by mutual agreement between City and Contractor.
- I. **Recyclable Materials.** Those materials which are capable of being recycled using available processes and markets and which would otherwise be processed or disposed of as Garbage. The listing of Recyclable Materials to be collected is set forth in **Exhibit 2**, which may be amended in accordance with Section 3.13.
- J. **White Goods.** Inoperative and discarded refrigerators, ranges, water heaters, freezers, washers, dryers, and other similar household appliances.

1.71 **Universal Waste.** Any waste matter which the State of California classifies as "Universal Waste," including, but not limited to, items and materials listed in 22 CCR 66261.9, as it may be amended, as well as the following: batteries, thermostats, lamps with fluorescent tubes, high intensity discharge lamps, sodium vapor lamps, and other lamps with hazardous waste characteristics, cathode ray tubes, aerosol cans, mercury-containing items, prescription and non-prescription drugs, not including controlled substances.

1.72 **Work Day.** Any day, Monday through Saturday, that is not a holiday set forth in Section 3.05 of this Agreement.

ARTICLE 2. Term of Agreement and Considerations

2.01 **Initial Term.** The initial term of this Agreement will begin at midnight July 1, 2021 ("Effective Date") and will terminate at 11:59 pm on June 30, 2041, unless earlier terminated or extended pursuant to the provisions hereof. **Contractor shall commence performance of Food Waste Collection Services to SFD Service Units pursuant to this Agreement on January 1, 2022.**

2.02 **Extension of Term Option.** Provided that Contractor is not then in default of any term or condition of the Agreement and that the Extension Term Option has not been voided as provided in Section 2.02.3 below, CONTACTOR may request no more than two (2) separate and sequential five year term extensions to the Initial Term (each, an "Extended Term") by providing City with written notice of the request at least eighteen (18) months prior to the expiration of the Initial Term or the first Extended Term. Following Contractor's request for an extension, City shall meet and confer with Contractor at least two (2) times prior to expiration of the Initial Term or the first Extended Term, but under no circumstances will City be obligated to extend the Term.

2.02.1 **Performance Review Prior to Five Year Extension.** If Contractor requests a term extension as described in Section 2.02 above, City may initiate a billing audit and performance review to be conducted as described in Section 12.01. Regardless of the outcome of this billing audit and performance review, City will have no obligation to extend the term of the Agreement.

2.02.2 **Other Provisions.** City or Contractor may, at the end of the Initial Term or Extended Term renegotiate the terms and conditions of the Agreement for an Extended Term. In addition, City may request

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proposals from qualified contractors to provide Collection Services. City retains the right to conduct a competitive procurement process while concurrently negotiating with Contractor.

2.02.3 **Voiding of Term Extension Option.** In the event Contractor materially fails to meet the minimum performance and Diversion standards set forth in ARTICLE 5 during the Initial Term, Contractor understands and agrees that its option to request an Extended Term from City shall be voided and this Agreement will terminate on June 30, 2041 as set forth in Section 2.01 of this Agreement.

In the event Contractor exercises the first Extended Term, and materially fails to meet the minimum performance and Diversion standards set forth in ARTICLE 5 during that first Extended Term, Contractor understands and agrees that its option to request a second Extended Term from City shall be voided and the Agreement will terminate on June 30, 2046.

2.03 **Condition Precedent to Effectiveness of Agreement.** Contractor shall submit the executed and acknowledged Performance Bond required by ARTICLE 21, the evidence of insurance required by ARTICLE 22, and the executed and acknowledged Guaranty required by ARTICLE 51 (together the Performance Bond, the evidence of insurance and the Guaranty are referred to as the "Form Documents"), all in form acceptable to the Agreement Administrator, at least fifteen Business Days prior to the Effective Date of this Agreement. City shall provide Contractor written notice of its approval or rejection within five (5) Business Days of receipt of the Form Documents. Contractor shall perform no work pursuant to this Agreement until it has provided, and the City has approved, the required Performance Bond, Guaranty, and evidence of insurance.

2.04 **Consideration for Franchise.** In consideration for City's grant of the exclusive franchise, the City's support services to comply with AB 939, and for retention of the longstanding relationship with City, Contractor shall make when due the payments described in this ARTICLE, and as may otherwise be set forth in this Agreement, to City.

2.04.1 **Franchise Fee.** The Franchise Fee shall be a percentage of Contractor's Gross Revenue received each month under the terms of this Agreement. The Franchise Fee percentage shall be **twelve and one-half percent (12.5%)** of Gross Revenues, unless otherwise adjusted by City. The Franchise Fee shall be paid to City no later than the 20th day succeeding each month, with the first monthly payment due on August 20, 2021. Payments will be delinquent if not paid in full within five calendar days of the due date.

2.04.2 **AB 939 Support Fee.** Contractor shall pay an AB 939 Support Fee to City for City's costs to provide support services relating to AB 939. The AB 939 Support Fee of **three hundred thousand dollars (\$300,000)** each year shall be paid in full on July 1st of each Agreement year, with the first payment due on **July 1, 2021**. Starting on **July 1, 2022**, and each July 1st thereafter, the AB 939 Support Fee amount shall be annually adjusted by the **CPI-U** amount as established in Section 4.03.1.

2.04.3 **Franchise Retention Fee.** Contractor shall pay a Franchise Retention Fee of **four million five hundred thousand dollars (\$4,500,000)**. The Franchise Retention Fee shall be paid to City in full by **July 1, 2021**. If the Franchise Retention Fee is not paid in full by **July 1, 2021**, this Agreement shall be null and void, and any monies paid by Contractor to City shall be retained by City.

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2.05 Article XIIID. This Agreement is contingent upon approval of the initial customer rates and any solid waste rate increase imposed herein by the Banning City Council pursuant to the provisions of Article XIIID of the California Constitution (added by Proposition 218). City agrees to undertake the notice and protest process as provided in Article XIIID with respect to any proposed rate increase, to the extent required by applicable law. Should a majority protest, as provided for under Article XIIID, invalidate approval of any rate increases provided for herein, City shall have the option to terminate this Agreement with 30 days' advance written notice at any time during the remainder of the term. While the Agreement is in effect, Company shall be compensated in accordance with the Agreement terms.

In addition, if at any time a voter initiative, as provided for in Article XIIID, Section 3, shall invalidate any portion of the fees imposed by City in furtherance of this Agreement, City shall have the option to terminate this Agreement with 30 days' advance written notice at any time during the remainder of the term.

City agrees to meet and confer with Company prior to City's termination of this Agreement under this Section to determine whether City and Company can negotiate a reduction in Company Compensation to offset the protested rate increase. Should the City terminate this Agreement pursuant to this Section, the City agrees to refund the Franchise Retention Fee prorated over the 20-year term of this Agreement within 120 days of termination.

2.06 CalRecycle Regulations. The Parties acknowledge that, pursuant to SB 1383, CalRecycle has adopted Regulations for Short Lived Climate Pollutants, which are added as Chapter 12 to Division 7 of Title 14 of the California Code of Regulations, with additional modifications of existing regulations in Title 14 and Title 27 of the California Code of Regulations ("SB 1383 Regulations"). The SB 1383 Regulations are effective on January 1, 2022. As of the date of execution of this Agreement, the costs of undertaking the obligations required by the SB 1383 Regulations are not fully understood. For that reason, on or about January 1, 2025 the Parties shall meet and confer in good faith to make any conforming revisions to provisions of this Agreement relating to the SB 1383 Regulations, as well as an upward or downward adjustment in compensation as provided in the Agreement. Any such adjustment in compensation shall be made only to the extent Contractor demonstrates the need to incur fifty thousand dollars (\$50,000) or more in added cost or City identifies cost savings of fifty thousand dollars (\$50,000) or more, as necessary for Contractor to comply with its obligations under this Agreement arising from the SB 1383 Regulations.

ARTICLE 3. Services Provided by Contractor

3.01 Grant of Exclusive Agreement. Subject to the exceptions stated in Section 3.02, City hereby grants to Contractor, on the terms and conditions set forth herein, the exclusive franchise, right and privilege to collect, remove and dispose of, in a lawful manner, Solid Waste accumulating in the Service Area that are required to be offered for collection to Contractor in accordance with City's Municipal Code, for the Term of and within the scope set forth in this Agreement.

3.02 Recyclable Materials, Organic Waste, and Large Item Disposal by Service Recipients. Service Recipients may sell or donate Recyclable Materials, Organic Waste, and Large Items by other appropriate means, including but not limited to, taking Recyclable Materials, Organic Waste, or Large Items to drop-off facilities and donating or selling such items to private or public entities provided the Service Recipient is not charged for nor pays for collection services for Recyclable Materials or Organic Waste in accordance with Applicable Law. Service

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Recipients may also self-haul Solid Waste to Disposal or Processing Facilities, to the extent authorized by the Municipal Code.

3.03 Service Standards. Contractor must perform all Collection Services under this Agreement in a thorough and professional manner.

3.04 Labor and Equipment. Contractor must provide and maintain all labor, equipment, tools, facilities, and personnel supervision required for the performance of Contractor's obligations under this Agreement. Contractor must at all times have sufficient backup equipment and labor to fulfill Contractor's obligations under this Agreement. No compensation for Contractor's services or for Contractor's supply of labor, equipment, tools, facilities or supervision will be provided or paid to Contractor by City or by any Service Recipient except as expressly provided by this Agreement.

3.05 Holiday Service. Contractor is not required to provide Collection Services or maintain office hours on these designated holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. In any week in which one of these holidays falls on a Work Day, Collection Services for the holiday and each Work Day thereafter will be delayed one Work Day for the remainder of the week with normally scheduled Friday Collection Services being performed on Saturday. Commercial Collection Services will be adjusted as set forth in ARTICLE 8, but must meet the minimum frequency requirements of one (1) time per week.

3.06 Inspections. City has the right to inspect Contractor's facilities or Collection vehicles and their contents at any reasonable time while operating inside or outside City.

3.07 Commingling of Materials.

3.07.1 Materials Collected from Other Waste Streams. Except as otherwise provided in this Agreement, Contractor may not at any time commingle any materials Collected pursuant to this Agreement with any other material Collected by Contractor from other waste streams, whether inside or outside City, without at least thirty (30) days prior to the proposed commingling providing the Agreement Administrator with written justification of need to commingle materials, to the reasonable satisfaction of the Agreement Administrator. If commingling is approved and takes place, Contractor agrees to indemnify, defend and hold City harmless from any claims, demands, fines or penalties arising from Contractor's commingling.

3.07.2 Recyclable Materials. Subject to Section 3.08, Contractor must not at any time commingle Recyclable Materials Collected pursuant to this Agreement with any other material type Collected by Contractor without the express prior written authorization of the Agreement Administrator.

3.07.3 Organic Waste. Subject to Section 3.08, Contractor must not at any time commingle Organic Waste Collected pursuant to this Agreement with any other material type Collected by Contractor, without the express prior written authorization of the Agreement Administrator.

3.08 Recyclable Materials and Organic Waste Contamination. Contractor must offer the Service Recipients the combination of Cart, Bin and Roll-Off Container sizes and collection frequency that matches their unique service needs to reduce contamination of Recyclable Materials and Organic Waste. To support City's Diversion goals and Contractor's Diversion Compliance obligations as set forth in Article 5, Contractor is only required

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to collect Recyclable Materials if they have been separated by the Service Recipient from Garbage and Organic Waste, and is only required to collect Organic Waste if it has been separated by the Service Recipient from Garbage and Recyclable Materials.

As part of Contractor's Public Education Services under Section 15.01, Contractor agrees to provide outreach and support to Service Recipients. Additionally, Contractor's route collection personnel will report to Contractor's supervisors if they observe potential contamination problems, and/or insufficient collection capacity. For purposes of determining if Recyclable Materials or Organic Waste are deemed to be contaminated, if, by visual or digital inspection, Recyclable Materials are commingled with ten percent (10%) by weight or volume of Garbage or Organic Waste, or if, by visual inspection, Organic Waste is commingled with three percent (3%) by volume of Garbage or Recyclable Materials, then Recyclable Materials and/or Organic Waste will be deemed to be contaminated and Contractor may take the following steps:

3.08.1 First and Second Occurrence. For the first and second occurrence within any twelve-month period of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), Contractor must collect the contaminated container, and must notify the Service Recipient by phone, text, U.S. mail, e-mail, other electronic means, or in person (which may be a container tag), of proper procedures for sorting Recyclable Materials or Organic Waste. Notice must also specify that for the third or subsequent incident of excess contamination, the Service Recipient may be charged a contamination fee for the contaminated container as set forth in the Schedule of Service Rates. In consultation with Service Recipient, Contractor may increase the Cart or Bin size or require an additional Cart or Bin. Contractor must provide digital/visual documentation to the Service Recipient that clearly documents the Service Recipient's on-going contamination problems.

3.08.2 Third and Subsequent Occurrence. For the third or subsequent occurrence within the same twelve-month period of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), Contractor must collect the contaminated container (as Garbage), and may charge the Service Recipient a contamination fee as set forth in the Schedule of Service Rates. Contractor must maintain records through digital/visual documentation of the Service Recipient's on-going contamination problems and provide the records, upon request, to Agreement Administrator within twenty (20) days of request. Contractor may increase the Cart or Bin size or collection frequency, or require an additional Cart or Bin, if necessary to provide the Service Recipient with adequate capacity to timely dispose of Recyclable Materials and Organic Waste without commingling as set forth in the Schedule of Service Rates. Prior to requiring an additional (or larger) Cart or Bin or change in collection frequency, Contractor's representative must first attempt to contact the Service Recipient by phone, U.S. mail, e-mail, other electronic means, or in person (which may be a container tag) to ensure that they have the appropriate level of service for proper collection of Recyclable Materials, Organic Waste, and Garbage. Contractor must continue providing the Recyclable Materials and Organic Waste Collection Services to the Service Recipient. Contractor must provide (or have provided) digital documentation to the Service Recipient that clearly documents the Service Recipient's on-going contamination problems and the notices as described above. Contractor shall, on a monthly basis, report to the City increases in Cart or Bin size or collection frequency for excessive contamination and a summary of all instances of contamination and associated charges as described in more detail in Section 17.02.1.3. City will consult with Contractor and consider, and pursue as warranted, appropriate legal remedies against offending Service Recipients in order to secure discontinuance of the contamination. All City costs of such action shall be recoverable from the offending Service Recipients.

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3.08.3 Tracking Occurrences of Contamination. Regarding Sections 3.08.1 and 3.08.2, each Contamination occurrence shall be tracked by Contractor, and the tracking for each Service Recipient shall reset twelve months from the date of the first documented incident.

3.08.4 Disputes Over Excess Contamination Charges. If Service Recipient disputes an action undertaken by Contractor as described in Sections 3.08.1 and 3.08.2, which must be within 30 days of the disputed action, Contractor shall initially use good faith efforts to informally resolve the dispute. If not resolved, Contractor shall temporarily halt any contamination charge and/or increased Service Rate resulting from increasing the Cart or Bin size or collection frequency, and shall take no action pursuant to Section 4.02 with regard to such charges and/or increased Service Rate until the dispute is resolved in accordance with this Section. Contractor may request a ruling by the Agreement Administrator to resolve the dispute. A request by Contractor to the Agreement Administrator to rule on any such dispute must be filed within ten Business Days of Contractor's halting of its actions, and must include written documentation and digital/visual evidence of ongoing overall problems. The Agreement Administrator may request a meeting (in person or phone) with both the Service Recipient and Contractor to resolve the dispute. Following such a meeting, the Agreement Administrator will rule on the dispute within ten Business Days, and the Agreement Administrator's decision on resolving the dispute between and Service Recipient will be final. If the Agreement Administrator rules in favor of the Service Recipient, Contractor will credit the disputed contamination charges or increased Service Rate. If the Agreement Administrator rules in favor of Contractor, Contractor may charge Service Recipient the prior halted contamination charge and/or increased Service Rate from the date on which the increased services (e.g., increasing the Cart or Bin number, size or collection frequency) commenced at rates as set forth in the Schedule of Service Rates.

3.08.5 Plan of Correction. If Contractor fails to follow the Recyclable Materials and Organic Waste Contamination procedures as set forth in this Section 3.08, Contractor shall prepare and submit to the Agreement Administrator a plan of correction within fifteen Business Days of demand from the City. Upon approval by the plan of correction by the Agreement Administrator, Contractor shall implement the plan of correction.

3.09 Container Overage and Correction Procedures. In managing Solid Waste Overages, the following apply:

3.09.1 Overage and Correction Procedures. Contractor shall offer the Service Recipients the combination of Cart, Bin, and Roll-Off Container sizes and collection frequency that matches each Service Recipient's unique service needs to enable clean, efficient, and cost-effective collection of Solid Waste. City and Contractor agree that overflow of Solid Waste that is not properly in the Service Recipient's Cart(s), Bin(s) or Roll-Off Container(s) ("Solid Waste Overages") may negatively impact public health and safety. In the event that Service Recipients are found to habitually overflow their Solid Waste Cart(s), Bin(s) or Roll-Off Container(s), Contractor may take the steps as listed below to correct Service Recipient's on-going overflow of Solid Waste.

3.09.1.1 Prior Arrangements for Collection. If the Service Recipient has made prior arrangements with Contractor in writing for collection of Solid Waste Overages, Contractor must collect such overages as arranged, and may charge the Service Recipient the Solid Waste Overage fee set forth in the Schedule of Service Rates.

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3.09.1.2 No Prior Arrangements. Except as provided otherwise in Sections 3.09.2 and 3.09.3, if the Service Recipient has not made prior arrangements with Contractor for collection of Solid Waste Overages, Contractor may take one of the following actions: (a) collect such Solid Waste Overage at no additional charge as a courtesy, (b) not collect the Solid Waste Overage and leave a Non-Collection Notice explaining the reason for non-collection of the Solid Waste Overage, (c) collect the Solid Waste Overage and charge the Service Recipient the Solid Waste Overage fee rate as set forth in the Schedule of Service Rates, or (d) increase the capacity or frequency of collection of the existing Cart(s), Bin(s) and Roll-Off Container(s) to match documented service needs as provided below.

3.09.2 Each Occurrence. For each occurrence of a Solid Waste Overage, Contractor must notify the Service Recipient by phone, text, U.S. mail, e-mail, or other electronic means, or in person (which may be a container tag), setting forth the date, description and photograph or video image of the Solid Waste Overage. Contractor's Non-Collection Notice for SFD Service Recipients shall also contain instructions on (a) how to schedule a Large Item Collection or (b) request an additional Cart to eliminate future Overages. Contractor may collect the Solid Waste Overage and may charge the Service Recipient a Solid Waste Overage fee as set forth in the Schedule of Service Rates. Contractor may increase the capacity or collection frequency of the Cart, Bin or Roll-Off Container to match documented service needs. At least ten Business Days prior to increasing the Cart, Bin or Roll-Off Container size or frequency of Collection, Contractor's representative must also contact the Service Recipient by phone, text, other electronic means, U.S. mail, e-mail or in person (which may be by a container tag) to inform the Service Recipient about the increase in the number or collection frequency of the Cart, Bin or Roll-Off Container to match documented service needs. Contractor shall on a quarterly basis report to the City changes in Service Recipient's Cart, Bin or Roll-Off Container size or collection frequency due to Solid Waste Overage. The increased capacity or collection frequency will remain in effect until Contractor determines that it is no longer needed to prevent overages. Such determination will be in Contractor's sole but reasonable discretion and will be subject to the dispute resolution procedure set forth below. City will consider, and pursue as applicable, appropriate legal remedies against offending Service Recipients in order to secure discontinuance of the overages. All City costs of such action shall be recoverable from the offending Service Recipients.

3.09.3 Disputes Over Container Overage Charges. If Service Recipient disputes an action undertaken by Contractor, which must be within 30 days of the disputed action, Contractor will initially use good faith efforts to informally resolve the dispute. If not resolved, Contractor shall temporarily halt Solid Waste Overage charge and/or increased Service Rate resulting from increasing the Solid Waste Cart, Bin or Roll-Off Container size or collection frequency, and shall take no action pursuant to Section 4.02 until the dispute is resolved in accordance with this Section with respect to such disputed charges. Contractor may request a ruling by the Agreement Administrator to resolve the dispute. A request by Contractor to the Agreement Administrator to rule on any such dispute must be filed within ten Business Days of Contractor's halting of its actions, and must include written documentation and digital/visual evidence of ongoing overall problems. The Agreement Administrator may request a meeting (in person or phone) with both the Service Recipient and Contractor to resolve the dispute. Following such a meeting, the Agreement Administrator will rule on the dispute within ten Business Days, and the Agreement Administrator's decision on resolving the dispute between and Service Recipient will be final. If the Agreement Administrator rules in favor of the Service Recipient, Contractor must credit the disputed charge or increased Service Rate. If the Agreement Administrator rules in favor of Contractor, Contractor may charge Service Recipient the prior halted Solid Waste Overage charge and/or increased Service Rate resulting from increasing the Solid Waste Cart, Bin or Roll-Off Container number, size, or collection frequency at rates as set forth in the Schedule of Service Rates.

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Notwithstanding any provision to the contrary, nothing shall prevent Contractor from taking actions in accordance with Section 4.02 with respect to any undisputed payment delinquencies.

3.10 Ownership of Materials. Except as provided otherwise under Applicable Law, title to Solid Waste will pass to Contractor at such time as the materials are placed in Contractor's Collection vehicle.

3.11 Spillage and Litter. Contractor shall not litter premises in the process of providing Collection Services or while its vehicles are on the road. Contractor must transport all materials Collected under the terms of this Agreement in such a manner as to minimize the spilling or blowing of such materials from Contractor's vehicles. Contractor must exercise all reasonable care and diligence in providing Collection Services so as to prevent spilling or dropping of Solid Waste and must immediately, at the time of occurrence, clean up such spilled or dropped Solid Waste.

3.11.1 Except as provided in Section 3.09.1, Contractor is not responsible for cleaning up sanitary conditions caused by the carelessness of the Service Recipient. Contractor must, however, clean up any material or Residual that is spilled or scattered by Contractor or its employees and report such instances in writing to City by the close of business within one (1) Business Day of the occurrence.

3.11.2 Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from Contractor's operations or equipment repair must be covered immediately with an absorptive material and removed from the street surface and private property. If such fluid leakage or spillage results in staining the street or sidewalk surface, Contractor must apply a suitable cleaning agent to the street surface to provide adequate cleaning.

3.11.3 The above paragraphs notwithstanding, Contractor must clean up any spillage or litter caused by Contractor within the same Work Day upon notice from City. To facilitate such cleanup, Contractor's vehicles must at all times carry sufficient quantities of petroleum absorbent materials along with a broom and shovel.

3.12 Regulations and Record Keeping. Contractor must comply with notification procedures for Hazardous Waste required by Applicable Law. All records required by regulations must be maintained at Contractor's facility. These records must include waste manifests, waste inventories, waste characterization records, inspection records, incident reports, and training records.

3.13 Additions and Deletions to List of Recyclable Materials - **Exhibit 2**. Contractor may submit requests to reclassify Recyclable Materials as Non-Recyclables to the Agreement Administrator. Contractor must include with any such request documentation that the cost to process, transport and market such materials exceeds its then-current value. If the Agreement Administrator concurs that the cost to process, transport and market such materials exceeds its then-current value, the Agreement Administrator shall approve the request.

Either party may request that Recyclable Materials be added to **Exhibit 2**. The party making the request shall include with the request documentation that the then-current market value exceeds the cost to process, transport and market such materials, and that there is a commercially viable market for the product. The other party shall not reject the request unless it documents that the cost to process, transport and market such materials exceeds its then-current value.

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Upon the occurrence of additions or deletions as may be determined pursuant to this Section, **Exhibit 2** may be revised by the Agreement Administrator without the need to amend this Agreement.

ARTICLE 4. Charges and Rates; Billing

4.01 Billing and Collection. Contractor is responsible for the billing and collection of payments for Collection Services within the Service Area and will assume those services as of the Effective Date. Contractor must charge Service Recipients as set forth in the Schedule of Service Rates and such rates may only be adjusted as provided for under this Agreement. Contractor will work with City's staff in between the date this Agreement is approved and the Effective Date to transfer over billing services and to ensure a smooth transition of such services for City and all Service Recipients. The initial Service Rates are specified in **Exhibit 1** of this Agreement, and are firm and fixed through June 30, 2022. Contractor shall not be entitled to any compensation from Service Recipients that is not listed in the Schedule of Service Rates, as adjusted from time to time in accordance with this Agreement. Contractor will not bill for Collection Services provided to City Facilities listed in **Exhibit 3**.

4.01.1 Transition of Collection of Payments. City will accept payments during a two (2) month transition period (July 1 to August 30, 2021) to ensure a smooth transition of the collection of payments for Collection Services. For payments made by Service Recipients to the City during the transition period, or after if payments are inadvertently paid to the City by Service Recipients, City shall send Contractor a monthly accounting of all monies received, listed by the account holder and/or service address. Contractor shall deduct the amount collected by the City from Contractor's monthly payment of the Franchise Fee pursuant to Section 2.04.1. For purposes of calculating the Franchise Fees due to the City, the amount collected by City shall be included as Contractor's Gross Revenues.

4.01.2 Partial Month Service. If, during a month, a Service Unit is added to or deleted from Contractor's Service Area, Contractor's Billing will be pro-rated based on the daily service rate (monthly Service Rate as set in the Schedule of Service Rates divided by the number of actual days in the month). The daily service rate will then be multiplied by the number of actual days in the month that service was provided to the Service Unit.

4.01.3 Production of Invoices from Contractor. Contractor must produce an invoice in advance, in a form approved by the Agreement Administrator, for services received under this Agreement. Contractor shall charge the Service Rates for any services required or permitted to be performed by the terms of this Agreement. Service Recipients shall be invoiced monthly in arrears for non-standard one-time services. For all other services, Service Recipients shall be invoiced in advance on a monthly billing cycle, no later than the twentieth (20th) day of the month preceding the period for which service is being billed. Contractor shall make payment of the invoice due within 30 days from the date of the invoice. Invoices may be submitted by mail or electronically, and payment methods may include check, credit card or ACH debit.

4.01.4 Overpayment. Where it has been determined that a Service Recipient has overpaid for service, for any reason, Contractor must provide the Service Recipient a credit against future invoices or a refund (as selected by the Service Recipient) as part of the next-scheduled invoicing.

4.02 Delinquent Service Accounts. Contractor reserves its right to, and may take such action as is legally available to collect or cause collection of such past due amounts, and to charge late fees and a tax-roll fee (if

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the delinquent account is placed on the tax-roll pursuant to Section 4.02.1), in the amounts set forth in the Schedule of Service Rates. If Contractor is charged a NSF fee by its bank as a result of a check paid by a Service Recipient being returned for insufficient funds, Contractor may charge the Service Recipient the amount of the NSF fee.

