

**AMENDED AND RESTATED  
FRANCHISE AGREEMENT**

**BETWEEN**

**THE CITY OF UNION CITY**

**AND**

**TRI CITY ECONOMIC DEVELOPMENT CORPORATION (TRI-CED)**

**FOR**

**RECYCLABLE MATERIALS COLLECTION AND PROCESSING SERVICES**

**Term of Agreement:  
July 1, 2025 through June 30, 2035**

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44 **WHEREAS;** since March 1994, Tri City Economic Development Corporation (“Tri-CED”) has provided the  
45 City with Recyclable Materials Collection and Processing services pursuant to a franchise agreement; and  
46

47 **WHEREAS;** Tri-CED is a California nonprofit public benefit corporation located in Union City, California and  
48 since 1985 has provided jobs to local residents, and has made substantial capital investments in recycling  
49 operations (by purchasing a 4.5 acre facility, improved and expanded the facility and its operations and,  
50 acquired new Recycling and Processing equipment) designed specifically to serve the needs of the Union  
51 City residents and those of other communities in order to achieve their respective Recycling goals, and  
52

53 **WHEREAS;** the City of Union City has historically supported local businesses; and,  
54

55 **WHEREAS;** in recognition of Tri-CED’s excellent performance and service to the community, on July 25,  
56 2004, the City Council approved Resolution No. 2688-04, which awarded an exclusive franchise agreement  
57 to Tri-CED (hereinafter “Contractor”) for Recyclable Materials Collection and Processing Services dated  
58 August 10, 2004, for the period from May 23, 2005 through May 31, 2015 (“2004 Franchise Agreement”);  
59 and  
60

61 **WHEREAS;** the City Council has determined that Contractor, by demonstrated experience, reputation and  
62 capacity, is qualified to provide for the Collection of Recyclables Materials from Residential and  
63 Commercial Premises using Cart service within the corporate limits of the City, and Transportation,  
64 Processing, and marketing of such Recyclable Materials, and City Council desires that Contractor continue  
65 to provide such services for the City; and  
66

67 **WHEREAS;** on November 25, 2014, in Resolution 4666-14, the City Council directed City staff to  
68 renegotiate with Contractor a ten (10)-year extension of the 2004 Franchise Agreement through June 30,  
69 2025, and to do so without competitive bidding; and  
70

71 **WHEREAS;** in January 2015, City staff and Contractor entered negotiations as directed by the City Council;  
72 and  
73

74 **WHEREAS;** on June 1, 2015, the 2004 Franchise Agreement was extended for thirteen (13) months  
75 pursuant to Section 3.4 of the 2004 Agreement; and  
76

77 **WHEREAS;** the Parties submitted an Amended and Restated Franchise Agreement for the City Council’s  
78 consideration; and  
79

80 **WHEREAS;** the City Council authorized the City to execute this Amended and Restated Franchise  
81 Agreement with a Term through June 30, 2025 with an option to extend (“Agreement”); and  
82

83 **WHEREAS;** in June 2023, City staff and the Contractor entered negotiations as directed by the City Council;  
84 and  
85

86 **WHEREAS;** the Parties submitted an Amended and Restated Franchise Agreement for the City Council’s  
87 consideration; and  
88

89 **WHEREAS;** the City Council authorized the City to execute this Amended and Restated Franchise  
90 Agreement with a term ending June 30, 2035 (“Agreement”); and  
91

92  
93 **WHEREAS;** this Agreement supersedes any and all prior agreements and understandings between the  
94 Parties, including the 2004 Franchise Agreement as extended and the 2015 Franchise Agreement; and  
95

96 **WHEREAS;** the City further declares its intent to approve Contractor’s Compensation and the associated  
97 Maximum Rates established by Contractor that may be charged to Customers for the Collection,  
98 Transportation, Processing, and Recycling of Recyclable Materials;  
99

100 **WHEREAS;** the Maximum Rates that Customers are charged are competitive for the industry based on the  
101 substantial array of services provided and are reasonably related to the cost of providing such services;  
102 and  
103

104 **WHEREAS,** this Agreement has been developed by and is satisfactory to the Parties; and  
105

106 **WHEREAS,** the City Council of City of Union City duly approved this Agreement per Resolution No.  
107 \_\_\_\_\_, together with the Franchise Fee, Contractor payments to City, and other City fees provided for  
108 in the Agreement (collectively “City Imposed Fees”), and found and determined that such City Fees were  
109 both necessary and reasonably reflect, or are less than, the actual costs City that will incur in the  
110 administration of the contracted services, compliance with mandatory state laws and regulations related  
111 to the contracted services, and to mitigate the impacts contracted services will have on City.  
112

113 **Now, THEREFORE,** in consideration of the mutual promises, covenants, and conditions contained in this  
114 Agreement and for other good and valuable consideration, the Parties agree as follows:  
115

116 **ARTICLE 1.**  
117 **DEFINITIONS**

---

118  
119 For purposes of this Agreement, unless a different meaning is clearly required, the following words and  
120 phrases shall have the following meanings respectively ascribed to them by this Article and shall be  
121 capitalized throughout this Agreement:  
122

123 **“2004 Franchise Agreement”** means the City’s exclusive franchise agreement to Tri-CED for Recyclable  
124 Materials Collection and Processing Services dated August, 10, 2004 for the period from May 23, 2005  
125 through May 31, 2015.  
126

127 **“AB 32”** means the California Global Solutions Act of 2006 (Division 25.5 of the California Health and Safety  
128 Code), also commonly referred to as “AB 32,” as amended, supplemented, superseded, and replaced from  
129 time to time.  
130

131 **“AB 341”** means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 [Chesbro, AB  
132 341]), also commonly referred to as “AB 341”, as amended, supplemented, superseded, and replaced  
133 from time to time. AB 341 requires businesses, defined to include commercial or public entities that  
134 generate more than 4 cubic yards of commercial Solid Waste per week or multifamily residential dwellings  
135 of 5 units or more, to arrange for Recycling services and requires jurisdictions to implement a commercial  
136 Solid Waste Recycling program.  
137

138 “**AB 939**” means the California Integrated Waste Management Act of 1989 codified in part in Public  
139 Resources Code §§ 40000 et seq., and such regulations adopted by California Department of Resources  
140 Recycling and Recovery (CalRecycle) for implementation of the Act, or its successor agency, including but  
141 not limited to, the Jobs and Recycling Act of 2011 (AB 341), SB 1016 (Chapter 343, Statutes of 2008  
142 [Wiggins, SB 1016]), and the Mandatory Commercial Organics Recycling Act (AB 1826) .

143  
144 “**AB 1594**” means the 2014 act to amend Sections 40507 and 41781.3 of the Public Resources Code,  
145 relating to solid waste (Chapter 719, Statutes of 2014 [Williams, AB 1594), also commonly referred to as  
146 “AB 1594”, as amended, supplemented, superseded, and replaced from time to time.

147  
148 “**AB 1826**” means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 [Chesbro, AB  
149 1826]), also commonly referred to as “AB 1826”, as amended, supplemented, superseded, and replaced  
150 from time to time. AB 1826 requires each jurisdiction, on and after January 1, 2016, to implement an  
151 Organic Waste Recycling program to Divert from the landfill Organic Waste from businesses. Each  
152 business meeting specific Organic Waste or Solid Waste generation thresholds phased in from April 1,  
153 2016, to January 1, 2020, is required to arrange for Organic Waste Recycling services.

154  
155 “**Adequate Commercial Recycling Program**” means the definition and process used by the Alameda  
156 County Waste Management Authority/Alameda County Source Reduction and Recycling Board to assess  
157 the existence of an “adequate commercial recycling program” for the purpose of determining municipal  
158 eligibility to receive per capita Recycling Fund monies beginning July 1, 2013. The policy adopted by the  
159 Alameda County Source Reduction and Recycling Board on November 8, 2012 is included as Exhibit I.

160  
161 “**Affiliate**” means all businesses (including corporations, limited and general partnerships and sole  
162 proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect  
163 Ownership interest or common management shall be deemed to be “Affiliated with” Contractor and  
164 included within the term “Affiliates” as used herein. An Affiliate shall include a business in which  
165 Contractor has a direct or indirect Ownership interest; a business, which has a direct or indirect Ownership  
166 interest in Contractor; and/or a business which is also Owned, controlled or managed by any business or  
167 individual which has a direct or indirect Ownership interest in Contractor. For the purposes of this  
168 definition, “Ownership” means ownership as defined in the constructive ownership provisions of Section  
169 318(a) of the Internal Revenue Code of 1986, as in effect on the date here, provided that ten percent  
170 (10.0%) shall be substituted for fifty percent (50.0%) in Section 318(a)(2)(C) and in Section 318(a)(3)(C)  
171 thereof; and Section 318(a)(5)(C) shall be disregarded. For purposes of determining Ownership under this  
172 paragraph and constructive or indirect ownership under Section 318(a), Ownership interest of less than  
173 ten percent (10.0%) shall be disregarded and percentage interests shall be determined on the basis of the  
174 percentage of voting interest of value which the ownership interest represents, whichever is greater.

175  
176 “**Agreement**” means this Amended and Restated Agreement between the City and Tri City Economic  
177 Development Corporation (“Tri-CED”) for Collection and Processing of Recyclable Materials from residents  
178 and multi-family and commercial businesses using Cart service, including all exhibits, and any future  
179 amendments hereto.

180  
181 “**Alternative Daily Cover (ADC)**” means cover material used to cover compacted solid wastes in a Disposal  
182 site other than Yard Trimmings and other than at least six (6) inches of earthen material, placed on the  
183 surface of the active face of the refuse fill area at the end of each operating day to control vectors, fires,  
184 odors, blowing litter, and scavenging, as defined in Section 20164 of the California Code of Regulations as  
185 may be amended from time to time.

