AGREEMENT

FOR THE PROVISION OF

SOLID WASTE COLLECTION SERVICES

Executed Between the

City of El Cerrito and East Bay Sanitary, Inc.

June 1, 2022
## TABLE OF CONTENTS

**Collection Services Agreement**

<table>
<thead>
<tr>
<th>Article</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Definitions</td>
<td>4</td>
</tr>
<tr>
<td>2</td>
<td>Term of Agreement</td>
<td>13</td>
</tr>
<tr>
<td>3</td>
<td>General Conditions</td>
<td>13</td>
</tr>
<tr>
<td>4</td>
<td>Contractor’s Compensation and Billing</td>
<td>20</td>
</tr>
<tr>
<td>5</td>
<td>Diversion</td>
<td>23</td>
</tr>
<tr>
<td>6</td>
<td>Residential Services</td>
<td>24</td>
</tr>
<tr>
<td>7</td>
<td>Commercial Services</td>
<td>28</td>
</tr>
<tr>
<td>8</td>
<td>Roll-off Services</td>
<td>32</td>
</tr>
<tr>
<td>9</td>
<td>City Services</td>
<td>32</td>
</tr>
<tr>
<td>10</td>
<td>Back-up Recycling Collection Services</td>
<td>34</td>
</tr>
<tr>
<td>11</td>
<td>Collection Routes</td>
<td>35</td>
</tr>
<tr>
<td>12</td>
<td>Minimum Performance Standards</td>
<td>35</td>
</tr>
<tr>
<td>13</td>
<td>Collection Equipment</td>
<td>37</td>
</tr>
<tr>
<td>14</td>
<td>Contractor’s Office</td>
<td>40</td>
</tr>
<tr>
<td>15</td>
<td>Support Services</td>
<td>42</td>
</tr>
<tr>
<td>16</td>
<td>Emergency Service</td>
<td>46</td>
</tr>
<tr>
<td>17</td>
<td>Record Keeping and Reporting Requirements</td>
<td>46</td>
</tr>
<tr>
<td>18</td>
<td>Nondiscrimination</td>
<td>47</td>
</tr>
<tr>
<td>19</td>
<td>Quality of Performance of Contractor</td>
<td>48</td>
</tr>
<tr>
<td>20</td>
<td>Performance Bond</td>
<td>49</td>
</tr>
<tr>
<td>21</td>
<td>Insurance</td>
<td>50</td>
</tr>
<tr>
<td>22</td>
<td>Hold Harmless and Indemnification</td>
<td>52</td>
</tr>
<tr>
<td>23</td>
<td>Default of Agreement</td>
<td>55</td>
</tr>
<tr>
<td>24</td>
<td>Modifications to the Agreement</td>
<td>57</td>
</tr>
<tr>
<td>25</td>
<td>Legal Representation</td>
<td>58</td>
</tr>
<tr>
<td>26</td>
<td>Conflict of Interest</td>
<td>58</td>
</tr>
<tr>
<td>27</td>
<td>Contractor’s Personnel</td>
<td>58</td>
</tr>
<tr>
<td>28</td>
<td>Exempt Waste</td>
<td>59</td>
</tr>
<tr>
<td>29</td>
<td>Independent Contractor</td>
<td>59</td>
</tr>
<tr>
<td>30</td>
<td>Laws to Govern</td>
<td>59</td>
</tr>
<tr>
<td>31</td>
<td>Consent to Jurisdiction</td>
<td>59</td>
</tr>
<tr>
<td>32</td>
<td>Assignment</td>
<td>59</td>
</tr>
<tr>
<td>Article</td>
<td>Section</td>
<td></td>
</tr>
<tr>
<td>---------</td>
<td>---------</td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>Compliance with Laws</td>
<td></td>
</tr>
<tr>
<td>34</td>
<td>Permits and Licenses</td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>Waiver</td>
<td></td>
</tr>
<tr>
<td>36</td>
<td>Prohibition Against Gifts</td>
<td></td>
</tr>
<tr>
<td>37</td>
<td>Point of Contact</td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>Notices</td>
<td></td>
</tr>
<tr>
<td>39</td>
<td>Transition to Next Contractor</td>
<td></td>
</tr>
<tr>
<td>40</td>
<td>Contractor’s Records</td>
<td></td>
</tr>
<tr>
<td>41</td>
<td>Entire Agreement</td>
<td></td>
</tr>
<tr>
<td>42</td>
<td>Severability</td>
<td></td>
</tr>
<tr>
<td>43</td>
<td>Right to Require Performance</td>
<td></td>
</tr>
<tr>
<td>44</td>
<td>Headings</td>
<td></td>
</tr>
<tr>
<td>45</td>
<td>Exhibits</td>
<td></td>
</tr>
<tr>
<td>46</td>
<td>Attorney’s Fees</td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Effective Date</td>
<td></td>
</tr>
</tbody>
</table>

- **Exhibit 1**: City Service Recipients
- **Exhibit 2**: Administrative Charges and Penalties
- **Exhibit 3**: Service Charges
- **Exhibit 4**: Annual Indexed Adjustment to Contractor’s Compensation
- **Exhibit 5**: Detailed Compensation Review
- **Exhibit 6**: Public Area Garbage and Organic Waste Collection Locations
- **Exhibit 7**: City Roll-off Service Facilities, Locations and Service Levels
- **Exhibit 8**: Reporting

Page 3 of 82
This Agreement is effective as of June 1, 2022 ("Effective Date"), and is between the City of El Cerrito, a
charter city of the State of California, referred to as "City" and East Bay Sanitary Co., Inc. referred to as
"Contractor". This Agreement supersedes all prior Agreements between the City and Contractor, with the
exception of the Street Sweeping Agreement, dated November 25, 2014.

Now, therefore, in consideration of the mutual covenants, agreements and consideration contained in this
Agreement, City and Contractor agree as follows:

**Article 1. Definitions**

For the purpose of this Collection Services Agreement, referred to as "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.

1.01 **AB 341.** “AB 341” means State of California Assembly Bill No. 341 approved October 5,
2011. AB 341 requires businesses, defined to include commercial or public entities that generate more
than 4 cubic yards of commercial Solid Waste per week or residential dwellings of five (5) units or more,
to arrange for Recycling services.

1.02 **AB 827.** “AB 827” means State of California Assembly Bill No. 827 approved October 02,
2019. AB 827 requires businesses that are mandated to recycle under AB 341 ("MCR") and/or mandated
to recycle Organic Waste under AB 1826 ("MOR") or SB 1383 and that provide customers access to the
business, to provide customers with a Recycling bin and/or Organic Waste collection bin for those waste
streams that is visible, easily accessible, and adjacent to each Garbage Container.

1.03 **AB 939.** “AB 939” or “The Act” means “The California Integrated Waste Management Act
of 1989” codified in part in Public Resources Collection §§ 40000 et seq, as it may be amended and as
implemented by the regulations of the California Department of Resources Recycling and Recovery
(CalRecycle), or its successor agency.

1.04 **AB 1594.** “AB 1594” means State of California Assembly Bill No. 1594 approved
September 28, 2014. AB 1594 provides that as of January 1, 2020, the use of Green Waste as Alternative
Daily Cover does not constitute diversion.

1.05 **AB 1826.** “AB 1826” means State of California Assembly Bill No. 1826 approved
September 28, 2014. AB 1826 requires each jurisdiction, on and after January 1, 2016, to implement an
Organic Waste recycling program to divert from the landfill Organic Waste from businesses. Each business
meeting specific Organic Waste or Solid Waste generation thresholds phased in from April 1, 2016, to
January 1, 2020, is required to arrange for Organic Waste recycling services.

1.06 **AB 3036.** “AB 3036” means State of California Assembly Bill No. 3036 approved
September 27, 2018. AB 3036 prohibits a County, City, District, or local government agency from
subjecting the hauling of certain byproducts from the processing of food or beverages to an exclusive
agreement, contract, license, or permit.
1.07 Agreement. “Agreement” means this written agreement between the City and the Contractor covering the work to be performed and all contract documents attached to the agreement and made a part thereof.

1.08 Agreement Administrator. “Agreement Administrator” means the Public Works Director, or designee, designated to administer and monitor the provisions of the Agreement.

1.09 Agreement Year. “Agreement Year” means each twelve (12) month period from May 1 to April 30 during the term of this Agreement.

1.10 Applicable Law. “Applicable Law” means all laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirement of any federal, state, county, city, and local governmental agency having jurisdiction over the collection and disposition of Garbage, Organic Waste, and Construction and Demolition Waste.

1.11 Assignee. “Assignee” means any person, company or corporation to whom the rights and obligations of this Agreement are transferred pursuant to Article 32.

1.12 Bin. “Bin” means a container designed or intended to be mechanically serviced by a commercial Collection Vehicle. It shall be designed to hold from one (1) to two (2) cubic yards of material with the lid properly closed.

1.13 Biohazardous or Biomedical Waste. “Biohazardous or Biomedical Waste” means any waste which may cause disease or reasonably be suspected of harboring pathogenic organisms; included is 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.


1.15 Calendar Year. “Calendar Year” means each twelve (12) month period from January 1 to December 31.

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

1.17 Cart. “Cart” means a receptacle with a rated capacity of at least twenty (20) and not more than sixty-four (64) gallons, having a hinged tight-fitting lid and wheels, that is provided by the Contractor, approved by the City, and used by Service Recipients for collection, accumulation, and removal of Solid Waste from commercial, industrial, or residential premises in connection with Collection Services.

1.18 CERCLA. “CERCLA” means 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 Control. “Change in Control” means when Mark Figone and/or Cara Figone and/or their lineal descendants shall cease to have the power, directly or indirectly, to control the management, operation and policies of the Contractor, whether through the ownership of a majority of voting securities, as trustee, by contract or otherwise.
1.20 **Change in Law.** “Change in Law” means any of the following events or conditions which has a material and adverse effect on the performance by either party of its obligations under this Agreement (except for payment obligations), or on the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, management operation or maintenance of the operating assets or providing the Collection Services or other matters to which Applicable Law applies:

A. the enactment, adoption, promulgation, issuance, modification, or written change of or in Applicable Law, including but not limited to new or adjusted fees and charges imposed by the State of California or the U.S. Federal government, directly related to the collection, handling, processing, Recycling or disposal of Garbage, Organic Waste, or C&D, or the enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation on or after Effective Date of any Applicable Law;

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

C. 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 the 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.

1.21 **City.** “City” means the City of El Cerrito, California.

1.22 **City Facility(ies).** “City Facility(ies)” means any building or other site owned or leased by the City.

1.23 **City Manager.** “City Manager” means the City Manager of the City of El Cerrito, or his or her designated representative, or any employee of the City who succeeds to the duties and responsibilities of the City Manager. All references in this Agreement to City Manager mean “City Manager or designee”.

1.24 **City Service Recipient.** “City Service Recipient” means any City Facilities that utilize Bins, Carts, or Roll-Off Containers for the accumulation and set-out of Solid Waste. City Service Recipients are the properties set forth in Exhibit 1 and may be modified by written notice to Contractor by the City.

1.25 **Collection.** “Collection” means the process whereby Residential, Commercial, Roll-off, and City Garbage, Organic Waste, and Construction & Demolition Waste are removed and delivered to a
Disposal Facility, Organic Waste Processing Facility, C&D Processing Facility, or other Solid Waste facility as appropriate.

1.26 **Container.** “Container” means a Bin, Cart, or Roll-Off Container that is approved by the Agreement Administrator for use by Service Recipients for Collection Services under this Agreement.

1.27 **Collection Services.** “Collection Services” means all services provided by this Agreement.


1.29 **Commercial Garbage.** “Commercial Garbage” means Garbage originating from Commercial Service Recipients.


1.31 **Commercial Service Recipient.** “Commercial Service Recipient” means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a Multi-Family Residential Dwelling, or as otherwise defined in 14 (CCR) Section 18982(a)(6). A Multi-Family Residential Dwelling that consists of five (5) or more units is a Commercial Business for purposes of this Agreement.

1.32 **Collection Vehicle.** “Collection Vehicle” means a licensed vehicle that is approved by the Agreement Administrator for use by Contractor for the collection and hauling of Garbage or Organic Waste.

1.33 **Compactor.** “Compactor” means any Container which has a compaction mechanism, whether stationary or mobile. Compactors are most typically Roll-off Containers but may also be Bins.

1.34 **Compost.** “Compost” means the product resulting from the managed and controlled biological decomposition of Organic Waste that is Source Separated from Garbage, or which is separated at a centralized facility.

1.35 **Composting.** “Composting” means the controlled and monitored process of converting Organic Waste into Compost.

1.36 **Construction and Demolition Waste or C&D.** “Construction and Demolition Waste” or “C&D” means Solid Waste consisting of waste building materials, packaging, and rubble resulting from construction, remodeling, repair and demolition operations on pavements, houses, Commercial buildings, and other structures.

1.37 **Construction and Demolition Waste (or C&D) Processing Facility.** “Construction and Demolition Waste Processing Facility” or “C&D Processing Facility” means a State permitted Solid Waste facility which accepts and processes C&D and designated by the City as the destination for C&D Collected pursuant to the terms of this Agreement.

1.38 **Contamination.** “Contamination” means all of the following: (i) materials placed in the Recycling Container that are not identified as acceptable Source Separated Recyclable Materials for the Recycling Container; (ii) materials placed in the Organic Waste Container that are not identified as acceptable Source Separated Organic Waste; (iii) materials placed in the Landfill Container that are
acceptable Source Separated Recyclable Materials or Organic Waste that can be placed in the Recycling Container and/or acceptable Source Separated Organic Waste; and (iv) Excluded Wastes placed in any Container, Bin, Cart or Compactor.

1.39 **Contractor.** “Contractor” means the entity that has obtained from the City this Agreement to provide Collection Services.

1.40 **Contractor’s Compensation.** “Contractor’s Compensation” means the compensation to Contractor via payment of Service Rates by Service Recipients as set forth in Section 4.01 and compensation for Service Charges as set forth in Exhibit 3.

1.41 **CPI All Other.** “CPI All Other” means the Consumer Price Index for All Urban Consumers: All Items in San Francisco-Oakland-Hayward, CA (CBSA), 1982-1984=100, Not Seasonally Adjusted (CUURA422SA0) published by the U.S. Bureau of Labor Statistics (“BLS”). If the index described in the preceding sentence is discontinued, the successor index with which it is replaced shall be used for subsequent calculations. If no successor index is identified by the BLS, the index published by BLS that is most comparable to the discontinued index shall be used.

1.42 **Dispose or Disposal.** “Dispose” or “Disposal” means the final disposition of Garbage at a permitted Landfill or other permitted Solid Waste Disposal Facility, as defined in California Public Resources Code 40192.

1.43 **Disposal Facility.** “Disposal Facility” means a State permitted Solid Waste facility which accepts Garbage for landfill Disposal and designated by the City as the destination for Garbage collected by Contractor pursuant to the terms of this Agreement.

1.44 **Edible Food.** “Edible Food” means food intended for human consumption, or as otherwise defined in 14 CCR Section 18982(a)(18). For the purposes of this Agreement or as otherwise defined in 14 CCR Section 18982(a)(18), Edible Food is not Solid Waste if it is recovered and not discarded. Nothing in this Agreement or in 14 CCR, Division 7, Chapter 12 requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code.

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

1.46 **Effective Date.** “Effective Date” means the date designated in the Agreement as the effective date. If no such date is indicated, it shall mean the date on which the Agreement is signed and delivered by the last of the parties to sign and deliver.

1.47 **Electronic Waste or E-Waste.** “Electronic Waste” or “E-Waste” means electronic equipment such as stereos, televisions, computers, VCR’s and other similar items.

1.48 **Excluded Waste.** “Excluded Waste” means hazardous substances, Hazardous Waste, infectious waste, designated waste, waste that is volatile, corrosive or infectious, medical waste, regulated radioactive waste, and toxic substances or material that facility operator(s), which receive materials from the City, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be disposed of in Class III landfills or accepted at the facility by permit
conditions, waste that in the City’s reasonable opinion would present a significant risk to human health or
the environment, cause a nuisance or otherwise create or expose the City to potential liability; but not
including de minimis volumes or concentrations of waste of a type and amount normally found in Solid
Waste after implementation of programs for the safe collection, processing, recycling, treatment, and
disposal of batteries and paint in compliance with Sections 41500 and 41802 of the Public Resources
Code. Excluded Wastes do not include used motor oil and filters, household batteries, Universal Wastes,
and/or latex paint when such materials are defined as allowable materials for collection through the City’s
collection programs and the Service Recipient has properly placed the materials for collection pursuant to
instructions provided by the Contractor.

1.49 **Exempt Waste.** “Exempt Waste” means Biohazardous or Biomedical Waste, Hazardous
Waste, sludge, 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.

1.50 **Food Waste.** “Food Waste” means all edible or inedible food such as, but not limited to,
fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, dairy, coffee grounds,
and eggshells. Food Waste excludes fats, oils, and grease when such materials are Source Separated
from other Food Waste. Food Waste includes food soiled paper, including paper plates, paper cups,
napkins, paper bags, and any other items as determined by the City.

1.51 **Franchise Fee.** “Franchise Fee” means a payment that Contractor has voluntarily agreed
to pay to City in consideration of the exclusive rights granted by the City under this Agreement. City and
Contractor acknowledge and agree that the amount of the Franchise Fee is the result of bona fide, arms-
length negotiations between City and Contractor. Contractor further acknowledges and agrees that the
amount of the Franchise Fee represents Contractor’s independent determination of the market value of
the exclusive rights granted by City under this Agreement based upon its knowledge of the amount of fees
paid by comparable businesses in the relevant geographic area for comparable exclusive rights.
Contractor is not required by this Agreement or any City ordinance, resolution, or regulation to charge the
Franchise Fee to Service Recipients. Because the Franchise Fee represents a cost to Contractor in
performing services pursuant to this Agreement, Contractor may, in its sole discretion, include an amount
equal to the Franchise Fee in Contractor’s Compensation.

1.52 **Garbage.** “Garbage” means those elements of the Solid Waste stream designated for
Disposal, and excludes Hazardous Waste, Universal Waste, Excluded Wastes, materials designated as
Organic Waste or for Recycling or materials which have been separated for Reuse.

1.53 **Garbage Collection Service.** “Garbage Collection Service” means the Collection of
Garbage from Service Recipients for delivery to a permitted Disposal facility.

1.54 **Green Waste.** “Green Waste” means Solid Waste consisting of any vegetative waste
generated from the maintenance or alteration of residential, commercial, or industrial premises including,
but not limited to, grass clippings, leaves, tree trimmings, prunings, brush, weeds, flowers, herbs, and
Holiday Trees.

1.55 **Gross Revenue.** “Gross Revenue” means all monetary amounts actually collected or
received by Contractor for the provision of Collection Services pursuant to this Agreement, excepting
326 revenues derived from Bin rentals as listed in the Contractor’s audited financial statements. Gross
327 Revenue shall include all receipts from Service Recipients including Service Rates, late charges,
328 Contamination charges, Overage charges, and all charges listed in Exhibit 3, including an amount equal
to the Franchise Fee, in the event that Contractor elects to include an amount equal to the Franchise Fee
329 in Contractor’s Compensation.
330
1.56 **Hazardous Waste.** “Hazardous Waste” means a waste, or combination of wastes as
defined by Code of Federal Regulations, Title 40.
331
1.57 **Holiday.** “Holiday” means Christmas Day and New Year’s Day.
332
1.58 **Household Hazardous Waste.** “Household Hazardous Waste” means that waste resulting
from products purchased by the general public for household use which, because of its quantity,
concentration or physical, chemical or infectious characteristics, may pose a substantial known or potential
hazard to human health or the environment when improperly treated, disposed or otherwise managed, or,
in combination with other Solid Waste, may be infectious, explosive, poisonous, caustic, toxic, or exhibit
any of the characteristics of ignitability, corrosivity, reactivity, or toxicity as per California Code of
Regulations Title 22, Division 4.5, Chapter 11, Section 66261.3
333
1.59 **Integrated Waste Management or IWM Fee.** “Integrated Waste Management Fee” or “IWM
Fee” means the fee set by resolution of the City Council and paid by Service Recipients for the City’s
provision of its integrated waste management services.
334
1.60 **Large Items.** “Large Items” means Solid Waste consisting of discarded White Goods,
furniture, tires, carpets, mattresses, and similar large items which do not fit in a regular Container and
require special handling due to their size but can be collected and transported without the assistance of
special loading equipment (such as forklifts or cranes) and without violating Collection Vehicle load limits.
It does not include abandoned automobiles and other vehicles, nor does it include items defined as Exempt
Waste.
335
1.61 **Non-Collection Notice.** “Non-Collection Notice” means 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.
336
1.62 **Organic Waste.** “Organic Waste” means Solid Waste containing material originated from
living organisms and their metabolic waste products, including, but not limited to Food Waste, Green
Waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with Food Waste, organic
textiles and organic carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids,
digestate, and sludges or as otherwise defined in 14 CCR Section 18982(a)(46).
337
1.63 **Organic Waste Collection Service.** “Organic Waste Collection Service” means the
338
1.64 **Organic Waste Processing Facility.** “Organic Waste Processing Facility” means a State
permitted Solid Waste facility which accepts and processes Organic Waste and designated by the City as
the destination for Organic Waste Collected pursuant to the terms of this Agreement.
339
1.65 **Overage.** “Overage” means excess Garbage and Organic Waste (i) placed inside a
Container that prevents the lid on the Container from being completely closed (i.e., lid remains open
greater than 45-degrees) or excess materials placed on top of or around a Container and (ii) could potentially result in excess materials spilling/dislodging during collection activity by Contractor’s Collection Vehicles.

1.66 Premises. “Premises” means any land or building in the City where Garbage or Organic Waste is generated or accumulated.

1.67 Recyclable Materials. “Recyclable Materials” means Solid Waste consisting of any material which retains useful properties and can be reclaimed after the production or consumption process.

1.68 Recycling. “Recycling” means the process of collecting, sorting, cleaning, reusing and marketing Recyclable Materials that would otherwise be disposed of in a landfill. The collection, transportation or disposal of Solid Waste not intended for, or capable of, recycling is not Recycling.


1.72 Residential Service Recipient. “Residential Service Recipient” means any Premises in the Service Area comprised of one (1) to four (4) dwelling units.

1.73 Residue. “Residue” means Solid Waste that is not diverted from landfill disposal after it has been delivered to an Organic Waste Processing Facility for processing for diversion from landfill disposal. Residue does not include Organic Waste that is processed for diversion but has no available markets.

1.74 Reuse. “Reuse” occurs when an item of the Solid Waste stream is reused in its manufactured form without reprocessing. Reusable materials include but are not limited to clothing, indoor and outdoor furnishings, clean fill dirt, architectural detailing, art and art supplies, books and antiques.

