

AGREEMENT

BETWEEN

CITY OF LAGUNA WOODS

AND

CR&R INCORPORATED

FOR

SOLID WASTE HANDLING SERVICES

EFFECTIVE JANUARY 1, 2022

TABLE OF CONTENTS

Page

SECTION 1. RECITALS.....	11
SECTION 2. DEFINITIONS.....	11
2.1 AB 341	11
2.2 AB 939	11
2.3 AB 1594.....	11
2.4 AB 1826.....	12
2.5 Affiliate.....	12
2.6 Agreement.....	12
2.7 Animal Waste.....	12
2.8 Applicable Laws	12
2.9 Billings/Billing/Bill.....	12
2.10 Bins	13
2.11 Bulky Items.....	13
2.12 CalRecycle	13
2.13 Cart.....	13
2.14 City.....	13
2.15 City Attorney	13
2.16 City Council.....	14
2.17 City Limits	14
2.18 City Manager	14
2.19 Collect/Collection/Collecting	14
2.20 Collection Vehicle	14
2.21 Commercial Edible Food Generator	14
2.22 Commercial Premises	14
2.23 Community Composting.....	15
2.24 Construction and Demolition Debris/C&D Material	15
2.25 Container.....	15
2.26 Contractor	15
2.27 Contractor’s Proposal.....	15
2.28 County Agreement.....	15
2.29 Customer/Customers.....	15
2.30 Disposal.....	16
2.31 Disposal Site	16
2.32 Divert/Diversion	16
2.33 Dwelling Unit.....	16
2.34 Edible Food.....	16
2.35 Effective Date	16
2.36 Electronic Waste/E-Waste	16
2.37 Environmental Laws	17
2.38 Equestrian Waste	17

	<u>Page</u>
2.39 Facility	17
2.40 Food Recovery	17
2.41 Food Recovery Organization	17
2.42 Food Recovery Service	17
2.43 Food Waste	18
2.44 Franchise	18
2.45 Franchise Area	18
2.46 Franchise Fee	18
2.47 Green Waste.....	18
2.48 Gross Receipts	18
2.49 Hazardous Substance	18
2.50 Hazardous Waste	19
2.51 Hauler Route/Route	19
2.52 Household Hazardous Waste	19
2.53 Materials Recovery Facility	19
2.54 Mixed Waste Processing.....	19
2.55 Multi-Family Dwelling	19
2.56 Municipal Code.....	20
2.57 Organic Waste/Organics/Organic Material.....	20
2.58 Person.....	20
2.59 Premises	20
2.60 Rate Year	20
2.61 Recycling	20
2.62 Recyclable Material/Recyclables.....	20
2.63 Recycling Container.....	20
2.64 Refuse	21
2.65 Renewable Natural Gas (RNG)	21
2.66 Residential.....	21
2.67 Residential Premises	21
2.68 Responsible Customer	21
2.69 Roll-off Box	21
2.70 SB 1383.....	21
2.71 Sharps.....	22
2.72 Single Family Dwelling	22
2.73 Solid Waste	22
2.74 Solid Waste Handling Services.....	22
2.75 Special Wastes	22
2.76 Source Separation/Source-Separated	22
2.77 State.....	22
2.78 Temporary Service.....	23
2.79 Term.....	23
2.80 Tier One Commercial Edible Food Generator.....	23
2.81 Tier Two Commercial Edible Food Generator	23
2.82 Transformation.....	23
2.83 Transfer Station.....	24

	<u>Page</u>
2.84 Universal Waste/U-Waste.....	24
2.85 Waste Generator.....	24
SECTION 3. GRANT OF EXCLUSIVE FRANCHISE FOR SOLID WASTE HANDLING SERVICES FROM ALL RESIDENTIAL AND COMMERCIAL PREMISES, AND FOR PROVIDING TEMPORARY SOLID WASTE HANDLING SERVICE.....	24
3.1 Scope of Franchise.....	24
3.2 Matters Excluded from Scope of Franchise.....	25
SECTION 4. ENFORCEMENT OF EXCLUSIVITY.....	26
SECTION 5. CONTRACTOR ACCEPTANCE, WAIVER, AND AUTHORIZATION.....	26
5.1 General.....	26
5.2 Contractor Status.....	27
5.3 Contractor Authorization.....	27
5.4 Annexations.....	27
5.5 Permits and Licenses.....	27
SECTION 6. TERM.....	27
6.1 Term of Agreement.....	27
6.2 Option to Extend.....	28
6.3 Extension Performance Review.....	28
SECTION 7. CONDITIONS TO EFFECTIVENESS OF AGREEMENT.....	28
7.1 Accuracy of Representation.....	28
7.2 Absence of Litigation.....	28
7.3 Furnishing of Insurance and Bonds, Letter of Credits, or Asset Pledge.....	28
7.4 Effectiveness of City Council Action.....	29
SECTION 8. SOLID WASTE HANDLING SERVICES PROVIDED BY CONTRACTOR.....	29
8.1 General.....	29
8.1.1 Equipment.....	29
8.1.2 Performance Standards.....	29
8.1.3 Noise and Disruption.....	29
8.1.4 Collection Times.....	29
8.1.5 Collection Schedule.....	29
8.1.6 Commingling of Routes.....	30
8.1.7 Replacement of Containers.....	30
8.1.8 Missed Pick-ups.....	31
8.1.9 Record of Non-collection.....	31
8.2 Residential Solid Waste Handling Service.....	32
8.2.1 Residential Curbside Cart Service.....	32
8.2.2 Residential Bin Service.....	33
8.2.3 Residential Organics Recycling Service.....	34

	<u>Page</u>	
8.2.4	Walk-Out Service.....	34
8.2.5	Residential Collection Programs - Education and Outreach.....	35
8.2.6	Residential Collection Programs - Compliance Monitoring and Enforcement.....	36
8.2.7	Residential Green Waste Program.....	36
8.2.8	Bulky Item Service for Residential Premises	36
	8.2.8.1 Weekly Bulky Item Collection	36
	8.2.8.2 In-Home Bulky Item Collection	37
8.2.9	Incidental Collection of Bulky Items.....	37
8.2.10	Bulky Item Diversion.....	37
8.2.11	Proper Handling of Bulky Items	38
8.2.12	Roll-off Service.....	38
8.3	Commercial Solid Waste Handling Services.....	38
8.3.1	Commercial Mixed Solid Waste/Refuse Service.....	38
8.3.2	Commercial Recycling Services	38
8.3.3	Commercial Organics Recycling Services.....	39
8.3.4	Commercial Collection Programs - Education and Outreach.....	40
8.3.5	Commercial Collection Programs - Compliance Monitoring and Enforcement.....	41
	8.3.5.1 Commercial Collection Programs - Compliance Review	41
8.3.6	Commercial Green Waste Services	41
8.3.7	Commercial Bulky Item Service.....	42
8.3.8	Scout and Push Out Services	42
8.4	Other Collection Programs As May Be Required by Law	42
8.5	Temporary Services	43
8.6	Recycling Obligations and Public Education Program.....	44
8.6.1	Minimum Requirements for Recyclable Materials, Green Waste and Roll-off Boxes.....	44
8.6.2	Extent of Applicable Franchise Rights	44
8.6.3	Obligations, Guarantee, and Indemnification	45
	8.6.3.1 Warranties and Representations.....	45
	8.6.3.2 Waste Reduction and Program Implementation	45
	8.6.3.4 Guarantee and Indemnification.....	45
8.6.4	Guaranteed Minimum Contractor Recycling Rate	46
	8.6.4.1 Mutual Cooperation & Good Faith Effort Diversion Compliance	47
8.6.5	AB 939 and SB 1383 Required Analysis.....	47
8.6.6	Implementation of Additional Diversion Services	47
8.6.7	Excessively Contaminated Containers.....	48
8.7	Additional Services.....	49
8.7.1	Monitoring and Cleaning of Bin Enclosures	49
8.7.2	Public Service Calls from City Departments and Service Providers	49
8.7.3	Collection at City Sponsored Events	49

	<u>Page</u>
8.7.4 Tire Recycling.....	50
8.8 Special Services	50
 SECTION 9. MINIMUM STANDARDS FOR CONTRACTOR’S SOLID WASTE	
HANDLING SERVICE COLLECTION VEHICLES	50
9.1 General.....	50
9.2 Air Quality/Fuel Requirements.....	50
9.3 Specific Requirements	51
9.4 Costs of Operation and Damages.....	53
9.5 City Inspection.....	53
9.6 Correction of Defects and Removal of Vehicles from Use within City	53
 SECTION 10. CONTRACTOR’S SOLID WASTE HANDLING SERVICE	
PERSONNEL	54
10.1 Uniforms	54
10.2 Identification of Employees.....	54
10.3 Employee List.....	54
10.4 Driver’s License.....	54
10.5 Screening of Field Employees	54
10.6 Discontinued Use of Unsatisfactory Employees.....	54
10.7 Training and Legal Compliance.....	54
10.8 Customer Service.....	55
10.8.1 Office Hours.....	55
10.8.2 Telephone Customer Service Requirements.....	55
10.8.2.1 Toll Free Number.....	55
10.8.2.2 Call Responsiveness.....	55
10.8.3 Complaint Documentation.....	56
10.8.4 Resolution of Customer Complaints.....	56
10.8.5 City Liaison.....	56
10.8.6 Dedicated Recycling Coordinator.....	56
10.9 Education and Public Awareness.....	57
10.9.1 General.....	57
10.9.2 Written Program Materials	57
10.9.3 Public Outreach.....	57
10.9.4 Corrective Action Notice	57
10.9.5 AB 341, AB 1826, and SB 1383 Implementation Plan	58
 SECTION 11. CONTRACTOR’S CONSIDERATION.....	
11.1 Franchise Fee	58
11.2 Services at City Premises.....	59
11.3 Waste and Recycling Services Reimbursement.....	59
 SECTION 12. CHARGE FOR LATE PAYMENTS.....	
59	
 SECTION 13. CONTRACTOR’S BILLING SERVICES AND SYSTEMS	
60	
13.1 Billing	60

	<u>Page</u>
13.1.1	Suspension of Service Due to Non-Payment.....60
13.2	Minimum Requirements for Billing Statements.....61
13.3	Billing System.....61
13.3.1	Computerization of Account Information.....61
13.3.2	Minimum Computer Programming Requirements.....62
13.3.3	Billing Inquiries.....62
13.4	Payment, Accounting Systems.....62
13.4.1	Collection and Processing of Payments.....62
13.4.1.1	Accounting and Deposit of Funds.....62
13.4.1.2	Allocation of Funds.....62
13.4.1.3	One Time Deferral of Payment Due Date.....63
SECTION 14.	FAITHFUL PERFORMANCE.....63
14.1	Surety.....63
14.1.1	Forfeiture of Surety.....63
14.1.2	Use of Surety by City.....63
14.2	Cash Bond.....64
14.2.1	Forfeiture of Cash Bond.....64
14.2.2	Use of Cash Bond by City.....64
14.3	Replacement Letter of Credit.....64
SECTION 15.	INSURANCE COVERAGE.....64
15.1	Minimum Scope of Insurance.....65
15.2	Minimum Limits of Insurance.....65
15.2.1	Commercial General Liability.....65
15.2.2	Automobile Liability.....65
15.2.3	Workers' Compensation and Employers Liability.....65
15.2.4	Cyber Security and Privacy Liability.....65
15.2.5	Cyber Technology Errors and Omissions.....66
15.3	Deductibles and Self-Insured Retentions.....67
15.4	Other Insurance Provisions.....67
15.4.1	General Liability.....67
15.4.2	Workers' Compensation and Employers Liability Coverage.....67
15.4.3	Environmental Pollution Control Insurance.....67
15.4.4	All Coverages.....68
15.5	Acceptability of Insurers.....68
15.6	Verification of Coverage.....68
15.7	Loss or Reduction in Insurance.....68
SECTION 16.	ASSIGNMENT, SUBLETTING, AND TRANSFER; REQUIREMENTS AND LIMITATIONS.....68
16.1	General.....68
16.2	Assignment to be Broadly Interpreted.....69
16.3	Nature of Agreement – Personal to Contractor.....69
16.4	Procedure for Consideration of Assignment.....69

	<u>Page</u>
SECTION 17. REVIEW OF SERVICES AND PERFORMANCE.....	70
17.1 Vehicle Miles Traveled/Greenhouse Gas Emissions Assessment.....	70
17.2 Performance Hearing	70
SECTION 18. CITY’S REMEDIES; DEFAULT AND TERMINATION	72
18.1 Notice of Default.....	72
18.2 Failure to Cure	72
18.3 Review by City Manager	72
18.4 City Council Review.....	72
18.5 Performance During Reviews	73
18.6 Termination without Right to Cure.....	73
18.7 Liquidated Damages	74
18.7.1 General.....	74
18.7.2 Service Performance Standards; Liquidated Damages for Failure to Meet Standards	74
18.7.3 Calculations for Liquidated Damages.....	75
18.7.3.1 Collection Reliability	75
18.7.3.2 Collection Quality	75
18.7.3.3 Customer Responsiveness.....	76
18.7.3.4 Timeliness of Submissions to City	76
18.7.3.5 Cooperation During Transition With Subsequent Solid Waste Enterprise.....	77
18.7.3.6 Minimum Hauler Recycling Requirements	77
18.7.3.7 General Contract Adherence.....	77
18.7.4 Excuse from Performance.....	77
18.7.5 Process for Assessment of Liquidated Damages	77
18.7.6 Timing of Payment	78
SECTION 19. CONTRACTOR’S REMEDIES; ADMINISTRATIVE HEARING.....	78
19.1 Administrative Hearing.....	78
19.2 Other Remedies; Claims	78
19.3 Actions for Damages.....	78
SECTION 20. CITY’S ADDITIONAL REMEDIES	79
SECTION 21. RIGHTS OF CITY TO PERFORM DURING EMERGENCY	79
21.1 Provision of Service.....	79
21.2 Possession of Equipment	79
21.3 Exclusions from Right to Possession of Equipment without Compensation	80
SECTION 22. PRIVACY	80
SECTION 23. REPORTS AND ADVERSE INFORMATION	80
23.1 Monthly Reports	80
23.2 Quarterly Reports.....	81

	<u>Page</u>
23.3 Annual Reports	81
23.4 Format of Reports	82
23.5 Adverse Information	82
23.6 Disaster Plan	83
23.7 Failure to Report	83
SECTION 24. COMPENSATION	84
24.1 Contractor Rates.....	84
24.2 Resolution of Disputes Regarding Rate Adjustments.....	84
24.3 Annual Consumer Price Index Adjustments.....	84
24.4 Limitations to Annual CPI Adjustments.....	85
24.4.1 Five Percent (5%) Cap	85
24.4.2 Compliance with Agreement	85
24.5 Discretionary Adjustments.....	85
24.6 Grants.....	86
SECTION 25. IDENTIFICATION OF CONTRACTOR	86
SECTION 26. CITY'S FLOW CONTROL OPTION/COUNTY AGREEMENT	86
26.1 Flow Control Option.....	86
26.2 County Agreement.....	87
SECTION 27. INDEMNIFICATION.....	87
27.1 General.....	87
27.2 Hazardous Substances Indemnification	88
SECTION 28. CONTRACTOR'S BOOKS AND RECORDS; AUDITS.....	90
28.1 Maintenance and Inspection of Records	90
28.2 CERCLA Defense Records.....	90
28.3 Ongoing Compliance Review	90
28.4 Audits.....	91
28.4.1 Examination of Services	91
28.4.2 Route Audits	91
SECTION 29. TRANSITION OBLIGATIONS.....	93
SECTION 30. GENERAL PROVISIONS	93
30.1 Force Majeure	93
30.2 Independent Contractor.....	93
30.3 Pavement Damage	94
30.4 Property Damage	94
30.5 Right of Entry	94
30.6 Law to Govern; Venue.....	94
30.7 Amendment.....	95
30.8 Notices	95
30.9 Savings Clause.....	95

	<u>Page</u>
30.10 Exhibits Incorporated.....	95
30.11 Joint Drafting	95
30.12 Attorneys' Fees and Litigation Costs.....	96
30.13 City's Authorized Agent	96
30.14 Integrated Agreement.....	96
30.15 Section Headings	96
30.16 Compliance with Law	96
30.17 No Third-Party Beneficiaries.....	96

AGREEMENT

This Agreement (“Agreement”) is entered into to be effective as of the 1st day of January, 2022, by and between the City of Laguna Woods (“City”) and CR&R Incorporated (“Contractor”) (collectively, the “Parties”) to provide an exclusive franchise for Solid Waste Handling Services within the City.

RECITALS:

A. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (“AB 939”), has declared that it is in the public interest to authorize and require local agencies to make adequate provision for the Disposal of all Solid Waste within their jurisdictions.

B. Pursuant to California Public Resources Code Section 40059(a)(2), the City Council of City has determined that the public health, safety, and welfare require that an exclusive franchise agreement be awarded to a qualified solid waste enterprise for Solid Waste Handling Services within the City Limits.

C. City and Contractor are mindful of the provisions of the laws governing the safe Collection, transport and transportation, Recycling, processing and Disposal of Solid Waste, including AB 939, AB 341, AB 1594, AB 1826, SB 1383, the Resource Conservation and Recovery Act (“RCRA”), and the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”). City and Contractor desire to leave no doubts as to their respective roles, and to memorialize that by entering into this Agreement, City is not thereby becoming an “arranger” or a “generator” as those terms are used in CERCLA, and that it is Contractor, not City, who is “arranging for” the Collection, transport for Disposal, and Recycling of municipal Solid Waste in the City which may contain hazardous substances. City and Contractor understand and agree that it is Contractor, and not City, who will arrange to collect Solid Waste, that City has not, and, by this Agreement does not, instruct Contractor on its Collection methods, nor supervise the Collection process, nor do the Parties intend to place title to such Solid Waste in City, but rather intend that whatever, if any, title in and to such Solid Waste that otherwise might exist in or with City in the absence of this Agreement is hereby transferred to Contractor, and further that if Contractor gains title to such Solid Waste it is by operation of law and agreement with its Customers and is not the result of this Agreement. By entering into this Agreement, City and Contractor further desire to confirm that Contractor has agreed to indemnify City in connection with any claims relating to the inadvertent or intentional Collection, transportation and/or Disposal of Hazardous Waste that may occur in connection with Contractor’s performance under this Agreement.

D. Contractor has agreed, as part of this Agreement, to provide such services as are necessary or desirable to ensure City complies with the requirements of all laws and regulations related to Solid Waste and Recycling, including without limitation AB 939, AB 341, AB 1594, AB 1826, SB 1383, RCRA, CERCLA and California Public Resources Code Section 49100, et seq.

E. City desires, among other things, to ensure adequate landfills remain available to meet the public's need for the safe handling and Disposal of Solid Waste, and further desires to ensure its citizens do not incur undue costs in safely disposing of Solid Waste they generate, and has thus entered into the County Agreement. Contractor has agreed, as part of this Agreement, to provide such services and take such actions as are necessary or desirable to ensure City complies with its obligations pursuant to the County Agreement.

C O V E N A N T S:

Based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the Parties, City and Contractor hereby agree as follows:

SECTION 1. RECITALS

The Parties acknowledge the above recitals are true and correct and incorporate them herein as if they were fully restated.

SECTION 2. DEFINITIONS

Whenever any term used in this Agreement has been defined by the California Public Resources Code, the definition of such term set forth therein shall apply unless the term is otherwise defined in this Agreement.

2.1 AB 341

“AB 341” means Assembly Bill 341 from the 2011-2012 Regular Session of the California Legislature (Chapter 476, Statutes 2011), as it may be amended, supplemented, superseded, or replaced from time to time.

2.2 AB 939

“AB 939” means the California Integrated Waste Management Act of 1989, currently codified as California Public Resources Code Section 40000 et seq., as it may be amended, supplemented, superseded, or replaced from time to time.

2.3 AB 1594

“AB 1594” means Assembly Bill 1594 from the 2013-2014 Regular Session of the California Legislature (Chapter 719, Statutes 2014), as it may be amended, supplemented, superseded, or replaced from time to time.

2.4 AB 1826

“AB 1826” means Assembly Bill 1826 from the 2013-2014 Regular Session of the California Legislature (Chapter 727, Statutes 2014), as it may be amended, supplemented, superseded, or replaced from time to time.

2.5 Affiliate

“Affiliate” means a business (including corporations, limited and general partnerships and sole proprietorships) in which Contractor owns a direct or indirect ownership interest, a business (including corporations, limited and general partnerships and sole proprietorships) which has a direct or indirect ownership interest in Contractor and/or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Contractor. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) “ten percent (10%)” shall be substituted for “fifty percent (50%)” in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

2.6 Agreement

“Agreement” means this franchise agreement between City and Contractor for Solid Waste Handling Services, including all exhibits and attachments, and any amendments thereto.

2.7 Animal Waste

“Animal Waste” means animal carcasses, dead animals, and/or parts or portions of dead animals. Animal Waste shall not include manure or Equestrian Waste.

2.8 Applicable Laws

“Applicable Laws” means all federal, State, county, and local laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirements of any governmental agency having jurisdiction over an aspect of this Agreement that are in force on the Effective Date, and as may be enacted, issued or amended thereafter, including without limitation City’s Municipal Code, AB 341, AB 939, AB 1594, AB 1826, and SB 1383.

2.9 Billings/Billing/Bill

“Billings”, “Billing”, or “Bill” means the statements of charges provided to Customers and/or Responsible Customers for services rendered by Contractor pursuant to the terms of this Agreement.

2.10 Bins

“Bins” means a Container, including dumpsters, compactors, and any similar such devices with a capacity of under ten (10) cubic yards.

2.11 Bulky Items

“Bulky Items” means Solid Waste that cannot and/or would not typically be accommodated within a Cart or Bin including specifically: furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators with and without Freon, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as “white goods”); residential wastes (including wood waste, tree branches, scrap wood, in the aggregate not exceeding one cubic yard per Collection); and clothing. For purposes of this Agreement, and notwithstanding any provision hereof to the contrary, Bulky Items shall specifically include items commonly known in the waste industry as “brown goods,” “e-waste” and “universal waste” (including, without limitation all types of electronic waste, stereos, televisions, computers and monitors, cellular phones, VCRs, microwaves and other similar type of equipment and products). Bulky Items do not include car bodies, Construction and Demolition Debris, Hazardous Waste, or items that cannot reasonably and safely be loaded and unloaded into a vehicle by two people using equipment of the type which, pursuant to industry standards, would normally be carried in a vehicle used in Collecting Bulky Items. In the event a question arises as to whether a specific item, or category of items meets the definition of Bulky Items, City shall be responsible to determine whether said definition shall apply, which determination shall be final and binding on the Parties.

2.12 CalRecycle

“CalRecycle” means the State of California’s Department of Resources Recycling and Recovery, and, as this department was structured prior to January 1, 2010, the California Integrated Waste Management Board, as well as any successor agency to CalRecycle.

2.13 Cart

“Cart” means a plastic Container with a hinged lid and wheels serviced by an automated or semi-automated process, as opposed to a manual process of lifting and dumping, with a capacity of no less than 30 and no greater than 101 gallons.

2.14 City

“City” means the City of Laguna Woods, a municipal corporation, located in Orange County, California.

2.15 City Attorney

“City Attorney” means the City Attorney of City.

2.16 City Council

“City Council” means the City Council of City.

2.17 City Limits

“City Limits” means the territorial boundaries of the City together with all amendments and changes thereto, which boundaries are depicted on maps, incorporated herein by reference, that are kept on file in the office of City’s City Clerk, and which are from time to time amended to reflect changes.

2.18 City Manager

“City Manager” means the City Manager of City or his/her/their designee.

2.19 Collect/Collection/Collecting

“Collect”, “Collection”, or “Collecting” means to take physical possession of, transport, and remove Solid Waste from a Premises.

2.20 Collection Vehicle

“Collection Vehicle” shall have the meaning ascribed in Section 9 of this Agreement.

2.21 Commercial Edible Food Generator

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

2.22 Commercial Premises

“Commercial Premises” means Premises upon which business activity is conducted, including but not limited to retail sales, wholesale operations, manufacturing, industrial operations, and services, including, but not limited to, professional services, hospitality services, and restaurant and food services, but excluding Residential Premises upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the property. Notwithstanding any provision to the contrary herein, in City’s Municipal Code, or otherwise, for purposes of this Agreement and to the extent permitted by law, Premises upon which assisted living facilities, community care facilities (and other similar types of facilities), hotels, and motels are operated shall be deemed to be Commercial Premises, and apartment complexes and condominium complexes shall not be deemed to be Commercial Premises.

2.23 Community Composting

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

2.24 Construction and Demolition Debris/C&D Material

“Construction and Demolition Debris” or “C&D Material” means any combination of inert building materials and Solid Waste resulting from construction, remodeling, repair, cleanup, or demolition operations as defined in California Code of Regulations Section 66261.3 *et seq.*, including, but not limited to, asphalt, concrete, Portland cement concrete, brick, lumber, gypsum wallboard, cardboard, and other associated packaging; roofing material, ceramic tile, carpeting, plastic pipe and steel. C&D Material may be commingled with rock, soil, tree stumps, and other vegetative matter resulting from land clearing and landscaping for construction or land development projects.

2.25 Container

“Container” means any and all types of Solid Waste receptacles, including but not limited to Carts, Bins, and Roll-off Boxes.

2.26 Contractor

“Contractor” means CR&R Incorporated, the entity granted the franchise pursuant to this Agreement, or any party permitted pursuant to the terms hereof permitted to become the successor or assignee thereof.

2.27 Contractor’s Proposal

“Contractor’s Proposal” means CR&R Incorporated’s proposal submitted in response to City’s Request for Proposal for Solid Waste Handling Services dated July 1, 2021 and subsequent submittals from Contractor prior to award.

2.28 County Agreement.

“County Agreement” means that certain waste Disposal agreement entered between various Orange County cities, including specifically the City of Laguna Woods, and the County of Orange relating to the use of County landfills for the Disposal of Solid Waste collected in such cities, and which is on file in the office of City’s City Clerk, as the same may be amended from time to time.

2.29 Customer/Customers

“Customer” or “Customers” means any Person receiving Solid Waste Collection services from Contractor within the Franchise Area.

2.30 Disposal

“Disposal” means the ultimate disposition of Solid Waste Collected by Contractor at a landfill or otherwise in full regulatory compliance.

2.31 Disposal Site

“Disposal Site” means a Solid Waste handling Facility utilized for the ultimate Disposal of Solid Waste Collected by Contractor.

2.32 Divert/Diversion

“Divert” or “Diversion” means to Divert from Disposal facilities or Transformation facilities through source reduction, Recycling and composting, as provided in California Public Resources Code Section 41780 as such act may be hereafter amended or superseded provided that Divert or Diversion shall only include delivery to Transformation facilities if the overall Diversion achieved by City is at a level where delivery to such facilities shall be considered Diversion pursuant to California Public Resources Code Section 41780.

2.33 Dwelling Unit

“Dwelling Unit” means one or more rooms designed for occupancy by one household for living and sleeping purposes and containing kitchen facilities or an area designed for the preparation of food for use solely by one household.

2.34 Edible Food

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

2.35 Effective Date

“Effective Date” means the 1st day of January 2022.

2.36 Electronic Waste/E-Waste

“Electronic Waste” or “E-Waste” means electronic equipment and includes, but is not limited to, stereos, televisions, computers, computer monitors, VCRs, cellular telephones, fax machines, household copiers, computer printers, DVD players, other electronic items with electric plugs that are banned from landfilling, and other similar items commonly known as “brown goods.”

2.37 Environmental Laws

“Environmental Law” means any federal and State statute, county, local and City ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions or permits, licenses and other operating authorizations relating to (i) pollution or protection of the environment, including natural resources, (ii) exposure of Persons, including employees, to hazardous materials or other products, raw materials, chemicals or other substances, (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities, or (iv) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and Disposal.

2.38 Equestrian Waste

“Equestrian Waste” means equestrian manure, wood shavings used for equestrian purposes, and straw bedding.

2.39 Facility

“Facility” means any plant or site, owned or leased and maintained, operated, or used either in whole or in part by Contractor for purposes of performing under this Agreement.