4.02.1 Delinquent SFD and MFD Service Accounts. Contractor shall provide SFD and MFD

Service Recipients with a notice of delinquency in the event of non-payment if an account is five (5) or more days past due. Contractor will not discontinue Collection Service from delinquent SFD and MFD Service Units. In consideration for Contractor's agreement to not discontinue Collection Service from delinquent SFD and MFD Service Units, City agrees to assist Contractor with placing and collecting qualifying delinquencies on the tax roll in accordance with Health & Safety Code §5473a. Contractor shall, by May 1st of each year or at such other time as agreed upon by City and Contractor, notify City in writing as to whether it will seek to have City place and collect qualifying delinquencies on the tax roll. Contractor shall be responsible for timely preparing, at no cost to City, all required information, reports, notices, and materials including without limitation, the report required by Health & Safety Code §5473, the notices required by Health & Safety Code §5473.1, and paying for any publication costs. City agrees that it shall within one-hundred twenty (120) days after the Effective Date of this Agreement adopt the necessary ordinance authorizing collection of eligible delinquent SFD and MFD Service Recipients on the tax roll, and to hold all hearings, timely publish all notices, and to timely make all filings required under the above sections, provided Contractor has timely provided the required information, reports, notices, and materials to City. For the purposes of this Section, a "qualifying delinquency" is an SFD or MFD Service Recipient that is at least ninety (90) days in arrears and for which Contractor has provided at least one written notice of the delinquency delivered to the service recipient and to the property owner, as that owner is listed on the last equalized assessment roll, by mail. City shall pay Contractor money collected from payment of the delinquent fees, less the Franchise Fee and the City's cost to administer the tax roll lien process.

4.02.2 Report of Delinquencies. In addition to, and to facilitate the foregoing, but not in

lieu of any requirement stated above, Contractor shall report to the Agreement Administrator, on a quarterly basis, all SFD and MFD Service Recipients who have received Collection Service and whose account is over ninety (90) days past due.

4.02.3 Delinquent Commercial Service Accounts. Delinquent accounts for MFD Service

Recipients shall be addressed in accordance with Section 4.02.1. Contractor shall provide all other Commercial Service Recipients with a notice of delinquency in the event of non-payment if an account is five (5) or more days past due. Contractor may cease provision of Collection Services to any Commercial Service Unit (not including MFD Service Units) due to non-payment upon thirty (30) days prior written notice to the Service Recipient and to the property owner, as that owner is listed on the last equalized assessment roll, with a copy to the Agreement Administrator. If payment is not received within thirty (30) days from the notice of delinquency, Contractor may terminate Commercial Collection Service at the delinquent account until the payment in full has been received including any accrued late fees (for such time as the bill remains unpaid after its due date), payment of a reactivation fee in the amount set forth in the Schedule of Service Rates, and reimbursement of any non-sufficient funds (NSF) bank charges. Contractor will provide City a list of delinquent accounts pursuant to section 17.02.1.4. Contractor may not charge for service during any period in which service was suspended. A deposit equal to the rate for one month's service based upon the Customer's three-month average billing history may be required of accounts which have been discontinued for non-payment prior to re-instituting service at such accounts. Collection of delinquent

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Commercial Service Accounts (other than MFD Service Recipients) shall not be eligible for placement and collection on the tax roll.

4.03 Adjustments to Service Rates. Beginning with the rate adjustment effective July 1, 2022, Contractor may apply for annual adjustments to Service Rates effective July 1 of each year. Contractor shall be responsible for calculating and submitting its annual rate adjustment application to City by April 1st. The Service Rates (including charges for Collection, Transportation, Transfer, Recyclable Materials Processing, Organic Waste Processing, and Disposal) shall be increased annually on July 1st, beginning July 1, 2022, as described in this Section. The Service Rates are comprised of the Service Component, Disposal Component, Recycling Processing Component, and Organic Waste Processing Component. No rate adjustment shall become effective until approved by the City Council. The City Council shall consider the rate adjustment application within 60 days after receipt of the completed application from Contractor.

4.03.1 Service Component. The Service Component may be adjusted by a percentage amount applied to the previous Service Component that is derived by multiplying the then-current Service Component by one-hundred percent (100%) of the percentage increase of the CPI-U. Provided that adequate supporting information has been submitted by Contractor, and subject to Section 2.05, the annual CPI-U Adjustment shall be deemed approved and shall take effect as outlined in this Section.

The CPI-U adjustment will be calculated using the change in the 12-month annual average of CPI-U index values between the January to December period of the prior year (the previous year), and the January to December period of the year before the prior year (the prior previous year), each as published by the U.S. Department of Labor, Bureau of Labor Statistics. Therefore, the first CPI-U adjustment will be based on the percentage change using the 12-month annual average for the period of January 2021 through December 2021 (the previous year) and the 12-month annual average January 2020 through December 2020 (the prior previous year).

4.03.2 Disposal Component.

4.03.2.1 Third Party Owned or Operated Disposal Facility(ies). For Disposal Facilities that are owned or operated by a Public Agency or other third party, or for any Disposal Facility where the per ton tipping fee is set or adjusted by a Public Agency, the Disposal Component shall be adjusted using the change in the per ton tip fee charged at the approved Disposal Facility between the immediately preceding Calendar Year (the previous year), and the Calendar Year before the previous year (the prior previous year). Therefore, the first adjustment will be based on the percentage change between the tip fee charged for the period of January 2021 through December 2021 (the previous year) and January 2020 through December 2020 (the prior previous year). Contractor shall provide to the City written documentation of the per ton tip fee adjustment at the approved disposal site as part of the annual rate adjustment application.

4.03.2.2 Contractor Owned or Operated Disposal Facility(ies). For Disposal Facilities that are owned and/or operated by Contractor or its Affiliates, and where the per ton tipping fee is NOT set or adjusted by a Public Agency, the Disposal Component shall be adjusted using the same methodology as specified in Section 4.03.1, and shall be subject to the same Rate Cap/Floor provisions as specified in Section 4.03.7.

4.03.3 Recycling Processing Component.

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4.03.3.1 Third Party Owned or Operated Recycling Processing Facility(ies). For Recycling Processing Facilities that are owned or operated by a Public Agency or other third-party, or for any Recycling Processing Facilities where the per ton tipping fee is set or adjusted by a Public Agency, the Recycling Processing Component shall be adjusted using the change in the per ton processing fee charged at the approved Materials Recycling Facility (MRF) facility between the immediately preceding Calendar Year (the previous year), and the Calendar Year before the previous year (the prior previous year). Therefore, the first adjustment will be based on the percentage change between the processing fee charged for the period of January 2021 through December 2021 (the previous year) and January 2020 through December 2020 (the prior previous year). Contractor shall provide to the City written documentation of the change of the per ton processing fee adjustment at the approved MRF, as part of the annual rate adjustment application.

4.03.3.2 Contractor Owned or Operated Recyclable Processing Facility(ies). For Recyclable Processing Facilities that are owned and/or operated by Contractor or its Affiliates, and where the per ton tipping fee is NOT set or adjusted by a Public Agency, the Recycling Processing Component shall be adjusted using the same methodology as specified in Section 4.03.1, and shall be subject to the same Rate Cap/Floor provisions as specified in Section 4.03.7.

4.03.4 Organic Waste Processing Component.

4.03.4.1 Third Party Owned or Operated Organic Waste Processing Facility(ies). For Organic Waste Processing Facilities that are owned or operated by a Public Agency or other third-party, or for any Organic Waste Processing Facility where the per ton tipping fee is set or adjusted by a Public Agency, the Organic Waste Processing Component shall be adjusted using the change in the per ton processing fee charged at the approved processing facility between the immediately preceding Calendar Year (the previous year), and the Calendar Year before the previous year (the prior previous year). Therefore, the first adjustment will be based on the percentage change between the processing fee charged for the period of January 2021 through December 2021 (the previous year) and January 2020 through December 2020 (the prior previous year). Contractor shall provide to the City written documentation of the per ton processing fee adjustment at the approved processing facility as part of the annual rate adjustment application.

4.03.4.2 Contractor Owned or Operated Organic Waste Processing Facility(ies). For Organic Waste Processing Facilities that are owned and/or operated by Contractor or its Affiliates, and where the per ton tipping fee is NOT set or adjusted by a Public Agency, the Organic Waste Processing Component shall be adjusted using the same methodology as specified in Section 4.03.1, and shall be subject to the same Rate Cap/Floor provisions as specified in Section 4.03.7.

4.03.5 Use of Multiple Disposal, Facilities, Recyclables Processing Facilities, or Organic Waste Processing Facilities. In the event that Contractor uses multiple approved Disposal, Recycling or Organic Waste Processing Facilities that have different per ton tip fees, any change in the *Disposal Element, Recycling Processing Element, or Organic Waste Processing Element* shall be based on the total of the percentage of tonnage delivered to each approved Disposal Facility, Recycling Processing Facility, or Organic Waste Processing Facility multiplied by the corresponding approved Disposal Facility, Recycling Processing Facility, or Organic Waste Facility tip fee. An example is below:

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<u>Multiple Approved Recyclables Processing Facilities</u>	<u>Delivered Recyclable Materials Tonnage</u>	<u>Percentage Delivered</u>	<u>Per Ton Tip Fee</u>	<u>Allocated Tip Fee</u>
<u>Facility A</u>	<u>3,500 Tons</u>	<u>67.3%</u>	<u>\$70.00</u>	<u>\$47.12</u>
<u>Facility B</u>	<u>1,700 Tons</u>	<u>32.7%</u>	<u>\$45.00</u>	<u>\$14.71</u>
Total New Tip Fee	5,200 Tons	100%	N/A	\$61.83

4.03.6 Rounding. Calculation of rates and determination of any annual adjustments will be made only in units of one cent (\$0.01) and will not result in a decrease to the rates currently in effect. Fractions of less than one cent (\$0.01) will not be considered in making adjustments. The indices will be truncated at three decimal places for the adjustment calculations.

4.03.7 Annual Rate Cap/Floor on Service Component. Except as specifically allowed in Sections 4.04 and 4.06 and Article 25, beginning on July 1, 2022, the total increase to the service component cannot exceed four percent (4.00%) nor be less than one percent (1.00%). In the event the total increase to the Service Component as calculated pursuant to Section 4.03.1 exceeds four percent (4.00%) or is less than one percent (1.00%) over the last reporting period, the amount of overage or decrease shall be carried over into any succeeding year until such time as it may be applied without violating the provisions of this Section. By way of example only, if the formula in Section 4.03.1 would provide for an increase of five percent (5%) in one year, the rate may only be increased by four percent (4%) for the corresponding year due to the limitations in this Section. If, in the next year, the formula in Section 4.03.1 would provide for an increase of one percent (1%), the unapplied one percent (1%) increase from the prior year may be applied to the formula in Section 4.03.1 for such next year, such that the total increase in the rates for the two year period in question would be six percent (6%). Notwithstanding the foregoing, the increases to the SFD Service Unit Service Rates occurring on July 1, 2022 and July 1, 2023 shall each include an increase of \$1.36 in addition to the increase provided in Sections 4.03.1 through 4.03.5 due to increased costs of service arising from SB 1383 implementation.

4.03.8 Financial Information; Approval of Revised Schedule of Service Rates. On or before April 1, 2022, and annually thereafter during the term of this Agreement, Contractor shall deliver to the Agreement Administrator in writing the annual adjustments as set forth in Section 4.03 and all calculations sufficient to enable City to verify the accuracy of Contractor's adjustment to the affected Service Rates to take place on the subsequent July 1st and the calculations from which such adjustments are derived. The Agreement Administrator shall verify the calculations and the adjustment and shall resolve discrepancies in the calculation or adjustment with Contractor. The Parties agree that verification and written approval of the calculation and adjustment by City Council shall constitute an amendment of the Schedule of Service Rates. This process shall not apply to Extraordinary Adjustments as provided in Section 4.04.

4.04 Extraordinary Adjustment to Service Rates. In addition to the annual adjustment described in Section 4.03, and any adjustment in accordance with ARTICLE 25, Contractor shall also be entitled to request an adjustment to the Schedule of Service Rates to address extraordinary changes in costs for providing the services required under this Agreement ("Extraordinary Adjustment"). Extraordinary Adjustments may be requested no more than once per Rate Year.

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4.04.1 Grounds for Extraordinary Adjustments. Extraordinary Adjustments may be requested based on any one or more of the following causes:

4.04.1.1 Material changes resulting from uncontrollable circumstances as defined in Section 20.06 of this Agreement;

4.04.1.2 An extraordinary increase in the cost of fuel used by Collection Vehicles;

4.04.1.3 An extraordinary increase or decrease in tonnage by material types and service types. This Extraordinary Adjustment may be requested from the Contractor or the City; or

4.04.1.4 Changes to Approved Facilities specified in **Exhibit 9**.

4.04.2 No Retroactive Adjustments. Extraordinary Adjustments may not be applied retroactively without City Council approval. Notwithstanding the preceding sentence, in no event may an Extraordinary Adjustment be applied retroactively to a date prior to July 1, 2022. Contractor may not request an Extraordinary Adjustment to Initial Service Rates, nor may Contractor request an Extraordinary Adjustment prior to June 30, 2022.

4.04.3 Contractor's request for an Extraordinary Adjustment must contain substantial proof and justification to support the need for the adjustment including a description of the causes and how the Change affects costs of service or revenue. For each request brought pursuant to this Section, Contractor must prepare a schedule documenting the costs and how they are necessitated by the causes. Such request must be prepared in a form acceptable to City with support for assumptions made by Contractor in preparing the estimate.

4.04.4 City shall request from Contractor such further information as it deems necessary to fully evaluate the request and make its determination, within 15 days of receipt by City of Contractor's request for an Extraordinary Adjustment. Contractor shall reimburse City for all costs incurred in reviewing a request for an Extraordinary Adjustment, within 30 days of receipt of an invoice from City, regardless of whether the requested adjustment is approved. City will review Contractor's request and, in City's sole and reasonable judgment, make the final determination as to whether an adjustment will be made, and if an adjustment is permitted, the appropriate amount of the adjustment. The City Council shall act on the request, including compliance with Section 2.05 of this Agreement, within 180 days of receipt from Contractor of all information requested by City.

4.05 Performance Standards for Adjustments to Rates. In order to be eligible for an adjustment under Section 4.03 or an Extraordinary Adjustment under Section 4.04, (a) Contractor must not have received a notice of default of this Agreement prior to the date of Contractor's request, or (b) if Contractor has received a notice of default that has not been cured, Contractor must be in the process of curing the default and proceeding diligently to do so in a timely manner, to the extent provided under ARTICLE 24 of this Agreement.

4.06 Adjustments Due to Changes in Fees, Payments, or City Services. In the event that City elects to increase or decrease the amount of fees or payments beyond those amounts provided for in Section 2.04, or increase or decrease the amount of City Services, the City and Contractor shall meet and confer to determine the appropriate adjustment in the Service Rates in accordance with Section 25.01.

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4.07 Compliance with Article XIID. Pursuant to Section 2.05 of this Agreement, all rate adjustments are subject to compliance with Article XIID of the California Constitution.

4.08 Procedures in Event of Denial of Rate Adjustment. In the event that City's approval of a rate adjustment is invalidated as a result of legal challenge, or that City is unwilling or unable to approve an Extraordinary Adjustment, Contractor will have the right, within thirty (30) days after notice of any such denial or invalidation, to request, in writing, that City negotiate in good faith regarding reductions in programs, services, or fees to compensate for any negative impact from the unapproved or invalidated rate increase. If City fails to commence negotiations in good faith or negotiations are not completed within forty-five (45) days following the date of receipt of Contractor's request, Contractor may terminate this Agreement no earlier than eighteen (18) months after written notice to City.

ARTICLE 5. Diversion Compliance

5.01 Contractor's Performance Critical to Satisfy Diversion Compliance. Contractor understands and agrees that this Agreement, and Contractor's performance of its responsibilities hereunder, is a critical component of the City's effort to meet or exceed on an annual basis Diversion Compliance. Contractor further understands and agrees that its performance under the Agreement, its collection and analysis of data regarding Solid Waste Collection within the City, and its transport of Organic Waste and Recyclable Material to permitted facilities for processing and diversion of these materials from the landfill are essential to City's ability to successfully implement its Integrated Waste Management Plan and each element thereof, including without limitation its Source Reduction and Recycling Element ("SRRE"), and to demonstrate Diversion Compliance in its annual report to CalRecycle. Contractor hereby agrees to assist the City to meet or exceed, on an annual basis the Diversion Compliance by undertaking the actions set forth in Section 5.02.

5.02 Contractors Required Actions. Contractor shall take all of the following actions to assist the City in meeting, on an annual basis, Diversion Compliance:

5.02.1 Except for Organic Waste collected from homeless encampments or material subject to quarantine by the California Department of Food & Agriculture, and except as provided in Sections 3.08 and 3.09, collect and deliver all Organic Waste to an approved Organics Processing Facility for processing and Diversion.

5.02.2 Except as provided in Sections 3.08 and 3.09, Collect and deliver all Recyclable Materials to an approved MRF, or other certified recycling facility, for processing Collect and deliver all Garbage to an approved Disposal Facility.

5.02.3 Collect and deliver all Construction and Demolition Debris to an approved MRF (or other certified C&D facility that meets California requirements of 65% minimum diversion) for processing and diversion.

5.02.4 Deliver all material set out for collection in Cart, Bins or Roll-Off Containers identified as containing source separated Recyclable Material to an approved MRF for processing and diversion.

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5.02.5 Deliver all material set out for collection in Cart, Bins or Roll-Off Containers identified as containing source separated Organic Waste to an approved Organic Waste Processing Facility for processing and diversion.

5.02.6 Only Residual or material in Garbage Carts or Garbage Bins will be delivered to the approved landfill for disposal. All other material must go to the designated facility for full processing and diversion, with Residual only going to the landfill after the processing.

5.02.7 Contractor must take all commercially reasonable and lawful actions to maximize diversion of materials from landfills.

5.02.8 Contractor must develop and provide sufficient accurate information and data as necessary to ensure that Contractor and City annually demonstrate Diversion Compliance to CalRecycle.

5.02.9 Contractor must implement public education and outreach programs as required under this Agreement.

5.03 If CalRecycle determines that City has failed to meet the Diversion Compliance due to Contractor's failure to undertake the actions described in this Section, Contractor must prepare, at Contractor's cost and expense, and submit a corrective action plan to City sufficient to demonstrate good faith efforts by City to comply with Diversion Compliance and that is otherwise acceptable to CalRecycle. Contractor must implement all measures identified in the corrective action plan at its sole cost and expense, unless the failure to meet Diversion Compliance was due to a Change in Law or due to the negligent acts or omissions of the City.

5.04 Failure of Recyclables Market. Notwithstanding any other provision of this Agreement to the contrary, where CalRecycle has determined that there are no commercially viable markets for a specific type of Recyclable Materials, or with written notice to City, Contractor is unable to identify a market for one or more Recyclable Materials despite the exercise of commercially reasonable efforts to process and market the material, and determines to dispose of the Recyclable Material(s), such a determination shall not constitute a failure to implement service, a failure to implement a program, or an event of default hereunder.

5.05 Representations and Warranties. Contractor represents and warrants that it is aware of and familiar with the Diversion Compliance, the Applicable Laws and City's waste stream. Contractor represents and warrants that it has the capacity, skill and ability to undertake the actions identified in Section 5.02 above without imposing any costs or fees other than those set forth in the Schedule of Service Rates, as may be adjusted as provided for in this Agreement. Where the Diversion Compliance is modified by a Change in Law, Contractor agrees to develop and implement such actions, programs and measures as are necessary to bring City into compliance with the modified Diversion Compliance and City agrees that it will meet and confer with Contractor for a period not to exceed ninety (90) days regarding such actions, programs and measures, their implementation, and adjustments to rates reasonably necessary to effectuate same in accordance with Section 25.02.

5.06 Mutual Cooperation. City and Contractor will reasonably cooperate in good faith with all efforts by each other to meet the Diversion Compliance and other compliance requirements imposed by the Applicable Laws. In this regard, City's obligations include, without limitation, making such petitions and applications as may be reasonably requested by Contractor for time extensions in meeting Diversion Compliance, implementing

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corrective actions plans, seeking reasonable and applicable exemptions where allowed under the Applicable Laws, and implementing additional programs in accordance with Section 25.01. City agrees to authorize such changes to Contractor's Collection Services or Collection Service programs as may be reasonably requested by Contractor in order to achieve the Diversion Compliance or new Diversion Compliance in accordance with Section 5.01.

5.07 Guarantee. Except for programs currently required by Applicable Law but not set forth in this Agreement, or that Contractor is expressly instructed by City not to implement, services which a Customer declines to accept, or to the extent arising from the negligent acts or omissions of the City, Contractor guarantees it will carry out its obligations under this Agreement such that: (i) Contractor will at all times be in compliance with the requirements of the Applicable Laws, and (ii) City will meet or exceed the Diversion Compliance set forth in the Applicable Laws. In this regard Contractor agrees that it will, in addition to any other Agreement requirement, at its sole cost and expense:

5.07.1 Subject to the restrictions set forth in Public Resources Code Section 40059.1, indemnify, defend, and hold City harmless from the imposition of any fee, charge, penalty, fine or similar monetary exaction by, from any enforcement proceeding or action undertaken by, and from the cost of any measure the City is required to undertake or implement by a court or CalRecycle to enforce against the City or Contractor the Diversion Compliance.

5.07.2 Assist City in responding to inquiries from CalRecycle;

5.07.3 Assist City in preparing for, and participating in, CalRecycle's biannual review of City's Source Reduction and Recycling Element, as the requirement for or name of may be amended or changed from time to time, pursuant to Public Resources Code Section 41825;

5.07.4 Assist City in applying for any extension, including under Public Resources Code Section 41820.5, if so directed by City;

5.07.5 Assist City in any hearing conducted by CalRecycle relating to City's compliance with the Applicable Laws;

5.07.6 Assist City with the development of and implement a public awareness and education program that is consistent with City's plans and policies; and

5.07.7 Provide City with Recycling, source reduction, and other technical assistance as may be needed to comply with the Applicable Laws.

ARTICLE 6. Service Units

6.01 Service Units. Service Units include all the following categories of premises which are in the Service Area as of July 1, 2021 and all such premises which may be added to the Service Area by means of annexation, new construction, or as otherwise set forth in this Agreement during the term of this Agreement:

6.01.1 SFD Service Units

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- 6.01.2 Commercial Service Units (includes MFD Service Units)
- 6.01.3 City Facilities
- 6.01.4 Any question as to whether a premise falls within one of these categories will be determined by the Agreement Administrator and the determination of the Agreement Administrator will be final.

6.02 Service Unit Changes. City and Contractor acknowledge that during the term of this Agreement it may be necessary or desirable to add or delete Service Units for which Contractor will provide Service. Contractor must provide services described in this Agreement to new Service Units in Service Area within five Work Days of receipt of notice from City or the new Service Unit to begin such Service.

6.03 Annexation. If during the term of the Agreement, additional territory within or adjacent to Contractor's Service Area is acquired by City through annexation, subject to the requirements of Public Resources Code Section 49520, Contractor agrees to provide Collection Services in such annexed area in accordance with the provisions and Service Rates set forth in this Agreement. Such Collection Services must begin within five Work Days of receipt of written notice from City. Contractor may not begin Collection Service without written authorization from City.

6.04 Route Map Update. Contractor shall provide City with updated Service Unit route maps within ten working days following the effective date of the Agreement. Additionally, Contractor must revise the Service Unit route maps to show the addition of Service Units added due to annexation and must provide such revised maps to the Agreement Administrator as requested.

ARTICLE 7. SFD Collection Services

7.01 SFD Collection Services. The SFD Collection Services are governed by the following terms and conditions:

7.01.1 The standard service level for an SFD Service Unit shall be one (1) approximately 96-gallon Garbage Cart, one (1) approximately 96-gallon Recycling Cart, and one (1) approximately 96-gallon Organic Waste Cart. Optional approximately 32- or 64-gallon Carts shall be provided at the Service Recipient's request.

7.01.2 Upon notification to Contractor by a new SFD Service Recipient that SFD Collection Service is requested, Contractor must provide Garbage, Recycling, and Organic Waste Carts within five (5) Work Days.

7.01.3 Conditions of Service. Contractor must provide SFD Collection Service to all SFD Service Units in the Service Area where the Solid Waste carts have been placed within three feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by Contractor and Service Recipient that will provide safe and efficient accessibility to Contractor's Collection crew and vehicle, and whose Garbage is properly containerized in Garbage Carts, Recyclable Materials are properly containerized in Recycling Carts, except as set forth in Section 7.09; and Organic Wastes are properly containerized in Organic Waste Carts.

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7.02 On-Premises Service. Notwithstanding any term or definition set forth in this Agreement, Contractor must provide front yard or side yard Collection of SFD Solid Waste to an SFD Service Unit by providing assistance in moving Carts to the curb, where access is safe for its drivers and authorized by the Service Recipient, as follows:

7.02.1 At no additional cost to the SFD Service Unit. SFD Service Units where all adult Service Recipients residing therein have disabilities that prevent them from setting their Solid Waste Cart at the curb for Collection, and if a request for front yard or side yard service has been made. In the event of a dispute over Service Recipient eligibility, the Agreement Administrator shall make the final determination.

7.02.2 At an additional cost to the SFD Service Unit. If requested by the SFD Service Recipient, Contractor must provide front yard or side yard service to SFD Service Recipients on a subscription basis and may charge the non-qualifying valet Service Rate included in the Schedule of Service Rates.

7.02.3 Collection Day. Contractor must provide front yard or side yard service Collection on the same Work Day that curbside Collection would otherwise be provided to the SFD Service Unit.

7.03 Frequency and Scheduling of Service. Except as set forth in Section 7.09, SFD Collection Service must be provided one (1) time per week on a scheduled route basis. SFD Collection Service must be scheduled so that all SFD Service Units receive SFD Garbage Collection Service, SFD Recyclable Material Collection Service, and SFD Organic Waste Collection Service on the same Work Day.

7.04 Hours and Days of Collection. SFD Collection Service must be provided Monday through Friday, commencing no earlier than 7:00 a.m. and terminating no later than 6:00 p.m. The hours, day, or both of Collection may be extended due to extraordinary circumstances or conditions in accordance with Section 20.06.

7.05 Manner of Collection. Contractor must provide SFD Collection Service with as little disturbance as possible and must leave any Solid Waste Cart(s) in an upright position at the same point it was collected without obstructing alleys, roadways, driveways, sidewalks or mail boxes. Contractor's employees providing SFD Collection Service must follow the regular walkway for pedestrians and may not trespass nor cross property to the adjoining premises unless the occupant or owner of both properties has given permission. Care should be taken to prevent damage to property, including flowers, shrubs, and other plantings.

7.05.1 Replacement of Carts. Contractor must provide collection containers to all SFD Service Recipients meeting SB 1383 Regulations in accordance with the schedule set forth in **Exhibit 4**. Container labeling must specify what materials are allowed to be placed in each container. Labels must represent acceptable versus unacceptable items in written or graphic form as approved by Agreement Administrator. Contractor's employees must take care to prevent damage to Carts by unnecessary rough treatment. Any Cart damaged by Contractor that is non-usable must be replaced by Contractor, at Contractor's expense, within five Work Days at no cost or inconvenience to the Service Recipient.