186  
187 **“Applicable Law”** means all Federal, State, County, and local laws, regulations, rules, orders, judgments,  
188 decrees, permits, approvals, or other requirements of any governmental agency having jurisdiction over  
189 an aspect of this Agreement that are in force on the Effective Date, and as may be enacted, issued, or  
190 amended thereafter, including, without limitation, the City’s Municipal Code, the California Integrated  
191 Waste Management Act of 1989 (Public Resources Code Section 40000 et seq.) as amended as of the  
192 Effective Date, inclusive (without exclusion to other amendments not referenced here) of AB 939, AB 341,  
193 AB 1826, AB 1594, SB 1383, and inclusive of all regulations implementing the same. It shall also include  
194 SB 54, the Plastic Pollution Prevention and Packaging Producer Responsibility Act, and the California Air  
195 Resources Board Advanced Clean Fleets regulations (2023).

196  
197 **“Approved Recyclable Materials Processing Facility”** means the Tri-CED facility and Recycling Processing  
198 site located at 33377 Western Avenue in Union City, California, which is owned by Contractor and  
199 approved by the City.

200  
201 **“Batteries”** means single-use or rechargeable batteries and all other batteries identified by the California  
202 Department of Resources Recycling and Recovery as Universal Waste. Examples include AAA, AA, C, D,  
203 button cell, and 9-volt batteries. Car batteries are excluded.

204  
205 **“Billings”** means any and all statements of charges for services rendered, howsoever made, described or  
206 designated by Contractor, or made by other for City or Contractor, presented to Customers served by  
207 Contractor for the Collection of Solid Waste, Recyclable Materials, and Organic Materials in the City.

208  
209 **“Bin”** means a Container with capacity of approximately one to eight cubic yards, with a hinged lid, and  
210 with wheels, that is serviced by a front end-loading Collection vehicle.

211  
212 **“Business Days”** mean Mondays through Fridays, excluding Holidays.

213  
214 **“Cart”** means a Contractor-provided plastic Container with a hinged lid and wheels that is serviced by an  
215 automated or semi-automated Collection vehicle. A Cart has capacity of 35, 64, or 96 gallons (or similar  
216 volumes).

217  
218 **“Change in Law”** means any of the following events or conditions which has a material and adverse effect  
219 on the performance by the Parties of their respective obligations under this Agreement, except as  
220 otherwise provided herein and except for payment obligations:

- 221
- 222 a. The enactment, adoption, promulgation, issuance, modification, or written change in  
223 administrative or judicial interpretation on or after the Effective Date of any Applicable Law;  
224 or
  - 225
  - 226 b. The order or judgment of any governmental body, on or after the Effective Date, to the  
227 extent such order or judgment is not the result of willful or negligent action, error or omission  
228 or lack of reasonable diligence of the City or of the Contractor, whichever is asserting the  
229 occurrence of a Change in Law; provided, however, that the contesting in good faith or the  
230 failure in good faith to contest any such order or judgment shall not constitute or be  
231 construed as such a willful or negligent action, error or omission or lack of reasonable  
232 diligence.

233

234  
235 **“City”** means the City of Union City, Union City, a municipal corporation, and all the territory lying within  
236 the municipal boundaries of the City as presently existing or as such, boundaries may be modified during  
237 the Term. Unless otherwise specified in this Agreement any action authorized or required by the City may  
238 be taken by the City Council or by an agent designated by the City Council.  
239  
240 **“Collection”** means the act of collecting Recyclable Materials and other material at the place of generation  
241 in the City.  
242  
243 **“Commencement Date”** means the date specified in Section 3.1 when Collection, Transportation, and  
244 Processing services required by this Agreement shall be provided.  
245  
246 **“Commercial”** shall mean of, from or pertaining to non-Residential Premises where business activity is  
247 conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing and  
248 industrial operations, but excluding businesses conducted upon Residential property which are permitted  
249 under applicable zoning regulations and are not the primary use of the property.  
250  
251 **“Complaint”** means written or orally communicated statements made by members of the public,  
252 Customers, Owners, or Occupants of properties served by Contractor, or officers, employees or agents of  
253 City alleging non-performance or deficiencies in Contractor’s performance, or otherwise alleging a  
254 violation by Contractor of the provisions of this Agreement.  
255  
256 **“Container” or “Containers”** means Contractor-provided Carts and “submarine style” Drop Boxes (Drop  
257 Boxes that were provided to Customers under the 2004 Franchise Agreement).  
258  
259 **“Contaminant”** means any material or substance in a Container that is not included in the definition of  
260 Recyclable Materials.  
261  
262 **“Contamination”** means an event whereby a Customer places Contaminants into Contractor’s Containers  
263 set out for Collection.  
264  
265 **“Contractor”** means Tri City Economic Development Corporation (“Tri-CED”), a corporation organized and  
266 operating under the laws of the State of California and its officers, directors, employees, agents,  
267 companies, and Subcontractors.  
268  
269 **“Contractor’s Compensation”** means the monetary compensation received by Contractor in return for  
270 providing services in accordance with this Agreement as described in Article 11.  
271  
272 **“Contractor’s Facility”** means the facility owned and operated by Contractor located at 33377 Western  
273 Avenue in Union City, California.  
274  
275 **“Contractor Party(ies)”** shall mean Contractor, officers, directors, or management or fiscal employees  
276 (where “management employee” means any employee with direct or indirect responsibility for direction  
277 and control over the Contractor’s activities under this Agreement and “fiscal” employee means an  
278 employee with direct or indirect responsibility and control duties relating to financial matters under this  
279 Agreement).  
280

281 **“Contractor’s Proposal”** means the proposal submitted by Contractor and received on September 8, 2004  
282 by the City in response to the City’s May 2004 Request for Proposals for Collection and Disposal Services  
283 and certain supplemental written materials incorporated by reference, and the proposal documents and  
284 supplemental information submitted by Contractor to the City commencing in November 2023 through  
285 April 2024 or soon thereafter.

286  
287 **“CPI”** means the consumer price index and shall be the series CUSR0000SEHG, Water and Sewer and  
288 Garbage Collection Services in U.S. city average, all urban consumers, seasonally adjusted.

289  
290 **“Criminal Activity”** means those activities described in Section 14.11.1.

291  
292 **“Curb (or Curbside)”** means the location of a Container for pick-up, where such Container is placed on the  
293 street or alley against the face of the curb, or where no Curb exists, the Container is placed not more than  
294 five feet from the outside edge of the street or alley nearest the property’s entrance.

295  
296 **“Customer”** means the Person who orders, receives, and pays for services from Contractor’.

297  
298 **“Delivery”** means placement of Recyclable Materials by a Generator in a receptacle and/or at a location  
299 that is designated for Collection pursuant to the City’s Municipal Code.

300  
301 **“Designated Transfer Station”** means the Fremont Recycling and Transfer Station at 41149 Boyce Road,  
302 Fremont, California unless the City Manager designates in writing a different transfer or Disposal site in  
303 accordance with Section 4.5. The Designated Transfer Station shall serve as a location for the receipt and  
304 transfer of Residue from the Processing of Recyclable Materials.

305  
306 **“Designated Waste”** means non-Hazardous Waste which may pose special Disposal problems because of  
307 its potential to contaminate the environment and which may be Disposed of only in Class II Disposal Sites  
308 or Class III Disposal Sites pursuant to a variance issued by the California Department of Health Services.  
309 Designated Waste consists of those substances classified as Designated Waste by the State of California,  
310 in California Code of Regulations Title 23, Section 2522 as may be amended from time to time.

311  
312 **“Discarded Materials”** means Solid Waste, Recyclable Materials, Yard Trimmings, or Construction and  
313 Demolition Debris placed by a Generator in a receptacle and/or at a location that is designated for  
314 Collection pursuant to the City’s Municipal Code.

315  
316 **“Disposal”** or **“Dispose”** (or a variation thereof) means the final disposition of Solid Waste at a landfill  
317 disposal site.

318  
319 **“Diversion”** means activities which reduce or eliminate the amount of Solid Waste from Solid Waste  
320 Disposal including, but not limited to, Recycling and Composting.

321  
322 **“Drop Box”** means an open-top Container with a typical capacity of 6 to 14 cubic yards that is serviced by  
323 a roll-off Collection vehicle.

324  
325 **“Effective Date”** means the date on which the latter of the two Parties signs the Agreement and the date  
326 on which Contractor may begin to take actions and incur costs in preparation to provide Collection,  
327 Transportation, and Processing services required by this Agreement.

328

329 **“E-Waste”** means discarded electronic equipment such as, but not limited to, television sets, computer  
330 monitors, central processing units (CPUs), laptop computers, external computer hard drives, computer  
331 keyboards, computer mice, computer printers, copiers, facsimile machines, radios, stereos, stereo  
332 speakers, DVDs, VCRs, telephones, cellular phones, camcorders and Batteries that were part of the e-  
333 waste items.

334  
335 **“Food Scraps”** means food scraps such as those Discarded Organic Materials that will decompose and/or  
336 putrefy including (i) all kitchen and table food waste, and animal or vegetable waste that attends or results  
337 from the storage, preparation, cooking or handling of food stuffs, and (ii) paper waste contaminated with  
338 Food Scraps. Food Scraps is a subset of Organic Materials.

339  
340 **“Franchise”** is the exclusive right and privilege of Contractor to Collect, Transport, and Process Recyclable  
341 Materials in accordance with the terms and conditions of this Agreement.

342  
343 **“Franchise Fees”** or **“City Fees”** means a payment that the Contractor has voluntarily agreed to pay to City  
344 in consideration of the exclusive rights granted by the City under this Agreement. City and Contractor  
345 acknowledge and agree that the amount of the Franchise Fee is the result of bona fide, arms-length  
346 negotiations between City and Contractor. Contractor further acknowledges and agrees that the amount  
347 of the Franchise Fee represents Contractor’s independent determination of the market value of the  
348 exclusive rights granted by City under this Agreement. Contractor is not required by this Agreement or  
349 any City ordinance, resolution, or regulation to charge the Franchise Fee to Customers. Because the  
350 Franchise Fee represents a cost to Contractor in performing services pursuant to this Agreement,  
351 Contractor may, in its sole discretion, include an amount equal to the Franchise Fee in Contractor’s  
352 compensation.

353  
354 **“Generator”** means any Person as defined by the Public Resources Code, whose act or process produces  
355 Solid Waste, Recyclable Materials, or Organic Materials as defined in the Public Resources Code, or whose  
356 act first causes Solid Waste to become subject to regulation.