2.40 Food Recovery

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

2.41 Food Recovery Organization

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

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

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

2.42 Food Recovery Service

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

2.43 Food Waste

“Food Waste” means Organics, excluding Green Waste, including but not limited to: (i) all food (including fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese and eggshells); (ii) food-soiled paper (including napkins, paper towels, paper plates); and, (iii) tea bags, coffee grounds and filters.

2.44 Franchise

“Franchise” means the special right granted by City to operate a public utility for Solid Waste services within the City.

2.45 Franchise Area

“Franchise Area” means all Premises within the City Limits, including Premises which may be annexed and thereby added to the City Limits following the Effective Date.

2.46 Franchise Fee

“Franchise Fee” means the fee paid by Contractor to City for the right to hold the Franchise for Solid Waste services granted by this Agreement and more fully defined in Section 11 hereof.

2.47 Green Waste

“Green Waste” means all leaves, grass cuttings and shrubs that accompany routine household or property maintenance functions.

2.48 Gross Receipts

“Gross Receipts” means and includes all monies, fees, charges, consideration, and revenue received by or imputed to Contractor and any Affiliate of Contractor, in connection with, arising from, or in any way attributable to the Solid Waste Handling Services carried out by or on behalf of Contractor pursuant to this Agreement. Gross Receipts includes, without limitation, monthly or quarterly Customer charges that are received by Contractor for Collection of Solid Waste, without subtracting Franchise Fees, fees imposed and collected pursuant to this Agreement, sums collected in connection with Temporary Services, and transportation charges. Gross Receipts does not include revenue from the sale of Recyclable Material, Organics, Green Waste, Food Waste, and other material which is diverted from Disposal.

2.49 Hazardous Substance

“Hazardous Substance” means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as “Hazardous Substances,” “hazardous materials,” “Hazardous Wastes,” “toxic waste,” “pollutant” or “toxic substances” or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.(CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §5101, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v)

California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7401 et seq.; and (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, State or local laws or regulations, including any of the Environmental Laws, currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

2.50 Hazardous Waste

"Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the US Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

2.51 Hauler Route/Route

"Hauler Route" or "Route" means the designated itinerary or sequence of stops for each segment of the Franchise Area, or as otherwise defined in 14 CCR Section 18982(a)(31.5).

2.52 Household Hazardous Waste

"Household Hazardous Waste" means waste resulting from products purchased by the general public for household use which, because of their 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.

2.53 Materials Recovery Facility

"Materials Recovery Facility" means a permitted Solid Waste Facility where Solid Waste or Recyclable Material is sorted or separated for the purposes of Recycling, processing, or composting.

2.54 Mixed Waste Processing

"Mixed Waste Processing" means the separation and sorting of Recyclables and other recoverable materials from other Solid Waste at a Materials Recovery Facility where commingled loads of Solid Waste are processed.

2.55 Multi-Family Dwelling

"Multi-Family Dwelling" means any building or lot containing more than one Dwelling Unit. Unless otherwise determined as set forth above, any Premises upon which three (3) or more Dwelling Units exists (not including hotels or motels), irrespective of whether residence therein is transient, temporary or permanent shall be deemed to be a Multi-Family Dwelling. Any ambiguity

as to whether a Customer's Premises qualifies for purposes of this Agreement as a Single-Family Dwelling or Multi-Family Dwelling shall be resolved by the City Manager whose decision shall be final.

2.56 Municipal Code

"Municipal Code" means City's Municipal Code ("Laguna Woods Municipal Code").

2.57 Organic Waste/Organics/Organic Material

"Organic Waste", "Organics", or "Organic Material" means Solid Waste containing material originated from living organisms and their metabolic waste products including, but not limited to, food, green material, landscape and pruning waste, organic textiles and carpets, untreated lumber, untreated wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges.

2.58 Person

"Person" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Orange, towns, cities, and special purpose districts.

2.59 Premises

"Premises" means any land, building, and/or structure within the Franchise Area where Solid Waste is generated or accumulated.

2.60 Rate Year

"Rate Year" means the period January 1 to December 30, for each year during the Term of this Agreement.

2.61 Recycling

"Recycling" means Collecting, sorting, cleansing, treating, processing, and reconstituting Recyclable Materials for the purpose of reuse or resale.

2.62 Recyclable Material/Recyclables

"Recyclable Material" or "Recyclables" means Solid Waste discarded within the Franchise Area for the purpose of being returned to the economic mainstream by Contractor using its available processes or economically viable processes generally available within the Solid Waste handling services industry. Should any dispute exist as to the economic viability of any process Contractor shall bear the burden of demonstrating the lack of viability to the City Manager, and the City Manager's determination on the issue shall be final.

2.63 Recycling Container

"Recycling Container" means a Recycling Bin or Recycling Cart, as the context requires.

2.64 Refuse

“Refuse” means Solid Waste or debris, except sewage, Construction and Demolition Debris, Recyclable Materials, and/or Organics.

2.65 Renewable Natural Gas (RNG)

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

2.66 Residential

“Residential” refers to services performed at and for Residential Premises.

2.67 Residential Premises

“Residential Premises” means all Premises upon which Dwelling Units exist including, but not limited to, Single Family Dwellings and Multi-Family Dwellings. Residential Premises shall also include clubhouses, golf course facilities, offices/service yards, and other Premises located within the private gated community located within City Limits and known as Laguna Woods Village. City shall provide Contractor with a list of such qualifying Laguna Woods Village properties, and update such list from time-to-time. Notwithstanding any provision to the contrary herein, in the Municipal Code, or otherwise, for purposes of this Agreement and to the extent permitted by law, Premises upon which assisted living facilities, community care facilities (and other similar types of facilities), hotels, and motels are operated shall be deemed to be Commercial Premises.

2.68 Responsible Customer

“Responsible Customer” means Customer who is responsible for making arrangements with Contractor to ensure Collection services are provided at Commercial Premises or Residential Premises in circumstances where a management company, homeowner association, or similar type entity arranges Collection services for such Premises. In the event of any dispute as to whether a right or obligation set forth herein is held by a Customer or a Responsible Customer, the City Manager is authorized to resolve such dispute in a manner that he/she/they determines best implements the intent of this Agreement.

2.69 Roll-off Box

“Roll-off Box” means Containers of ten (10) yards or larger, including compactors.

2.70 SB 1383

“SB 1383” means Senate Bill 1383 from the 2015-2016 Regular Session of the California Legislature (Chapter 395, Statutes of 2016), as it may be amended, supplemented, superseded, or replaced from time to time.

2.71 Sharps

“Sharps” means hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin of humans or animals for the delivery of medications.

2.72 Single Family Dwelling

“Single Family Dwelling” means a building or lot containing one Dwelling Unit, and for purposes of this Agreement includes buildings and lots with more than one Dwelling Unit where such Dwelling Units are determined by City to be reasonably able to receive individualized Solid Waste Collection service by the automated process utilizing Carts contemplated herein.

2.73 Solid Waste

“Solid Waste” means and includes all discarded putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, Refuse, rubbish, construction waste, industrial waste, commercial Solid Waste, Bulky Items, and any other discarded solid, semisolid, and liquid waste permitted to be disposed of at a Class III landfill and which are included within the definition of “Nonhazardous Solid Waste” set forth in the California Code of Regulations. Solid Waste does not include Hazardous (Class I) Waste, low-level radioactive waste, firearms, untreated medical waste, or Special Wastes as defined herein.

2.74 Solid Waste Handling Services

“Solid Waste Handling Services” means the Collection, transfer, transport, Recycling, processing, and Disposal of Solid Waste for Premises within the City.

2.75 Special Wastes

“Special Wastes” means wastes other than Solid Waste including sewage, sludge, industrial sludge, asbestos, auto bodies, tires, used motor oil, Hazardous Waste, Animal Waste, explosive substances, firearms, radioactive materials, and other materials which may not be disposed of at a Class III landfill or which require special handling.

2.76 Source Separation/Source-Separated

“Source Separation” or “Source-Separated” means the segregation into separate Containers by the Waste Generator of individual components of material which otherwise would become mixed Solid Waste for the sole purpose of Recycling of such materials. Source separation includes the segregation of Recyclable Materials for single stream Collection, as well as the segregation of Organics for single stream Collection.

2.77 State

“State” means the State of California.

2.78 Temporary Service

“Temporary Service” means Solid Waste Handling Services provided by Contractor on an as-needed and temporary basis to any Premises within the City in conjunction with construction, demolition, cleanup or other projects, and by use of temporarily placed Containers.

2.79 Term

“Term” shall have the meaning ascribed in Section 6 of this Agreement.

2.80 Tier One Commercial Edible Food Generator

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

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

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

2.81 Tier Two Commercial Edible Food Generator

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

- A. Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
- B. Hotel with an on-site food facility and 200 or more rooms.
- C. Health facility with an on-site food facility and 100 or more beds.
- D. Large Venue.
- E. Large Event.
- F. A State agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.
- G. A local education agency with an on-site food facility.

If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(74) shall apply to this Agreement.

2.82 Transformation

“Transformation” means incineration, pyrolysis, distillation, gasification, or biological conversion other than composting. “Transformation” does not include composting.

2.83 Transfer Station

“Transfer Station” means a Facility that receives Solid Waste from Collection vehicles and transfers the material to larger vehicles for transport to landfills and other destinations. Transfer Stations may or may not also include Materials Recovery Facilities transferring residual Solid Waste (i.e., Solid Waste left after the sorting of Recyclable Materials) to landfills and Recyclable Materials, including Organics and/or Construction and Demolition Debris, to processors, brokers, or end-users.

2.84 Universal Waste/U-Waste

“Universal Waste” or “U-Waste” means any of the following waste that are conditionally exempt from classification as Hazardous Wastes pursuant to 22 CCR 66261.9: (i) batteries as described in 22 CCR Section 66273.2; (ii) thermostats as described in 22 CCR Section 66273.4; (iii) lamps as described in 22 CCR Section 66273.5; (iv) cathode tube materials as described in 22 CCR Section 66273.6; and, (v) Electronic Waste.

2.85 Waste Generator

“Waste Generator” means any Person as defined by the California Public Resources Code, whose act or process produced Solid Waste as defined in the California Public Resources Code, or whose act first causes Solid Waste to become subject to regulation.

SECTION 3. GRANT OF EXCLUSIVE FRANCHISE FOR SOLID WASTE HANDLING SERVICES FROM ALL RESIDENTIAL AND COMMERCIAL PREMISES, AND FOR PROVIDING TEMPORARY SOLID WASTE HANDLING SERVICE

3.1 Scope of Franchise

Except as hereinafter expressly set forth, City hereby grants to Contractor and Contractor hereby accepts from City, for the Term hereof, the exclusive contract, right, and privilege to Collect, transport, recycle, and dispose of all Solid Waste generated or accumulated within the Franchise Area. The exclusive franchise, right and privilege to provide Solid Waste Handling Services within City granted to Contractor by this Agreement shall be interpreted to be consistent with all applicable federal and State laws, now in effect and adopted during the Term of this Agreement, and the scope of this Agreement shall be limited by all applicable current and developing laws and regulations. In the event that future interpretations of current law or future enactments limit the ability of City to lawfully grant Contractor the scope of services as specifically set forth herein, Contractor agrees that the scope of this Agreement will be limited to those services and materials which may be lawfully provided, and that City shall not be responsible for any lost profits claimed by Contractor as a result thereof.

3.2 Matters Excluded from Scope of Franchise

Notwithstanding any other provisions set forth in this Agreement to the contrary, the exclusive franchise granted herein shall exclude the Collection, transportation, Recycling, and Disposal of:

(A) any Solid Waste otherwise within the scope of this Agreement which is transported by a Self-Hauler as that term is used in the Municipal Code, or any other City ordinance, resolution, regulation or policy, as such may be adopted or amended from time to time;

(B) any Solid Waste otherwise within the scope of this Agreement during a locally proclaimed emergency (defined as a "local emergency" pursuant to Section 8630 of the California Emergency Services Act) or subsequent recovery period, provided that Contractor lacks the ability to perform the necessary work in a timely manner, or for any other reason determined by the City Council of City or City Manager related to public health, safety or welfare;

(C) the sale, donation, or transfer of Recyclable Material and/or Organic Material by the Waste Generator to any Person or entity other than Contractor; provided, however, to the extent permitted by law, if the Waste Generator is required to pay monetary or non-monetary consideration for the Collection, transportation, transfer, or processing of Recyclable Material and/or Organics to any person or entity other than Contractor, the fact that the Waste Generator receives a reduction or discount in price (or in other terms of the consideration the Waste Generator is required to pay) shall not be considered a sale or donation;

(D) any Solid Waste otherwise within the scope of this Agreement which is Collected or transported to a Disposal or Recycling Facility by City agents or employees in the course and scope of any services provided for City;

(E) any Solid Waste Collected at any City sponsored event if City does not request Contractor provide Collection services for City sponsored event;

(F) the Collection, transportation, or Disposal of Hazardous Waste; Universal Waste; Electronic Waste; biohazardous waste; untreated medical waste; infectious waste; Animal Waste; used cooking fats, oils, grease and similar waste; or other materials which do not constitute Solid Waste;

(G) the Collection, transportation, and Disposal of Construction and Demolition Debris by a contractor, handyman, repairman, or other similar service provider, using its own equipment, as an incidental part of the services provided to its clients, rather than as a hauling service, provided that such waste is not Collected or transported by a third party hired for the primary purpose of Collecting and transporting said materials;

(H) the Collection, transportation, and Disposal of Green Waste, including, but not limited to Green Waste and related Solid Waste by a gardener, or landscaper, as an incidental part of the gardening or landscaping services provided to its customers, rather than as a hauling service provided that such Solid Waste is not Collected or transported by a third party hired for the primary purpose of Collecting and transporting said materials;

(I) Contractor's right to Collect and/or Dispose of Solid Waste shall not be exclusive in the event Contractor fails to maintain substantially complete regular Collection services pursuant to this Agreement and the Collection schedules then in effect, for any reason, including, but not limited to a force majeure event or a strike by Contractor's employees or similar labor dispute. City may provide for Collection and/or Disposal services from persons other than Contractor during such periods without limitation;

(J) Solid Waste Handling Services provided by any Person having a legal right to continue doing so, pursuant to Public Resources Code Section 49520, et. seq., or otherwise, as long as and to the extent such legal right continues to exist; except that to the degree any territory in which Contractor has a franchise granted by another governmental entity is annexed into City during the Term, Contractor agrees the provisions of this Agreement shall apply to such territory and further acknowledges that this Agreement constitutes any notice required by the Public Resources Code in connection therewith;

(K) any Edible Food that is collected from a Commercial Edible Food Generator by other Person(s), such as a Person from a Food Recovery Organization or Food Recovery Service, for the purposes of Food Recovery; or that is transported by the Commercial Edible Food Generator to another location(s), such as the location of a Food Recovery Organization, for the purposes of Food Recovery, regardless of whether the Commercial Edible Food Generator donates, sells, or pays a fee to the other Person(s) to collect or receive the Edible Food from the Commercial Edible Food Generator; and

(L) any Organics or Equestrian Waste that is composted or otherwise legally managed at the site where it is generated or at a Community Composting site.

SECTION 4. ENFORCEMENT OF EXCLUSIVITY

Contractor shall be responsible for enforcing the exclusivity of this Agreement. City shall reasonably assist Contractor in its efforts to enforce the exclusivity hereof. In addition, City shall adopt such ordinances or other regulations as it deems to be necessary or desirable to protect the exclusive rights granted herein. City shall have the right, but not the obligation, to enforce the exclusivity hereof, including by instituting appropriate legal proceedings, and/or requesting that Contractor do so. Contractor shall have an affirmative obligation to enforce such exclusivity provisions when requested to do so by City. Contractor shall reimburse City for its reasonable legal costs, administrative costs (including staff time), or other expenses incurred in connection with City's actions to either enforce the exclusivity hereof, or to assist Contractor in doing so.

SECTION 5. CONTRACTOR ACCEPTANCE, WAIVER, AND AUTHORIZATION

5.1 General

Contractor agrees to be bound by and comply with all the requirements of this Agreement. Contractor waives Contractor's right to challenge the terms of this Agreement under federal, State, or local law, or administrative regulation. Contractor waives any right or claim to serve City or

any part of City under any prior grant of franchise, contract, license, or permit issued or granted by any governmental entity including any right under Public Resources Code Section 49520.

5.2 Contractor Status

Contractor represents and warrants that it is duly organized, validly existing and in good standing under Applicable Laws. It is qualified to transact business in the State of California and has the power to own and operate its Facilities and properties, and to carry on its business as now owned and operated and as required by this Agreement.

5.3 Contractor Authorization

Contractor represents and warrants that it has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of Contractor (and/or the shareholders, if necessary) have taken all actions required by Applicable Laws, its articles of incorporation, and its bylaws or otherwise to authorize the execution of this Agreement. The Persons signing this Agreement on behalf of Contractor have authority to do so. Contractor shall designate in writing one employee for City as a single point of contact for issues arising under this Agreement. City may accept that this employee's actions are taken on behalf of and with the full approval of Contractor.

5.4 Annexations

This Agreement extends to any territory annexed to City during the term of this Agreement except to the extent that Collection by Contractor within that annexed territory would violate the provisions of Public Resources Code Section 49520. In such event, this Agreement shall become effective as to such area at the earliest possible date permitted by law, and City agrees that it shall cooperate with Contractor to fulfill any requirement necessary for Contractor to serve the annexed area consistent with this paragraph.

5.5 Permits and Licenses

Contractor shall acquire and maintain all necessary permits and licenses for the services required under this Agreement as may change from time to time. Failure to maintain all required permits and licenses shall be deemed a material breach of contract for which City may terminate this Agreement as provided in Section 18.6.

SECTION 6. TERM

6.1 Term of Agreement

The term of this Agreement (the "Term") shall be for an approximate period of ten (10) years and six (6) months commencing on the Effective Date. The Solid Waste Collection services provided to Customers shall commence on January 1, 2022 ("Service Commencement Date"). The Term of this Agreement shall end at 11:59 p.m. on June 30, 2032, unless this Agreement is terminated sooner pursuant to Section 18 hereof, or otherwise.

6.2 Option to Extend

Unless Contractor provides written notice to City on or before June 30, 2031 that it desires to opt out of City's right to unilaterally extend this Agreement as provided herein, the City Council shall have the option to exercise one (1) five (5) year extension to the Term of this Agreement such that if the one (1) five (5) year extension option is exercised, the Term of this Agreement expires at midnight on June 30, 2037. If the City Council does not exercise the option to extend the Term as set forth above, as evidenced by a formal action of the City Council taken in a duly noticed open meeting, on or before February 28, 2032, said option shall expire and this Agreement shall automatically terminate at 11:59 p.m. on June 30, 2032. The decision to exercise said option shall be subject to the City Council's sole, absolute and unfettered discretion.

6.3 Extension Performance Review

At any time prior to exercising its extension option, the City Council may, at its discretion, require the City Manager to conduct a performance review of Contractor's services pursuant to this Agreement. As part of the extension performance review, City may also conduct a second Vehicle Miles Traveled/Greenhouse Gas Emissions Assessment as described in Section 17.1. Contractor shall provide City with an advance payment to defray the total cost of said extension performance review, in an amount subject to the City Manager's reasonable determination not to exceed \$15,000. Said extension performance review will be separate from and in addition to the performance review set forth in Section 17.2.

SECTION 7. CONDITIONS TO EFFECTIVENESS OF AGREEMENT

The satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by City in writing, is a condition precedent to the effectiveness of this Agreement, and a condition of Contractor's continued right to the benefits conveyed herein:

7.1 Accuracy of Representation

All representations and warranties made by Contractor and set forth in this Agreement shall be accurate, true, and correct on and as of the Effective Date of this Agreement.

7.2 Absence of Litigation

There shall be no litigation pending in any court challenging the award of this Agreement to Contractor or the execution of this Agreement or seeking to restrain or enjoin its performance.

7.3 Furnishing of Insurance and Bonds, Letter of Credits, or Asset Pledge

Contractor shall have furnished evidence of the sureties and insurance required by Sections 14 and 15 hereof, and shall comply with all ongoing requirements relating thereto.

7.4 Effectiveness of City Council Action

The City Council's action approving this Agreement shall have become effective pursuant to California law.

**SECTION 8.
SOLID WASTE HANDLING SERVICES
PROVIDED BY CONTRACTOR**

8.1 General

8.1.1 Equipment

Contractor shall furnish all labor, supervision, materials, supplies, and equipment necessary to provide for all services required by the terms of this Agreement.

8.1.2 Performance Standards

Contractor shall perform Solid Waste Handling Services as required hereunder in a thorough and professional manner so that Customers are provided reliable, courteous, and high-quality Solid Waste Handling Services at all times. Services provided shall be consistent with all relevant provisions of Applicable Laws.

8.1.3 Noise and Disruption

Contractor shall perform Solid Waste Handling Services as required hereunder in such a manner as to minimize noise and other disruptive impacts including, without limitation, those upon traffic.

8.1.4 Collection Times

Contractor shall not commence Collection of Solid Waste for Customers until 7:00 a.m., nor shall such activities occur after 5:00 p.m. at Residential Premises and after 7:00 p.m. for Commercial Premises. No Solid Waste Collection shall occur on Sundays at Residential Premises, except as may be requested by Responsible Customers in exceptional circumstances for which specific approval is given by the City Manager. Solid Waste Collection shall not occur on the following holidays: New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day.

8.1.5 Collection Schedule

All Collection Routes shall be subject to written approval by the City Manager. Customers at all Residential and Commercial Premises within the City shall have not less than one established Collection day each week. Contractor shall coordinate with City to ensure that Solid Waste Collection is compatible with City's street sweeping operations, as may change from time to time. Contractor will be required to complete their designated Routes each day so as not to interfere with City's street sweeping operations, as may change from time to time. Contractor shall provide notice to each Customer of its established Collection day(s), and shall provide at least thirty (30)

days' notice to Customers of any change in their established Collection day(s). Notwithstanding any provision herein to the contrary, should any established Collection day fall on a legal holiday, or on any other holiday, which is observed by either a landfill or other lawful Disposal site to which Solid Waste is taken for Disposal, or a Mixed Waste Processing Facility to which Recyclable Material is taken, Contractor shall provide for Collection one (1) day later during the pick-up week, and the regular Collection schedule shall be resumed the following week. Contractor shall notify City of the affected Routes at least twenty-four (24) hours before each holiday. A pick-up week shall be defined as Monday through Saturday. Contractor may not change its established Collection schedules without obtaining the prior written consent of the City Manager.

8.1.6 Commingling of Routes

Contractor shall not during its Collection process commingle Solid Waste Collected hereunder with Solid Waste Collected in any other City, or on behalf of any other entity operating or existing within City that is not subject to this Agreement, and is specifically prohibited from combining Collection Routes related to services provided pursuant to this Agreement with Collection Routes for other jurisdictions, or entities, it may service.

8.1.7 Replacement of Containers

Contractor shall, whenever possible, return Carts to the location where they were found (e.g., on the sidewalk or in the street gutter, adjacent to the curb) upon completing Collection. Contractor shall return all Bins in the location upon the property of each Customer utilizing Bins designated for storage of Bins, and shall secure gates, doors, and/or enclosures when applicable.

(A) All Containers shall meet the minimum standards set forth on the attached Exhibit B.

(B) Contractor shall be responsible to maintain, clean and replace, as necessary, all Containers, including but not limited to, in the interest of public health and safety.

(C) All Containers shall be maintained by Contractor in good repair, and any question as to the meaning of this standard shall be resolved by the City Manager.

(D) Contractor shall deliver Containers to each Customer at no additional charge.

(E) Contractor shall ensure it maintains an accurate list that contains the total number of Containers it services, including the account/customer number, service address, GPS coordinates, type and size of Container, and the serial number or other identifying information associated with each Container. Contractor shall keep this list up to date at all times, provide it to City within ten (10) days of any update, and shall include a current updated list with each annual report as set forth in Section 23.3. In addition, Contractor shall provide this list to City within forty-five (45) days of the Service Commencement Date.

(F) All Carts shall be maintained by Contractor in a watertight condition, as shall all Bins which are used primarily for the Disposal of Solid Waste containing liquids.

(G) Upon request and no more than one time per calendar year, Contractor shall exchange a Customer's Cart for a "like new" Cart at no additional charge on Customer's next regular Collection day unless City requests an earlier exchange, in which case Contractor shall make the exchange within forty-eight (48) hours of notification from City. In addition, Contractor shall repair and maintain, remove graffiti from, and replace lost, stolen or damaged Carts at no charge to Customers on Customer's next Collection day, unless City requests earlier repair, maintenance, removal of graffiti, or replacement, in which case, Contractor shall cause such work to be completed within forty-eight (48) hours of notification from City (Sundays and holidays as described in Section 8.1.4 excepted). However, Contractor shall be entitled to charge Customers for the replacement of any Cart that has been damaged by a Customer's willful neglect or abuse, ordinary wear and tear excepted, with such charges being subject to the City Manager's approval and at a fee no higher than Contractor's actual cost of repair and replacement.

(H) All Bins and Roll-off Boxes shall be kept freshly painted in a uniform fashion. All Bins and Roll-off Boxes shall be identified with Contractor's name and phone number in letters not less than three inches high on its exterior so as to be visible and legible when the Container is placed for use.

(I) At a Customer's request, Contractor shall provide Bins with locking lids and locks and may charge rates to Customers for locking Bins which do not exceed the maximum rates set forth in Exhibit A.

(J) Contractor shall mark its Containers with conspicuous warning notices stating Disposal of Hazardous Waste in the Containers is prohibited.

(K) Contractor is responsible for cleaning and maintaining Collection Container enclosures in a manner reasonably acceptable to City, including, but not limited to, sweeping and removing litter and debris from the floor of the enclosure after each Collection.

8.1.8 Missed Pick-ups

In case of a missed pick-up called in by a Customer, Contractor shall Collect Solid Waste and Recyclable Material from such Customer by 5:00 p.m. on the day of the call if Contractor was notified before 12:00 p.m. that same day or, for calls received after 12:00 p.m., within twenty-four (24) hours after the call is received. Records of the addresses of all missed pick-ups shall be maintained by Contractor and shall be reported to City on a monthly basis in accordance with Section 23.1. If Contractor demonstrates to the satisfaction of the City Manager a pattern of ongoing late "set-outs" by a given Customer, missed pick-ups resulting from late set-outs by that Customer shall not be counted as missed pick-ups in evaluating Contractor's performance hereunder. The Customer service phone system required by Section 10.8.2 hereof is intended, among other things, to serve as a "hotline" for Customers to call in the event Solid Waste placed for Collection is not Collected by Contractor and to facilitate having such Solid Waste Collected as soon as reasonably possible, and in no event later than as required by the provisions hereof.

8.1.9 Record of Non-collection

As more fully set forth herein, Contractor shall Collect all Solid Waste placed for Collection by Customers in Containers, excepting materials that do not meet the definition of Solid

Waste (such as hazardous substances) or which are commingled with such materials. Whenever Contractor determines not to Collect any Solid Waste deposited for Collection, Contractor shall leave a tag at least 2" by 6" in size, indicating the reason for Contractor's refusal to do so. This information may be either handwritten or left by means of a check system (i.e., checking off boxes on a preprinted form). The tag shall provide Contractor's business name and its local telephone number and shall be securely fastened to the Container or the article refused. Contractor shall maintain a record of all such taggings at its place of business. Such record shall contain the date of such notice, street address, reason for non-collection, and a summary of any communications between Contractor and Customer involved. Such record shall be retained and reported to City on a monthly basis in accordance with Section 23.1. Contractor shall follow-up with all Customers receiving a tag for non-collection by telephone within twenty-four (24) hours.

8.2 Residential Solid Waste Handling Service

8.2.1 Residential Curbside Cart Service

Contractor shall offer and provide a Residential Recycling program for Customers receiving curbside Cart service that enables City and Customers to meet or exceed the requirements of all laws and regulations related to solid waste and recycling, including without limitation AB 939, and implements the related provisions of Contractor's Implementation Plan set forth in Exhibit C, and achieves the Diversion requirements set forth in this Agreement.