7.05.1.1 Upon notification to Contractor by City or a Service Recipient that the Service Recipient's Cart(s) has been stolen or damaged beyond repair through no fault of Service Recipient, Contractor must deliver a replacement Cart(s) to such Service Recipient within five Work Days. Contractor must maintain records documenting all Cart replacements occurring on a quarterly basis.

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7.05.1.2 Each Service Recipient is entitled to the replacement of one Cart every ten years during the life of this Agreement at no cost to the Service Recipient, if the cart is damaged by no fault of Service Recipient, lost, destroyed, or stolen. Except in the case of a Cart that must be replaced because of damage caused by Contractor or in the case where Contractor elects to replace a Cart rather than repair it on-site, Contractor will be compensated for the cost of those replacements in excess of one (1) per type of Cart per Service Recipient every ten years during the term of the Agreement, in the amount set forth in the Schedule of Service Rates for "Cart Exchange".

7.05.1.3 Contractor understands and agrees that this provision is intended to be applied on a per Cart type, individual Service Recipient basis and accordingly each Service Recipient could receive up to three replacement Carts, one (1) of each type, every ten years during the term of the Agreement.

7.05.1.4 Contractor must comply with CalRecycle container requirements for colors, labels, and/or signage, as they may apply during the term of this Agreement. No additional compensation shall be provided to Contractor for Contractor's compliance with CalRecycle container requirements.

7.05.2 Repair of Garbage, Recycling and Organic Waste Carts. Contractor is responsible for the repair of Carts, including but not be limited to, hinged lids, wheels and axles. Within five Work Days of notification by City or a Service Recipient of the need for such repairs, Contractor must repair the Cart or if necessary, remove the Cart for repairs and deliver a replacement Cart to the Service Recipient, at Contractor's expense.

7.05.3 Cart Exchange. Upon notification to Contractor by City or a Service Recipient that a change in the size of a Cart is requested, Contractor must deliver such Cart to such Service Recipient within five Work Days. Each SFD Service Unit is eligible to receive one (1) free Cart exchange of each type of Cart per Calendar Year during the term of this Agreement with a total of three Carts being exchanged. Accordingly, Contractor will be compensated only for the cost of those exchanges in excess of one (1) occurrence per type of Cart per Calendar Year for those SFD Service Units receiving different Cart sizes, in the amount set forth in the Schedule of Service Rates for "Cart Exchange".

7.05.4 Additional Cart Request. Upon notification to Contractor by City or a Service Recipient that additional Carts are requested, Contractor must deliver such Carts to such Service Recipient within five Work Days, at the rate set forth in the Schedule of Service Rates.

7.05.5 Ownership of Carts. Ownership of Carts is vested in Contractor.

7.06 SFD Garbage Collection Service. This service is governed by the following terms and conditions:

7.06.1 Non-Collection. Contractor is not required to collect any Garbage that is not placed in a Garbage Cart. In the event of non-collection, Contractor will follow the steps set forth in Section 3.09.

7.06.2 Disposal Facility. Except as set forth below, all Garbage Collected as a result of performing SFD Garbage Collection Services must be transported to, and disposed of, at a permitted Disposal Facility. In the event the Disposal Facility is closed on a Work Day, Contractor must transport and dispose of the Garbage at another legally permitted disposal facility. Failure to comply with this provision will result in the levy of liquidated damages as specified in this Agreement and may result in Contractor being in default under this Agreement.

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7.07 SFD Recycling Service. This service is governed by the following terms and conditions:

7.07.1 Oversizes. Corrugated cardboard that will not fit inside the Recyclable Materials Cart may be placed beside the Recycling Cart beginning December 26th through the second Friday in January each year during the term of this Agreement.

7.07.2 Material Recycling Facility. Subject to Section 3.08, all Recyclable Materials Collected as a result of performing recycling services must be delivered to a permitted Material Recycling Facility. Failure to comply with this provision will result in the levy of liquidated damages as specified in Section 20.4 and may result in Contractor being in default under this Agreement. All expenses related to Recyclables Materials processing will be the sole responsibility of Contractor except as otherwise provided in this Agreement.

7.07.3 Recycling - Changes to Services. Should changes in Applicable Law arise that necessitate any additions or deletions to the services described in this Section, including the type of items included as Recyclable Materials, the parties will negotiate any necessary cost changes and will enter into an Agreement amendment covering such modifications to the services to be performed and the compensation to be paid before undertaking any changes or revisions to such services.

7.08 SFD Organic Waste Collection Service. This service is governed by the following terms and conditions:

7.08.1 Contractor's SFD Organic Waste Collection Service is required to include Green Waste. Contractor must expand the SFD Organic Waste Collection Service to include Food Waste and Other Organics on January 1, 2022 as part of the SFD Organic Waste Collection Services as required by CalRecycle to comply with SB 1383. Collected Organic Waste shall be processed at a permitted Organic Waste Processing Facility.

7.08.2 Contractor must comply with CalRecycle collection frequency requirements as they may apply during the term of this Agreement. In the event such required changes to collection frequency that cause Contractor to incur additional collection costs, Contractor is entitled to receive additional compensation in accordance with Section 25.02.

7.08.3 Organic Waste Processing Facility. Subject to Section 3.08, Contractor shall make arrangements for and must deliver all Collected Organic Waste to a permitted Organic Waste Processing Facility or a permitted Organic Waste transfer station. Failure to comply with this provision will result in the levy of liquidated damages as specified in Section 20.4 and may result in Contractor being in default under this Agreement. All expenses related to Organic Waste processing will be the sole responsibility of Contractor except as otherwise provided in this Agreement.

7.08.4 Holiday Tree Collection. Contractor must Collect Holiday Trees set out at the curb for Collection beginning December 26th each year through the second Friday in January during the term of this Agreement. Contractor must deliver the Collected Holiday Trees to an appropriate facility for processing. This annual service will be provided at no additional charge to the SFD Service Recipient. Contractor is not required to Divert Holiday Trees with tinsel, flocking or ornaments.

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7.09 SFD Large Item Collection Service. This service is governed by the following terms and conditions:

7.09.1 Conditions of Service. Up to three (3) times per Calendar Year, Contractor must provide SFD Large Item Collection Service to all SFD Service Units in the Service Area whose Large Items have been placed within three feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by Contractor and Service Recipient that will provide safe and efficient accessibility to Contractor's Collection crew and vehicle. The Service Recipient may not intentionally commingle residential Large Items with other Solid Waste. The Service Recipient will be limited to the equivalent of one and one-half (1.5) cubic yards of bundled Solid Waste, or six Large Items, or ten 32-gallon bags for each SFD Large Item Collection Service event at no additional cost or expense ("Collection Event"). For subsequent collection in any Agreement Year or additional materials at a Collection Event, Contractor shall receive compensation from the Service Recipient at the rate for such service set forth in the Schedule of Service Rates. Contractor may refuse Collection of mattresses placed for Collection unless wrapped in plastic or covered with a mattress cover.

7.09.2 Frequency of Service. SFD Large Item Collection Service must be provided within three Work Days of receipt of the request or as otherwise agreed upon with the SFD Service Unit. Contractor will use good faith efforts to collect Large Items on the regular Collection day if the request is received at least forty-eight (48) hours in advance.

7.09.3 Large Items Containing Freon. In the event Contractor Collects Large Items that contain Freon, Contractor must handle such Large Items in a manner such that the Large Items are not subject to regulation as hazardous waste under applicable state and federal laws or regulations.

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

- 7.09.4.1 Reuse as is (where energy efficiency is not compromised).
- 7.09.4.2 Disassemble for reuse or Recycling.
- 7.09.4.3 Recycle.
- 7.09.4.4 Disposal.

7.09.5 Restriction on Landfilling. Contractor may not landfill such Large Items unless the Large Items cannot be reused or recycled.

7.09.6 City Direction of Large Items. City reserves the right to direct Contractor to take Large Items Collected pursuant to this Section to a designated site or sites located within twenty (20) miles of City Hall for the purpose of permitting persons who will reuse or recycle such Large Items to obtain the Large Items at no cost. Contractor has no obligation to dispose of the Large Items or Large Item Residuals remaining at the directed site or sites after reusers and recyclers have removed reusable or recyclable Large Items.

7.10 Used Motor Oil and Motor Oil Filter Collection.

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7.10.1 Contractor shall provide collection of used motor oil and motor oil filters for recycling as part of Contractor's SFD Collection Services, at no charge to SFD Service Recipients. Contractor will provide SFD Service Units with oil collection containers.

7.10.2 Contractor shall provide SFD Service Recipients upon request with used motor oil containers and heavy-duty zip lock bags for used motor oil filters. SFD Service Recipient's will be allowed to recycle up to two (2) gallons of used motor oil per month and up to three (3) used motor oil filters per month using this service. Used motor oil must be properly containerized and bagged in accordance with Contractor's instructions and set out next the Garbage Cart. Used motor oil must be recycled and/or lawfully disposed.

7.11 Used Tire Collection. Contractor shall provide collection of used tires for recycling as part of Contractor's SFD Collection Services, at no charge to SFD Service Recipients. SFD Service Recipient's will be allowed curbside collection of up to eight (8) used tires per year.

7.12 Sharps Collection. Contractor shall provide a program for the mail-back of used Sharps to SFD Service Recipients that request to participate in such program. At a minimum, the Sharps mail-back program shall result in each SFD Service Recipient who desires to participate in it annually receiving one "kit" at no cost per Calendar Year, which shall be comprised of a mailing box for such container preaddressed for delivery and processing to a properly permitted disposal location. Refills for the "kit" shall be provided on such basis as may be requested by participating SFD Service Recipients at the rates set forth in the Schedule of Service Rates.

ARTICLE 8. Commercial and MFD Collection Services

8.01 Commercial Collection Service. Except as set forth below, Contractor must provide Commercial Collection Service in the Service Area, including to all MFD Service Units. This service is governed by the following terms and conditions:

8.01.1 Provision of Service. Contractor must provide Collection Service to all Commercial Service Units in the Service Area whose Solid Waste is properly containerized in Bins, Carts, or Roll-off Containers as appropriate where the Carts, Bins, or Roll-off Containers are accessible as set forth in Section 8.01.4. Except where provided otherwise in Section 3.08 and 3.09, the size of the container and the frequency (above the minimum) of collection will be determined between the Service Recipient and Contractor. The size and frequency must be sufficient to provide that no Solid Waste need be placed outside the Cart, Bin, or Roll-off Container. The base Commercial Collection Service will include Commercial Garbage Service as described in Section 8.02 below, Commercial Recycling Service as described in Section 8.03.2 below, and Commercial Organic Waste Collection Service as described in Section 8.04.2 below.

8.01.2 Required Capacity. Contractor must provide Commercial Recycling Service and Commercial Organic Waste Collection Service to all Commercial Service Units in the Service Area. For each Service Unit, Contractor must provide a minimum capacity of Commercial Recycling Service and Commercial Organic Waste Collection Service as part of a bundled service, as required in Sections 8.03.2 and 8.04.2. For those Commercial Units which need more capacity than the minimum standard, Contractor may charge the Service Rate set forth in the Schedule of Service Rates.

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8.01.3 Hours of Collection. Commercial Collection Service must be provided, commencing no earlier than 4:00 a.m., and terminating no later than 6:00 p.m., Monday through Saturday with service on Sunday starting no earlier than 6:00 a.m., and terminating no later than 6:00 p.m. The hours of Collection may be extended due to extraordinary circumstances or conditions with the prior written consent of the Agreement Administrator.

8.01.4 Accessibility; Pull-Out Service. Contractor must collect all Carts, Bins or Roll-Off Containers that are readily accessible to Contractor's crew and vehicles and not blocked. Contractor may charge a "return to service" fee in the amount set forth in the Schedule of Service Rates, where it is required to return to the Customer location to service the Cart, Bin or Roll-off Container because access was blocked. However, Contractor must provide "pull-out services" as necessary during the provision of Commercial Collection Services at the rate set forth in the Schedule of Service Rates. Pull-out services include, but are not limited to, dismounting from the Collection vehicle, moving the Bins or Carts from their storage location for Collection and returning the Bins or Carts to their storage location.

8.01.5 Manner of Collection. Contractor must provide Commercial Collection Service with as little disturbance as possible and must leave any Bin, Cart, or Roll-Off Container at the same point it was originally located without obstructing alleys, roadways, driveways, sidewalks or mail boxes.

8.01.6 Distribution of Bins and Carts for Commercial Service Units. Contractor must provide collection containers to all Commercial Service Units; however, Commercial Service Units may own their Bin or Roll-off Container. Container labeling must specify what materials are allowed to be placed in each container in accordance with SB 1383 Regulations. Contractor must also distribute Bins, Carts or Roll-off Containers to new Commercial Service Units that are added to Contractor's Service Area during the term of this Agreement. The size of the Bins, Carts or Roll-Off Containers and the combination of Bins, Carts or Roll-Off Containers to be distributed will be as requested by the Service Recipient and the distribution must be completed within five Work Days of receipt of the request for service.

8.01.7 Replacement of Bins and Carts. Contractor's employees must avoid damage to Bins or Carts by unnecessary rough treatment. Any Bin or Cart damaged by Contractor must be replaced by Contractor, at Contractor's expense, within five Work Days at no cost or inconvenience to the Service Recipient. Bins or Carts damaged by the Contractor will not be counted against the replacement limits described in Section 8.01.7.1.

8.01.7.1 Each Commercial Service Unit is entitled to the replacement of one (1) lost, destroyed, or stolen Bin or Cart once each ten years of the term of this Agreement at no cost to the Service Unit, except where loss or damage is caused by the Service Recipient. Accordingly, Contractor will be compensated for the cost of those replacements in excess of one (1) per type of Bin or Cart per Commercial Service Unit during each ten years of the term Agreement, at the rate set forth in the Schedule of Service Rates for "Cart or Bin Exchange". Contractor must deliver a replacement Bin or Cart to such Service Unit within five Work Days. City Services provided by the Contractor shall be exempt from bin and cart replacement limits.

8.01.7.2 Contractor must comply with CalRecycle container requirements as they may apply during the term of this Agreement. If any such changes are adopted after the Effective Date that results in Contractor being required to replace containers before they have been fully depreciated, Contractor will be eligible for additional compensation in accordance with ARTICLE 25.

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8.01.8 Repair of Bins and Carts. Contractor is responsible for repair of Bins and Carts. Within five Work Days of notification by City or a Service Recipient of the need for such repairs, Contractor must repair the Bin or Cart or if necessary, remove the Bin or Cart for repairs and deliver a replacement Bin or Cart to the Service Recipient, at Contractor's expense. Bin or Cart repair also includes the removal of graffiti from the Bin or Cart.

8.01.9 Bin and Cart Exchange. Upon notification to Contractor by City or a Service Recipient that a change in the size, or number of the Bins or Carts is required, Contractor must deliver such Bins or Carts to such Service Recipient within five Work Days. Each Commercial Service Unit is eligible to receive one (1) free Bin or Cart exchange per service per Calendar Year during the term of this Agreement. Contractor is allowed to charge the Commercial Service Unit for the cost of those exchanges in excess of one (1) Bin or Cart exchange per Calendar Year, in the amount set forth in the Schedule of Service Rates for "Bin or Cart Exchange". Additional Carts or Bins or different size Carts and Bins will be serviced for the rates set forth in the Schedule of Service Rates. City Services provided by the Contractor shall be exempt from Bin and Cart exchange limits.

8.01.10 Ownership of Carts, Bins, and Roll-off Containers. Ownership of Carts, Bins, and Roll-off Containers distributed by Contractor is vested in Contractor.

8.01.11 Cleaning of Bins and Carts. Once each Calendar Year, if requested by the Commercial Service Unit, Contractor must clean all Bins and Carts at the Commercial Service Unit's premises, or must replace the dirty Bins and Carts with clean Bins and Carts. Replacement of dirty Bins and Carts for cleaning purposes shall not count as a replacement Cart or Bin for purposes of the limitations in Section 8.01.77. This service must be provided at no charge to the Commercial Service Unit, up to once per Calendar Year. In addition, regardless of whether or not this cleaning is requested by the Service Unit, Contractor will ensure that all Carts and Bins are cleaned on an as-needed basis so as to maintain a clean appearance and proper function. Any Bin or Cart cleanings cannot be done in a manner that results in water entering City's storm drain system in violation of Applicable Law. Additional cleanings requested by Service Recipient beyond once each Calendar Year will be subject to the amount set forth in the Schedule of Service Rates. Bins and Carts used for City Services provided by the Contractor shall be exempt from the limits in this Section.

8.01.11.1 Non-Collection. Contractor is not required to Collect any commercial Solid Waste that is not placed in a Cart, Bin, or Roll-off, except where provided otherwise in Section 3.09.1.1. In the event of non-collection due to Overage, Contractor must follow the steps as set forth in Section 3.09.

8.02 Commercial Garbage Collection Service.

8.02.1 Conditions of Service. Contractor must provide Commercial Garbage Collection Service to all Commercial Service Units in the Service Area whose Garbage is properly containerized in Garbage Carts, Bins, or Roll-off Containers, where the Garbage Carts, Bins, or Roll-off Containers are accessible.

8.02.1.1 Size and Frequency of Service. This service must be provided as deemed necessary and determined between Contractor and the Commercial Service Unit, but such service must be received no less than one (1) time per week with no exception for holiday(ies) as set forth herein. Collection service scheduled to fall on a holiday may be rescheduled as determined between the Commercial Service Unit and Contractor as long

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as the minimum frequency requirement is met. Service may be provided by Garbage Bin, Cart, or Roll-off Container at the option of the Commercial Service Unit. The size of the container and the frequency of Collection will be determined between the Commercial Service Unit and Contractor. However, size and frequency must be sufficient to not exceed the capacity of the Bin, Cart or Roll-Off Container, except where provided otherwise in Section 3.09.1.1. Contractor must provide containers as part of the Commercial Collection Service Rates set forth in the Schedule of Service Rates, however, Commercial Service Units may own their Garbage Bin or Roll-Off Containers provided that the Commercial Service Unit is completely responsible for its proper care, repair and maintenance and that such Bin or Roll-Off Container must be of a type that can be serviced by Contractor's equipment. Upon notification to Contractor by a new Commercial Service Unit that Commercial Collection Service is requested, Contractor must provide Garbage, Recycling, and Organic Waste Containers in sizes as determined between the Commercial Service Unit and Contractor within five (5) Work Days, or as otherwise agreed upon between the Commercial Service Unit and Contractor.

8.02.2 Disposal Facility. All Garbage collected as a result of performing Commercial Garbage Collection Services must be transported to, and disposed of, at a permitted Disposal Facility. In the event the Disposal Facility is closed on a Work Day, Contractor must transport and dispose of Garbage at another legally permitted disposal facility. Failure to comply with this provision will result in the levy of liquidated damages as specified in this Agreement and may result in Contractor being in default under this Agreement.

8.03 Commercial Recycling Service. This service is governed by the following terms and conditions:

8.03.1 Conditions of Service. Contractor must provide Commercial Recycling Service to all Commercial Service Units in the Service Area whose Recyclable Materials are properly containerized in Recycling Bins, Recycling Carts, or Recycling Roll-off Containers except as set forth below, where the Recycling Bins or Carts are accessible. Commercial Recycling Collection will occur Monday through Friday, and on Saturdays upon request.

8.03.2 Base Commercial Recycling Service. All Commercial Service Recipients subscribing to Commercial Garbage Collection Service must receive weekly collection of the equivalent volume of one (1) approximately 96-gallon Recycling Cart per Service Recipient as a bundled service at the Service Rates in the Schedule of Service Rates. This equivalent volume may be provided in the form of up to two (2) smaller Carts, if requested by the Service Recipient and/or to help meet space constraints. In situations where shared service is provided, the equivalent volume of one (1) approximately 96-gallon Recycling Cart per individual Commercial entity that is sharing service must be provided at no additional cost, and the actual configuration of Recycling Cart and/or Bin sizes to be provided will be based on the total equivalent volume and configured in a manner determined by the Service Recipient in consultation with Contractor.

8.03.3 Size and Frequency of Service. This service will be provided as deemed necessary and determined between Contractor and the Service Recipient, but such service must be received no less than one (1) time per week with no exception for holiday(s) as set forth herein. Collection service scheduled to fall on a holiday may be rescheduled as determined between the Service Recipient and Contractor as long as the minimum frequency requirement is met. Service may be provided by Bin, Cart, or Roll-off Container at the option of the Service Recipient. The size of the container and the frequency (above the minimum) of Collection will be determined between the Service Recipient and Contractor. Size and frequency must be sufficient to provide that no Recyclable Materials need be placed outside the Bin, Cart, or Roll-off Container. Contractor may charge for Commercial

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Recycling Services (above the Base Commercial Recycling Service requirement as established in Section 8.03.2 above) and must provide containers and service them at rates in the amounts set forth in the Schedule of Service Rates. Service Recipients may own their Bin or Roll-Off Container provided that the Service Recipient is completely responsible for its proper maintenance and such Bin or Roll-Off Container must be of a type that can be serviced by Contractor's equipment.

8.03.4 Material Recovery Facility. Except as otherwise provided in this Agreement, all Recyclable Materials Collected as a result of performing Recycling Services must be delivered to the Material Recovery Facility. Failure to comply with this provision will result in the levy of liquidated damages as specified in this Agreement and may result in Contractor being in default under this Agreement.

8.03.5 Recycling - Changes to Work. Should changes in law arise that necessitate any additions or deletions to the work described herein including the type of items included as Recyclable Materials, the parties will negotiate any necessary cost changes and will enter into an Agreement amendment covering such modifications to the work to be performed and the compensation to be paid before undertaking any changes or revisions to such work.

8.03.6 Compliance with AB 341. Except as otherwise provided in this Agreement, Contractor will provide Commercial Recycling Service in a manner to assist the City in achieving compliance with AB 341, as it may be amended from time to time. Starting July 1, 2021 and each July 1st thereafter, Contractor will notify all Commercial Service Units of the requirements to comply with the law. Contractor must provide all Commercial Service Units with a volume of Commercial Recycling Service to be in full compliance with the law. Contractor will conduct in-person outreach to all non-participating commercial covered generators a minimum of once per calendar year. Notwithstanding the above, City and Contractor acknowledge that Contractor has no legal authority to require a Service Recipient to subscribe or otherwise undertake diversion services, and that actions by the City, including adoption and enforcement of ordinances, will be required for the City to achieve compliance with AB 341.

8.03.7 Additional Recycling Bins, Carts or Roll-Off Containers. Contractor must provide additional Commercial Recycling Bins and Carts to Commercial Service Recipients above the minimum requirements within five Work Days of request (or as otherwise agreed between Contractor and Service Recipient) and may charge for such additional capacity at rates in the amounts set forth in the Schedule of Service Rates provided that additional Bins, Carts or Roll-Off Containers are used by Commercial Service Recipients for the purposes of setting out additional Recyclable Materials for regular weekly Commercial Recycling Service.

8.04 Commercial Organic Waste Collection Service. This service is governed by the following terms and conditions:

8.04.1 Conditions of Service. Contractor must provide Commercial Organic Waste Collection Service to all Commercial Service Units in the Service Area whose Organic Waste is properly containerized in Organic Waste Carts, except as set forth below, where the Organic Waste Carts are accessible and may be safely collected without harm to persons or property, including standard Collection vehicles. Contractor will charge for collection of Organic Waste collected in Carts at the rates set forth in the Schedule of Service Rates. Contractor acknowledges that, by way of City approved exemption, not all Commercial Service Units will receive Organic Waste Collection Service in Carts. Contractor will provide Organic Waste Collection Bins upon request and as necessary

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provided such Collection Bins may be safely collected without harm to persons or property, including standard Collection vehicles. Contractor will provide a sufficient number of Carts or Bins and at a collection frequency to allow for any such Commercial Service Unit to utilize the collection of Organic Waste. Commercial Organic Waste Collection will occur Monday through Friday, and on Saturdays upon request and as necessary.

Contractor must comply with CalRecycle collection frequency requirements as they may apply during the term of this Agreement.

8.04.2 Base Commercial Organic Waste Service. All Commercial Service Recipients subscribing to Commercial Garbage Collection Service must receive weekly collection of the equivalent volume of one (1) approximately 64-gallon Organic Waste Cart per Service Recipients as part of a bundled service at the rates set forth in the Schedule of Service Rates. In situations where shared service is provided, the equivalent volume of one (1) approximately 64-gallon Organic Waste Cart per individual Commercial entity that is sharing service must be provided as part of a bundled service, and the actual configuration of Organic Waste Cart and/or Bin sizes to be provided will be based on the total equivalent volume and configured in a manner determined by the Service Recipient in consultation with Contractor. To be exempted from Commercial Organic Waste Collection Services, the Service Recipient must obtain an exemption from the City. City may request assistance from Contractor in City's review of the application. Commercial Service Recipients that have been granted an exemption from Organic Waste Collection Service Recipients shall be charged in accordance with the Exempt Organic Waste Collection Service Rates in the Schedule of Service Rates.

8.04.3 Size and Frequency of Service. This service will be provided as deemed necessary and determined between Contractor and the Service Recipient, but such service must be received no less than one (1) time per week with no exception for holiday(s) as set forth herein. Collection service scheduled to fall on a holiday may be rescheduled as determined between the Service Recipient and Contractor as long as the minimum frequency requirement is met. Service may be provided by Bin or Cart at the option of the Service Recipient. The size of the container and the frequency (above the minimum) of Collection will be determined between the Service Recipient and Contractor. Size and frequency must be sufficient to provide that no Organic Waste needs be placed outside the Bin or Cart. Contractor may charge for Commercial Organic Waste Services (above the Base Commercial Organic Waste Service requirement as established in Section 8.04.2 above) and must provide containers at the rates set forth in the Schedule of Service Rates. A Service Recipient may own their Bin provided that the Service Recipient is completely responsible for its proper maintenance and such Bin must be of a type that can be serviced by Contractor's equipment.

8.04.4 Organic Waste Processing Facility. Except as specified in Section 3.08, 5.01, and 20.06, all Organic Waste Collected as a result of performing Organic Waste Collection Services must be delivered to the Organic Waste Processing Facility. Failure to comply with this provision will result in the levy of liquidated damages as specified in this Agreement and may result in Contractor being in default under this Agreement.

8.04.5 Organic Waste - Changes to Services. Should changes in law arise that necessitate any additions or deletions to the services described in this Section, including the type of items included as Organic Waste, the parties will negotiate any necessary cost changes and will enter into an Agreement amendment covering such modifications to the services to be performed and the compensation to be paid before undertaking any changes or revisions to such services.