357  
358 **“Hazardous Substance”** means any of the following: (a) any substances defined, regulated or listed  
359 (directly or by reference) as “Hazardous Substances”, “hazardous materials”, “Hazardous Wastes”, “toxic  
360 waste”, “pollutant” or “toxic substances” or similarly identified as hazardous to human health or the  
361 environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and  
362 Liability Act (CERCLA) of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation  
363 Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv)  
364 the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25105-25107, 25249.8,  
365 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and (vii) California Water Code §13050; (b)  
366 any amendments, rules or regulations promulgated there under to such enumerated statutes or acts  
367 currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material,  
368 chemical, waste or pollutant identified as hazardous or toxic or regulated under any other Applicable Law  
369 currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated  
370 biphenyl’s (“PCBs”), petroleum, natural gas and synthetic fuel products, and by-products.

371  
372 **“Hazardous Waste”** means all substances defined as Hazardous Waste, acutely Hazardous Waste, or  
373 extremely Hazardous Waste by the State of California in Health and Safety Code §25100.02, §25105, and  
374 §25107 or in the future amendments to or recodifications of such statutes or identified and listed as  
375 Hazardous Waste by the U.S. Environmental Protection Agency (EPA), pursuant to the Federal Resource

376 Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and  
377 regulations promulgated there under.

378  
379 **“Holidays”** are defined as New Year’s Day (January 1), Thanksgiving Day (fourth Thursday in November),  
380 and Christmas Day (December 25).

381  
382 **“Household Hazardous Waste”** means that waste resulting from products purchased by the general  
383 public for household use which, because of its quantity, concentration, or physical, chemical or infectious  
384 characteristics, may pose a substantial known or potential hazard to human health or the environment  
385 when improperly treated, Disposed, or otherwise managed, or, in combination with other Solid Waste,  
386 may be infectious, explosive, poisonous, caustic, or toxic, or exhibit any of the characteristics of  
387 ignitability, corrosivity, reactivity, or toxicity as per California Code of Regulations Title 22, Division 4.5,  
388 Chapter 11, Section 66261.3.

389  
390 **“Infectious Waste”** means biomedical waste generated at hospitals, public or private medical clinics,  
391 dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary  
392 facilities and other similar establishments that are identified in Health and Safety Code Section 25107.5  
393 as may be amended from time to time.

394  
395 **“Legislation”** means any code, ordinance, resolution, or any other formal enactment of the governing  
396 body of the City, which now exists or which may hereafter be adopted, which constitutes law or regulation  
397 governing the operation of the Contractor.

398  
399 **“Liquidated Damages”** means the amounts due by Contractor for failure to meet specific quantifiable  
400 standards of performance as described in Section 13.6 and Exhibit D.

401  
402 **“Maximum Rates”** means those rates or charges established by Contractor and approved from time-to-  
403 time by the City Council, which set forth the maximum amount that Contractor may charge Customer for  
404 for services provided pursuant to this Agreement.

405  
406 **“Non-Parcelized Multi-Family”** means, notwithstanding any contrary definition in the City’s Municipal  
407 Code, any Residential Premises with more than one unit used for Residential purposes regardless of  
408 whether residence therein is transient, temporary or permanent, which receive centralized, communal  
409 Collection service for all units on the Premises which are billed to one Customer at one address, excluding  
410 hotels (which shall be considered Commercial Premises), Single-Family Premises, and Parcelized Multi-  
411 Family Premises (however, those Parcelized Multi-Family Premises that receive centralized, communal  
412 Collection service shall be considered Non-Parcelized Multi-Family Premises).

413  
414 **“Occupant”** means the Person who occupies a Premises.

415  
416 **“Organic Materials”** means those Discarded Materials that will decompose and/or putrefy and that the  
417 City’s Municipal Code permits, directs, and/or requires Generators to separate from Solid Waste and  
418 Recyclable Materials for Collection in specially designated Containers for Organic Materials Collection.  
419 Organic Materials include Yard Trimmings and Food Scraps such as, but not limited to, green trimmings,  
420 grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small wood  
421 pieces, other types of organic yard waste, vegetable waste, fruit waste, grain waste, dairy waste, meat  
422 waste, fish waste, paper contaminated with Food Scraps or otherwise not accepted in the Recyclable  
423 Materials Collection program, pieces of unpainted and untreated wood, and pieces of unpainted and

424 untreated wallboard. No Discarded Material shall be considered to be Organic Materials, however, unless  
425 such material is separated from Solid Waste and Recyclable Material.

426

427 **“Owner”** means the Person holding legal title to the land or building.

428

429 **“Parcelized Multi-Family”** means any attached home, townhouse, condo or residence designated or used  
430 for occupancy by one family, excluding those Premises that receive centralized, communal Collection  
431 (which shall be considered Non-Parcelized Multi-Family Premises).

432

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

434

435 **“Pass-Through Cost(s)”** means lease costs, interest expense, Processing facility cost adjustment, Franchise  
436 Fees and other City fees, regulatory fees, and other items, which are included as part of Contractor’s  
437 Compensation but for which Contractor does not receive profit. Pass-Through Costs shall include  
438 regulatory fees, which are directly assessed against the Contractor by governmental entities, that  
439 Contractor remits to such entities provided that the City approves such costs incurred by the Contractor  
440 as a direct result of mandatory Federal, State, regional and local governmental and/or regulatory fees,  
441 surcharges, assessments or other governmental payments related to provision of its obligations under  
442 this Agreement except costs related to judgments, settlements, fines, or Liquidated Damages.

443

444 **“Person(s)”** means any individual, firm, association, organization, partnership, corporation, business trust,  
445 joint venture, the United States, the State of California, the County of Alameda, and special purpose  
446 districts.

447

448 **“Premises”** means any land or building in the City where Recyclable Materials are generated or  
449 accumulated.

450

451 **“Processing”** means to prepare, treat, or convert through some special method.

452

453 **“Processing Site”** means any plant or site used for the purpose of sorting, cleansing, treating or  
454 reconstituting Recyclable Materials for the purpose of making such material available for reuse.

455

456 **“Rate Year”** means a 12-month period, commencing July 1 and concluding June 30 for which Total  
457 Contractor’s Compensation is calculated. Rate Years are numbered consecutively starting with Rate Year  
458 Eleven (July 1, 2015 to June 30, 2016), thus reflecting a continuation from the 2004 Franchise Agreement  
459 Rate Years.

460

461 **“Recyclable Materials”** means those Discarded Materials that the City Code permits, directs and/or  
462 requires Generators to set out in Recyclable Materials Containers for Collection for the purpose of  
463 Recycling. No Discarded Materials shall be considered Recyclable Materials unless such material is  
464 separated from Solid Waste and Organic Materials. Recyclable materials shall include, at a minimum, the  
465 materials deemed recyclable on the SB 54 Covered Material Category List published and updated annually  
466 by CalRecycle pursuant to Public Resources Code (PRC) Sections 42061 (a), 42061 (c) and 42061 (d).  
467 Recyclable materials may include additional materials as accepted and approved by the City and  
468 Contractor.

469

470

471 **“Recycle or Recycling”** means the process of sorting, cleansing, treating and reconstituting at a Recyclable  
472 Materials Processing Site materials that would otherwise be Disposed of at a landfill for the purpose of  
473 returning such materials to the economy in the form of raw materials for new, reused or reconstituted  
474 products. **“Recycling”** does not include transformation as defined in Public Resources Code Section 40201.  
475 Paper products and printing and writing paper, each as defined in SB 1383, may be placed in either the  
476 Recyclable Materials Container or the Organic Waste Container. Carpet and textiles, as well as  
477 compostable plastic materials, may not be placed in either the Recyclable Materials Container or the  
478 Organic Waste Container.

479  
480 **“Related-Party Entity” (or “Related Parties”)** means any Affiliate, which has financial transactions with  
481 Contractor pertaining to this Agreement that has been approved by the City.

482  
483 **“Residential”** shall mean of, from, or pertaining to a Single-Family Premises, Parcelized Multi-Family  
484 Premises, or Non-Parcelized Multi-Family Premises including single-family homes, apartments,  
485 condominiums, townhouse complexes, mobile home parks, cooperative apartments, and yacht harbors  
486 and marinas where residents live aboard boats.

487  
488 **“Residue” or “Residual”** (or a variation thereof) means material remaining, if any, after Processing of  
489 Recyclable Materials that requires Disposal.

490  
491 **“Residue Level”** means the percentage equal to the Tonnage of Residue Disposed by Contractor divided  
492 by Tonnage Collected by Contractor, which reflects the amount of Residue.

493  
494 **“Revenue Requirement”** means the total amount of Contractor’s Compensation and City Fees that is used  
495 by Contractor to establish the Maximum Rates it charges Customers for services provided pursuant to this  
496 Agreement.

497  
498 **“SB 54”** means the Packaging Pollution Prevention and Packaging Producer Responsibility Act of 2022  
499 (Chapter 75, Statutes of 2022 [Allen, et al., SB 54]), also commonly referred to as “SB 54”, as amended,  
500 supplemented, superseded, and replaced from time to time.

501  
502 **“SB 1383”** means the Short-Lived Climate Pollutant Reduction Act of 2016 (Chapter 395, Statutes of 2016  
503 [Lara, SB 1383]), also commonly referred to as “SB 1383”, as amended, supplemented, superseded, and  
504 replaced from time to time.

505  
506 **“Service Type”** refers separately to the Recyclable Materials Collection services for each of the following  
507 types of Customer types: Single-Family Cart service, Parcelized Multi-Family Cart service, Non-Parcelized  
508 Multi-Family Cart service, Commercial Cart service, and City facilities Cart service.

509  
510 **“Single-Family”** means, notwithstanding any contrary definition in the City’s Municipal Code, any  
511 detached or attached house or residence designed or used for occupancy by one family, provided that  
512 Collection service feasibly can be, and is, provided to such Premises as an independent unit, and the owner  
513 or occupant of such independent unit is billed directly for the Collection service.