1.75 Roll-off Collection Service. “Roll-off Collection Service” means Collection Service provided by Contractor in Roll-off Containers.

1.76 Roll-off Container. “Roll-off Container” means a large container with a capacity of ten (10), twenty (20), thirty (30), or forty (40) cubic yards that is loaded onto a specialized Collection Vehicle.


1.78 SB 1383. “SB 1383” means Senate Bill 1383, the Short-lived Climate Pollutant Reduction Act of 2016.

1.79 SB 1383 Regulations. “SB 1383 Regulations” means or refers to, for the purposes of this Agreement, the Short-Lived Climate Pollutants: Organic Waste Reduction regulations developed by
CalRecycle and adopted in 2020 that created 14 CCR, Division 7, Chapter 12 and amended portions of regulations of 14 CCR and 27 CCR.

1.80 Service Area. “Service Area” means that area within the city limits of the City of El Cerrito designated by City as the Service Area.

1.81 Service Rate(s). “Service Rate(s)” means the maximum rates authorized by this Agreement, as confirmed by resolution of the City Council, and paid by Service Recipients to Contractor for provision of Collection Services. Service Rates are the means of payment of Contractor’s Compensation, which includes compensation for any and all expenses associated with delivery and tipping of Garbage at the Disposal Facility, Organic Waste at the Organic Waste Processing Facility, and C&D at the C&D Processing Facility.


1.83 Solid Waste. “Solid Waste” has the same meaning as defined in Public Resources Code Section 40191, which defines Solid Waste as all putrescible and nonputrescible solid, semisolid, and liquid wastes, including Garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semi-Solid Wastes, and other discarded solid and semi-Solid Wastes, with the exception that Solid Waste does not include any of the following wastes: Hazardous waste, as defined in the Public Resources Code Section 40141; Radioactive waste regulated pursuant to the State Radiation Control Law (Chapter 8 commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code); Medical waste regulated pursuant to the State Medical Waste Management Act (Part 14 commencing with Section 117600) of Division 104 of the Health and Safety Code). Untreated medical waste shall not be disposed of in a Solid Waste landfill, as defined in Public Resources Code Section 40195.1. Medical waste that has been treated and deemed to be Solid Waste shall be regulated pursuant to Division 30 of the Public Resources Code.

1.84 Source Separated. “Source Separated” means materials that have been kept separate from the Solid Waste stream, at the point of generation, for the purpose of additional sorting or processing in order to return them to the economic mainstream in the form of raw material for new, Reused, or reconstituted products, which meet the quality standards necessary to be used in the marketplace, or as otherwise defined in 14 CCR Section 17402.5(b)(4). For the purposes of this Agreement, Source Separated shall include separation of waste and materials into different containers for the purpose of complying with this Agreement.

1.85 Term. “Term” means the time period or duration of this Agreement.

1.86 Universal Waste or U-Waste. “Universal Waste” or “U-Waste” means hazardous wastes, including, but not limited to, electronic devices, fluorescent lamps, cathode ray tubes, instruments that contain mercury, batteries, and many other items, as determined by the California Department of Toxic Substance Control pursuant to the California Code of Regulations (Title 22 Universal Waste Rule).
1.87 **Waste Reporting System.** “Waste Reporting System” means an online/digital data system designed by the City for recording and documenting outreach, customer service, site visits, service levels, weights and volumes by waste stream, and field issues for compliance, and reporting purposes.

1.88 **White Goods.** “White Goods” means enamel-coated major appliances, such as washing machines, clothes dryers, hot water heaters, stoves, and refrigerators.

1.89 **Work Day.** “Work Day” means any day, Monday through Saturday, that is not a Holiday.

1.90 **Wood waste.** “Wood waste” means Solid Waste consisting of stumps, large branches, tree trunks, and wood pieces or particles that are generated from the manufacturing or production of wood products, harvesting, processing or storage of raw wood materials, or construction and demolition activities.

**Article 2. Term of Agreement**

2.01 **Term.** The term of this Agreement shall begin on June 1, 2022, and extend through May 31, 2032.

2.02 **Automatic Annual Extension of Term.** Provided that Contractor is in compliance with the terms and conditions of this Agreement, the Term shall be annually extended for one (1) additional Agreement Year on April 30, 2023, and on April 30 of each succeeding year.

2.03 **Notice of Non-Extension.** The automatic annual extension of Term described in Section 2.02 above may be terminated by either party in its sole discretion, without cause, by providing written notice to the other party (a “Notice of Non-Extension”) prior to such annual extension. Such Notice shall be effective on April 30 of the Agreement Year in which the Notice is provided and will only terminate the automatic annual extension described in Section 2.02.

2.03 An assignment of this Agreement pursuant to Article 32 shall automatically trigger the non-extension of the Term of this Agreement pursuant to Section 2.03 above, with the Notice of Non-Extension date being the same as the effective date of the assignment of the Agreement. The City may, in its sole discretion, allow the automatic annual extension of this Agreement to continue after an assignment of this Agreement. In the event that the City exercises its discretion to allow the automatic annual extension of this Agreement to continue, it shall provide written notice to the Assignee.

2.04 **Maximum Term.** Notwithstanding Section 2.02 above, the maximum Term of this Agreement shall be twenty-five (25) years through April 30, 2047.

2.05 **Extension to Maximum Term.** On or around May 1, 2036, and provided that Contractor is in compliance with the terms and conditions of this Agreement, the parties shall meet and confer in good faith to determine whether to extend to the maximum Term referenced in Section 2.04 above. In considering whether to extend the maximum Term, the parties shall also conduct a review of the Agreement to determine whether amended or new terms and conditions are needed.

**Article 3. General Conditions**

3.01 **Grant of Exclusive Agreement.** City hereby grants to Contractor, on the terms and conditions set forth herein, the exclusive right and privilege to collect, remove and dispose of, in a lawful manner, Garbage and Organic Waste accumulating in the City’s Service Area that are required to be
accumulated and offered for collection to the Contractor in accordance with the City’s Municipal Code, for
the Term of and within the scope set forth in this Agreement.

3.02 Exclusions to Exclusivity.

3.02.1 Specialized Materials. If Contractor is unable or unwilling to collect and process for
diversion of specialized materials, including, but not limited to, Organic Waste, metals, construction and
demolition debris, laboratory waste, pallets and others, and which a third party is able to re-use or recycle,
Service Recipients shall have the right to engage the third-party recycler to collect and recycle those source-
separated materials provided that the diversion is verified by the City and the third party obtains a City
business license.

3.02.2 Byproducts of Food and Beverage Processing. Under AB 3036 (2018), certain
byproducts from the processing of food or beverages from agricultural or industrial sources, provided they
are source-separated and used as animal feed, are exempted from this Agreement. Entities requesting
exemption must apply to the City and be any of the following: registered pursuant to Section 110460 of the
Health and Safety Code or be exempted from registration pursuant to Section 110480 of the Health and
Safety Code or be a beer manufacturer as defined in Section 23012 of the Business and Professions Code,
or a distilled spirits manufacturer, as defined in Section 23015 of the Business and Professions Code.

3.02.3 Donated Solid Waste. This Agreement shall not prohibit any Service Recipient
from donating Organic Waste or Large Items to youth, civic or charitable organizations qualified as such
pursuant to Federal law. Organic Waste or Large Items donated pursuant this section must be Source
Separated at a premises.

3.02.4 Gardening or Landscape Services. This Agreement shall not prohibit a gardening,
landscaping, or tree trimming company from removing Green Waste from a premises as an incidental part
of a total service offered by that company. This section shall not apply to removal of Green Waste from a
premises by a gardening, landscaping, or tree trimming company that is providing a hauling service
separately and not as an incidental part of a total service.

3.02.5 Sale or Donation of Organic Waste. This Agreement shall not prohibit any person
from selling Organic Waste or giving Organic Waste away to persons or entities other than Contractor.
However, in either instance: (1) the Organic Waste must be Source Separated from and not mixed with other
Solid Waste; and (2) the seller/donor may not pay the buyer/donee any consideration for collecting,
processing or transporting such Organic Waste. A discount or reduction in the price for collection, disposal
and/or Recycling services for any form of un-segregated or segregated Solid Waste is not a sale or donation
of Organic Waste and does not qualify for this exception. However, once Organic Waste has been placed in
the Container and the Container set out for Collection, the Organic Waste become the property of Contractor.

3.03 Contractor Payments to City.

3.03.1 Franchise Fee. Contractor shall pay the City a Franchise Fee equal to fifteen
percent (15%) of Gross Revenue. The amount of the Franchise Fee may be adjusted by mutual agreement
of the City and Contractor through a written amendment to this Agreement. Contractor shall make monthly
payments of the Franchise Fee to the City. Contractor shall calculate and pay the Franchise Fee based on
Gross Revenue received from Service Recipients. Contractor shall reconcile Franchise Fee payments to the
City for Gross Revenue received during the City’s fiscal year (July 1 through June 30) by August 30 of each
Calendar Year. In the event that the City and Contractor agree to an adjustment to the amount of the Franchise fee during the term of this Agreement, Contractor may, in its sole discretion, include an amount equal to the adjustment in Contractor’s Compensation.

3.03.2 Integrated Waste Management Fee. Contractor shall collect Integrated Waste Management Fees (IWM Fees) on its bills. The IWM Fees billed on Contractor’s bills shall be those set by City Council resolution. Contractor shall make monthly payments of collected IWM Fees to the City. Contractor shall pay IWM Fees based on IWM Fee payments received from Service Recipients each calendar month. Contractor shall reconcile IWM payments to the City for IWM Fee payments received from Service Recipients during the City’s fiscal year (July 1 through June 30) by August 30 of each Calendar Year.

3.03.3 Remittances. Franchise Fee and IWM Fees remittances to the City will be accompanied by a report, prepared in a format acceptable to City Manager, setting forth the basis, and calculations used for computing the amount paid to the City. The figures used shall be taken from the general books of account of the Contractor. All supporting documentation must be retained by the Contractor.

(a) If the Franchise Fee and IWM Fees remittances to the City are not paid by the date set by this Agreement, then in addition to the fees, the Contractor shall pay a penalty as specified in Exhibit 2, except to the extent that such lateness is due to uncontrollable circumstances, as defined in Section 19.06 of this Agreement.

(b) In addition, the Contractor shall pay interest on all unpaid fees at the rate of six (6) percent per annum or the prime (lending) rate, whichever is higher but not to exceed the maximum legal rate, from the date the fees were due and payable to the date actually paid.

(c) If the delay is due to uncontrollable circumstances, Contractor must request approval in writing from the City Manager at least ten (10) business days prior to the date on which fees and reports are due. City shall contact Contractor within five (5) business days of receiving request for submission delay as to whether delay shall be permitted.

3.03.4 Taxes and Utility Charges. The Contractor shall pay all Taxes lawfully levied or assessed upon or in respect of the operating assets or the Collection Services, or upon any part thereof of upon any revenues necessary for the operation of the operating assets and the provision of the Collection Services, when the same shall become due.

3.03.5 Disputes. In the event of any disputes between the Contractor and the City with respect to the fees described in Section 3.03, the City shall provide the Contractor with written objection within 365 days of the receipt of the remittance report described in Section 3.03.3, indicating the reason the report is disputed and providing all reasons then known to the City for its objection to or disagreement with such amount. If any such amount is adjusted in the City’s favor pursuant to agreement, mediation, legal proceeding, or otherwise, the Contractor shall pay the amount of such adjustment to the City, with interest pursuant to Section 3.03.3(b) above from the date such disputed amount was due to the City to the date of payment in full of such amount. Nothing contained in this subsection shall limit the authority of any authorized office of the City or any other governmental agency to raise a further objection to any amount billed by the Contractor pursuant to an audit conducted pursuant to Applicable Law. If the Contractor prevails in the dispute, the Contractor shall have the right to recover from the City the overage paid.
3.04 **Service Standards.** Contractor must perform all Collection Services under this Agreement in a thorough and professional manner while meeting the minimum performance and diversion standards included herein.

3.05 **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 always have sufficient backup equipment and labor to fulfill Contractor's obligations under this Agreement. No payment for Contractor's Collection Services or for Contractor's supply of labor, equipment, tools, facilities or supervision will be provided or paid to Contractor by any Service Recipient except as expressly provided by this Agreement.

3.06 **Holiday Service.** Contractor is not required to provide Collection Services or maintain office hours on Christmas Day and New Year's 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. Service Recipients subscribed to Saturday service would still receive Saturday service.

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

3.08 **Commingling of Materials.** Contractor may not at any time commingle Garbage, Organic Waste or C&D pursuant to this Agreement with any other material type Collected by Contractor, without the express prior written authorization of the Agreement Administrator.

3.09 **Contamination.** Contractor must offer Service Recipients the correct combination of Cart and Bin sizes and collection frequency beyond the minimum service requirements as necessary, that matches their unique service needs to reduce Contamination of Recyclable Materials and Organic Waste. Contractor is only required to collect Organic Waste if it has been separated by the Service Recipient from Garbage and Recyclable Materials. 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 Organic Waste are deemed to be contaminated, if, by visual inspection, Organic Waste is commingled with three percent (3%) by volume of Garbage or Recyclable Materials, then Organic Waste will be deemed to be contaminated and Contractor may take the following steps.

3.09.1 **First and Second Occurrence.** For the first and second occurrence within any one Calendar Year of Contamination for a particular container (i.e., Organic Waste), Contractor must collect the contaminated container (as Garbage) and must affix a City-approved Contamination Violation Notice that meets the requirements of 14 CCR Section 18995.1(a)(4) to the contaminated container which contains instructions on the proper procedures for sorting Organic Waste and Recyclable Materials. Contractor must also notify the Service Recipient by phone, U.S. mail, e-mail, and in person (which may be a container tag or door hanger), that for the third and subsequent incidents of excess Contamination, the Service Recipient may be charged a Contamination charge for the Collection of the contents of the contaminated Container per Exhibit 3 and Contractor may increase the Container size or require an additional Container. Contractor's representative must also contact the Service Recipient by phone, U.S. mail, e-mail, or in person (which may be a container tag) to ensure that they have the appropriate level of service for proper collection of Organic
Waste. Contractor must also document all Contamination issues in the Waste Reporting System and provide digital/visual documentation to the Service Recipient that clearly documents the Service Recipient’s on-going Contamination problems.

3.09.2 Third and Subsequent Occurrences. For the third and subsequent occurrence within any one Calendar Year of Contamination of Organic Waste, Contractor will provide a Contamination Violation Notice that contains instructions on the proper procedures for setting out Recyclable Materials or Organic Waste. Contractor must collect the contaminated Container as Garbage and may charge the Service Recipient a Contamination charge. For any Contamination charge being billed, Contractor must provide digital/visual documentation to the Service Recipient that clearly documents the Service Recipient’s on-going Contamination problems. Contractor may increase the Container size, require locking Containers, or increase collection frequency, and impose a Contamination charge on the account for a period of six months or until the Service Recipient has demonstrated no Contamination for a period of three consecutive months.

3.09.3 Tracking Occurrences of Contamination. Each Contamination occurrence is tracked annually per Calendar Year, and resets at the start of each Calendar Year if Contamination occurrences are not active and consecutive. Where Contamination is occurring, and occurrences are consecutive and unremedied, their count shall continue across Calendar Years until remedy occurs. In this case, once a Service Recipient has demonstrated no Contamination for a period of three consecutive months the tracking calendar will reset.

3.09.4 Disputes Over Contamination Charge. If a Service Recipient disputes a Contamination charge (which must be within 30 days of them being charged), Contractor will temporarily halt any Contamination charge and/or increased Container size and/or collection frequency and Contractor may request a ruling by the Agreement Administrator to resolve the dispute. During the pendency of any request, Contractor may restore Container size, quantity, or collection frequency to the prior levels. A request by Contractor to the Agreement Administrator to rule on any such dispute must be filed within ten (10) Business Days of Contractor’s halting of Contamination charge and must include written documentation and digital/visual evidence of ongoing overall problems. The Agreement Administrator may request a meeting (in person or video conference 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 (10) Business Days, and the decision on resolving the dispute between Contractor and Service Recipient will be final. If the ruling is in favor of the Service Recipient, Contractor will credit the disputed Contamination charges. If the ruling is in favor of Contractor, Contractor may charge Service Recipient the prior halted Contamination charge resulting from increasing the Container size or collection frequency.

3.10 Overage and Correction Procedures. Contractor shall provide the Service Recipients the correct combination of Containers and collection frequency that matches each Service Recipient’s unique service needs to enable clean, efficient, and cost-effective collection of Garbage and Organic Waste. City and Contractor agree that overflow of Garbage or Organic Waste that is not properly in the Service
Recipient’s Containers may negatively impact public health and safety. If a Service Recipient is found to habitually overflow Container(s), i.e., lid will not close, Contractor may take the steps as listed below to correct Service Recipient’s on-going overflow of material.

3.10.1 Prior Arrangements. If a Service Recipient has made prior arrangements with Contractor for collection of Garbage or Organic Waste Overages, Contractor must collect such Overages as arranged, and may bill the Service Recipient an Overage charge as set forth in Exhibit 3.

3.10.2 No Prior Arrangements. If a Service Recipient has not made prior arrangements with Contractor for collection of an Overage, (i) Contractor may collect such Overage at no additional charge as a courtesy, (ii) Contractor may not collect the Overage and leave a Non-Collection Notice explaining the reason for non-collection of the Overage, or (iii) Contractor may collect the Overage and charge the Service Recipient an Overage charge.

3.10.3 Disputes Over Container Overage Charges. Any disputes regarding Overage charges shall follow the same process as for Contamination charges, as described in Section 3.09.4, above.

3.11 Ownership of Materials. Except as provided otherwise under Applicable Law, title to Garbage and Organic Waste will pass to Contractor at such time as said materials are set out for Collection.

3.12 Ownership of Carts and Bins. Ownership of Garbage and Organic Waste Carts and Bins shall rest with Contractor, except that ownership of Carts and Bins in the possession of a Service Recipient at the expiration of this Agreement shall rest with City. At the time of transfer of such Carts and Bins, Contractor will be reimbursed for the net book value of Garbage and Organic Waste Carts and Bins being transferred. Ownership of Recyclable Material Carts shall rest with the City. At its sole discretion, City may elect not to exercise its rights with regards to this Section and in such case the Carts shall remain the property of Contractor upon termination of this Agreement. In this event Contractor shall be responsible for removing all Carts and Bins in service from the Service Area and reusing or Recycling the Carts and Bins.

3.13 Container Cleaning. Contractor shall provide for cleaning of Containers, including Carts, Bins, and Roll-off Containers as requested by Service Recipients or the City per the charges listed in Exhibit 3. There shall be no cost to the City for the cleaning of containers in use at City facilities.

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

3.14.1 Contractor is not responsible for cleaning up sanitary conditions caused by the carelessness of the Service Recipient; however, Contractor must clean up any material or residue that is spilled or scattered by Contractor or its employees.

3.14.2 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 absorbent material and removed from the street surface. Contractor must document spillage and notify City’s stormwater compliance coordinator within two (2) hours of any spills resulting from Contractor’s operations or equipment.
When necessary, Contractor must apply a suitable cleaning agent and cleaning technique to the street surface to provide adequate cleaning as approved by the City’s stormwater compliance coordinator to be compliant with the City’s stormwater permit.

3.14.3 The above paragraphs notwithstanding, Contractor must clean up any spillage or litter caused by Contractor within two (2) hours upon notice from the City. If City deems necessary, Contractor must engage third-party environmental clean-up specialist to remove any equipment oil, hydraulic fluids, or any other liquid or debris that remains on street after Contractor’s own clean-up efforts. If clean-up is not conducted to satisfaction of City, City has right to engage environmental clean-up specialist to perform additional clean-up work at the expense of Contractor.

3.14.4 In the event where damage to City streets is caused by a hydraulic fluid spill (i.e., any physical damage in excess of a simple cosmetic stain caused by the spill), Contractor shall be responsible for all repairs to return the street to the same condition as that prior to the spill. Contractor shall be responsible for all clean-up activities related to the spill. Repairs and clean-up shall be performed in a manner satisfactory to the City and at no cost to the City.

3.14.5 To facilitate immediate cleanup, Contractor’s Collection Vehicles must always carry sufficient quantities of absorbent materials along with a broom and shovel.

3.15 Regulations and Record Keeping. Contractor must comply with emergency notification procedures required by applicable laws, regulatory requirements, and other sections of this Agreement. All records required by regulations must be maintained at Contractor’s office.

3.16 Additions and Deletions. Contractor must provide Collection Services described in this Agreement to new Service Recipients in Contractor’s Service Area within five (5) Work Days of receipt of notice from the new Service Recipient or the City to begin such Service.

3.17 Annexation. If during the term of this Agreement, additional territory within or adjacent to the 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 set forth in this Agreement. Such Collection Services must begin within five (5) Work Days of receipt of written notice from City, subject to Collection Container availability. Contractor may not begin Collection Service without written authorization from City.

3.18 Section 18988.1 and 18988.2 Compliance. Contractor is responsible for delivery of all Garbage, Organic Waste and C&D to properly permitted Disposal Facilities, transfer stations, Organic Waste Processing Facilities, and C&D Processing Facilities as designated by the City. Failure to comply with this provision will result in the levy of an Administrative Charge or Penalty as specified in Exhibit 2 and may result in Contractor being in default under this Agreement. Contractor shall comply with its obligations under this Agreement and the obligations that by operation of law are imposed upon it directly pursuant to the SB 1383 Regulations.

3.19 Organic Waste Processing Facility. Contractor must deliver all Organic Waste Collected pursuant to this Agreement to a fully permitted Organic Waste Processing Facility that has been selected by the City. All expenses related to Organic Waste processing will be the sole responsibility of Contractor. Failure to comply with this provision constitutes default under this Agreement. City has the right to designate the Organic Waste Processing Facility and Contractor’s Compensation shall be adjusted to reflect any
increase or decrease in Contractor’s costs resulting from the City’s exercise of flow control rights. Contractor
must ensure that the Organic Waste Collected pursuant to this Agreement is not delivered to a Disposal
Facility.

3.20 Disposal Facility. Except as set forth below, all Garbage Collected as a result of performing
Garbage Collection Services must be transported to, and disposed of, at the Disposal Facility that has been
selected by the City. All expenses related to Garbage Disposal are responsibility of Contractor. Failure to
comply with this provision constitutes default under this Agreement. City has the right to designate the
Disposal Facility and Contractor’s Compensation shall be adjusted to reflect any increase or decrease in
Contractor’s costs resulting from the City’s exercise of flow control rights.