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8.04.6 Compliance with AB 1826 and SB 1383. Contractor will provide Commercial Organic Waste Service in a manner to assist the City in achieving compliance with AB 1826 and SB 1383. Starting July 1, 2021 and each July 1st thereafter, Contractor will notify all Commercial Service Units of the requirements to comply with the law. Contractor must provide the volume of collection service to all Commercial Service Units in order to be in full compliance with the law. Contractor will conduct in-person outreach to all non-participating commercial covered generators a minimum of once per calendar year. Notwithstanding the above, City and Contractor acknowledge that Contractor has no legal authority to require a Service Recipient to subscribe or otherwise undertake diversion services, and that actions by the City, including adoption and enforcement of ordinances, will be required for the City to achieve compliance with AB 1826 and SB 1383.

8.04.7 Additional Organic Waste Bins or Carts. Contractor must provide additional Commercial Organic Waste Bins and Carts to Commercial Service Recipients above the minimum requirements within five Work Days of request and may charge for such additional capacity at the rates set forth in the Schedule of Service Rates.

ARTICLE 9. Construction and Demolition Debris and Other Temporary Collection Service

9.01 Construction and Demolition Debris and Other Temporary Collection Service. This service is governed by the following terms and conditions:

9.01.1 Conditions of Service. Upon request of a Service Unit, Contractor must provide Construction and Demolition Debris and Other Temporary Collection Service on a temporary on-call basis, at the rates and charges as set forth in the Schedule of Service Rates. Contractor must provide Service Units with Construction and Demolition Debris and Other Temporary Collection Service with as little disturbance as possible and without obstructing alleys, roadways, driveways, sidewalks, or mail boxes. Contractor may only place Roll-off Containers in strict adherence with City's right-of-way requirements and Municipal Code.

9.01.2 Frequency of Service. Construction and Demolition Debris and Other Temporary Collection Service must be provided within seven Work Days of receipt of the request.

ARTICLE 10. City Services Provided by Contractor

10.01 City Collection Services. City Collection Services shall be provided at no cost to City and shall be governed by the following terms and conditions:

10.01.1 Conditions of Service. Contractor shall provide Solid Waste Collection Services to all City Facilities as set forth in **Exhibit 3**, and as may be modified by written notice by City as a City-directed change under Section 25.01. Contractor must provide City Collection Services in the same manner as service provided to Commercial Service Units in ARTICLE 8. Construction and Demolition Debris and Other Temporary Collection Service related to routine City construction or public works projects undertaken solely by City employees, shall be provided by Contractor at no cost to City.

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10.01.2 Contractor shall receive written permission from City before placing any containers on City owned property for service, except that no such permission shall be needed to place Containers at locations specified in **Exhibit 3**.

10.01.3 Contractor shall limit the number of trips and the path of travel for collection vehicles in City parking lots so as not to unduly interfere with the flow of traffic in City facilities and reduce wear and tear on City parking lots.

10.02 City Code Enforcement Clean-up Services. Within two Work Days of a request from the Agreement Administrator, Contractor shall provide Bins or Roll-off Containers to support City's code enforcement clean-up operations, including homeless encampments, within the Service Area. Contractor shall deliver up to 20 40-CY Roll-off Containers to the location designated by the Agreement Administrator per year. Within one Work Day of request by the Agreement Administrator, Contractor shall Collect the Roll-off Container and transport and deliver the Roll-off Container to a Disposal Facility, the Materials Recovery Facility, or Organics Processing Facility, as appropriate given the characteristics of the load. City shall be responsible for loading all Solid Waste into Contractor's Bins or Roll-off Containers.

10.03 City-Sponsored Events Service. Upon request by City, Contractor shall provide Collection Services and delivery and pick-up of Containers at up to five events that are sponsored, organized, or substantially supported by City at no cost to City, but subject to the limitation in the last sentence of this Section. Contractor shall provide Garbage Collection Service not to exceed 200 cubic yards of Garbage per year and a combination of Recyclable Materials or Organic Waste Collection Service not to exceed 100 cubic yards of Recyclable Materials or Organic Waste per year. Contractor may charge the City for Collection Service in excess of the aforementioned cubic yards of Garbage, Recyclables, or Organic Waste Collection Service in accordance with the rates set forth in the Schedule of Service Rates. The Solid Waste collection and disposal plan for each event shall be developed by Contractor and submitted to the Agreement Administrator in writing for approval prior to each event. City may change or increase the number of the City-Sponsored Event receiving services, and the service levels provided at any City-Sponsored Events, by written notice to Contractor, as a City -directed change under Section 25.01.

10.04 Neighborhood Clean-up Events. Contractor shall provide Collection Services at Neighborhood Clean-up Events at a maximum of three per year upon request by City. City shall notify the Contractor of the dates these events each January for the upcoming year. Each event shall occur on a Saturday between the hours of 8:00 a.m. and 1:00 p.m. at Dysart Park or other location selected by City and shall be limited to SFD and MFD Service Recipients within the Service Area. The Agreement Administrator shall notify Contractor in writing or e-mail not less than eight (8) weeks prior to the date of the Neighborhood Clean-up Event. The services shall be provided in a manner that meets all needs of the Neighborhood Clean-up Collection Event. Required equipment and Collection shall be provided by Contractor at no cost of any kind to City, excluding labor and benefits costs for City staff and City contractors at the Neighborhood Clean-up Events. Contractor shall provide collection of Solid Waste generated by an SFD Service Recipient within the Service Area, including: Garbage, Green Waste, Recyclable Materials, Brown Goods, White Goods, and Large Items. Contractor shall maintain a sufficient quantity of Containers at the Neighborhood Clean-up Event to receive material from the Neighborhood Clean-up Event. Collection at Neighborhood Clean-up Events does not include collection of Construction and Demolition Debris. Contractor shall provide shredding services at each event. In addition to landfill passes provided by Riverside County Waste Management Department (RCWMD), Contractor shall provide 30 "free landfill passes" per event for City staff to

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distribute to SFD Recipients as needed. As a matter of procedure, the City will first use the passes provided by RCWMD and then, if needed, begin using the “free landfill passes” provided per event by the Contractor. The City will use reasonable efforts to have disposal costs waived by RCWMD.

10.04.1 Contractor shall prepare and distribute to SFD and MFD Service Recipients Neighborhood Clean-up Event notices no later than six (6) weeks prior to each event. At a minimum, the dates and hours of operation, locations of the collection sites, and acceptable materials for collection shall be included in the notices. Contractor may separately mail electronically transmit the notices, or provide the notices as billing inserts to each SFD and MFD Service Recipient. Contractor shall provide Spanish-translated notices upon request by City. The costs of production, printing, mailing and all associated costs for the notices shall be borne by Contractor. Contractor shall also provide their information in digital format to City.

10.04.2 City shall validate each SFD and MFD Service Recipient’s residency through a valid driver license with a current Banning address and name of individual attending the event or Utility Bill confirming the individual is a Banning SFD or MFD Service Recipient.

10.04.3 On the first (1) Work Day following each Neighborhood Clean-up Event, Contractor shall remove and clean up any remaining materials left for collection.

ARTICLE 11. Collection Routes

11.01 Service Routes. Contractor must provide City with maps precisely defining Collection routes, together with the days and the times at which Collection will regularly commence.

11.02 Service Route Changes. Contractor must submit to City, in writing, any proposed route change (including maps thereof) not less than forty-five (45) calendar days prior to the proposed date of implementation. Contractor may not implement any route changes without the prior review of the Agreement Administrator. If the change will change the Collection day for a Service Recipient, Contractor must notify those Service Recipients in writing of route changes not less than fifteen (15) days before the proposed date of implementation.

11.02.1 Collection Route Audits. City reserves the right to conduct audits of Contractor’s Collection routes. Contractor must cooperate with City in connection therewith, including permitting City employees or agents, designated by the Agreement Administrator, to ride in the Collection vehicles in order to conduct the audits, provided such person executes Contractor’s release form for this purpose. Contractor has no responsibility or liability for the salary, wages, benefits or worker compensation claims of any person designated by the Agreement Administrator to conduct such audits.

ARTICLE 12. Audit and Performance Reviews

12.01 Billing Audit and Performance Reviews.

12.01.1 Selection and Cost. City may conduct billing audit and performance reviews (“reviews”) of Contractor’s performance during the term of this Agreement, as described in Sections 12.01.1.1 through 12.01.1.2 below. The reviews will be performed by a qualified firm under Agreement to City. City will have the final responsibility for the selection of the firm but may seek and accept comments and recommendations from

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Contractor. The reviewing firm shall execute a commercially reasonable non-disclosure agreement with Contractor. No such non-disclosure agreement shall restrict the selected firm from providing information to City.

12.01.1.1 Full Reviews During Initial Term. City may conduct three full reviews during the Initial Term of this Agreement. The first review will be scheduled to occur within the first four (4) years of the Agreement, for anticipated completion by June 30, 2025. The second review will be scheduled to occur at City's discretion within the first ten years of the Agreement, for anticipated completion by June 30, 2031. A subsequent review may be scheduled at City's discretion, occurring prior to City approving an extension to the term of this Agreement as described in Section 2.02.

12.01.1.2 Full Review During Extension Period. In the event that Contractor is granted an extension to the term of this Agreement as described in Section 2.02, City may conduct one (1) additional full review at Contractor's expense during the five year extension period. The purpose of these full reviews is described in Section 12.01.2.

12.01.1.3 Payment by Contractor. Contractor agrees to be responsible for the cost of up to three reviews during the Initial Term, and for the cost of one review during the extension period. The Contractor agrees to be responsible for up to a maximum amount of **seventy-five thousand dollars (\$75,000)** for each review. Commencing on July 1, 2028 and each July 1st thereafter, the maximum Contractor contribution towards the cost for each review will be adjusted by the CPI-U as established in Section 4.03.1.

12.01.2 Purpose. The reviews will be designed to verify that Service Recipient billing rates have been properly calculated and they correspond to the level of service received by the Service Recipient; verifying that Franchise Fees, and other fees required under this Agreement have been properly calculated and paid to City; verifying Contractor compliance with the reporting requirements and performance standards of this Agreement; and verifying the Diversion percentages reported by Contractor. City (or its designated consultant) may utilize a variety of methods in the execution of the performance review and billing audit, including analysis of relevant documents, on-site observations, and other activities required to achieve the purposes of the audit, provided that such activities do not cause undue interference with Contractor's operations. City (or its designated consultant) will review and document the items in the Agreement that require Contractor to meet specific performance standards, submit information or reports, perform additional services, or document operating procedures, that can be objectively evaluated. This information will be formatted in a "compliance checklist" with supporting documentation and findings tracked for each of the identified items. The review will specifically include a determination of Contractor's Diversion compliance with ARTICLE 5, and the public outreach and education requirements of ARTICLE 15. City (or its designated consultant) may review the Service Recipient's service functions and structure utilized by Contractor. This may include Contractor's protocol for addressing Service Recipient's complaints and service interruption procedures. Complaint logs may be reviewed, along with procedures and systems for tracking and addressing complaints. On-site and field observations by City (or its designated consultant) may include, to the extent necessary to conduct the audit scope:

12.01.2.1 Interviews and discussions with Contractor's administration and management personnel;

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- 12.01.2.2 Review and observation of Contractor's customer service functions and structure;
- 12.01.2.3 Review of public education and outreach materials;
- 12.01.2.4 Interviews and discussions with Contractor's financial and accounting personnel;
- 12.01.2.5 Interviews with route dispatchers, field supervisors and managers;
- 12.01.2.6 Interviews with vehicle maintenance supervisors regarding maintenance practices; and
- 12.01.2.7 Review of on-route collection services, including collection productivity and visual inspection of residential routes before and after collection to evaluate Cart placement and cleanliness of streets.

12.01.3 Contractor's Cooperation. Contractor must cooperate fully with the review and provide all requested data for the audit as set forth in Section 12.01.2, including operational data, financial data of the type described in Section 17.01, and other data reasonably requested by City within thirty (30) Work Days.

12.01.4 Additional Billing Audit and Performance Review. City may conduct an Additional Billing Audit and Performance Review no less than six months after the completion of the prior Billing Audit and Performance Review to solely for the purpose of determining that Contractor has cured any such area of non-compliance identified in the initial Billing Audit and Performance Review. Contractor will be responsible for the cost of any such Additional Billing Audit and Performance Review, up to a maximum amount of **Seventy-Five Thousand Dollars (\$75,000).** Commencing on July 1, 2028, and each July 1st thereafter, the maximum Contractor contribution towards the cost for the review will be adjusted by the CPI-U amount as established in Section 4.03.1.

12.02 City Requested Program Review. City reserves the right to require Contractor to periodically conduct reviews of the Collection Services programs, provided that such reviews are reasonable and can be accomplished at no additional cost to Contractor and without interfering with Contractor's operations. Such reviews would assess one or more of the following performance indicators: average volume of Recyclable Materials per setout per Service Recipient, average volume of Green Waste and/or Food Waste per setout per Service Recipients, and contamination levels. Prior to the program evaluation review, City and Contractor will meet and discuss the purpose of the review and agree on the method, scope, and data to be provided by Contractor.

12.03 Cooperation with Other Program Reviews. Pursuant to regulatory requirements, if City wants to collect program data, perform field work, conduct route audits to investigate Service Recipient participation levels and setout volumes and/or evaluate and monitor program results related to Garbage, Recyclable Materials and Organic Waste collected in City by Contractor, Contractor must cooperate with City or its agent(s) as reasonably requested by City, provided that such cooperation can be accomplished at no additional cost to Contractor and without interfering with Contractor's operations.

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ARTICLE 13. Collection Equipment

13.01 Equipment Specifications.

13.01.1 General Provisions. All equipment used by Contractor in the performance of services under this Agreement must be of a high quality and comply with all Applicable Laws and applicable air quality standards, including all applicable provisions of South Coast Air Quality Management District Rule 1193. The vehicles must be designed and operated so as to prevent Collected materials from escaping from the vehicles. Hoppers must be closed on top and on all sides with screening material to minimize Collected materials from leaking, blowing or falling from the vehicles. All trucks and containers must be leak resistant and must be operated to minimize spillage of liquids during Collection or in transit.

13.01.2 Large Items. Vehicles used for Collection of Large Items may not use compactor mechanisms or mechanical handling equipment that may damage reusable goods or release Freon or other gases from pressurized appliances.

13.01.3 Collection Vehicles. Contractor may not use any Collection vehicle that is more than ten years old or has more than 250,000 miles unless such vehicle is a Rebuilt Vehicle.

13.01.4 Collection Vehicle Size Limitations / Overweight Vehicle Charge. Contractor may not use any Collection vehicle in violation of weight limitations set forth in Applicable Law. Contractor must report all instances of overweight vehicles to City on a monthly basis as part of its monthly City Reports submittal described in Section 17.02. Contractor may be assessed Liquidated Damages as set forth Section 20.04 as a result of exceeding an overweight vehicle rate of ten percent (10%) in any month during the term of the Agreement. The overweight vehicle rate will be calculated as the total number of overweight collection vehicle instances during each month, divided by the total number of collection vehicle loads transported during the same corresponding month. Prior to collecting Liquidated Damages for overweight vehicles, City shall afford Contractor a reasonable opportunity to provide the Agreement Administrator documentation of any extraordinary circumstance or Uncontrollable Circumstance, in accordance with Section 20.06, that caused the overweight vehicles. Extraordinary circumstances include without limitation heavy rains or high winds that caused excess Solid Waste to be generated, rain to accumulate in open Collection Containers, or normal Collection routes to be delayed or shortened to extreme weather conditions. The Agreement Administrator shall have authority to consider Contractor's documentation and uphold and collect the assessed charge, to reduce the charge, or waive and dismiss the charge. The Agreement Administrator shall also have the authority to waive charges in advance of an anticipated, or in response to an actual, emergency event.

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

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

13.01.7 Vehicle Signage and Painting. Collection vehicles must be painted and numbered without repetition and must have Contractor's name, Contractor's customer service telephone number, and the number of the vehicle painted in letters of contrasting color, at least four inches high, on each side and the rear of each vehicle. No advertising is permitted other than the name of Contractor, its logo and registered service marks except promotional advertisement of the Recyclable Materials and Organic Waste programs. Contractor must repaint all vehicles (including vehicles striping) during the term of this Agreement on a frequency as necessary to maintain a positive public image as reasonably determined by the Agreement Administrator.

13.01.8 Bin Signage, Painting, and Cleaning. All metal or plastic Bins of any service type furnished by Contractor must be either painted or galvanized. All metal or plastic Bins must display Contractor's name, Contractor's customer service telephone number, and the number of the Bin and must be kept in a clean and sanitary condition. Bins may be subject to periodic, unscheduled inspections by City and determination as to sanitary condition will be made by City. Bin cleanings beyond once each Calendar Year will be subject to the amount set forth in the Schedule of Service Rate. Any and all steam cleaning or sanitizing of Bins, Carts, Compactors, or Roll-Off Containers by Contractor is not allowed within City limits, unless approved by the Agreement Administrator.

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

13.02.1 No later than July 1, 2021, Contractor must submit to the Agreement Administrator verification that each of Contractor's Collection vehicles has passed the California Heavy Duty Vehicle Inspection. Thereafter, Contractor must cause each vehicle in Contractor's Collection fleet to be tested annually in the California Heavy Duty Inspection Program and must submit written verification to City upon request by the Agreement Administrator. Contractor may not use any vehicle that does not pass such inspection.

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

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

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13.05 Equipment Inventory. On or before July 1, 2022, and through the Term of this Agreement as part of its annual report to City, in accordance with Section 17.04.2.12, Contractor must provide to City an inventory of Collection vehicles and major equipment used by Contractor for Collection or transportation and performance of services under this Agreement. The inventory must indicate each Collection vehicle by Contractor assigned identification number, DMV license number, the age of the chassis and body, type of fuel used, the type and capacity of each vehicle, the number of vehicles by type, the date of acquisition, the decibel rating and the maintenance and rebuild status. Each inventory must also include the tare weight of each vehicle. Each vehicle inventory must be accompanied by a certification signed by Contractor that all Collection vehicles meet the requirements of this Agreement.

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

ARTICLE 14. Contractor's Office

14.01 Contractor's Office. Contractor must maintain an office where complaints can be received. Such office must be equipped with sufficient telephones that all Collection Service related calls received during normal business hours are answered by an employee within five rings. Contractor must have responsible persons in charge and must be open during normal business hours, 8:00 a.m. to 5:00 p.m. on Monday through Friday. Contractor must provide either a local or toll-free telephone number, and a telephone answering service or mechanical device to receive Service Recipient inquiries during those times when the office is closed. Calls received after normal business hours must be addressed the next Work Day morning.

Contractor shall keep records of all Service Recipient's calls for at least three years, collected on a Calendar Year cycle. Contractor must include the type of call (Complaint, compliment, Other), a summary of the call the time and date of the call, and if a complaint was made, the resolution to the complaint. A record of each quarter's calls will be reported as part of the quarterly report, as part of Section 17.03.1.4 of this Agreement. A record of each year's calls will be reported as a part of the Annual Report, as defined in Section 17.04.2.8 of this Agreement. These records will also be made available to City, for its review, upon request.

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

14.01.2 Multilingual/TDD Service. Contractor must at all times maintain the capability of responding to telephone calls in English, Spanish, and such other languages as City may direct. Contractor must at all times maintain the capability or responding to telephone calls through Telecommunications Device for the Deaf (TDD) Services.

14.01.3 Service Recipient Calls. During office hours, Contractor must maintain a telephone answering system capable of accepting at least fifteen (15) incoming calls at one time. Contractor must record all calls including any inquiries, service requests and complaints into a customer service log.

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14.01.4 All incoming calls will be answered within five rings. Any call "on-hold" in excess of one and one-half (1.5) minutes must have the option to remain "on-hold" or request a "call-back" from a customer service representative. Contractor's customer service representatives must return Service Recipient calls. For all messages left before 3:00 p.m., all "call backs" must be attempted a minimum of one time prior to 6:00 p.m. on the day of the call. For messages left after 3:00 p.m., all "call backs" must be attempted on the second Work Day after the call was received, indicating that Contractor has attempted to return the call.

ARTICLE 15. Contractor Support Services

15.01 Public Outreach and Education Services. Contractor, at its own expense, must prepare, submit and implement an annual (Calendar Year) Public Education and Outreach Program. The proposed action plan must be submitted annually for City approval no later than August 1st for the next Calendar Year.

15.01.1 Sustainability Representative. Contractor will collaborate with City staff to make available reasonable use of one or more Contractor representatives to assist City in meeting requirements of the Act. On an annual basis, Contractor will make an individual available as needed to implement, in cooperation with City, Public Education and Outreach programs in the Service Area on an average of approximately two days a week.

15.01.2 Website. Contractor will maintain a website that describes and promotes the use of the available Recycling services. Contractor will consult, collaborate and coordinate its activities with City regarding Recycling programs so that City is fully informed and provided as opportunity for input to Contractor's Recycling programs.

15.01.3 Annual Recycling Awards. Contractor will recognize outstanding participation in Recycling and/or Organic Waste programs by identifying "recycling all-stars" for recognition at a City Council meeting during each November, beginning November 2021.

15.01.4 Outreach Activities. On an annual basis Contractor will coordinate Recycling and Organics education and outreach programs for Residential and Commercial Service Recipients, in conformance with the Act, including without limitation the Act, in coordination with City. This program will consist of the following:

15.01.4.1 Contractor will attend public events and host booths to promote recycling education and awareness. Contractor will work with City to identify which special events will be attended.

15.01.4.2 Contractor to distribute educational material to Service Recipients on an annual basis. Examples include recycling tips, battery and bulb education, proper Cart placement, resource information, and HHW education. This material will be mailed or electronically transmitted to Service Recipients.

15.01.4.3 Service Recipients will have access to Contractor's local website to find information specific to City's programs. Contractor will maintain and update information provided on the website. This content will include proper container set out, educational materials, newsletters and program descriptions. Service Recipients will also have the ability to use Contractor's web-based service request system.

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15.01.4.4 Contractor will work with City and with local media to ensure information is communicated to the community (new programs, events, recycling information, etc.).

15.01.4.5 Contractor to use options, such as; local newspaper, broadcast news, websites, homeowners associations (HOA), and civic groups.

15.01.4.6 Contractor will assist City in supporting Food Waste and Green Waste Diversion surveys and programs.

15.01.4.7 Contractor will complete Garbage, Organic Waste, and Recycling audits for Commercial Service Recipients and provide recommendations to Commercial Service Recipients on how to improve overall resource efficiency.

15.01.5 News Media Requests. Contractor will notify the Agreement Administrator by e-mail or phone of all requests for news media interviews related to the services covered under this Agreement within twenty-four (24) hours of Contractor's receipt of the request. When practicable, before responding to any inquiries involving controversial issues or any issues likely to affect participation or Service Recipient's perception of services, Contractor will discuss Contractor's proposed response with the Agreement Administrator.

15.01.5.1 Copies of draft news releases or proposed trade journal articles that use the name of City or relate to the services provided hereunder must be submitted to the Agreement Administrator for prior review and approval at least five Business Days in advance of release, except where Contractor is required by any law or regulation to submit materials to any regulatory agency in a shorter period of time, in which case Contractor must submit such materials to City simultaneously with Contractor's submittal to such regulatory agency.

15.01.5.2 Copies of articles resulting from media interviews or news releases that use the name of City or relate to the services provided hereunder must be provided to City within five (5) Business Days after publication.

15.02 Diversion and Sustainability Work Plan. Contractor shall develop an annual Waste Diversion and Sustainability Work Plan to help guide Contractor's staff's work efforts for Agreement Administrator approval. Contractor's initial Work Plan shall cover July 1, 2021 through December 31, 2022 and is set forth in **Exhibit 5**. Thereafter, Contractor's annual Waste Diversion and Sustainability Work Plan is due to the City by October 1, 2022 and each October 1st thereafter. This program must be designed to increase Diversion and Service Recipients participation and should target certain Recyclable and Organic Materials or "problem" areas of Contractor's Service Area where improvements can be maximized. Targets of outreach should be based on local trends and recycling patterns based on information obtained by both the Agreement Administrator and Contractor staff. To the extent possible, Contractor will work to modernize its public outreach and education services throughout the term of this Agreement by providing outreach materials to Service Recipients electronically (e.g., via email). The Contractor shall commence implementation of the initial work plan on July 1, 2021, and shall make diligent good faith efforts to fully implement and complete the Work Plan by December 31, 2022. Thereafter, Contractor shall commence implementation of the annual work plan on January 1 of each year, and shall make diligent good faith efforts to fully implement and complete each annual Work Plan by December 31st of that year. Contractor is obligated to spend at

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least **Seventy Five Thousand Dollars (\$75,000)** per year, exclusive of Contractor's labor and benefit costs, to implement the Work Plan provided that Contractor shall not be obligated to spend more than **Seventy Five Thousand Dollars (\$75,000)** as adjusted and specified in this Section without a mutual agreement between the Parties. Commencing in 2023, this amount shall be adjusted annually by the percentage change in the CPI-U for the prior calendar year as established in Section 4.03.1. Contractor's expenditures pursuant to this Section are in addition to Contractor's Public Outreach and Education Services provided pursuant to Section 15.01. If Contractor fails to fully implement the Work Plan in any Calendar Year, the Parties shall meet and confer in good faith to discuss Contractor's opportunity to cure any such failure to fully implement the Work Plan and to account for any extenuating circumstances excusing performance in accordance with this Agreement. The meet and confer process shall be completed prior to May 1 of the subsequent year. In the event that the Parties cannot reach a resolution during the thirty-day period, Contractor shall pay to City all costs incurred by City if City completes the Work Plan, whether the work is performed in the same or in the succeeding Calendar Year. In the event City completes a portion of the Work Plan, Contractor shall pay to City any third party costs incurred by City, and Contractor shall pay for all City staff time involved in completing the portion of the Work Plan.

15.03 Annual Collection Service Notice. Each year during the term of this Agreement, Contractor must publish and distribute (by mail or electronically) a notice to all Service Units regarding the Collection Service programs. The notice must contain at a minimum; definitions of the materials to be Collected; procedures for setting out the materials; the days when Garbage Collection Services, Recycling Services, and Organic Waste Collection Services will be provided; the customer service phone number; instructions on the proper filling of Containers; instructions as to what materials may or may not be placed in Recyclable Materials or Organic Waste Containers; and the amount of overage and contamination fees in the event of non-compliance. The notice must also advertise the availability of on-premises Collection Services, SFD Large Items Collection Services and Construction and Demolition Debris and Other Temporary Collection Services, and specifically the availability of no-charge on-premises Collection Services for specific qualified Service Recipients as described in Section 7.02.1. The notice must be provided in English, and other languages as directed by City and must be distributed by Contractor no later than March 31 of each year.

15.04 Recovered Product. At no cost to City, Contractor must provide City with Recovered Organic Waste Products (as defined in Sections 18982(60) and 18993.1(f) of the SB 1383 Regulations), which may include mulch, in an amount sufficient for City to comply with 14 CCR Section 18993.1. Contractor must deliver the Recovered Organic Waste Products at a time and location mutually agreeable between City and Contractor. Delivered mulch or compost can be in bulk form or bagged.