514  
515 **“Solid Waste”** means solid waste as defined in California Public Resources Code, Division 30, Part 1,  
516 Chapter 2, §40191 and regulations promulgated there under that the City Code requires Generators  
517 within the City to set out for Collection. Excluded from the definition of Solid Waste are Construction and  
518 Demolition Debris, Hazardous Waste, Infectious Waste, Designated Waste, Source Separated Recyclable

519 Materials, Source Separated Organic Materials, and radioactive waste. Notwithstanding any provision to  
520 the contrary, “Solid Waste” may include de minimis volumes or concentrations of waste of a type and  
521 amount normally found in Residential Solid Waste after implementation of programs for the safe  
522 collection, recycling, treatment and disposal of Household Hazardous Waste in compliance with Section  
523 41500 and 41802 of the California Public Resources Code as may be amended from time to time.

524  
525 Solid Waste includes Salvageable Materials only when such materials are included for Collection in a Solid  
526 Waste Container.

527  
528 **“Solid Waste Contractor”** means the company selected by the City that entered into an exclusive  
529 franchise agreement for: 1) the Collection of Solid Waste, 2) the Collection and Processing of Recyclable  
530 Materials from Multi-Family and Commercial Customers subscribing to Recyclable Materials Collection  
531 services using Bins and Drop Boxes, and 3) the Collection and Processing of Organic Materials.

532  
533 **“Source Separated”** means the segregation, by the Generator, of materials designated for separate  
534 Collection for some form of Recycling, composting, recovery, or reuse.

535  
536 **“Specialty Recyclable Material”** means material not specified in this Agreement that can be or will be  
537 Collected for purposes of Recycling by any Person operating under a valid permit issued by the City. Such  
538 Specialty Recyclable Material includes, but is not limited, to scrap metal weighing more than ten (10)  
539 pounds, construction and demolition debris, high-grade paper (including office mixed paper), pallets, and  
540 plastic film. Specialty Recyclable Materials do not include Source Separated Recyclable Materials set out  
541 for Collection in Containers by Single-Family, Parcelized Multi-Family, Non-Parcelized Multi-Family,  
542 Commercial, and Drop Box Customers.

543  
544 **“State”** means the State of California.

545  
546 **“Subcontractor”** means a party who has entered into a contract, express or implied, with the Contractor  
547 for the performance of an act that is necessary for the Contractor’s fulfillment of its obligations under this  
548 Agreement.

549  
550 **“Term”** means the Term of this Agreement, including extension periods if granted, as provided for in  
551 Article 3.

552  
553 **“Ton (or Tonnage)”** means a unit of measure for weight equivalent to two thousand (2,000) standard  
554 pounds where each pound contains sixteen (16) ounces.

555  
556 **“Transportation”** means the act of transporting or state of being transported.

557  
558 **“Unacceptable Spillage”** means any Solid Waste, Recyclable Materials or Organic Materials spilled or left  
559 at established Collection sites by Contractor after Collection, except that small particles of grass clippings  
560 and leaves of the size and volume (that can be collected by regular street sweeping operations) may be  
561 left behind.

562  
563 **“Yard Trimmings”** means those Discarded Materials that will decompose and/or putrefy, including, but  
564 not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree  
565 trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of organic waste.  
566 Yard Trimmings are a subset of Organic Materials.

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**ARTICLE 2.**  
**REPRESENTATIONS AND WARRANTIES OF**  
**THE CONTRACTOR**

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The Contractor, by acceptance of this Agreement, represents and warrants the conditions presented in this Article.

**2.1 CORPORATE STATUS**

Contractor is a 501 (c) (3) California nonprofit corporation duly organized, validly existing and in good standing under the laws of the State. It is qualified to transact business in the State and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

**2.2 CORPORATE AUTHORIZATION**

Contractor has the authority and has taken all actions required by law, its articles of incorporation, its bylaws, or otherwise, to enter and perform its obligations under this Agreement. The Person signing this Agreement on behalf of Contractor represents and warrants that they have authority to do so and the Secretary’s Certificate in Exhibit A confirms this. This Agreement constitutes the legal, valid, and binding obligation of the Contractor.

**2.3 AGREEMENT WILL NOT CAUSE BREACH**

To the best of Contractor’s knowledge after reasonable investigation, the execution or delivery of this Agreement or the performance by Contractor of its obligations hereunder does not conflict with, violate, or result in a breach: (i) of any law or governmental regulation applicable to Contractor; or (ii) any term or condition of any judgment, order, or decree of any court, administrative agency or other governmental authority, or any Agreement or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default there under.

**2.4 NO LITIGATION**

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

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

609 **2.5 NO ADVERSE JUDICIAL DECISIONS**

610 To the best of Contractor’s knowledge after reasonable investigation, there is no judicial decision that  
611 would prohibit this Agreement or subject this Agreement to legal challenge.  
612

613 **2.6 NO LEGAL PROHIBITION**

614 To the best of Contractor’s knowledge after reasonable investigation, there is no Applicable Law in effect  
615 on the date Contractor signed this Agreement that would prohibit the Contractor’s performance of its  
616 obligations under this Agreement and the transactions contemplated hereby.  
617

618 **2.7 CONTRACTOR’S STATEMENTS**

619 The Contactor’s Proposal and any other supplementary information submitted to the City, which the City  
620 has relied on in awarding and entering this Agreement, do not: (i) contain any untrue statement of a  
621 material fact, or (iii) omit to state a material fact that is necessary in order to make the statements made,  
622 in light of the circumstances in which they were made, not misleading.  
623

624 **2.8 CONTRACTOR’S INVESTIGATION**

625 Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances  
626 surrounding the Agreement and the work to be performed hereunder. Contractor has taken such matters  
627 into consideration in entering this Agreement to provide services in exchange for the compensation  
628 provided for under the terms of this Agreement.  
629

630 **2.9 ABILITY TO PERFORM**

631 Contractor possesses the business, professional, and technical expertise to Collect, Transport, Process,  
632 and market the Recyclable Materials generated in the City. Contractor possesses the equipment,  
633 facility(ies), and employee resources required to perform its obligations under this Agreement.  
634

635 **2.10 VOLUNTARY USE OF DESIGNATED TRANSFER STATION**

636 Contractor, without constraint and as a free-market business decision in accepting this Agreement, agrees  
637 to use the Designated Transfer Station for the purposes of transferring and Disposing of all Residue from  
638 the Processing of Recyclable Materials Collected in the City. Such decision by Contractor in no way  
639 constitutes a restraint of trade notwithstanding any Change in Law regarding flow control limitations or  
640 any definition thereof.

641 **ARTICLE 3.**  
642 **TERM OF AGREEMENT**  
643

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644 **3.1 EFFECTIVE DATE AND COMMENCEMENT DATE**

645 The Effective Date of this Agreement shall be the date the latter of the two Parties signs the Agreement.  
646

647 The Commencement Date shall be July 1, 2025 and shall be the date on which Contractor initiates  
648 provision of Collection, Transportation, Processing, and marketing of Recyclable Materials required by this  
649 Agreement.  
650

651 Between the Effective Date and Commencement Date, Contractor shall perform all activities necessary to  
652 prepare itself to start Collection, Transportation, Processing, and marketing of Recyclable Materials  
653 required by this Agreement on the Commencement Date. Such activities shall allow Contractor to  
654 implement services described in this Agreement starting on the Commencement Date.  
655

656 **3.2 CONDITIONS TO EFFECTIVENESS OF AGREEMENT**

657 The obligation of City to permit this Agreement to become effective and to perform its undertakings  
658 provided for in this Agreement is subject to the satisfaction of all the conditions below, each of which may  
659 be waived, in written form, in whole or in part by City.  
660

661 **A. Accuracy of Representations.** The representations and warranties made in Article 2 of this  
662 Agreement are true and correct on and as of the Effective Date.  
663

664 **B. Absence of Litigation.** There is no litigation pending on the Effective Date in any court challenging  
665 the award or execution of this Agreement or seeking to restrain or enjoin its performance.  
666

667 **C. Furnishings of Evidence of Insurance and Performance Assurance.** Contractor has furnished  
668 evidence of the insurance and performance assurance required by Article 12 that is satisfactory  
669 to the City.  
670

671 **D. Effectiveness of City Council Action.** The City Council shall have taken action approving this  
672 Agreement and all Parties shall have signed the Agreement pursuant to Applicable Law prior to or  
673 on the Effective Date, provided that no restraining order of any kind has been issued.  
674

675 **3.3 TERM**

676 The Term of this Agreement shall continue in full force from 12:01 a.m. on July 1, 2025 (Commencement  
677 Date), to midnight June 30, 2035, unless the Agreement is extended by City pursuant to Section 3.4 or  
678 terminated in accordance with Section 13.2.  
679

680 **3.4 OPTION TO EXTEND TERM**

681 At the City's sole discretion, the City shall have the option to extend this Agreement on one or more  
682 occasions provided that the combined extension period does not exceed five years or extend beyond June  
683 30, 2040. If the City extends the Agreement, it shall give written notice to Contractor one hundred eighty  
684 (180) calendar days prior to the initial expiration date or extended expiration date of this Agreement. The  
685 City's written notice shall specify the number of months by which it elects to extend the Term of this  
686 Agreement and the revised expiration date of the Agreement. At the end of the Term, the City may  
687 renegotiate the terms and conditions of the Agreement with the Contractor or select another means to  
688 procure or provide Collection services. The City has no obligation to renegotiate, renew or extend the  
689 rights granted to Contractor beyond the initial Term of the Agreement defined in Section 3.3.  
690

691 It is the City's intent to conduct a detailed review of the Contractor's performance and Contractor's cost  
692 of operations during Rate Year 27 (July 1, 2031 through June 30, 2032) to determine Contractor's  
693 Compensation and Maximum Rates for Rate Year 28 (July 1, 2032 through June 30, 2033) and to determine  
694 if the City is interested in extending the Agreement an additional period of time beyond the initial Term  
695 defined in Section 3.3. During this detailed review, the City would consider the capital requirements such

696 as replacement of Collection vehicles and Containers that may be necessary to continue service through  
697 the extension period.

698  
699

700

**ARTICLE 4.**  
**SCOPE OF AGREEMENT**

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**703 4.1 SCOPE OF AGREEMENT**

704 This Franchise granted to Contractor shall be exclusive with regards to Collection, Transporting, and  
705 Processing of Recyclable Materials generated in the City, except as described in Section 4.2 or except  
706 where otherwise precluded by Applicable Law.