Article 4. Contractor’s Compensation and Billing

4.01 Contractor’s Compensation. Contractor shall be due an annual Contractor’s Compensation
for provision of Collection Services, which Contractor shall retain from its collection of Service Rates for
Collection Services. Contractor’s Compensation amount shall be calculated annually in accordance with
Section 4.02 and Exhibit 4 to this Agreement. Annual Contractor’s Compensation set per Exhibit 4 shall
also be adjusted annually per a balancing adjustment calculated based on over or under collection of
revenues from collection of Service Rates for Collection Services compared to Contractor’s Compensation
as set for such Calendar Year. For example, adjusted Contractor’s Compensation as set for Calendar Year
2020 was $4,764,353 and Contractor’s collection of revenues from Services Rates for Collection Services
during Calendar Year 2020, based on Contractor’s audited financial statement, was $4,866,026, yielding
over-collection of revenues from Service Rates for Collection Services of $101,673. That over-collection
was credited to Contractor’s Compensation as set for Calendar Year 2022 (calculated per the methodology
in Section 4.02 and Exhibit 4 to be $5,070,115) yielding an adjusted Contractor’s Compensation of
$4,968,441 due to Contractor in 2022. Contractor’s Compensation for Calendar Year 2023 would likewise
be calculated based on 2022 Contractor’s Compensation of $5,070,155 times the Annual Indexed
Adjustment per Section 4.02 and Exhibit 4, plus the difference between the 2021 adjusted Contractor’s
Compensation of $4,717,975 and the actual Service Rate Revenue for Collection Services for Calendar
Year 2021 per the Contractor’s audited financial statements. Example calculation table for annual
Contractor’s Compensation and adjustments is shown below.

<table>
<thead>
<tr>
<th>Percentage Increase to Contractor’s Compensation (Per Section 4.02)</th>
<th>2020</th>
<th>2021</th>
<th>2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>EBS Annual Revenue Requirement for Garbage and Organic Waste Collection and Franchise Fees</td>
<td>$ 4,867,115</td>
<td>$ 4,946,936</td>
<td>$ 5,070,115</td>
</tr>
<tr>
<td>Under (Over) Balancing From 2 years prior</td>
<td>$(102,763)</td>
<td>$(228,961)</td>
<td>$(101,673)</td>
</tr>
<tr>
<td>Adjusted Contractor’s Compensation after Over (Under) Balancing</td>
<td>$ 4,764,353</td>
<td>$ 4,717,975</td>
<td>$ 4,966,441</td>
</tr>
<tr>
<td>Service Rate Revenue for Collection Services per Contractor’s Audited Financial Statements</td>
<td>$ 4,866,026</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Actual Revenues Over (Under) Adjusted Contractor’s Compensation</td>
<td>$ 101,673</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
4.02 Annual Indexed Adjustment to Contractor’s Compensation. Beginning on January 1, 2023, and annually thereafter, Contractor shall, subject to compliance with all provisions of this Section, be eligible for an annual adjustment to Contractors’ Compensation via an Indexed Adjustment calculated in accordance with Exhibit 4 to this Agreement. On or before October 1, 2022, and annually thereafter during the Term of this Agreement, Contractor shall deliver to City its application for adjustment to its Compensation, including required financial information and the calculated Indexed Adjustment to Contractor’s Compensation. Such financial information shall be in the format as may be mutually agreed on between the City and Contractor. Contractor’s failure to provide the financial information shall not preclude the City from applying the Indexed Adjustment using the prior year’s financial data, or pro forma data if no prior year financial data is available, if that application would result in a negative adjustment to Contractor’s Compensation. If Contractor fails to submit the financial information required by October 1, the City at its sole and reasonable discretion, may consider a late request for the Indexed Adjustment.

4.03 Detailed Compensation Review. City reserves the right to conduct a detailed review of Contractor’s Compensation no more frequently than every three years. Contractor reserves the right to request a detailed Contractor’s Compensation review if variance arises in total actual costs as compared to total indexed costs by greater than 5% in any year. The methodology to be followed, including allowable and non-allowable expenses and expense limitations, is included in Exhibit 5. Contractor shall pay the cost of the review that will be an allowable expense to be recovered during the following year and then removed from Contractor’s Compensation.

4.04 Extraordinary Adjustment to Contractor’s Compensation. If a Change in Law occurs after the Effective Date that City and Contractor agree increases Contractor’s allowable costs of operation, then City and Contractor shall negotiate in good faith a reasonable and appropriate adjustment to Contractor’s Compensation sufficient to offset Contractor’s increased allowable costs of operation resulting from the Change in Law. As an exception to the preceding sentence, Contractor shall not be entitled to an adjustment in Contractor’s Compensation with respect to the first $50,000 of increased costs incurred by Contractor resulting from the Change in Law. The Parties may negotiate and agree on the amount of Contractor’s Compensation adjustment pursuant to this Section 4.04 without a Detailed Compensation Review pursuant to Section 4.03. Contractor shall bear the burden of justifying to City any adjustment due to a Change in Law and shall bear its own costs of preparing its request for an adjustment and supporting documentation. City may request from Contractor such further information as it reasonably deems necessary to fully evaluate Contractor’s request and make its determination whether Contractor has satisfied its burden, which determination shall not be unreasonably withheld. City shall notify Contractor of its determination within ninety (90) calendar days of receipt of the written request and all other additional information reasonably requested by City. Any such change will be implemented on the following January 1st, or within any other time frame agreed upon between City and Contractor. The City Council shall consider Contractor’s request and, based upon the information submitted, confirm whether the adjustment in Contractor’s Compensation has been justified as necessary to offset Contractor’s increased allowable costs of operation resulting from the Change in Law. The adjustment shall be memorialized in a written amendment to this Agreement.

4.05 Performance Standards for Adjustments to Contractor’s Compensation. To be eligible for an Indexed Adjustment to Contractor’s Compensation under Section 4.02, a detailed Compensation
adjustment under Section 4.03, or an extraordinary adjustment under Section 4.04, Contractor must cure
any material default under Article 23 of this Agreement for which City has provided notice to Contractor.

4.06 Billing and Collection Services. Contractor may bill Service Recipients up to the maximum
Service Rates authorized by this Agreement, as confirmed by City Council resolution, and other charges
per Exhibit 3. Contractor is responsible for the billing and collection of payments for all Service Rates, IWM
Fees, and other charges.

4.06.1 Production of Invoices. The Contractor shall prepare, mail or electronically
transmit, and collect bills (or shall issue written receipts for cash payments) for services under this
Agreement in advance but no less than three (3) times per year. Billing shall not be permitted more than 15
days prior to the initiation of collection service period. Bills shall not be subject to late notification or charges
until 30 days following the closing day of the service period. Contractor shall include e-mail address on all
billing notices and shall accept payment by check, credit card or electronic fund transfer, with no fees
payable by the Service Recipient or bill payor. Contractor shall make credit card or electronic fund transfer
payment known and available on its website and on all paper or electronic bills. Billings shall include
sufficient space on the statement to accommodate up to 35 typed characters as specified by the City. 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 (where the account is closing or
as selected by the Service Recipient, and where the refund amount exceeds the lesser of the regular
invoicing amount or $200) within thirty (30) days of such determination.

4.06.2 Delinquent Service Accounts. Contractor shall be entitled to payment of Service
Rates and IWM Fees, and other charges from the Service Recipients. In the event of nonpayment from a
Service Recipient, the Contractor may temporarily stop collection as of the second scheduled collection
day after the payment due date until payment has been secured, or until the City Manager authorizes a
waiver or exemption from Collection Services as provided for in the City’s Municipal Code. Prior to stopping
Collection Services, the Contractor shall individually notify the Service Recipient in writing or by phone that
service will be stopped if payment is not secured. If payment is not secured after thirty (30) days from the
payment due date, the Contractor shall notify the City Manager in writing of the failure to pay and the date
that Collection Service was stopped. Upon notification, the City Manager will investigate whether the lack
of Collection Service constitutes a nuisance as defined in Chapter 8.34 of the City’s Municipal Code or
whether a waiver or exemption from Collection Service as provided for in the Municipal Code is allowable.
The City Manager may require the Contractor to continue to provide Collection Services for occupied
residences or businesses and may pursue nuisance abatement pursuant to Chapter 8.34 of the City’s
Municipal Code. Any cost recovery of abatement costs, as authorized pursuant to Chapter 8.34 of the City’s
Municipal Code, shall not be recoverable by recording a lien or special assessment against the parcel of
land on which the nuisance is or was maintained. Contractor shall provide the City with, and shall post on
its website, a written procedure through which a Service Recipient may contest billings.

4.06.3 Contractor must report to the Agreement Administrator, bi-monthly, all Service
Recipients who have received Collection Service and whose account is over ninety (90) days past due. The
Contractor may discontinue service to a Service Recipient who is delinquent in paying for Collection
Services rendered no earlier than 60 days after the last day of the billing period or that date on which the
billing for the service period is delivered to the Service Recipient, whichever is later. For this purpose,
delivery of the billing shall include the date such billing is deposited by to Contractor into the U.S. Mail or
delivered electronically. The Contractor shall notify the Service Recipient and the City Manager in writing
of its intent to discontinue service not less than 10 business days before such discontinuation shall occur.

4.07 Service Rates. Contractor’s Compensation is paid to Contractor solely based on collection
of Service Rates from Service Recipients. The City and Contractor will annually meet and confer to prepare
recommended adjustments to Service Rates that will meet the Contractor’s Compensation for the coming
Calendar Year. The adjustments to the Service Rates are subject to consideration by the City Council to
confirm that they are consistent with this Agreement and meet the Contractor’s Compensation for the
following Calendar Year. The City Council’s determination regarding the proposed adjustments to the
Service Rates will be made by resolution of the City Council.

4.08 Procedures in Event of Invalidation of Adjustments to Service Rates. In the event that City
is unable by operation of Applicable Law to confirm a proposed adjustment to the Service Rates, or some
or all of the Service Rates are disallowed by operation of Applicable Law, Contractor will have the right,
within thirty (30) days after notice of any such inability to confirm or invalidation of a Service Rate
adjustment, to request, in writing, that City negotiate in good faith regarding alternative adjustments to
Service Rates and reductions in programs, services, or fees to compensate for any negative impact from
the unconfirmed or invalidated Service Rate adjustment. 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, either party may terminate this Agreement no earlier than one hundred and eighty (180) days after
written notice to the other.

Article 5. Diversion

5.01 Warranties and Representations. Contractor warrants that it is aware of and familiar with
City's Solid Waste system, and that it has the ability to provide sufficient programs and Collection Services
designed to ensure City will meet or exceed the diversion requirements as set forth in this Article 5, as well
as the diversion requirements of the Applicable Laws (including, without limitation, amounts of Solid Waste
to be diverted, time frames for diversion, and any other requirements) (including AB 939, AB 341, AB 1826,
AB 1594, SB 1016, and SB 1383, and all amendments and related subsequent legislation), and that it will
do so within Contractor’s Compensation as stipulated in this Agreement.

5.02 Mutual Cooperation. City and Contractor will reasonably cooperate in good faith with all
efforts by each other to meet City's diversion and other compliance requirements imposed by AB 939, AB
341, AB 1826, AB 1594, SB 1016, and SB 1383 and other Applicable Laws, and to meet Contractor’s
obligations under this Article 5. 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 goals, or other exceptions from the terms of Applicable Laws, and to agree to authorize such
changes to Contractor's Organic Waste, or Garbage programs as may be reasonably requested by
Contractor in order to achieve the minimum requirements of this Article 5.

5.03 Guarantee. Except for programs currently required by Applicable Law but not set forth in
this Agreement, or programs Contractor is expressly instructed by City not to implement, or Collection
Services which a Service Recipient refuses to accept, Contractor shall implement the diversion programs
set forth in this Agreement such that: (i) Contractor and City will at all times be in compliance with the
requirements of the Applicable Laws applicable to them including specifically AB 939, AB 341, AB 1826,
AB 1594, SB 1016, and SB 1383, and (ii) City will meet or exceed the diversion requirements (including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements) set forth in this Article 5 and the Applicable Laws including AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383, and all amendments thereto. In this regard Contractor agrees that it will, in addition to any other Agreement requirement, at its sole cost and expense:

5.03.1 Assist City in responding to inquiries from CalRecycle or any other regulatory agency.

5.03.2 Assist City in applying for any extension, including under Public Resources Code section 41820, if so directed by City.

5.03.3 Assist City in any hearing conducted by CalRecycle, or any other regulatory agency, relating to City's compliance with the Applicable Laws including AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383.

5.03.4 Provide City with other technical assistance as may be needed to comply with the Applicable Laws including AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383.

5.03.5 Be responsible for and pay any fees, fines, penalties or other costs imposed against City by CalRecycle, and indemnify and hold harmless City from and against any fines, penalties, or other liabilities, levied against it for violation of the diversion requirements, set forth in the Applicable Laws, including AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383, or for violation of any other provision of the Applicable Laws, arising from or in any way related to Contractor's performance of its obligations under this Agreement, provided, however, that all of Contractor’s obligations under this Article 5 shall be subject to the provisions of Section 40059.1 of the Public Resources Code.

Article 6. Residential Services

6.01 Conditions of Service. Except as set forth below, Contractor must provide Residential Collection Services to all Residential Service Recipients in the Service Area. Residential Collection Services are governed by the following terms and conditions.

6.02 Weekly Service. Weekly Residential Collection Services include one (1) 32-Gallon Garbage Cart (with the option to downsize to a 20- or upsize to a 64-Gallon Garbage Cart) and one (1) 64-Gallon Organic Waste Cart as part of the base Residential Collection Service. The actual configuration of Garbage and Organic Waste Cart sizes shall be at the option of the Service Recipient. Contractor shall provide all Residential Service Recipients with at least one (1) 64-Gallon Organic Waste Cart by June 1, 2022.

6.03 Curb Service. Contractor must provide Residential Collection Service to all Residential Service Recipients in the Service Area whose Residential Garbage is properly containerized in Garbage Carts, Organic Wastes are properly containerized in Organic Waste Carts where the Garbage and Organic Waste carts have been placed within six (6) 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 Collection Vehicle.
6.04 On-Premises Service. Notwithstanding any term or definition set forth in this Agreement, Contractor must provide Collection of Residential Garbage and Organic Waste on the Residential Service Recipients premises, including side or rear yard, as follows and at no additional Cost to the Service Recipient.

6.04.1 Residential Service Recipients where all adult Service Recipients residing therein have disabilities that prevent them from setting their Garbage or Organic Waste Cart at the curb for Collection, and if a request for on-premises service has been made.

6.04.2 Residential Service Recipients where all adult Service Recipients residing therein have medical or physical conditions that prevent them from setting their Garbage or Organic Waste Cart at the curb for Collection, as determined by the City and agreed by the Contractor, and if a request for on-premises service has been made.

6.04.3 Contractor must provide on-premises Collection Service on the same Work Day that curbside Collection would otherwise be provided to the Residential Service Recipient.

6.05 Frequency and Scheduling of Service and Hours of Collection. Residential Collection Service must be provided a minimum one (1) time per week on a scheduled route basis. Residential Collection Service must be scheduled so that all Service Recipients receive Garbage Collection Service and Organic Waste Collection Service on the same Work Day. Residential Collection Service must be provided, commencing no earlier than 6:00 a.m. and terminating no later than 7:00 p.m., Monday through Friday, except for Holidays. The City has the right, in coordination with the Contractor, to determine that the Residential Collection Service commence no earlier than 7:00 a.m. The hours, day, or both of Collection may be extended due to uncontrollable circumstances or conditions with the prior verbal or written consent of the Agreement Administrator.

6.06 Manner of Collection. The Contractor must provide Residential Collection Service with as little disturbance as possible and must leave any Garbage or Organic Waste Carts in an upright position and with the lid closed at the same point it was Collected without obstructing alleys, roadways, driveways, sidewalks or mail boxes. Contractor’s employees providing Residential Collection Service must follow the regular walk for pedestrians while on private property 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.

6.07 Non-Collection. Contractor is not required to Collect any Residential Garbage that is not placed in a Garbage Cart. In the event of non-collection, Contractor will follow the steps set forth in Section 3.11. Contractor is not required to Collect Organic Waste if the Service Recipient does not segregate the Organic Waste from Garbage or Recyclable Materials. Furthermore, Contractor is not required to Collect Organic Wastes that are contaminated through commingling with Garbage or Recyclable Materials. Contractor will address Contamination in accordance with Section 3.09.

6.08 Carts. Contractor shall procure and supply all Residential Service Recipients with new Garbage and Recyclable Materials Carts by April 1, 2023. All Garbage, Organic Waste and Recyclable Materials Carts must meet the color and labelling requirements of 14 CCR 18984 (a)-(c). Specifically, Garbage Carts must be black or grey, Organic Waste Carts must be green, and Recyclable Materials Carts must be blue, and with all such Cart colors subject to pre-approval by the City. Labels on all Carts must be
durable long-lasting labels placed on the Cart lids and must specify what materials are allowed to be placed in each container and items that are prohibited container Contamination for each container, subject to pre-approval by the City. Contractor shall continue to procure and supply sufficient Carts as necessary to meet the needs of all Residential Service Recipients for the duration of the Agreement. Contractor shall not be entitled to or eligible for any change in Contractor’s Compensation for any expenses related to the Carts purchased pursuant to the first sentence in this Section. Depreciation and interest expenses for all Carts purchased by Contractor pursuant to the first sentence in this Section shall not be included in the amounts of depreciation and interest used for the purposes of determining any Annual Indexed Adjustment to Contractor’s Compensation per Section 4.02 nor for the purposes of a Detailed Compensation Review per Section 4.03. City shall directly reimburse Contractor for the following costs associated with the Recyclable Materials Carts (but not the Garbage Carts or Organic Waste Carts) purchased pursuant to the first sentence of this Section: assembly and distribution, reclaimation of existing carts for recyclable materials, taxes, and freight. Contractor shall provide City with an invoice showing actual amounts paid for costs to be reimbursed by City pursuant to the immediately preceding sentence.

6.09 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 (5) Work Days.

6.10 Cart Replacement. Contractor’s employees must take care to prevent damage to Carts by unnecessary rough treatment. However, any Cart damaged by the Contractor must be replaced by Contractor, at Contractor's expense, within five (5) Work Days at no cost or inconvenience to the Service Recipient.

6.10.1 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 Contractor, Contractor must deliver a replacement Cart(s) to such Service Recipient within five (5) Work Days. Contractor must maintain records documenting all Cart replacements occurring and report through the Waste Reporting System.

6.10.2 Each Service Recipient is entitled to the replacement of one (1) lost, destroyed, or stolen Cart every ten (10) years during the term of this Agreement at no cost to the Service Recipient. 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 may bill the Service Recipient for the cost of those replacements in excess of one (1) per type of Cart per Service Recipient in a ten (10) year period, in accordance a Cart Replacement charge per Exhibit 3.

6.10.3 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 two (2) replacement Carts, one (1) of each type, every ten (10) years during the term of the contract.

6.11 Cart Repair. Contractor is responsible for the repair of Carts, including but not be limited to, hinged lids, wheels and axles. Within five (5) Work Days of notification by the 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.
6.12 Additional Cart Request. Upon notification to the Contractor by City or a Service Recipient that additional Carts for Garbage or Organic Waste are requested, Contractor shall deliver such Carts to such Service Recipient within five (5) Work Days. Contractor shall also notify the City of any Service Recipient requests for additional Recycling Carts.

6.13 Holiday Tree Collection. Contractor must Collect Holiday Trees set out at the curb for Collection during the three-week period beginning December 26th each year during the term of this Agreement. Contractor must deliver the Collected Holiday Trees to the Organic Waste Processing Facility. This annual service will be provided at no additional charge to the Service Recipient. Contractor is not required to divert Holiday Trees with tinsel, flocking or ornaments.

6.14 Large Item Collection Service. Contractor must provide Large Item Collection Service to all Residential Service Recipients in the Service Area whose Large Items have been placed within six (6) 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 Collection Vehicle. Up to two (2) times per Calendar Year each Residential Service Recipient is entitled to receive Large Item Collection amounting to a combined annual maximum of the equivalent of (a) eight (8) cubic yards of uncontainerized Garbage or Organic Waste, or (b) eight (8) Large Items, or (c) twenty-five (25) 32-gallon bags at no additional cost and expense. For subsequent collection in any Calendar Year, the Contractor may bill the Service Recipient the charge per Exhibit 3.

6.14.1 Frequency of Service. Large Item Collection Service will be provided on the next regular Collection day if the request is received at least two (2) Work Days in advance of the next regular Collection day. The Service Recipient may not commingle Large Items with Garbage.

6.14.2 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.

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

6.14.3.1 Reuse as is (where energy efficiency is not compromised).

6.14.3.2 Disassemble for reuse or Recycling.

6.14.3.3 Recycle.

6.14.3.4 Disposal.

6.14.4 Disposal of Large Items. Contractor may not landfill such Large Items unless the Large Items cannot be reused or recycled.

6.14.5 City Direction of Large Items. City reserves the right to direct Contractor to take specific types of Large Items Collected pursuant to this Section to designated sites not more than twenty (20) miles from City Hall for the purpose of reuse or Recycling at no cost. Contractor has no obligation to dispose of the Large Item Residue remaining at the directed site or sites after scavengers and recyclers have removed reusable or recyclable Large Items.
6.15 **E-waste and U-waste Collection Service.** Contractor shall provide Residential Service Recipients with three (3) times annual collection of E-waste and/or U-waste at no additional cost or expense.

### Article 7. Commercial Services

**7.01 Conditions of Service.** Except as set forth below, Contractor must provide Commercial Collection Services to all Commercial Service Recipients in the Service Area. This service is governed by the following terms and conditions.

**7.02 Provision of Service.** Contractor must provide Commercial Garbage Collection Service and Commercial Organic Waste Collection Service to all Commercial Service Recipients in the Service Area whose Garbage and Organic Waste are properly containerized in Containers. Contractor must offer Garbage Carts in 20-, 32- and 64-gallon sizes and Organic Waste Carts in 32- and 64-gallon sizes. Contractor must offer Garbage Bins in 1 and 2-cubic yard sizes and 1-cubic yards for Organic Waste Bins. The size of the container and the frequency (above the once weekly minimum) of collection will be determined between the Service Recipient and Contractor. However, the size and frequency must be sufficient to provide that no Garbage or Organic Waste need be placed outside the Container. The base Garbage Collection Service will include Commercial Organic Waste Collection Service as described below.

**7.03 Size and Frequency of Service.** Commercial Collection Service must be provided as deemed necessary and determined between Contractor and the Commercial Service Recipient, but such service must be received no less than one (1) time per week. The size of Garbage and Organic Waste Containers and the frequency (above the minimum) of Collection will be determined between the Commercial Service Recipient and Contractor. However, size and frequency must be sufficient to provide that no Garbage or Organic Waste need be placed outside the Containers. Service Recipients may own and provide their own Compactor provided that the Service Recipient is completely responsible for its proper maintenance, and such Compactor is of a type that is compatible with Contractor's equipment. All other Containers used by Service Recipients must be owned and supplied by Contractor.