15.05 Edible Food Recovery Support. As part of Contractor's Outreach and Education Services, and at no cost to City, Contractor must provide support to City's Edible Food Recovery program as the City develops it and as required under 14 CCR Section 18991.1. Contractor support may include educating commercial edible food generators, and providing records of site visits, conducting education efforts, and listing food recovery organizations.

15.06 Additional Outreach Programs and Services. Contractor will provide additional public outreach services and programs as requested by City at a price to be mutually agreed upon by written agreement between Contractor and the Agreement Administrator. This agreement will ultimately take the form of a standard City services agreement. In the event Contractor and Agreement Administrator cannot reach a mutually agreed upon

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price for the requested service or program, City shall have the right to procure the service of other vendors or contractors to provide the requested public outreach services.

ARTICLE 16. Emergency Service

16.01 Revised Services During an Emergency. In the event of an emergency or natural disaster, the Agreement Administrator may grant Contractor a variance from regular routes and schedules, which will not be withheld unreasonably. As soon as practicable after such event, Contractor must advise the Agreement Administrator when it is anticipated that normal routes and schedules can be resumed.

City and Contractor shall meet and confer to develop an emergency response and clean-up plan ("Emergency Response Plan") for the provision by Contractor of equipment and labor required to collect, cleanup, and remove debris upon the occurrence of an emergency or natural disaster, as proclaimed or declared by the City Council ("Emergency Services"). In accordance with an agreed upon Emergency Response Plan, and in the event of an emergency or natural disaster, Contractor shall provide Emergency Services when requested by the Agreement Administrator. Contractor shall use commercially reasonable efforts to dispatch the requested equipment and labor to the City as promptly as practicable following the request by the Agreement Administrator.

Contractor agrees that, in the event that Contractor is unable to respond within the time period requested by City for collection, cleanup and removal of debris resulting from an emergency or natural disaster, City shall have the right to engage other persons, firms, and entities to collect, cleanup and remove debris resulting from such emergency or natural disaster for a period ending on the earlier of the date such collection, cleanup and removal is complete or ninety (90) days following the response from Contractor to the original request from City.

At the time when Contractor's work may continue following a natural disaster, Contractor will cooperate with City to prepare and implement a disaster recovery plan. This plan shall identify Contractor's plans for maximizing the amount of Recyclable Materials Diverted from the waste and debris created by the disaster and to identify and secure disposal sites and capacity for such waste.

ARTICLE 17. Record Keeping and Reporting Requirements

17.01 Record Keeping. Notwithstanding ARTICLE 42 herein:

17.01.1 Accounting Records. Contractor must maintain full, complete and separate financial, statistical and accounting records, pertaining to cash, billing, and provisions of all Collection Services, prepared on an accrual basis in accordance with generally accepted accounting principles. Such records will be subject to audit and inspection solely for the purposes set forth in Section 12.01.2. Gross receipts derived from provision of the Collection Services, whether such services are performed by Contractor or by a subcontractor or subcontractors, will be recorded as revenues in the accounts of Contractor. Contractor must maintain and preserve all cash, billing and disposal records for a period of not less than three years following the close of each of Contractor's fiscal years.

17.01.1.1 City reserves the right to request audited, reviewed, or compiled financial statements prepared by an independent Certified Public Accountant, or as may be provided by Contractor's parent, Waste Management Holdings, Inc. In the event that Contractor does not maintain separate financial or accounting

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records prepared specifically for services provided under this Agreement, Contractor may use industry standard allocation methods to provide financial information as applicable to the service provided under this Agreement.

17.01.2 Agreement Materials Records. Contractor must maintain records of the quantities of Solid Waste collected, processed, and disposed under the terms of this Agreement, by type, Collected, purchased, processed, sold, donated or given for no compensation, and Residual disposed.

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

17.02 Monthly Reporting.

17.02.1 General. Contractor must submit monthly reports no later than 5 p.m. PT on the thirtieth day of the month following the close of the reporting period. If the thirtieth day falls on a day that City is closed or a holiday, then the payment will be due on the next Business Day. Monthly reports must include the following information:

17.02.1.1 Gross Receipts Reporting. Contractor must include an accounting of Contractor's gross receipts collected during the preceding month.

17.02.1.2 Collection Overage Charges. The monthly report must include each Service Unit incurring a charge for a Solid Waste Overage in the previous month. Within twenty (20) work days of request by City, Contractor will provide to City copies of the written notification provided to Service Unit and digital documentation of overages.

17.02.1.3 Contamination Reporting. To the extent required by Applicable Law, the monthly report must include a summary of all instances of qualifying contamination under the procedures in Section 3.08. This summary must include the total number of accounts where contamination occurred, the total number of Contamination Violation Notices issued by Contractor to Service Recipients, and the total number of instances where Collection Cart or Bins size or Collection frequency was increased specifically due to contamination. Within twenty (20) work days of request by City, Contractor will provide to City copies of the Contamination Violation Notices and the digital documentation of contamination.

17.02.1.4 Account Delinquency. Provide a summary report of SFD Service Recipients delinquent accounts of non-payment after 90 days past due. Provide a summary report of commercial delinquent accounts of non-payment after 30 days and stop service accounts (accounts for which service has been terminated pursuant to Section 4.02.3).

17.02.1.5 AB 341, AB 1826, and SB 1383 Compliance Data. Contractor must report the total number of Service Units serviced and the number of containers, container sizes and frequency of Collection for Garbage, Recyclable Materials and Organic Waste for each Service Unit. Contractor must also provide the following information separately for AB 341, AB 1826 and SB 1383.

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- A. The total number of Service Units, and the total number of those Service Units that are not receiving Contractor's required services to Recycling Collection Service or Organics Collection Service.
- B. A summary of the type of follow-up outreach that was provided to those Service Units that are not subscribed to Recycling Collection Service or Organics Collection Service.

17.03 Quarterly Reporting.

17.03.1 General. Contractor must submit quarterly reports no later than 5 p.m. PT on the thirtieth day of the month following the close of the reporting period. If the thirtieth day falls on a day that City is closed or a holiday, then the payment will be due on the next Business Day. Quarterly reports must include the following information:

17.03.1.1 Overweight Vehicle Reporting. The quarterly report must include a summary total of all instances of overweight collection vehicles. This summary must include the number of overweight vehicle instances expressed as a percentage of the total number of collection vehicle loads transported during the reported quarter.

17.03.1.2 Tonnage Data. Contractor must report the tonnage of Garbage, Recyclable Materials and Organic Waste collected, processed for Diversion, Residual amounts and landfilled for broken down by SFD, MFD, Commercial, and City Service Collection Services.

17.03.1.3 Non-Collection. The quarterly report must include a summary of each Service Unit receiving a Non-Collection Notice in the previous quarter along with a description for the Non-Collection Notice.

17.03.1.4 Service Recipient Complaint Log. The quarterly report must include the Service Recipient call log collected from the previous quarter as required in Section 14.01 of this Agreement.

17.03.1.5 Commercial Outreach Report. The quarterly report must include a complete list of all Commercial accounts, which includes each account's status as a "covered generator" under AB 341 and AB 1826, the date and status of Contractor's outreach efforts at each account, and the current level of Recycling and Organics program participation at each account.

17.03.1.6 Public Outreach and Education Implementation Report. The quarterly report must include a progress report that provides the Agreement Administrator details of overall implementation of the annual Public Outreach and Education Plan.

17.03.1.7 Solid Waste Overage Change in Container Size or Collection Frequency. The quarterly report must include customer service data sorted by service type, Container size, number of Containers, and frequency of collection.

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17.04 Annual Reporting.

17.04.1 General. Contractor must submit an annual report no later than 5:00 p.m. PT on February 28, 2022 and each February 28th thereafter for the previous Calendar Year. If February 28th falls on a day that City is closed, then the report will be due on the next Business Day. Annual reports must be provided electronically in software acceptable to City.

17.04.2 Annual Reports. Annual reports to City must include:

17.04.2.1 Financial Reports. Contractor must prepare an annual Financial Report for submittal to City. At a minimum, the Financial Report must include the number of SFD Service Units and Commercial Service Units provided with Collection Services, including any additional services, Contractor's gross billing and amount collected for each type of Service Unit, and the amount received for the sale of Recyclable Materials, cost of Recyclables Materials processing, and the cost of residual disposal.

17.04.2.2 Public Education Summary. Public education and information activities undertaken during the year, including distribution of bill inserts, collection notification tags, community information and events, tours and other activities related to the provision of Collection Services. This report will discuss the impact of these activities on Recycling and Organics program participation and include amounts Collected from SFD and Commercial Service Units.

17.04.2.3 Summary of Programs. An analysis of any Recycling and Organic Waste Collection, processing and marketing issues or conditions (such as participation, setouts, contamination, etc.) and possible solutions, discussed separately for SFD and Commercial programs.

17.04.2.4 Garbage Data. The number of SFD and Commercial Service Units and the number of Bins, Carts and Roll-Off Containers distributed by size and Service Unit type.

17.04.2.5 Recycling Data. Gross tons Collected daily on average by material type by route for SFD and Commercial Recycling service. The average participation rates by quarter relative to the total number of Service Units by Service Unit type. Indicate, by material type (and grade where appropriate), annually by quarter totals of Recyclable Materials processed and sold including facility name and location, average price received per ton and total recycling revenue received for the Calendar Year, cost of Recyclables Materials processing, and the cost of residual disposal. Indicate any quantities, by material type, donated or otherwise disbursed without compensation. Indicate number of Bins and Carts distributed by size and Service Unit type. Also provide annually by quarter totals and location for Residual disposed.

17.04.2.6 Organic Waste Data. Include average daily gross tons Collected by route. Include the total number of generators that receive each type of Organic Waste Collection Service provided by Contractor. Indicate number of Bins and Carts distributed by size and Service Unit type. Provide totals and location for Residual Disposed. Include the number of route reviews conducted for prohibited contaminants and the number of Non-Collection Notices issued to Service Recipients.

17.04.2.7 Commercial Outreach Report. A complete list of all Commercial accounts, which includes each account's status as a "covered generator" under AB 341 and AB 1826, the date and status of

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Contractor's outreach efforts at each account, and the current level of Recycling and Organics program participation at each account.

17.04.2.8 Customer Service Log. A summary of the type and number of complaints and their resolution, including calls related to missed pickups and responses to such calls. (with three-year retention)

17.04.2.9 Green Pages. A copy of Contractor's most recent "Green Pages" (i.e., customer call center "cheat sheet") for the City of Banning, or the equivalent information used by customer service representatives in the event that the "Green Pages" are renamed or otherwise reworked during the term of this Agreement.

17.04.2.10 Overweight Vehicle Data. A summary of all instances of overweight collection vehicles. This summary must also include the number of overweight vehicle instances as a percentage of the total number of collection vehicle loads transported during the Calendar Year.

17.04.2.11 Summary Narrative. A summary narrative of problems encountered with Collection and processing activities and actions taken. Indicate type and number of Non-Collection Notices left at Service Recipient locations. Indicate instances or numbers of property damage or injury, significant changes in operation, market factors, publicity conducted, or needs for publicity. Include description of processed material loads rejected for sale, reason for rejection and disposition of load after rejection.

17.04.2.12 Bin, Cart, and Equipment Inventory. An inventory of Collection vehicles and major equipment used by Contractor for Collection or transportation and performance of services under this Agreement. The inventory must indicate each Collection vehicle by Contractor assigned identification number, DMV license number, the age of the chassis and body, type of fuel used, the type and capacity of each vehicle, the number of vehicles by type, the date of acquisition, the decibel rating and the maintenance and rebuild status. Each inventory must also include the tare weight of each vehicle. Each vehicle inventory must be accompanied by a certification signed by Contractor that all Collection vehicles meet the requirements of this Agreement.

17.04.2.13 AB 341, AB 1826, and SB 1383 Compliance Data. Contractor must report the total number of Service Units serviced and the number of containers, container sizes and frequency of Collection for Garbage, Recyclable Materials and Organic Waste for each Service Unit. Contractor must also provide the following information separately for AB 341, AB 1826 and SB 1383.

- A. The total number of Service Units, and the total number of those Service Units that are not receiving Contractor's required services to Recycling Collection Service or Organics Collection Service.
- B. A summary of the type of follow-up outreach that was provided to those Service Units that are not subscribed to Recycling Collection Service or Organics Collection Service.

17.05 Diversion Data. By 5:00 p.m. PT on March 30, 2022, and annually thereafter during the term of this Agreement, Contractor must deliver to City Diversion data for the specific services performed under this Agreement in the format specified by City.

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17.06 CalRecycle Reports. Contractor will provide reasonable assistance to City in preparing annual reports to CalRecycle, including but not limited to supplying required data for preparation of the reports.

17.06.1 In the event that CalRecycle requires City to submit an Implementation Schedule to comply with AB 341, AB 1826, SB 1383 and other Applicable Laws, Contractor will provide reasonable assistance to City in preparing a report, including Contractor's policies and procedures related to compliance with AB 341, AB 1826, SB 1383, and other Applicable Laws and how recycling or organics are collected, a description of the geographic area, routes, list of addresses served and a method for tracking contamination, copies of route audits, copies of notice of contamination, copies of notices, violations, education and enforcement actions issued, and copies of educational materials, flyers, brochures, newsletters, website, and social media.

17.07 Characterization Study. Contractor will provide summary of results from a waste characterization study of inbound Recyclable Materials collected in City Service Area for determining the amount of Residuals in Recyclable Materials by January 1st of each year to be used for the subsequent twelve (12) month period.

17.08 Additional Reporting. Contractor must furnish City with any additional reports as may reasonably be required, such reports to be prepared within a reasonable time following the reporting period.

ARTICLE 18. Nondiscrimination

18.01 Nondiscrimination. In the performance of all work and services under this Agreement, Contractor may not discriminate against any person on the basis of such person's race, color, sex (including pregnancy, childbirth, and related medical conditions), age, ancestry, national origin, religion, marital status, or sexual orientation, gender identity and gender expression, disability (physical and mental), medical conditions, AIDS/HIV, citizenship status and genetic information, military or veteran status, political affiliations or activities, and status as a victim of domestic violence, assault or stalking. Contractor must comply with all applicable local, state and federal laws and regulations regarding nondiscrimination, including those prohibiting discrimination in employment.

ARTICLE 19. Service Inquiries and Complaints

19.01 Contractor's Customer Service. All service inquiries and complaints from Service Recipients will be directed to Contractor. A representative of Contractor must be available to receive the complaints during normal business hours. All service complaints will be handled by Contractor in a prompt and efficient manner. In the case of a dispute between Contractor and a Service Recipient, the matter will be reviewed, and a decision made by the Agreement Administrator.

19.01.1 Contractor will utilize the Customer Service Log to maintain a record of all inquiries and complaints in a manner prescribed by City. Contractor must maintain a record of all inquiries and complaints for a minimum of three years, available upon City request.

19.01.2 For those complaints related to missed Collections, where Containers are properly and timely set out, that are received by 12:00 noon on a Work Day, Contractor will return to the Service Unit address and Collect the missed materials before leaving the Service Area for the day. For those complaints related to missed Collections that are received after 12:00 noon on a Work Day, Contractor will have until the end of the following

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Work Day to resolve the complaint. For those complaints related to repair or replacement of Carts or Bins, the appropriate Sections of this Agreement will apply.

19.01.3 Contractor agrees that it is in the best interest of City that all Solid Waste be Collected on the scheduled Collection day. Accordingly, missed Collections will normally be Collected as set forth above regardless of the reason that the Collection was missed. However, in the event a Service Recipient requests missed Collection service more than two (2) times in any consecutive two (2) month period the Agreement Administrator will work with Contractor to determine an appropriate resolution to that situation. In the event Contractor believes any complaint to be without merit, Contractor will notify the Agreement Administrator in writing. The Agreement Administrator will investigate all disputed complaints and render a decision, in his or her reasonable discretion.

19.01.4 Contractor's service and emergency telephone numbers must be accessible by a local (City) phone number. The telephone number(s) must be listed in the area's telephone directories under Contractor's name in the White Pages and Yellow Pages, and on the Contractor's website.

ARTICLE 20. Quality of Performance of Contractor

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

20.02 Service Supervisor. Contractor must assign a qualified supervisor to be in charge of the Collection Service within the Service Area and must provide the contact name of that person in writing to the Agreement Administrator within thirty (30) days of the execution of this Agreement, and annually by July 1st of each subsequent Calendar Year of the term of this Agreement, and any other time the person in that position changes. The supervisor must be physically located in the Service Area and available to the Agreement Administrator through the use of telecommunication equipment at all times that Contractor is providing Collection Services. In the event the supervisor is unavailable due to illness or vacation, Contractor must designate an acceptable substitute who will be available and who has the authority to act in the same capacity as the supervisor.

20.03 Contractor Representative. Contractor must designate a Representative (Contractor's Representative) and must provide the name of that person in writing to City within thirty (30) days of the execution of this Agreement and annually by July 1st of each subsequent Calendar Year of this Agreement and any other time the person in that position changes. Contractor's Representative must be available to City through the use of telecommunications equipment at all times that Contractor is providing Collection Services in the Service Area. Contractor's Representative must provide City with an emergency phone number where Contractor's Representative can be reached outside of normal business hours.

20.04 Liquidated Damages. Should Contractor be in material breach of the requirements set forth in this Agreement, it is mutually understood and agreed that the public will necessarily suffer damages and that such damages, from the nature of the default in performance will be extremely difficult to value and impractical to fix. City finds, and Contractor agrees, that as of the time of the execution of this Agreement, it is impractical, if not

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impossible, to reasonably ascertain the extent of damages or the costs related thereto which will be incurred by City as a result of a material 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 this 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) services might be available at substantially lower costs than alternative services, and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches. Accordingly, Contractor and City agree that the following table of liquidated damages in the amounts set forth opposite the breach described are acceptable:

LIQUIDATED DAMAGES			
	Item	Amount	If Cured in 15 Days
a.	Failure to submit to City all reports by the deadlines required under the provisions of this Agreement.	\$100 per day.	-0-
b.	Failure to submit to City all payments by the deadlines required under the provisions of this Agreement.	\$500 per day.	-0-
c.	Failure to display Contractor's name and customer service phone number on collection vehicles.	\$100 per incident per day.	-0-
d.	Failure to maintain collection hours as required by this Agreement.	\$100 per day.	-0-
e.	Failure to have Contractor personnel in Contractor -provided uniforms.	\$25 per day per employee.	-0-

The following items Can Not Be Cured

	Item	Amount (cannot be cured)
g.	Except as provided in Section 20.06, failure to maintain customer service representatives available as required by this Agreement.	\$100 per day.
h.	Failure to initiate clean up spillage or litter on public streets located within City caused by Contractor's collection vehicles within two (2) hours after notice by City to Contractor.	\$500 per incident, and reimbursement to City for cleanup.
i.	Except as provided in Sections 3.08, 3.09, 5.01, and 20.06, delivery of separately collected Recyclable Materials or separately collected Organic Waste in the Disposal Facility without first obtaining the required permission of City.	\$500 per load.

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LIQUIDATED DAMAGES		
j.	Failure to deliver Garbage collected under this Agreement to the Disposal Facility, except as otherwise expressly provided in this Agreement.	\$5,000 each failure.
k.	Failure to timely submit a corrective action plan as set forth in Section 5.03.	\$5,000, and \$500 per day thereafter until the plan is submitted
l.	Except as provided in Section 20.06, Overweight Collection Vehicles, as set forth in Section 13.01.4	\$100 per day per load.
m.	Failure to respond to each complaint within close of next Work Day.	\$100 per day per incident per Service Recipient.
n.	Failure to collect a missed collection by close of the next Work Day, that exceeds twenty (20) in any Calendar Year.	\$1,000 per Calendar Year, plus \$50 per incident thereafter.
o.	Failure to repair or replace damaged Containers within five Work Days, or other time period agreed to by Contractor and Service Recipient, that exceeds twenty (20) in any Calendar Year.	\$1,000 per Calendar Year, plus \$50 per incident per day thereafter.

20.05 Procedure for Review of Liquidated Damages. The Agreement Administrator shall promptly notify Contractor of any events or circumstances that could result in the imposition of Liquidated Damages. The Agreement Administrator may assess Liquidated Damages pursuant to this Agreement on a monthly basis. At the end of each month during the term of this Agreement, the Agreement Administrator will issue a written notice to Contractor ("Notice of Assessment") of the Liquidated Damages assessed and the basis for each assessment.

20.05.1 The assessment will become final unless, within ten Business Days of the date of the notice of assessment, Contractor provides a written request for a meeting with the Agreement Administrator to present evidence that the assessment should not be made, or the alleged deficiency has been cured.

20.05.2 The Agreement Administrator will schedule a meeting between Contractor and the Agreement Administrator as soon as reasonably possible after timely receipt of Contractor's request.

20.05.3 The Agreement Administrator will review Contractor's evidence and render a decision sustaining or reversing the Liquidated Damages within ten Business Days after the meeting. Written notice of the decision will be provided to Contractor. The Agreement Administrator's determination will be final, subject to Section 24.07.

20.05.4 In the event Contractor does not submit a written request for a meeting within ten calendar days of the date of the Notice of Assessment and the alleged deficiency is not cured, the Agreement Administrator's determination will be final.

20.05.5 City's assessment or collection of Liquidated Damages are in addition to and not in lieu of any other remedy available to it and will not prevent City from exercising any other right or remedy, including the right to terminate this Agreement, for Contractor's failure to perform the work and services in the manner set forth in this Agreement.

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20.06 Uncontrollable Circumstances.

20.06.1 If either party is prevented from or delayed in performing its duties under this Agreement by circumstances beyond its control, whether or not foreseeable, including, without limitation, acts of terrorism, acts of God, landslides, lightning, forest fires, storms, floods, severe weather, freezing, earthquakes, or other natural disasters, the threat of such natural disasters, pandemics (or threat of same), quarantines, civil disturbances, acts of the public enemy, wars, blockades, public riots, strikes, lockouts, or other labor disturbances, federal, state or locally declared emergency or disaster, acts of government or governmental restraint or other causes, whether of the kind enumerated or otherwise, that are not reasonably within the control of the affected party, then the affected party will be excused from performance hereunder during the period of such disability. Notwithstanding the preceding sentence, the Parties agree that Collection of Garbage is an essential service, and if authorized by State and local government orders to continue essential operations, Contractor is not excused from the Collection of Garbage pursuant to this Agreement during the period of such disability. If Contractor is prevented by State or local government orders from processing Recyclable Materials or Organic Waste due to any of the reasons set forth in this Section, Contractor shall Collect and dispose of the Recyclable Materials and Organic Waste as Garbage.

20.06.2 The party claiming excuse from performance must promptly notify the other party when it learns of the existence of such cause, including the facts constituting such cause, and when such cause has terminated.

20.06.3 The interruption or discontinuance of services by a party caused by circumstances outside of its control will not constitute a default under this Agreement.

ARTICLE 21. Performance Bond

21.01 Performance Bond.

21.01.1 On or before June 1, 2021 Contractor shall deliver to City a performance bond, which secures the faithful performance of this Agreement, including, without limitation, payment of any liquidated damages and the funding of any work to cure a breach of this Agreement. The bond must be issued by an admitted surety insurer with an A.M. Best rating of not less than A-:VII and is included on the list of surety companies approved by the Treasurer of the United States. The bond must be in the amount of \$1,000,000 and substantially in the form provided in **Exhibit 6**. The bond shall contain the original notarized signature of an authorized representative of the surety and affixed thereto shall be a certified and current copy of his or her power of attorney. The bond shall be unconditional, annually renewed, and remain in force during the entire term of this Agreement and for the period specified in subsection 21.01.3, and shall be null and void at the conclusion of that period if Contractor promptly and faithfully performs all terms and conditions of this Agreement.

21.01.2 In the event Contractor shall for any reason become unable to, or fail in any way to, perform as required by this Agreement, City may declare a portion or all of the performance bond which is necessary to recompense and make whole City, forfeited to City. In the event Contractor fails to renew the performance bond at least 30 days prior to its expiration, and fails to notify City of same within that same period, City may declare the performance bond forfeited to City. Upon partial forfeiture of the performance bond, Contractor shall restore the

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performance bond to its face amount within 30 days of City's declaration. Failure to restore the performance bond to its full amount within 30 days shall be a material breach of contract.

21.01.3 Some Agreement requirements extend beyond the term, and other requirements will not be substantiated until after the final service date. Therefore, Contractor shall not terminate the performance bond, and will renew it annually to ensure continuous availability to City, until receiving a written release from City. Any performance bond will automatically expire at the end of 12 months after the end of the term unless City has notified Contractor in writing as to a specific contractual claim which is yet to be resolved, instructing Contractor to retain the bond until the contractual claim is resolved. Neither permission from City to discontinue holding this bond, nor permitted expiration after 12 months, shall be deemed as a release by City of any claim it may have against Contractor.

ARTICLE 22. Insurance

22.01 Insurance Policies. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work described herein and the results of that work by Contractor, its agents, representatives, employees, or subcontractors. With respect to General Liability and Contractors Pollution Liability, coverage should be maintained for a minimum of five years after contract completion.

22.02 Minimum Scope and Limit of Insurance. If Contractor maintains broader coverage and/or higher limits than the minimums shown below in Sections 22.02.1 through 22.02.4, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City. Insurance coverage must be at least this broad;

22.02.1 Commercial General Liability (CGL). Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$10,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

22.02.2 Automobile Liability. Insurance Services Office Form Number CA 0001 covering any auto (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned (Code 9) autos, with limit no less than \$10,000,000 per accident for bodily injury and property damage.

22.02.3 Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

22.02.4 Contractors Pollution Liability for Facilities Owned by Contractor. Applicable to the work being performed, with a limit no less than **\$10,000,000** per claim or occurrence and **\$20,000,000** aggregate per policy year.

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22.02.5 Pollution Liability for Facilities Owned by Third Parties. Applicable to the work being performed, with a limit no less than **\$10,000,000** per claim or occurrence and **\$10,000,000** aggregate per policy year.

22.02.6 Cyber Liability Insurance. Applicable to the work being performed covering cyber liability that names the City as an additional insured, with a limit no less than **\$5,000,000** per claim or occurrence and **\$5,000,000** aggregate per policy period of one year.

22.03 Self-Insured Retentions. Any self-insured retentions must be declared to the Agreement Administrator. Should City form a reasonable belief that Contractor may be unable to pay any self-insured retentions, Contractor must procure a letter of credit issued by a state or federal guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by City's risk manager.

22.04 Other Insurance Provisions.

22.04.1 The General Liability, Automobile Liability, and Contractors Pollution Liability, policies are to contain, or be endorsed to contain, the following provisions:

22.04.1.1 City, its officers, officials, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

22.04.1.2 For any claims related to this project, Contractor's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, agents, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

22.04.1.3 Where commercially available, each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City. Where not commercially available, Contractor shall provide notice of cancellation to City.

22.04.2 The Automobile Liability policy shall be endorsed to include Transportation Pollution Liability insurance, covering materials to be transported by Contractor pursuant to the Agreement. This coverage may also be provided on Contractor's Pollution Liability policy.