707

708 The Contractor, or its Subcontractor(s), shall be responsible for the following services:

709

710 **A.** Collecting all Residential Recyclable Materials generated in the City and placed by Generator for  
711 Collection in Carts.

712

713 **B.** Collecting all Commercial and City Recyclable Materials generated in the City and placed by  
714 Generator for Collection in Carts.

715

716 **C.** Collecting used motor oil and used motor oil filters from Single-Family and Parcelized Multi-Family  
717 Customers, to the extent such materials are placed Curbside for Collection in Contractor-provided  
718 containers.

719

720 **D.** Collecting Batteries and cell phones from Single-Family and Parcelized Multi-Family Customers  
721 with, to the extent such materials are placed Curbside for Collection next to the Recyclable  
722 Materials Cart in either Contractor-provided or Customer-provided re-sealable clear plastic bags.

723

724 **E.** Transporting Recyclable Materials Collected in the City by Contractor to the Approved Recyclable  
725 Materials Processing Facility.

726

727 **F.** Processing and marketing Recyclable Materials Collected in the City by Contractor.

728

729 **G.** Providing public education to residents and businesses regarding Recyclable Materials Collection  
730 service in the City.

731

732 **H.** Collecting and Processing all E-Waste from two annual drop-off events and from Generator's  
733 delivery to the Approved Recyclable Materials Processing Facility.

734

735 In the provision of these services, Contractor shall be responsible for:

736

737 **A.** Furnishing all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and  
738 all other items and services necessary to perform its obligations under this Agreement.

739

740 **B.** Paying all expenses related to provision of services required by this Agreement including, but not  
741 limited to, taxes, regulatory fees, Pass-Through Costs, utilities, etc.

- 742  
743 **C.** Providing all services required by this Agreement in a thorough and professional manner so that  
744 residents, businesses, and the City are provided timely, reliable, courteous, and high-quality  
745 service at all times.  
746  
747 **D.** Perform all services in substantial accordance with the Contractor’s Proposal and in full  
748 accordance with this Agreement at all times using best industry practice for comparable  
749 operations. If the Contractor’s Proposal and Agreement conflict, the Agreement shall prevail.  
750  
751 **E.** Complying with Applicable Law.  
752  
753 **F.** Performing or providing all other services necessary to fulfill its obligations under this Agreement.  
754

755 The enumeration and specification of particular aspects of service, labor, or equipment requirements shall  
756 not relieve Contractor of the duty of accomplishing all other aspects necessary to fulfill its obligations  
757 under this Agreement whether such requirements are enumerated elsewhere in the Agreement or not,  
758 unless excused in accordance with Section 13.6.  
759

760 **4.2 LIMITATIONS TO SCOPE**

761 The materials listed below in this Section may be collected and transported by other Persons. Such  
762 Persons shall do so in accordance with the City’s Municipal Code.  
763

- 764 **A. Solid Waste, Recyclable Materials and Organic Materials Collected, Processed, Transferred and**  
765 **Disposed of under the City’s Franchise Agreement with the Solid Waste Contractor.**  
766  
767 **B. Solid Waste, Organic Materials, Construction and Demolition Debris Materials Hauled in Drop**  
768 **Boxes.**  
769  
770 **C. Recyclable Materials Hauled by Owner or Occupant, or its Contractor.** Recyclable Materials and  
771 Specialty Recyclable Materials that are removed from any Premises by the Owner or Occupant  
772 and are Transported to a Disposal Site or Processing Site by (i) the Owner or Occupant of such  
773 Premises, (ii) full-time employee of Owner or Occupant that uses the Owner’s or Occupant’s  
774 equipment to transport materials; or (iii) a contractor whose removal of the Recyclable Materials  
775 is incidental to the service being performed and such contractor removes materials at no  
776 additional or separate fee.  
777  
778 **D. Donated Materials.** Source Separated Recyclable Materials and Specialty Recyclable Materials  
779 Generated in the City that are donated by the Generator to youth, civic, charitable, or other  
780 nonprofit organizations.  
781  
782 **E. Containers Recycled.** Containers delivered for Recycling under the California Beverage Container  
783 Recycling Litter Reduction Act, Section 14500, et. seq. California Public Resources Code as may be  
784 amended from time to time.  
785  
786 **F. Commodities Hauled in Bin or Drop Boxes from Multi-Family and Commercial Premises.** Source  
787 Separated Recyclable Materials and Specialty Recyclable Materials generated by Multi-Family or

788 Commercial Premises, including City facilities, that are placed by Generator in a Bin or Drop Box,  
789 and hauled by a City-permitted contractor.

790  
791 **G. Commodities Collected in Bins or Drop Boxes.** Source Separated Recyclable Materials and  
792 Specialty Recyclable Materials generated by Multi-Family or Commercial Premises, which (1) are  
793 placed in Bins or Drop Boxes and (2) are Collected and compensated by a Person (or company)  
794 through a private arrangement with the Generator.

795  
796 **H. Recyclable Materials Generated by Public Schools.** Recyclable Materials generated by public  
797 schools located in the City.

798  
799 **I. Recyclable or Reusable Materials Collected by Third Parties.** Recyclable or Reusable Materials  
800 generated by Customers and set out for collection by a third party. The City and Contractor shall  
801 meet and confer in good faith regarding the potential collection by a third party of recyclable  
802 materials not currently targeted for collection by Contractor. Contractor shall have the right of  
803 first refusal regarding materials considered for collection by third parties if it is determined by the  
804 City that expanding Contractor's scope of materials targeted for collection provides a value-added  
805 service to residents, and if Contractor exercises said right of first refusal, Contractor shall not be  
806 provided additional compensation for the inclusion of such materials in the list of acceptable  
807 Recyclable Materials collected by Contractor, and Contractor shall be obligated to continue  
808 collecting said Recyclable Materials during the Term.

809  
810 Contractor acknowledges and agrees that the City may permit other Persons besides the Contractor to  
811 Collect any and all types of materials excluded from the scope of this Franchise, as set forth above, without  
812 seeking or obtaining approval of Contractor. If Contractor can produce evidence that other Persons are  
813 servicing Containers or are Collecting and Transporting Recyclable Materials in a manner that is not  
814 consistent with the City's Municipal Code, it shall report the location and the name of the Person or  
815 company to the City along with Contractor's evidence of the violation of the exclusiveness of this  
816 Franchise.

817  
818 This Agreement and scope of this Franchise shall be interpreted to be consistent with Applicable Law, now  
819 and during the Term of the Agreement. If future judicial interpretations of current law or new laws,  
820 regulations, or judicial interpretations limit the ability of the City to lawfully provide for the scope of  
821 services as specifically set forth herein, Contractor agrees that the scope of the Agreement will be limited  
822 to those services and materials which may be lawfully provided and that the City shall not be responsible  
823 for any lost profits or losses claimed by Contractor to arise out of limitations of the scope of the Agreement  
824 set forth herein. In such an event, it shall be the responsibility of Contractor to minimize the financial  
825 impact of such future judicial interpretations or new laws.

826  
827 **J. Materials Generated or Accumulated During an Emergency or Disaster.** During a declared State  
828 or Federal emergency or disaster, City may enlist additional contractors or other entities in the  
829 Collection, transportation, and/or Disposal of any and all types of materials that are generated or  
830 accumulated. In particular, the City may choose to pursue reimbursement of disaster services  
831 through the Federal Emergency Management Agency (FEMA), which would require that the  
832 associated disaster services be secured via a competitive bidding process. Contractor shall not be  
833 prohibited by any part of this Agreement from participating in this competitive bidding process,  
834 but City shall be free to put services associated with declared disasters out to bid in accordance  
835 with FEMA requirements and enlist additional contractors based on the results of that process.

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**4.3 SUBCONTRACTING**

Contractor has the right, but not the obligation, to subcontract all or part of its Collection, Transportation, Processing, or marketing of Recyclable Materials or E-Waste to one or more Subcontractors; however, Contractor shall not engage any Subcontractors without the prior written consent of the City. As of the Effective Date of this Agreement, the City has not approved Contractor’s use of any Subcontractors.

**4.4 OWNERSHIP OF MATERIALS**

Once Recyclable Materials are placed in Containers and at the Collection location, ownership and the right to possession of such materials shall transfer directly from the Generator to Contractor. Once Recyclable Materials are deposited by Contractor at a Processing Site, such materials shall become the property of the owner or operator of the facility.

**4.5 CITY-DIRECTED CHANGES TO SCOPE**

**A. Types of Changes.** City may, by written notice, direct Contractor to perform additional services or modify existing services. For example, and without limitation, the City may request the following:

1. Collection of Recyclable Materials from public Recyclable Materials Containers placed in the public right-of-way;
2. Collection of certain materials as Recyclable Materials, which were originally Solid Waste, but during the Term can, in the reasonable opinion of the City, be economically Recycled;
3. Inclusion of new Diversion programs;
4. Expansion of public education activities;
5. Elimination of programs or materials to be Collected;
6. Modification of the manner in which Contractor performs existing services;
7. Performance of pilot programs;
8. Implementation of innovative services, which may entail new Collection methods, targeted routing, different kinds of services, different types of Collection vehicles, and/or new requirements for Generators;
9. Capital equipment modifications and additions related to an extension of the initial Term of the Agreement as defined in Section 3.3; and,
10. Implementation of one or more programs to support the waste reduction goals of City’s Climate Action Plan.

**B. Procedure for Making Changes in Scope.** Contractor shall present, within 30 calendar days of the City’s written request, a written proposal to provide additional or expanded services. Contractor shall not be compensated for the proposal preparation costs or costs incurred during the negotiation of its proposal for the change in scope of such services. At a minimum, the proposal shall contain a complete description of the following:

1. Collection methodology to be employed (equipment, manpower, etc.).
2. Equipment to be utilized (vehicle number, types, capacity, age, etc.).