**7.04 Organic Waste Collection Service.** Contractor shall provide all Commercial Service Recipients with one (1) 64-Gallon Organic Waste Cart by June 1, 2022. Additional Organic Waste Cart or Bin service may be requested by the Service Recipient, subject to Service Rates for those additional Containers. To be exempted from Commercial Organic Waste Collection Service, Service Recipient must apply for waiver per the City's Municipal Code. All such waiver applications must be reported in the Waste Reporting System and approved by the City.

**7.04.1 Organic Waste - Improper Procedure.** Contractor is not required to Collect Organic Waste if the Service Recipient does not separate the Organic Waste from Garbage and Recyclable Materials. Furthermore, Contractor is not required to collect Organic Waste that is contaminated through commingling with Garbage or Recyclable Materials. To address Contamination, Contractor must follow the steps set forth in Section 3.09.

**7.04.2 Additional Organic Waste Containers.** Contractor must provide additional Organic Waste Containers to Service Recipients at Service Rates for those additional Containers, provided that additional Containers are used by Service Recipients for the proposes of setting out additional Organic Waste for regular weekly Organic Waste Collection Service.
7.04.3 **Compliance with AB 1826 and SB 1383.** Contractor will develop and maintain its Commercial Organic Waste Collection Service in a manner designed to assist City and Service Recipients to achieve and maintain compliance with AB 1826 and SB 1383. Contractor will notify non-exempt covered Commercial Service Recipients of the requirements to comply with the law annually starting July 1, 2022 and as requested by the City thereafter.

7.05 **Hours of Collection.** Commercial Collection Service must be provided, commencing no earlier than 5:00 a.m., and terminating no later than 7:00 p.m., Monday through Saturday, except for Holidays. There will be no Commercial Collection Service on Sundays. The hours, day, or both of Collection may be extended due to uncontrollable circumstances or conditions with the prior verbal or written consent of the Agreement Administrator. The City has the right, in coordination with the Contractor, to determine that the Commercial Collection Service commence no earlier than 6:00 a.m.

7.06 **Accessibility.** Contractor must Collect all Containers that are readily accessible to Contractor’s crew and Collection Vehicles and not blocked.

7.07 **Manner of Collection.** Contractor must provide Commercial Collection Service with as little disturbance as possible and must leave any Container at the same point it originally located without obstructing alleys, roadways, driveways, sidewalks or mail boxes.

7.08 **Non-Collection.** Contractor is not required to Collect any Commercial Garbage that is not placed in a Garbage Container unless such Commercial Garbage is outside the Garbage Container because of Overage. In the event of non-collection or Overage, Contractor must follow the steps as set forth in Section 3.10.

7.09 **Carts.** Contractor shall procure and supply all Commercial Service Recipients that subscribe to Cart service with new Garbage and Recyclable Materials Carts by April 1, 2023. All Garbage, Organic Waste and Recyclable Materials Carts must meet the color and labelling requirements of 14 CCR 18984 (a)-(c). Specifically, Garbage Carts must be black or grey, Organic Waste Carts must be green, and Recyclable Materials Carts must be blue, and with all such Cart colors subject to pre-approval by the City. Labels on all Carts must be durable long-lasting labels placed on the Cart lids and must specify what materials are allowed to be placed in each container and items that are prohibited container Contamination for each container, subject to pre-approval by the City. Contractor shall continue to procure and supply sufficient Carts as necessary to meet the needs of all Commercial Service Recipients for the duration of the Agreement. Contractor shall not be entitled to or eligible for any change in Contractor’s Compensation for any expenses related to the Carts purchased pursuant to the first sentence in this Section. Depreciation and interest expenses for all Carts purchased by Contractor pursuant to the first sentence in this Section shall not be included in the amounts of depreciation and interest used for the purposes of determining any Annual Indexed Adjustment to Contractor’s Compensation per Section 4.02 nor for the purposes of a Detailed Compensation Review per Section 4.03. City shall directly reimburse Contractor for the following costs associated with the Recyclable Materials Carts (but not the Garbage Carts or Organic Waste Carts) purchased pursuant to the first sentence of this Section: assembly and distribution, reclamation of existing carts for recyclable materials, taxes, and freight. Contractor shall provide City with an invoice showing actual amounts paid for costs to be reimbursed by City pursuant to the immediately preceding sentence.
7.10 **Bins.** Contractor must make commercially reasonable efforts to distribute newly painted and labelled Bins to all Commercial Service Recipients in the Service Area that subscribe to Garbage, Organic Waste and Recycling Bin service by December 1, 2022 with such Bins meeting the color and labelling requirements of 14 CCR 18984 (a)-(c). All Garbage and Organic Waste Bins must display Contractor’s name and Contractor’s customer service telephone number and website and all Recycling Bins must display City’s name and City’s customer service telephone number and website. Garbage and Organic Waste Bins must be free of dents and painted as needed to maintain an orderly appearance throughout the term of the Agreement, but not less frequently than once every three years. Garbage and Organic Waste Bins may be subject to periodic, unscheduled inspections by City and determination as to sanitary condition will be made by City. Contractor shall continue to procure and supply sufficient Garbage and Organic Waste Bins as necessary to meet the needs of all Commercial Service Recipients for the duration of the Agreement. Contractor shall not be entitled to or eligible for any change in Contractor’s Compensation for any expenses related to the Bins purchased pursuant to the first sentence in this Section. Depreciation and interest expenses for all Bins purchased or upgraded by Contractor pursuant to the first sentence in this Section shall not be included in the amounts of depreciation and interest used for the purposes of determining any Annual Indexed Adjustment to Contractor’s Compensation per Section 4.02 nor for the purposes of a Detailed Compensation Review per Section 4.03.

7.11 **Container Exchange.** Upon notification to Contractor by City or a Service Recipient that a change in the size of their Containers is required, Contractor must deliver such Containers to such Service Recipient within five (5) Work Days.

7.12 **Container Replacement.** Contractor’s employees must avoid damage to Containers by unnecessary rough treatment. Any Container damaged by the Contractor must be replaced by Contractor, at Contractor’s expense, within five (5) Work Days at no cost or inconvenience to the Service Recipient.

7.12.1 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 Contractor, Contractor must deliver a replacement Cart(s) to such Service Recipient within five (5) Work Days. Contractor must maintain records documenting all Cart replacements occurring and report through the Waste Reporting System.

7.12.2 Each Commercial Service Recipient is entitled to the replacement of one (1) lost, destroyed, or stolen Garbage and Organic Container every ten (10) years during the term of this Agreement at no cost to the Service Recipient. Accordingly, Contractor may bill the Service Recipient for the cost of those replacements in excess of one (1) Garbage and Organic Container per Commercial Service Recipient during the term of the Agreement, in accordance with the Container Replacement charge per Exhibit 3. Contractor must deliver a replacement Container to such Service Recipient within five (5) Work Days.

7.13 **Container Repair.** Contractor is responsible for repair of Containers. Within five (5) Work Days of notification by City or a Service Recipient of the need for such repairs, Contractor must repair the Container or if necessary, remove the Container for repairs and deliver a replacement Container to the Service Recipient. Container repair also includes the removal of graffiti from the Container.

7.14 **Large Item Collection Service.** Contractor must provide Large Item Collection Service to all Commercial Service Recipients in the Service Area that 1) include dwelling units and 2) whose Large Items have been placed within six (6) 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 Collection Vehicle.

7.14.1 General. Each Commercial Service Recipient that includes dwelling units is
annually entitled to receive Large Item Collection of up to a combined annual maximum of the equivalent
of (a) four (4) Large Items, or (b) twelve (12) 32-gallon bags of Garbage per dwelling unit for up to twenty
(20) units at no additional cost and expense. The Contractor may bill the Service Recipient a charge per
Exhibit 3 for Large Item Collection Service in excess of the annual amounts listed in this Section 7.14,
provided that Contractor provides notice to the Commercial Service Recipient in advance of scheduling and
providing Large Item Collection Service that would be subject to a charge.

7.14.2 Frequency of Service. Large Item Collection Service will be provided to
Commercial Service Recipients that include dwelling units within ten (10) Work Days of a request from the
Commercial Service Recipient. The Service Recipient may not commingle Large Items with Garbage, and
the Service Recipient may not use Large Item Collection Service as a supplement to regular Garbage or
Organic Waste Collection Service.

7.14.3 Contractor shall work with the property manager of each eligible Commercial
Service Recipient to arrange for a Large Item Collection at a designated location within the Commercial
Service Recipient on the scheduled Collection date. Only the property manager or other designated
representative of an eligible Commercial Service Recipient may request and schedule Large Item
Collection, not tenants.

7.14.4 Contractor shall, in coordination with the City, develop and implement a program
whereby eligible Commercial Service Recipients can notify their tenants of the availability of the Large Item
Collection Service, and instructing the tenants to request Large Item Collection service through the property
manager or other designated representative of the Commercial Service Recipient.

7.14.5 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.

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

7.14.6.1 Reuse as is (where energy efficiency is not compromised).
7.14.6.2 Disassemble for reuse or Recycling.
7.14.6.3 Recycle.
7.14.6.4 Disposal.

7.14.7 Disposal of Large Items. Contractor may not landfill such Large Items unless the
Large Items cannot be reused or recycled.

7.14.8 City Direction of Large Items. City reserves the right to direct Contractor to take
specific types of Large Items Collected pursuant to this Section to designated sites not more than twenty
(20) miles from City Hall for the purpose of reuse or Recycling at no cost. Contractor has no obligation to
dispose of the Large Item Residue remaining at the directed site or sites after scavengers and recyclers have removed reusable or recyclable Large Items.

**Article 8. Roll-off Services**

8.01 **Conditions of Service.** Except as set forth below, Contractor must provide Roll-off Services to Service Recipients in the Service Area requesting such service. Roll-off Collection Services are governed by the following terms and conditions. Contractor has the exclusive right and obligation to provide Roll-off Service in the City.

8.02 **Frequency and Scheduling of Service and Hours of Collection.** Roll-off Service is a non-regular temporary service and is scheduled and provided on the request of a Service Recipient in coordination with the Contractor. Roll-off Service is not a substitute for regular Residential or Commercial Collection Services. Roll-off Collection Service must not commence earlier than 6:00 a.m. and terminating no later than 7:00 p.m., Monday through Saturday, except for Holidays.

8.03 **Manner of Collection.** The Contractor must provide Roll-off Collection Service with as little disturbance as possible and must leave any Roll-off Containers in a designated accessible location meeting the requirements of the City and the Service Recipient without obstructing alleys, roadways, driveways, sidewalks or mailboxes. Contractor’s employees providing Roll-off Collection Service must follow the regular walk for pedestrians while on private property 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. Contractor is responsible for cleaning up any Garbage, Organic Waste, or C&D Waste that spills from any Roll-off Container during provision of Roll-off Collection Service.

8.04 **Roll-off Containers.** Contractor is responsible for ensuring that its Roll-off Containers are well maintained, durable, safe, and labelled in accordance with Container contents. Any Roll-off Containers that may contain liquids shall be leak proof.

**Article 9. City Services**

9.01 **Conditions of Service.** Collection Services provided to City shall be governed by the following terms and conditions.

9.02 Contractor shall provide Garbage and Organic Waste Collection Services to all City Service Recipients set forth in Exhibit 1 (and where applicable, subject to the conditions in this section), where the Containers are not blocked and are accessible by Contractor’s Collection Vehicles. The frequency of collection may be designated by the City, but not to exceed six (6) times per week per container. City may change the City Service Recipients receiving service, and the container volume and collection frequency provided to any City Service Recipient, by written notice to Contractor.

9.03 Contractor shall receive written permission from the 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 for such Containers in Exhibit 1.

9.04 Contractor shall limit the number of trips and the path of travel for Collection Vehicles in City parking lots.
9.05 **Public Area Garbage and Organic Waste Collection.** At no additional cost or expense to the City, Contractor shall provide Garbage and Organic Waste Collection Service from Containers placed at the public-right-of-way locations designated by the City in Exhibit 6, in Containers provided by the City. Garbage and Organic Waste Containers shall be serviced on a regular schedule of no less than one (1) day per week, and up to five (5) days per week for high usage areas, or as-needed basis as directed by the City, to avoid any Overage of Garbage or Organic Waste.

9.06 **Clean-Up Services.** Within two (2) Work Days of a request from the Agreement Administrator, Contractor shall provide Roll-off Containers to support City’s requested clean-up services in the Service Area. City shall be responsible for loading or arranging for loading of each Roll-off Container. Contractor shall collect, transport and deliver collected Garbage and Organic Waste to a Disposal Facility or Organic Waste Processing Facility, as appropriate given the characteristics of the load. Contractor shall deliver, and collect, transport and process the Garbage and/or Organic Waste from up to twenty-four (24) Roll-off Containers each Calendar Year at no charge to the City. Contractor shall provide written notice to the Agreement Administrator when twenty (20) such services have been provided. Contractor and City agree that Contractor shall not exceed twenty-four (24) such services except by written approval of the City.

9.07 **Clean-up of Downed Trees.** Within one (1) Work Day of a request from the Agreement Administrator, Contractor shall provide Roll-off Containers to support City’s clean-up and removal of downed trees that result from natural events (storms, high winds etc.) in the Service Area. City shall be responsible for loading or arranging for loading of each Roll-off Container. Contractor shall collect, transport and deliver said Organic Waste to an Organic Waste Processing Facility. Contractor shall deliver, and collect, transport and process Organic Waste from up to ten (10) Roll-off Containers each Calendar Year at no charge to the City. Contractor shall provide written notice to the Agreement Administrator when eight (8) such services have been provided. Contractor and City agree that Contractor shall not exceed ten (10) such services except by written approval of the City.

9.08 **City Fire Prevention Clean-ups.** Within four (4) Work Days of a request from the Agreement Administrator, Contractor shall provide Roll-off Containers to support City’s fire prevention efforts. Contractor shall collect, transport and deliver said Organic Waste to an Organic Waste Processing Facility. Contractor shall deliver, and collect, transport and process Organic Waste from up to twenty-four (24) Roll-off Containers each Calendar Year at no charge to the City. Contractor shall provide written notice to the Agreement Administrator when twenty (20) such services have been provided. Contractor and City agree that Contractor shall not exceed twenty-four (24) such services except by written approval of the City.

9.09 **City Roll-off Collection Service.** Contractor shall provide Roll-off Collection Services to the City facilities locations identified in Exhibit 7. Contractor shall provide City with the prioritization of Roll-off Collection Service that it provides to other Service Recipients, and at the minimum sizes and frequencies of collection identified in Exhibit 7. Contractor will provide Roll-off Collection Service to the City within 36 hours of request. Contractor may request a meet and confer with the City to add Roll-off routing capacity if needed service levels increase such that additional routing is needed to meet this service expectation.

9.10 **Abandoned Garbage/Illegal Dumping Reporting.** When conducting service within the City, Contractor shall direct its Collection Vehicle drivers to report to Contractor sightings of illegal dumping of Garbage or Organics Waste by recording: (i) the addresses of any Service Recipient where Garbage, Recyclable Material, and/or Organic Waste is accumulating; and (ii) the address, or other location
description at which Garbage, Recyclable Material, and/or Organic Waste has been dumped. Contractor shall report to the City sightings and the recorded address within two (2) Work Days.

9.11 Abandoned Garbage/Illegal Dumping Clean-up. At City’s direction, Contractor shall collect, transport and process dumped items from up to fifty (50) illegal dumping clean-up requests per year at no additional charge to City. Contractor shall respond to clean up items within one (1) Work Day. Contractor shall provide written notice to the Agreement Administrator when forty (40) such services have been provided. Contractor and City agree that Contractor shall not exceed fifty (50) such services except by written approval of the City.

9.12 City-Sponsored Events Service. Upon request by the City, Contractor shall provide Garbage and Organic Waste Containers and Collection Services at up to five (5) City-Sponsored Events annually at no cost to the City.

9.13 Large Item Collection Service. Contractor shall collect Large Items, including E-Waste and Universal Waste, from City Service Recipients as listed on Exhibit 1 on an on-call basis on the same terms and conditions as are provided to Residential Service Recipients.

Article 10. Back-up Recycling Collection Services

10.01 Back-up Recycling Collection Service by Contractor Collection Vehicle driven by Contractor Driver. Contractor shall, upon request by the City, provide back-up Collection Vehicles to be driven by a Contractor driver(s), to provide collection of Recyclable Materials, subject to compliance with all applicable collective bargaining agreements and the availability of said Collection Vehicles accompanied by Contractor drivers. The provisions of this Agreement pertaining to liability and insurance shall apply to Contractor’s Collection Vehicles and drivers while provided to the City under this Section 10.01. Upon such a request by the City, Contractor shall coordinate with the City to provide the Collection Vehicles and Contractor drivers for back-up collection of Recyclable Materials and shall do so in a manner meeting the Collection Service expectations contained in this Agreement. Contractor will be compensated by City for provision of the back-up Collection Vehicles and Contractor drivers based upon the charges listed in Exhibit 3. The City and Contractor may enter into a separate agreement regarding use of the Contractors drivers if necessitated by applicable collective bargaining agreements.

10.02 Contractor shall also, upon request by the City, provide back-up Collection Vehicles for use by City drivers to provide collection of Recyclable Materials, subject to the availability of said Collection Vehicles. Upon such a request by the City, Contractor shall coordinate with the City to provide Collection Vehicles for use by City drivers for back-up collection of Recyclable Materials and shall do so in a manner meeting the Collection Service expectations contained in this Agreement. Contractor will be compensated by City for provision of back-up Collection Vehicles based upon the charges listed in Exhibit 3. The City and Contractor shall enter into a separate agreement to address allocation of liability and application of insurance related to City driver use of Contractor’s back-up Collection Vehicles. City and Contractor may enter into a separate agreement regarding Contractor’s providing back-up Collection Vehicles to provide such collection of Recyclable Materials.
Article 11. Collection Routes

11.01 Service Routes. Contractor must provide City with and publicly display on its website maps precisely defining Collection routes, together with the days and the times at which Collection will regularly commence. Contractor shall update such maps on its website within four (4) Work Days of any change in Collection routes.

11.02 Service Route Changes. Contractor must submit to City, in writing, any proposed route change (including maps thereof) not less than sixty (60) 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 thirty (30) days before the proposed date of implementation.

11.03 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 to conduct the audits. 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.

11.04 Route Map Update. Contractor must revise the Service Recipient route maps to show the addition of Service Recipients added due to annexation and must provide such revised maps to the Agreement Administrator as requested.

Article 12. Minimum Performance Standards

12.01 Administrative Charges and Penalties. Administrative charges and penalties as detailed in Exhibit 2 may be assessed on the Contractor by the City pursuant to this Agreement. Charges and penalties will be adjusted by the change in the CPI All Other a maximum of one time annually.

12.02 Billing/Financial Audit and Performance Reviews. Contractor shall review its billings to all Service Recipients. The purpose of the review is to determine that the amount which the Contractor is billing each Service Recipient is correct with regard to the level of service (i.e., frequency of collection, size of container, location of container) and Service Rates and charges in effect at the time. The Contractor shall review Service Recipient accounts not less than every two (2) years and provide a written certification to the City that all such billing is correct. The documentation of the review, as well as verification that any errors have been corrected should be provided to the City within thirty (30) days of Contractor’s completion of the billing review.

12.02.1 Selection and Cost. City may conduct billing audit, financial audit and performance reviews (together, "reviews") of Contractor’s performance at any time during the term of this Agreement. The reviews will be performed by the City or a qualified firm under contract to City. City will have the final responsibility for the selection of the firm. City may conduct reviews at any time during the term of the Agreement. City and Contractor agree to each pay fifty percent (50%) of the cost of the audits and performance reviews.

12.02.2 Purpose. The reviews will be designed to verify that billings have been properly calculated and they correspond to the level of service received by the Service Recipient, verify that
Contractor is correctly billing for all Collection Services provided, Franchise Fees, Integrated Waste Management Fees required under this Agreement have been properly calculated and paid to City, verify Contractor’s compliance with the reporting requirements and performance standards of this Agreement, verify the diversion percentages reported by Contractor, and verify any other provisions of the Agreement. City (or its designated consultant) may utilize a variety of methods in the execution of this review, including, but not limited to, analysis of relevant documents, on-site and field observations, and interviews. 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 documented and be formatted in a "compliance checklist" with supporting documentation and findings tracked for each of the identified items. City (or its designated consultant) may review the customer service functions and structure utilized by Contractor. This may include Contractor’s protocol for addressing 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, but are not necessarily limited to:

1. Interviews and discussions with Contractor's administration and management personnel;
2. Review and observation of Contractor’s customer service functions and structure;
3. Review of public education and outreach materials;
4. Interviews and discussions with Contractor’s financial and accounting personnel;
5. Interviews with route dispatchers, field supervisors and managers;
6. Interviews with route drivers;
7. Interviews with Collection Vehicle maintenance staff and observation of maintenance practices; and
8. Review of on-route Collection Services, including observation of driver performance and collection productivity and visual inspection of residential routes before and after collection to evaluate cart placement and cleanliness of streets.

12.02.3 Contractor’s Cooperation. Contractor shall cooperate fully with the review and provide all requested data, including operational data, financial data and other data reasonably requested by City within fifteen (15) Work Days of the request.

12.02.4 Additional Billing/Financial Audit and Performance Review. In the event that the Billing/Financial Audit and Performance Review concludes that Contractor is not in compliance with all terms and conditions of this Agreement and such non-compliance is material, Contractor is subject to administrative charges and penalties as described in Exhibit 2 as well as reimbursement to the City for the full cost of the audit plus any underpayments discovered during the Audit. Additionally, City may conduct an Additional Billing Audit and Performance Review to ensure that Contractor has cured any such area of non-compliance. Contractor will be responsible for the cost of any such Additional Billing/Financial Audit and Performance Review for a maximum cost of Fifty Thousand Dollars ($50,000) to be adjusted by the annual change in the CPI All Other a maximum of one time annually.

12.02.5 City Requested Program Review. City reserves the right to require Contractor to periodically conduct reviews of the Residential and Commercial Garbage and Organic Waste collection 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 could assess one or more of
the following performance indicators: average volume of Organic Waste per setout per Service Recipient, participation level, Contamination levels, etc. 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.

### Article 13. Collection Equipment

#### 13.01 Equipment Specifications

All equipment used by Contractor in the performance of Collection Services under this Agreement must be of a high quality and meet all Federal, State, and local regulations and air quality standards. Collection Vehicles must be designed and operated so as to prevent collected materials from escaping from the Collection Vehicles. Hoppers must be closed on top and on all sides with screening material to prevent collected materials from leaking, blowing or falling from the Collection Vehicles. All Collection Vehicles and Containers must be watertight and must be operated so that liquids do not spill during Collection or in transit.