22.04.3 If General Liability and Contractors Pollution Liability coverages are written on a claims-made form:

22.04.3.1 The retroactive date must be shown, and must be before the date of the Agreement or the beginning of work under this Agreement.

22.04.3.2 Insurance must be maintained, and evidence of insurance must be provided for at least five years after completion of the contract of work.

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22.04.3.3 If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase an extended period coverage for a minimum of five years after completion of contract work.

22.05 Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A-: VII if admitted in the State of California.

22.06 Verification of Coverage. Contractor shall furnish City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before work begins. Failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right to review complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time, at the corporate headquarters of Contractor's Guarantor, 800 Capitol Street, Houston, Texas 77002.

22.07 Waiver of Subrogation. Contractor hereby grants to City a waiver of subrogation which any insurer may acquire against City, its officers, officials, employees, and volunteers, from Contractor by virtue of the payment of any loss arising from Contractor's performance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Contractor, its employees, agents, and subcontractors under this Agreement.

22.08 Subcontractors. In connection with a request by Contractor to utilize a subcontractor(s) to perform work in the City pursuant to this Agreement, City and Contractor agree to negotiate in good faith with respect to appropriate insurance coverages and coverage amounts, giving consideration to the nature of the work in the City, the potential risk to City, and any prior arrangements between the proposed subcontractor and City. Notwithstanding the above, the foregoing requirement shall not apply to subcontractors whose work is not performed within the physical boundary of the City. For CGL coverage subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.

22.09 Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances, subject to Section 25.01.

ARTICLE 23. Indemnification

23.01 General Indemnification. Contractor must indemnify, defend and hold harmless City, and its elected and appointed public officials, officers, directors, employees, agents and other contractors of each of them (collectively, "City Indemnitees"), from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals as well as all court or other dispute resolution costs), liabilities, expenditures or causes of action of any kind (including negligent, reckless, willful or intentional acts or omissions of Contractor, any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any services or anyone for whose acts any of them may

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be liable), arising from, relative to or caused by the performance of the services (collectively, "Claims"). This indemnity includes but is not limited to Claims attributable to bodily injury, sickness, disease or death and to injury or destruction of tangible property. Contractor agrees, at Contractor's expense, after written notice from City, to defend any action against City Indemnitees that falls within the scope of this indemnity using counsel selected by Contractor and approved by City in its reasonable judgment. Additionally, if Contractor, after receipt of written notice from City, fails to defend and indemnify as required under this Agreement, Contractor must pay any reasonable attorneys' fees or costs incurred by City in securing any such payment from Contractor. Payment of any amount due pursuant to the foregoing indemnity must, after receipt of written notice by Contractor from City that such amount is due, be made by Contractor prior to City being required to pay same.

23.02 Diversion Indemnification. Subject to the requirements of Public Resources Code Section 40059.1, which will control in the event of any conflict with the provisions of this Section, Contractor agrees to protect and defend City Indemnitees with counsel selected by Contractor and approved by City, which approval City shall not unreasonably withhold, to pay all attorneys' and consultant's fees, and to indemnify and hold City Indemnitees harmless from and against all fines or penalties imposed by the CalRecycle if the Diversion goals specified in California Public Resources Code Section 41780, as it may be amended, are not met by City with respect to the materials Collected by Contractor and if the lack in meeting such goals are attributable to the failure of Contractor to implement and operate the recycling or organics programs or undertake the related activities required by this Agreement. In the event CalRecycle provides an administrative process to challenge the imposition of a compliance order or a fine or fines falling under this Section, Contractor will be responsible for engaging any consultants or attorneys necessary to represent City in any such challenge.

23.03 Hazardous Substances Indemnification. CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by City), protect and hold harmless City Indemnitees from and against any and all Claims of any kind whatsoever paid, suffered or incurred by or against City Indemnitees resulting from any repair, cleanup, removal action or response action undertaken pursuant to CERCLA, the Health & Safety Code or other similar federal, state or local law or regulation, with respect to Solid Waste Collected and Disposed of by CONTRACTOR. The foregoing indemnity is intended to operate as an agreement pursuant to section 107(e) of CERCLA and section 25364 of the Health & Safety Code to defend, protect, hold harmless and indemnify City Indemnitees from all forms of liability under CERCLA, the Health & Safety Code or other similar federal, state or local law or regulation.

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

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

23.06 Subcontractors. Contractor must require all subcontractors performing work in City to enter into an agreement containing the provisions set forth in Section 23.01, in which agreement the subcontractor fully indemnifies City in accordance with this Agreement for work performed by the subcontractor.

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23.07 Exception. Notwithstanding other provisions of this Agreement, Contractor's obligation to indemnify, hold harmless and defend City, its officers and employees will not extend to any claim, loss, liability, penalty, damage, action or suit arising or resulting from acts or omissions constituting City's or its elected and appointed public official's officer's, director's employee's, agent's and contractor's sole negligence, willful misconduct, or material breach of this Agreement.

23.08 Damage by Contractor. If Contractor's employees or subcontractors cause any injury, damage or loss to City property, including but not limited to City streets or curbs, excluding normal wear and tear, Contractor must reimburse City for City's cost of repairing such injury, damage or loss. Such reimbursement is not in derogation of any right of City to be indemnified by Contractor for any such injury, damage or loss. With the prior written approval of City, Contractor may repair the damage at Contractor's sole cost and expense. Any injury, damage or loss to private property caused by the negligent or willful acts or omissions of Contractor to private property must be repaired or replaced by Contractor at Contractor's sole expense. Disputes between Contractor and its Service Recipients or private property owners as to damage to private property are civil matters and complaints of damage will be referred to Contractor as a matter within its sole responsibility and as a matter within the scope of Section 23.01 (General Indemnification).

ARTICLE 24. Default of Agreement

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

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

24.01.2 By order or decree of a court, Contractor is adjudged bankrupt or an order is made approving a petition filed by any of its creditors or by any of the stockholders of Contractor, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or of any state thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) calendar days after the entry thereof, any notice of default will be and become null, void and of no effect; unless such stayed judgment or order is reinstated in which case, such default will be deemed immediate; or

24.01.2.1 By, or pursuant to, or under the authority of any legislative act, resolution or rule or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator takes possession or control of all or substantially all of the property of Contractor, and such possession or control continues in effect for a period of sixty (60) calendar days; or

24.01.3 Contractor has defaulted, by failing or refusing to pay in a timely manner the Liquidated Damages or other monies due City under this Agreement and such default is not cured within ten (10) calendar days of receipt of written notice by City to do so; or

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

24.01.5 In the event that the monies due City under Section 24.01.3 above or an unsatisfied final judgment under Section 24.01.4 above is the subject of a judicial proceeding, Contractor will not be in default if the sum of money is bonded. All bonds must be in the form acceptable to the City Attorney; or

24.01.6 Contractor has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Agreement or any of the rules and regulations promulgated by City pursuant thereto or has failed or refused to comply with the instructions of the Agreement Administrator relative thereto and such default is not cured within thirty (30) calendar days of receipt of written notice by City to do so. If by reason of the nature of such default, the same cannot reasonably be remedied within thirty (30) calendar days following receipt by Contractor of written demand from City to do so, Contractor fails to commence the remedy of such default within such thirty (30) calendar days following such written notice or having so commenced fails thereafter to continue with diligence the curing thereof (with Contractor having the burden of proof to demonstrate (a) that the default cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with diligence to cure such default, and such default will be cured within a reasonable period of time); or

24.01.7 Contractor has defaulted, by failing or refusing to submit a Diversion and Sustainability Work Plan reasonably acceptable to the Agreement Administrator as required by Section 15.02 by October 31, 2022, or each October 31 thereafter, and such default is not cured within thirty (30) calendar days of receipt of written notice by City to do so.

24.02 Effective Date of Termination. In the event of any the events specified above, and except as otherwise provided in such subsections, termination will be effective upon the date specified in City's written notice to Contractor and upon such date this Agreement will be deemed immediately terminated and upon such termination all liability of City under this Agreement to Contractor will cease, and City will have the right to call upon the Performance Bond and will be free to negotiate with other contractors for the operation of interim and long-term Collection Services. Contractor must reimburse City for all direct and indirect costs of providing any interim Collection Services as a result of Contractor's default in this Agreement after the termination date and for a period of four (4) months.

24.03 Immediate Termination. City may terminate this Agreement immediately upon written notice to Contractor in the event Contractor: (a) fails to provide and maintain the Performance Bond as required by this Agreement, (b) fails to obtain or maintain insurance policies endorsements as required by this Agreement, (c) fails to provide the proof of insurance as required by this Agreement, or (d) offers or gives any gift to a City official or employee prohibited by City's Municipal Code.

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

24.05 Alternative Service. Should Contractor, for any reason, except the occurrence or existence of any of the events or conditions set forth in Section 20.06, refuse or be unable for a period of more than forty-eight

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(48) hours, to Collect a material portion or all of the Solid Waste which it is obligated under this Agreement to Collect, and as a result, Solid Waste should accumulate in City to such an extent, in such a manner, or for such a time that the City Manager, in the reasonable exercise of the City Manager's discretion, should find that such accumulation endangers or menaces the public health, safety or welfare, then City will have the right to contract with another Solid Waste enterprise to Collect any or all Solid Waste which Contractor is obligated to Collect pursuant to this Agreement. City must provide twenty-four (24) hours prior written notice to Contractor during the period of such emergency, before contracting with another Solid Waste enterprise to Collect any or all Solid Waste which Contractor would otherwise collect pursuant to this Agreement for the duration of period during which Contractor is unable to provide such services. In such event, Contractor must undertake commercially reasonable efforts to identify sources from which such substitute Solid Waste services are immediately available, and must reimburse City for all of its increased expenses for such substitute services during the period in which Contractor is unable to provide Collection services required by this Agreement.

24.06 Survival of Certain Contractor Obligations. Notwithstanding the termination of this Agreement by Contractor or City, Contractor's obligation to indemnify, defend and hold City and City Indemnitees harmless as provided in ARTICLE 23 shall survive termination for five years from the date of termination. Notwithstanding the termination of this Agreement by Contractor or City, such act shall not automatically invalidate or cancel any insurance policy, performance bond or similar instruments provided by Contractor under this Agreement and such policies, performance bonds and other instruments shall remain in full force and effect for one full year after termination.

24.07 Contractor's Remedies; Administrative Hearing.

24.07.1 Should Contractor contend that City is in breach of any aspect of this Agreement or wishes to contest a determination made by the City hereunder, it shall give notice to the City Manager requesting an administrative hearing on the allegation. The hearing shall occur as soon as reasonably possible, or on such date as mutually agreed by the parties and shall be held before an impartial hearing officer mutually agreed upon by the parties. The hearing officer shall make an advisory ruling on Contractor's allegations and suggest a remedy if a breach by City is determined to exist. The hearing officer's ruling and recommendations shall become final and binding if the parties so agree in writing within thirty (30) days of the date notice of the decision is given to both parties. Otherwise, the hearing officer's ruling shall have no further force or effect.

24.07.2 Contractor shall be entitled to all available remedies in law or equity for City's breach of this Agreement. Contractor shall not file or otherwise commence any action against City, in law or equity, in any court, until after an administrative hearing as set forth above has been completed, and the above noted thirty (30) day period to accept the hearing officer's decision has passed, or either City or Contractor has given timely written notice to the other that it will not accept the hearing officer's decision. The applicable statute of limitations for any claim by Contractor in law or equity for City's breach of this Agreement shall be tolled commencing on the date of Contractor's notice until after an administrative hearing as set forth above has been completed, and the above noted thirty (30) day period to accept the hearing officer's decision has passed, or either City or Contractor has given timely written notice to the other that it will not accept the hearing officer's decision.

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ARTICLE 25. Modifications to the Agreement

25.01 City-Directed Change. City has the power to make changes in this Agreement as the result of Changes in Law, changes in the Municipal Code, or both, or to impose new rules and regulations on Contractor under this Agreement relative to the scope and methods of providing Collection Services as may from time-to-time be necessary and desirable for the public welfare.

25.01.1 City will give Contractor reasonable notice of any proposed change and an opportunity to be heard concerning those matters. The scope and method of providing Collection Services as referenced herein will be liberally construed to include procedures, operations and obligations, financial or otherwise, of Contractor. When such modifications are made to this Agreement, City and Contractor will negotiate in good faith, a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of Contractor due to any modification in the Agreement under this ARTICLE. City and Contractor will not unreasonably withhold agreement to such compensation adjustment.

25.01.2 The City has approved the facilities proposed for use by Contractor in connection with providing the Collection Services under this Agreement as set forth in **Exhibit 9** (the "Approved Facilities"). Contractor may add additional facilities to **Exhibit 9**, with prior City written approval. The City reserves the right to designate additional facilities ("City Designated Facilities") to be added to **Exhibit 9** in the event that an Approved Facility is unable to handle the volume of Solid Waste contemplated by this Agreement or is otherwise in material noncompliance with Applicable Law. City and Contractor will use their best efforts to obtain indemnification against CERCLA, State Environmental Laws, and related claims from the owner and/or operator of the City Designated Facility; provided, however, Contractor shall not be responsible or liable in any way, nor shall Contractor defend, indemnify or hold City harmless for any Claims arising out of, related to or in connection with the use of such City Designated Facility or any action or inaction of any third-party related thereto. In the event that City and Contractor agree to use such City Designated Facilities, Contractor shall be entitled to a rate adjustment in accordance with this Section.

25.02 Change in Law. City and Contractor understand and agree that the California Legislature has the authority to make comprehensive changes in Solid Waste Collection legislation and that these and other changes in Applicable Law (including regulations adopted by CalRecycle) in the future which mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this Agreement. Contractor agrees that the terms and provisions of the Municipal Code, as it now exists or as it may be amended in the future, will apply to all of the provisions of this Agreement and the Service Recipients of Contractor located within the Service Area. In the event any future change in federal law or regulations, state or local law of regulation, or the City Code materially alters the obligations of Contractor, then the affected Schedule of Service Rates will be adjusted in accordance with this Section. Nothing contained in this Agreement will require any party to perform any act or function contrary to law. City and Contractor agree to enter into good faith negotiations regarding modifications to this Agreement which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to this Agreement, City and Contractor will negotiate in good faith, a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of Contractor due to any change in law or modification in the Agreement under this ARTICLE. City and Contractor will not unreasonably withhold agreement to such compensation adjustment. If the change in law relates to a new or increased tax or fee, City shall use good

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faith efforts to implement the adjustment as of the effective date of such new or increased tax, charge or fee subject to the compliance with Section 2.5.

ARTICLE 26. Legal Representation

26.01 Acknowledgement. It is acknowledged that each party was, or had the opportunity to be, represented by counsel in the preparation of and contributed equally to the terms and conditions of this Agreement and, accordingly, the rule that an Agreement will be interpreted strictly against the party preparing the same will not apply due to the joint contributions of both parties.

ARTICLE 27. Financial Interest

27.01 Representation. Contractor warrants and represents that no elected official, officer, agent or employee of City has a financial interest, directly or indirectly, in this Agreement or the compensation to be paid under it and, further, that no City employee who acts in City as a "purchasing agent" as defined in City's Municipal Code, nor any elected or appointed officer of City, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of Contractor and, further, that no such City employee, purchasing agent, City elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material financial interest in Contractor or this Agreement under Applicable Law.

ARTICLE 28. Contractor's Personnel

28.01 Personnel Requirements. Contractor must employ and assign qualified personnel to perform all services required under this Agreement. Contractor is responsible for ensuring that its employees comply with all Applicable Laws related to their employment and position.

28.01.1 City may request the transfer of any employee of Contractor who materially violates any provision of this Agreement, or who is wanton, negligent, or discourteous in the performance of his or her duties under this Agreement.

28.01.2 Contractor's field operations personnel are required to wear a clean uniform shirt bearing Contractor's name. Contractor's employees, who normally come into direct contact with the public, including drivers, must bear some means of individual photographic identification such as a name tag or identification card.

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

28.01.4 Each driver of a Collection vehicle must at all times comply with Applicable Law.

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

28.01.6 Contractor's name and the Customer Service telephone number must be properly displayed on all Collection vehicles.

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ARTICLE 29. Exempt Waste

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

ARTICLE 30. Independent Contractor

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

30.02 Subcontractors. Contractor will require all subcontractors performing work in City to enter into an agreement containing the provisions set forth Section 30.01 in which agreement the subcontractor agrees that Contractor and subcontractor are independent contractors and have no other agency relationship with City.

ARTICLE 31. Laws to Govern

31.01 The law of the State of California governs the rights, obligations, duties and liabilities of City and Contractor under this Agreement and govern the interpretation of this Agreement, without reference to its conflict of laws principles.

ARTICLE 32. Consent to Jurisdiction

32.01 The parties agree that any litigation between City and Contractor concerning or arising out of this Agreement must be filed and maintained exclusively in the Superior Court of Riverside County, State of California, or in the United States District Court for the Central District of California to the fullest extent permissible by law. Each party consents to service of process in any manner authorized by Applicable Law.

ARTICLE 33. Assignment; Subcontracting

33.01 No assignment of this Agreement or any right occurring under this Agreement may be made in whole or in part by Contractor without the express prior written consent of City, which consent City may grant or withhold in its reasonable discretion. Any assignment of this Agreement made by Contractor without the express written consent of City will be null and void and will be grounds for City to declare a default of this Agreement and immediately terminate this Agreement by giving written notice to Contractor, and upon the date set forth in such notice this Agreement will be deemed terminated, and upon such termination all liability of City under this Agreement to Contractor will cease, and City will have the right to call the Performance Bond provided pursuant to ARTICLE 21 and will be free to negotiate with other contractors, for the services that are the subject of this Agreement. In the event of any assignment approved by City, the assignee must fully assume all the liabilities of

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Contractor by way of an assignment and assumption agreement. Notwithstanding the above, an assignment to an Affiliate of Contractor may be undertaken upon notice to City, but without the requirement for its approval.

33.01.1 In the event that the City consents to assignment of this Agreement to a qualified service provider, Contractor must pay the City its costs incurred for staff time, consultant fees, and attorneys' fees incurred to evaluate the suitability of any proposed assignee, and to review, draft and finalize any documentation required to approve and implement any assignment. To be considered, assignment applications must include an assignment fee in the amount of one percent (1%) of Contractor's Gross Receipts in the Calendar Year prior to the year assignment request is received by City, which amount includes payment in full for any and all costs related to the assignment application and City's analysis of the assignment application. Any amount remaining in the assignment fee upon completion of the City's assignment analysis, after deduction of all costs incurred by the City related to the assignment, will be credited to the Contractor. Contractor payments for assignment costs are in addition to and not in lieu of any other fees, charges or amounts Contractor is required to pay the City pursuant to the Agreement.

33.01.2 Contractor shall furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding 5 operating years.

33.01.3 Contractor must furnish the City with satisfactory proof that the proposed assignee has the demonstrated technical capability to perform all franchised services and any other information required by the City to ensure the proposed assignee can fulfill the terms of the Agreement in a timely, safe, and effective manner.

33.02 No subcontractors may be engaged by Contractor for the provision of Services required by this Agreement without the express prior written consent of City, which consent City may grant or withhold in its reasonable discretion. Contractor will be responsible for directing the work of Contractor's subcontractors and any compensation due or payable to Contractor's subcontractor will be the sole responsibility of Contractor. The Agreement Administrator will have the right to require the removal of any subcontractor for reasonable cause.

ARTICLE 34. Compliance with Laws

34.01 In the performance of this Agreement, City and Contractor must comply with all Applicable Laws, including without limitation the Banning Municipal Code.

34.02 City must provide written notice to Contractor of any planned amendment of the Banning Municipal Code that would substantially affect the rights or performance of Contractor's services pursuant to this Agreement. Such notice must be provided at least thirty (30) calendar days prior to the City Council's approval of such an amendment.

ARTICLE 35. Permits and Licenses

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

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ARTICLE 36. City Use of Written Materials

36.01 City may use all reports, documents, brochures, public education materials, and other written, printed, electronic or photographic materials developed by Contractor and submitted to the City at the request of City or as required under this Agreement, without limitation or restrictions on the use of such materials by City. Notwithstanding the preceding sentence, City shall not disclose to third parties any materials that are determined to be exempt from disclosure under the California Public Records Act, pursuant the provisions of Section 42.04.1.

ARTICLE 37. Waiver

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

ARTICLE 38. Prohibition Against Gifts

38.01 Contractor represents that Contractor is familiar with the regulations regarding the acceptance of any gift by a City officer or designated employee. Contractor may not offer any City officer or designated employee any gifts prohibited by federal, State or local laws or regulations.

ARTICLE 39. Point of Contact

39.01 The day-to-day dealings between Contractor and City will be between the Contractor Representative and the Agreement Administrator.

ARTICLE 40. Notices

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

As to City:

Direct of Public Works
City of Banning
99 E. Ramsey Street
Banning, CA, 92220
Telephone: (951) 922-3105

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As to Contractor:

USA Waste California, Inc.
Attn: Larry Metter, President – Southern California Area
9081 Tujunga Avenue
Sun Valley, CA 91352
Telephone: (818) 252-3140

40.02 The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this Section. Notice shall be deemed given on the day it is personally delivered or received by overnight courier or, if mailed, three (3) days from the date it is deposited in the mail. Notice provided by personal delivery, overnight courier, or first class mail may also be provided via electronic mail, and shall be deemed given on the day it is received; however, if received after 4:30 p.m., or on weekends or holidays, notice will be deemed received on the next Business Day.

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

ARTICLE 41. Transition to Next Contractor

41.01 In the event Contractor is not awarded a new Agreement to continue to provide Collection Services following the expiration or early termination of this Agreement, Contractor will cooperate fully with City and any subsequent contractors to assure a smooth transition of services described in this Agreement. Such cooperation will include transfer of routing information, route maps, and a current list of Service Recipients (complete with addresses for Collection Services and billing); providing a complete inventory of all Carts, Bins and Roll-Off Containers, and all keys associated with such inventory and storage areas; providing adequate labor and equipment to complete performance of all Collection Services required under this Agreement until such transition is complete; to negotiate in good faith regarding the transfer of ownership of Carts, Bins and Roll-Off Containers, as appropriate, to City; including transporting such containers to a location designated by the Agreement Administrator; coordinating Collection of materials set out in new containers if new containers are provided for a subsequent Agreement; and providing other reports and data required by this Agreement.

ARTICLE 42. Contractor's Records

42.01 Contractor must maintain any and all letters, books of account, invoices, vouchers, canceled checks, and other records or documents described in ARTICLE 17 for a minimum period of three years, or for any longer period required by law, from the date of termination or completion of this Agreement.

42.02 Contractor must maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three years, or for any longer period required by law, from the date of termination or completion of this Agreement.

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42.03 Any records or documents required to be maintained pursuant to this Agreement must be made available for inspection or audit solely for the purposes set forth in Section 12.01.2, at any time during regular business hours, upon written request by the Agreement Administrator, the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Unless an alternative site is mutually agreed upon, the records will be available at Contractor's address indicated for receipt of notices in this Agreement.

42.04 Where City has reason to believe that such Records or documents may be lost or discarded due to the dissolution, disbandment or termination of Contractor's business, City may, by written request or demand of any of the above named officers, require that custody of the Records be given to City and that the Records and documents be maintained in City Hall. Access to such Records and documents will be granted only to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

42.04.1 Contractor acknowledges that City is legally obligated to comply with the California Public Records Act ("CPRA"). City acknowledges that Contractor may consider certain records, reports, or information contained therein ("Records") which Contractor is required to provide to City under this Agreement, to be of a proprietary or confidential nature. In such instances, Contractor will inform City in writing of which records are considered proprietary or confidential and shall identify the statutory exceptions to disclosure provided under the CPRA that legally permit non-disclosure of the Records. At such time as City receives a request for records under the CPRA or the Federal Freedom of Information Act ("FOIA") or a subpoena or other court order requesting disclosure of the Records, City will notify Contractor of the request, subpoena or order and of City's obligation and intent to provide a response within ten calendar days. Contractor shall within five calendar days either: (i) consent in writing to the disclosure of the Records; (ii) demand that City assert Contractor identified exceptions to disclosure under the CPRA and agree in writing to indemnify, defend and hold City harmless from any litigation, orders or judgments arising from the non-disclosure as requested by Contractor; or (iii) seek and obtain, at Contractor's sole cost and expense, the order of a court of competent jurisdiction staying or enjoining the disclosure of the Records. Contractor shall provide City written notice of its intent to seek such a court order. If Contractor timely files an application for such a court order, City shall not disclose any Records until a final non-appealable judgment is entered by the court. If Contractor fails to timely respond, then City may proceed to disclose the Records, in which event Contractor agrees that it waives and releases City of any liability for the disclosure of the Records.

ARTICLE 43. Entire Agreement

43.01 This Agreement and the attached Exhibits constitute the entire Agreement and understanding between the parties, and the Agreement will not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties.

ARTICLE 44. Severability

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

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ARTICLE 45. Right to Require Performance

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

ARTICLE 46. All Prior Agreements Superseded

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

45.02 As of July 1, 2021 the Prior Agreement shall terminate, and be of no further force or effect.

ARTICLE 47. Headings

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

ARTICLE 48. Exhibits

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

ARTICLE 49. Attorney's Fees

49.01 In the event that litigation is brought by a party in connection with this Agreement, the prevailing party will be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies under this Agreement or the enforcement of any of the terms, conditions, or provisions of this Agreement.

ARTICLE 50. Effective Date

50.01 This Agreement will become effective at such time as it is properly executed by City and Contractor and Contractor will begin Collection Services under this Agreement as of July 1, 2021.

ARTICLE 51. Guarantee of Contractor's Performance

51.01 Contractor is a wholly owned subsidiary of Waste Management, Inc., a Delaware corporation. Waste Management, Inc. shall guaranty Contractor's performance of this Agreement, including any insurance obligation required under the Agreement that Contractor fulfills by means of self-insured retention. The guaranty, in substantially the form attached as **Exhibit 7**, will be provided at least fifteen Business Days prior to the Effective Date of this Agreement.

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

CITY OF BANNING
A General Law City

DocuSigned by:

Colleen Wallace 6/23/2021
By: Colleen Wallace, Mayor

CONTRACTOR
USA WASTE OF CALIFORNIA, INC.