- 882 3. Labor requirements (number of employees by classification).  
883  
884 4. Type of materials to be collected or Containers to be utilized.  
885  
886 5. Provision for program publicity/education/marketing.  
887  
888 6. Five-year projection of the financial results of the program's operations in a balance sheet  
889 and operating statement format including documentation of the key assumptions underlying  
890 the projections and the support for those assumptions, giving full effect to the savings or  
891 costs to existing services.  
892  
893 7. Plans for implementing the service change.

894  
895 The City shall review the Contractor's proposal for the change in scope of services. If the  
896 Contractor's proposal is desirable to the City, the City may negotiate with the Contractor to amend  
897 the Agreement to reflect the change in scope. If the City chooses not to negotiate with the  
898 Contractor, then the City waives its right to permit Persons other than the Contractor to provide  
899 the additional services.

900  
901 Contractor acknowledges and agrees that City may permit other Persons besides Contractor to  
902 provide additional Recyclable Materials Collection and Diversion services not otherwise  
903 contemplated if Contractor and City cannot agree on Terms and conditions of such services in 120  
904 calendar days from the date when City first requests a proposal from Contractor to perform such  
905 services.

906  
907 If the Contractor and City do not reach an agreement on the change in scope, the Contractor shall  
908 forfeit its exclusive right to Collect such material from Generators or provide the services under  
909 consideration and the City may solicit proposals from one or more other parties for such service  
910 and Contractor shall be invited to submit a proposal during the process.

911  
912 **C. Adjustment to Contractor's Compensation.** If the City directs a change in scope or Approved  
913 Recyclable Materials Processing Facility, Contractor shall be entitled to an adjustment in its  
914 compensation in accordance with Section 11.7. Contractor shall not be compensated for the  
915 proposal preparation costs or costs incurred during the negotiation of its proposal for the change  
916 in scope of such services.

917  
918 **D. Implementation of New Services.** The Contractor's implementation of the new services or  
919 change in Processing Site shall occur in a timely, smooth, and seamless manner such that  
920 Customers and/or Generators do not experience disruption in Collection services. Contractor shall  
921 be responsible for managing implementation of new Collection services or change in the  
922 Approved Recyclable Materials Processing Facility and other related services and shall do so in  
923 accordance with an approved implementation plan.

924  
925 **E. Monitoring and Evaluation of Changes in Scope.** If the City requests, the Contractor shall meet  
926 with the City to describe the progress of each new service. If applicable, Contractor shall  
927 document the results of the new programs on a monthly basis, including at a minimum the  
928 Tonnage Diverted by material type, the end use or processor of the Diverted materials and the

929 cost per Ton for Transporting and Processing each type of material and other such information  
930 requested by the Contractor and/or City necessary to evaluate the performance of each program.

931  
932 At each meeting, the City and Contractor shall have the opportunity to revise the program based  
933 on mutually agreed upon terms in accordance with provisions of this Section. The City shall have  
934 the right to terminate a program if, in its sole discretion, the Contractor is not cost effectively  
935 achieving the program's goals and objectives and, should such an event occur, the City shall  
936 compensate the Contractor for its costs (including any stranded capital and shut down costs).  
937 Before such termination, the City shall meet and confer with the Contractor for a period not to  
938 exceed 90 calendar days to resolve the City's concerns. Thereafter, the City may utilize a third  
939 party to perform these services if the City reasonably believes the third party can improve on  
940 Contractor's performance and/or cost. Notwithstanding these changes, Contractor shall continue  
941 the program during the meet and confer period and, thereafter, until the third party takes over  
942 the program.  
943

944 **4.6 CITY'S RIGHT TO PERFORM SERVICES AND POSSESS EQUIPMENT**

945  
946 **4.6.1 General**

947 The City, in its sole discretion, may determine a period of emergency if both of the following conditions  
948 occur: (i) Contractor, for any reason whatsoever, fails, refuses, or is unable to perform its Collection,  
949 Transportation, Processing, and marketing obligations, at the time and in the manner provided in this  
950 Agreement, for a period of more than 48 hours, and (ii) the City finds that such failure, refusal, or inability  
951 endangers or menaces the public health, safety, or welfare. If the City determines a period of emergency,  
952 then the City shall have the right during the period of such emergency to (i) perform, or cause to be  
953 performed, such services with its own or other personnel without liability to Contractor; and/or (ii) take  
954 possession of and use any or all of Contractor's land, equipment, and other property used or useful in  
955 providing the Collection, Transportation, Processing, and marketing services under this Agreement. The  
956 right to take possession shall not include the right to take possession of the Approved Recyclable Materials  
957 Processing Facility. If the City chooses to exercise such rights, the City shall provide written notice to the  
958 Contractor twenty-four (24) hours prior to its plans to exercise its rights. The City agrees that it assumes  
959 complete responsibility for the proper and normal use of such equipment and facilities while in its  
960 possession and that it shall attempt to avoid interrupting the Contractor's services to other parties.

961  
962 The City shall provide oral notice (by telephone or in Person) to Contractor of the Contractor's failure,  
963 refusal, or inability to perform its Collection obligations and of the City's intent to perform Collection  
964 services and/or possess Contractor's equipment. The City shall send written confirmation of such oral  
965 notification to Contractor, by certified mail, within twenty-four (24) hours of the oral notification, unless  
966 the 24-hour deadline ends on a Sunday, City holiday, or U.S. Postal Service holiday, then confirmation of  
967 such notice shall be sent on the day following such day.

968  
969 Contractor agrees that in such event:

- 970  
971 **A.** It will take direction from the City to effect the transfer of possession of property to the City for  
972 City's use.  
973

974 **B.** It will, if City so requests, keep in good repair and condition all of such property, provide all motor  
975 vehicles with fuel, oil and other service, and provide such other service as may be necessary to  
976 maintain said property in satisfactory operational condition.

977  
978 **C.** Subject to provisions of any labor agreements then in effect, Contractor shall provide the services  
979 of all or any personnel necessary or useful for the Collection, Transportation, Processing, and  
980 marketing operations including, if City so desires, employees then employed by Contractor.  
981 Contractor further agrees, if City so requests, to furnish City the services of any or all management  
982 or office personnel employed by Contractor whose services are necessary or useful for Collection,  
983 Transportation, Processing, and marketing operations.

984  
985 If the interruption or discontinuance of service is caused by any of the reasons listed in Section 13.7, the  
986 City shall pay to Contractor one hundred and thirty-four dollars (\$134) per day (or more should the  
987 Contractor demonstrate that a higher per day cost for the vehicles is being incurred by the Contractor) for  
988 use of each Collection vehicle and the reasonable rental value of other equipment and facilities,  
989 possession of which is taken by the City, for the period of the City's possession, if any, which extends  
990 beyond the period of time for which Contractor has rendered bills to Customers in advance of service.

991  
992 Except as otherwise expressly provided in the previous paragraph, the City's exercise of its rights under  
993 this Article: (i) does not constitute a taking of private property for which compensation must be paid; (ii)  
994 will not create any liability on the part of City to Contractor; and (iii) does not exempt Contractor from the  
995 indemnity provisions of Article 12, which are meant to extend to circumstances arising under this Section,  
996 provided that Contractor is not required to indemnify City against claims and damages arising from the  
997 sole negligence of City officers, employees, and agents in the operation of Collection vehicles during the  
998 time the City has taken possession of such vehicles.

999  
1000 **4.6.2 Duration of City's Possession**

1001 City has no obligation to maintain possession of Contractor's property and/or continue its use in  
1002 Collection, Transportation, Processing, and marketing operations for any period of time and may, at any  
1003 time, in its sole discretion, relinquish possession to the Contractor.

1004  
1005 The City's right to retain temporary possession of Contractor's property, and to provide Collection  
1006 services, shall continue until Contractor can demonstrate to the City's satisfaction that it is ready, willing  
1007 and able to resume such services or for 180 calendar days, whichever occurs first.

1008  
1009 **4.7 TRANSITION TO NEXT CONTRACTOR AT END OF AGREEMENT**

1010 If applicable, before expiration or earlier termination of this Agreement, Contractor will take direction  
1011 from the City and subsequent Contractor to assist in a timely and orderly transition of services from  
1012 Contractor to subsequent contractor. In response to the City's direction, Contractor shall provide route  
1013 lists (which identify each Customer on the route, its service level and scheduled Collection day, and any  
1014 special Collection notes) and detailed Customer account and Billing information. Contractor may, but  
1015 shall not be obliged to, sell Collection vehicles, equipment, or facilities to the next contractor.

1016  
1017 **4.8 CITY FREE TO NEGOTIATE WITH THIRD PARTIES**

1018 The City may investigate all options for Collection, Transportation, Processing, and marketing services that  
1019 will be scheduled to commence after the expiration of the Term or earlier termination of this Agreement.

1020 Without limiting the generality of the foregoing, the City may solicit proposals from Contractor and from  
1021 third parties for the provision of Collection, Transportation, Processing, or marketing of Recyclable  
1022 Materials, and any combination thereof. The City may negotiate and execute agreements for such  
1023 services that will take effect upon the expiration or earlier termination of this Agreement.  
1024  
1025

1026 **ARTICLE 5.**  
1027 **COLLECTION SERVICES**  
1028

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1029 **5.1 RECYCLABLE MATERIALS COLLECTION**

1030  
1031 **5.1.1 General**

1032 Contractor shall Collect Recyclable Materials Generated at Residential and Commercial Premises that are  
1033 commingled in the Customer’s Recyclable Materials Collection Cart, provided that the Customer has  
1034 Source Separated the Recyclable Materials from Solid Waste and Organic Materials and the Recyclable  
1035 Materials is not bagged in plastic bags.  
1036

1037 In accordance with Section 4.5, the City may request Contractor to modify its scope of service to include  
1038 Collection of additional types of Recyclable Materials beyond those materials defined in Article 1. If the  
1039 City requests Collection of additional Recyclable Materials, the Contractor shall not receive additional  
1040 compensation for Collection service if the Recyclable Materials are placed by Generator in the Recyclable  
1041 Materials Cart unless Contractor can demonstrate that Collection of the additional material(s) requires  
1042 modifications to Collection routes to accommodate the additional volume of the material(s). An  
1043 adjustment to Contractor’s Compensation may be made for changes in Processing costs in accordance  
1044 with Section 4.5.  
1045