13.01.1 Collection Vehicles. Contractor shall make commercially reasonable efforts to operate primary Collection Vehicles that do not exceed ten (10) years from the date of manufacture, except for backup and Roll-off Collection Vehicles. Contractor must notify City of a need to use any Collection Vehicle exceeding ten (10) years from the date of manufacture as a primary Collection Vehicle. Such notification must accompany documentation demonstrating that such Collection Vehicle is in good operating condition, meets required safety and emissions standards, and is free of leaks. Collection Vehicles must use renewable diesel. During the Term, to the extent required by law, Contractor shall provide its Collection Vehicles to be in full compliance with all Applicable Laws, including State and Federal clean air requirements that are adopted or proposed to be adopted, including, but not limited to, the California Air Resources Board Heavy Duty Engine Standards as currently proposed to be contained in California Code of Regulations, title 13, sections 2020 et seq., the Federal EPA’s Highway Diesel Fuel Sulfur regulations and all other applicable air pollution control laws. Collection 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.

13.01.2 Fleet Planning. Contractor will work with the City to replace Contractor’s current Collection Vehicles (as inventoried pursuant to Section 13.06) with Collection Vehicles that will reduce carbon emissions. As of the Effective Date of this Agreement, Contractor will fuel all diesel Collection Vehicles with renewable diesel.

13.01.3 Electric or Zero Emission Collection Vehicles. At such time as it is technologically and economically feasible, and unless a “Notice of Non-Extension” has previously been provided by either party per Section 2.03, Contractor shall purchase electric or other zero emission Collection Vehicles and procure electricity or other fuel from qualifying sources to support procurement goals. City and Contractor shall proactively take such steps as are necessary to plan for, and upon City direction, execute transition of the Contractor’s Collection Vehicles to reliance on electricity or other zero emission technologies as a fuel source. Contractor shall report to the City no less than annually on the status of the transition. The City and Contractor shall, no less than annually, confer on the degree to which it is technologically and economically feasible to transition some or all Collection Vehicles to electricity or other zero emission technology. In determining whether it is economically feasible to transition Collection Vehicles per this Section, the City and Contractor shall review and evaluate Contractor’s current and historical finances and profitability compared...
to the targeted Operating Ratio listed in Exhibit 5. The transition to electric or other zero emission Collection Vehicles will be economically feasible when the cost, including depreciation and interest, of each such proposed electric or other zero emission Collection Vehicle that is in excess of the cost, including depreciation and interest, of a conventional diesel Collection Vehicle is projected, taking into account Contractor’s projected revenue and other net operating costs, exclusive of Pass-Through Costs and Non-Allowable Costs, and without a Compensation adjustment, to achieve an Operating Ratio of ninety and one-half percent (90.5%) or less. Upon a determination by the City that it is technologically and economically feasible to transition some or all Collection Vehicles to electricity or other zero emissions technology, Contractor shall proceed to purchase and operate such vehicles on a schedule mutually agreed to by Contractor and City, and Contractor shall only be entitled to or eligible for a change in Contractor’s Compensation for the cost, including depreciation and interest, of replacement diesel Collection Vehicles but not for the excess cost, including depreciation and interest, of transitioning to electric or zero emission Collection Vehicles. For the purposes of determining any Annual Indexed Adjustment to Contractor’s Compensation per Section 4.02, and for the purposes of conducting any Detailed Compensation Review per Section 4.03, depreciation and interest expenses for all Collection Vehicles purchased by Contractor pursuant to this Section shall not include any amounts of depreciation and interest above the amounts that would have been incurred had Contractor replaced Collection Vehicles with diesel Collection Vehicles and not transitioned to electric or zero emission Collection Vehicles per this Section. Contractor shall be entitled to a change in Contractor’s Compensation for construction of an electric charging or other fueling station, subject to the mutual agreement of the City and Contractor and approval of the City Council. Contractor will coordinate with the City in finding or constructing a suitable charging or other fueling station for Contractor’s electric or other zero emission Collection Vehicles.

13.01.4 Collection Vehicle Size Limitations / Overweight Vehicle Charge. Contractor may not use any Collection Vehicle in violation of weight limitations in Applicable Law. The Contractor may exceed the Collection Vehicle size limitation for a limited time due to extraordinary circumstances or conditions with the prior written consent of the Agreement Administrator. The limited time may not exceed 120 days. Contractor must report all instances of overweight Collection Vehicles to City quarterly and as part of its Annual Reports to the City. Contractor may be assessed administrative charges as specified in Article 12 as a result of exceeding an overweight Collection Vehicle rate of five percent (5.00%) in any Calendar Year during the term of the Agreement, except to the extent resulting from extraordinary circumstances, as described below. The overweight Collection Vehicle rate will be calculated as the total number of overweight Collection Vehicle instances during the Calendar Year, divided by the total number of Collection Vehicle loads transported during the Calendar Year. Prior to collecting administrative charges for overweight Collection Vehicles, the City shall afford Contractor a reasonable opportunity to provide the Agreement Administrator documentation of the extraordinary circumstance that caused the overweight Collection Vehicles. Extraordinary circumstances in this particular case include, but may be limited to, heavy rains or high winds that caused excess Green Waste to be generated, rain to accumulate in open 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 Collection Vehicles used by Contractor in providing Collection Services under this Agreement, except those Collection Vehicles used solely on Contractor’s premises, are to be registered with the California Department of Motor Vehicles. In addition, each such Collection 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 provide City a copy of its Collection 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.

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, clearance lights, and warning flags. 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, website and the number of the Collection Vehicle painted in letters of contrasting color, at least four (4) inches high, on each side and the rear of each Collection Vehicle. No advertising is permitted other than the name of Contractor, its logo and registered service marks, except promotional advertisement of the Organic Waste programs, which is encouraged. City to approve any promotional material of the Organic Waste Programs affixed to or painted on Contractor’s Collection Vehicles and may require such promotion to be utilized from time to time in order to encourage correct Recycling, reduce Contamination, and provide relevant education. Contractor must repaint all Collection Vehicles during the term of this Agreement on a frequency as necessary to maintain a positive public image as reasonably determined by the Agreement Administrator, but not less often than once every five years beginning January 1, 2023.

13.02 **Vehicle Certification.** For each Collection Vehicle used in the performance of Collection 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 Collection 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.

13.03 No later than January 1, 2023, Contractor must submit to the Agreement Administrator verification that each of the Contractor’s Collection Vehicles has passed the California Heavy Duty Vehicle Inspection. Thereafter, Contractor must cause each Collection Vehicle in Contractor’s Collection fleet to be tested annually in the California Heavy Duty Inspection Program and must, upon request, submit written verification to City within ten (10) Work Days of the completion of such test. Contractor may not use any Collection Vehicle that does not pass such inspection.

13.04 **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.
13.05 **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 Agreement Administrator, and must show, at a minimum, each Collection Vehicle 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.

13.06 **Equipment Inventory.** On or before July 1, 2022 Contractor shall provide to City an inventory of Collection Vehicles and major equipment used by Contractor for Collection or transportation and performance of Collection 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 Collection Vehicle, the number of Collection Vehicles by type, the date of acquisition, the decibel rating and the maintenance and rebuild status. Contractor must submit to the Agreement Administrator, either by e-mail, an updated inventory annually to the City or more often at the request of the Agreement Administrator. Each inventory must also include the tare weight of each Collection Vehicle as determined by weighing at a certified scale used by Contractor. Each Collection Vehicle inventory must be accompanied by a certification signed by Contractor that all Collection Vehicles meet the requirements of this Agreement.

13.07 **Reserve Equipment.** Contractor shall 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 the Contractor to perform the contractual duties.

**Article 14. Contractor’s Office**

14.01 **Contractor’s Office.** Contractor shall maintain an office or call center where calls, emails and complaints can be received within the City. Such office must be equipped with enough telephones that all Collection Service-related calls received during normal business hours are answered by an employee. The office must have responsible persons in charge during Collection hours and must be open during such normal business hours, 7:30 a.m. to 3:30 p.m. on Monday through Friday. Contractor must provide either a local or toll-free telephone number that connects to the call center, 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.

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

14.03 **Multilingual/TDD Service.** Contractor’s service and emergency telephone numbers must be accessible by a local (City) phone number or toll-free number. Contractor shall also maintain service and emergency telephone numbers accessible by teletypewriter (TTY) devices, including cellphone and smartphone. The service telephone number(s) shall be listed in the telephone directories covering City’s boundaries and must be under Contractor’s name in the commercial and residential listings. Contractor’s service and emergency numbers, including TTY numbers, shall be available through an online search and listed on the Contractor’s website. Contractor must at all times maintain the capability of responding to telephone calls in English and such other languages as City may direct. Contractor must at all times maintain the capability of responding to telephone calls through Telecommunications Device for the Deaf (TDD) Services.
14.04 Service Recipient Calls. During office hours, Contractor must maintain a telephone answering system capable of accepting at least five (5) incoming calls at one time. Contractor must record all calls including any inquiries, service requests and complaints into a customer service log. All incoming calls will be answered at the local office or call center within 5 rings. Any call “on-hold” in excess of 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 and emails. For all phone messages left before 3:00 p.m., all “call backs” must be attempted a minimum of one time prior to 3:00 p.m. on the day of the call. For messages left after 3:00 p.m., all “call backs” must be attempted a minimum of one time prior to noon the next Work Day. Contractor must make minimum of three attempts within one (1) Work Day of the receipt of the call. If Contractor is unable to reach the Service Recipient on the next Work Day, Contractor must send a postcard or email to the Service Recipient on the second Work Day after the call was received, indicating that the Contractor has attempted to return the call. Email messages must be responded to within one (1) Work Day.

14.05 Customer Service. All service inquiries and complaints will be directed to Contractor. A representative of Contractor must be available to receive the complaints during normal business hours. Contractor is required to maintain a Customer Service Management System for handling of complaints received by the Contractor or City for Collection Services provided by this Agreement. All service complaints will be handled by Contractor in a prompt and efficient manner. Complaints must be addressed and resolved within three (3) Work Days. 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. By June 1, 2023, Contractor will utilize a new Customer Service Management System to maintain a record of all inquiries and complaints in a manner prescribed by City. The Customer Service Management System shall also provide for City’s access to it and include, but not be limited to, the functionalities listed below:

14.05.1 Real time identification of service days and routing.
14.05.2 Identification of stopped accounts and generation of daily stop lists.
14.05.3 Service Recipient address and contact information.
14.05.4 Tracking of Containers by address and service location.
14.05.5 Tracking of Garbage, Organic Waste and Recycling routes and service days.
14.05.6 Tracking of Container deliveries, late-set outs and missed pickups.
14.05.7 Creation of route sheets and delivery lists for Garbage, Organic Waste and Recycling routes.
14.05.8 Notations for any special services, on-premises services, or special conditions for any Service Recipient.
14.05.9 Documentation of any Service Recipient site visits conducted by Contractor or City.
14.05.10 Documentation of all Contamination or Overages.
14.05.11 Allow for attachment of photos, notices, other documentation in a Service Recipients account.
14.05.12 Schedule, tracking and documentation of Large Item collections and City provided Recycling clean-ups.

14.05.13 Generation of statistics including number of stops, lifts, and accounts per route per day.

14.05.14 Direct emails to Service Recipients.

14.05.15 Geocoding of Service Recipient service addresses for maps, routings and stop lists.

14.06 Complaints. 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 Recipient 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 Work Day to resolve the complaint. For those complaints related to repair or replacement of Containers, the appropriate Sections of this Agreement will apply.

14.07 Contractor agrees that it is in the best interest of City that all Residential Garbage and Organic 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, by e-mail. The Agreement Administrator will investigate all disputed complaints and render a decision.

Article 15. Support Services

15.01 Compliance Representative. Contractor will designate staff to conduct site visits and provide outreach and education in support of meeting CalRecycle diversion requirements and to meet State mandates associated with AB 939, AB 341, AB 1826, AB 827, AB 1594, SB 1016, and SB 1383, and all amendments and related subsequent legislation. The designated staff shall be available as needed to meet with the City and conduct site visits to implement diversion programs in the Service Area at least four (4) days per week. The Contractor staff designated pursuant to this section shall also meet with the City to discuss provision of services under this Agreement no less than quarterly.

15.02 Compost Procurement and Delivery. At no cost to the City, Contractor must provide City up to 480 cubic yards of Compost annually, delivered to a location and on a schedule as agreed to between the Contractor and the City.

15.03 Route Reviews. At least once annually, beginning in 2022, Contractor shall conduct a route review for each of its routes. The number of Containers to review per route shall be calculated on the basis of the number of Garbage accounts provided service by a specific route for one week. For example, if “Route A” collects Garbage from 250 accounts, 4 days per week for a total of 1,000 accounts per week; include a minimum of 25 accounts for the route review of “Route A”. For each route review Contractor shall inspect at least the following minimum number of Containers but may inspect more if Contractor deems necessary; and shall inspect all Containers placed for collection (including Recycling Containers, Organic
Waste Containers, and Garbage Containers). Each inspection shall involve lifting the Container lid and observing the contents but shall not require Contractor to disturb the contents or open any bags. If Contractor observes Contamination Contractor shall follow the provisions outlined in Section 3.09. Contractor may select the Containers to be inspected at random, or (if mutually agreed with the City) by any other method not prohibited under the SB 1383 regulations. Contractor will also collect photographic documentation during route reviews. For the avoidance of doubt, Contractor shall not be required to annually inspect every Container on a route. Contractor shall include the results of each Route Review in its next regularly scheduled report to City as required by Section 17.

<table>
<thead>
<tr>
<th>Route Size (# Garbage accounts/ week)</th>
<th>Minimum Number of Containers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1,500</td>
<td>25</td>
</tr>
<tr>
<td>1,500-3,999</td>
<td>30</td>
</tr>
<tr>
<td>4,000-6,999</td>
<td>35</td>
</tr>
<tr>
<td>7,000 or more</td>
<td>40</td>
</tr>
</tbody>
</table>

15.04 Compliance Reviews. At least once annually, beginning in 2022, Contractor shall review the records of its Commercial Service Recipients in the City that are subscribed for at least two (2) cubic yards per week of combined Garbage, Organic Waste and Recyclable Materials service, to determine whether those Commercial Service Recipients are subscribed for Organic Waste collection service or have an applicable waiver. Contractor shall include the results of each compliance review in its quarterly reports to the City, as required by Section 17.

15.05 Site Visits. Based on Contractor’s Compliance Reviews of the list of Commercial Service Recipients requiring site visit compiled in accordance with Section 15.04 above, Contractor shall conduct an annual site visit to each Commercial Service Recipient in the City that is determined to not be subscribed to Organic Waste Collection Service and is not eligible for a waiver. During the site visits, Contractor shall encourage those businesses to sign up for SB 1383 compliant Organics Waste Collection Service and provide educational material about SB 1383’s requirements. Contractor will also collect photographic documentation during all site visits. The Contractor shall conduct no less than 30 in-depth, in-person, diversion site visits per quarter.

15.06 Education and Outreach. Prior to July 1, 2022, and annually thereafter, Contractor shall provide the information listed below to all Service Recipients under the Agreement. This information will be provided, at a minimum, through print and electronic media, on the Contractor’s website, and may also be provided through workshops, meetings and/or on-site visits. Contractor shall collaborate with the City in the development of solid waste brochures for residential and commercial Service Recipients and split the cost (50/50) to design and print all solid waste brochures. The Contractor also agrees to attach a full-service brochure to each residential cart in the City, at the City’s discretion, beginning at the earliest in Calendar Year 2022 and at a maximum of every three years thereafter, with the costs not being included in Contractor’s Compensation. Contractor shall provide Commercial Service Recipients with interactive assistance such as employee trainings, in a virtual or in-person format, when Organic Waste Collection Service is added, or upon request.
15.06.1 Information on the Service Recipient’s requirements to properly separate Organic Waste and Recyclable Materials into appropriate Containers.

15.06.2 Information on methods for: the prevention of Organic Waste generation, recycling Organic Waste on-site, sending Organic Waste to community composting, and any other local requirements regarding Organic Waste.

15.06.3 Information regarding the methane reduction benefits of reducing the landfill disposal of Organic Waste, and the methods of Organic Waste recovery contemplated by the Agreement.

15.06.4 Information regarding how to recover Organic Waste.

15.06.5 Information related to the public health and safety and environmental impacts associated with the landfill disposal of Organic Waste.

15.07 Waivers. Unless other arrangements have been made by the City, Contractor shall be responsible for the distribution, collection and evaluation of waiver applications as appropriate and provide the City a recommendation to accept or deny waiver requests. Contractor shall develop waiver application forms and shall provide them to the City for its approval prior to use. Contractor shall evaluate requests for exemption or waiver from SB 1383 requirements on the basis of physical space or de minimis generation and provide the City with periodic recommendations and supporting documentation to deny or approve waivers, including a site visit and re-evaluation at least every five years as required by the SB 1383 Regulations.

15.08 Edible Food Recovery. Unless other arrangements have been made by the City, Contractor shall provide the City with a list of Tier One commercial edible food generators located in the City by April 1, 2023 and annually thereafter. Contractor shall provide the City with a list of Tier Two commercial edible food generators located within their jurisdiction by January 1, 2024 and annual thereafter. Tier One and Tier Two edible food generators are defined in El Cerrito Municipal Code Chapter 8.12.010. Unless other arrangements have been made by the City, Contractor shall provide educational materials to Service Recipients discovered to be out of compliance with the SB 1383 Regulations requirements (e.g., Tier 1 or 2 generator not donating edible food, insufficient interior containers, etc.) and report a list of such Service Recipients as well as actions taken to the City on a periodic basis.

15.09 Compliance Plan. Contractor, at its own expense, must prepare, submit and implement an annual (Calendar Year) Compliance Plan (“Plan”), which will guide Contractor’s work efforts. This Plan will include measures to meet diversion targets, increase diversion, and increase participation of Service Recipients in Recycling and Organic Waste programs, and should target certain materials or “problem” areas, including Recycling and Organic Waste sorting and Contamination, within Contractor’s Service Area where improvements can be maximized. Planned outreach and education services, and outreach materials should be included as part of the Plan and updated annually. Targets of outreach should be based on local Solid Waste trends from data obtained by both the City and Contractor, and other reputable sources. Contractor will maintain current and state-of-the-art public outreach and education services throughout the term of this Agreement by providing outreach materials to Service Recipients electronically (via email and social media) in addition to print. Contractor must submit first year draft Plan to the City by September 1, 2022. City will review and provide revisions to draft Plan within thirty (30) days of receipt. Contractor must revise and submit final Plan to City by December 1, 2022. The Compliance Plan must include the following:
15.09.1 City-specific website. Contractor shall maintain a City-specific website that fully explains the Contractor’s Collection Services and Service Rates, the diversion options available, and allows Service Recipients to submit service changes, inquiries, complaints or queries. The website must describe and promote the use of the available Recyclable Materials and Organic Waste services in the City. Contractor’s local website must provide information specific to the City’s programs. Contractor will ensure that information provided on the website is maintained and up to date. Content will include proper container set out, educational materials, newsletters and program descriptions. Contractor’s website shall include all information required in SB 1383 18985.1 (a), including the list of edible food recovery services 18985.2 (a).

15.09.2 Available Services Notice and Information. At least annually Contractor must publish and distribute (by mail and electronically) a notice to all Service Recipients regarding the full range of services offered by Contractor and City. The notice must contain at a minimum (i) clear descriptions of the materials to be Collected, (ii) procedures for setting out materials, (iii) the days when Garbage Collection Services and Organic Waste Collection Services will be provided, (iv) Contractor’s local customer service phone number, (v) instructions on the proper filling of Containers, (vi) instructions as to what materials may or may not be placed in Recyclable Materials or Organic Waste Containers, (vii) how to select container sizes to maximize diversion, (viii) participation in Recycling and Organic Waste programs, (ix) the charges for Overage and Contamination in the event of non-compliance, (x) the availability of on-premises Collection Services, including the availability of no-charge on-premises Collection Services for qualified persons, (xi) Large Items Collection Services; and other services described in this Agreement at the direction of the City. The notice must be provided in English, and other languages as directed by the City, and must be distributed by Contractor no later than October 1 of each year. The Notice shall meet all requirements of SB 1383 18985.1 (a).

15.09.3 Education and Outreach Materials. Contractor must implement public education and outreach in conformance with applicable laws (e.g., SB 1383, AB 1826, AB 827, AB 939, AB 341, AB 1594, etc.) and in coordination with the City. Contractor shall attend public events and host booths to promote education and awareness. Contractor will work with City to identify which special events will be attended. Contractor, together with City, shall work with local media to ensure information on new programs, events, Recycling, Organic Waste etc. is communicated to the community. Contractor shall use a variety of options such as local paper, news, websites, Homeowners Associations, schools and civic groups to distribute information and education about City Solid Waste programs, and events. Contractor shall distribute educational material to Service Recipients a minimum of once a quarter by mail or electronically. These materials should include tips on Recycling properly, use of Organic Waste containers, Composting, battery and electronics education, prevention of Contamination issues, proper Container placement, resource information, and HHW education.

15.09.4 Service Recipient Personnel Training. Contractor shall advise and educate appropriate personnel (management, employees, janitors, etc.) with Commercial Service Recipients on methods and recommendations to decrease landfilling including best practices for Source Separation. Annually and during new staff on-boarding, Contractor shall train customer service representatives and account managers/recycling coordinators serving Organic Waste Service Recipients in the City on the SB 1383 requirements, SB 1383 Regulations as they may be revised from time to time, and on resources available to assist in compliance. Trainings may be in a virtual or in-person format. The Contractor shall establish annual customer service and recycling training for all personnel with the objective of providing
consistent high-level customer service. The Contractor shall provide a copy of the proposed training materials annually, no later than January 31 of each year along with documentation of all staff who received the prior year’s training.

15.10 Contractor shall expend at least twenty-five thousand dollars ($25,000) per year (as adjusted annually by the CPI All Other) for development and subsequent implementation of the Plan, which may include the annual subscription cost for the Waste Reporting System and consultants but may not include direct personnel or benefit costs associated with the Contractor’s staff designated pursuant to Section 15.01.

15.11 Tri-Annual Customer Satisfaction Assessment and Survey. The Contractor shall establish a tri-annual customer satisfaction assessment and survey, with the first tri-annual survey completed by December 31, 2024. The customer satisfaction assessment will include an improvement plan, and the Contractor shall report the results of the assessment and the improvement plan to the City once finalized. The Contractor shall submit a draft of the survey to the City for approval by April 1 of each year that the survey is to be conducted.