Contractor shall provide all Customers at Residential Premises receiving curbside Cart service ("Curbside Cart Customer") with at least one (1) thirty-two (32) to thirty-five (35) gallon Cart for Collection of mixed Solid Waste (a "Refuse Cart") and one (1) thirty-two (32) to thirty-five (35) gallon Cart for Collection of Recyclables, and shall Collect such Solid Waste placed therein not less than once per week, at rates which do not exceed the maximum rates set forth in Exhibit A. Upon request from any Curbside Cart Customer, Contractor shall exchange either of the two (2) standard Carts with a sixty-four (64) gallon or ninety-six (96) gallon Cart, or a thirty-two (32) to thirty-five (35) gallon Cart if previously exchanged for a larger size, at no additional charge.

A Curbside Cart Customer (or Responsible Customer) may request that Contractor remove the one (1) standard Cart for Collection of Recyclables at no additional charge to Customer (or Responsible Customer) provided Contractor meets with Customer (or Responsible Customer) and determines that (1) in the interest of public health or safety, the Recycling Cart should not be provided, or (2) the Curbside Cart Customer is adequately served by a nearby Recycling Container located in a common area. Contractor shall notify City of all such removals in writing as part of the next required monthly reporting and provide related justification.

Contractor shall provide Curbside Cart Customers with additional Carts in excess of the two (2) standard Carts and shall provide additional Collections upon request, if approved by the Responsible Customer where applicable, or as may be required by City's Municipal Code, public health and safety requirements, or by the City Manager, and may charge rates for such services rates which do not exceed the maximum rates set forth in Exhibit A.

In the event of any dispute as to the adequacy of the number, size, or Collection frequency of Carts at any given Residential Premises, the City Manager shall have the ability to approve the number, size, and Collection frequency of Carts used at such Residential Premises.

Wherever feasible, Curbside Cart Customers shall be directed by Contractor to place Carts for Collection on the sidewalk or in the street gutter, against the curb, in front of their Premises, or adjacent to their Premises in the alley or easement in the rear of their Premises. If a Curbside Cart Customer and Contractor cannot agree upon a Collection location, or if the City Manager determines the selected location may cause public safety or other concerns, the City Manager may make the final determination of the Collection location.

In the event extra pickups are required at a Residential Premises in any given month, Contractor may charge the Curbside Cart Customer or Responsible Customer, where applicable, for such pickups rates which do not exceed the maximum rates set forth in Exhibit A.

8.2.2 Residential Bin Service

Contractor shall offer and provide a Residential Recycling program for Customers receiving Bin service that enables City and Customers to meet or exceed the requirements of all laws and regulations related to solid waste and recycling, including without limitation AB 939, and implements the related provisions of Contractor's Implementation Plan set forth in Exhibit C, and achieves the Diversion requirements set forth in this Agreement.

The number and size of Bins provided by Contractor for Collection of mixed Solid Waste and Recyclables, and the frequency of Collection, shall be mutually agreed upon by Customer or Responsible Customer, where applicable, and Contractor, except that Collection shall occur not less than one time per week and the City Manager shall have the right to impose minimum requirements for Container numbers and sizes and more frequent Collection should he/she/they determine such action is needed to protect public health and safety or comply with Applicable Laws. Contractor may charge rates for such services which do not exceed the maximum rates set forth in Exhibit A.

In the event of any dispute as to the adequacy of the number, size, or Collection frequency of Bins at any given Residential Premises, the City Manager shall have the ability to approve the number, size, and Collection frequency of Bins used at such Residential Premises.

Bins shall be Collected by Contractor from the location upon each Customer's property designated for their storage and replaced to that location with gates and/or doors secured, as applicable, after Collection is completed, unless different arrangements are agreed upon by Customer and Contractor. If a Customer and Contractor cannot agree upon a Collection location, or if the City Manager determines the selected location may cause public safety or other concerns, the City Manager may make the final determination of the Collection location.

In the event extra pickups are required at a Commercial Premises, Contractor may charge Customer or Responsible Customer, where applicable, for such pickups rates which do not exceed the maximum rates set forth in Exhibit A.

8.2.3 Residential Organics Recycling Service

Contractor shall offer and provide a Residential Organics program that enables City and Customers to meet or exceed the requirements of all laws and regulations related to the Collection, disposal, diversion and recovery of Organic waste, including without limitation AB 1826 and SB 1383, and achieves the Diversion requirements set forth in this Agreement. Contractor's program shall be comprised of either or both (i) adding a third cart for source separated Organics Collection ("Organics Containers") or (ii) establishing centralized locations for Collection of Organics, and shall be consistent with Contractor's Proposal. The program implemented by Contractor shall be presented in writing to City in advance, and shall be approved by the City Manager prior to implementation. Once approved, the written program description shall become a part of Exhibit C to this Agreement, and may be amended from time to time upon approval by the City Manager to ensure compliance with all Applicable Laws.

The number, type and size of Containers provided by Contractor for Collection of Organics, and the frequency of Collection, shall meet the minimum requirements set forth in Exhibit C, but otherwise may be mutually agreed upon by Customer or Responsible Customer, where applicable, and Contractor, except that Collection of Organics shall occur not less than one time per week and the City Manager shall have the right to impose minimum requirements for Container numbers, types and sizes and more frequent Collection should he/she/they determine such action is needed to protect public health and safety or comply with Applicable Laws. Contractor may charge rates for such services which do not exceed the maximum rates set forth in Exhibit A.

In the event of any dispute as to the adequacy of the number, type, size, or Collection frequency of Containers at any given Residential Premises, the City Manager shall have the ability to approve the number, type, size, and Collection frequency of Containers used at such Residential Premises.

Wherever feasible, Customers shall be directed by Contractor to place Carts for Collection on the sidewalk or in the street gutter, against the curb, in front of their Premises, or adjacent to their Premises in the alley or easement in the rear of their Premises. Bins shall be Collected by Contractor from the location upon each Customer's property designated for their storage and replaced to that location with gates and/or doors secured, as applicable, after Collection is completed, unless different arrangements are agreed upon by Customer and Contractor. If a Customer and Contractor cannot agree upon a Collection location, or if the City Manager determines the selected location may cause public safety or other concerns, the City Manager may make the final determination of the Collection location.

In the event extra pickups are required at a Residential Premises, Contractor may charge Customer or Responsible Customer, where applicable, for such pickups rates which do not exceed the maximum rates set forth in Exhibit A.

8.2.4 Walk-Out Service

Contractor shall provide eligible Residential Premises Customers with "walk-out service" as set forth in this paragraph at no additional charge. This service shall require Contractor to use

its own forces to bring a Customer's Carts from the garage, backyard, side yard, or such other location of a Dwelling Unit at which the Containers are regularly stored, to Contractor's Collection Vehicle; and, after Disposal of the contents thereof, returning said Containers to the location where they are regularly stored. To be eligible for this service the person at the Residential Premises shall have a California Department of Motor Vehicles-issued disabled person placard/license plates, and provide a letter to Contractor from a physician confirming that he/she/they is/are unable to move his/her/their Carts to the curb, and that to the best of the physician's knowledge there is no other capable persons living in the Residential Premises household to provide this service. Contractor may require each eligible person at the Residential Premises to provide a new letter from a physician on an annual basis in order to maintain eligibility for walk-out service. Any dispute regarding eligibility for walk-out service shall be resolved by the City Manager. Contractor may provide Customers who are not eligible for free walk-out service pursuant to the foregoing with walk-out service at a rate which shall not exceed the maximum rate set forth in Exhibit A.

Contractor may require as a condition of walk-out service that a Customer sign a standardized agreement, the terms of which shall be subject to the City Manager's approval, which authorizes entry onto the Residential Premises serviced under Customer's account and holds Contractor harmless from liability (including specifically liability related to pets escaping) associated with Contractor providing such service.

8.2.5 Residential Collection Programs - Education and Outreach

Contractor shall produce, keep current, and provide public information in compliance with all Applicable Laws, including specifically, without limitation, SB 1383, and that specifically outlines its Residential Premises Collection programs. Contractor's public information and outreach efforts shall occur on a schedule substantially similar to that set forth in Contractor's Proposal, modified in a manner acceptable to the City Manager to account for the date this Agreement is approved. All public information, education and outreach related materials and content shall be approved in advance by the City Manager, shall be consistent with Contractor's Proposal, and shall include at least the following:

- an initial mailing letter to all Customers introducing Contractor and explaining the transition that will occur to Contractor as well as Contractor's programs.
- a detailed brochure that describes Contractor's recycling programs, with such brochures being made available to all Customers throughout the Term including by mailing them to new Customers who subscribe for service, and placing them at community locations designated by the City Manager from time to time.
- a dedicated, separate page on Contractor's website for City which outlines Contractor's services.
- social media platforms designed to provide education to Customers on the importance of recycling and proper means by which to utilize Contractor's programs.
- appearances on local cable television programs explaining Contractor's services.

8.2.6 Residential Collection Programs - Compliance Monitoring and Enforcement

Contractor is responsible for monitoring Residential Premises Containers for the Collection of Refuse, Recyclables, and Organics as may be necessary to determine whether the content of each Collection Container is contaminated pursuant to Section 8.6.7. Contractor shall provide route auditing and waste characterization studies on an ongoing basis as may be needed to ensure City's compliance with all Applicable Laws, including without limitation AB 1826 and SB 1383, in a manner satisfactory to the City Manager that at a minimum meets the monitoring, auditing and related public education and outreach follow up set forth in Contractor's Proposal.

8.2.7 Residential Green Waste Program

As of the Effective Date of this Agreement, source separated Green Waste generated from Residential Premises is collected by third-parties and Contractor shall not be required to provide source separated Green Waste Collection from Residential Premises. However, should source separated Green Waste generated from Residential Premises cease to be Collected by third-parties, Contractor shall, if requested by City, commence source separated Collection of that Green Waste and Contractor and City shall meet and confer in good faith to determine a fair and reasonable adjustment to the maximum rates set forth in Exhibit A in order to compensate Contractor for the source separated Collection and proper handling of Green Waste. City reserves the right to contract with a Person other than Contractor for the Collection of source separated Green Waste, and in such case, source separated Green Waste would be deemed excluded from scope of Franchise pursuant to Section 3.2.

Notwithstanding the above, Contractor is required to Collect Green Waste that a Customer discards as Solid Waste and places in a Refuse Cart, Organics Container, or other Container for Collection.

8.2.8 Bulky Item Service for Residential Premises

8.2.8.1 Weekly Bulky Item Collection

Contractor shall provide Bulky Item Collection services to Residential Premises at no charge using the "geographic-based" approach described herein. Contractor shall coordinate with City to divide the City into five geographic areas that encompass all Residential Premises. These five geographic areas may change from time to time subject to the City Manager's approval. Each geographic area shall receive Bulky Item Collection service on a designated weekday each week, to be approved by the City Manager. In order to receive service, Customers shall place Bulky Items to be Collected in the same location where such Customers place Solid Waste for Collection. Customers shall not be required to make advance arrangements, and rather it is intended that Bulky Item Collection will occur on an ongoing, weekly basis in each of the five geographic zones. No single Bulky Item that cannot be safely handled by two workers using industry standard equipment will be accepted for Collection as part of this service, with any dispute regarding this issue subject to resolution by the City Manager. Customers shall be instructed to place Bulky Items in a manner so as to not block enclosures or otherwise impede Collection Service. Contractor shall work with City to produce, keep current, and make available public information materials specifically outlining its weekly Bulky Item Collection service. In addition, Contractor shall install signs at

enclosures used as the Collection location for Solid Waste for Residential Customers that identify the geographic zone the enclosure is in, with information regarding Bulky Item Collection days and times. Such signs shall be approved by the City Manager, and shall be provided, installed and maintained at Contractor's cost.

8.2.8.2 In-Home Bulky Item Collection

Upon request by City, Contractor shall design and implement a program for the Collection of Bulky Items from within a Customer's Dwelling Unit that the City Council finds satisfactory and approves, at rates subject to mutual agreement between City and Contractor.

8.2.9 Incidental Collection of Bulky Items

In addition to the services described above in Sections 8.2.8.1 and 8.2.8.2, Contractor shall Collect Bulky Items placed out for Collection by Customers in an enclosure or adjacent to Containers at no charge ("Incidental Bulky Item Collection"). No single Bulky Item that cannot be safely handled by two workers using industry standard equipment will be accepted for Collection as part of this service, with any dispute regarding this issue subject to resolution by the City Manager. The Incidental Bulky Item Collection service shall occur on a daily basis throughout the City, with the vehicle scheduled for Bulky Item Collection each day pursuant to Section 8.2.8.1 above making a sweep of the entire City to perform Incidental Bulky Item Collection. It is the intent that this Incidental Bulky Item Collection shall occur on an occasional basis; however, Contractor acknowledges that City cannot control, and is not responsible for illegal dumping or abandonment of Bulky Items in enclosures, and hence the full extent of Contractor's obligation in connection with this service is difficult to predict.

8.2.10 Bulky Item Diversion

Bulky Items Collected pursuant to this Agreement may not be landfilled until the following hierarchy of diversion efforts has been followed by Contractor:

- a. Reuse as is (if energy efficient);
- b. Disassemble for reuse or Recycling;
- c. Recycle, Transformation, other means of diversion; and
- d. Disposal.

This hierarchy is intended to preclude the use of front or rear loading packer vehicles for Bulky Items unless the compaction mechanism is not used to compact the Bulky Items. The disposition of Bulky Items shall be tracked by Contractor and this information shall be included in Contractor's quarterly reports to City.

8.2.11 Proper Handling of Bulky Items

Contractor shall properly handle all materials required to be collected as Bulky Items, including specifically items that require special handling pursuant to the Environmental Laws, such as materials that constitute “universal waste” and/or “e-waste.”

8.2.12 Roll-off Service

Residential Premises shall, if requested by a Customer, receive Roll-off Collection services in the same manner as Commercial Premises as set forth in Section 8.3.1 below.

8.3 Commercial Solid Waste Handling Services

8.3.1 Commercial Mixed Solid Waste/Refuse Service

Contractor shall provide all Customers at Commercial Premises with at least one Cart, Bin and/or Roll-off Box for Collection of mixed Solid Waste, and shall Collect all mixed Solid Waste placed therein for Collection not less than once per week, at rates which do not exceed the maximum rates set forth in Exhibit A. Contractor shall provide additional Containers to Customers and shall provide additional Collections upon request, if approved by the Responsible Customer where applicable, or as may be required by City’s Municipal Code, public health and safety requirements, or by the City Manager, and may charge rates for such services rates which do not exceed the maximum rates set forth in Exhibit A.

In the event of any dispute as to the adequacy of the number, type, size, or Collection frequency of Containers at any given Commercial Premises, the City Manager shall have the ability to approve the number, type, size, and Collection frequency of Containers used at such Commercial Premises.

Wherever feasible, Customers shall be directed by Contractor to place Carts for Collection on the sidewalk or in the street gutter, against the curb, in front of their Premises, or adjacent to their Premises in the alley or easement in the rear of their Premises. Bins and Roll-off Boxes shall be Collected by Contractor from the location upon each Customer’s property designated for their storage and replaced to that location with gates and/or doors secured, as applicable, after Collection is completed, unless different arrangements are agreed upon by Customer and Contractor. If a Customer and Contractor cannot agree upon a Collection location, or if the City Manager determines the selected location may cause public safety or other concerns, the City Manager may make the final determination of the Collection location.

In the event extra pickups are required at a Commercial Premises in any given month, Contractor may charge Customer or Responsible Customer, where applicable, for such pickups rates which do not exceed the maximum rates set forth in Exhibit A.

8.3.2 Commercial Recycling Services

Contractor shall offer and provide a commercial Recycling program (the “Commercial Recycling Program”) that enables City and Customers to meet or exceed the requirements of all laws and regulations related to solid waste and recycling, including without limitation AB 341,

and implements the related provisions of Contractor's Implementation Plan set forth in Exhibit C, and achieves the Diversion requirements set forth in this Agreement.

The number, type and size of Containers provided by Contractor for Collection of Recyclables, and the frequency of Collection, shall be mutually agreed upon by Customer or Responsible Customer, where applicable, and Contractor, except that Collection shall occur not less than one time per week and the City Manager shall have the right to impose minimum requirements for Container numbers, types and sizes and more frequent Collection should he/she/they determine such action is needed to protect public health and safety or comply with Applicable Laws. Contractor may charge rates for such services which do not exceed the maximum rates set forth in Exhibit A.

In the event of any dispute as to the adequacy of the number, type, size, or Collection frequency of Containers at any given Commercial Premises, the City Manager shall have the ability to approve the number, type, size, and Collection frequency of Containers used at such Commercial Premises.

Wherever feasible, Customers shall be directed by Contractor to place Carts for Collection on the sidewalk or in the street gutter, against the curb, in front of their Premises, or adjacent to their Premises in the alley or easement in the rear of their Premises. Bins and Roll-off Boxes shall be Collected by Contractor from the location upon each Customer's property designated for their storage and replaced to that location with gates and/or doors secured, as applicable, after Collection is completed, unless different arrangements are agreed upon by Customer and Contractor. If a Customer and Contractor cannot agree upon a Collection location, or if the City Manager determines the selected location may cause public safety or other concerns, the City Manager may make the final determination of the Collection location.

In the event extra pickups are required at a Commercial Premises, Contractor may charge Customer or Responsible Customer, where applicable, for such pickups rates which do not exceed the maximum rates set forth in Exhibit A.

8.3.3 Commercial Organics Recycling Services

Contractor shall offer and provide a commercial Organics program (the "Commercial Organics Program") that enables City and Customers to meet or exceed the requirements of all laws and regulations related to solid waste and recycling, including without limitation AB 1826 and SB 1383, and implements the related provisions of Contractor's Implementation Plan set forth in Exhibit C, and achieves the Diversion requirements set forth in this Agreement.

The number, type and size of Containers provided by Contractor for Collection of Organics, and the frequency of Collection, shall be mutually agreed upon by Customer or Responsible Customer, where applicable, and Contractor, except that Collection shall occur not less than one time per week and the City Manager shall have the right to impose minimum requirements for Organics Container numbers, types and sizes and more frequent Collection should he/she/they determine such action is needed to protect public health and safety or comply with Applicable Laws. Contractor may charge rates for such services which do not exceed the maximum rates set forth in Exhibit A.

In the event of any dispute as to the adequacy of the number, type, size, or Collection frequency of Organics Containers at any given Commercial Premises, the City Manager shall have the ability to approve the number, type, size, and Collection frequency of such Containers used at such Commercial Premises.

Wherever feasible, Customers shall be directed by Contractor to place Carts for Collection on the sidewalk or in the street gutter, against the curb, in front of their Premises, or adjacent to their Premises in the alley or easement in the rear of their Premises. Bins shall be Collected by Contractor from the location upon each Customer's property designated for their storage and replaced to that location with gates and/or doors secured, as applicable, after Collection is completed, unless different arrangements are agreed upon by Customer and Contractor. If a Customer and Contractor cannot agree upon a Collection location, or if the City Manager determines the selected location may cause public safety or other concerns, the City Manager may make the final determination of the Collection location.

In the event extra pickups are required at a Commercial Premises, Contractor may charge Customer or Responsible Customer, where applicable, for such pickups rates which do not exceed the maximum rates set forth in Exhibit A.

8.3.4 Commercial Collection Programs - Education and Outreach

Contractor shall produce, keep current, and provide public information in compliance with all laws and regulations related to Solid Waste and Recycling, including without limitation AB 939, AB 341, AB 1826, and SB 1383 and that specifically outlines its Commercial Premises Collection Programs. Contractor's public information and outreach efforts shall occur on a schedule substantially similar to that set forth in Contractor's Proposal, modified in a manner acceptable to the City Manager to account for date this Agreement is approved. All public information, education and outreach related materials and content shall be approved in advance by the City Manager, shall be consistent with Contractor's Proposal, and shall include at least the following:

- an initial mailing letter to all Customers introducing Contractor and explaining the transition that will occur to Contractor as well as Contractor's programs.
- a detailed brochure that describes Contractor's recycling programs, with such brochures being made available to all Customers throughout the Term including by mailing them to new Commercial Customers who subscribe for Collection services during the Term, and by placing them at community locations designated by the City Manager from time to time.
- a dedicated, separate page on Contractor's website for City which outlines Contractor's services.
- social media platforms designed to provide education to Customers on the importance of recycling and proper means by which to utilize Contractor's programs.

8.3.5 Commercial Collection Programs - Compliance Monitoring and Enforcement

Contractor is responsible for monitoring Commercial Premises Containers for the Collection of Refuse, Recyclables, and Organics as may be necessary to determine whether the content of each Collection Container is contaminated pursuant to Section 8.6.7. Contractor shall provide route auditing and waste characterization studies on an ongoing basis as may be needed to ensure City's compliance with all Applicable Laws, including without limitation AB 1826 and SB 1383, in a manner satisfactory to the City Manager that at a minimum meets the monitoring, auditing and related public education and outreach follow up set forth in Contractor's Proposal.

8.3.5.1 Commercial Collection Programs - Compliance Review

Beginning no later than July 1 of the first contract year, and annually thereafter, Contractor shall conduct compliance reviews of all Commercial Premises Solid Waste Collection accounts pursuant to all laws and regulations related to Solid Waste and Recycling, including without limitation SB 1383. A Contractor representative will contact, via in-person meetings, all Commercial Customers not subscribing to the Organics Collection service required under applicable CalRecycle requirements. For Customers not subscribing to Organics service, the Contractor representative shall assist customers with selecting appropriate Containers and Container sizing, identifying acceptable Organics for Collection and processing, and attempting to resolve any logistical detriments to providing Organics Collection service. If a Customer does not subscribe to Organics service within 30 days of Contractor's site visit, and, after at least three documented attempts by Contractor to follow-up with Customer, Customer continues to be non-responsive, Contractor may refer Customers to City for enforcement action.

Such a referral to City by Contractor for non-compliant accounts must include a written summary of the actions taken by Contractor to implement a program compliant with all laws and regulations related to Solid Waste and Recycling, and any written correspondence from Customer to Contractor. If, after City begins enforcement proceedings against Customer, Customer agrees to comply and implement a program compliant with all laws and regulations related to Solid Waste and Recycling, City will notify Contractor of Customer's willingness to comply, and Contractor will coordinate with Customer to implement a program compliant with all laws and regulations related to Solid Waste and Recycling.

8.3.6 Commercial Green Waste Services

Commercial Customers shall have the option to subscribe to source separated Green Waste Collection service through Contractor or otherwise arrange for the Collection, transportation, and Disposal of Green Waste as allowed pursuant to Section 3.2.

The number, type and size of Containers provided by Contractor for Collection of Green Waste, and the frequency of Collection, shall be mutually agreed upon by Customer or Responsible Customer, where applicable, and Contractor, except that Collection shall occur not less than one time per week and the City Manager shall have the right to impose minimum requirements for Container numbers, types and sizes and more frequent Collection should he/she/they determine such action is needed to protect public health and safety or comply with Applicable Laws.

Contractor may charge rates for such services which do not exceed the maximum rates set forth in Exhibit A.

In the event of any dispute as to the adequacy of the number, type, size, or Collection frequency of Containers at any given Commercial Premises, the City Manager shall have the ability to approve the number, type, size, and Collection frequency of Containers used at such Commercial Premises.

Wherever feasible, Customers shall be directed by Contractor to place Carts for Collection on the sidewalk or in the street gutter, against the curb, in front of their Premises, or adjacent to their Premises in the alley or easement in the rear of their Premises. Bins and Roll-off Boxes shall be Collected by Contractor from the location upon each Customer's property designated for their storage and replaced to that location with gates and/or doors secured, as applicable, after Collection is completed, unless different arrangements are agreed upon by Customer and Contractor. If a Customer and Contractor cannot agree upon a Collection location, or if the City Manager determines the selected location may cause public safety or other concerns, the City Manager may make the final determination of the Collection location.

In the event extra pickups are required at a Commercial Premises, Contractor may charge Customer or Responsible Customer, where applicable, for such pickups rates which do not exceed the maximum rates set forth in Exhibit A.

8.3.7 Commercial Bulky Item Service

Contractor shall provide unlimited Bulky Item Collection services to Commercial Customers on an on-call basis. Contractor may charge rates for such services which shall not exceed the maximum rates set forth in Exhibit A. Bulky Item Collection service calls shall be responded to within a reasonable time but not longer than ten (10) days from the date of Customer's call for service. Contractor shall produce, keep current, and provide public information specifically outlining the Bulky Item pick-up service. Bulky Items Collected pursuant to this Section are subject to the Diversion and handling requirements set forth in Sections 8.2.10 and 8.2.11.

8.3.8 Scout and Push Out Services

Certain Commercial Premises within the City Limits are uniquely configured such that Contractor may determine that a smaller vehicle may be needed to retrieve a Customer's Container in order for a regular Collection vehicle to service the Container ("Scout Service"). Certain Commercial Premises may be configured such that a Customer's Container must be manually moved in order to be serviced by a Collection Vehicle ("Push Out Service"). Contractor shall provide Scout Service and Push Out Service to Commercial Premises as it deems appropriate, and Contractor may charge for Scout Service or Push Out Service at rates that do not exceed the maximum rates set forth in Exhibit A.

8.4 Other Collection Programs As May Be Required by Law

In the event CalRecycle, or any federal, State, or local law or regulation, imposes upon City or Contractor a requirement for the implementation of any source separated program for the

Collection of any waste material (whether or not meeting the definition of Solid Waste hereunder) not already covered by this Agreement, whether Residential or Commercial in nature, Contractor shall design and present a program to City to comply with such requirement, which program shall meet the City Manager's reasonable approval ("Proposed Program"). Except with respect to programs which are required due to Contractor's failure to achieve Diversion requirements set forth herein (which programs are subject to Section 8.6.6), at such time as (if) any such Proposed Program is implemented, Contractor and City shall meet and confer in good faith to determine a fair and reasonable adjustment to the maximum rates set forth in Exhibit A in order to compensate Contractor for implementing said Proposed Program.

In determining a fair and reasonable rate adjustment, City may consider the cost to Contractor in providing the Proposed Program. If City and Contractor cannot agree on a rate adjustment for the Proposed Program within ninety (90) days from the date City first requests Contractor design and present the Proposed Program to City, then City may enter into an agreement with another party for the services that would be provided by Contractor's Proposed Program and Contractor agrees that the Proposed Program shall be exempt from the exclusivity granted to Contractor in this Agreement.

Contractor shall present the Proposed Program within sixty (60) days of a request to do so by City. The Proposed Program shall include a detailed description of the following: (1) Containers to be used and method of Collection; (2) equipment to be used (e.g., vehicle number, models, capacity, and age); (3) number of employees required for the Proposed Program; (4) materials to be Collected; (5) promotional and public education materials; (6) a two-year projected financial analysis of the Proposed Program's operations in an operating statement format, including documentation of the key assumptions underlying the projections, and the support for those assumptions; and (7) any other information required by City to evaluate the Proposed Program.

8.5 Temporary Services

Contractor shall provide Temporary Services on an on-call basis to any Customer requesting such service pursuant to the following conditions:

(A) Bins and Roll-off Boxes utilized in connection with Temporary Services shall meet the minimum standards set forth herein.

(B) No charges excepting rates not exceeding the maximum rates set forth in Exhibit A related to Bins or Roll-off Boxes utilized in connection with Temporary Services shall be imposed by Contractor, unless approved in accordance with Section 8.8 (Special Services).

(C) Temporarily placed Bins may be used for small cleanup type projects at Single Family and Multi-Family Dwellings; provided, however, Bins used for such purposes shall not remain at the same address for a period that exceeds four consecutive weeks. Bins may not be placed in any location so as to create a safety hazard or so as to block any public or private street or driveway to a degree that it is not reasonably usable. Bins placed in City's rights-of-way shall be subject to such requirements as may be imposed by City, and at a minimum shall be equipped

with reflectors, reflective tape, reflective paint, or other reflective devices which, to the satisfaction of the City Manager, make such Bins reasonably visible to vehicle traffic at night.