1046 **5.1.2 Single-Family Premises**

1047 Contractor shall Collect commingled Recyclable Materials from Single-Family Premises once per week.  
1048 Contractor shall provide each Customer with one (1) Cart for Recyclable Materials.  
1049

1050 Contractor shall provide new Carts to all Single-Family Premises as described in Section 5.1.6.  
1051

1052 **5.1.3 Parcelized Multi-Family Premises**

1053 Contractor shall provide commingled Recyclable Materials Collection service to Parcelized Multi-Family  
1054 Premises that subscribe to Recyclable Materials Cart Collection service, in the same manner described in  
1055 Section 5.1.2 for Single-Family Premises.  
1056

1057 Contractor shall provide new Carts to all Parcelized Multi-Family Premises as described in Section 5.1.6.  
1058

1059 **5.1.4 Non-Parcelized Multi-Family Premises**

1060 Contractor shall Collect commingled Recyclable Materials from Non-Parcelized Multi-Family Premises that  
1061 subscribe to Recyclable Materials Cart Collection service, up to five days per week, but not less than once  
1062 per week. Contractor shall allow Non-Parcelized Multi-Family Premises to use one or more 64-gallon or  
1063 96-gallon Carts for Recyclable Materials Collection that are shared by the Occupants of the Premises or  
1064 “submarine-style” Drop Boxes for those Non-Parcelized Multi-Family Premises that had such Drop Boxes  
1065 on the Commencement Date. Contractor shall work with the Customer to place Recyclable Materials

1066 Carts adjacent to the Customer’s Solid Waste Containers. The frequency of service may depend on  
1067 whether space constraints limit the number of Carts that can be provided at the Non-Parcelized Multi-  
1068 Family Premises. Should the Customer require service more than three days per week, then Contractor  
1069 shall meet and confer with the City to discuss the Collection of Recyclable Materials from such Customer.  
1070

1071 Contractor shall provide new Carts to all Parcelized Multi-Family Premises as described in Section 5.1.6.  
1072

1073 Contractor shall Collect Recyclable Materials at the designated location agreed upon by Contractor and  
1074 Customer.  
1075

1076 **5.1.5 Commercial Premises**

1077 Contractor shall Collect Recyclable Materials from Commercial Premises subscribing to 64-gallon or 96-  
1078 gallon Recyclable Materials Cart service as frequently as scheduled by Customer, but not less than once  
1079 per week. If Customer requests Recyclable Materials Collection services more frequently than once per  
1080 week or use of multiple Carts, Contractor shall provide requested service at City-approved Rates.  
1081

1082 Contractor shall allow Commercial Customers to select a Collection service method that best suits the  
1083 needs of its Premises. Specifically, the Contractor shall offer the following choices to Commercial  
1084 Customers:  
1085

1086 **A. Cart service.** Contractor shall allow Commercial Customers to use Cart(s) for Recyclable Materials  
1087 Collection. Contractor shall provide each Customer with a choice of one or more Carts with  
1088 capacities of 64 or 96 gallons each.  
1089

1090 **B. Deployment of new Carts.** Contractor shall provide new Carts to all Commercial Premises as  
1091 described in Section 5.1.6.  
1092

1093 **C. Centralized Cart service.** Contractor shall allow for Commercial Customers to use Cart(s) for  
1094 Recyclable Materials Collection that are shared by the Occupants of two or more Commercial  
1095 Premises. In such case, Contractor shall provide one or more Carts to such Premises as requested  
1096 by Customer(s) provided that a minimum of 96 gallons of Container capacity for Recyclable  
1097 Materials is provided for every four (4) Commercial Premises.  
1098

1099 **5.1.6 Deployment of New Carts**

1100 Contractor shall provide each Customer a new blue sixty-four (64) gallon Cart for the Collection of  
1101 Recyclable Materials and shall provide Customer with a new blue twenty (20) gallon, thirty-five (35) gallon  
1102 or ninety-six (96) gallon (rather than a sixty-four (64) gallon) Cart upon Customer request.  
1103  
1104

1105 New Recycle Carts shall be provided to all Single-Family, Parcelized Multi-Family, Non-Parcelized Multi-  
1106 Family and Commercial Premises during Rate Year 21. Contractor shall deploy the replacement of Recycle  
1107 Carts during the spring of 2025, and Contractor shall schedule said deployment of new Carts for February  
1108 and March 2025. The new Carts shall be delivered to all Single-Family, Parcelized Multi-Family, Non-  
1109 Parcelized Multi-Family and Commercial Premises in no longer than a four (4) consecutive week duration.  
1110 The new Cart deployment shall coincide with the deployment of new Carts provided by the Solid Waste  
1111 Contractor to each Premise. Contractor shall ensure that its new Cart deployment to each Customer is  
1112 exactly aligned to the new Cart deployment by Solid Waste Contractor.

1113  
1114 Contractor's Carts currently in service at Premises shall be removed from all Single-Family, Parcelized  
1115 Multi-Family, Non-Parcelized Multi-Family and Commercial Premises when the new Carts are delivered.  
1116

1117 Contractor shall provide Recycling Materials Collection service from Carts placed Curbside by Occupant's  
1118 unless the Occupant is physically unable to place the Cart at the Curb as demonstrated by Occupant  
1119 producing a valid handicap placard or letter from their doctor stating the Occupant is physically unable to  
1120 place the Cart at the Curb. Contractor shall Collect Carts from an alternative service location (such as the  
1121 porch, sideyard, or backyard) that is agreed to by Contractor and Occupant who is physically unable to  
1122 place the Cart at the Curb.  
1123

1124 **5.2 USED MOTOR OIL, USED OIL FILTER, BATTERY AND CELL PHONE CURBSIDE COLLECTION**

1125  
1126 **A. Used Motor Oil and Oil Filters.** On a weekly basis, Contractor shall Collect from Single-Family and  
1127 Parcelized Multi-Family Customers used motor oil and used motor oil filters placed Curbside for  
1128 Collection in Contractor-provided containers. Contractor shall not be required to Collect more  
1129 than one gallon of used motor oil per individual dwelling unit per week.  
1130

1131 Contractor shall provide one-gallon translucent plastic containers with screw on tops for used  
1132 motor oil Collection and 6-mil plastic Ziploc-type bags for used oil filter Collection to Single-Family  
1133 and Parcelized Multi-Family Customers upon the Customer's request within five Business Days of  
1134 such request, at no additional cost to the Customer.  
1135

1136 **B. Batteries and Cell Phones.** On a weekly basis, Contractor shall Collect from Single-Family and  
1137 Parcelized Multi-Family Customers Batteries and cellular telephones ("cell phones") deposited in  
1138 Contractor-provided or Customer-provided re-sealable clear plastic bags and placed Curbside  
1139 next to the Recyclable Materials Cart. Contractor shall provide instructions to Customers  
1140 describing how to prepare lithium coin-type and other Batteries to prevent fires, including, but  
1141 not limited to, taping both sides and any other measures.  
1142

1143 **5.3 COLLECTION FROM CITY FACILITIES**

1144  
1145 Contractor shall Collect Recyclable Materials from City locations where the City chooses Recyclable  
1146 Materials Cart Collection service, at the service levels identified in Exhibit B. Collection from City Facilities  
1147 shall occur at least once per week or more frequently as requested by the City. Contractor shall provide  
1148 and maintain Collection Carts for the City's use.  
1149

1150 Contractor may integrate Recyclable Materials from City facilities with other Collection services, provided  
1151 that Contractor attributes Tonnage Collected from City facilities separately from other Customers.  
1152

1153 Contractor shall provide the services required by this Section at no charge to the City, but the cost of  
1154 providing the services shall be an allowable expense under Article 11.  
1155

1156 **5.4 DROP-OFF PROGRAMS FOR E-WASTE**

1157 **A.** Contractor shall Collect and Process E-Waste from Residential Customers by: 1) operating two (2)  
1158 one (1) day E-Waste drop-off events; and, 2) accepting E-Waste at Contractor’s Facility as further  
1159 set forth below.

1160  
1161 **1. Drop-Off Events.**

1162  
1163 Contractor shall be responsible for promoting, managing, staffing, and operating two (2)  
1164 one (1) day drop-off events to accept E-Waste from Residential Customers. The date of  
1165 the E-Waste events and all advertisements or public announcements related to such  
1166 event shall be approved by the City. The Contractor shall identify and provide a City-  
1167 approved location for such event. At such events, the Contractor shall accept E-Waste  
1168 delivered by Residential Customers during a six (6) hour period. Contractor shall provide  
1169 personnel that will assist with directing traffic; verifying Persons delivering E-Waste are  
1170 City residents; documenting the number of Persons delivering materials; and directing  
1171 Persons where to unload materials. In addition, Contractor shall be responsible for  
1172 managing the E-Waste event; supervising and directing event personnel; inspecting  
1173 materials delivered to the event; separating and packaging E-Waste; documenting each  
1174 material type and quantity of such; Transporting E-Waste to reuse, Recycling, and/or  
1175 Processing locations; and cleaning-up the location of drop-off event at the end of the  
1176 event.

1177  
1178 Contractor shall promote each E-Waste event by preparing a newsletter article and direct  
1179 mail announcement to be mailed out to Customers and by advertising in a minimum of  
1180 one local newspaper.

1181  
1182 **2. Acceptance of E-Waste at Contractor’s Facility.** Contractor shall accept E-Waste  
1183 delivered by Residential Customers to the Contractor’s Facility during operating hours.

1184  
1185 **B.** For all E-Waste accepted, Contractor shall arrange and pay for (a) the marketing and sale of E-  
1186 Waste to the extent the material is recyclable or reusable; and/or (b) the management of toxic or  
1187 Hazardous Substances in accordance with applicable law; and/or (c) the proper Disposal of non-  
1188 recyclable or non-reusable materials.

1189  
1190 **C.** Contractor’s acceptance and Processing of E-Waste pursuant to this Section 5.4 shall be at no cost  
1191 to the City and not included in Contractor’s Compensation.