DocuSigned by:

Larry Metter 6/22/2021
By: Larry Metter
President, Southern California Area

DocuSigned by:

Caroline Patton, Deputy City Clerk 6/23/2021
ATTEST:

DocuSigned by:

Doug Corcoran 6/23/2021
By: Doug Corcoran
Vice President

DocuSigned by:

Peter Demolder 6/23/2021
By: Peter Demolder
Assistant Secretary

APPROVED AS TO FORM

DocuSigned by:

Kevin Ennis 6/23/2021
By: Kevin Ennis, City Attorney

Collection Services Agreement

EXHIBIT 1 RATE SCHEDULE

RESIDENTIAL SERVICES					
Residential Cart Service	Service Component	Disposal Component	Organics Component	Recycling Component	Monthly Rate
Basic Rate (96-gal Garbage, 96-gal Recycling, and 96-gal Organic Waste)	\$19.40	\$2.69	\$1.69	\$0.97	\$24.75
OTHER RESIDENTIAL SERVICES					
Non-Qualifying Valet Service	\$15.00	\$0.00	\$0.00	\$0.00	\$15.00
Additional 96-Gal Garbage Cart	\$7.20	\$2.69			\$9.89
Additional 64-Gal Garbage Cart	\$6.11	\$1.79			\$7.90
Additional 35-Gal Garbage Cart	\$4.96	\$0.98			\$5.94
Additional Recycle Cart - Any Size	\$1.57	\$0.00		\$0.97	\$2.54
Additional Organic Waste Cart - Any Size	\$4.36	\$0.00	\$1.69		\$6.05
Residential Set-up Fee	\$12.99				\$12.99
Cart Exchange	\$29.72				\$29.72
Additional Bulky & E-waste - Per Item	\$22.61	\$0.00	\$0.00	\$0.00	\$22.61
Residential Contamination/Overage Fee	\$17.68				\$17.68
Return Service Fee	\$17.10				\$17.10
Insufficient Funds Fee (NSF)	\$25.00				\$25.00
Additional Sharps Refill Fee 1.4 QT -after 1 free kit annually	\$45.00				\$45.00
Cart Cleaning Fee	\$29.72				\$29.72
Late Fees - 2.5% or \$5 minimum on balances over \$15.00					
Tax Roll Fees – 10% of unpaid balance per occurrence					

Collection Services Agreement

COMMERCIAL GARBAGE, RECYCLING, AND ORGANIC WASTE BUNDLED COLLECTION SERVICE					
All Services Include 1 time per week collection with 96-gallon Recycling Cart and 64-gallon Organic Waste Cart					
Subscription Level	Service Component	Disposal Component	Organics Component	Recycling Component	Monthly Rate
2 Yard Garbage bin, 1x a week	\$153.28	\$14.78	\$21.61	\$0.97	\$190.64
2 Yard Garbage bin, 2x a week	\$257.57	\$29.57	\$21.61	\$0.97	\$309.72
2 Yard Garbage bin, 3x a week	\$352.82	\$44.35	\$21.61	\$0.97	\$419.75
2 Yard Garbage bin, 4x a week	\$450.32	\$59.14	\$21.61	\$0.97	\$532.04
2 Yard Garbage bin, 5x a week	\$545.56	\$73.92	\$21.61	\$0.97	\$642.06
2 Yard Garbage bin, 6x a week	\$640.79	\$88.71	\$21.61	\$0.97	\$752.08
3 Yard Garbage bin, 1x a week	\$182.77	\$22.18	\$21.61	\$0.97	\$227.53
3 Yard Garbage bin, 2x a week	\$316.60	\$44.35	\$21.61	\$0.97	\$383.53
3 Yard Garbage bin, 3x a week	\$439.04	\$66.53	\$21.61	\$0.97	\$528.15
3 Yard Garbage bin, 4x a week	\$561.51	\$88.71	\$21.61	\$0.97	\$672.80
3 Yard Garbage bin, 5x a week	\$683.98	\$110.88	\$21.61	\$0.97	\$817.44
3 Yard Garbage bin, 6x a week	\$806.44	\$133.06	\$21.61	\$0.97	\$962.08
4 Yard Garbage bin, 1x a week	\$228.12	\$29.57	\$21.61	\$0.97	\$280.27
4 Yard Garbage bin, 2x a week	\$407.26	\$59.14	\$21.61	\$0.97	\$488.98
4 Yard Garbage bin, 3x a week	\$570.57	\$88.71	\$21.61	\$0.97	\$681.86
4 Yard Garbage bin, 4x a week	\$736.14	\$118.27	\$21.61	\$0.97	\$876.99
4 Yard Garbage bin, 5x a week	\$899.43	\$147.84	\$21.61	\$0.97	\$1,069.85
4 Yard Garbage bin, 6x a week	\$1,062.74	\$177.41	\$21.61	\$0.97	\$1,262.73
6 Yard Garbage bin, 1x a week	\$298.44	\$44.35	\$21.61	\$0.97	\$365.37
6 Yard Garbage bin, 2x a week	\$547.94	\$88.71	\$21.61	\$0.97	\$659.23
6 Yard Garbage bin, 3x a week	\$777.00	\$133.06	\$21.61	\$0.97	\$932.64
6 Yard Garbage bin, 4x a week	\$1,003.82	\$177.41	\$21.61	\$0.97	\$1,203.81
6 Yard Garbage bin, 5x a week	\$1,232.94	\$221.77	\$21.61	\$0.97	\$1,477.29
6 Yard Garbage bin, 6x a week	\$1,459.74	\$266.12	\$21.61	\$0.97	\$1,748.44
96 Gallon Garbage Cart, 1x a week	\$59.89	\$2.69	\$21.61	\$0.97	\$85.16
96 Gallon Garbage Cart, 2x a week*	\$107.80	\$5.38	\$21.61	\$0.97	\$135.76
96 Gallon Garbage Cart, 3x a week*	\$161.70	\$8.07	\$21.61	\$0.97	\$192.35
96 Gallon Garbage Cart, 4x a week*	\$215.60	\$10.76	\$21.61	\$0.97	\$248.94
96 Gallon Garbage Cart, 5x a week*	\$269.51	\$13.45	\$21.61	\$0.97	\$305.54

* Commercial cart service due to space constraints must be pre-approved by City

Collection Services Agreement

COMMERCIAL / MULTI FAMILY EXEMPT ORGANIC WASTE COLLECTION SERVICE RATES					
All Services Include 1 time per week collection with 96-gallon Recycling Cart					
Subscription Level	Service Component	Disposal Component	Organics Component	Recycling Component	Monthly Rate
2 Yard Garbage bin, 1x a week	\$114.89	\$14.78	\$0.00	\$0.97	\$130.64
2 Yard Garbage bin, 2x a week	\$219.19	\$29.57	\$0.00	\$0.97	\$249.73
2 Yard Garbage bin, 3x a week	\$314.43	\$44.35	\$0.00	\$0.97	\$359.75
2 Yard Garbage bin , 4x a week	\$411.93	\$59.14	\$0.00	\$0.97	\$472.04
2 Yard Garbage bin , 5x a week	\$507.17	\$73.92	\$0.00	\$0.97	\$582.06
2 Yard Garbage bin, 6x a week	\$602.41	\$88.71	\$0.00	\$0.97	\$692.09
3 Yard Garbage bin, 1x a week	\$144.39	\$22.18	\$0.00	\$0.97	\$167.54
3 Yard Garbage bin , 2x a week	\$278.21	\$44.35	\$0.00	\$0.97	\$323.53
3 Yard Garbage bin , 3x a week	\$400.66	\$66.53	\$0.00	\$0.97	\$468.16
3 Yard Garbage bin, 4x a week	\$523.12	\$88.71	\$0.00	\$0.97	\$612.80
3 Yard Garbage bin , 5x a week	\$645.59	\$110.88	\$0.00	\$0.97	\$757.44
3 Yard Garbage bin , 6x a week	\$768.06	\$133.06	\$0.00	\$0.97	\$902.09
4 Yard Garbage bin, 1x a week	\$189.73	\$29.57	\$0.00	\$0.97	\$220.27
4 Yard Garbage bin , 2x a week	\$368.87	\$59.14	\$0.00	\$0.97	\$428.98
4 Yard Garbage bin , 3x a week	\$532.18	\$88.71	\$0.00	\$0.97	\$621.86
4 Yard Garbage bin, 4x a week	\$697.75	\$118.27	\$0.00	\$0.97	\$816.99
4 Yard Garbage bin, 5x a week	\$861.04	\$147.84	\$0.00	\$0.97	\$1,009.85
4 Yard Garbage bin , 6x a week	\$1,024.35	\$177.41	\$0.00	\$0.97	\$1,202.73
6 Yard Garbage bin, 1x a week	\$260.05	\$44.35	\$0.00	\$0.97	\$305.37
6 Yard Garbage bin, 2x a week	\$509.56	\$88.71	\$0.00	\$0.97	\$599.24
6 Yard Garbage bin , 3x a week	\$738.62	\$133.06	\$0.00	\$0.97	\$872.65
6 Yard Garbage bin, 4x a week	\$965.44	\$177.41	\$0.00	\$0.97	\$1,143.82
6 Yard Garbage bin, 5x a week	\$1,194.55	\$221.77	\$0.00	\$0.97	\$1,417.29
6 Yard Garbage bin, 6x a week	\$1,421.36	\$266.12	\$0.00	\$0.97	\$1,688.45
96 Gallon Garbage Cart, 1x a week	\$21.50	\$2.69	\$0.00	\$0.97	\$25.16
96 Gallon Garbage Cart, 2x a week*	\$37.97	\$5.38	\$0.00	\$1.94	\$45.29
96 Gallon Garbage Cart, 3x a week*	\$56.95	\$8.07	\$0.00	\$2.91	\$67.93
96 Gallon Garbage Cart, 4x a week*	\$75.94	\$10.76	\$0.00	\$3.88	\$90.58
96 Gallon Garbage Cart, 5x a week*	\$94.92	\$13.45	\$0.00	\$4.85	\$113.22

* Commercial cart service due to space constraints must be pre-approved by City

Collection Services Agreement

COMMERCIAL CART COLLECTION SERVICE RATES					
<u>MAXIMUM 2 Carts Per Commercial Service Unit</u>					
Subscription Level	Service Component	Disposal Component	Organics Component	Recycling Component	Monthly Rate
96 Gallon Garbage Cart, 1x a week	\$10.93	\$2.69	\$0.00	\$0.00	\$13.62
96 Gallon Garbage Cart, 2x a week*	\$19.67	\$5.38	\$0.00	\$0.00	\$25.05
96 Gallon Garbage Cart, 3x a week*	\$29.51	\$8.07	\$0.00	\$0.00	\$37.58
96 Gallon Garbage Cart, 4x a week*	\$39.35	\$10.76	\$0.00	\$0.00	\$50.11
96 Gallon Garbage Cart, 5x a week*	\$49.19	\$13.45	\$0.00	\$0.00	\$62.64
96 Gallon Recycle Cart, 1x a week	\$10.57	\$0.00	\$0.00	\$0.97	\$11.54
96 Gallon Recycle Cart, 2x a week*	\$19.03	\$0.00	\$0.00	\$1.94	\$20.97
96 Gallon Recycle Cart, 3x a week*	\$28.54	\$0.00	\$0.00	\$2.91	\$31.45
96 Gallon Recycle Cart, 4x a week*	\$38.05	\$0.00	\$0.00	\$3.88	\$41.93
96 Gallon Recycle Cart, 5x a week*	\$47.57	\$0.00	\$0.00	\$4.85	\$52.42

* Commercial cart service due to space constraints must be pre-approved by City

Collection Services Agreement

COMMERCIAL BIN GARBAGE COLLECTION SERVICE RATES					
(Service available if also subscribed to Recycling or Organics above Compliance Service minimum)					
Subscription Level	Service Component	Disposal Component	Organics Component	Recycling Component	Monthly Rate
2 Yard, 1x a week	\$104.32	\$14.78	\$0.00	\$0.00	\$119.10
2 Yard, 2x a week	\$208.62	\$29.57	\$0.00	\$0.00	\$238.19
2 Yard, 3x a week	\$303.86	\$44.35	\$0.00	\$0.00	\$348.21
2 Yard, 4x a week	\$401.36	\$59.14	\$0.00	\$0.00	\$460.50
2 Yard, 5x a week	\$496.60	\$73.92	\$0.00	\$0.00	\$570.52
2 Yard, 6x a week	\$591.84	\$88.71	\$0.00	\$0.00	\$680.55
3 Yard, 1x a week	\$133.82	\$22.18	\$0.00	\$0.00	\$156.00
3 Yard, 2x a week	\$267.64	\$44.35	\$0.00	\$0.00	\$311.99
3 Yard, 3x a week	\$390.09	\$66.53	\$0.00	\$0.00	\$456.62
3 Yard, 4x a week	\$512.55	\$88.71	\$0.00	\$0.00	\$601.26
3 Yard, 5x a week	\$635.02	\$110.88	\$0.00	\$0.00	\$745.90
3 Yard, 6x a week	\$757.49	\$133.06	\$0.00	\$0.00	\$890.55
4 Yard, 1x a week	\$179.16	\$29.57	\$0.00	\$0.00	\$208.73
4 Yard, 2x a week	\$358.30	\$59.14	\$0.00	\$0.00	\$417.44
4 Yard, 3x a week	\$521.61	\$88.71	\$0.00	\$0.00	\$610.32
4 Yard, 4x a week	\$687.18	\$118.27	\$0.00	\$0.00	\$805.45
4 Yard, 5x a week	\$850.47	\$147.84	\$0.00	\$0.00	\$998.31
4 Yard, 6x a week	\$1,013.78	\$177.41	\$0.00	\$0.00	\$1,191.19
6 Yard, 1x a week	\$249.48	\$44.35	\$0.00	\$0.00	\$293.83
6 Yard, 2x a week	\$498.99	\$88.71	\$0.00	\$0.00	\$587.70
6 Yard, 3x a week	\$728.05	\$133.06	\$0.00	\$0.00	\$861.11
6 Yard, 4x a week	\$954.87	\$177.41	\$0.00	\$0.00	\$1,132.28
6 Yard, 5x a week	\$1,183.98	\$221.77	\$0.00	\$0.00	\$1,405.75
6 Yard, 6x a week	\$1,410.79	\$266.12	\$0.00	\$0.00	\$1,676.91

Collection Services Agreement

COMMERCIAL GARBAGE COMPACTOR COLLECTION SERVICE RATES					
(Service available if also subscribed to Recycling or Organics above Compliance Service minimum)					
Subscription Level	Service Component	Disposal Component	Organics Component	Recycling Component	Monthly Rate
2 Yard, 1x a week	\$120.72	\$44.35	\$0.00	\$0.00	\$165.07
2 Yard, 2x a week	\$241.40	\$88.71	\$0.00	\$0.00	\$330.11
2 Yard, 3x a week	\$353.04	\$133.06	\$0.00	\$0.00	\$486.10
2 Yard, 4x a week	\$466.93	\$177.41	\$0.00	\$0.00	\$644.34
2 Yard, 5x a week	\$578.57	\$221.77	\$0.00	\$0.00	\$800.34
2 Yard, 6x a week	\$690.19	\$266.12	\$0.00	\$0.00	\$956.31
3 Yard, 1x a week	\$158.40	\$66.53	\$0.00	\$0.00	\$224.93
3 Yard, 2x a week	\$316.83	\$133.06	\$0.00	\$0.00	\$449.89
3 Yard, 3x a week	\$463.87	\$199.59	\$0.00	\$0.00	\$663.46
3 Yard, 4x a week	\$610.91	\$266.12	\$0.00	\$0.00	\$877.03
3 Yard, 5x a week	\$757.94	\$332.65	\$0.00	\$0.00	\$1,090.59
3 Yard, 6x a week	\$905.02	\$399.18	\$0.00	\$0.00	\$1,304.20
4 Yard, 1x a week	\$211.95	\$88.71	\$0.00	\$0.00	\$300.66
4 Yard, 2x a week	\$423.88	\$177.41	\$0.00	\$0.00	\$601.29
4 Yard, 3x a week	\$619.96	\$266.12	\$0.00	\$0.00	\$886.08
4 Yard, 4x a week	\$818.32	\$354.82	\$0.00	\$0.00	\$1,173.14
4 Yard, 5x a week	\$1,014.42	\$443.53	\$0.00	\$0.00	\$1,457.95
4 Yard, 6x a week	\$1,210.50	\$532.24	\$0.00	\$0.00	\$1,742.74
6 Yard, 1x a week	\$298.66	\$133.06	\$0.00	\$0.00	\$431.72
6 Yard, 2x a week	\$597.30	\$266.12	\$0.00	\$0.00	\$863.42
6 Yard, 3x a week	\$875.56	\$399.18	\$0.00	\$0.00	\$1,274.74
6 Yard, 4x a week	\$1,151.58	\$532.24	\$0.00	\$0.00	\$1,683.82
6 Yard, 5x a week	\$1,429.86	\$665.30	\$0.00	\$0.00	\$2,095.16
6 Yard, 6x a week	\$1,705.84	\$798.36	\$0.00	\$0.00	\$2,504.20

Collection Services Agreement

COMMERCIAL BIN RECYCLING COLLECTION SERVICE RATES					
(Available if additional capacity is needed above Recycling or Organics Compliance Service minimum)					
Subscription Level	Service Component	Disposal Component	Organics Component	Recycling Component	Monthly Rate
2 Yard, 1x a week	\$102.16	\$0.00	\$0.00	\$8.72	\$110.88
2 Yard, 2x a week	\$204.33	\$0.00	\$0.00	\$17.44	\$221.77
3 Yard, 1x a week	\$128.87	\$0.00	\$0.00	\$13.08	\$141.95
3 Yard, 2x a week	\$257.73	\$0.00	\$0.00	\$26.16	\$283.89
4 Yard, 1x a week	\$171.09	\$0.00	\$0.00	\$17.44	\$188.53
4 Yard, 2x a week	\$342.19	\$0.00	\$0.00	\$34.88	\$377.07
6 Yard, 1x a week	\$217.81	\$0.00	\$0.00	\$26.16	\$243.97
6 Yard, 2x a week	\$435.64	\$0.00	\$0.00	\$52.32	\$487.96
Extra Pick Up - Recycle	\$82.30	\$0.00	\$0.00	\$0.00	\$82.30

COMMERCIAL ORGANIC WASTE COLLECTION SERVICE RATES					
(Available if additional capacity is needed above Recycling or Organics Compliance Service minimum)					
Subscription Level	Service Component	Disposal Component	Organics Component	Recycling Component	Monthly Rate
64 Gallon, 1x a week	\$38.39	\$0.00	\$21.61	\$0.00	\$60.00
64 Gallon, 2x a week	\$76.78	\$0.00	\$43.22	\$0.00	\$120.00
64 Gallon, 3x a week	\$115.17	\$0.00	\$64.83	\$0.00	\$180.00
64 Gallon, 4x a week	\$153.57	\$0.00	\$86.44	\$0.00	\$240.01
64 Gallon, 5x a week	\$191.93	\$0.00	\$108.05	\$0.00	\$299.98
64 Gallon, 6x a week	\$230.33	\$0.00	\$129.66	\$0.00	\$359.99
2 Yard, 1x a week	\$199.29	\$0.00	\$136.40	\$0.00	\$335.69
2 Yard, 2x a week	\$398.61	\$0.00	\$272.79	\$0.00	\$671.40
2 Yard, 3x a week	\$597.96	\$0.00	\$409.19	\$0.00	\$1,007.15
2 Yard, 4x a week	\$797.29	\$0.00	\$545.58	\$0.00	\$1,342.87
2 Yard, 5x a week	\$996.57	\$0.00	\$681.98	\$0.00	\$1,678.55
2 Yard, 6x a week	\$1,195.89	\$0.00	\$818.37	\$0.00	\$2,014.26

Collection Services Agreement

OTHER COMMERCIAL COLLECTION SERVICE RATES					
Service	Service Component	Disposal Component	Organics Component	Recycling Component	Monthly Rate
Extra Pick Up - Garbage	\$82.30	\$0.00	\$0.00	\$0.00	\$82.30
Lost, Stolen, or Burned Bin – 3CY	\$574.68	\$0.00	\$0.00	\$0.00	\$574.68
Lost, Stolen, or Burned Bin – 6CY	\$838.54	\$0.00	\$0.00	\$0.00	\$838.54
Lost, Stolen, or Burned Cart – 64-gal	\$46.49	\$0.00	\$0.00	\$0.00	\$46.49
Lost, Stolen, or Burned Cart – 96 gal	\$51.41	\$0.00	\$0.00	\$0.00	\$51.41
Cart Overage Fee	\$17.68	\$0.00	\$0.00	\$0.00	\$17.68
Bin Overage Fee	\$73.31	\$0.00	\$0.00	\$0.00	\$73.31
Temporary 3 Yard Garbage Bin one month with up to 4 collections	\$259.25	\$22.18	\$0.00	\$0.00	\$281.43
Temporary 3 Yard Garbage Bin - 7 day	\$167.37	\$5.12	\$0.00	\$0.00	\$172.49
Locking Lids	\$20.13	\$0.00	\$0.00	\$0.00	\$20.13
Commercial Set-up Fee/ Reactivation Fee	\$24.23	\$0.00	\$0.00	\$0.00	\$24.23
Bin Exchange	\$63.16	\$0.00	\$0.00	\$0.00	\$63.16
Replacement Lock	\$41.92	\$0.00	\$0.00	\$0.00	\$41.92
Replacement key	\$8.38	\$0.00	\$0.00	\$0.00	\$8.38
Pull-out service per bin 16-35 feet	\$18.33	\$0.00	\$0.00	\$0.00	\$18.33
Pull-out service per bin 36-50 feet	\$27.52	\$0.00	\$0.00	\$0.00	\$27.52
Pull-out service per bin over 51 feet	\$36.68	\$0.00	\$0.00	\$0.00	\$36.68
Return to Service	\$32.98	\$0.00	\$0.00	\$0.00	\$32.98
Insufficient Funds Fee (NSF)	\$25.00	\$0.00	\$0.00	\$0.00	\$25.00
Bin Cleaning Fee	\$63.16	\$0.00	\$0.00	\$0.00	\$63.16
Cart Cleaning Fee	\$29.72	\$0.00	\$0.00	\$0.00	\$29.72
Cart Contamination Fee	\$17.68	\$0.00	\$0.00	\$0.00	\$17.68
Bin Contamination Fee	\$82.88	\$0.00	\$0.00	\$0.00	\$82.88
Late Fees - 2.5% or \$5 minimum on balances over \$15.00					
Tax Roll Fees (MFD only) - 10% of unpaid balance per occurrence					

Collection Services Agreement

ROLL-OFF SERVICES					
Service	Service Component	Disposal Component	Organics Component	Recycling Component	Monthly Rate
40 Yard with 4 tons	\$432.97	\$170.72	\$0.00	\$0.00	\$603.69
Compactor - plus landfill tipping fee	\$427.83	\$0.00	\$0.00	\$0.00	\$427.83
40 Yard Permanent plus landfill tipping fees	\$331.41	\$0.00	\$0.00	\$0.00	\$331.41
10 Yard Permanent plus tipping fee	\$331.41	\$0.00	\$0.00	\$0.00	\$331.41
Roll-Off Recycle/per load	\$331.41	\$0.00	\$0.00	\$0.00	\$331.41
Delivery/Relocate/Trip Charge	\$120.96	\$0.00	\$0.00	\$0.00	\$120.96
Minimum Pull Fee (1 per month)	\$331.41	\$0.00	\$0.00	\$0.00	\$331.41
Industrial Set-up Fee	\$28.13	\$0.00	\$0.00	\$0.00	\$28.13

Collection Services Agreement

EXHIBIT 2

LIST OF RECYCLABLE MATERIALS

Recyclables must be dry, loose (not bagged), unshredded, empty, and include ONLY the following:

<ul style="list-style-type: none"> • Aluminum cans • PET bottles with the symbol #1 – with screw tops only • HDPE bottles with the symbol #2 (milk, water bottles, detergent, soaps, etc) • HDPE bottles with the symbol #5 (bottles and tubs) • Steel and tin cans • Glass food and beverage containers – brown, clear, or green • Plastic bags and bagged materials 	<ul style="list-style-type: none"> • Newspaper • Mail • Uncoated paperboard (cereal, food, snack boxes) • Uncoated printing, writing and office paper; telephone books • Uncoated old corrugated containers / cardboard • Magazines, glossy inserts and pamphlets, catalogs • Microwavable trays • Kraft brown bags, paper egg cartons
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Non-Recyclables include, but are not limited to the following:

<ul style="list-style-type: none"> • Porcelain and ceramics • Light bulbs • Soiled paper, including paper plates, cups and pizza boxes • Expanded polystyrene • Glass and metal cookware/bakeware • Hoses, cords, wires • Flexible plastic or film packaging and multi-laminated materials • Food waste and liquids, containers containing such items • Hazardous/Medical Waste or containers which contained such materials • Any paper Recyclable Materials or pieces of paper Recyclables Materials less than 4 inches in size in any dimension 	<ul style="list-style-type: none"> • Mirrors, window or auto glass • Coated cardboard • Plastics not listed above including but not limited to those with symbols #3, #4, #6, and #7, and unnumbered plastics including utensils • Coat hangers • Household appliances and electronics • Yard waste, construction debris, and wood • Needles, syringes, IV bags or other medical supplies • Textiles, cloth, or any fabric (bedding, pillows, sheets, etc.) • Napkins, paper towels, tissue, paper plates, and paper cups • Propane tanks, batteries
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Collection Services Agreement

EXHIBIT 3
LIST OF CITY FACILITIES

Facility Name	Location
1. A.C. Dysart Park	South end of 22 nd Street
2. Animal Shelter	2242 E. Charles Street
3. Armory	2041 W. Nicolet Street
4. Aquatic Center	749 N. San Gorgonio Avenue
5. Banning Municipal Airport	200 S. Hathaway Street
6. Chamber Building (Leased)	58 E. Ramsey Street
7. City Hall	99 E. Ramsey Street
8. City Yard Building	176 E. Lincoln Street
9. CNG Fueling / Joint Fueling Station	176 E. Lincoln Street
10. Corporate Warehouse	176 E. Lincoln Street
11. Fire Administration Building	3900 W. Wilson Street
12. Fire Station	172 N. Murray Street
13. Fire Station	5261 W. Wilson Street
14. Fleet Maintenance Building	176 E. Lincoln Street
15. Lions Park	995 S. Hargrave Street
16. Police Department	125 E. Ramsey Street
17. Police Department West	125 E. Ramsey Street
18. Repplier Park	201 W. George Street
19. Repplier Park Bowl	201 W. George Street
20. Richard Sanchez Park	3758 Cypress Street
21. Roosevelt Williams Park	1101 E. George Street
22. Senior Center	769 N. San Gorgonio Avenue
23. Sportsman Club / Shooting Range (Leased)	250 Mias Canyon Road
24. Streets Operations Yard (Collection Site)	2242 E. Charles Street
25. Sylvan Park	2798 W. George Street
26. Wastewater Treatment Plant	2242 E. Charles Street
27. Water Shop	3333 Bluff Road
28. San Gorgonio Parking Lot	39 S. San Gorgonio Avenue

Collection Services Agreement

EXHIBIT 4 CART AND BIN SPECIFICATIONS

1. Cart Specifications.

- 1.1. Carts must be designed and manufactured with heavy plastic in accordance with standard industry specifications approved by City.
- 1.2. Carts must be constructed with material that resists deterioration from ultraviolet radiation, and be incapable of penetration by household pets or small wildlife when lids are fully closed.
- 1.3. Carts must include wheels and handles that accommodate ease of movement by able-bodied persons.
- 1.4. Carts must include lids that continuously overlap the Cart body so as to prevent the intrusion of rainwater and minimize odors. The lids would be of a design and weight so as to prevent the Cart body from tilting backward when flipping the lid open.
- 1.5. Carts must be capable of being lifted into the collection vehicle without damage or distortion under normal usage.
- 1.6. Carts must be labeled using hot stamp or labels, and at a minimum will include Contractor's name and graphics indicating what materials may and may not be placed in each Cart type.
- 1.7. All references to Cart capacity in this Agreement are approximate. Capacity may vary +/- 10% depending on manufacturer.