(D) Contractor shall work with Customers requesting Construction and Demolition Debris Collection services to ensure that requirements under City's ordinance regulating the Recycling and Disposal of Construction and Demolition Debris are met, including, but not limited to, ensuring that each covered project meets the minimum required diversion level. Contractor agrees to comply with all provisions of the ordinance, as may be amended from time to time, and to provide consulting services for construction contractors in City as may be contemplated by any such ordinance at no charge (such as assistance in preparing plans for the collection, Recycling and Disposal of Construction and Demolition Debris in accordance with this Agreement and providing data for reporting to City).

(E) In addition to complying with any related requirements that may exist in any ordinance which may be in effect in City regulating the Recycling and Disposal of Construction and Demolition Debris, including specific diversion levels that may be required by any such ordinance, Contractor shall make all reasonable efforts to recycle all Construction and Demolition Debris it Collects, especially to the degree such loads contain clean inert materials. Towards this end, Contractor shall make available to Customers involved in construction separate containers within which to Collect different types of marketable materials, such as dirt, steel, concrete and wood.

8.6 Recycling Obligations and Public Education Program

8.6.1 Minimum Requirements for Recyclable Materials, Green Waste and Roll-off Boxes

Contractor shall utilize a truck dedicated for the purpose of Collecting Recyclable and Organics, such that Recyclable and Organic Material Collected are not commingled with other Solid Waste (including Green Waste, if incorporated into this Agreement pursuant to Section 8.2.7), except that it may be comingled with Organic Material. All material Collected by Contractor in Recycling and Organics Containers pursuant to this Agreement shall be delivered to a properly permitted Facility, to meet the requirements of Applicable Laws. If incorporated into this Agreement pursuant to Section 8.2.7, all Green Waste separated prior to Collection and thereafter Collected by Contractor pursuant to this Agreement (including specifically materials Collected in Green Waste Carts) shall be delivered to a properly permitted Facility, to meet the requirements of Applicable Laws, for Recycling, mulching, composting, or alternative uses. All Roll-off Boxes, whether for Commercial Customers or Temporary Service, shall be delivered to a properly permitted Facility, to meet the requirements of Applicable Laws, for Recycling and reuse purposes.

8.6.2 Extent of Applicable Franchise Rights

Except as explicitly provided herein, nothing in this Agreement shall be construed as giving Contractor the right to Collect any Solid Wastes, Special Wastes, or other material which has not been discarded and placed for Collection in Containers provided by Contractor in the location designated for that purpose.

8.6.3 Obligations, Guarantee, and Indemnification

8.6.3.1 Warranties and Representations

Contractor warrants and represents that it is aware of and familiar with City's Source Reduction and Recycling Element (the "SRRE"), that it is familiar with City's waste stream, and that it has the ability to and will provide sufficient programs and services to ensure City will meet or exceed the Diversion goals (including, without limitation, amounts of Solid Waste to be diverted, time frames for Diversion, and any other requirements) set forth in any relevant law or regulation, including without limitation AB 939, AB 341, AB 1826 and SB 1383, and all amendments thereto, and that it shall do so without imposing any costs or fees other than those set forth in Exhibit A (including if it implements new programs to achieve such goals which are not called out herein). Stated otherwise, Contractor acknowledges that it is responsible for ensuring that its various programs achieve the Diversion requirements hereunder, and that it may be required to modify its programs from time to time, at no additional cost to City or Customers, to meet such Diversion requirements. Contractor specifically acknowledges that City's current mandated Diversion goal as set forth pursuant to the Applicable Laws is fifty percent (50%), and that this is subject to possible modification pursuant to the provisions of AB 341.

8.6.3.2 Waste Reduction and Program Implementation

Contractor shall implement the programs identified in the SRRE immediately upon the Service Commencement Date hereof, and shall implement any programs required by any amendments or modifications thereto. In meeting this obligation Contractor shall be mindful of and comply with all requirements of the County Agreement, including specifically, without limitation, the requirements thereof generally relating to (i) the delivery of Solid Waste only to transfer stations that provide quarterly certifications of Solid Waste delivered, and (ii) the Disposal of residual Solid Waste that remains after Recycling processes have been completed. On and after the Service Commencement Date, Contractor shall provide City with written reports in a form and frequency adequate to meet City's required filing and reporting requirements to CalRecycle and to the County of Orange throughout the Term of this Agreement wherein City's performance under the above programs shall be set forth in detail. Contractor shall be responsible to prepare, or assist City with the preparation of, all reports and other information as may be required by any agency, including specifically, without limitation, Cal Recycle and State of California. Contractor shall reimburse City for any costs City incurs in appearing before CalRecycle and/or the County of Orange in relation thereto.

8.6.3.4 Guarantee and Indemnification

Contractor warrants and guaranties that it will carry out its obligations under this Agreement such that: (i) both it and City will at all times be in compliance with the requirements of all Applicable Laws including specifically, without limitation, AB 939, AB 341, AB 1594, AB 1826, 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 any relevant law or regulation, including without limitation AB 939, AB 341, AB 1826 and SB 1383, and all amendments thereto. In this regard, Contractor agrees that it will, in addition to any other requirement contained herein, at its sole cost and expense:

(A) to the extent legally permitted, defend, with counsel approved by City, indemnify, and hold harmless City and City's officials, employees, and agents from and against all fines and/or penalties and other liabilities which may be imposed by CalRecycle or any other regulatory agency if: (1) Contractor fails or refuses to timely provide information relating to its operations which is required pursuant to this Agreement or any Applicable Laws and such failure or refusal prevents or delays City from submitting reports required by Applicable Laws in a timely manner; or (2) the source reduction and Recycling goals, Diversion goals, program implementation requirements, or any other requirements of Applicable Laws are not met with respect to the waste stream Collected under this Agreement;

(B) assist City in responding to inquiries from CalRecycle;

(C) assist City in preparing for, and participating in, any review of City's SRRE pursuant to Applicable Laws;

(D) assist City in applying for any extension if so directed by City;

(E) assist City in any hearing conducted by CalRecycle relating to City's compliance with Applicable Laws;

(F) assist City with the development of and implement a public awareness and education program that is consistent with City's SRRE, as well as any related requirements of Applicable Laws;

(G) provide City with recycling, source reduction, and other technical assistance related to compliance with the Applicable Laws;

(H) defend, with counsel acceptable to City, City and City's officials, employees, and agents against the imposition of fines and/or penalties, or any other liabilities, issued by CalRecycle; and

(I) be responsible for and pay, any fees, 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 diversion requirements, or 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.

8.6.4 Guaranteed Minimum Contractor Recycling Rate

Contractor shall divert a minimum of fifty percent (50%) of all Solid Waste it Collects under this Agreement for each calendar year beginning January 1, 2022 ("Recycling Diversion Requirement"). Diversion of materials not Collected by Contractor shall not be counted towards meeting the Recycling Diversion Requirement. Contractor shall not be entitled to a reduction in the Recycling Diversion Requirement, or a rate adjustment, if or when:

- Transformation or other facilities are no longer available for any reason; or

- CalRecycle diversion credit under AB 939 or other Applicable Laws is no longer provided for Solid Waste sent to a Transformation Facility.

To comply with this Section, Contractor is required to submit tonnage reports supporting the Recycling Diversion Requirement to City within 45 days of the end of each calendar year, and to provide supporting documentation as may be requested by City or its designee as part of, or independent of, an audit. Failure to meet, and fully support, the Recycling Diversion Requirement may result in City assessing liquidated damages in accordance with Section 18.7.3.6 and/or termination of this Agreement pursuant to Section 18.6(H).

8.6.4.1 Mutual Cooperation & Good Faith Effort Diversion Compliance

City and Contractor shall reasonably cooperate in good faith with all efforts by each other to meet City's minimum recycling and diversion requirements and other compliance requirements imposed by AB 939, AB 341, AB 1826, SB 1383, and all other Applicable Laws, and to meet Contractor's obligations under Section 8.6.4 and any related Liquidated Damages set forth in Section 18.7.3.6. In this regard, City's obligations shall include, without limitation, making such petitions and applications to third party agencies, such as CalRecycle, as may be reasonably requested by Contractor for time extensions in meeting diversion goals, or other exceptions from the terms of Section 8.6.4, and Section 18.7.3.6. Contractor shall reimburse City for any costs in incurs in making any such petitions or applicaitons.

8.6.5 AB 939 and SB 1383 Required Analysis

Contractor acknowledges that City must perform Solid Waste generation and Disposal characterization studies periodically to comply with the requirements of AB 939, and Route reviews and/or waste evaluations to comply with SB 1383. Contractor agrees to participate and cooperate with City and its agents and to accomplish studies and data collection and prepare reports, as needed and directed by City, to determine weights and volumes of Solid Waste Collected and characterize Solid Waste generated, disposed, transformed, Diverted or otherwise handled/processed to satisfy the requirements of AB 939 and SB 1383.

8.6.6 Implementation of Additional Diversion Services

In the event City does not meet the Recycling Diversion Requirement, or the diversion goal of any program required by any law or regulation as of the Effective Date, with respect to all Solid Waste generated in City, the City Manager may direct Contractor to perform additional services (including the implementation of new diversion programs) or modify the manner in which it performs existing services, and Contractor agrees to do so at no additional charge. Contractor shall seek the City Manager's approval for the implementation of new Diversion programs, which the City Manager may deny, approve or conditionally approve in his/her/their reasonable discretion. Pilot programs and innovative services, which may entail new Collection methods, and use of new or alternative waste processing and Disposal technologies are included among the kinds of changes which the City Manager may direct.

8.6.7 Excessively Contaminated Containers

Without limiting Contractor's overall diversion obligations pursuant to this Agreement, Contractor and City agree to work together to identify what materials are appropriate for inclusion in Containers designed for the Collection of mixed Solid Waste, , Recyclables , Organic Materials and Green Waste, and what materials if placed therein constitute "contamination." Unless otherwise directed by City to ensure Contractor's obligations are consistent with Contractor's Proposal, or as may be modified to ensure consistency with City's Municipal Code and Applicable Laws, Contractor and City agree to utilize the following procedures to assist in minimizing contamination:

(A) If Contractor documents that a particular Refuse Container, Recycling Container, Organics Container, or Green Waste Container is excessively contaminated, Contractor shall service the Container, making whatever accommodations are necessary (at no additional cost to Customer), such as Collecting the Container as Refuse, or removing the contamination prior to Collection. Contractor shall affix a notice to the Container or Customer's entrance to Residential Dwelling Unit or Commercial Premises, and send an electronic copy of the notice to Customer if an email address is on file, with language intended to inform Customer that:

- (1) The Container required special Collection services and the contents could not be readily recycled due to the presence of non-Recyclable Material in the Container;
- (2) What materials are and are not to be placed in the Container;
- (3) Warning that future instances of contamination may result in administrative civil penalties; and
- (4) A telephone number to contact Contractor to obtain additional information and/or receive responses to any questions Customer may have.

For Containers in which the Responsible Customer is not the primary Solid Waste generator, a similar notice shall be provided to the Responsible Customer.

(B) In the event the same Refuse Container, Recycling Container, Organics Container, or Green Waste Container in question is found to be contaminated a second and third time, Contractor shall provide a second and third notice substantially similar to the first, and affix it to the Container or Customer's entrance to Residential Dwelling Unit or Commercial Premises, and send an electronic copy of the notice to Customer if an email address is on file. Thereafter, if the Container in question continues to be excessively contaminated, Contractor may charge Customer a contamination fee in an amount that does not exceed the maximum rate set forth in Exhibit A. In addition, where there have been three (3) or more instances of excessive contamination in a single Container in any twelve (12) month period, Contractor may (with approval of the City Manager) deliver additional or larger Containers to Customer, or require additional weekly Collections as appropriate, and charge Customer for such increased or additional services at rates that do not exceed the maximum rates set forth in Exhibit A.

8.7 Additional Services

As part of the consideration for entering into this Agreement, Contractor shall provide the following additional services at no charge, and shall not adjust its rates to Customers to offset costs incurred in providing any of the following services:

8.7.1 Monitoring and Cleaning of Bin Enclosures

In addition to the requirements in Section 8.1.7, Contractor shall work with the City Manager in identifying and resolving continual problems with overflowing Bins or Bin enclosures, and/or other unsanitary conditions caused by Customers. Contractor shall clean out any overflowing Bins or Bin enclosures within City within twenty-four (24) hours of notification by City or request by a Responsible Customer.

8.7.2 Public Service Calls from City Departments and Service Providers

Contractor shall, free of charge, within twenty-four (24) hours respond to calls from City, City's code enforcement and other contract service providers, the Orange County Sheriff's Department, and Orange County Fire Authority, to provide Containers for and/or dispose of Bulky Items and other Solid Waste as a result of illegal or unauthorized dumping, or other Code enforcement matters, occurring within City. Contractor agrees that if requested to provide such services in connection with abatement activities for which reimbursement is sought from the property owner by City through abatement liens or otherwise, Contractor will provide billing information sufficient for City to include it in its liens, and Contractor will be paid at such time as the abatement lien is paid, or reimbursement is otherwise obtained by City from the property owner. Upon receipt of a call for service from City made pursuant to this Section, Contractor shall advise City within two (2) hours as to when service will be provided, and unless otherwise agreed by City service shall be provided within twenty-four (24) hours.

8.7.3 Collection at City Sponsored Events

Contractor shall provide Solid Waste Collection at all City-sponsored or supported programs and events, and at all special events or events in large venues (such as concerts or sporting events) as requested by City. The number, type and service requirements for these programs and events may vary from year to year. This service shall include providing, servicing, and storing Containers (cardboard boxes and liners, Carts, Bins and/or Roll-off Boxes) to Collect and dispose of all Solid Waste generated, and providing, servicing and storing Containers to Collect and process source-separated Organic Waste and Recyclable Materials. Contractor shall provide these services (i) at no cost for City-sponsored or supported programs and events, and (ii) at rates subject to approval by the City Manager for non-City-sponsored or supported programs and events, following a site and service evaluation.

Contractor shall assist persons who are responsible to coordinate programs or events for which services are provided pursuant to this Section 8.7.3 in the implementation of Recycling programs, as requested by City. Contractor shall be responsible to prepare and submit to City a "waste reduction and recycling plan" prior to such programs or events, and within thirty (30) days following each such event shall submit a waste characterization report listing the amount of each material Collected for Disposal and Recycling at the program or event.

8.7.4 Tire Recycling

Upon request by City, Contractor shall design and implement at no cost a program for the collection of illegal or unauthorized dumping of tires within City Limits (the "Tire Collection Program") that the City Manager finds satisfactory and approves. Contractor shall be responsible to ensure the Tire Collection Program complies with all Applicable Laws.

8.8 Special Services

Contractor may provide special pickup procedures or services in addition to the services described herein for Customers who request or require such services at reasonable rates established by Contractor, which rates are subject to approval by the City Manager. Contractor shall notify the City Manager of any such services prior to such time as they are provided in order to allow City an opportunity to conduct necessary inspections, review the proposed rate, and impose appropriate regulations.

SECTION 9. MINIMUM STANDARDS FOR CONTRACTOR'S SOLID WASTE HANDLING SERVICE COLLECTION VEHICLES

9.1 General

Contractor shall provide vehicles for the Collection of Solid Waste ("Collection Vehicles") that are sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms. Contractor is expressly obligated to provide such Collection Vehicles as are required to meet the service standards set forth herein. Contractor shall have available on Collection days sufficient back-up vehicles for each type of Collection Vehicle used to respond to complaints and emergencies. Upon or prior to the Effective Date of this Agreement and prior to the start of any extension period of this Agreement pursuant to Section 6, Contractor shall provide City with a report containing the information required under South Coast Air Quality Management District's Rule 1193(d)(7). Notwithstanding anything in this Agreement to the contrary, the vehicles Contractor utilizes solely for delivery of Bins and for pick-up of Bulky Items shall not be considered "Collection Vehicles" for purposes of Section 9.3(A), Section 9.3(B), and Section 9.3(C).

9.2 Air Quality/Fuel Requirements

Contractor's Collection Vehicles shall comply with all rules and regulations of the South Coast Air Quality Management District, the Air Resource Board, and any other regulatory body that may be in effect during the Term of this Agreement, as well as other federal, State and local laws and regulations that may be enacted during the Term of this Agreement. Contractor's Collection Vehicles shall meet or exceed such air quality standards as may be adopted by the forgoing regulatory bodies during the Term. Contractor's Collection Vehicles shall comply with the requirements in the South Coast Air Quality Management District's Rule 1193.

9.3 Specific Requirements

Each Collection Vehicle utilized by Contractor in the performance of this Agreement shall meet the following minimum standards:

(A) Each Collection Vehicle must either be fueled by Renewable Natural Gas (“RNG”) or Contractor shall annually procure throughout the term of the Agreement, on behalf of City and in compliance with SB 1383 regulations, the same amount of RNG (or other SB 1383-compliant fuel) as would be used by all Contractor’s Collection Vehicles assigned to City’s Collection Routes. At City’s request, Contractor shall timely obtain and provide City with a written certification by an authorized representative of the publicly-owned treatment works or the procurement agreement service provider certifying that the in-vessel digestion Facility produces the RNG consistent with the requirements of 14 CCR Section 18993.1(h). Contractor shall maintain records of the amount of RNG purchased and shall report this information in its annual report to City. Contractor agrees to City’s right to report this RNG usage toward the City’s fulfillment of its annual recovered Organic Waste product procurement target in accordance with 14 CCR Section 18993.1.

(B) Each Collection Vehicle shall be equipped with an on-board methane detection system capable of detecting methane leaks in the cab of the Collection Vehicle.

(C) Each Collection Vehicle shall be equipped with a tag axle.

(D) Each Collection Vehicle shall be registered with the California Department of Motor Vehicles.

(E) Each Collection Vehicle shall be inspected regularly by Contractor to ensure it meets the requirements of the California Vehicle Code and the California Highway Patrol. Contractor shall provide copies of its Biannual Inspection of Terminal (“BIT”) inspection reports to City within 30 days of its receipt of such reports and shall make all records related to its vehicles, including Contractor’s maintenance records, available to City upon request by the City Manager.

(F) Each Collection Vehicle shall be equipped with devices capable of covering every open section of the vehicle in which Solid Waste may be placed and, while operating upon the public rights-of-way, shall be covered so as to prevent any Solid Waste from falling or being blown or otherwise dislodged from the vehicle.

(G) Each Collection Vehicle shall be continuously maintained so as to both: (1) meet the highest industry standards with regards to efforts to prevent liquid from leaking and to the degree possible ensure each Collection Vehicle is “watertight” and “leak-proof” and, (2) at all times comply with the provisions of all laws and regulations including the Vehicle Code and any applicable National Pollutant Discharge Elimination System (“NPDES”) permit, with regard to materials leaking from Collection Vehicles. Contractor shall be responsible to promptly clean any spillage or Solid Waste that leaks or otherwise escapes the vehicle.

(H) As frequently as determined necessary by the City Manager, each Collection Vehicle shall be painted, shall have routine body work performed, and shall be cleaned, so that

such vehicles do not become unsightly. Each vehicle shall be painted with Contractor's colors and identifying information as required herein.

(I) Contractor's name, local or toll-free telephone number, and a vehicle number shall be visibly printed or painted in letters not less than five (5) inches in height so as to be legible on both sides of each Collection Vehicle. Any other information or signage printed, painted, or displayed on Contractor's Collection Vehicles, when such Vehicles are providing Collection services within City Limits, shall be subject to approval by City.

(J) Each Collection Vehicle shall be maintained in a clean and sanitary condition both inside and out.

(K) Each Collection Vehicle shall carry a broom, shovel, and operable fire extinguisher, and shall be equipped with a communication device sufficient to allow the driver to communicate directly with Contractor's dispatcher and/or main office.

(L) Each Collection Vehicle shall be kept in good repair and working order, and shall be equipped with appropriate safety equipment, including any new safety related technologies that become standard in the waste industry, and at a minimum shall have a video monitor-based back-up system, or its equivalent. Contractor shall keep a sufficient supply of replacement parts and equipment on hand to ensure adequate vehicle maintenance and timely and continuous performance of the services contemplated by this Agreement.

(M) Contractor shall inspect each Collection Vehicle daily to ensure that all equipment is operating properly. Collection Vehicles which are not operating properly shall be removed from service until repaired and operating properly. Contractor shall perform all scheduled maintenance functions upon Collection Vehicles in accordance with the manufacturer's specifications and schedule. Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Contractor shall keep accurate records of all Collection Vehicle maintenance and repair, recorded according to date and mileage, including signed verifications that repairs and maintenance has been properly performed, and shall make such records available to City upon request.

(N) No Collection Vehicle shall be utilized if it is leaking brake, hydraulic, or other fluids, and Contractor shall clean up any leaks or spills from their vehicles per the NPDES permits in effect at the time. No fluids shall be washed into storm drains at any time. All NPDES dry-cleaning measures shall be complied with. All Collection Vehicles must be equipped with absorbent for such cleanup efforts.

(O) Upon request, Contractor shall furnish City a written inventory of all equipment, including Collection Vehicles, used in providing service pursuant to this Agreement. This inventory shall list all equipment by manufacturer, ID number, date of acquisition, type and capacity.

(P) Contractor shall utilize Collection Vehicles of a size, weight, nature, and type so as to not be unreasonably intrusive on the community with respect to noise, emissions,

maneuverability, safety, and other factors and to avoid or minimize pavement damage and wear and tear of the street or adjacent properties, as approved by the City Manager.

(Q) Contractor shall not load Collection Vehicles in excess of the manufacturer's recommendations or limitations imposed by Applicable Laws.

(R) Noise levels of equipment used for Collection shall not exceed 75db (seventy-five decibels) when measured at a distance of twenty-five (25) feet from the vehicle, five (5) feet from the ground; provided, however, in the event there is any conflict with this Section and the noises levels permitted under City's Municipal Code, as such may be amended from time to time, the provisions in City's Municipal Code shall apply. Contractor shall submit to City, upon the City Manager's request, a certificate of Collection Vehicle noise level testing, by an independent testing entity, for any Collection Vehicle. Nothing in this Agreement shall be construed as granting Contractor any rights or waivers to violate any Applicable Laws.

(S) All Collection Vehicles used by Contractor to perform Collection services under this Agreement shall be equipped with on-board routing systems capable of tracking vehicle miles traveled ("VMT"). VMT systems must be capable of generating reports as requested by City. In addition, all Collection Vehicles shall, at a minimum, be equipped with a global positioning system ("GPS") and Contractor shall be able to provide evidence of the Routes location of each Collection Vehicle throughout each service day. The City Manager, in his/her/their sole discretion, may grant Contractor a waiver of this requirement due to the unavailability of equipment or delays in manufacture; evidence of such unavailability or delay shall be used by the City Manager to determine the period for which the waiver shall apply.

9.4 Costs of Operation and Damages

Contractor shall be responsible for any costs incurred in connection with ensuring all Collection Vehicles comply with all Applicable Laws, including without limitation any such laws and regulations that may now exist or hereinafter be adopted relating to noise, fuels, emission standards, or weight limits.

9.5 City Inspection

City may cause or require any Collection Vehicle used in performance of this Agreement to be inspected and tested at any time and in such manner as may be appropriate to verify that the vehicle is being maintained in compliance with the provisions of this Agreement.

9.6 Correction of Defects and Removal of Vehicles from Use within City

Contractor agrees to immediately remove from service, and replace or repair, to City's satisfaction, any Collection Vehicle which City determines to be of unsightly appearance, unsafe, unsanitary, leaking, out of compliance with any law or regulation or this Agreement, or otherwise in an unsatisfactory operating condition; and any such vehicle shall not be returned to service until the City Manager gives his/her/their written consent for its return.

**SECTION 10.
CONTRACTOR'S SOLID WASTE HANDLING
SERVICE PERSONNEL**

10.1 Uniforms

Each of Contractor's Collection employees shall wear a clean uniform bearing Contractor's name. Uniforms must be well maintained and in good condition.

10.2 Identification of Employees

Contractor shall provide identification badges, cards or similar devices, for all of its employees, and all authorized subcontractors, who may make personal contact with residents of City. City may require Contractor to notify Customers yearly, or more frequently if determined necessary by City, of the form of said identification.

10.3 Employee List

Contractor shall provide a list of current employees and authorized subcontractors to City upon request.

10.4 Driver's License

Each employee operating a vehicle as part of his/her/their duties shall, at all times, carry a valid operator's license for the type of vehicle he/she/they is/are operating.

10.5 Screening of Field Employees

Contractor shall make reasonable efforts to determine if its employees working in the field (i.e., drivers of Collection Vehicles, and employees otherwise involved in Collection at Customer Premises) have been convicted of a felony, and shall identify any such employees known to it to City. City shall have the ability to require that any employee so identified by Contractor not work in the field in the Franchise Area.

10.6 Discontinued Use of Unsatisfactory Employees

No employee shall continue to have any involvement whatsoever with regard to any work in anyway relating to or arising from this Agreement if City gives notice to Contractor that such employee is determined by City to be discourteous, disorderly, inefficient, unable to communicate effectively with Customers, or otherwise objectionable (provided the term "otherwise objectionable" shall not permit City to "ban" an employee for reasons that violate public policy; and, further, City shall give a reason for requesting the "ban" of any employee from engaging in work related to this Agreement).

10.7 Training and Legal Compliance

Contractor shall provide operating and safety training that meets minimum State Division of Occupational Safety and Health ("Cal/OSHA") standards for all personnel, and shall comply

with all laws and regulations applicable to its employees and personnel. Contractor shall periodically train employees on all the specific requirements of this Agreement applicable to the employee's effective performance of his/her/their duties. Not less than once per calendar year, Contractor shall be required to submit to City a copy of the training material, as well as, record documentation demonstrating the "Agreement-specific" training has occurred. In addition, Contractor shall require that all new employees with duties related to this Agreement receive the above "Agreement-specific" training as part of the orientation process, and Contractor shall provide documentation to City demonstrating said training has occurred.

10.8 Customer Service

10.8.1 Office Hours

Contractor shall maintain a local office, within 50 miles of City, for communication with the public that at a minimum will be open from 8:00 a.m. to 5:00 p.m. Monday through Friday, holidays as described in Section 8.1.4 excepted. At least one responsible and qualified representative of Contractor, capable of communicating in English and Spanish, shall be present and available during all times that an office is required to be open as noted above ("Office Hours"), for personal communication with the public regarding Billings (including the acceptance of in person Bill payments), complaints, customer service inquiries, etc. and a similarly qualified person shall be available for communication with the public by phone during any times other than Office Hours when Collection is occurring.

10.8.2 Telephone Customer Service Requirements

10.8.2.1 Toll Free Number

Contractor shall maintain a toll-free telephone number that rings at all times during Office Hours. English speaking personnel will be available during Office Hours to assist Customers with telephonic inquiries. Contractor shall have the ability (through the use of outside resources or otherwise) to communicate with Customers who only speak Spanish, Korean, Mandarin Chinese, or Tagalog to ensure their inquiries, questions, complaints and other matters are dealt with in a reasonably timely fashion. All such personnel shall be polite and responsive, and shall be sufficiently knowledgeable, and have the authority to respond and/or advise Customers seeking assistance. Contractor's telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days.

10.8.2.2 Call Responsiveness

Contractor shall make reasonable attempts to answer all phone calls within five (5) rings. If a call has been placed on hold for three (3) minutes, the caller shall be given an automated option to leave their phone number for a return call, which shall occur within 90 minutes if the call occurs during regular business hours. Calls received after regular business hours will be returned within 90 minutes of operations commencing the next business day. Contractor shall make at least three attempts within the next twenty-four (24) hour period to return the call, and if efforts to reach the Customer are unsuccessful will send an email to the email address on file, and where no email address is on file will send a follow up letter to the account address on file; and, in either case, will document its efforts in the Customer's file.

10.8.3 Complaint Documentation

All service complaints shall be directed to Contractor. Contractor shall log all complaints received and said log shall include the date and time the complaint was received, the name, address and telephone number of the complaining party, a description of the complaint, the name of the employee recording the complaint and the action taken by Contractor to respond to and remedy the complaint. All written Customer complaints and inquiries shall be date-stamped when received. All complaints shall be initially responded to within one (1) business day of receipt. Contractor shall log action taken to respond to and remedy the complaint. Daily logs of complaints shall be retained for a minimum of twenty-four (24) months. All Customer service records and logs kept by Contractor shall be available to City upon request. City shall, at any time during regular Office Hours, have access to Contractor's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints. Contractor shall provide to City on a monthly, quarterly, and annual basis, a complaint log, in a form satisfactory to City, that includes all of the complaints logged pursuant to this Section, the complainant and the resolution.