Article 16. Emergency Service

16.01 Revised Services During an Emergency. In the event of a major storm, earthquake, fire, natural disaster, pandemic, or other such event, the Agreement Administrator may grant the 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. The Agreement Administrator will make an effort through the various outreach media to inform the public when regular Collection Services may be resumed. The clean-up from some events may require that Contractor hire additional equipment, employ additional personnel, or work existing personnel on overtime hours to clean debris resulting from the event. Contractor will receive additional compensation, above the normal Contractor's Compensation contained in this Agreement, to cover the costs of rental equipment, additional personnel, overtime hours and other documented expenses based on the charges per Exhibit 3, provided Contractor has first secured written authorization and approval from City through the Agreement Administrator. City will be given equal priority and access to resources as with other jurisdictions held by Contractor or its affiliates.

16.02 Disaster Recovery Support. In the event of a tornado, major storm, earthquake, fire, natural disaster, or other such event, Contractor agrees to provide disaster recovery support to a reasonable degree, upon request by Agreement Administrator. This may include additional hauling of debris, temporary storage of debris where feasible, additional disposal, use of different transfer and disposal facilities, and documentation of debris type, weight, and diversion. Contractor should follow protocol laid out in the Contra Costa County or City Disaster Debris Plans, as applied to Solid Waste hauling and handling.

Article 17. Record Keeping and Reporting Requirements

17.01 Record Keeping.

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, copy, and inspection. Gross receipts derived from provision of the Collection
Services will be recorded as revenues in the accounts of Contractor. The Contractor shall keep and preserve, during the Term of this Agreement, and for a period of not less than four (4) years following expiration or other termination hereof, full, complete and accurate records, including all cash, billing and disposal records, as indicated in the Agreement.

17.01.2 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 or its parent company. In the event that Contractor does not maintain separate financial or accounting records prepared specifically for Collection 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.

17.01.3 Material Records. Contractor must maintain records of the quantities of (i) Residential and Commercial Garbage Collected and disposed under the terms of this Agreement, (ii) Organic Waste by type, Collected, purchased, processed, sold, donated or given for no compensation, and residue disposed under the terms of this Agreement.

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

17.02 Monthly Report of Franchise Fee and Integrated Waste Management Fee Payments. Contractor must submit a monthly report of Franchise Fee and Integrated Waste Management Fee Payments within thirty (30) days of the end of each month. The monthly payment report must include an accounting of Contractor’s Gross Revenue received during the preceding month, and the calculated Franchise Fee payment. It must also include an accounting of receipts of Integrated Waste Management Fees paid by Service Recipients.

17.03 Quarterly Reports. Contractor must submit quarterly reports no later than 5 p.m. pacific time on the last day of the month following the end of the prior quarter (January – March, April – June, July – September, October – December). Quarterly reports must be provided electronically using software acceptable to the City. If the last day of the month falls on a day that City is closed or a Holiday, then the report will be due on the next Work Day.

17.04 Annual Reports. Contractor must submit annual reports no later than 5 p.m. PT on April 1, 2023 and each April 1st thereafter for the previous Calendar Year. If April 1st falls on a day that City is closed, then the report will be due on the next Work Day. Annual reports must be submitted in hard copy and must also be provided electronically in software acceptable to the City.

17.05 Report Format. All reports to be submitted in a format approved by the City and in a format specified by the City and must at minimum include the details listed in Exhibit 8.

Article 18. Nondiscrimination

18.01 Nondiscrimination. In the performance of all work and Collection Services under this Agreement, Contractor may not discriminate against any person based on such person’s race, sex, color, national origin, religion, marital status, immigration status, disability, or sexual orientation or gender identity. Contractor must comply with all applicable local, State and Federal laws and regulations regarding nondiscrimination, including those prohibiting discrimination in employment.
Article 19. Quality of Performance of Contractor

19.01 **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.

19.02 **Service Supervisor.** Contractor must assign a qualified supervisor to be in charge of the Collection Service within the Service Area and must provide the name of that person in writing to the Agreement Administrator within thirty (30) days prior to the Effective Date, and at any 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.

19.03 **Agreement Manager.** Contractor must designate an Agreement Manager and must provide the name of that person in writing to City within thirty (30) days prior to the Effective Date and any time the person in that position changes. The Agreement Manager must be available to the City through the use of telecommunications equipment at all times that Contractor is providing Collection Services in the Service Area. The Agreement Manager must provide City with an emergency phone number where the Agreement Manager can be reached outside of normal business hours.

19.04 **Administrative Charges and Penalties.** Quality performance by the Contractor is of primary importance. In respect of this, Contractor agrees to pay City administrative charges and penalties as per Exhibit 2 should Contractor fail to meet its responsibilities under this Agreement. Should Contractor be in 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 and impractical to fix. City finds, and the Contractor agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which will be incurred by City as a result of a breach by Contractor of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration and deprivation of the benefits of 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.

19.05 **Procedure for Review of Administrative Charges.** The Agreement Administrator may assess administrative charges and penalties as specified in Article 12 pursuant to this Agreement monthly. As needed during the term of this Agreement, the Agreement Administrator will issue a written notice to
Contractor ("Notice of Assessment") of the administrative charges assessed and the basis for each
assessment.

19.05.1 The assessment will become final unless, within ten (10) calendar days of the date
of the notice of assessment, Contractor provides a written request for a meeting with the City Manager to
present evidence that the assessment should not be made.

19.05.2 The Agreement Administrator will schedule a meeting between Contractor and the
City Manager as soon as reasonably possible after timely receipt of Contractor’s request.

19.05.3 The City Manager will review Contractor’s evidence and render a decision
sustaining or reversing the administrative charges as soon as reasonably possible after the meeting. Written
notice of the decision will be provided to Contractor.

19.05.4 In the event Contractor does not submit a written request for a meeting within ten
(10) calendar days of the date of the Notice of Assessment, the Agreement Administrator’s determination
will be final.

19.05.5 City’s assessment or collection of administrative charges 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.

19.06 Uncontrollable Circumstances.

19.06.1 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, landslides, lightning, forest fires, storms, floods, severe weather, freezing, earthquakes,
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, acts of government or governmental restraint (including but not limited to public health orders
by Contra Costa County or State officials) 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.

19.06.2 If either party is prevented from or delayed in performing its duties under this
Agreement by circumstances beyond its control, as defined in this Article 19, such failure of or delay in
performance shall not constitute a default or breach. The party prevented or delayed shall perform the duty
as soon as practicable after the circumstance preventing or delaying service has abated.

19.06.3 A party prevented from or delayed in performing its duties under this Agreement
by circumstances beyond its control shall provide the other party with notice immediately upon learning that
it will be prevented from or delayed in performing the duty.

Article 20. Performance Bond

20.01 Performance Bond. No later than the Effective Date, Contractor must furnish to City, and
keep current, a performance bond, for the faithful performance of this Agreement and all obligations arising
hereunder in an amount of one and one half million dollars ($1,500,000) and satisfy the requirements listed
below.
The performance bond must be executed by a surety company licensed to do business in
the State of California; having an "A-" or better rating by A. M. Best or Standard and Poor; and included on
the list of surety companies approved by the Treasurer of the United States.

In the event City draws on the bond, all of City’s costs of collection and enforcement of the
Bond, including reasonable attorneys’ fees and costs, must be paid by Contractor.

The performance bond shall be renewed annually for the entire term of the Agreement and
evidence must be provided to City annually.

**Article 21. Insurance**

Insurance Policies. Contractor must secure and maintain throughout the term of this
Agreement insurance against claims for injuries to persons or damages to property which may arise from or
in connection with Contractor’s performance of work or Collection Services under this Agreement.
Contractor’s performance of work or Collection Services includes performance by Contractor’s employees,
agents, representatives and subcontractors.

Minimum Scope of Insurance. Insurance coverage must be at least this broad:

21.02.1 Insurance Services Office Form No. GL 0002 (Ed. 1/96) covering Comprehensive
General Liability and Insurance Services Office Form No. GL 0404 covering Broad Form Comprehensive
General Liability; or Insurance Services Office Commercial General Liability coverage (“occurrence” form
CG 0001), including X, C, U where applicable.

21.02.2 Insurance Services Office Form No.CA 0001 (Ed. 12/93) covering Automobile
Liability, code 1 “any auto”, or code 2 “owned autos” and endorsement CA 0025. Coverage must also include
code 8, “hired autos” and code 9 “non-owned autos”.

21.02.3 Workers’ Compensation insurance as required by the California Labor Code and
Employers Liability Insurance.

21.02.4 Environmental Pollution Liability Insurance.

Minimum Limits of Insurance. Contractor must maintain insurance limits no less than:

21.03.1 Comprehensive General Liability: $3,000,000 combined single limit per occurrence
for bodily injury, personal injury and property damage. If Commercial General Liability insurance with a
general aggregate limit is used, either the general aggregate limit will apply separately to this Agreement or
the general aggregate limit must be $5,000,000.

21.03.2 Automobile Liability: $10,000,000 combined single limit per accident for bodily
injury and property damage.

21.03.3 Workers’ Compensation and Employers Liability: Workers’ Compensation limits as
required by the California Labor Code and Employers Liability limits of $1,000,000 per accident.

21.03.4 Environmental Pollution Liability: $3,000,000 per occurrence and $5,000,000
aggregate, with five (5) years’ tail coverage. Coverage shall include bodily injury or property damage arising
out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of
pollutants resulting from Contractor’s operations.
21.03.5 If Contractor maintains higher limits than the minimum shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Service Provider. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

21.04 Deductibles and Self-Insured Retention. Any deductibles or self-insured retention must be declared to City’s risk manager. Should City form a reasonable belief that Contractor may be unable to pay any deductibles or self-insured retentions, Contractor must procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by City’s risk manager.

21.05 Requirements for All Contractor Insurance Policies.

21.05.01 General Liability, Automobile and Environmental Liability Coverage. Contractor’s general liability, automobile, and environmental liability policies required by this Agreement shall contain the following:

1. City, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by, or on behalf of, Contractor; products and completed operations of Contractor; premises owned, leased or used by Contractor; and automobiles owned, leased, hired or borrowed by Contractor. The coverage must contain no special limitations on the scope of protection afforded to City, its officers, employees, agents and contractors.

2. Contractor’s insurance coverage must be primary insurance as respects City, its officers, employees, agents and contractors. Any insurance, or self-insurance maintained by City, its officers, employees, agents or contractors will be in excess of Contractor’s insurance and will not contribute with it.

3. Any failure to comply with reporting provisions of the policies will not affect coverage provided to City, its officers, employees, agents, or contractors.

4. Coverage must State that Contractor’s insurance will apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

21.05.02 All Coverage. Each insurance policy required by this Agreement must be endorsed to state that coverage may not be canceled except after thirty (30) calendar days (ten (10) days in the event of cancellation for non-payment) prior written notice has been given to City. Moreover, Contractor will not order the cancellation of any required insurance policy or change in insurance policy limits without thirty (30) days prior written notice to City by Contractor.

21.06 Acceptability of Insurers. Insurance is to be placed with insurers having an A.M. Best rating of A-/VII or better.

21.07 Verification of Coverage. Contractor must furnish City with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsement for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Contractor must furnish City with a new certificate of insurance and endorsements on each renewal of coverage or change of insurers.

21.07.1 Proof of insurance must be mailed to the following address or any subsequent address as may be directed by the City:
21.08 Modification of Insurance Requirements. The insurance requirements provided in this Agreement may be modified or waived by City’s risk manager, in writing, upon the request of Contractor if City’s risk manager determines such modification or waiver is in the best interest of City considering all relevant factors, including exposure to City.

21.09 Rights of Subrogation. All required insurance policies must preclude any underwriter’s rights of recovery or subrogation against City with respect to matters related to Contractor’s performance of its obligations under this Agreement, with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above-described insurance. Contractor must ensure that any companies issuing insurance to cover the requirements contained in this Agreement agree that they will have no recourse against City for payment or assessments in any form on any policy of insurance. The clauses ‘Other Insurance Provisions’ and ‘Insured Duties in the Event of an Occurrence, Claim or Suit’ as it appears in any policy of insurance in which City is named as an additional insured will not apply to City.

21.10 Failure to maintain insurance. Should Contractor fail to obtain or maintain insurance as required by this Agreement, Contractor shall have 7 days to cure the defect, during which time City shall have the option, but not the obligation to, at Contractor’s sole expense: (i) hire replacement Collection Services to perform Contractor’s tasks until insurance coverage is resumed; or (ii) obtain replacement insurance coverage during said cure period. Should Contractor fail to correct this defect, City shall have the option to terminate this Agreement immediately.

Article 22. Hold Harmless and Indemnification

22.01 Hold Harmless. Contractor releases and shall hold City, its elected officials, officers, agents, employees and volunteers harmless from all of Contractor’s claims, demands, lawsuits, judgments, damages, losses, or injuries and from all liability to Contractor, to Contractor’s employees, to Contractor’s contractors or subcontractors, or to the owners of Contractor’s firm, which damages, losses, injuries or liability occur during the work or Collection Services required under this Agreement, or performance of any activity or work required under this Agreement.

22.02 Defense and Indemnity of Third-Party Claims/Liability. Contractor shall indemnify, defend with legal counsel reasonably approved by City, and hold harmless City, its officers, officials, employees and volunteers (“City indemnitee”) from and against all liability including, but not limited to, loss, damage, expense, or cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Contractor’s negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the active negligence or willful misconduct of City. Should conflict of interest principles preclude a single legal counsel from representing both City and Contractor, or should City otherwise find Contractor’s legal counsel
unacceptable, then Contractor shall reimburse City its costs of defense, including without limitation
reasonable legal counsel fees, expert fees and all other costs and fees of litigation. The Contractor shall
promptly pay City any final judgment rendered against City (and its officers, officials, employees and
volunteers) with respect to claims determined by a trier of fact to have been the result of Contractor’s
negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply
with any of its obligations contained in this Agreement. It is expressly understood and agreed that the
foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of
California and will survive termination of this Agreement.

22.02.1 Contractor’s obligations under this section apply regardless of whether or not such
claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or
penalty, or liability was caused in part or contributed to by a City Indemnitee. However, without affecting the
rights of City under any provision of this Agreement, Contractor shall not be required to indemnify and hold
harmless City for liability attributable to the active negligence or willful misconduct of City, provided such
active negligence or willful misconduct is determined by agreement between the parties or by findings of a
court of competent jurisdiction. In instances where City is shown to have been actively negligent or guilty of
or willful misconduct and where City’s active negligence or willful misconduct accounts for only a percentage
of the liability involved, the obligation of the Contractor will be for that entire portion or percentage of liability
not attributable to the active negligence or willful misconduct of City.

22.03 Nonwaiver. City does not waive, nor shall be deemed to have waived, any indemnity,
defense or hold harmless rights under this section because of the acceptance by City, or the deposit with
City, of any insurance certificates or policies described in Article 21.

22.04 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, to pay all
attorneys’ fees, and to indemnify and hold City Indemnitees harmless from and against all fines or penalties
imposed by the California Integrated Waste Management Board 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 is attributable to the failure of
Contractor to implement and operate the diversion 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, Contractor will be responsible for engaging any consultants or attorneys
necessary to represent City in any challenge. All consultants and attorneys engaged hereunder are subject
to the agreement of City and Contractor.

22.05 Hazardous Substances Indemnification. Contractor agrees to indemnify, defend (with
counsel reasonably approved by City), protect and hold harmless the City Indemnitees from and against any
and all Claims of any kind whatsoever paid, suffered or incurred by or against the 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 or
Household Hazardous 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 &
22.06 Release Regarding Articles XIIIIC and XIIID of the California Constitution. City intends to comply with all applicable laws concerning the Service Rates. Upon thorough analysis, the parties have made a good faith determination that the Service Rates for the Collection Services provided under this Agreement are not subject to California Constitution Articles XIIIIC and XIIID because, among other reasons, such services are provided by a private corporation and not by City, Service Rates are calculated pursuant to the terms of this Agreement to provide Contractor's Compensation, the City does not impose Service Rates on any Service Recipient or property, the receipt of Collection Services is voluntary and not required of any property within City, and any owner or Service Recipient of property within City has the opportunity to avoid the Collection Services available under this Agreement either through self-hauling or use of property in such a manner that Solid Waste is not generated. Accordingly, and subject to Section 4.08, Contractor agrees to hold harmless and release the City Indemnitees from and against any and all claims Contractor may have against the City Indemnitees resulting in any form from the Service Rates or in connection with the application of California Constitution Article XIIIIC and Article XIIID to the imposition, payment or collection of the Service Rates. This Section will survive the expiration or termination of this Agreement for Claims arising prior to the expiration or termination of this Agreement.

22.07 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.

22.08 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.

22.09 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 loss, liability, penalty, damage, action or suit arising or resulting solely from acts or omissions constituting active negligence, willful misconduct, breach of this Agreement, or violation of law on the part of City, its officers or employees.

22.10 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 shall reimburse City for City's cost of repairing or replacing 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 Article 22.
Article 23. Default of Agreement

23.01 Termination. City may terminate 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:

23.01.1 Contractor voluntarily 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 consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

23.01.2 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 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

23.01.3 Contractor has defaulted, by failing or refusing to pay in a timely manner the administrative charges or other monies due to City and such default is not cured within thirty (30) calendar days of receipt of written notice by City to do so; or

23.01.4 Contractor has defaulted by allowing any final judgment for the payment of money owed to City 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

23.01.5 In the event that the monies due to City under Section 23.01.3 above or an unsatisfied final judgment under Section 23.01.4 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

23.01.6 Contractor has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Agreement, including the maintenance of a performance bond in accordance with Article 20, or any of the rules and regulations promulgated by City pursuant thereto or has wrongfully 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, or if by reason of the nature of such default, the same cannot 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). However,
notwithstanding anything contained herein to the contrary, for the failure of Contractor to provide Collection Services for a period of three (3) consecutive Work Days, City may secure Contractor's records on the fourth (4th) Work Day in order to provide interim Collection Services until such time as the matter is resolved and Contractor is again able to perform pursuant to this Agreement; provided, however, if Contractor is unable for any reason or cause to resume performance at the end of thirty (30) calendar days all liability of City under this Agreement to Contractor will cease and this Agreement may be terminated by City.

23.02 Violations. Notwithstanding the foregoing and as supplemental and additional means of termination of this Agreement under this Article, in the event that Contractor's record of performance shows that Contractor has defaulted in the performance of any of the covenants and conditions required herein to be kept and performed by Contractor three (3) or more times in any twelve (12) month period, and regardless of whether the Contractor has corrected each individual condition of default, Contractor will be deemed a "habitual violator", will be deemed to have waived the right to any further notice or grace period to correct, and all such defaults will be considered cumulative and collectively will constitute a condition of irredeemable default. City will thereupon issue Contractor a final warning citing the circumstances therefor, and any single default by Contractor of whatever nature, subsequent to the occurrence of the last of such cumulative defaults, will be grounds for immediate termination of this Agreement. In the event of any such subsequent default, City may terminate this Agreement upon giving of written final notice to Contractor, such cancellation to be effective upon the date specified in City's written notice to Contractor, and all contractual fees due hereunder plus any and all charges and interest will be payable to such date, and Contractor will have no further rights hereunder. Immediately upon the specified date in such final notice Contractor must cease any further performance under this Agreement.

23.03 Effective Date. In the event of any of 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, except for payment for Collection Services rendered up to and including the date of termination, all liability of City under this Agreement to Contractor will cease, and City will have the right to call 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.

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

23.05 Alternative Service. Should Contractor, for any reason, except the occurrence or existence of any of the events or conditions set forth in Section 19.06 [Uncontrollable Circumstances], refuse or be unable for a period of more than forty-eight (48) hours, to Collect a material portion or all of the Garbage, Organic Waste and C&D which it is obligated under this Agreement to Collect, and as a result, Garbage, Organic Waste and C&D 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 enter into an agreement with another Solid Waste Collection enterprise to Collect any or all Garbage, Organic Waste and C&D 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 event, before contracting
with another Solid Waste Collection enterprise to Collect any or all Garbage, Organic Waste and C&D that
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 Collection Services are immediately
available and must reimburse City for all of its expenses for such substitute Collection Services during period
in which Contractor is unable to provide Collection Services required by this Agreement.

Article 24. Modifications to the Agreement

24.01 City-Directed Change. City has the power to make changes in this Agreement 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. The size of
Containers specified herein are designed to meet the requirements of the State’s mandates including AB
341, AB 1826 and SB 1383. City reserves the right to redirect Garbage, Organic Waste, and C&D to alternate
Solid Waste facilities and change the designated sizes of Carts and/or Bins in accordance with any such
changes. City will give the Contractor notice of any proposed change and an opportunity to be heard
concerning those matters.

24.02 Recycling Collection. City has the power to direct Contractor to undertake Collection of
Recyclable Materials from Service Recipients. City and Contractor agree to meet and confer in good faith
regarding City’s potential interest in such a change to the Collection Services provided by this Agreement,
Contractor’s ability to provide the requested services, adjustments to this Agreement, and adjustments to
Contractor’s Compensation that would be requested to implement such a change.

24.03 Adjustments to Contractor’s Compensation for a City-Directed Change. In the event of any
City-directed change, Contractor shall be entitled to an adjustment to Contractor’s Compensation using the
procedure described in Exhibit 5. 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. In the event that City and Contractor cannot agree on an adjustment to Contractor’s
Compensation resulting from a City-directed change within six months of the change request, or other period
as agreed upon by both parties, City and Contractor agree to submit the proposed change to Contractor’s
Compensation to binding arbitration as described in Section 24.05.

24.04 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 in the future which mandate certain actions or programs for counties,
municipalities or Contractor 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 City of El Cerrito
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 or regulation, or the City Code materially alters
the obligations of Contractor, then Contractor may request a change in Contractor’s Compensation. 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 a Change in Law.
In the event that City and Contractor agree to a modification to this Agreement to implement changes in the interest of the public welfare or due to a Change in Law, but they cannot agree on an adjustment to Contractor’s Compensation resulting therefrom, City and Contractor agree to submit the proposed change to Contractor’s Compensation to binding arbitration as described in Section 24.05.

24.05 Arbitration. Arbitration shall be conducted by a single arbitrator. If, within twenty (20) days from the receipt of a request to arbitrate (or such longer period mutually agreed to by the parties), the parties are unable to agree on an arbitrator, then a single arbitrator shall be appointed pursuant to the Commercial Arbitration Rules of the American Arbitration Association, which shall govern any arbitration requested under this provision. Each party shall bear its own costs and expenses of any arbitration, including its attorneys’ fees. Notwithstanding the immediately preceding sentence subsequent to a Change in Control, the prevailing party in any arbitration will be entitled to recover from the opposing party all of the prevailing party’s costs and expenses, including reasonable attorneys’ fees. Each party shall pay one-half of the costs of the arbitrator, regardless of whether there has been a Change in Control.