2. Bin Specifications.

- 2.1. Bins must be constructed of heavy metal or heavy plastic, and must be watertight and well painted.
- 2.2. Wheels, forklift slots, and other appurtenances, which are designed for movement, loading, or unloading of the container, must be maintained in good repair.
- 2.3. Bins must have the name and phone number of Contractor on the exterior so as to be visible when the Bin is placed for use.
- 2.4. Each Bin must be labeled with a listing of materials that may and may not be placed in a particular Bin type, and each Bin must include a conspicuous warning: "Not to be used for the disposal of hazardous, electronic, or universal waste."

Collection Services Agreement

- 2.5. Bid lids must be constructed of metal or heavy plastic, so as to minimize the intrusion of rainwater and minimize odors.
- 2.6. Bins must be capable of being lifted into the collection vehicle without damage under normal usage.
- 2.7. Bins must have a lock as part of service as specified by City Ordinance. Locking bins will be provided to all customers at no additional charge.

3. Container Replacement Schedule.

Starting July 1, 2021, all new accounts, and request for Cart or Bin exchanges from existing accounts will be done with Carts or Bins that meet SB 1383 color and labeling compliance.

Service Recipient Carts or Bins will be replaced to ensure color and labeling compliance with SB 1383. Ten percent (10%) of customer accounts will be replaced annually to ensure City will be fully compliant by June 30, 2032.

Collection Services Agreement

EXHIBIT 5 DIVERSION AND SUSTAINABILITY WORK PLAN

Diversion Work Plan

This Diversion Plan describes Contractor's strategic approach to increase the City's overall diversion rate.

RESIDENTIAL SECTOR

Introductory Service Guidelines (annual collection service notice)

Contractor will update residential guideline kit that will be delivered to each home as part of the new contract. The service guideline will explain new programs, routing and proper cart usage (overage and contamination process and fees). The guideline will also communicate other services such as bulky item pick-ups, citywide cleanups, proper recycling services, and temporary bin services. Residential guideline will also be distributed to any new customers when a change in occupancy is noted.

Programs for Waste and Recycling Diversion The following programs will be performed on an ongoing basis throughout the term of the agreement:

Curbside Bulky Item Pick-up Residents receive three bulky item curbside pick-up services per year. 6 items per request. E-waste items may be collected as part of this program and count towards the 6 items.

Curbside Used Motor Oil Pick-up Residents can receive up to two gallons per month of used motor oil pick-up curbside.

Used Tire Collection Residents can receive up to 8 used tires per year curbside collection.

Christmas Tree Recycling Residents can dispose of their natural (no flocking, tinsel, decorations etc.) after two weeks commencing December 26 in effort to divert green waste.

Sharps Program- Residents will have opportunity to safely dispose of "sharps waste" generated at residential premises, through mail-based program. The first mail back container is free and additional containers will be available for a fee established from time to time by the Contractor

Residential Program to increase recycling and minimize contamination

Residential Notices. Residential carts will be tagged if the cart is identified as contaminated, overfilled or unacceptable waste. The program highlights multiple educational opportunities (2 occurrences) before contamination penalties are incurred.

Collection Services Agreement

EXHIBIT 5 DIVERSION AND SUSTAINABILITY WORK PLAN

Correspondence to customer will contain the following information:

- A listing of reasons why refuse or recyclables were left or will be left in the future.
- A listing of materials that are acceptable.
- A listing of materials that are not acceptable.
- A customer service number for contractor.
- Explanation of contamination fees.
- Household Hazardous Waste collection phone number.

Additional Community Wide Program to support Diversion Efforts

Community Clean-up Event Residents can participate in three (3) city-wide clean-up events in effort to divert waste and reduce illegal dumping. E-waste collection will be part of this event.

Community Shredding Day Residents can dispose of their paper documents three (3) times a year in effort to increase recycling and divert materials. Event will be in conjunction with the community cleanup events.

Residential Recycling Rewards Program Annually in celebration of America Recycles Day- Contractor with work with city staff to recognize a residential customer at a council meeting for being a model citizen by Recycling Often. Recycling Right.

Contractor will provide a gift along with a Recycling All Star Certificate

COMMERCIAL SECTOR

Annual communication notice

An annual communication notice will be sent to all commercial accounts providing information regarding waste and recycling services, recycling compliance support (site audits), and communication regarding overage and contamination reduction efforts to support increase recycling practices. Communication notice will also be distributed to any new commercial customer.

Contractor proposes to increase diversion from Commercial sources by:

1. Customized Commercial Recycling Programs and Consultative Services Contractor's Sustainability Representative (SR) serves as a business and environmental consultant to commercial customers to develop customized plans to improve recycling and waste education. In addition to completing free waste audits upon request, our SR provides a customized commercial recycling options to participating commercial customers to ensure compliance with state recycling mandates.

Collection Services Agreement

EXHIBIT 5 DIVERSION AND SUSTAINABILITY WORK PLAN

2. Additional efforts by Sustainability Representative. In each customer's customized commercial recycling options, Contractor's SR will make practical recommendations with consideration to space constraints, refuse collection practices and other factors. They will also evaluate the appropriate type, size and placement of recycling containers based on commercial site needs.
3. Execute AB 341/ AB 1826 Compliance Bundled Service Program Contractor's SR will work closely with City to coordinate efforts to have business and multi-family accounts (5+units) identified as not having a recycling program, comply with the approved compliance bundled service. This will require a coordinated effort to communicate the mandated service with the customer and deliver the recycling and/or organics carts.
 - AB 341 Compliance Status Reports Contractor will identify and report to the City annually the AB 341 compliance status of each business. Contractor's SR along with City Staff will work with each non-compliant business to establish programs. (*AB 341 defines "business" as any commercial entity, public entity such as a school or hospital, and multi-family dwelling of five (5) units or more.*)
 - Organic Materials / AB 1826 Compliance Status Reports Contractor will identify and report to the City annually any businesses impacted by AB 1826. Contractor's SR along with Staff will work with affected businesses to establish services that comply with the law.
 - Key Accounts As a part of Mandatory Commercial Recycling (AB 341) and Mandatory Commercial Organics Recycling (AB 1826) programs, City Staff in collaboration with Sustainability Representative will identify key accounts such as property managers, multi-family site managers, and major commercial and industrial properties and develop outreach efforts designed to engage greater participation in these State-mandated programs. These accounts will be representative of the top 10% waste generators in the City.
4. Commercial Outreach and Engagement Messages on Invoices Contractor will send recycling education messages in the invoices in effort to establish awareness and participation in recycling right and diverting from the landfill.

Commercial Program to increase recycling practices and minimize contamination

1. Contamination Program. Contractor will provide educational information to commercial businesses that are contaminating their recycling streams. Program is aimed to reduce contamination in commercial services by identifying contaminated bin and placing a notice with contaminants and serving the container as trash with a contamination charge implemented after two notices.

Collection Services Agreement

EXHIBIT 5 DIVERSION AND SUSTAINABILITY WORK PLAN

Sustainable Representative will perform education outreach by following up with customer, site visit (if requested) and providing educational material to on site staff to improve recycling practices and minimize contamination.

2. Overage Program. Contractor will identify commercial businesses that dispose of excess material on service day. Customer will receive notification of right sizing program in effort to reduce waste and identify potential recycling diversion. If practice continues, customer will receive overage fee.
3. Commercial Recycling Rewards Program Annually in celebration of America Recycles Day- Contractor will work with city staff to recognize a commercial customer at a council meeting for being a model business owner by Recycling Often. Recycling Right. Contractor will provide a gift basket along with a Recycling All Star Certificate
 - Food Recovery Program- Contractor will work to coordinate an incentive program to recognize commercial customers who select to work with local food recovery organizations.

INDUSTRIAL SECTOR

Contractor will increase diversion from the Industrial sector by:

- AB 341 Recycling Programs. (Previously described.)
- Organic Materials / Mandatory Commercial Organics Recycling Law. (Previously described.)
- Construction & Demolition Waste. All New Construction Accounts have access to our Builders Direct Program. This program is tailored to meet the needs of all contractors offering DART Reporting, Representative and direct operations contact.
 - Source-Separated Collection. Contractor will provide multiple containers on large job sites to enable developer/contractors to source-separate materials. Job sites with limited space might also source-separate material using containers phased to match the construction progress, i.e., rock, inerts, concrete & wood for demolition and flatwork phases, wood for framing phases, plastics & metals for plumbing, electrical & ducting phases, drywall for wall phases, carpet remnants, cardboard for HVAC, appliance and finish phases.

Mixed C&D Processing. Contractor will provide containers for mixed construction & demolition roll-off processing.

Collection Services Agreement

EXHIBIT 5 DIVERSION AND SUSTAINABILITY WORK PLAN

Sustainability Plan

ONGOING PROGRAMS

The following public education and outreach activities will be performed on an ongoing basis throughout the term of the contract.

Annual Sustainability Plan

Contractor will submit for review a comprehensive Sustainability Plan (Plan) for City approval no later than August 1 for the next Calendar Year. The Plan will incorporate AB 341, AB 1826, and SB 1383 to help City stay in compliance with these state mandates.

The Plan will include proposed education focused on service information and recycling guidelines for both residential and commercial customers. Schedule of when education material will be disseminated throughout the year, social media calendar, and community event participation.

- (1) Communication Collateral Various forms of literature will be distributed to the community annually. The collateral will remind residents what is accepted for recycling, advise them of holiday schedules, bulky waste pickup, Sharps Program, waste and recycling events, community events, and other special waste handling topics.
 - *Service Guide and Welcome Packet* will be updated to provide information regarding SB 1383- food waste collection program, cart audit and contamination/overage prevention program.
- (2) Annual Assessment of Education & Outreach Efforts Contractor staff will work cooperatively with the City to monitor the effectiveness of existing public education and outreach programs and to identify and develop new public education and outreach programs as might be necessary to meet diversion targets.
- (3) Community Events Contractor will provide waste and recycling services, at no charge, in a continuing effort to support City programs and events and to promote recycling awareness to the public. Contractor will coordinate with City to identify which special events will be attended.
- (4) Chamber, Civic Group Presentations Contractor will reach out to the local Chamber of Commerce and service organizations to work with these organizations to complete presentations to the business community about available services

Collection Services Agreement

EXHIBIT 5 **DIVERSION AND SUSTAINABILITY WORK PLAN**

and programs, education around state mandates (AB 341, AB1826, SB 1383) as well as the benefits of recycling services.

- (5) Marketing Resources Contractor will distribute video and images (social media education posts) geared towards residential and commercial customers annually to inform regarding special programs, recycling initiatives such as AB341. AB1826 and SB 1383 for city staff to incorporate in its traditional and social media platforms.
- (6) Social Media WM will use its presence on social media (Facebook, Twitter and Instagram) to provide real-time information about our local operations, enhance community conversations, promote recycling and engage more directly with customers and community organizations to address their questions.

Additional Contractor Education Tools

- (1) Local Banning Customer Website Contractor will update with new service offerings local customer website to inform the public about routing, services levels, program offerings (community cleanups, bulky waste collection, sharps program, etc.) proper cart usage, recyclable materials accepted, community events and information on environmental protection. Information will be updated on an on-going basis.
- (2) Residential & Commercial Invoice Inserts Bill inserts provide a simple and effective method to educate residents and commercial customers about service changes, recycling and sustainability programs, edible food recovery options, or other important information.
- (3) Recycling Rewards Program Annually in celebration of America Recycles Day- Contractor with work with city staff to recognize one residential customer and one commercial customer at a November council meeting for being model recyclers. Contractor will provide a gift along with a Recycling All Star Certificate.
 - *Food Recovery Program*- To incentivize commercial customers to work with food recovery organizations, Contractor will create an awards program similar to Recycling Rewards Program to recognize commercial customers that go the extra mile to donate food rather than dispose of it.
- (4) Recycle Right Contractor will use this site to educate residents, multi-family, and commercial businesses on important recycling topics, and to offer tools, such as posters,

Collection Services Agreement

EXHIBIT 5 **DIVERSION AND SUSTAINABILITY WORK PLAN**

recycling fact sheets and videos that can be used to support recycling practices. Contractor will use <https://www.wm.com/us/en/recycle-right> to educate the community more about the changing world of recycling, industry news and trends.

Outreach Material for City Facilities

Collateral Material Contractor will make available copies of collateral material created for city staff distribution at city facilities for both residential and commercial customers. Material will provide information regarding state recycling mandates, recycling services offered, C&D recycling information.

Collection Services Agreement

EXHIBIT 6 FORM OF PERFORMANCE BOND

Bond No.: 107393279
Effective: July 1, 2021

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, City of Banning, California, a municipal corporation ("City") has awarded to USA Waste of California, Inc., a Waste Management company ("Principal"), an exclusive franchise for the collection, processing, and disposal of residential solid waste generated within City; and

WHEREAS, the exclusive franchise, identified as "Franchise Agreement for Providing Residential and Commercial Solid Waste Services" ("Franchise Agreement") is incorporated by this reference; and

WHEREAS, the Principal is required under the terms of the exclusive franchise to furnish a bond for its faithful performance;

NOW, THEREFORE, we, Principal and Travelers Casualty and Surety Company of America as Surety, are held and firmly bound unto City in the penal sum of One Million Dollars (\$1,000,000.00), lawful money of the United States, for the payment of which we bind ourselves, our heirs, successors, executors, administrators, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the hereby bounded Principal, his, her or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the Franchise Agreement and any alteration thereof made as therein provided, on the Principal's part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

As part of the obligation secured hereby, and in addition to the face amount specified, costs and reasonable expenses and fees will be included, including reasonable attorneys' fees, incurred by City in successfully enforcing the obligation, all to be taxed as costs and included in any judgment rendered.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Franchise Agreement, the work to be performed thereunder, or

Collection Services Agreement

the specifications accompanying the Franchise Agreement will in any manner affect its obligations on this bond, provide the Surety is given timely written notice of any such change, extension of time, alteration, or addition to the terms of the Franchise Agreement, the work, or the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by the above-named Principal and Surety on July 1, 2021.

USA Waste of California, Inc.

(Type name of Principal)

17700 Indian Road

Moreno Valley, CA 92555

(Type address of Principal)

By: Jeff Bennett (Jun 9, 2021 15:31 EDT)

(Signature of authorized officer)

Jeff Bennett

Assistant Treasurer

(Title of officer)

Travelers Casualty and Surety Company of America

(Type name of Surety)

One Tower Square, Bond 5/BP

Hartford, CT 06183

(Type address of Surety)

By: Misty Wright

(Signature of authorized officer)

Misty Wright

Attorney-in-Fact

(Title of officer)

Collection Services Agreement

APPROVED AS TO FORM:


Kevin H. Ennis
CITY ATTORNEY

Note: This Bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached. DATE OF BOND MUST NOT BE BEFORE DATE OF CONTRACT. Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of Texas

County of Harris

On July 1, 2021 before me, Lucrecia Zamora, personally appeared Jeff Bennett who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

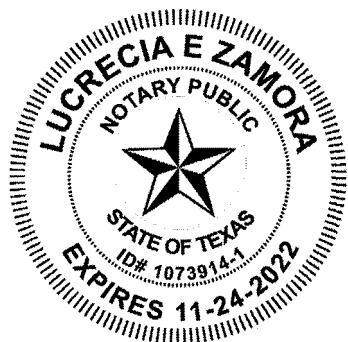
I certify under PENALTY OF PERJURY under the laws of the State of Texas that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Lucrecia E. Zamora

Signature _____

Signature of Notary Public



Aon Risk Services Southwest, Inc. dba
Aon Risk Insurance Services Southwest, Inc.
CA License# 0559715

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

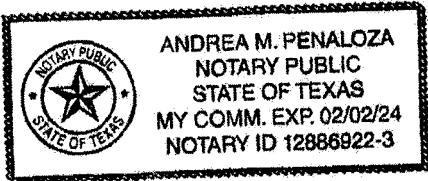
State of TEXAS

County of HARRIS

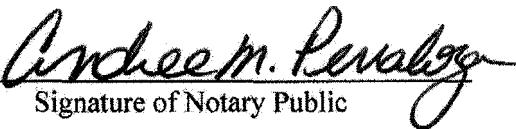
On July 1, 2021 before me, Andrea M. Penaloza, Notary Public, personally appeared Misty Wright who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Texas that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature

A handwritten signature in black ink that reads "Andrea M. Penaloza".

Signature of Notary Public

TRAVELERS

Travelers Casualty and Surety Company of America
 Travelers Casualty and Surety Company
 St. Paul Fire and Marine Insurance Company

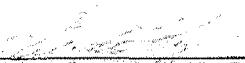
POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Misty Wright, of Houston, Texas**, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this 3rd day of February, 2017.



State of Connecticut

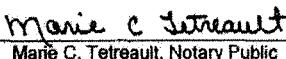
By: 
Robert L. Raney, Senior Vice President

City of Hartford ss.

On this the 3rd day of February, 2017, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the 30th day of June, 2021


Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognition, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognition, contract of indemnity, or writing obligatory in the nature of a bond, recognition, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this 1st day of July, 2021




Kevin E. Hughes, Assistant Secretary

*To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
 Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.*

EXHIBIT 7
FORM OF GUARANTY

THIS GUARANTY ("Guaranty") is given as of the 1 day of July 2021, and is made with reference to the following facts and circumstances:

A. USA Waste of California, Inc. ("Owner") is a corporation organized under the laws of the State of Delaware. Waste Management, Inc. ("Guarantor") is a corporation organized under the laws of the State of Delaware. Owner is an indirect wholly-owned subsidiary of Guarantor.

B. Owner and the City of Banning ("City") have negotiated an Agreement entitled Franchise Agreement for Providing Residential and Commercial Solid Waste Services ("Agreement").

C. It is a requirement of the Agreement that Guarantor guarantee Owner's performance of the Agreement.

D. Guarantor is providing this Guaranty and other considerations to induce City to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. **Guaranty of the Agreement.** Guarantor irrevocably and unconditionally guarantees to City the complete and timely performance by Owner of each and every term of the Agreement that Owner is required to perform. If Owner fails to perform any term of the Agreement, Guarantor will promptly and fully perform it in the place of Owner, or cause it to be performed. Guarantor also guarantees all obligations to City, including, without limitation, payment to City of any damages, costs, or expenses that might become recoverable by City from Owner due to its breach of the Agreement.

2. **Guarantor's Obligations are Absolute.** The obligations of Guarantor under this Guaranty are continuing, unconditional, and unlimited, and, with respect to any payment obligation of Owner under the Agreement, constitute a guarantee of payment and not of collection, and are not conditional upon the validity or enforceability of the Agreement. In any action brought against Guarantor to enforce, or for damages or breach of, its obligations under this Guaranty, Guarantor will be entitled to all defenses, if any, that would be available to Owner in an action to enforce, or for damages for breach of, the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).

Collection Services Agreement

3. Waivers. Guarantor has no right to terminate this Guaranty, or to be released, relieved, exonerated, or discharged from its obligations under this Guaranty for any reason, including, without limitation: (a) the insolvency, bankruptcy, reorganization, or cessation of existence of Owner; (b) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (c) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder, or the impairment or suspension of any of City's rights or remedies against Owner; or (d) any merger or consolidation of Owner with any other entity, or any sale, lease, or transfer of any or all the assets of Owner. Without limiting the generality of the foregoing, Guarantor waives the rights and benefits under California Civil Code Section 2819.

Guarantor waives all benefits and defenses under California Civil Code Sections 2846, 2849, and 2850, including, without limitation, the right to require City to (a) proceed against Owner; (b) proceed against or exhaust any security or collateral City may now or later hold; or (c) pursue any other right or remedy for Guarantor's benefit. Guarantor agrees that City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Owner, or any other guarantor or pledgor, and without proceeding against or exhausting any security or collateral City may now or later hold. City may, in its sole discretion, exercise all rights and remedies available to it against Owner, or any other guarantor or pledgor, without impairing City's rights and remedies in enforcing this Guaranty.

Guarantor expressly waives diligence, presentment, demand for payment or performance, protest, and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed under this Guaranty are paid or performed, Guarantor's obligations will continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from City as a preference, fraudulent transfer, or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Owner prior to such avoidance or recovery; and (b) payment in full of any obligations then outstanding.

4. Term. This Guaranty is not limited to any period of time, but will continue in full force and effect until all of the terms of the Agreement have been fully performed or otherwise discharged. Guarantor will remain fully responsible under this Guaranty without regard to the acceptance by City of any performance bond or other collateral to assure the performance of Owner's obligations under the Agreement. Guarantor will not be released from its obligations under this Guaranty so long as there is any claim by City against Owner arising out of the Agreement based on Owner's failure to perform, which failure has not been settled or discharged.

Collection Services Agreement

5. No Waivers. No delay by City in exercising any rights under this Guaranty, nor City's failure to exercise those rights, will operate as a waiver of those rights. No notice to or demand on Guarantor will be a waiver of any obligation of Guarantor, or right of City, to take other or further action without notice or demand. No modification or waiver of any provisions of this Guaranty will be effective unless it is in writing and signed by City and by Guarantor, nor will any waiver be effective except in the specific instance or matter for which it is given.

6. Attorneys' Fees. If Guarantor breaches its obligations under this Guaranty Guarantor will pay reasonable attorneys' fees, and all other reasonable costs and expenses that are incurred by City in enforcing this Guaranty, or that are incurred in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties under this Guaranty.

7. Governing Law: Jurisdiction. This Guaranty is and will be deemed to be a contract entered into under the laws of the State of California and will be governed and construed in accordance with the laws of California without regard to its conflicts of laws rules for all purposes including, but not limited to, matters of construction, validity, and performance. Guarantor agrees that any action brought by City to enforce this Guaranty may be brought in any court of the State of California, and Guarantor consents to personal jurisdiction over it by those courts solely for the purpose of any action brought by City to enforce this Guaranty. Guarantor appoints the following person as its agent for service of process in California:

The Corporation Trust Company
1209 Orange Street
Wilmington, DE 19801

With a copy by certified mail to:

Waste Management, Inc.
800 Capitol Street
Houston, TX 77002
Attn: General Counsel
GCLegal@wm.com

8. Severability. If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will not affect the remaining portions of this Guaranty, which portions are severable and will continue in full force and effect.

9. Binding On Successors. This Guaranty inures to the benefit of City and its successors and shall be binding upon Guarantor and its successors, including any transferee of substantially all of Guarantor's assets, and its shareholders in the event of Guarantor's dissolution or insolvency.

Collection Services Agreement

10. Authority. Guarantor represents and warrants that it has the corporate power and authority to give this Guaranty, that the execution of this Guaranty has been authorized by all necessary action under its articles of incorporation and by-laws, and that the person signing this Guaranty on its behalf has the authority to do so.

11. Notices. Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To City: City Manager
Banning City Hall
99 E. Ramsey Street
Banning, CA 92220

with a copy to the City Attorney at the same address.

To the Guarantor:

Waste Management, Inc.
800 Capitol Street
Houston, TX 77002
Attn: General Counsel
GCLegal@wm.com

IN WITNESS WHEREOF, THE FOREGOING IS EXECUTED AS OF THE DATE FIRST WRITTEN ABOVE.

WASTE MANAGEMENT, INC.
a Delaware corporation

By:



Authorized Representative

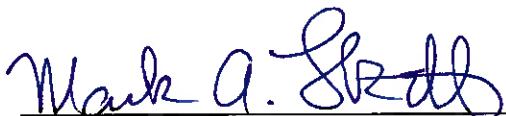
Title:

VICE PRESIDENT AND TREASURER

Date:

6/9/2021

By:



Authorized Representative

Title:

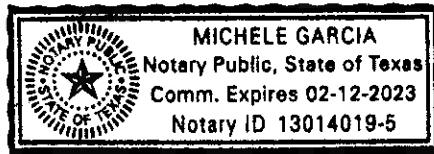
VICE PRESIDENT - TAX

Date:

6/9/2021

Collection Services Agreement

SIGNATURES TO BE NOTARIZED



Collection Services Agreement

EXHIBIT 8

SUBCONTRACTORS

Bulky Waste Collection Program:

FleetGenius

840 W Grove Ave, Orange, CA 92865

**Local team located at Waste Management's Moreno Valley Transfer Station*

Environmental Cleaning Services

Green Clean Pressure Washing LLC 1602 Shetland Cir. Norco, CA 92860

Community Cleanup Support Services:

E-Waste Collection

e-Recycling of California 8065 Marine Way Irvine, CA 92618

Paper Shredding

SHRED-IT,C/O STERICYCLE, INC. 5360 Goodman Road. Eastvale, CA 91752

Collection Services Agreement

EXHIBIT 9 APPROVED FACILITIES

Contractor has informed City that all Approved Facilities are either Publicly Owned or operated, or owned and operated by Waste Management or an Affiliate.

Operating Facility

Facility: Moreno Valley Hauling and Transfer Station

Owner: Waste Management

SWIS: 33-AA-0234

Location: 17700 Indian Rd., Moreno Valley, CA 92555

Disposal Facility:

Riverside County landfill system: July 2021 tipping fee: **\$42.68/ton**

Facility: El Sobrante Landfill

Owner: Waste Management

SWIS: 33-AA-0217

Location: 10910 Dawson Canyon Rd, Corona, CA 92883

Facility: Lamb Canyon Landfill

Owner: Riverside County

SWIS: 33-AA-0007

Location: 16411 Lamb Canyon Rd, Beaumont, CA 92223

Facility: Badlands Landfill

Owner: Riverside County

SWIS: 33-AA-0006

Location: 31125 Ironwood Avenue, Moreno Valley, CA 92553

Processing Facilities:

Commingled Recyclables July 2021 tipping fee: **\$53.00/ton**

Facility: Azusa Material Recycling Facility

Owner: Waste Management

SWIS: 19-AA-1127

Location: 1501 W. Gladstone St., Azusa, CA 91702

Collection Services Agreement

Greenwaste Facilities:

July 2021 tipping fee: **\$50.00/ton**

Facility: SoCal Landscape

Owner: Southern California Landscape Supply

SWIS: 33-AA-0326

Location: 17520 Bridge St, Moreno Valley, CA 92555

Commingled Organic Options in compliance with SB 1383

Commingled Organic Waste tipping fee: \$109.00/ton*

Facility: South Valley Organic Composting Facility

Owner: Waste Management

SWIS: 43-AA-0017

Location: 24487 Road 140 Tulare, CA 93274

*Starting January 2022