10.8.4 Resolution of Customer Complaints

Disputes between Contractor and its Customers regarding the services provided in accordance with this Agreement may be resolved by City. City's decision shall be final and binding. Should Contractor and Customers not be able to establish a mutually acceptable fee to be charged for special services as set forth in Section 8.8, the matter shall be dealt with pursuant to this Section, be determined by City, and City's decision shall be final. Intervention by City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Contractor. Nothing in this Section is intended to affect the remedies of third parties against Contractor. To the extent that remedies are warranted through this Agreement, this Section shall apply.

10.8.5 City Liaison

Contractor shall designate in writing a "City Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Customer complaints. City shall have the right to approve Contractor's choice for a liaison. It is anticipated that the City Liaison will regularly attend City meetings related to Contractor's performance of the Agreement and City events involving community outreach programs. The City Liaison must be available to City by telephone at all times.

10.8.6 Dedicated Recycling Coordinator

Contractor shall assign a "full time" Recycling coordinator to City (meaning a typical forty (40) hour per week job assignment, taking into account typical leave time) who shall be responsible for assisting with public education and outreach as well as compliance (including, but not limited to, inspections, monitoring, enforcement and reporting) with AB 939, AB 341, AB 1826, SB 1383, related Food Recovery efforts, and such other laws and regulations related to Diversion and Recycling as may be applicable during the Term. The Recycling coordinator shall coordinate with City in connection with AB 939, AB 341, AB 1826 and SB 1383 program

implementation and shall perform and/or oversee Contractor's inspection and other monitoring and enforcement-related functions, prepare reports required by CalRecycle to be certified by Contractor as to completeness and accuracy, conduct public outreach and education, participate in and facilitate community events throughout the year to promote Contractor's programs, and assist with resolution of complaints in accordance with Sections 10.8.2.2, 10.8.3 and 10.8.4. The Recycling coordinator shall physically work from City's City Hall at such times as mutually agreed upon by Contractor and City to ensure a close working relationship and coordination with City staff as well as accessibility for Responsible Customers and Customers; with any dispute regarding such times to be resolved by the City Manager in his/her/their reasonable discretion. Contractor shall keep records documenting the Recycling coordinator's activities, in a manner subject to the City Manager's reasonable approval, sufficient to substantiate the requirement that a "full time" assignment has been satisfied. Such records shall be retained for a minimum of twelve (12) months and be made available to City upon request.

10.9 Education and Public Awareness

10.9.1 General

Contractor acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve the requirements of all Applicable Laws, including specifically, without limitation, AB 939, AB 341, AB 1826 and SB 1383. Accordingly, Contractor agrees to exploit opportunities to expand public and Customer knowledge concerning needs and methods to reduce, reuse and recycle Solid Waste and to cooperate fully with City in this regard.

10.9.2 Written Program Materials

Contractor shall maintain a program of providing information relevant to the need and the methods to reduce, reuse and recycle Solid Waste, and Contractor upon request from City, may include such information along with bills provided to Customers. All public education materials shall be approved in advance by City, be produced in English and languages as required by Government Code Section 7295 and bear the City seal unless otherwise directed by City. Contractor shall keep a record of all promotional and public education materials utilized, and shall provide quarterly reports summarizing its public outreach and education efforts.

10.9.3 Public Outreach

At a minimum, Contractor shall promote Recycling through presentations and educational materials to businesses, business groups, homeowners associations, construction contractors and other civic groups.

10.9.4 Corrective Action Notice

Contractor shall develop a corrective action notification form for use in instances where a Customer sets out inappropriate materials for Collection that explains the appropriate manner for Disposal of such items.

10.9.5 AB 341, AB 1826, and SB 1383 Implementation Plan

Contractor shall develop an implementation plan, to be approved by City Manager and thereafter become Exhibit C to this Agreement, that at a minimum is submitted to the City Manager no later than November 4, 2021, modified in a manner acceptable to the City Manager to account for the date this Agreement is approved for keeping City in compliance with AB 341, AB 1826, and SB 1383 and meeting all requirements of this Agreement. Contractor shall implement and follow all timelines, planned tasks, procedures, proposed staffing assignments, and schedules contained in its implementation plan (Exhibit C).

SECTION 11. CONTRACTOR'S CONSIDERATION

In addition to any other consideration set forth herein, as part of its consideration for entering this Agreement, and for the exclusive franchise, right and privilege to provide Solid Waste Handling Services within City as specified herein Contractor shall provide the following:

11.1 Franchise Fee

Contractor shall pay to City, a franchise fee equal to the greater of five percent (5%) of Contractor's annual Gross Receipts each year, or portion thereof, throughout the Term of this Agreement or Eighty Thousand Dollars (\$80,000) (the "Franchise Fee"). Except for the final six months of the unextended Term of this Agreement, said Franchise Fee shall be paid to City quarterly on or before the last day of each of the first three quarters of each calendar year. The payment for the fourth quarter of each calendar year shall be due on or before each January 30. Should any such due date fall on a weekend or holiday in which City's business offices are closed, payment shall be due on the first day thereafter in which City's business offices are open. The amount of each payment for the first three calendar quarters of each calendar year shall be Twenty Thousand Dollars (\$20,000). The payment for the fourth calendar quarter of each calendar year shall be an amount that is not less than Twenty Thousand Dollars (\$20,000), adjusted upward as may be necessary to ensure the total payment for the calendar year is the greater of five percent (5%) of Contractor's Gross Receipts for the calendar year, or Eighty Thousand Dollars (\$80,000).

For the final six months of the unextended Term of this Agreement, Contractor shall pay to City Twenty Thousand Dollars (\$20,000) for the first quarter of the 2032 calendar year on or before March 31, 2032. Contractor's payment for the second quarter of the 2032 calendar year shall be due to City on or before July 30, 2032 in an amount that is not less than Twenty Thousand Dollars (\$20,000), adjusted upward as may be necessary to ensure the total payment for the first two calendar quarters of the 2032 calendar year is the greater of five percent (5%) of Contractor's Gross Receipts for the same period, or Forty Thousand Dollars (\$40,000)

The Franchise Fee due hereunder shall apply to Gross Receipts of Contractor collected after the expiration of the Term hereof relating to Contractor's performance during the Term hereof. The Franchise Fee payment due in connection with each fourth calendar quarter shall be accompanied by a statement certified by an officer of Contractor attesting to the accuracy of the amounts paid, and setting forth the basis for their calculation in a manner acceptable to City.

11.2 Services at City Premises

Upon request, Contractor shall provide Collection services at all Premises owned and/or operated by City, at no cost to City and shall provide Containers for such service as City deems appropriate for each of its various Premises (i.e., Carts, Bins or Roll-off Boxes). Collection services Contractor provides for City Premises may include, but are not limited to, Collection of all Solid Waste, including Recyclable Materials, Organics Waste, and Green Waste. City may require Contractor to use its own forces to bring City's Containers, as well as plastic bags provided by City, from the interior and exterior locations at which they are regularly stored by City, to Contractor's Collection Vehicle; and, after Disposal of the contents thereof, return said Containers to the location where they are regularly stored by City. Such services shall be provided for all existing City Premises, as they may be expanded from time to time, as well as all new or additional Premises acquired/constructed during the Term hereof at no additional cost, provided however that any Construction and Demolition Debris shall be subject to the maximum rates set forth in this Agreement for such Solid Waste applicable to commercial Customers. Contractor shall carry out its obligations pursuant to this provision in a manner, and to a degree (including specific days and times), approved by the City Manager.

11.3 Waste and Recycling Services Reimbursement

On or before April 30 and November 30 of each year thereafter, Contractor shall make a payment to City in the amount more fully set forth in this paragraph intended to defray its administrative costs related to this Agreement and waste management activities City performs (the "Waste and Recycling Services Reimbursement"). The Waste and Recycling Services Reimbursement is intended to cover, but is not limited to or required to be applied to, the following: ongoing compliance review as noticed in Section 28.3, City's legal and consultant fees incurred in administration of this Agreement, City promotion of waste management through its website, local cable television station, community newsletters, and materials provided at City Hall, Household Hazardous Waste and e-waste Collection, document shredding, and City Hall drop-off location for medications, small electronics, batteries, and fluorescent bulbs. The total amount of the biannual Waste and Recycling Services Reimbursement shall be One Hundred Sixty Five Thousand Dollars (\$165,000) [increased annually by any positive change in CPI as calculated under Section 24.3], payable in two installments of Eighty-Two Thousand, Five Hundred Dollars (\$82,500) [increased annually by any positive change in CPI as calculated under Section 24.3] each due on or before April 30 and November 30 of each year during the Term of the Agreement. City shall not be required to send Contractor an invoice for the Waste and Recycling Services Reimbursement, and instead Contractor's Eighty-Two Thousand, Five Hundred Dollars (\$82,500) installment obligation shall automatically become due on April 30 and November 30 of each year during the Term of the Agreement.

SECTION 12. CHARGE FOR LATE PAYMENTS

In the event Contractor fails to timely make any of the payments provided for in this Agreement (whether reimbursements, Franchise Fees, payments of funds collected in connection with billing services, or otherwise), Contractor shall pay to City, as additional consideration, a sum of money equal to five percent (5%) of the amount due. This amount is required in order to defray

those additional expenses and costs incurred by City by reason of the delinquent payment including, but not limited to, the cost of administering, accounting for, and collecting said delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving the revenue. In addition, any amounts not paid to City by Contractor within sixty (60) days of the due date shall be subject to interest in the amount of ten percent (10%) per annum, calculated on a daily basis for each day such sums remain past due.

SECTION 13. CONTRACTOR'S BILLING SERVICES AND SYSTEMS

13.1 Billing

Contractor shall provide services pursuant to this Agreement at rates it sets, charges to, and collects from Customers and Responsible Customers; provided, however, Contractor's rates shall not exceed those set forth in Exhibit A, which sets out the maximum rates that may be charged by Contractor for the various different service options that may occur hereunder, as such maximum rates may be adjusted from time to time pursuant to the terms hereof. Contractor shall provide all Customers, or Responsible Customers, where applicable, with itemized Bills, detailing charges for all services, including charges for late payments, as well as the period of service to which the Bill applies. Contractor acknowledges that it, and not Customers nor Responsible Customers, is to pay a Franchise Fee and the other fees noted herein to City as consideration for this Agreement. Accordingly, Contractor's Bills shall not include separate itemization of a "Franchise Fee" or other similar designation relating to fees which Contractor is required to pay to City.

Billings may be made on a monthly basis for all Customers and Responsible Customers. Premises ordering service after the first of the month or canceling service prior to the end of the month shall be charged on a prorated per-pickup basis.

13.1.1 Suspension of Service Due to Non-Payment

Contractor may discontinue service to any Customer, or Responsible Customer, where applicable, as set forth in this Section. Customers or Responsible Customers who have not remitted required payments within sixty (60) days after the date of Billing shall be notified on forms approved by the City Manager. Said forms shall contain a statement that services may be discontinued fifteen (15) days from the date of the notice if payment is not made before that time. If payment is not made by the expiration of said fifteen (15) day period, Contractor must contact City and advise of the delinquency and may discontinue service to that Customer or Responsible Customer, forty-eight (48) hours thereafter with City's prior consent. Contractor shall resume Solid Waste Collection on the next regularly scheduled Collection day for any Customer or Responsible Customer whose service is discontinued upon receipt of payment of delinquent fees and any related service restart charges in accordance with the maximum rates set forth in Exhibit A, or at such sooner time as directed to do so by City. Contractor may not charge for service during any period in which service was suspended. Any delinquent fees or service charges to be imposed in connection with delinquent accounts shall be set by Contractor and be subject to City Manager approval. A payment equal to the maximum rate for one month's service as set forth in Exhibit A, as such rates may be amended from time to time, may be required of accounts which have been discontinued for non-payment prior to re-instituting service at such accounts.

Notwithstanding the above, in the event of a Billing dispute and/or to avoid negatively impacting public health or safety, Contractor shall not suspend service to any Customer or Responsible Customer without City's prior consent, and shall continue to provide service to any Customer or Responsible Customer if directed to do so by City without regard to the status of said Customer's or Responsible Customer's account.

13.2 Minimum Requirements for Billing Statements

Bills shall be prepared and provided in a manner that adequately presents the services rendered in an easy to understand and verifiable format. The format of Contractor's Bills must be approved by City prior to the commencement of Solid Waste Collection services under this Agreement. City reserves the right to require changes to the Bill format during the Term of this Agreement. In addition to any other pertinent data, Billing statements mailed by Contractor shall be printed to contain the following information, and the language contemplated for compliance with this requirement shall be subject to the City Manager's approval:

(A) A "statement date" indicating the date the Bill is generated and mailed.

(B) A notice to Customers or Responsible Customers that payments are due within thirty (30) days of the statement date, an advisement that Customer's or Responsible Customer's account will become delinquent if payment is not received by the 60th day following the statement date, an advisement of the date and time by which payments must be received in order to avoid delinquent fees (e.g., 4:00 p.m. on the 75th day following the statement date), and a notification of the amount of fees that will be imposed and the potential for service interruptions if payments are not received by the specified date and time.

(C) An advisement to Customers and Responsible Customers that payment can be made in the following manner:

- (1) by mailing payment to Contractor at such address as Contractor may designate;
- (2) by automatic withdrawal from a checking account;
- (3) by major credit card on-line (i.e., via the Internet); or
- (4) in person at Contractor's local office pursuant to Section 10.8.1 by cash, check, credit card or other acceptable forms of payment.

(D) An advisement that inquiries relating to Solid Waste Collection should be directed to Contractor, including an address, phone number and internet site, for such inquiries.

13.3 Billing System

13.3.1 Computerization of Account Information

Contractor shall provide and maintain, at its expense, computer equipment sufficient to operate pertinent computer programs and otherwise provide the services required by this Section. Contractor shall create, at its own expense, computer programs sufficient to operate a

computerized billing system, permanently maintain all account records and otherwise meet the requirements of this Section.

13.3.2 Minimum Computer Programming Requirements

In addition to any other requirements set forth herein, the programs created by Contractor to operate and maintain the billing system shall at a minimum be able to perform the following functions:

(A) create a permanent record of any adjustment to a Customer's or Responsible Customer's account;

(B) work in connection with a backup system such that all Customer and Responsible Customer account data and records are protected from a computer failure and permanently preserved on not less than a daily basis; and

(C) allow Customers or Responsible Customers to make payments on-line (i.e., via the Internet) by a major credit card, automatic withdrawal from a checking account, mail, cash or other acceptable forms of payment.

13.3.3 Billing Inquiries

All Billing inquiries shall be entered into the computerized billing system. Contractor's computer programs shall keep a permanent record of all Billing inquiries and all adjustments to Customer's or Responsible Customer's Bills resulting therefrom.

13.4 Payment, Accounting Systems

13.4.1 Collection and Processing of Payments

13.4.1.1 Accounting and Deposit of Funds

All payments received by Contractor shall be appropriately credited to Customer and Responsible Customer accounts, deposited in a bank account and accounted for in a businesslike manner utilizing generally accepted accounting principles. To facilitate audits and record keeping Contractor shall make all withdrawals from its bank accounts by check, ACH debit/credit or wire, regardless of whether the withdrawal is to provide funds to City, Contractor, or any permissible subcontractor of Contractor.

13.4.1.2 Allocation of Funds

With respect to payments received from each Customer or Responsible Customer, unless a Customer or Responsible Customer specifically directs a different allocation, funds shall be allocated first to outstanding charges for Solid Waste Collection, from oldest to most recent charges, then to any related delinquency fees or service charges, and lastly to other administrative charges, up to the amount of any outstanding balance. Any overpayment shall be credited to future Bills in the same sequence, or returned to Customers or Responsible Customers as appropriate.

13.4.1.3 One Time Deferral of Payment Due Date

Notwithstanding any provision hereof to the contrary, Contractor shall notify all Responsible Customers that payment for services provided at Residential Premises in November 2022 and December 2022 may be deferred from the date typically due such that payment will not be due until January 31, 2023. Contractor may continue to invoice Responsible Customers as it typically would, provided such payments are not due until January 31, 2023.

SECTION 14. FAITHFUL PERFORMANCE

14.1 Surety

Contemporaneously with execution of this Agreement, as security for Contractor's faithful performance of all obligations of this Agreement, Contractor shall provide a surety mechanism (the "Surety") as more fully defined below in the amount of One Hundred and Fifty Thousand Dollars (\$150,000.00). The Surety may be comprised of either a performance bond or an irrevocable letter of credit, or a combination of both. If a letter of credit is utilized to satisfy some or all of the Surety requirement, it shall be drawn upon a financial institution with an office within one hundred (100) miles of City, and otherwise in a form acceptable to the City Attorney. The performance bond, if any, shall be issued by a duly authorized corporate surety company authorized to do business in California, and in a form acceptable to the City Attorney. The cost of the Surety shall be the sole responsibility of Contractor. The Surety shall be released within thirty (30) days after both (i) the expiration of the Term of this Agreement; and (ii) Contractor's satisfactory performance of all obligations hereunder.

14.1.1 Forfeiture of Surety

In the event Contractor shall for any reason become unable to, or fail in any way to, perform as required by this Agreement, City may declare a portion or all of the Surety, as may be necessary to recompense and make whole City, forfeited to City. Upon partial or full forfeiture of the Surety, Contractor shall restore the Surety to its original amount within thirty (30) days of City's notice to do so. Failure to restore the Surety to its full amount within thirty (30) days shall be a material breach of this Agreement.

14.1.2 Use of Surety by City

Notwithstanding any provision hereof to the contrary, thirty (30) days following City providing Contractor with written notice of its failure to pay City any amount owing under this Agreement, either the letter of credit or performance bond comprising the Surety may be utilized by City for purposes including, but not limited to: (1) Payment of sums due under the terms of this Agreement which Contractor has failed to timely pay to City, including specifically liquidated damages; and (2) Reimbursement of costs borne by City to correct violations of this Agreement not corrected by Contractor.

14.2 Cash Bond

Contemporaneously with execution of this Agreement, as security for Contractor's faithful performance of all obligations of this Agreement, Contractor shall also provide City with a cash bond ("Cash Bond") as more fully defined below in the amount of Fifty Thousand Dollars (\$50,000.00). The Cash Bond may be comprised of either a cash payment or an irrevocable letter of credit, or a combination of both. If a letter of credit is utilized to satisfy some or all of the Cash Bond requirement, it shall be drawn upon a financial institution with an office within one hundred (100) miles of City, and otherwise in a form acceptable to the City Attorney. The cash payment, if any, shall be deposited in an interest-bearing account at a financial institution with an office within one hundred (100) miles of City that is acceptable to the City Attorney. All interest on a cash payment, if any, shall accrue to Contractor. Any costs associated with the Cash Bond shall be the sole responsibility of Contractor. The Cash Bond shall be released within thirty (30) days after both (i) the expiration of the Term of this Agreement; and (ii) Contractor's satisfactory performance of all obligations hereunder.

14.2.1 Forfeiture of Cash Bond

In the event Contractor shall for any reason become unable to, or fail in any way to, perform as required by this Agreement, City may declare a portion or all of the Cash Bond, as may be necessary to recompense and make whole City, forfeited to City. Upon partial or full forfeiture of the Cash Bond, Contractor shall restore the Cash Bond to its original amount within thirty (30) days of City's notice to do so. Failure to restore the Cash Bond to its full amount within thirty (30) days shall be a material breach of this Agreement.

14.2.2 Use of Cash Bond by City

Notwithstanding any provision hereof to the contrary, thirty (30) days following City providing Contractor with written notice of its failure to pay City any amount owing under this Agreement, either the letter of credit or cash payment comprising the Cash Bond may be utilized by City for purposes including, but not limited to: (1) Payment of sums due under the terms of this Agreement which Contractor has failed to timely pay to City, including specifically liquidated damages; and (2) Reimbursement of costs borne by City to correct violations of this Agreement not corrected by Contractor.

14.3 Replacement Letter of Credit

City may draw upon the entire letter of credit (if any) utilized to meet Contractor's obligations pertaining to the Surety and Cash Bond, and convert it to a cash payment, if Contractor fails to cause the letter of credit to be extended or replaced with another satisfactory letter of credit no later than sixty (60) days prior to its expiration.

SECTION 15. INSURANCE COVERAGE

Contractor shall procure and maintain during the entire Term of this Agreement the following types of insurance, and shall maintain the following minimum levels of coverage, which shall apply to any claims which may arise from or in connection with Contractor's performance

hereunder or the actions or inactions of any of Contractor's officers, agents, representatives, employees, or subcontractors in connection with Contractor's performance. The insurance requirements hereunder in no way limit Contractor's various defense and indemnification obligations, or any other obligations as set forth herein.

15.1 Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The most recent editions of Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 00 01).
2. The most recent editions of Insurance Services Office form number CA 00 01 1001 covering Automobile Liability, code 1 "any auto".
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

15.2 Minimum Limits of Insurance

Contractor shall maintain in force for the Term of this Agreement limits no less than:

15.2.1 Commercial General Liability

Ten Million Dollars (\$10,000,000.00) limit aggregate and Ten Million Dollars (\$10,000,000.00) limit per occurrence for bodily injury, personal injury and property damage. Such limits can be achieved through a combination of primary and excess liability policies.

15.2.2 Automobile Liability

Ten Million Dollars (\$10,000,000.00) combined limit per accident for bodily injury and property damage. Such limits can be achieved through a combination of primary and excess liability policies.

15.2.3 Workers' Compensation and Employers Liability

Workers' compensation statutory limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000.00) per accident.

15.2.4 Cyber Security and Privacy Liability

Contractor shall procure and maintain Cyber Security and Privacy Liability insurance with limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate which shall include the following coverage:

(A) Liability arising from the theft, dissemination and/or use of confidential or personally identifiable information; including credit monitoring and regulatory fines arising from such theft, dissemination or use of the confidential information.

(B) Network security liability arising from the unauthorized use of, access to, or tampering with computer systems, including hacker or denial of service attacks.

(C) Liability arising from the failure of technology products (software) required under the contract for Contractor to properly perform the services intended.

(D) Electronic media liability arising from personal injury, plagiarism or misappropriation of ideas, domain name infringement or improper deep-linking or framing, and infringement or violation of intellectual property rights.

(E) Liability arising from the failure to render professional services.

If coverage is maintained on a claims-made basis, Contractor shall maintain such coverage for an additional period of three (3) years following termination of the contract. Required endorsements include a thirty (30) day notice of cancellation.

15.2.5 Cyber Technology Errors and Omissions

Contractor shall procure and maintain Cyber Technology Errors and Omissions insurance with limits of One Million Dollars (\$1,000,000 per occurrence/loss, Two Million Dollars (\$2,000,000) aggregate which shall include the following coverage:

(A) Liability arising from the theft, dissemination and/or use of confidential or personally identifiable information, including credit monitoring and regulatory fines arising from such theft, dissemination or use of the confidential information.

(B) Network security liability arising from the unauthorized use of, access to, or tampering with computer systems.

(C) Liability arising from the failure of technology products (software) required under the contract for Contractor to properly perform the services intended.

(D) Claims alleging the failure of computer security that result in the transmission of malicious code, deletion, destruction or alteration of data, or the denial of service

(E) Electronic media liability arising from personal injury, plagiarism or misappropriation of ideas, domain name infringement or improper deep-linking or framing, and infringement or violation of intellectual property rights.

(F) Liability arising from the rendering, or failure to render, professional services.

(G) If coverage is maintained on a claims-made basis, Contractor shall maintain such coverage for an additional period of three (3) years following termination of the contract. Required endorsements include a thirty (30) day notice of cancellation.

15.3 Deductibles and Self-Insured Retentions

All deductibles or self-insured retentions (i) shall be for the account of Contractor and paid entirely by Contractor without contribution from City, and (ii) shall be declared to City. If, in the reasonable opinion of City, Contractor does not have sufficient financial resources to protect City from exposure with respect to any deductibles or self-insured retentions Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

15.4 Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

15.4.1 General Liability

City and its elected and appointed officials, officers, employees, agents and volunteers shall be named as additional insureds in connection with liability arising out of activities performed by or on behalf of Contractor; Premises owned, leased or used by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City or its elected and appointed officials, officers, employees, agents and volunteers. As respects the liabilities assumed by Contractor under this Agreement, Contractor's insurance coverage shall be the primary insurance for City and its elected and appointed officials, officers, employees, agents and volunteers in connection with the above enumerated categories. Any insurance or self-insurance maintained by City or its elected and appointed officials, officers, employees, agents and volunteers shall be in excess of Contractor's insurance and shall not contribute with it. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to City or its elected and appointed officials, officers, employees, agents and volunteers. Coverage shall state that Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

15.4.2 Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against City and its elected and appointed officials, officers, employees, agents and volunteers for losses arising from work performed by Contractor for City. A Waiver of Subrogation Endorsement must be issued to City by the insurer.

15.4.3 Environmental Pollution Control Insurance

Contractor shall maintain either an endorsement to its general liability policy, or a separate policy of insurance covering environmental pollution and contamination that names City as an additional insured. Said coverage shall be in the amount of not less than Two Million Dollars (\$2,000,000) per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate, and shall substantially comply with all other provisions set forth in Section 15.4.1.

15.4.4 All Coverages

Except for Worker's Compensation, each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice has been given to City. Additionally, Contractor agrees that it will not suspend, void or reduce in coverage or limits each insurance policy required by this clause without notice to City.

15.5 Acceptability of Insurers

The insurance policies required by this Section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better, unless otherwise approved by the City Manager.

15.6 Verification of Coverage

Contractor shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Article. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to City and are to be received and approved by City before work commences. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

15.7 Loss or Reduction in Insurance

In the event that Contractor fails to retain or maintain insurance with the scope and amounts of coverage required hereunder, City shall have the right, but not the obligation to either terminate this Agreement, or obtain insurance coverage as required herein on behalf of Contractor and utilize funds from the Initial Surety and/or Agreement Surety defined in Section 14 to pay the cost of providing such coverage.

SECTION 16. ASSIGNMENT, SUBLETTING, AND TRANSFER; REQUIREMENTS AND LIMITATIONS

16.1 General

Contractor shall not assign any portion of or all of its rights, nor delegate, subcontract or otherwise transfer any portion of or all of its obligations under this Agreement (collectively referred to as an "Assignment") to any other Person without the prior approval by the City Council. The City Council has unfettered discretion to approve or deny such an Assignment. The City Council's exercise of its unfettered discretion may include City Council review and approval of any Assignment terms, including, but not limited to, insurance obligations, indemnification language, bonding requirements, and any and all other terms the City Council may in its unfettered discretion require. Any such Assignment made without the approval by the City Council shall be void and the attempted Assignment shall constitute a material breach of this Agreement.

16.2 Assignment to be Broadly Interpreted

For purposes of this Section, the term "Assignment" shall be given the broadest possible interpretation, and shall include, but not be limited to: (i) a sale, exchange or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of any membership interest of Contractor to a third party; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Contractor; (iv) any assignment by operation of law, including those resulting from mergers or acquisitions by or of Contractor or any of its Affiliates, insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding; (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Contractor; and (vi) Contractor's subcontracting of only a portion of its rights and obligations under this Agreement.

16.3 Nature of Agreement – Personal to Contractor

Contractor acknowledges that this Agreement involves rendering a vital service to City's residents and businesses, and that City has selected Contractor to perform the services specified herein based on (1) Contractor's experience, skill and reputation for conducting its Solid Waste Handling Services in a safe, effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations and best Solid Waste management practices, and (2) Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to City under this Agreement. City has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Agreement.