Article 25. Legal Representation

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

Article 26. Conflict of Interest

26.01 Contractor is unaware of any City employee or official that has a financial interest in Contractor’s business. During the term of this Agreement and/or as a result of being awarded this Agreement, Contractor shall not offer, encourage or accept any financial interest in Contractor’s business by any City employee or official.

Article 27. Contractor’s Personnel

27.01 Contractor shall make information about wage rates, benefits and job classifications of Contractor’s employees available to the City prior to any subsequent procurement for the Collection Services provided hereunder.

27.02 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.

27.03 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 their duties under this Agreement.

27.04 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.
27.05 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 Collection Vehicle that is being operated.

27.06 Each driver of a Collection Vehicle must at all times comply with all applicable State and Federal laws, regulations and requirements.

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

Article 28. Exempt Waste

28.01 Contractor is not required to Collect or dispose of Exempt Waste but may offer such services. 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 29. Independent Contractor

29.01 In the performance of Collection 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.

Article 30. Laws to Govern

30.01 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.

Article 31. Consent to Jurisdiction

31.01 The parties agree that any litigation between City and Contractor concerning or arising out of this Contract must be filed and maintained exclusively in the Superior Courts of Contra Costa County, State of California, or in the United States District Court for the Northern District of California to the fullest extent permissible by law. Each party consents to service of process in any manner authorized by California law.

Article 32. Assignment

32.01 No interest in this Agreement may be assigned, sold or transferred, either in whole or in part, by Contractor without the prior written consent of the City which the City may grant or refuse in its reasonable discretion. The Contractor shall promptly notify the City in writing at least one hundred twenty (120) days in advance of the proposed closing of any such proposed assignment, sale or transfer. The Contractor is encouraged to notify the City as soon as possible of any proposed assignment, sale or transfer. In the event that the City Council approves of any assignment, sale or transfer, said approval shall not relieve Contractor of any of its obligations or duties under this Agreement unless this Agreement is modified in writing to that effect.
32.02 Any such assignment, sale or transfer made by the Contractor without the consent of the City shall be null and void and the attempted assignment, sale or transfer shall constitute a material breach of this Agreement and give the City grounds to terminate this Agreement upon written notice to the Contractor, and upon such termination, all liability of the City under this Agreement to the Contractor shall cease, and the City (1) shall have the right to call the performance bond; and (2) shall be free to negotiate with other Solid Waste Collection enterprises to provide Solid Waste Collection Services; and (3) shall have the right to award an agreement for such services to the enterprise of its choice. For purposes of this section, "assignment, sale or transfer" shall include, but not be limited to:

32.02.1 A sale, exchange or other transfer to a third party of outstanding common stock of the Contractor which results in a Change in Control.

32.02.2 A sale to a third party of all or substantially all of the Contractor's assets dedicated to providing Collection Services required by this Agreement.

32.02.3 Any subcontracting of the Contractor's Collection Services required by this Agreement.

32.02.4 Any dissolution, reorganization, consolidation, merger, recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction that results in a Change in Control.

32.02.5 Any combination of the foregoing (whether or not related or contemporaneous transactions) which has the effect of a Change in Control.

32.02.6 Any assignment by operation of law, including insolvency or bankruptcy, assignment for the benefit of creditors, writ of agreement for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in a probate proceeding that results in a Change in Control.

32.03 The Contractor acknowledges that this Agreement involves rendering a vital service to the City's residents and businesses, and that the City has selected the Contractor to perform the Collection Services specified herein based on:

32.03.1 The Contractor's experience, skill and reputation for conducting its Solid Waste management operations in a safe, effective and responsible fashion, at all times in keeping with applicable local, state and federal environmental laws, regulations and best management practices.

32.03.2 The Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to City under this Agreement. The City relied on each of these factors, among others, in choosing the Contractor to perform the Collection Services to be rendered by the Contractor under this Agreement.

32.04 The City is concerned about the possibility that an assignment, sale or transfer could result in significant increases in the costs of Collection Services relative to the costs promised by Contractor that were a material inducement to City to enter into this Agreement, as well as a change in the quality of service. Accordingly, the following standards have been set to ensure that any assignment, sale or transfer shall result in continued quality of service and that the Assignee has the ability to provide Collection Services without significant increases in costs. At a minimum, no request by the Contractor for the City's consent to
an assignment, sale or transfer need be considered by the City unless and until the Contractor has met the requirements of this Article 32.

32.05 The Contractor shall reimburse the City for its reasonable, documented expenses for attorneys and other consultants engaged by the City to investigate the suitability of any proposed Assignee, and to review and finalize any documentation required as a condition for approving any such assignment. In furtherance of the Contractor’s obligation to the City upon notice by the Contractor of its intention to assign its rights hereunder the Contractor shall pay the City the sum of one hundred thousand dollars ($100,000) as a refundable deposit of such expenses of the City. This amount shall be adjusted by the annual change in the CPI All Other a maximum of one time annually. The City shall refund to the Contractor any portion of the deposit that the City does not use for the purposes authorized by this Section 32.05.

32.06 The Contractor shall furnish the City with audited financial statements of the proposed Assignee’s operations for the immediately preceding three (3) operating years.

32.07 The Contractor shall furnish the City with satisfactory proof:

32.07.1 That the proposed Assignee has at least ten (10) years of Solid Waste management experience including the handling of Solid Waste, Recyclable and Organic Materials on a scale equal to or exceeding the scale of operations conducted by the Contractor under this Agreement;

32.07.2 That in the last five (5) years, neither the proposed Assignee nor any of its affiliates have suffered significant major citations or other charges from any federal, state or local agency having jurisdiction over its operations due to any significant failure to comply with state, federal or local environmental laws and that the Assignee has provided the City with a complete list of such citations and charges;

32.07.3 That the proposed Assignee has conducted its operations in a reasonably environmentally safe and conscientious fashion;

32.07.4 That the proposed Assignee has conducted its Solid Waste management practices in good faith and substantial compliance with sound management practices, including all federal, state and local laws regulating the collection and disposal of Solid Waste, including Hazardous Wastes; and

32.07.5 That the proposed Assignee can fulfill the terms of this Agreement in a timely, safe and effective manner without material changes in the quality of Collection Services or materials increases in the costs of providing them, in the form of any other available information required by City.

32.08 To assist the City in determining whether to provide consent to an assignment, sale, or transfer, the City may request from the Assignee (directly or through Contractor) reasonable documentation of Assignee’s understanding of and ability and plan to perform the obligations proposed to be assumed by Assignee under the Agreement. To assist the City in determining whether to consent to an assignment, sale, or transfer the City may also require one or more representatives of the Assignee to meet in person to demonstrate to the City’s reasonable satisfaction that the Assignee understands and intends and has the ability to perform the obligations intended to be assumed under this Agreement.

32.09 Under no circumstances shall the City be obliged to consider any proposed assignment, sale or transfer by the Contractor if the Contractor is in material breach of any provision of this Agreement at the time of the request or at any time during the period of consideration of the request. The City will provide
the Contractor with a reasonable opportunity to be heard before the City Manager and the opportunity to correct any such claimed failure of performance or material breach.

32.10 In the event that City approves an assignment, sale or transfer, the Assignee shall not be entitled to request any adjustment in Contractor’s Compensation other than as provided under this Agreement.

32.11 Contractor shall provide an annual written update to the City by October 1 of each year detailing the Contractor’s plans, actions, accomplishments and next steps with respect to its internal succession planning. Contractor shall meet with the City on request to discuss details of the Contractor’s succession planning efforts.

Article 33. Compliance with Laws

33.01 In the performance of this Contractor, Contractor must comply with all Applicable Laws, including, without limitation, the El Cerrito Municipal Code.

33.02 City shall provide written notice to Contractor of any planned amendment of the El Cerrito Municipal Code that would substantially affect the performance of Contractor’s Collection 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 34. Permits and Licenses

34.01 Contractor shall 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.

34.02 The Contractor must have a valid City of El Cerrito Business License throughout the term of the Agreement.

Article 35. Waiver

35.01 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 36. Prohibition Against Gifts

36.01 Contractor represents that Contractor is familiar with City’s prohibition against 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 the City.

Article 37. Point of Contact

37.01 The day-to-day dealings between Contractor and City will be between Contractor and the Agreement Administrator.
Article 38. Notices

38.01 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 the City:

Public Works Director
City of El Cerrito Public Works Dept.
10890 San Pablo Avenue
El Cerrito, CA 94350
Telephone: (510) 215-4385
e-mail: yortiz@ci.el-cerrito.ca.us

As to the Contractor:

President
East Bay Sanitary Co., Inc.
1432 Kearney St.
El Cerrito, CA 94350
Telephone: (510) 237-4321
e-mail: markfigone@ebsan.com

38.02 Notices will be effective when received at the address as specified above. Changes in the respective address to which such notice is to be directed may be made by written notice.

38.03 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 39. Transition to Next Contractor

39.01 In the event Contractor is not awarded an extension or new contract 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 Collection Services described in this Agreement. Such cooperation will include but not be limited to transfer of computer data, files and tapes; providing routing information, route maps, Collection Vehicle fleet information, and list of Service Recipients; providing a complete inventory of all Containers; providing adequate labor and equipment to complete performance of all Collection Services required under this Agreement; taking reasonable actions necessary to transfer ownership of Carts and Bins, 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 in subsequent Agreements and providing other reports and data required by this Agreement.
Article 40. Contractor’s Records

40.01 Contractor shall keep and preserve, during the Term of this Agreement, full, complete, and accurate financial and accounting records, pertaining to cash, billing and disposal transactions for the Service Area, prepared on an accrual basis in accordance with generally accepted accounting principles. These records and reports are necessary for the City to properly administer and monitor the Agreement and to assist the City in meeting the requirements of the Act. The Contractor shall keep and preserve, during the Term of this Agreement, and for a period of not less than four (4) years following expiration or other termination hereof or for any longer period required by law, full, complete and accurate records as indicated in the Agreement.

40.02 Any records or documents required to be maintained pursuant to this Agreement must be made available for inspection or audit, 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. Copies of such documents will be provided to City electronically, available to City for inspection at the local Contractor office, or an alternate site if mutually agreed upon.

40.03 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 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 (10) calendar days. Contractor shall within five (5) calendar days either: (i) consent in writing to the disclosure of the Records; or (ii) seek and obtain, at Contractor’s sole cost and expense, the order of a court of competent jurisdiction staying or enjoining the disclosure of the Records. If Contractor fails to timely respond, then City may proceed to disclose the Records in which event Contractor agrees to the disclosure and waives and releases City of any liability for the disclosure of the Records.

40.04 Where City has reason to believe that such records or documents may be lost or discarded in the event of 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 to any party authorized by Contractor, Contractor’s representatives, or Contractor’s successor-in-interest.

Article 41. Entire Agreement

41.01 This Agreement and the attached Exhibits constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof, and the Agreement will not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties.
Article 42. Severability

42.01 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.

Article 43. Right to Require Performance

43.01 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 44. Headings

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

Article 45. Exhibits

45.01 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 46. Attorney’s Fees

46.01 In the event that arbitration or litigation is brought by a party in connection with this Agreement, each party shall bear its own costs and expenses, including, without limitation, attorneys’ fees. Notwithstanding the immediately preceding sentence subsequent to a Change in Control, in the event that either party brings arbitration or litigation 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 47. Effective Date

47.01 This Agreement will become effective when it is properly executed by City and Contractor and Contractor will begin Collection Services under this Agreement as of June 1, 2022.
IN WITNESS WHEREOF, City and Contractor have executed this Agreement on the respective date(s) below each signature.

CITY OF EL CERRITO
A Charter Law City
By: [Signature]
Karen Pinkos, City Manager

CONTRACTOR
By: [Signature]
Mark Figone, President

ATTEST
Holly M. Charlotte, City Clerk
APPROVED AS TO FORM
City Attorney
By: [Signature]

By: [Signature]
Cara Figone, Vice President
Secretary, Assistant Secretary, Financial Officer, Asst. Treasurer

Sky Woodruff
Exhibit 1
City Service Recipients

Contractor shall provide no-cost Garbage and Organic Waste Collection Services for the following City Service Recipients.

<table>
<thead>
<tr>
<th>Location</th>
<th>Service Level</th>
<th>Frequency</th>
</tr>
</thead>
</table>
| 1. Arlington Park  | (1) 1 Cubic Yard (CY) bin for garbage  
|                    | (1) 64-gallon cart for green waste                | Once Per Week Pickup|
| 2. Cerrito Vista Park | (1) 1 CY bin for garbage                         | Once Per Week Pickup|
| 3. Community Center | (1) 1 CY bin for garbage  
|                    | (3) 64-gallon carts for green waste               | Once Per Week Pickup|
| 4. El Cerrito Library | (2) 64-gallon carts for garbage  
|                    | (2) 64-gallon carts for green waste               | Once Per Week Pickup|
| 5. City Hall       | (1) 1 CY bin for garbage  
|                    | (1) 64-gallon cart for green waste                | Once Per Week Pickup|
| 6. Public Safety Building | (1) 2 CY bin for garbage  
|                    | (1) 64-gallon cart for green waste                | Once Per Week Pickup|
| 7. Fire Station #72 | (2) 64-gallon carts for garbage  
|                    | (1) 64-gallon cart for green waste                | Once Per Week Pickup|
| 8. Corporation Yard | (2) 64-gallon carts for garbage  
|                    | (2) 64-gallon carts for green waste               | Once Per Week Pickup|
| 9. Recycling Center | (1) 64-gallon cart for garbage  
|                    | (1) 64-gallon cart for green waste                | Once Per Week Pickup|
| 10. Casa Cerrito   | (1) 64-gallon cart for garbage  
|                    | (1) 64-gallon cart for green waste                | Once Per Week Pickup|

NOTE: Exhibit 1 may be adjusted from time to time, as needed, to include all premises owned, operated, or maintained by the City.
### Exhibit 2
Administrative Charges and Penalties

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount if Not Cured in 30 Days</th>
<th>If Cured in 30 Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Failure to respond to each complaint within three (3) Work Days of receipt of complaint.</td>
<td>$100 per incident per Service Recipient.</td>
<td></td>
</tr>
<tr>
<td>b. Failure to maintain call center hours as required by this Agreement.</td>
<td>$100 per day.</td>
<td>-0-</td>
</tr>
<tr>
<td>c. Failure to submit to City all reports by the deadlines required under the provisions of this Agreement.</td>
<td>$100 per day.</td>
<td>-0-</td>
</tr>
<tr>
<td>d. Failure to include all parts of quarterly and annual reports specified Exhibit 8.</td>
<td>$100 per day.</td>
<td>-0-</td>
</tr>
<tr>
<td>e. Failure to submit to City all payments by the deadlines required under the provisions of this Agreement.</td>
<td>1% of the total amount due if fees are 1 – 10 days late; and 10% of the total amount due if fees are more than 10 days late.</td>
<td></td>
</tr>
<tr>
<td>f. Failure for Collection Container to be compliant with specifications of this Agreement.</td>
<td>$50.00/each Collection Container not compliant.</td>
<td>-0-</td>
</tr>
<tr>
<td>g. Failure for Collection Container to be compliant with SB 1383 labeling requirements.</td>
<td>$50.00/each Collection Container not compliant.</td>
<td>-0-</td>
</tr>
<tr>
<td>h. Failure to display Contractor's name and customer service phone number on Collection Vehicles.</td>
<td>$100 per incident per day.</td>
<td>-0-</td>
</tr>
<tr>
<td>i. Failure to Collect a missed collection Container by close of the next Work Day upon notice to Contractor, that exceeds twenty (20) in any Calendar Year.</td>
<td>$1,000 per Calendar year, plus $10 per incident per day.</td>
<td>-0-</td>
</tr>
<tr>
<td>j. Failure to repair or replace damaged Containers within the time required by this Agreement, that exceeds twenty (20) in any Calendar year.</td>
<td>$1,000 per Calendar year, plus $10 per incident per day.</td>
<td></td>
</tr>
<tr>
<td>k. Failure to maintain collection hours as required by this Agreement.</td>
<td>$100 per day.</td>
<td>-0-</td>
</tr>
<tr>
<td>l. Failure to have Contractor personnel in Contractor-provided uniforms.</td>
<td>$25 per day per employee.</td>
<td>-0-</td>
</tr>
<tr>
<td>Item</td>
<td>Amount if Not Cured in 30 Days</td>
<td>If Cured in 30 Days</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------</td>
<td>-------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>m. Failure of Contractor to follow Contamination and Overage procedures as set forth in this Agreement.</td>
<td>$100/day for failure to implement correction plan.</td>
<td>Submit for approval to City and implement plan of correction to City within 30 days.</td>
</tr>
<tr>
<td>n. Vehicle fluid leak incidents from Contractor Collection Vehicles in excess of three (3) during a calendar year.</td>
<td>$5000 per incident in excess of three (3)</td>
<td></td>
</tr>
<tr>
<td>o. Failure of Contractor to provide proof of performance bond as required by this Agreement</td>
<td>Agreement Default $500 per day</td>
<td></td>
</tr>
<tr>
<td>p. Failure of Contractor to provide proof of insurance as required by this Agreement</td>
<td>Agreement Default $500 per day</td>
<td></td>
</tr>
<tr>
<td>q. Failure to Collect holiday trees on Collection Days.</td>
<td>$25 per day.</td>
<td>-0-</td>
</tr>
<tr>
<td>r. Failure to commence service to a new Service Recipient within seven (7) days after order.</td>
<td>$150 per day</td>
<td>-0-</td>
</tr>
<tr>
<td>w. Failure to initially respond to a Service Recipient complaint within one (1) business day.</td>
<td>$50.00 per failure to resolve Service Recipient compliant or request</td>
<td>-0-</td>
</tr>
<tr>
<td>t. Failure to conduct the required tri-annual customer satisfaction assessment and survey and report the results to the City.</td>
<td>$1,000</td>
<td>-0-</td>
</tr>
<tr>
<td>u. Failure to conduct any of the required quarterly in-depth diversion site visits within each calendar quarter.</td>
<td>$50</td>
<td>-0-</td>
</tr>
<tr>
<td>v. Failure to provide Roll-off hauling service from the City of El Cerrito Recycling and Environmental Resource Center and Corporation Yard within 2 working days of the service being requested.</td>
<td>$250</td>
<td>-0-</td>
</tr>
<tr>
<td>w. Failure to return containers to original service location with lids closed.</td>
<td>$50</td>
<td>-0-</td>
</tr>
<tr>
<td>x. Failure to comply with State and Federal vehicle weight limitations.</td>
<td>$200 per incident after twenty-five (25) such incidents per quarter.</td>
<td>-0-</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
<td>Amount if Not Cured in 30 Days</td>
</tr>
<tr>
<td>------</td>
<td>------------------------------------------------------------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>y.</td>
<td>Failure to use City designated Disposal Facility, Organics Waste Facility, and C&amp;D Processing Facility and failure to comply with Section 3.18.</td>
<td>$100/ton</td>
</tr>
<tr>
<td>z.</td>
<td>Disposal of Organic Waste in the Disposal Facility without first obtaining the required permission of the City.</td>
<td>$1,000 per load.</td>
</tr>
<tr>
<td>aa.</td>
<td>Failure to deliver to Service Recipients new Garbage, Organic Waste, and Recyclable Materials Carts meeting color and labelling requirements by the date specified in this Agreement.</td>
<td>$1,000 plus $50/day</td>
</tr>
<tr>
<td>bb.</td>
<td>Failure to be in compliance with the terms and conditions of the Agreement pursuant to Section 12.02.4.</td>
<td>$5,000</td>
</tr>
</tbody>
</table>
Exhibit 3
Service Charges

Services charges will be adjusted by the change in the CPI All Other a maximum of one time annually. Amounts listed with an asterisk (*) may fluctuate based on market prices except for labor hours which may fluctuate based on labor agreements; the Contractor shall notify the City of any adjustments to these prices a maximum of one time annually.