16.4 Procedure for Consideration of Assignment

If Contractor requests City's consideration of and consent to an Assignment, the City Council may deny, approve or conditionally approve such request in its sole and absolute discretion. Under no circumstances shall City be obliged to consider any proposed Assignment if Contractor is in default at any time during the period of consideration. Should City consent to any Assignment request, such Assignment shall not take effect until all conditions relating to City's approval have been met. Any request for an Assignment shall be made in a manner to be prescribed by the City Manager, and no request by Contractor for consent to an Assignment need be considered by City unless and until Contractor has met (or with respect to matters that would only occur upon completion of the Assignment if approved, made reasonable assurances that it will meet) the following requirements:

(A) Contractor shall undertake to pay City its reasonable direct and indirect expenses, including administrative, investigative, consulting, and attorneys' fees and costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such Assignment (collectively the "Administrative

Assignment Fee”). An advance non-refundable payment in an amount to be determined by the City Manager towards the Administrative Assignment Fee shall be paid to City prior to City’s consideration of any Assignment request, although Contractor shall be responsible to pay all costs incurred by City in considering a request for Assignment, including those in excess of the aforesaid payment amount, regardless of whether City consents to the Assignment.

(B) If requested to do so, Contractor shall furnish City with audited financial statements of the proposed assignee’s operations for the immediately preceding three (3) operating years.

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

(D) The proposed assignee shall execute an agreement assuming all of Contractor’s rights and liabilities under this Agreement.

SECTION 17. REVIEW OF SERVICES AND PERFORMANCE

17.1 Vehicle Miles Traveled/Greenhouse Gas Emissions Assessment

The City Council may, at its discretion, within three (3) years after the Effective Date, direct the City Manager to conduct an assessment of opportunities for Contractor to reduce vehicle miles traveled based on data acquired by Contractor pursuant to Section 9.3(S), as well as an assessment of the greenhouse gas emissions generated by Contractor during Contractor’s performance of this Agreement. Contractor shall provide City with an advance payment to defray the total cost of said assessment, in an amount subject to the City Manager’s reasonable determination not to exceed \$15,000.

17.2 Performance Hearing

(A) Commencing in or about July 2023, and on a biennial basis thereafter, City may hold a hearing to review Contractor’s Solid Waste Collection efforts, source reduction, processing and other diversion services and overall performance under this Agreement (the “Solid Waste Services and Performance Review Hearing”). The purpose of the Solid Waste Services and Performance Review Hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, Recycling, processing and Disposal to achieve a continuing, advanced Solid Waste Collection, source reduction and Recycling and

Disposal system; and to ensure services are being provided by Contractor with adequate quality, effectiveness and economy and in full compliance with the terms of this Agreement. Topics for discussion and review at the Solid Waste Services and Performance Review Hearing shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, Customer complaints, amendments to this Agreement, developments in the law, new initiatives for meeting or exceeding all laws and regulations related to Solid Waste and Recycling, including without limitation AB 939, AB 341, AB 1826, and SB 1383 , regulatory constraints and Contractor performance. City and Contractor may each select additional topics for discussion at any Solid Waste Services and Performance Review Hearing.

(B) If the number of Customer complaints regarding Contractor's Solid Waste Collection are deemed by City to be excessive or the nature of to be significant, City may, at any time (subject to the paragraph immediately below), hold a Solid Waste Services and Performance Review Hearing as described in the previous paragraph.

(C) City shall notify Contractor of its intent to hold a Solid Waste Services and Performance Review Hearing at least ninety (90) days in advance thereof. The notice will indicate whether the hearing will occur before City staff, the City Council, or such other body as City may designate in the notice. Forty-five (45) days after receiving notice from City of a Solid Waste Services and Performance Review Hearing, Contractor shall submit a report to City which may contain such information as it wished to have considered, and shall contain the following:

- (1) Current diversion rates and a report on Contractor's outreach activities for the past year;
- (2) Recommended changes and/or new services to improve City's ability to meet Diversion goals and to contain costs and minimize impacts on rates; and
- (3) Any specific plans for provision of changed or new services by Contractor.

(D) The reports required by this Agreement regarding Customer complaints shall be used as one basis for review of Contractor's performance, and Contractor may submit other relevant performance information and reports for consideration at the Solid Waste Services and Performance Review Hearing. In addition to the above, City may request Contractor to submit any other specific information relating to its performance for consideration at the Solid Waste Services and Performance Review Hearing, and any Customer may submit comments or complaints during or before the Hearing, either orally or in writing. Contractor shall be present at and participate in the Solid Waste Services and Performance Review Hearing.

(E) Not later than ninety (90) days after the conclusion of each Solid Waste Services and Performance Review Hearing, City may issue a report. As a result of the review, City may require Contractor to provide expanded or new services within a reasonable time and for reasonable rates and compensation and City may direct or take corrective actions for any performance inadequacies.

SECTION 18.
CITY'S REMEDIES; DEFAULT AND TERMINATION

18.1 Notice of Default

If the City Manager determines that Contractor has defaulted in the performance of any obligation hereunder, or that Contractor's performance pursuant to this Agreement with respect to such matters has not been in conformity with reasonable industry standards which are obtained in similar cities in Southern California, the provisions of this Agreement, the requirements of the Municipal Code, the requirements of CalRecycle, including, but not limited to, requirements for source reduction and Recycling or any other applicable federal, State, or local law or regulation, including but not limited to the laws governing transfer, storage, or Disposal of Special Wastes, or Hazardous Wastes, the City Manager may provide written notice to Contractor of such default. The City Manager may, in such written notice, set a reasonable time within which correction of such default shall be made. Unless a longer or shorter time is otherwise specified by the City Manager, a reasonable time for correction shall be thirty (30) days from the date such written notice is given.

18.2 Failure to Cure

If Contractor fails to correct, to the satisfaction of the City Manager, all deficiencies contained in the written notice thereof within the specified time, or if it is not reasonably possible to correct such deficiencies within the specified time, and Contractor fails to commence to correct or remedy such deficiencies within the specified time and diligently effect such correction or remedy thereafter, then the City Manager may refer the matter to the City Council for review, or review the matter himself/herself/their self.

18.3 Review by City Manager

If the City Manager reviews the matter and determines that Contractor has failed to properly or adequately cure any default set forth above, the City Manager, in the exercise of his/her/their discretion, may terminate this Agreement, or take such other action as he/she/they deems appropriate to pursue any remedy available to City. A decision or order of the City Manager shall be final and binding on Contractor unless Contractor files a "Notice of Appeal" with City's City Clerk within five (5) business days of the date the notice of the City Manager's decision is given. The City Manager shall schedule any appeal for consideration by the City Council no later than the earliest feasible regular City Council Meeting following the date a Notice of Appeal is given to City.

18.4 City Council Review

In the event an appeal of a decision of the City Manager is filed, or if the City Manager refers the matter to the City Council without rendering a decision, the City Council shall set the matter for consideration before the City Council as an agenda item at either a regular, adjourned regular, or special meeting. In reviewing the matter the City Council may consider any information reported by the City Manager regarding the deficiencies, and shall give Contractor, or its representatives and any other interested person, a reasonable opportunity to be heard. The City Council shall determine whether Contractor has failed to properly or adequately perform as set

forth above, and if so whether to terminate the Agreement, or to pursue any other remedy available to City.

18.5 Performance During Reviews

Contractor's performance under this Agreement is not excused during any period of time when its performance is under review as set forth above, including at any time prior to a final decision as to whether such performance is deficient.

18.6 Termination without Right to Cure

The above right of termination as a result of Contractor's failure to timely cure any deficiency is in addition to City's right to terminate this Agreement without affording Contractor an opportunity to cure in circumstances where Contractor is determined by City to have materially breached this Agreement. City shall thus be afforded the right to terminate this Agreement in the event of any material breach hereof by Contractor without affording Contractor the right to cure as a result of any action, inaction or circumstance which is a legally defined material breach, or is defined herein as a material breach, and/or under any of the following circumstances which are hereby specifically defined as material breaches:

- (A) If Contractor practices, or attempts to practice, any fraud upon City.
- (B) If Contractor becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.
- (C) If Contractor willfully violates any orders or rulings of any regulatory body having jurisdiction over Contractor relative to this Agreement. So long as City's rights are not prejudiced during the pendency of any challenge to such orders or rulings by Contractor, Contractor may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no material breach of this Agreement shall be deemed to have occurred until a final ruling has been rendered.
- (D) If Contractor ceases to provide Solid Waste Handling Services, including Collection of Solid Waste, Recyclable Material, and/or Organics Waste, as required under this Agreement over all or any portion of the Franchise Area for a period of seven (7) days or more, for any reason not specified as a force majeure event hereunder.
- (E) If Contractor fails to materially comply with any insurance or indemnification requirement set forth in this Agreement.
- (F) If City is required to pay any fine or penalty, which is not paid on its behalf by Contractor or which Contractor fails, refuses, neglects or is unable to pay or indemnify City against, relating to any diversion or other requirement of Applicable Laws.
- (G) If Contractor, Contractor's shareholders, Contractor's directors, or any senior management level employee of Contractor (defined for purposes of this provision as any representative of Contractor who regularly is in communication with or regularly has contact with any member of the City Council or City Manager, or any of Contractor's employees who

communicate with any City employee with decision making authority on matters related to the performance of the Agreement) is convicted of a Criminal Matter (as defined herein). For purposes of this Section the term Criminal Matter refers to any felony or misdemeanor offense having any relationship to either Solid Waste Handling Services or public corruption (including, without limitation, bribery, conflict of interest related allegations, vote selling, or any similar type charges).

(H) If Contractor fails to meet the Recycling Diversion Requirement in Section 8.6.4 for any calendar year under this Agreement.

18.7 Liquidated Damages

18.7.1 General

City finds, and 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 shall be incurred by City as a result of a breach by Contractor of certain specific obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that the services that are the subject of this Agreement 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 specific breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

18.7.2 Service Performance Standards; Liquidated Damages for Failure to Meet Standards

The parties further acknowledge that consistent, reliable Solid Waste Handling Service is of utmost importance to City and that City has considered and relied on Contractor's representations as to its quality of service commitment in entering this Agreement with it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such breaches as an event of default, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages for such specific breaches, considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has

had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

Contractor Initial Here  City Initial Here 54

18.7.3 Calculations for Liquidated Damages

Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below for each type of action warranting such damages:

18.7.3.1 Collection Reliability

(A) For each failure to commence service to a new Customer account within seven (7) days after order: \$200.00.

(B) For each failure to Collect Solid Waste from any established Customer on the scheduled Collection day and not Collected within the period described in this Agreement which exceed five (5) such failures annually: \$200.00.

(C) For each failure to Collect Solid Waste, which has been properly set out for Collection, from the same Customer on two (2) consecutive scheduled pickup days: \$200.00.

18.7.3.2 Collection Quality

(A) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place Containers upright with lids secured which exceeds ten (10) such occurrences annually: \$150.00.

(B) For each occurrence of excessive noise or discourteous behavior which exceeds five (5) such occurrences annually: \$500.00.

(C) For each occurrence of Collecting Solid Waste during unauthorized hours which exceeds five (5) such occurrences annually: \$500.00.

(D) For each occurrence of damage to private property in an amount in excess of \$1,000 which exceeds five (5) such occurrences annually: \$500.00.

(E) For each failure to clean up Solid Waste spilled from Containers, excepting amounts that are so nominal in nature that they would not reasonably be expected to be noticed by the driver of a Collection Vehicle, within ninety (90) minutes or in compliance with NPDES requirements, whichever is stricter: \$500.00.

18.7.3.3 Customer Responsiveness

(A) For each failure to initially respond to a Customer complaint within one (1) business day, which exceeds five (5) such occurrences annually, and for each additional day in which the complaint is not addressed: \$150.00.

(B) For each failure to process Customer complaints to City as required herein, which exceeds five (5) such occurrences annually: \$200.00.

(C) For each failure to respond to a written inquiry from City's Solid Waste contract manager regarding service requests or requests for information within two (2) business days (excluding Saturday, Sunday and holidays listed in Section 8.1.4), and for each additional day in which the inquiry is not addressed, which exceed five (5) occurrences annually: \$200

(D) For each failure to remove graffiti from Containers or to replace with Containers bearing no graffiti, within twenty-four (24) hours (Sundays and holidays excepted) of a request from City: \$150.00.

(E) For each failure to repair or replace a damaged or missing Container within two (2) business days (excluding Saturday, Sunday and holidays listed in Section 8.1.4) of request from City or Customer: \$150.00

(F) For each failure to process a claim for damages within thirty (30) days from the date submitted to Contractor: \$100.00

(G) For every Recycling Cart Collected as Refuse without issuing a notice per Section 8.6.7 which exceeds ten (10) such occurrences annually: \$50.00

(H) For every Organics Cart Collected as Refuse without issuing a notice per Section 8.6.7 which exceeds ten (10) such occurrences annually: \$50.00

(I) For each failure to issue a notice to a Customer for materials not collected due to improper set out which exceeds ten (10) such occurrences annually: \$100.00

18.7.3.4 Timeliness of Submissions to City

(A) Any report shall be considered late until such time as a correct and complete report is received by City. For each calendar day a report is late, the daily liquidated damage amount shall be:

(1) Monthly Reports: \$100.00 per day.

(2) Quarterly Reports: \$200.00 per day.

(3) Annual Reports: \$500.00 per day.

18.7.3.5 Cooperation During Transition With Subsequent Solid Waste Enterprise

(A) For each day routing information, including billing information and other operating records needed to service premises, is requested by City or any subsequent solid waste enterprise in accordance with Section 29 and is received after City-established due dates, both for preparation of a request for proposals and for any subsequent solid waste enterprise's implementation of service: \$1,000.00 per day.

(B) For each day delivery of keys, security codes, remote controls used to access garages, gates and bin enclosures, or other means of access to Solid Waste Containers is delayed beyond one (1) day prior to new solid waste enterprise servicing Customers with access issues: \$1,000.00 per day.

(C) For delay in not meeting the requirements from Section 29 in a timely manner, in addition to the daily liquidated damages for breach under Sections 18.7.3.5(A)-(B) above, a one-time charge of: \$35,000.

18.7.3.6 Minimum Hauler Recycling Requirements

(A) For each calendar year in which Contractor fails to meet the guaranteed Recycling Diversion Requirement set forth in Section 8.6.4: \$40 for each ton below the tonnage level necessary to meet the Recycling Diversion Requirement.

18.7.3.7 General Contract Adherence

(A) For each day that Contractor fails to provide services required under the Agreement, or comply with terms of the Agreement, five (5) business days after receipt of written notification from City that such services are not being provided or terms are not being met: \$500.00 per day.

18.7.4 Excuse from Performance

The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other natural disasters, war, civil insurrection, riots, acts of any government (including judicial action), pandemics and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder.

18.7.5 Process for Assessment of Liquidated Damages

(A) City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or through an investigation of Customer complaints.

(B) Prior to assessing liquidated damages, City shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Contractor may review (and make copies at its own expense) all information in the possession of

City relating to incident(s)/non-performance. Contractor may, within ten (10) days after receiving the notice, request a meeting with the City Manager. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. The City Manager will provide Contractor with a written explanation of his/her/their determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of City Manager shall be final.

(C) City may assess liquidated damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement.

18.7.6 Timing of Payment

Contractor shall pay any liquidated damages assessed by City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, City may proceed against any security required by this Agreement to obtain payment, and/or find Contractor in default and exercise its right to terminate this Agreement as set forth herein.

SECTION 19. CONTRACTOR'S REMEDIES; ADMINISTRATIVE HEARING

19.1 Administrative Hearing

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

19.2 Other Remedies; Claims

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

19.3 Actions for Damages

As a prerequisite to the filing and maintenance of any action for damages by Contractor against City arising out of this Agreement, Contractor shall present a claim to City, as required by Government Code Section 910 et seq., within thirty (30) days of the date of the occurrence giving rise to the claim for damages.

SECTION 20.
CITY'S ADDITIONAL REMEDIES

In addition to any other remedies set forth herein, City shall be entitled to any or all of the following rights and remedies in the event of a breach of this Agreement by Contractor:

(A) The right to use Contractor's equipment for the purpose of Collecting, transporting, and/or disposing of Solid Waste, including Recyclable Material, for a period not to exceed six (6) months. In the case of equipment not owned by Contractor, Contractor shall assign to City, to the extent Contractor is permitted to do so under the instruments pursuant to which Contractor possesses such equipment, the right to use and possess the equipment. If City exercises its rights under this Section, City shall pay to Contractor the reasonable rental value of the equipment for the period of City's possession thereof (although payment may, if appropriate, occur in the form of a setoff against damages otherwise owed by Contractor pursuant to the terms hereof);

(B) The right to license others to perform the services otherwise to be performed by Contractor hereunder, or to perform such services itself; and

(C) The right to obtain damages and/or injunctive relief. Both parties recognize and agree that in the event of a breach of this Agreement by Contractor, City will suffer irreparable injury and incalculable damages sufficient to support injunctive relief, to specifically enforce the provisions of this Agreement, and to enjoin the breach hereof.

SECTION 21.
RIGHTS OF CITY TO PERFORM DURING EMERGENCY

21.1 Provision of Service

Should Contractor, for any reason whatsoever, refuse or be unable to provide Solid Waste Handling Services for a period of more than forty-eight (48) hours, and if as a result thereof, Solid Waste should accumulate in City to such an extent or in such a manner that the City Manager finds that such accumulation endangers or menaces the public health, safety, or welfare, City shall have the right, upon twelve (12) hours prior written notice to Contractor, during the period of such emergency, to temporarily take possession of any or all equipment and facilities of Contractor previously used in providing Collection, transportation, and Disposal of Solid Waste and provide, through its own forces or otherwise, Solid Waste Handling Services which Contractor otherwise would be obligated to provide pursuant to this Agreement. Contractor agrees that in such event it shall fully cooperate with City to affect such a transfer of possession for City's use.

21.2 Possession of Equipment

Contractor agrees, that in the event of circumstances described in Section 21.1 above, City may take temporary possession of and use all of said equipment and facilities without paying Contractor any rental or other charge. Upon Contractor giving City notice that it is able to resume its normal responsibilities under this Agreement City shall either relinquish possession of all of the above mentioned property to Contractor.

21.3 Exclusions from Right to Possession of Equipment without Compensation

Specifically excluded from the circumstances in which City may possess and utilize Contractor's equipment without compensation are circumstances in which Contractor fails or refuses to provide Solid Waste Handling Services hereunder for any reason which is not a force majeure event as defined herein. In such circumstances City's right to utilize and possess Contractor's equipment shall be subject to the provisions of the above Section 20.

SECTION 22. PRIVACY

Contractor shall strictly observe and protect the privacy rights of Customers. Information identifying individual Customers or the composition or contents of a Customer's Solid Waste stream, or any of the billing information pertaining to any Customers, shall not be revealed to any person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, ordinance, or regulation of a governmental agency having jurisdiction, or upon valid authorization of Customer. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies or waste audits which may be required by all laws and regulations related to Solid Waste and Recycling, including without limitation AB 939 and SB 1383, or this Agreement. Contractor shall not market or distribute, outside the normal course of its business, mailing lists with the names and addresses of Customers or Responsible Customers. The rights afforded Customers pursuant to this Section shall be in addition to any other privacy right afforded Customers pursuant to federal or State law.

SECTION 23. REPORTS AND ADVERSE INFORMATION

The parties acknowledge that City will require reporting at various intervals by which information important to City can be compiled and analyzed. Throughout the Term the parties agree to work together to address City's needs with respect to the information to be contained in reports prepared by Contractor. The following is intended as a starting point in order to have established an objective baseline for reporting, but the frequency and content of the reports called out below may be changed by agreement of the parties; provided any such change is approved by the City Manager in writing. Monthly reports shall be submitted within thirty (30) calendar days after the end of the report month. Quarterly reports shall be submitted within thirty (30) calendar days after the end of the calendar quarter.

23.1 Monthly Reports

At a minimum, Contractor shall report the following to City on a monthly basis: Solid Waste Collected by Contractor for each month, sorted by type of Solid Waste in tons broken down at a level acceptable to City (which at a minimum shall include: refuse, Green Waste, e-waste and universal waste item counts, types of recyclables including PET, HDPE, mixed plastics, aluminum, cardboard, mixed paper, sand, and concrete), as well as by customer type (i.e., single family, multi-family, commercial, roll-off, curbside, etc.); the facilities where all Solid Waste Collected was processed or disposed; a list of all missed pick-ups; a list of the records related to non-collection notices; notices issued and other actions taken pursuant to Section 8.6.7 of this Agreement for

contaminated Recycling Containers, Organics Containers, and Green Waste Containers (if applicable); and a narrative summary of problems encountered (including scavenging) and actions taken with recommendations for City, as appropriate. Contractor shall also provide a detailed list of all In-Home Bulky Item Collections including, at a minimum, Customer name, Customer address, Customer telephone number, date(s) of service, and a description of each item Collected.

23.2 Quarterly Reports

At a minimum, Contractor shall report the following to City on a quarterly basis within thirty (30) days of the end of each calendar quarter: the information required in the monthly reports; the complaint summary for the quarter summarized by nature of complaints; copies of promotional and public education materials sent during the quarter; description of Contractor outreach activities conducted the previous quarter; Commercial Recycling and Organics site visits summary, including the name and address of Customer, the date of the visit and the contact name and phone number, demonstrating that the required visits have been made, and reason provided for not establishing a Recycling or Organics program; list of all Customers participating in Recycling Collection services; list of Customers that do not participate in Recycling Collection services and whether Customer not receiving Recycling Collection services self-hauls or is serviced by a third-party; list of Commercial Premises Customers required to participate in an Organics Recycling program pursuant to Public Resources Code Section 42649.81; list of Commercial Premises Customers that do and do not participate in an Organics program, whether the Organics program is provided by Contractor or another party; Commercial Premises Customers participating in Food Recovery programs; additional information that may be requested by CalRecycle or City related to Recycling and Organics programs; a narrative description of problems encountered and actions taken with respect to scavenging, and such other information or reports that City may reasonably request or require. Contractor shall, upon demand by City, provide true and accurate copies of landfill tipping receipts, records showing delivery at processing or reuse facilities, and similar such documents in order to enable City to verify Contractor's quarterly reports.

23.3 Annual Reports

Within thirty (30) days of the end of each calendar year during the Term of this Agreement and within thirty (30) days after the end of the Term, Contractor shall submit a written annual report, at its sole expense, in a form approved by City, which includes, but is not limited to, the following information:

(A) A summary of the previous year's activities including, but not limited to, services begun or discontinued during the reporting year, and the number of Customers broken down on a monthly basis;

(B) A summary of the total tons of Solid Waste Collected in City in the preceding year as well as a summary of the total tonnage diverted from the State's landfill systems during that time frame;

(C) Information and reports required by City to meet its reporting obligations imposed by all laws and regulations related to Solid Waste and Recycling, including without limitation AB 939, AB 341, AB 1826, and SB 1383, in a form and content approved by the City Manager;

(D) A revenue statement, certified by the chief financial officer of Contractor, setting forth Franchise Fees paid and the basis for the calculation thereof, including specifically a breakdown of sources of revenue included in Gross Receipts and the amount of revenue derived from each such source comprising Gross Receipts;

(E) A list of Contractor's officers and the members of its Board of Directors, or as applicable a list identifying all Persons holding a membership interest in Contractor;

(F) A list of stockholders or other equity investors holding five percent (5%) or more of the interest in Contractor; and

(G) A list of each service address or other identifying location associated with each Customer's or Responsible Customer's account, the total number of Containers at each such address or other identifying location, types of services being Billed and the serial numbers associated or other identifying information associated with each Container at such address as required by Section 8.1.7(E).

(H) A list of Customers or Responsible Customers who elect not to receive a Recycling or Organics Cart, including contact information, reasons, and the locations thereof.

(I) Records of the amount of RNG used to provide services in the City. If Routes are commingled with other jurisdictions, Contractor must use an allocation method consistent with the requirements of SB 1383 to quantify City's allocated amount.

23.4 Format of Reports

Each monthly, quarterly, and annual report shall be submitted to City, addressed to the City Manager or his/her/their or her designee. Records related to performance of this Agreement shall be maintained by Contractor in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. The format of each report shall be approved by City. Contractor agrees to submit all reports to e-mail addresses designated by City in an electronic format approved by City, compatible with City's software/computers at no additional charge.

23.5 Adverse Information

(A) Contractor shall provide City two copies of all reports and other material adversely affecting this Agreement submitted by Contractor to the United States Environmental Protection Agency, CalRecycle, State Water Resources Control Board, California Regional Water Quality Control Boards, and any other federal, State, regional, or local regulatory agency. Copies shall be submitted to City simultaneously with Contractor's filing of such matters with said agencies. Contractor's routine correspondence to said agencies need not be automatically submitted to City, but shall be made available to City upon written request.

(B) Contractor shall submit to City copies of all pleadings, applications, notifications, communications, and documents of any kind submitted by Contractor to, as well as copies of all decisions, correspondence, and actions by, any federal, State, and local courts, regulatory agencies, and other government bodies relating in any manner to Contractor's performance of services pursuant to this Agreement. To the degree authorized by law, any confidential data exempt from public disclosure shall be retained in confidence by City and its authorized agents and shall not be made available for public inspection.

(C) Contractor shall submit to City such other information or reports in such forms and at such times as City may reasonably request or require.

(D) All reports and records required under this or any other Section hereof shall be furnished at the sole expense of Contractor.

23.6 Disaster Plan

Within one hundred and eighty (180) days of the Effective Date, Contractor shall prepare a draft disaster debris cleanup implementation plan that sets forth procedures for collection of debris following a major disaster such as an earthquake, mudslide, storm, flood, fire, terrorist attack, riot, civil disturbance or other similar event. The disaster plan shall address priorities for cleanup at critical facilities, procedures for reimbursement for costs, describe communication plans, list key contact persons, and provide maps showing proposed sites for stockpiling of disaster debris that cannot be transported to the landfill. Contractor shall coordinate the plan with City's emergency service teams and private parties, as necessary. The draft plan shall be presented to the City Manager for consideration and approval. The final plan shall be distributed to those employees of Contractor and City and private parties who would have a role in implementing such plan in the event of a disaster.

In addition to the disaster debris cleanup implementation plan, Contractor shall: (1) assist City in the event of a major disaster by providing Collection Vehicles and drivers normally assigned to City at rates which do not exceed the maximum rates set forth in Exhibit A; and (2) , upon request and at no additional charge, provide to City at City Hall or other locations designated by the City Manager, up to ten (10) Bins and/or Roll-off Boxes, with the quantity and size to be designated by City, for use as emergency containers to store emergency materials and supplies.

23.7 Failure to Report

The refusal of Contractor to file any of the reports required, or the inclusion of any materially false or misleading statement or representation made knowingly by Contractor in such report shall be deemed a material breach of the Agreement, and shall subject Contractor to all remedies, legal or equitable, which are available to City under this Agreement or otherwise.

SECTION 24. COMPENSATION

24.1 Contractor Rates

Contractor shall provide services to Customers pursuant to this Agreement at rates it sets, charges to, and collects from Customers, which rates shall not exceed those set forth in Exhibit A, which sets out the maximum rates that may be charged by Contractor, as such maximum rates may be adjusted from time to time pursuant to the terms hereof. The maximum rates set forth in Exhibit A are inclusive of all services to be provided, including but not limited to, transportation, Disposal, and Container costs, and no other charges shall be imposed by Contractor for such services.

24.2 Resolution of Disputes Regarding Rate Adjustments

Any dispute regarding an adjustment to the maximum rates Contractor may charge, or the computation thereof, shall be decided by the City Manager. The rates in effect at the time such dispute is submitted to the City Manager shall remain in effect pending resolution of such dispute. The effective date of the adjusted maximum rate following the resolution of any such dispute, whether retroactive or prospective, shall be determined by the City Manager.

24.3 Annual Consumer Price Index Adjustments

Commencing on January 1, 2023, the maximum rates as set forth in Exhibit A shall be adjusted, and such rates shall be adjusted annually thereafter on each subsequent January 1st during the Term hereof (the "Adjustment Dates"), by multiplying each rate by the percentage change in the average Consumer Price Index ("CPI") for All Urban Consumers (CPI-U), U.S. city average, Garbage and trash collection index, Series ID CUUR0000SEHG02, Not Seasonally Adjusted, for the twelve (12) month period ending the September immediately prior to the applicable Adjustment Date versus the index average for the previous twelve (12) months. At least forty-five (45) days prior to charging Customers any rate increased due to an increase in the CPI, Contractor shall obtain the City Manager's approval to do so. The City Manager shall approve such a request unless it is determined, based upon substantial evidence, that the requested adjustment to the maximum rate does not meet the requirements as set forth herein.

It is anticipated that to obtain City Manager's approval of Contractor's requested rate increase, Contractor shall provide all necessary information to justify the request. City will make an effort to verify information provided by Contractor, but ultimately Contractor bears the burden of ensuring the submitted information is correct and supported by all necessary documentation. Contractor agrees and acknowledges that City is entitled to rely, in good faith, on information submitted by Contractor, including mathematical calculations, CPI data, and other documentation, to justify Contractor's requested rate increase. In the event that there are errors in Contractor's requested rate increase request, including, but not limited to, an inaccurate rate adjustment request, inaccurate application of the rate increase formula described above, or usage of inaccurate data, Contractor acknowledges and agrees that City is entitled to seek recovery of damages on behalf of the public or impose future rate reductions to compensate for the errors. Contractor also waives any arguments or defenses Contractor now has or may have in the future, including estoppel, waiver, or other similar equitable remedies, with respect to any action, claim, demand, proceeding

or suit in law or equity of any and every kind and description brought by or on behalf of City or Customers due to errors in Contractor's requested rate increase.

24.4 Limitations to Annual CPI Adjustments

Notwithstanding anything to the contrary in Section 24.3 above, the maximum annual adjustment occurring pursuant to Section 24.3 shall be limited by the provisions set forth below.

24.4.1 Five Percent (5%) Cap

Any maximum rate may not be increased in any given year by more than five percent (5%) without regard to any higher increase which may otherwise be justified by the formula set forth in Section 24.3. In the event an increase exceeds the five percent (5%) cap, the un-applied percentage may be rolled forward and applied to maximum rate increases in subsequent years.

24.4.2 Compliance with Agreement

No increase to the maximum rates shall occur if the City Manager determines that Contractor did not substantially comply with all terms of this Agreement in the rate year preceding the increase, including without limitation, provisions hereof relating to reporting, diversion, and Customer service standards.

24.5 Discretionary Adjustments

Contractor may request an adjustment to the maximum rates set forth in Exhibit A at reasonable times other than as set forth in Section 24.3 for unusual changes in the cost of providing service under this Agreement. For each request for an adjustment to the maximum rates brought pursuant to this Section, Contractor shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to City with support for assumptions made by Contractor in preparing the estimate. The City Council shall review Contractor's request and, in the City Council's sole judgment and absolute, unfettered discretion, make the final determination as to whether an adjustment to the maximum rates will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment. The City Council may consider increases or decreases in Contractor's total revenues and total cost of services when reviewing an extraordinary rate adjustment request. Contractor may not request an extraordinary increase in the maximum rates as a result of: changes in fees or taxes such as Social Security, disability or income tax; changes in health care costs, including increases to the cost of health insurance or changes to the requirements for health insurance; nominal changes or changes that could have been reasonably anticipated in the market value of Recyclables, Organics or Green Waste or processing costs for Recyclables, Organics, or Green Waste; inaccurate estimates by Contractor of its cost of operations; or costs of compliance with South Coast Air Quality Management District and Air Resource Board rules and standards for Collection Vehicles. An advance non-refundable payment of Five Thousand Dollars (\$5,000.00) shall be paid to City prior to City's consideration of each of Contractor's requests for an adjustment of the maximum rates pursuant to this Section.

24.6 Grants

From time to time, federal, State or local agencies including City may provide to Contractor grants to assist in financing qualified programs provided by Contractor in the City (including, without limitation, grants for Diversion programs and related equipment, alternative fuel vehicles and equipment, and Household Hazardous Waste Collection and Disposal). Contractor shall notify City upon receipt of any such grant funds that may be used to fund services provided pursuant to the terms of this Agreement. With the exception of grants already received by Contractor as of the Effective Date, and grants for Collection Vehicles, any funds received through grants for services in the City are intended to benefit City and its residents and businesses, and in essence are held by Contractor in trust on behalf of City. Accordingly, Contractor agrees that the total amount of compensation it receives from Customers hereunder, may be reduced by the amount of any such grant, unless the grant is used to pay for services in City. The City Council shall determine whether the reduction in Contractor's compensation shall be: (1) passed through to Customers designated by City as a reduction to maximum rates; (2) as an offset to the next increase to maximum rates requested by Contractor; (3) paid to City for use as City directs; or (4) applied in any combination of (1) through (3).

SECTION 25. IDENTIFICATION OF CONTRACTOR

Contractor has agreed to use the name CR&R Incorporated (and may also use the dba, CR&R Environmental Services) to identify itself to the public as the specific organization that shall provide all services under this Agreement. Unless otherwise approved in writing by City, this name shall be used for all correspondence, Billing statements, directory listings, references, signs, and vehicle and Container identification.

SECTION 26. CITY'S FLOW CONTROL OPTION/COUNTY AGREEMENT

26.1 Flow Control Option

City shall have the absolute ability to choose the location for the delivery and/or Disposal of all Solid Waste (including Recyclable Material, Organic Waste, Green Waste, and Construction and Demolition Debris) Collected pursuant to this Agreement (hereinafter City's "Flow Control Option"). Contractor expressly consents to City's ability to direct the location for Disposal of Solid Waste hereunder, and waives any and all rights to challenge City's ability to do so, including without limitation any rights under the Commerce Clause of the United States Constitution. As of the Effective Date, City shall be deemed to have exercised its Flow Control Option so as to require delivery of all Solid Waste Collected hereunder to the Orange County landfill system in a manner consistent with its obligations under the County Agreement (including, without limitation, its obligations related to Solid Waste that is delivered to a processing/transfer Facility prior to being delivered to a landfill for Disposal), and Contractor has agreed to handle all Solid Waste Collected hereunder in a manner consistent with City's exercise of its Flow Control Option as noted above. Should City exercise its Flow Control Option so as to require Contractor to use any Facility other than as noted above, Contractor and City shall meet and confer in good faith to arrive at a reasonable adjustment to any maximum rates set forth in Exhibit A that are impacted by such

decision. At any time during the Term of this Agreement, the City Manager may notify Contractor in writing that City no longer desires to exercise its Flow Control Option. In the event City so notifies Contractor of its desire to cease exercising its Flow Control Option, Contractor shall have the absolute discretion to utilize any Disposal Facility, Transfer Station, Recycling Facility, material recovery Facility, landfill, or other Facility of its choosing to retain, recycle, process, and dispose of Solid Waste generated within the City, provided the use of such Facility by Contractor enables it to meet all other requirements of this Agreement.

26.2 County Agreement

Contractor expressly acknowledges its awareness of the County Agreement which has been adopted and entered into by City. Moreover, Contractor acknowledges that it has had an opportunity to review the County Agreement, and is aware of the provisions thereof that require all Solid Waste collected in the City Limits to be disposed of in the Orange County landfill system. Contractor further acknowledges that the County of Orange is an intended third party beneficiary of Contractor's obligations relating in any way to the Disposal of Solid Waste pursuant to this Agreement and the County Agreement. Contractor hereby adopts as its obligations hereunder such provisions of the County Agreement that require action or inaction by it as City's Solid Waste franchisee. Contractor represents and warrants that it can and will perform its duties in connection with this Agreement in such a manner as to ensure that City does not breach the terms of the County Agreement as a result of Contractor's actions or inaction. In the event City advises Contractor in writing that the County Agreement has been terminated, or that it no longer wishes to exercise its Flow Control Option in a manner consistent with the County Agreement, then Contractor's obligations pursuant to this paragraph shall be terminated.

SECTION 27. INDEMNIFICATION

27.1 General

(A) Contractor hereby agrees to and shall indemnify and hold harmless City, its elected and appointed officials, officers, employees, agents, and volunteers (collectively the "Indemnities") from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description (including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) arising out of, resulting from, and/or in any way connected with this Agreement including: (1) the negligence or willful misconduct of Contractor, its officers, employees, agents, and/or subcontractors in performing services under this Agreement; (2) the failure of Contractor, its officers, employees, agents, and/or subcontractors to comply in all respects with the provisions of this Agreement, all Applicable Laws (including, without limitation, the Environmental Laws), ordinances and regulations, and/or applicable permits and licenses; (3) the acts of Contractor, its officers, employees, agents, and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws); and (4) any challenge to the award of, or any provisions of this Agreement (including any claim that the application of any provision hereof violates any provision of the California Constitution). The foregoing indemnity and hold harmless provisions shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding,

suit, injury, death or damage is also caused in part by any of Indemnities' negligence, but shall not extend to matters resulting from Indemnities' sole negligence, or willful misconduct. Contractor further agrees to and shall, upon demand of City, at Contractor's sole cost and expense, defend (with attorneys acceptable to City) City, its elected and appointed boards and commissions, officers, employees, and agents against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events, and to reimburse City for any and all costs and expenses City incurs in providing any such defense, either before, during or after the time Contractor elects to provide such defense, including any and all costs incurred in overseeing any defense to be provided herein by Contractor.

(B) Contractor, upon demand of City, made by and through the City Attorney, shall protect City and appear in and defend City and its elected officials, officers, employees and agents, in any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the definitions of "Solid Waste" or "Recyclable Material," the scope of the rights granted herein, conflicts between the rights granted herein and rights asserted by other Persons, or the limits of City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or any other federal or State laws to provide Collection services in the City.

(C) The provisions of this Section shall not terminate or expire, shall be given the broadest possible interpretation, and shall survive the expiration or earlier termination of this Agreement.

27.2 Hazardous Substances Indemnification

(A) Without regard to any insurance coverage or requirements, and without limiting the above general indemnification obligation in any way, Contractor specifically agrees to and shall, to the maximum extent permitted by law, defend (with counsel acceptable to City) reimburse, indemnify, and hold City and its past and present officers, council members, employees, consultants and agents (hereinafter "Indemnified Parties") harmless from and against any and all claims, actions, liabilities, damages, demands, judgments, losses, costs, liens, expenses, suits, actions, attorneys' fees, consultant fees, penalties and any and all other losses, damages, fees and expenses of whatever kind or nature ("Claims") (including but not limited to response costs, investigative costs, assessment costs, monitoring costs, treatment costs, cleanup costs, removal costs, remediation costs, and similar costs, damages and expenses) that arise out of or are alleged to arise out of or in any way relate to any action, inaction or omission of Contractor that:

(1) results in any demand, claim, notice, order, or lawsuit, asserting that any Indemnified Party is liable, responsible or in any way obligated to investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise cleanup, any Hazardous Contaminant (as defined herein); or

(2) relates to material Collected, transported, recycled, processed, treated or disposed of by Contractor.

(B) Contractor's obligations pursuant to this Section shall apply, without limitation, to:

(1) any Claims brought pursuant to or based on the provisions of the Environmental Laws, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 et seq., the Carpenter-Presley-Tanner Hazardous Substances Account Act (California Health & Safety Code Sections 25300 et seq.), the California Hazardous Waste Control Laws (California Health and Safety Code Sections 25100 et seq.), the California Porter-Cologne Act (California Water Code Section 13000 et seq.), and any and all amendments and regulations thereto, and any other federal, State, regional or local environmental statutory or regulatory provision;

(2) any Claims based on or arising out of or alleged to be arising out of the ownership, use, lease, sale, design, construction, maintenance or operation by Contractor of any Facility;

(3) any Claims based on or arising out of or alleged to be arising out of the marketing, sale, distribution, storage, transportation, Disposal, processing or use of any materials recovered by Contractor; and

(4) any Claims based on or arising out of or alleged to be arising out of any breach of any express or implied warranty, representation or covenant arising out of or in connection with this Agreement.

(C) The foregoing indemnity and defense obligations shall apply irrespective of the negligence or willful misconduct of Contractor or any Affiliate of Contractor.

(D) For purposes of this Agreement, the term “Hazardous Contaminant” means any “hazardous material,” as that term is defined under California Health & Safety Code Section 25501(n); any “hazardous substance,” as that term is defined herein or under California Health & Safety Code Sections 25281(h), 25501(n), 25501.1 and under Title 42, Section 9601(14) of the United States Code; any “hazardous waste,” as that term is defined herein and under Title 42, Section 6903(5) of the United States Code and under California Health & Safety Code Section 25501(n); any chemical which the Governor has identified as a chemical known to the State to cause cancer or reproductive toxicity pursuant to California Health & Safety Code Section 25249.8; any crude oil or refined or unrefined petroleum product or any fraction or derivative thereof; and any asbestos or asbestos-containing material. The term “Hazardous Contaminant” shall also include any and all amendments to the above-referenced statutory and regulatory provisions made before or after the date of execution of this Agreement.

(E) The provisions of this Section shall not terminate or expire, shall be given the broadest possible interpretation, and shall survive the expiration or earlier termination of this Agreement.

(F) With regard to any claim covered by this provision arising from the delivery of Solid Waste to the Orange County landfill system pursuant to the terms of the County Agreement, the indemnity provisions hereof are intended to be supplemental to any indemnification obligations owed to City by the County of Orange pursuant to the County Agreement.

SECTION 28.
CONTRACTOR'S BOOKS AND RECORDS; AUDITS

28.1 Maintenance and Inspection of Records

Contractor shall maintain all records relating to the services provided hereunder, including but not limited to Customer lists, billing records, accounts payable records, maps, compliance records, records reflecting the number of Refuse, Recycling, Organics, and Green Waste (if applicable) Routes and Route hours by service category (such as residential, multi-family, commercial, roll-off, and special services), records demonstrating facilities, equipment and personnel used to perform services, records reflecting the number of Refuse, Recycling, Organics, and Green Waste (if applicable) Containers in service by frequency of Collection for each customer group (such as single family, multi-family, commercial, roll-off); records reflecting the number of roll-off box pulls, and such other documents and materials which reasonably relate to Contractor's compliance with the provisions of this Agreement (the "Records"), for the full Term of this Agreement, and an additional period thereafter of not less than three (3) years, or any longer period required by law. City shall have the right, upon five (5) business days advance notice, to inspect the Records. Such Records shall be made available to City at Contractor's regular place of business, but in no event outside the County of Orange. Prior to destruction of records relating to the services provided pursuant to this Agreement, Contractor shall provide copies or originals of such records to City.

28.2 CERCLA Defense Records

City views the ability to defend against the Comprehensive Environmental Response, Compensation and Liability Act and related litigation as a matter of great importance. For this reason, City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be matters of concern. Contractor shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) for not less than five (5) years following the termination of this Agreement, and agrees to notify City's City Manager, City Clerk and City Attorney before destroying such records thereafter. At any time, including after the expiration of the Term hereof, Contractor shall provide copies of such records to City. The requirements of this Section shall survive the expiration of the Term of this Agreement.

28.3 Ongoing Compliance Review

City intends review Contractor's performance on an ongoing basis to ensure compliance with the terms and provisions of this Agreement, and it is City's intent that a designated portion of the Waste and Recycling Services Reimbursement, as more fully described in Section 11.3, will be used to fund City's costs associated with ensuring Contractor's ongoing compliance. At a minimum, City intends to have internal staff or outside consultants review Contractor's performance to ensure ongoing compliance with the terms hereof, including, but not limited to, the payment of required fees, performance of the services stated herein, implementation of programs required under the Agreement, Contractor's maintenance and upkeep of records, and compliance with all Applicable Laws. Contractor shall provide any and all information reasonably requested by City in connection with its efforts to ensure compliance with the terms hereof,

regardless of whether such information is specifically otherwise called out herein as an item that Contractor is required to maintain and provide to City.

28.4 Audits

28.4.1 Examination of Services

From time to time, anticipated but not required to occur as a result of reports and other submittals required by this Agreement, City may require Contractor to make available any or all of its records related to performance hereunder available to an independent auditor or examiner, to be selected by City, for auditing and examination purposes (a “Discretionary Audit”). The scope of the Discretionary Audit and auditor or examiner will be determined by City and the scope may include, but is not limited to, compliance with terms of this Agreement, Customer service levels and Billing, fee payments, Gross Receipts, tonnage, and verification of diversion rates. Except as otherwise provided herein, City shall bear the cost of any Discretionary Audit. Should any Discretionary Audit reveal an underpayment of any Franchise Fee required pursuant to this Agreement, the amount of such underpayment shall become due and payable to City not later than fifteen (15) days after written notice of such underpayment is sent to Contractor by City, complete with any additional late charges as set forth herein. If a Discretionary Audit reveals inaccuracies or inconsistencies in more than five percent (5%) of all Customer accounts, either with Contractor’s operations or billing systems, or an underpayment of Franchise Fees of more than three percent (3%), Contractor shall bear the entire cost of such Discretionary Audit.

28.4.2 Route Audits

Contractor shall complete an audit at its expense of its Collection Routes for all Customers at Residential and Commercial Premises at such times as may be requested by City; provided, however, that while City may request that such an audit occur at any time, it may not request such audits at Contractor’s expense more than three (3) times during the Term and one (1) time during the extended term if applicable. The timing of such audits is at City’s discretion. The Routes audit, at minimum, shall consist of an independent physical observation by Person(s) other than the Routes driver or Routes supervisor of each Customer in the City. The Routes audit shall include, as a minimum, the following information for each account:

- Route Number;
- Truck Number;
- Account Name;
- Account Number;
- Account service address;
- Service Level per Billing System (quantity, size, frequency);
- Service Level per Routing System;

- Observed Containers (quantity, type and size);
- Serial number (or other coding if acceptable to the City Manager) identifying each Cart and its associated service address;
- Bin condition;
- Proper signage; and
- Graffiti.

Within thirty (30) days after the completion of the Routes audit, Contractor shall submit to City a report summarizing the results thereof which shall include:

- Identification of the Routes;
- Truck numbers;
- Number of accounts, by Routes and in total;
- Number of Containers (broken down by type) per service address, per Routes and total number of Containers;
- Types of exceptions observed;
- Number of exceptions by type;
- Total monthly Billing, pre-audit;
- Total monthly Billing, post-audit (subsequent to corrections of identified exceptions);
- Percentage of the number of accounts with errors to the total number of accounts served; and
- Percentage of the “net” change in monthly Billing as a result of the audit to the total pre-audit monthly Billing.

The report shall include a description of the procedures followed to complete the audit, and shall include the names and titles of those supervising the Routes audits and the name and titles of those performing the observations. Additionally, the report shall include a description of the pre-audit training of the Routes auditors, particularly if temporary personnel are used. The report shall also include a description of the changes and Contractor’s plans to resolve any exceptions. The Routes audit data and results of the audit shall be available for review by City or its representative.

The Route audits described in this Section are in addition to route audits or similar requirements set forth in SB 1383 or other Applicable Laws.

**SECTION 29.
TRANSITION OBLIGATIONS**

At the end of the Term, or in the event this Agreement is terminated for cause prior to the end of the Term, Contractor shall cooperate fully with City and any subsequent solid waste enterprise it designates to assure a smooth transition of services. Contractor's cooperation shall include, but not be limited to, providing Routes lists, billing information and other operating records needed to service all premises covered by this Agreement. The failure to cooperate with City following termination shall be conclusively presumed to be grounds for specific performance of this covenant and/or other equitable relief necessary to enforce this covenant.

Contractor shall provide any new solid waste enterprise with all keys, security codes and remote controls used to access garages, gates and bin enclosures. Contractor shall be responsible for coordinating transfer immediately after its final collection activities, so as to not disrupt services, including coordinating with the new solid waste enterprise on the removal of Contractor's Containers and the delivery of the new solid waste enterprise's Containers. Contractor shall provide City with detailed Routes sheets containing service names and addresses, billing names and addresses, monthly rate and service levels (number and size of Containers and pickup days) at least ninety (90) days prior to the transition date, provide an updated list two weeks before the transition, and a final updated list with any changes the day before the transition. Contractor shall provide means of access to the new solid waste enterprise at least one (1) full business day prior to its first day of collection, and within sufficient time so as to not impede in any way the new solid waste enterprise from easily servicing all Containers.

**SECTION 30.
GENERAL PROVISIONS**

30.1 Force Majeure

Contractor shall not be in default under this Agreement in the event that its ability to provide Solid Waste Handling Services or Temporary Services, in compliance with its obligation to do so hereunder, is temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrections, strikes or other labor disturbances lasting five (5) days or less, explosion, natural disasters such as floods, earthquakes, landslides, fires, and pandemics, or "other catastrophic events" which are beyond the reasonable control of Contractor. The term "other catastrophic events" does not include: (i) the financial inability of Contractor to perform; (ii) failure of Contractor to obtain any necessary permits or licenses from other governmental agencies; (iii) the failure to obtain the right, or the loss of the right, to use the facilities of any public utility where such failure is due in substantial part to the acts or omissions of Contractor; or (iv) strikes or other labor disturbances lasting longer than five (5) days.

30.2 Independent Contractor

(A) Contractor is and shall at all times remain a wholly independent contractor and not an officer, official, employee or agent of City. Nothing in this Agreement shall be construed as creating a partnership or joint venture between City and Contractor.

(B) Contractor shall have no authority to bind City in any manner, nor to incur any obligation, debt, or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by the City Manager.

(C) The personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Contractor or any of Contractor's officers, officials, employees or agents, except as set forth in this Agreement. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, officials, employees or agents is in any manner officers, officials, employees or agents of City.

(D) Neither Contractor, nor any of Contractor's officers, officials, employees, or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

(E) Contractor is solely responsible for the acts and omissions of its officers, officials, employees, and agents, if any.

30.3 Pavement Damage

Contractor shall be responsible for the cost of repair of any extraordinary damage to the public streets and private streets, whether or not paved, including but not limited to, associate curbs, gutters, and traffic control devices, located within the Franchise Area resulting from providing the services required hereunder.

30.4 Property Damage

Any physical damage caused by the negligent or willful acts or omissions of employees, agents, or subcontractors of Contractor to private or public property shall be promptly repaired or replaced at Contractor's expense.

30.5 Right of Entry

Contractor shall not have the right, until Contractor receives permission from the property owner, to enter or drive on any private street, court, place, easement, or other private property for the purpose of providing Temporary Services and/or Solid Waste Handling Services pursuant to this Agreement.

30.6 Law to Govern; Venue

The laws of the State of California shall govern this Agreement. In the event of litigation between the parties, venue in State trial courts shall lie exclusively in the County of Orange and venue in federal trial courts shall lie exclusively in the District of California in which City is located.

30.7 Amendment

This Agreement is intended to carry out City's obligations to comply with the provisions of AB 939, AB 341, AB 1826, and SB 1383, as implemented by regulations of CalRecycle, as they from time to time may be amended. In the event that, after the Effective Date of this Agreement, AB 939, AB 341, AB 1826 or SB 1383 is amended, or other State or federal laws or regulations are enacted and prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Except as otherwise expressly stated herein, no other amendment of this Agreement shall be valid unless it is in writing and duly executed by the parties.

30.8 Notices

All notices required or permitted to be given under this franchise shall be in writing and shall be personally delivered or sent by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To City: City of Laguna Woods
 Attn: City Manager
 24264 El Toro Road
 Laguna Woods, CA 92637

To Contractor: CR&R Incorporated
 Attn: Regional Vice President, Orange County
 11292 Western Avenue
 Stanton, CA 90680

or to such other address as either party may from time to time designate by notice to the other given in accordance with this Section. Notice shall be deemed given on the date served if served personally between the hours of 8:00 a.m. to 5:00 p.m. on any regular business day for City's business offices. If mailed, notice shall be deemed given three (3) business days from the date such notice is deposited in the United States mail in the manner proscribed above.

30.9 Savings Clause

If any non-material provision of this Agreement is for any reason held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Agreement.

30.10 Exhibits Incorporated

Exhibits A through C are attached to and incorporated in this Agreement by reference.

30.11 Joint Drafting

This Agreement shall be interpreted as if it were drafted jointly by the parties to the Agreement.

30.12 Attorneys' Fees and Litigation Costs

In the event either party brings any action or proceeding to enforce or interpret the terms or provisions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable attorneys' fees and other litigation costs and expenses, including without limitation expert witness fees, consultant fees and costs. Without limiting its scope in any way, this provision is expressly intended to, and shall, apply to fees and costs incurred in any appeal.

30.13 City's Authorized Agent

Notwithstanding anything contained herein to the contrary, and excepting amendments hereto and such actions set forth herein specifically calling for City Council action or approval, the City Manager is designated as City's authorized agent to take any action with regard to any matter, or enforce any right, set forth herein requiring action by City.

30.14 Integrated Agreement

This Agreement contains the entire integrated agreement and understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, promises, proposals, and agreements between the Parties, whether written or oral. The Parties acknowledge this document has been executed with the consent and upon the advice of counsel. Each of the Parties acknowledges that no party or agent or attorney of any other party has made any promise, representation, or warranty, express or implied, not contained in this Agreement, to induce the other party to execute this instrument.

30.15 Section Headings

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

30.16 Compliance with Law

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost, comply with all Applicable Laws, including the laws and regulations of the United States, the State of California, the provisions of the Municipal Code, and any federal, State, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended.

30.17 No Third-Party Beneficiaries

Except as otherwise provided for in this Agreement, nothing in this Agreement, whether expressed or implied, is intended to confer any rights on any persons other than the parties to the Agreement and their representatives, successors, and permitted assigns.