<table>
<thead>
<tr>
<th>Service Charge Type</th>
<th>Charge Per Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Standard Service Charges</strong></td>
<td></td>
</tr>
<tr>
<td>Contaminated Container Charge (Per Article 3)</td>
<td>$25.00</td>
</tr>
<tr>
<td>Overage Charge (Per Article 3)</td>
<td>$25.00</td>
</tr>
<tr>
<td>Cart Cleaning (Per Article 3)</td>
<td>$25.00</td>
</tr>
<tr>
<td>Bin Cleaning (Per Article 3)</td>
<td>$50.00</td>
</tr>
<tr>
<td>Roll-off Cleaning (Per Article 3)</td>
<td>$100.00</td>
</tr>
<tr>
<td>Cart / Bin Replacement Charge (Per Articles 6 and 7)*</td>
<td>$65.00 / $1,000.00</td>
</tr>
<tr>
<td>Additional Large Item Collection Charge (Per Articles 6 and 7)</td>
<td>Per Extra Service Rates Below</td>
</tr>
<tr>
<td><strong>Back-up Recycling Collection Services Charges (Per Article 10) and Emergency Service Charges (Per Article 16)</strong></td>
<td></td>
</tr>
<tr>
<td>– Collection Vehicle per day*</td>
<td>$360.00</td>
</tr>
<tr>
<td>– Driver per Hour / Overtime*</td>
<td>$152.00 / $174.00</td>
</tr>
<tr>
<td>– Driver per Day / Overtime*</td>
<td>$889.00 / $1065.00</td>
</tr>
<tr>
<td><strong>Extra Service Charges (Services and Charges per Service Recipient Request)</strong></td>
<td></td>
</tr>
<tr>
<td>Extra Solid Waste Collection Services</td>
<td></td>
</tr>
<tr>
<td>Return for Service Charge (if Container not set out)</td>
<td>$25.00</td>
</tr>
<tr>
<td>Extra 15-gal bag of Garbage or Organic Waste</td>
<td>$6.35</td>
</tr>
<tr>
<td>Extra 20-gal bag of Garbage or Organic Waste</td>
<td>$8.45</td>
</tr>
<tr>
<td>Extra 30-gal bag of Garbage or Organic Waste</td>
<td>$12.65</td>
</tr>
<tr>
<td>Extra 64-gal bag of Garbage or Organic Waste</td>
<td>$26.95</td>
</tr>
<tr>
<td>Extra 1/2 CU YD (4 x 30-gal bags)</td>
<td>$42.50</td>
</tr>
<tr>
<td>Extra CU YD (8 x 30-gal bags)</td>
<td>$85.00</td>
</tr>
<tr>
<td>Extra Dump on 1 YD Container</td>
<td>$110.50</td>
</tr>
<tr>
<td>Service Charge Type</td>
<td>Charge Per Unit</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Extra Dump on 2 YD Container</td>
<td>$196.05</td>
</tr>
<tr>
<td><strong>Additional Services</strong></td>
<td></td>
</tr>
<tr>
<td>Toilet (Seat &amp; Water Tank)*</td>
<td>$75.00</td>
</tr>
<tr>
<td>Sofa up to 7FT / Sofa Bed*</td>
<td>$60.00 / $80.00</td>
</tr>
<tr>
<td>Stuffed Chair / Lazy Boy / Recliner*</td>
<td>$60.00</td>
</tr>
<tr>
<td>Twin / Full – Mattress or Box Spring*</td>
<td>$60.00</td>
</tr>
<tr>
<td>Queen / King – Mattress or Box Spring*</td>
<td>$65.00</td>
</tr>
<tr>
<td>Baby Crib Mattress*</td>
<td>$20.00</td>
</tr>
<tr>
<td>TV / Computer Monitor*</td>
<td>$150.00</td>
</tr>
<tr>
<td>Dishwasher / Washer / Dryer / Stove*</td>
<td>$100.00</td>
</tr>
<tr>
<td>Water Heater *</td>
<td>$80 /+$10 per gal</td>
</tr>
<tr>
<td>Refrigerator / Freezer / AC Unit*</td>
<td>$125.00</td>
</tr>
<tr>
<td>Area Rug 5ft and up*</td>
<td>$20.00 - $40.00</td>
</tr>
<tr>
<td>Office Chair*</td>
<td>$20.00</td>
</tr>
<tr>
<td>Office Desk*</td>
<td>$20.00 - $50.00</td>
</tr>
<tr>
<td>Patio Furniture (Tables/Chairs)*</td>
<td>$50.00 - $90.00</td>
</tr>
<tr>
<td>Dining Table / Chairs*</td>
<td>$50.00 - $90.00</td>
</tr>
<tr>
<td>L-Shape Sectional*</td>
<td>$60.00 - $150.00</td>
</tr>
<tr>
<td>Bedframe (Head/Footrest + Railing)*</td>
<td>$50.00 - $90.00</td>
</tr>
<tr>
<td>Bookshelves / End Tables / Nightstands*</td>
<td>$40.00 - $90.00</td>
</tr>
<tr>
<td>Exercise Equipment*</td>
<td>$100.00 - $150.00</td>
</tr>
<tr>
<td>Kitchen Cabinets / Sink / Windows*</td>
<td>$50.00 - $150.00</td>
</tr>
<tr>
<td>Lock and Key Set for Carts or Containers</td>
<td>$30.00</td>
</tr>
<tr>
<td>Locking System Installation on Containers</td>
<td>$150.00</td>
</tr>
</tbody>
</table>
Exhibit 4

Annual Indexed Adjustment to Contractor’s Compensation

The Contractor shall provide the City with annual audited financial statements no later than July 1 of each year. The City and Contractor agree that Contractor’s Compensation will be adjusted annually based on the Refuse Rate Index (RRI) methodology described in this Exhibit 4, subject to City Council confirmation that the proposed adjustments comply with the RRI calculation methodology. The process and timing of proposed Contractor’s Compensation adjustments based upon the RRI calculation methodology shall be as described in the last paragraph of this Exhibit 4.

Refuse Rate Index (RRI) Calculation Methodology
Contractor’s Compensation for the following Calendar Year (e.g., 2023) shall be adjusted annually by multiplying the Contractor’s Compensation for the current Calendar Year (e.g., $5,070,115 for 2022) by the calculated Index Rate Adjustment Factor that shall equal:

One (1)  
Plus  
[(Union Salaries and Wages Adjustment Factor x Union Salaries and Wages Expense Percentage)  
Plus  
(Non-Union Salaries and Wages Adjustment Factor x Non-Union Salaries and Wages Expense Percentage)  
Plus  
(Diesel Fuel Adjustment Factor x Diesel Fuel Expense Percentage)  
Plus  
(Vehicle Maintenance Adjustment Factor x Vehicle Maintenance Expense Percentage)  
Plus  
(All Other Adjustment Factor x All Other Expense Percentage)  
Plus  
(Depreciation and Interest x Depreciation and Interest Expense Percentage)]

Where:

Union Salaries and Wages Adjustment Factor shall be the applicable annual adjustment to the wages and benefits specified in the Contractor’s then applicable Collective Bargaining Agreement. The Union Salaries and Wages Expense Percentage used to calculate each annual adjustment shall be established each year based on the actual percentages of those expense items as reported in the Contractor’s prior year audited Financial Statement.

Non-Union Salaries and Wages Adjustment Factor shall be equal to the CPI All Other annual adjustment to the wages and benefits for non-union employees. The Non-Union Salaries and Wages Expense Percentage used to calculate each annual adjustment shall be established each year based on the actual percentages of those expense items as reported in the Contractor’s prior year audited Financial Statement.

Diesel Fuel Adjustment Factor shall be the average annual percentage change in US Energy Information Administration Weekly Retail Gasoline and Diesel Prices (https://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_sca_m.htm) for each of the prior 12 months, as of August of the Current Year. Diesel Fuel Expense Percentage shall be the percentage of the Contractor’s total operating expenses that are related to diesel fuel expenses.

Vehicle Maintenance Adjustment Factor shall be the average annual percentage change in the Consumer Price Index (Series ID CUURS49BSA0) for each of the prior 12 months, as of August of the Current Year. All Other Expense Percentage shall be the percentage of the Contractor’s total operating expenses that are related to expenses for all other operating categories not otherwise addressed in this Exhibit 4.
Depreciation and Interest Adjustment Factor shall be set based on the Contractor’s actual depreciation and interest expenses for the current year compared to the prior year. Depreciation and Interest Expense Percentage shall be the percentage of the Contractor’s total operating expenses that are related to depreciation and interest expenses.

The table below provides the actual RRI calculation which was used to adjust Contractor’s Compensation for Calendar Year 2022.

<table>
<thead>
<tr>
<th>Item #</th>
<th>Category</th>
<th>Data Source</th>
<th>Percent Change (1)</th>
<th>Category Costs</th>
<th>Category Weight (2)</th>
<th>Weighted Percentage Change (3)</th>
<th>Adjusted Category Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Union Labor</td>
<td>The applicable annual adjustment to the wage rates and benefits specified in the Company’s applicable Union Agreement</td>
<td>2.59%</td>
<td>$989,289</td>
<td>27.26%</td>
<td>0.71%</td>
<td>$1,014,917</td>
</tr>
<tr>
<td>2</td>
<td>Non-Union Labor</td>
<td>Series ID: CUURS49BSA0, All items in San Francisco-Oakland-Hayward, CA, all urban consumers, not seasonally adjusted</td>
<td>2.55%</td>
<td>$832,336</td>
<td>22.94%</td>
<td>0.56%</td>
<td>$853,557</td>
</tr>
<tr>
<td>3</td>
<td>Diesel Fuel</td>
<td>California No 2 Diesel Ultra Low Sulfur (0-15 ppm) Retail Prices (Dollars per Gallon) [1]</td>
<td>3.14%</td>
<td>$101,504</td>
<td>2.80%</td>
<td>0.09%</td>
<td>$104,687</td>
</tr>
<tr>
<td>4</td>
<td>Vehicle Maintenance</td>
<td>Series ID: pcu333624333924, industrial truck, trailer and stacker mfg.</td>
<td>3.75%</td>
<td>$125,557</td>
<td>3.46%</td>
<td>0.13%</td>
<td>$130,269</td>
</tr>
<tr>
<td>5</td>
<td>All Other</td>
<td>Series ID: CUURS49BSA0, All items in San Francisco-Oakland-Hayward, CA, all urban consumers, not seasonally adjusted</td>
<td>2.55%</td>
<td>$1,429,975</td>
<td>39.40%</td>
<td>1.00%</td>
<td>$1,466,434</td>
</tr>
<tr>
<td>6</td>
<td>Depreciation and Interest</td>
<td>Set to actual</td>
<td>-0.66%</td>
<td>$150,292</td>
<td>4.14%</td>
<td>-0.03%</td>
<td>$149,297</td>
</tr>
<tr>
<td>7</td>
<td>Pension Liability Funding</td>
<td>No annual adjustment to Pension Funding Liability - Existing rates set to generate $45,885 annually.</td>
<td>0.00%</td>
<td>$0</td>
<td>0.00%</td>
<td>0.00%</td>
<td>$0</td>
</tr>
<tr>
<td>RRI</td>
<td></td>
<td></td>
<td></td>
<td>$3,628,952</td>
<td>100.00%</td>
<td>2.49%</td>
<td>$3,719,161</td>
</tr>
</tbody>
</table>

(1) Assumes these are the percentage changes in the indices from year to year.
(2) Assumes the categories represent these percentages as a total of CONTRACTOR’S operating costs.
(3) Represents the product of Percentage Change x Category Weight.

**Negative Adjustment Factor**
In any year that the calculated RRI results in a negative number, there shall be no adjustment to the Contractor’s Compensation. Instead, the negative number shall be added to the result of the subsequent year’s calculated RRI. The result shall be an Adjusted RRI that shall be used to calculate the Contractor’s Compensation adjustment for that subsequent year.

**RRI Exceeding Five Percent**
In the event that the calculated RRI exceeds five percent (5%), that calculated adjustment will be used to adjust the Contractor’s Compensation for the next year as provided for in the above methodology. However, in such a case the City or Contractor has the option to require that a detailed review of the Contractor’s revenues and expenses be conducted the following year (as per Exhibit 5) in lieu of the RRI adjustment process for determining an appropriate Contractor’s Compensation adjustment for the next year.

**Request for RRI Compensation Adjustment**
The Contractor shall submit to the City its Request for RRI Compensation adjustment by October 1 of each year. That Request shall provide support for the calculated RRI and shall show the proposed Contractor’s Compensation for the next Calendar Year as the product of the then current year Contractor’s Compensation times the RRI. The City shall have the opportunity to review and adjust the Contractor’s RRI Compensation Adjustment calculations to ensure mathematical accuracy and adherence to the terms and conditions of this Agreement. The City shall use its best efforts to obtain City Council confirmation of adjustments to Service Rates sufficient to meet Contractor’s Compensation by
January 1 of the next year. However, the City shall not seek City Council confirmation of any retroactive adjustments to compensate the Contractor for any delay in confirming the Service Rates.
Detailed Compensation Review

General
In the event that either City or Contractor requests a Detailed Compensation Review, as provided for in Section 4.03, the Detailed Compensation Review shall be based on evidence or data presented by City or Contractor contained within the audited financial statements for the preceding complete Calendar Year for the services required by this Agreement.

Overview of Detailed Compensation Review Process
The Detailed Compensation Review process is as follows:
1. Identify the reason(s) for the Detailed Compensation Review request.
2. Establish the actual financial results for the prior Calendar Year, which shall consist of all franchised revenues and expenses as reported in Contractor's Annual Audited Financial Statement. It is expected that any revenues and/or expenses attributed to non-franchised services shall be clearly reported in the Annual Audited Financial Statement along with the basis used to assign or allocate such revenues and expenses.
3. Make any appropriate adjustments to the actual costs to account for non-allowable costs and/or to exclude or reduce any costs that were not reasonably and necessarily incurred in the performance of the services provided in accordance with the Agreement.
4. Calculate the adjustment required to achieve a revenue that will, in turn, result in a 90.5% (ninety-and one-half percent) targeted Operating Ratio.
5. Complete and submit a Detailed Compensation Review application.

Detailed Compensation Review Application
In support of a Detailed Compensation Review, Contractor shall prepare a Detailed Compensation Review application (hereinafter “Application”) that shall be submitted to the other Party no later than August 1. The Application shall include:
1. The reason(s) for the Application.
2. Line-item revenue and expenses for the franchised services as reported in Contractor's Annual Audited Financial Statement.
3. Variance analyses of revenues and expenses for the prior five years, along with explanations for significant variances.
4. Calculated revenue requirement based upon the current Operating Ratio.
5. The Contractor shall depreciate all trucks and containers over 10-years or greater for the duration of the Term.
6. Requested adjustment to Contractor's Compensation required to achieve a revenue that will, in turn, result in a 90.5% (ninety-and one-half percent) targeted Operating Ratio.

Operating Ratio
“Operating Ratio” means the ratio, expressed as a percentage, of the net operating costs actually incurred by Contractor, exclusive of Pass-Through Costs and Non-Allowable Costs, divided by Contractor's net income, as produced by the Service Rates and Service Charges that are applied to the services provided under this agreement.

Pass-Through Costs
"Pass-Through Cost" means a cost to which no element of overhead, administrative expense, or profit is added. Pass-Through Costs shall include:
- Franchise fees.
- All processing and disposal (tip fees) costs incurred by Contractor.
Franchise Fees may be included at Contractor's discretion as an element of costs for calculating Contractor's Compensation, however these expenses shall not be included in any costs used as
a basis for calculating or determining Operating Ratio. Processing and disposal tip fees are not
included in Contractor’s Compensation.

**Compensation for Pension Liability**

The City agrees that, when Contractor’s Compensation is calculated, compensation for the
Contractor’s then-unfunded pension liability will be 78.5% of actual, pending managerial review
of the pension fund and investment strategy. The Contractor agrees that compensation for the
Contractor’s then-unfunded pension liability shall not exceed $45,885 per year, until a time when
the pension becomes fully funded; upon full funding of the pension liability, or a Change in Control,
the amount will be removed Contractor’s Compensation.
### Exhibit 6

**Public Area Garbage and Organic Waste Collection Locations and Frequencies**

<table>
<thead>
<tr>
<th>Location</th>
<th>Service Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>11. San Pablo Avenue (northern city limits to southern city limits) Trash receptacles on both sides of street including at transit shelters</td>
<td>5 times/week</td>
</tr>
<tr>
<td>12. Ohlone Greenway (northern city limits to southern city limits) Trash receptacles located at cross streets (e.g., Central Ave., Fairmount Ave., Stockton Ave.)</td>
<td>3 times/week</td>
</tr>
<tr>
<td>13. El Cerrito High School Area Trash receptacles located on Ashbury Avenue between Fairmount Ave. and Stockton Ave.</td>
<td>3 times/week</td>
</tr>
<tr>
<td>14. Hillside Natural Area - can at King Court entrance, can at Schmidt Entrance</td>
<td>3 times/week</td>
</tr>
</tbody>
</table>
| 15. Miscellaneous Locations:  
  - Lincoln Ave at Clayton Ave.  
  - Moeser Lane at Sea View Dr.  
  - Moeser Lane at Shevlin Dr.  
  - 6510 Stockton Avenue | 3 times/week |

**NOTE:** Exhibit 6 locations and collection frequencies may be adjusted by City from time to time, as needed.
Contractor shall provide Roll-off Container Collection Service as needed for all Roll-off Container service requests from the City of El Cerrito Recycling and Environmental Resource Center and Corporation Yard. Tipping Wall Roll-off Containers located at the City’s Corporation Yard Tipping Wall shall be maintained in good condition and free of leaks. Contractor shall pick up containers at the Recycling Center and Tipping Wall following all standard operating procedures required under the facility’s solid waste, stormwater, and other operating permit(s).

### Exhibit 7

City Roll-off Service Facilities, Locations and Service Levels

<table>
<thead>
<tr>
<th>Location</th>
<th>Container/Service</th>
<th>Service Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. El Cerrito Recycling Center</td>
<td>20-40 Cubic Yard containers for Recyclable Materials delivered to processing facilities within 35 miles of City Hall, as directed by City.</td>
<td>Minimum service level of 3 days per week, with 1-2 pickups occurring each day, for a total of 3-6 pick-ups per week.</td>
</tr>
<tr>
<td>2. El Cerrito Corporation Yard and Tipping Wall</td>
<td>20 Cubic Yard containers, including separated material streams for landfill disposal, green waste, and street sweep spoils.</td>
<td>Minimum service level of 3 days per week, with 1-2 pickups occurring each day, for a total of 3-6 pick-ups per week.</td>
</tr>
</tbody>
</table>

NOTE: Exhibit 7, including Roll-off Container collection types and service frequency may be adjusted by City from time to time, as needed.
Exhibit 8
Reporting

The City reserves the right to require reasonable changes to the content and/or format of this and any and all other reports that the Contractor is required to provide to the City. The City also reserves the right to require the Contractor to provide any other information that it deems necessary for effectively administering its franchise with the Contractor in a complete and timely manner, with the understanding that determination of additional information does not impose addition costs on the Contractor. Reports shall be submitted in electronic format, with all numeric information submitted in Excel. 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.

Contractor will provide reasonable assistance to City in preparing annual reports to CalRecycle (the “Electronic Annual Report” or EAR), including but not limited to supplying required data for preparation of the reports, and completing all required data input in the Waste Reporting System. In the event that CalRecycle requires City to report an Implementation Schedule to comply with AB 341, AB 1826, SB 1383, SB 1594 and other Applicable Laws, Contractor will provide 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 Organic Waste 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.

Quarterly Reports
Contractor shall submit Quarterly Reports to the City. Quarterly Reports to the City must include:

1. Compliance Reviews. Contractor shall report the date that compliance reviews were conducted, the name and title of each person that conducted the reviews. Contractor shall report the results of the review (i.e., Contractor’s findings as to whether the Service Recipients reviewed are subscribed for Organic Waste collection service, have an applicable waiver, or neither) and any relevant evidence supporting such findings (e.g. account records). Contractor shall provide copies of any educational materials issued pursuant to such reviews. Contractor shall report to the City all Service Recipients discovered to be out of compliance with the SB 1383 Regulations, including a list of the service recipients, the type of violation, actions taken to educate those Service Recipients, and contact information for those Service Recipients. This includes identifying Residential and Commercial accounts that are subscribed to Garbage collection service but that are not subscribed Organic Waste Container collection service. Contractor must also provide the following information separately for both AB 341 and AB 1826, including:
   - The total number of non-exempt Commercial Service Recipients that fall under the AB 341 or AB 1826 thresholds, and the total number of those non-exempt Commercial Service Recipients that are not subscribed to Commercial Organic Waste Collection Service.
   - A summary of the type of follow-up outreach that was provided to those non-exempt Commercial Service Recipients that are not subscribed to Commercial Organic Waste Collection Service.

2. Route Reviews. Contractor shall report the date that route reviews were conducted, the name and title of each person that conducted the reviews, a list of the account names and...
addresses covered by the review, and a description of each route reviewed, including Contractor’s route number. Contractor shall also provide details regarding the results of the reviews (i.e., the addresses where any prohibited Container Contaminants were found), and any photographs taken.

3. **Contamination.** To the extent required by Applicable Law, the quarterly report must include a summary of all instances of qualifying Contamination under the procedures in Section 3.09. 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, a list of accounts where such notices occurred, and the total number of instances where Container size or Collection frequency was increased specifically due to Contamination. Within twenty (20) Work Days of request by City, Contractor will provide copies of the Contamination Violation Notices and the digital documentation of Contamination. The quarterly report must include each Service Recipient incurring a charge for Contamination in the previous quarter. Contractor shall provide a description of Contractor’s process for determining the level of Container Contamination under the Agreement. Contractor shall provide documentation relating to observed prohibited Container Contaminants, whether observed during Route Reviews or otherwise. Contractor shall provide copies of the form of each notice issued to Service Recipients for prohibited Container Contaminants, as well as, for each such form, a list of the Service Recipients to which such notice was issued, the date of issuance, the Service Recipient’s name and service address, and the reason for issuance (if the form is used for multiple reasons). This information will also be provided monthly to any other government entity approved by the City, including but not limited to RecycleMore. Contractor shall report the number of times notices were issued to Service Recipients for prohibited Container Contaminants and the number of Containers where the contents were disposed due to observation of prohibited Container Contaminants.

4. **Collection Overage Charges.** The quarterly report must include each Service Recipient incurring a fee charge for an Overage in the previous quarter.

5. **Service Recipient Complaints Log.** The quarterly report must include the Service Recipient call log collected from the previous quarter, including a summary of the type and number of complaints and their resolution.

6. **Missed Pickups.** The quarterly report must include a summary of each Service Recipient receiving a missed pickup in the previous quarter along with a description or the reason for the missed pickup.

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

8. **On-hold Accounts.** The quarterly report must include each Service Recipient that was not billed in the previous quarter due to vacation hold, vacancy etc.

**Annual Reports**

Contractor shall submit Annual Reports to the City. Annual reports to City must include:

1. **Compliance.** Contractor must document education and outreach conducted, public event participation, school visits, compliance notices mailed, site visits to meet the requirements of SB 1383, service level audits completed, information distributed, and media used, and community events hosted. This must include public education 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. Contractor shall also provide copies of all outreach and education information (including flyers, brochures, newsletters, invoice messaging, website and social media postings, emails, and other electronic messages), including the date the information was disseminated or the direct contact made. For website and social media postings, this shall
be the date posted. Contractor must report the total number of Commercial Service
Recipients serviced and the number of containers, container sizes and frequency of
collection for Garbage and Organic Waste for each non-exempt Commercial Service
Recipient.

2. **Tonnage and Service Data.** Contractor must annually report the number of unique
Residential Service Recipient accounts serviced and the number of unique Commercial
Service Recipient accounts serviced, tonnage of Garbage and Organic Waste collected and
processed for diversion broken down by Container type. Quantities should be broken down
by Residential, Commercial, and City Service Collection Services.

3. **Financial Report.** Contractor must prepare an annual Financial Report for submittal to the
City. At a minimum, the Financial Report must include the number of Residential Service
Recipients, Commercial Service Recipients provided with Collection Services by Service
Type, container size, frequency of service and current billing Service Rates including any
additional service charges, the Contractor’s gross billing and amount collected for each type
of Service Recipient.

4. **Container and Vehicle Inventory.** An updated complete inventory of Containers by type and
size, and an updated complete inventory of Collection Vehicles including for each Collection
Vehicle: Collection Vehicle number, route number, date purchased, Collection Vehicle type,
tare weight, license plate number, fuel type and Collection Vehicle make and model.

5. **Overweight Vehicles.** The annual report must include a summary total of all instances of
overweight Collection Vehicles. This summary must include the number of overweight
Collection Vehicle instances expressed as a percentage of the total number of Collection
Vehicle loads transported.

6. **Environmental Stewardship.** Contractor must describe all environmental management
policies and activities related to Collection Service, including the use of alternative fuel
Collection Vehicles, reduction of air emissions and wear and tear on the City’s streets, use
of recycled products throughout operations, use of 100% renewable energy at buildings and
facilities owned or operated by the Contractor, internal Source Separation and Reuse
protocol, water and resource conservation activities within facilities (design, construction and
operation), compliance with laws governing e-waste, HHW, and u-waste, and use of non-toxic products when possible.