[SIGNATURES ON FOLLOWING PAGE]

“City”

CITY OF LAGUNA WOODS

Dated: 10-20-21

By: 
Shari L. Horne, Mayor

APPROVED AS TO FORM:

By: 
Alisha Patterson, City Attorney

ATTEST

By: 
Yolie Trippy, CMC, City Clerk

“Contractor”

CR&R Incorporated

Dated: 10.26.21

By: 
Cliff Ronenberg, Chairman and
Chief Executive Officer

EXHIBIT A

MAXIMUM RATE SCHEDULE FOR SOLID WASTE HANDLING SERVICES

[BEGINS ON FOLLOWING PAGE]

MAXIMUM RATE SCHEDULE FOR YEAR 1 (January 1, 2022 – December 31, 2022)

Residential Services Rates

Standard Rate (1 Refuse & 1 Recycling)	\$ 12.73/month plus \$4.00/month if customer requests organics cart
Extra Pickup	\$ 4.34/pickup
Additional Refuse Cart	\$ 7.04/month
Additional Recycling Cart	\$ 1.52/month
Walk-Out Service Eligible Customers	No Charge
Walk-Out Service Other Customers	\$ 5.83/month
Contaminated Cart Fee	\$ 28.04/instance
Organics Pail (Purchase)	\$ 7.50/pail

Monthly Residential Bin Rates

Container Size/Type	1/week	2/week	3/week	4/week	5/week	6/week	7/week
2-Yard Refuse	\$ 53.78	\$ 82.01	\$ 164.77	\$ 219.68	\$ 258.14	\$ 296.57	N/A
3-Yard Refuse	\$ 60.16	\$ 91.74	\$ 184.32	\$ 245.73	\$ 288.74	\$ 331.73	N/A
4-Yard Refuse	\$ 82.72	\$ 120.33	\$ 272.43	\$ 360.65	\$ 448.87	\$ 488.80	N/A
2-Yard Recycling	\$ 40.33	\$ 61.51	\$ 123.58	\$ 164.76	\$ 193.60	\$ 222.42	N/A
3-Yard Recycling	\$ 45.12	\$ 68.80	\$ 138.24	\$ 184.30	\$ 216.55	\$ 248.80	N/A
Locking Bin (addt.)	\$ 7.45	\$ 8.18	\$ 8.56	\$ 8.92	\$ 9.30	\$ 9.67	N/A
Cart - Refuse	\$ 37.94	\$ 70.19	\$ 100.02	\$ 128.36	\$ 155.63	\$ 182.09	N/A
Cart - Recycling	\$ 28.46	\$ 52.64	\$ 75.01	\$ 96.27	\$ 116.73	\$ 136.57	N/A
2-Yard Organics	\$ 81.59	\$ 124.43	\$ 249.96	\$ 333.28	\$ 391.60	\$ 449.90	N/A
Cart Organics	\$ 29.91	\$ 45.61	\$ 91.66	\$ 122.20	\$ 143.58	\$ 164.96	N/A

Residential Bin Rates

Extra Refuse Pickup	\$ 44.46/pickup
Extra Recycling Pickup	\$ 33.35/pickup
Extra Bin Cleaning	\$ 46.01/cleaning
Extra Bin Exchange	\$ 57.47/exchange
Contaminated Bin Fee	\$ 56.07/instance

Monthly Commercial Services Rates

Container Size/Type	1/week	2/week	3/week	4/week	5/week	6/week	7/week
2-Yard Refuse	\$ 107.61	\$ 164.11	\$ 329.70	\$ 439.58	\$ 516.53	\$ 593.43	N/A
3-Yard Refuse	\$ 120.39	\$ 183.57	\$ 368.82	\$ 491.71	\$ 577.76	\$ 663.79	N/A
4-Yard Refuse	\$ 165.53	\$ 240.78	\$ 545.13	\$ 721.66	\$ 898.20	\$ 978.09	N/A
2-Yard Recycling	\$ 80.71	\$ 123.08	\$ 247.27	\$ 329.68	\$ 387.40	\$ 445.07	N/A
3-Yard Recycling	\$ 90.29	\$ 137.68	\$ 276.62	\$ 368.78	\$ 433.32	\$ 497.84	N/A
Locking Bin (addt.)	\$ 7.34	\$ 8.07	\$ 8.44	\$ 8.79	\$ 9.16	\$ 9.53	N/A
Cart - Refuse	\$ 37.94	\$ 70.19	\$ 100.02	\$ 128.36	\$ 155.63	\$ 182.09	N/A
Cart - Recycling	\$ 28.46	\$ 52.64	\$ 75.01	\$ 96.27	\$ 116.73	\$ 136.57	N/A
2-Yard Organics	\$ 81.59	\$ 124.43	\$ 249.96	\$ 333.28	\$ 391.60	\$ 449.90	N/A
Cart Organics	\$ 29.91	\$ 45.61	\$ 91.66	\$ 122.20	\$ 143.58	\$ 164.96	N/A

Commercial Services Rates

Extra Refuse Pickup	\$ 44.46/pickup
Extra Recycling Pickup	\$ 33.35/pickup
Extra Bin Cleaning	\$ 46.01/cleaning
Extra Bin Exchange	\$ 57.47/exchange
Temporary 2-Yard Bin	N/A
Temporary 3-Yard Bin Rental (7 Days)	\$ 102.86
Temporary 4-Yard Bin	N/A
Temporary 3-Yard Bin Rental Beyond 7 Days	\$ 9.07/day
Extra Organics Cart Pickup	\$ 22.43/pickup
Extra Organics Cart Cleaning	\$ 60.31/cleaning
Extra Organics Cart Exchange	\$ 28.74/exchange
Extra Organics Bin Cleaning	\$ 45.76/cleaning
Extra Organics Bin Exchange	\$ 57.19/exchange
Contaminated Bin Fee	\$ 56.07/instance
Contaminated Cart Fee	\$ 28.74/instance

Monthly Commercial Green Waste Services Rates

Container Size/Type	1/week	2/week	3/week	4/week	5/week	6/week	7/week
Green Waste Bin	\$ 80.02	\$ 122.03	\$ 245.16	\$ 326.87	\$ 384.07	\$ 441.25	N/A
Green Waste Cart	\$ 29.34	\$ 44.74	\$ 89.89	\$ 119.85	\$ 140.82	\$ 161.79	N/A
Locking Bin (addt.)	\$ 7.30	\$ 8.03	\$ 8.39	\$ 8.75	\$ 9.12	\$ 9.49	N/A

Commercial Green Waste Services Rates

Extra Green Waste Pickup	\$ 60.01/pickup
Contaminated Cart Fee	\$ 28.74/instance
Contaminated Bin Fee	\$ 56.07/instance

Roll-off Services Rates (Pull Rate Includes 6 Tons)

Standard 40-Yard Rental (7 Days)	\$ 582.22
Low Boy Rental (7 Days)	\$ 722.22
Compactor	\$ 669.56/pull
Per Ton Over 6 Tons	\$ 71.21/ton
Box Rental Beyond 7 Days Without Pull	\$ 11.04/day
Trip Charge (Dry Run, Relocation)	\$ 92.08/trip
Contamination Fee	\$ 58.31/instance

Scout/Push Out Services Rates (Per Bin/Per Service)

0 – 25 Feet	\$ 0.00
26 – 50 Feet	\$ 20.05
51 – 75 Feet	\$ 40.09
76 – 100 Feet	\$ 60.14
Greater than 100 Feet	\$ 0.20 Per Foot

Monthly Split Bin Services Rates

Container Size/Type	1/week	2/week	3/week	4/week	5/week	6/week	7/week
3-Yard Refuse & Recycling	\$ 171.75	\$ 218.24	\$ 438.48	\$ 584.57	\$ 686.87	\$ 789.15	N/A

MAXIMUM RATE SCHEDULE FOR YEAR 2 (January 1, 2023 – December 31, 2023)

(Rates are subject to CPI adjustment per Section 24)

Residential Services Rates

Standard Rate (1 Refuse & 1 Recycling)	\$ 15.73/month plus \$4.00/month if customer requests organics cart
Extra Pickup	\$ 6.51/pickup
Additional Refuse Cart	\$ 10.56/month
Additional Recycling Cart	\$ 2.28/month
Walk-Out Service Eligible Customers	No Charge
Walk-Out Service Other Customers	\$ 8.75/month
Contaminated Cart Fee	\$ 28.04/instance
Organics Pail (Purchase)	\$ 7.50/pail

Monthly Residential Bin Rates

Container Size/Type	1/week	2/week	3/week	4/week	5/week	6/week	7/week
2-Yard Refuse	\$ 80.67	\$ 123.02	\$ 247.15	\$ 329.52	\$ 387.21	\$ 444.85	N/A
3-Yard Refuse	\$ 90.25	\$ 137.61	\$ 276.48	\$ 368.60	\$ 433.10	\$ 497.59	N/A
4-Yard Refuse	\$ 124.08	\$ 180.49	\$ 408.64	\$ 540.98	\$ 673.31	\$ 733.20	N/A
2-Yard Recycling	\$ 60.50	\$ 92.27	\$ 185.36	\$ 247.14	\$ 290.41	\$ 333.64	N/A
3-Yard Recycling	\$ 67.68	\$ 103.21	\$ 207.36	\$ 276.45	\$ 324.83	\$ 373.19	N/A
Locking Bin (addt.)	\$ 7.45	\$ 8.18	\$ 8.56	\$ 8.92	\$ 9.30	\$ 9.67	N/A
Cart - Refuse	\$ 56.91	\$ 105.28	\$ 150.03	\$ 192.54	\$ 233.45	\$ 273.14	N/A
Cart - Recycling	\$ 42.68	\$ 78.96	\$ 112.52	\$ 144.40	\$ 175.09	\$ 204.85	N/A
2-Yard Organics	\$ 122.38	\$ 186.64	\$ 374.95	\$ 499.92	\$ 587.40	\$ 674.86	N/A
Cart Organics	\$ 44.87	\$ 68.42	\$ 137.48	\$ 183.30	\$ 215.37	\$ 247.45	N/A

Residential Bin Rates

Extra Refuse Pickup	\$67.68/pickup
Extra Recycling Pickup	\$50.76/pickup
Extra Bin Cleaning	\$69.02/cleaning
Extra Bin Exchange	\$86.21/exchange
Contaminated Bin Fee	\$56.07/instance

Monthly Commercial Services Rates

Container Size/Type	1/week	2/week	3/week	4/week	5/week	6/week	7/week
2-Yard Refuse	\$ 121.06	\$ 184.62	\$ 370.91	\$ 494.53	\$ 581.10	\$ 667.61	N/A
3-Yard Refuse	\$ 135.44	\$ 206.51	\$ 414.93	\$ 553.17	\$ 649.98	\$ 746.76	N/A
4-Yard Refuse	\$ 186.22	\$ 270.87	\$ 613.27	\$ 811.87	\$ 1,010.47	\$ 1,100.35	N/A
2-Yard Recycling	\$ 90.80	\$ 138.47	\$ 278.18	\$ 370.89	\$ 435.83	\$ 500.71	N/A
3-Yard Recycling	\$ 101.58	\$ 154.89	\$ 311.19	\$ 414.88	\$ 487.48	\$ 560.07	N/A
Locking Bin (addt.)	\$ 7.45	\$ 8.18	\$ 8.56	\$ 8.92	\$ 9.30	\$ 9.67	N/A
Cart - Refuse	\$ 85.41	\$ 158.00	\$ 225.16	\$ 288.95	\$ 350.35	\$ 409.91	N/A
Cart - Recycling	\$ 64.06	\$ 118.50	\$ 168.87	\$ 216.71	\$ 262.76	\$ 307.43	N/A
2-Yard Organics	\$ 122.38	\$ 186.64	\$ 374.95	\$ 499.92	\$ 587.40	\$ 674.86	N/A
Cart Organics	\$ 44.87	\$ 68.42	\$ 137.48	\$ 183.30	\$ 215.37	\$ 247.45	N/A

Commercial Services Rates

Extra Refuse Pickup	\$ 67.68/pickup
Extra Recycling Pickup	\$ 50.76/pickup
Extra Bin Cleaning	\$ 69.02/cleaning
Extra Bin Exchange	\$ 86.21/exchange
Temporary 2-Yard Bin	N/A
Temporary 3-Yard Bin Rental (7 Days)	\$ 105.43
Temporary 4-Yard Bin	N/A
Temporary Bin Rental Beyond 7 Days	\$ 9.30/day
Extra Organics Cart Pickup	\$ 33.65/pickup
Extra Organics Cart Cleaning	\$ 61.82/cleaning
Extra Organics Cart Exchange	\$ 29.46/exchange
Extra Organics Bin Cleaning	\$ 68.64/cleaning
Extra Organics Bin Exchange	\$ 85.79/exchange
Contaminated Bin Fee	\$ 56.07/instance
Contaminated Cart Fee	\$ 29.46/instance

Monthly Commercial Green Waste Services Rates

Container Size/Type	1/week	2/week	3/week	4/week	5/week	6/week	7/week
Green Waste Bin	\$ 120.03	\$ 183.05	\$ 367.74	\$ 490.30	\$ 576.11	\$ 661.88	N/A
Green Waste Cart	\$ 44.00	\$ 67.11	\$ 134.84	\$ 179.78	\$ 211.23	\$ 242.69	N/A
Locking Bin (addt.)	\$ 10.95	\$ 12.04	\$ 12.59	\$ 13.13	\$ 13.68	\$ 14.23	N/A

Commercial Green Waste Services Rates

Extra Green Waste Pickup	\$ 90.02/pickup
Contaminated Cart Fee	\$ 29.46/instance
Contaminated Bin Fee	\$ 56.07/instance

Roll-off Services Rates (Pull Rate Includes 6 Tons)

Standard 40-Yard Rental (7 Days)	\$ 611.33
Low Boy Rental (7 Days)	\$ 758.33
Compactor	\$ 703.03/pull
Per Ton Over 6 Tons	\$ 71.21/ton
Box Rental Beyond 7 Days Without Pull	\$ 108.33/day
Trip Charge (Dry Run, Relocation)	\$ 222.22/trip
Contamination Fee	\$ 56.07/instance

Scout/Push Out Services Rates (Per Bin/Per Service)

0 – 25 Feet	\$ 0.00
26 – 50 Feet	\$ 20.05
51 – 75 Feet	\$ 40.09
76 – 100 Feet	\$ 60.14
Greater than 100 Feet	\$ 0.20/foot

Monthly Split Bin Services Rates

Container Size/Type	1/week	2/week	3/week	4/week	5/week	6/week	7/week
3-Yard Refuse & Recycling	\$ 171.75	\$ 218.24	\$ 438.48	\$ 584.57	\$ 686.87	\$ 789.15	N/A

MAXIMUM RATE SCHEDULE FOR YEAR 3 (January 1, 2024 – December 31, 2024)

(Rates are subject to CPI adjustment per Section 24)

Residential Services Rates

Standard Rate (1Refuse & 1 Recycling)	\$ 17.73/month plus \$4.00/month if customer requests organics cart
Extra Pickup	\$ 6.51/pickup
Additional Refuse Cart	\$ 10.56/month
Additional Recycling Cart	\$ 2.28/month
Walk-Out Service Eligible Customers	No Charge
Walk-Out Service Other Customers	\$ 8.75/month
Contaminated Cart Fee	\$ 28.04/instance
Organics Pail (Purchase)	\$ 7.50 /pail

Monthly Residential Bin Rates

Container Size/Type	1/week	2/week	3/week	4/week	5/week	6/week	7/week
2-Yard Refuse	\$ 116.97	\$ 178.38	\$ 358.37	\$ 477.80	\$ 561.45	\$ 645.03	N/A
3-Yard Refuse	\$ 130.86	\$ 199.53	\$ 400.89	\$ 534.47	\$ 628.00	\$ 721.51	N/A
4-Yard Refuse	\$ 179.92	\$ 261.71	\$ 592.53	\$ 784.42	\$ 976.30	\$ 1,063.14	N/A
2-Yard Recycling	\$ 87.73	\$ 133.79	\$ 268.78	\$ 358.35	\$ 421.09	\$ 483.77	N/A
3-Yard Recycling	\$ 98.14	\$ 149.65	\$ 300.67	\$ 400.85	\$ 471.00	\$ 541.13	N/A
Locking Bin (addt.)	\$ 7.45	\$ 8.18	\$ 8.56	\$ 8.92	\$ 9.30	\$ 9.67	N/A
Cart - Refuse	\$ 82.52	\$ 152.66	\$ 217.54	\$ 279.18	\$ 338.50	\$ 396.05	N/A
Cart - Recycling	\$ 61.89	\$ 114.50	\$ 163.16	\$ 209.38	\$ 253.88	\$ 297.04	N/A
2-Yard Organics	\$ 177.45	\$ 270.63	\$ 543.67	\$ 724.88	\$ 851.73	\$ 978.54	N/A
Cart Organics	\$ 65.06	\$ 99.21	\$ 199.35	\$ 265.79	\$ 312.29	\$ 358.80	N/A

Residential Bin Rates

Extra Refuse Pickup	\$ 98.14/pickup
Extra Recycling Pickup	\$ 73.61/pickup
Extra Bin Cleaning	\$ 100.08/cleaning
Extra Bin Exchange	\$ 125.00/exchange
Contaminated Bin Fee	\$ 56.07/instance

Monthly Commercial Services Rates

Container Size/Type	1/week	2/week	3/week	4/week	5/week	6/week	7/week
2-Yard Refuse	\$ 127.79	\$ 194.88	\$ 391.52	\$ 522.00	\$ 613.39	\$ 704.70	N/A
3-Yard Refuse	\$ 142.96	\$ 217.99	\$ 437.98	\$ 583.90	\$ 686.09	\$ 788.25	N/A
4-Yard Refuse	\$ 196.56	\$ 285.92	\$ 647.34	\$ 856.97	\$ 1,066.61	\$ 1,161.48	N/A
2-Yard Recycling	\$ 95.84	\$ 146.16	\$ 293.64	\$ 391.50	\$ 460.04	\$ 528.52	N/A
3-Yard Recycling	\$ 107.22	\$ 163.49	\$ 328.48	\$ 437.93	\$ 514.57	\$ 591.19	N/A
Locking Bin (addt.)	\$ 7.45	\$ 8.18	\$ 8.56	\$ 8.92	\$ 9.30	\$ 9.67	N/A
Cart - Refuse	\$ 90.15	\$ 166.78	\$ 237.66	\$ 305.00	\$ 369.82	\$ 432.69	N/A
Cart - Recycling	\$ 67.61	\$ 125.09	\$ 178.25	\$ 228.75	\$ 277.36	\$ 324.51	N/A
2-Yard Organics	\$ 177.45	\$ 270.63	\$ 543.67	\$ 724.88	\$ 851.73	\$ 978.54	N/A
Cart Organics	\$ 65.06	\$ 99.21	\$ 199.35	\$ 265.79	\$ 312.29	\$ 358.80	N/A

Commercial Services Rates

Extra Refuse Pickup	\$ 98.14/pickup
Extra Recycling Pickup	\$ 73.61/pickup
Extra Bin Cleaning	\$ 100.08/cleaning
Extra Bin Exchange	\$ 125.00/exchange
Temporary 2-Yard Bin	N/A
Temporary 3-Yard Bin Rental (7 Days)	\$ 108.07
Temporary 4-Yard Bin	N/A
Temporary Bin Rental Beyond 7 Days	\$ 9.53/day
Extra Organics Cart Pickup	\$ 48.79/pickup
Extra Organics Cart Cleaning	\$ 63.36/cleaning
Extra Organics Cart Exchange	\$ 30.20/exchange
Extra Organics Bin Cleaning	\$ 99.52
Extra Organics Bin Exchange	\$ 124.39
Contaminated Bin Fee	\$ 56.07/instance
Contaminated Cart Fee	\$ 30.20/instance

Monthly Commercial Green Waste Services Rates

Container Size/Type	1/week	2/week	3/week	4/week	5/week	6/week	7/week
Green Waste Bin	\$ 174.04	\$ 265.42	\$ 533.22	\$ 710.94	\$ 835.35	\$ 959.72	N/A
Green Waste Cart	\$ 63.80	\$ 97.30	\$ 195.52	\$ 260.67	\$ 306.29	\$ 351.90	N/A
Locking Bin (addt.)	\$ 15.88	\$ 17.46	\$ 18.26	\$ 19.03	\$ 19.83	\$ 20.63	N/A

Commercial Green Waste Services Rates

Extra Green Waste Pickup	\$ 130.53/pickup
Contaminated Cart Fee	\$ 30.20/instance
Contaminated Bin Fee	\$ 56.07/instance

Roll-off Services Rates (Pull Rate Includes 6 Tons)

Standard 40-Yard Rental (7 Days)	\$ 641.90
Low Boy Rental (7 Days)	\$ 796.25
Compactor	\$ 738.19/pull
Per Ton Over 6 Tons	\$ 71.21/ton
Box Rental Beyond 7 Days Without Pull	\$ 113.75/day
Trip Charge (Dry Run, Relocation)	\$ 222.22/trip
Contamination Fee	\$ 56.07/instance

Scout/Push Out Services Rates (Per Bin/Per Service)

0 – 25 Feet	\$ 0.00
26 – 50 Feet	\$ 20.05
51 – 75 Feet	\$ 40.09
76 – 100 Feet	\$ 60.14
Greater than 100 Feet	\$ 0.20/foot

Split Bin Services

Container Size/Type	1/week	2/week	3/week	4/week	5/week	6/week	7/week
3-Yard Refuse & Recycling	\$ 171.75	\$ 218.24	\$ 438.48	\$ 584.57	\$ 686.87	\$ 789.15	N/A

MAXIMUM RATE SCHEDULE BEGINNING JANUARY 1, 2025

(Rates are subject to CPI adjustments per Section 24)

Residential Services Rates

Standard Rate (1Refuse & 1 Recycling)	\$ 18.23/month plus \$4.00/month if customer requests organics cart
Extra Pickup	\$ 6.51/pickup
Additional Refuse Cart	\$ 10.56/month
Additional Recycling Cart	\$ 2.28/month
Walk-Out Service Eligible Customers	No Charge
Walk-Out Service Other Customers	\$ 8.75/month
Contaminated Cart Fee	\$ 28.04/instance
Organics Pail (Purchase)	\$ 7.50 /pail

Monthly Residential Bin Rates

Container Size/Type	1/week	2/week	3/week	4/week	5/week	6/week	7/week
2-Yard Refuse	\$ 134.51	\$ 205.14	\$ 412.12	\$ 549.47	\$ 645.67	\$ 741.79	N/A
3-Yard Refuse	\$ 150.49	\$ 229.46	\$ 461.03	\$ 614.64	\$ 722.20	\$ 829.74	N/A
4-Yard Refuse	\$ 206.91	\$ 300.97	\$ 681.41	\$ 902.08	\$ 1,122.75	\$ 1,222.61	N/A
2-Yard Recycling	\$ 100.88	\$ 153.85	\$ 309.09	\$ 412.10	\$ 484.25	\$ 556.34	N/A
3-Yard Recycling	\$ 112.86	\$ 172.10	\$ 345.77	\$ 460.98	\$ 541.65	\$ 622.30	N/A
Locking Bin (addt.)	\$ 7.45	\$ 8.18	\$ 8.56	\$ 8.92	\$ 9.30	\$ 9.67	N/A
Cart - Refuse	\$ 94.90	\$ 175.56	\$ 250.17	\$ 321.06	\$ 389.28	\$ 455.46	N/A
Cart - Recycling	\$ 71.17	\$ 131.67	\$ 187.63	\$ 240.79	\$ 291.96	\$ 341.59	N/A
2-Yard Organics	\$ 204.07	\$ 311.22	\$ 625.22	\$ 833.61	\$ 979.49	\$ 1,125.32	N/A
Cart Organics	\$ 74.81	\$ 114.09	\$ 229.25	\$ 305.65	\$ 359.14	\$ 412.62	N/A

Residential Bin Rates

Extra Refuse Pickup	\$ 112.86/pickup
Extra Recycling Pickup	\$ 84.65/pickup
Extra Bin Cleaning	\$ 115.09/cleaning
Extra Bin Exchange	\$ 143.75/exchange
Contaminated Bin Fee	\$ 56.07/instance

Monthly Commercial Services Rates

Container Size/Type	1/week	2/week	3/week	4/week	5/week	6/week	7/week
2-Yard Refuse	\$ 134.51	\$ 205.14	\$ 412.12	\$ 549.47	\$ 645.67	\$ 741.79	N/A
3-Yard Refuse	\$ 150.49	\$ 229.46	\$ 461.03	\$ 614.64	\$ 722.20	\$ 829.74	N/A
4-Yard Refuse	\$ 206.91	\$ 300.97	\$ 681.41	\$ 902.08	\$ 1,122.75	\$ 1,222.61	N/A
2-Yard Recycling	\$ 100.88	\$ 153.85	\$ 309.09	\$ 412.10	\$ 484.25	\$ 556.34	N/A
3-Yard Recycling	\$ 112.86	\$ 172.10	\$ 345.77	\$ 460.98	\$ 541.65	\$ 622.30	N/A
Locking Bin (addt.)	\$ 7.45	\$ 8.18	\$ 8.56	\$ 8.92	\$ 9.30	\$ 9.67	N/A
Cart - Refuse	\$ 94.90	\$ 175.56	\$ 250.17	\$ 321.06	\$ 389.28	\$ 455.46	N/A
Cart - Recycling	\$ 71.17	\$ 131.67	\$ 187.63	\$ 240.79	\$ 291.96	\$ 341.59	N/A
2-Yard Organics	\$ 204.07	\$ 311.22	\$ 625.22	\$ 833.61	\$ 979.49	\$ 1,125.32	N/A
Cart Organics	\$ 74.81	\$ 114.09	\$ 229.25	\$ 305.65	\$ 359.14	\$ 412.62	N/A

Commercial Services Rates

Extra Refuse Pickup	\$ 112.86/pickup
Extra Recycling Pickup	\$ 84.65/pickup
Extra Bin Cleaning	\$ 115.09/cleaning
Extra Bin Exchange	\$ 143.75/exchange
Temporary 2-Yard Bin	N/A
Temporary 3-Yard Bin Rental (7 Days)	\$ 110.77
Temporary 4-Yard Bin	N/A
Temporary Bin Rental Beyond 7 Days	\$ 9.77/day
Extra Organics Cart Pickup	\$ 56.11/pickup
Extra Organics Cart Cleaning	\$ 64.95/cleaning
Extra Organics Cart Exchange	\$ 30.95/exchange
Extra Organics Bin Cleaning	\$ 114.45
Extra Organics Bin Exchange	\$ 143.05
Contaminated Bin Fee	\$ 56.07/instance
Contaminated Cart Fee	\$ 30.95/instance

Monthly Commercial Green Waste Services Rates

Container Size/Type	1/week	2/week	3/week	4/week	5/week	6/week	7/week
Green Waste Bin	\$ 200.15	\$ 305.23	\$ 613.20	\$ 817.58	\$ 960.66	\$ 1,103.68	N/A
Green Waste Cart	\$ 73.37	\$ 111.90	\$ 224.84	\$ 299.77	\$ 352.23	\$ 404.68	N/A
Locking Bin (addt.)	\$ 18.27	\$ 20.08	\$ 21.00	\$ 21.89	\$ 22.81	\$ 23.73	N/A

Commercial Green Waste Services Rates

Extra Green Waste Pickup	\$ 150.11/pickup
Contaminated Cart Fee	\$ 30.95/instance
Contaminated Bin Fee	\$ 56.07/instance

Roll-off Services Rates (Pull Rate Includes 6 Tons)

Standard 40-Yard Rental (7 Days)	\$ 674.00
Low Boy Rental (7 Days)	\$ 836.06
Compactor	\$ 775.09/pull
Per Ton Over 6 Tons	\$ 71.21/ton
Box Rental Beyond 7 Days Without Pull	\$ 119.44/day
Trip Charge (Dry Run, Relocation)	\$ 222.22/trip
Contamination Fee	\$ 56.07/instance

Scout/Push Out Services Rates (Per Bin/Per Service)

0 – 25 Feet	\$ 0.00
26 – 50 Feet	\$ 20.05
51 – 75 Feet	\$ 40.09
76 – 100 Feet	\$ 60.14
Greater than 100 Feet	\$ 0.20/foot

Monthly Split Bin Services Rates

Container Size/Type	1/week	2/week	3/week	4/week	5/week	6/week	7/week
3-Yard Refuse & Recycling	\$ 214.69	\$ 272.80	\$ 548.10	\$730.71	\$858.59	\$ 986.44	N/A

EXHIBIT B

CONTAINER/BIN SPECIFICATIONS

- All Containers utilized by Contractor shall meet the standards of the industry and Applicable Laws and shall perform to the reasonable satisfaction of the City Manager in order to be utilized in City.
- Each Bin and Cart utilized by Contractor shall be labeled with graphics so as to: (1) explain/depict the items for which it is designated/not designated to Collect, and (2) identify the name of Contractor and Contractor's phone number for service related issues, including complaints. Labels shall be replaced when worn, and when information on the label is in need of updating, but no later than ninety (90) days of request from City. All such labeling shall be approved by the City Manager prior to use by Contractor. All Carts shall be labeled in accordance with Applicable Laws throughout the term of this Agreement.
- Refuse, Recycling, Organics, and Green Waste Cart/Bin lids shall be differentiated by color, except that Organics and Green Waste Containers may be the same color if comingled for Collection. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Cart lid colors shall be consistent throughout the City and shall comply with Applicable Laws.
- Unless otherwise specified in the Agreement, any Cart distributed by Contractor in City after the Effective Date shall be newly manufactured and have never previously been used for the Collection of Solid Waste; excepting that Carts which have been refurbished such that they are "like new" may be used so long as their condition is satisfactory as determined by the City Manager.
- All Bins and Carts distributed pursuant to this Agreement shall have an identifying serial number hot stamped into the Bin or Cart body, or otherwise have an individual identification demarcation affixed to the Bin or Cart in a manner acceptable to the City Manager. Contractor shall keep current, and provide to City at the times set forth in this Agreement, a list of each address to which a Bin or Cart has been distributed and the serial number (or other acceptable identification) of all Bins and Carts at each such address.
- All Bins shall be industry standard metal Bins, split vertically, and equipped with low-profile casters that shall not exceed three (3) inches in height. If approved by City Manager upon either a request by Customers, or in response to Contractor's desire, Bins may be made of plastic, vertically split, and equipped with casters that shall not to exceed five (5) inches in height. Bin lids shall be "Single Wall Impact Plastic REC Lid, Lightweight" or comparable if approved by the City Manager. Upon request of any Customer, Contractor shall provide Bins with lids that close securely and which are capable of being locked at rates that do not exceed those set forth in Exhibit A.

EXHIBIT C

AB 341, AB 1826, and SB 1383 IMPLEMENTATION PLAN

[FORTHCOMING PER SECTION 10.9.5]