1192  
1193 **D.** Regulatory Compliance. The Contractor and all Subcontractors shall be in good standing with the  
1194 regulatory community. The Contractor and all proposed Subcontractors, as well as companies  
1195 responsible for dismantling, sale, reuse, and Recycling of materials, shall be in regulatory  
1196 compliance as follows:

- 1197  
1198 1. The Contractor shall obtain all appropriate federal, State, and local licenses; relevant permits;  
1199 and registrations.  
1200 2. The Contractor shall provide the City with all notices of violations, administrative orders, or  
1201 other enforcement actions taken by regulatory agencies during the life of the contract.  
1202 3. The Contractor shall verify that closure plans and financial assurance plans are in place.

1203 4. The Contractor shall ensure that required environmental planning documents are available,  
1204 including the hazardous materials management plan, hazard communications plan, right-to-  
1205 know training program, and worker safety program.  
1206

1207 **ARTICLE 6.**  
1208 **PROCESSING AND MARKETING**  
1209

---

1210 **6.1 PROCESSING**

1211  
1212 **A. General.** Contractor agrees to Transport and deliver all commingled Recyclable Materials it  
1213 Collects in the City to the Approved Recyclable Materials Processing Facility. Residue derived from  
1214 processing the Recyclable Materials shall be Disposed of by Contractor at the Designated Transfer  
1215 Station.  
1216

1217 Below is information about the Approved Recyclable Materials Processing Facility selected by the  
1218 Contractor:

1219  
1220 Facility Name: Tri-CED Community Recycling Center  
1221 Owner: Tri-City Community Economic Development Corporation  
1222 Operator: Tri-CED Community Economic Development Corporation  
1223 Address: 33377 Western Avenue, Union City, CA  
1224 Contact Person and telephone number: Mr. Jason Toro, 510-471-3850  
1225

1226 **B. Guarantee Capacity.** Contractor shall secure sufficient capacity to Process Recyclable Materials  
1227 Collected under this Agreement. Contractor shall provide the City, upon request, with  
1228 documentation demonstrating availability of such capacity.  
1229

1230 **C. Regulatory Compliance.** Contractor shall keep all existing permits and approvals necessary for  
1231 use of the Approved Recyclable Materials Processing Facility in full regulatory compliance.  
1232 Contractor shall, upon request, provide copies of notices of violation or permits to the City Upon  
1233 request, Contractor shall provide copies of all regulatory compliance inspection reports to the City  
1234 within two (2) business days after receiving said reports.  
1235

1236 **D. Change in Processing Facility Location.** If Contractor elects to use a Recyclable Materials  
1237 Processing Facility that is different than the Approved Recyclable Materials Processing Facility, it  
1238 shall request written approval from the City 60 days prior to use of the site and obtain the City's  
1239 written approval no later than 10 days prior to use of the site. Contractor shall not be  
1240 compensated for paying any increased Transportation and Processing costs associated with the  
1241 use of a Processing facility different from the Approved Recyclable Materials Processing Facility.  
1242

1243 If Contractor is unable to use the Approved Recyclable Materials Processing Facility due to an  
1244 emergency or sudden unforeseen closure of the Approved Recyclable Materials Processing  
1245 Facility, Contractor may use an alternative Processing facility provided that the Contractor  
1246 provides verbal and written notice to the City within 24 hours of use of an alternative Processing  
1247 site. The written notice shall include a description of the reasons the Approved Recyclable  
1248 Materials Processing Facility is not feasible and the period of time Contractor proposes to use the

1249 alternative Processing facility. Contractor shall receive the City’s written approval to use the  
1250 alternative Processing facility within 24 hours of the City’s receipt of the Contractor’s written  
1251 notice. Contractor shall not be compensated for paying any increased Transportation and  
1252 Processing costs associated with the use of Processing facilities different from the Approved  
1253 Recyclable Materials Processing Facility.  
1254

1255 **E. Residue Level.** Contractor shall use commercially reasonable efforts to achieve a Residue Level  
1256 of less than twenty-five percent (25.0%) by weight for Source Separated Recyclable Materials  
1257 Collected in the City and processed by Contractor. Contractor shall determine the Residue Level  
1258 resulting from the Processing of Recyclable Materials at the Approved Recyclable Materials  
1259 Processing Facility monthly and report this information to the City. Exhibit I describes the protocol  
1260 for Residue management including a Residue calculation process, reporting requirements related  
1261 to the Residue management, and Acceptable Residue Level performance consequences if the  
1262 Acceptable Residue Level is not achieved as prescribed in Exhibit I commencing for Rate Year 22  
1263 beginning on July 1, 2026.  
1264

1265 **F. Contamination Level.** Contractor shall use commercially reasonable efforts to achieve a  
1266 Contamination Level of less than ten percent (10.0%) by weight for Source Separated Recyclable  
1267 Materials Collected in the City. Contractor shall determine the Contamination Level present in  
1268 Recyclable Materials at the Approved Recyclable Materials Processing Facility. Exhibit I describes  
1269 the protocol for Contamination management including a Contamination characterization process,  
1270 reporting requirements related to the Contamination testing, and corrective actions and  
1271 consequences if the Contamination Level is equal to ten percent (10.0%) or more.  
1272

1273 **G. Disposal of Recyclable Materials and E-Waste Prohibited.** Recyclable Materials and E-Waste may  
1274 not be Disposed of in lieu of Recycling the material, without the express written approval of the  
1275 City. If for reasons beyond its reasonable control, Contractor believes that it cannot Divert the  
1276 Recyclable Materials or E-Waste from Disposal, then it shall prepare a written request for approval  
1277 to Dispose of such material. Such request shall contain the basis for its belief (including but not  
1278 limited to supporting documentation), describe the Contractor’s efforts to arrange for the  
1279 Diversion from Disposal of such material, the period required for such Disposal, the incremental  
1280 net cost increases or net cost savings (giving account to the value from the sale of the Recyclable  
1281 Materials or E-Waste) resulting from such Disposal, and any additional information supporting the  
1282 Contractor’s request. The City shall consider the Contractor’s request and inform Contractor in  
1283 writing of its decision within two (2) calendar days.  
1284

1285 **6.2 MARKETING**

1286  
1287 **A. General.** The Contractor shall be responsible for marketing Recyclable Materials Collected in the  
1288 City. Contractor shall be compensated for such Recyclable Materials at not less than fair market  
1289 value. Contractor shall retain all revenues generated from the sale of Recyclable Materials.  
1290

1291 **B. Marketing Plan.** Contractor shall prepare and maintain a City-approved marketing plan for all  
1292 Recyclable Materials Collected in the City. The plan shall be in place on or before the  
1293 Commencement Date of this Agreement. The marketing plan shall fully describe the Contractor’s  
1294 marketing methods and approach, targeted primary and contingent markets, pricing policy and

1295 assumed salvage value for each Collected type of Recyclable Material products, and contingency  
1296 plans if market conditions are severe.

1297  
1298 **C. Assurance of Recycling.** Contractor shall provide proof to the City that all Recyclable Materials  
1299 Collected are marketed for Recycling or reuse in such a manner that materials shall be considered  
1300 as Diverted in accordance with the State regulations established by the Act. All Residue from the  
1301 Processing activities that is not marketed for use shall be accounted for as Disposal Tonnage at a  
1302 permitted Disposal Site. No Recyclable Materials shall be transported to a domestic or foreign  
1303 location if Solid Waste Disposal of such material is its intended use.

1304  
1305 **D. Brokers and Buyers.** Contractor shall provide City with a list of broker/buyers it uses each quarter  
1306 as required in Section 9.4.A. City may audit one broker or buyer per month to confirm that  
1307 materials are being Recycled. If Contractor becomes aware that a broker or buyer has illegally  
1308 handled or Disposed of material generated in the City or elsewhere, Contractor shall immediately  
1309 inform the City and terminate its contract or working relationship with such party immediately.

1310  
1311  
1312

## ARTICLE 7. OTHER SERVICES

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1313  
1314  
1315

### 1316 **7.1 PUBLIC EDUCATION**

1317  
1318 **A. General.** Contractor understands and recognizes the importance of effective public education  
1319 and promotion as the key to helping Residents and businesses understand more about source  
1320 reduction, reuse, Recycling, and Composting. Throughout the Term of the Agreement,  
1321 Contractor’s public education and technical assistance program shall include, at a minimum, the  
1322 specific requirements described in this Section and Exhibit E.

1323  
1324 Contractor’s public education program shall also include performing education, outreach,  
1325 monitoring, noticing, and reporting of all Contractor’s Customers for Commercial and Multi-  
1326 Family properties as required by AB 32, AB 939, AB 341, AB 1826, and AB 1594, the Alameda  
1327 County Waste Management Authority Mandatory Recycling Ordinance 2012-01 (Phases 1 and 2),  
1328 and Alameda County Waste Management Authority Adequate Commercial Recycling standards  
1329 (provided in Exhibit I).

1330  
1331 **B. Staffing and Training.** To best achieve the highest possible level of public education and  
1332 awareness, Contractor shall retain on its staff one (1) full-time Recycling Outreach Coordinator  
1333 who shall dedicate forty (40) hours per week, fifty (50) weeks per year exclusively to the  
1334 coordination and implementation of public education and outreach activities provided under this  
1335 Agreement.

1336  
1337 Duties of Contractor’s Recycling Outreach Coordinator shall include, but are not limited to,  
1338 business site visits, waste audits, technical assistance, presentations to civic groups, school  
1339 assemblies, visits with homeowners associations, and visits to Parcelized and Non-Parcelized  
1340 Multi-Family complexes and other tasks required to promote and explain Recycling, Organics, and

1341 other programs offered by the Contractor and the City's Solid Waste Contractor such as Organics  
1342 collection service. The Recycling Outreach Coordinator shall remain receptive to any additions,  
1343 modifications or enhancements to the activities and obligations described in this Section and in  
1344 Exhibit E that City staff believes would further progress in promoting Recycling education and  
1345 diversion of materials from landfill disposal.

1346  
1347 The Contractor shall train employees in various classifications to perform the responsibilities for  
1348 delivering public education. The training program shall include, but not be limited to, the activities  
1349 described Exhibit E.

1350  
1351 **C. Annual Public Education Plan.** As part of Contractor's third quarterly report, the Contractor shall  
1352 prepare, submit and implement an annual public education plan for the upcoming calendar year  
1353 that is consistent with the specific requirements described in this Article and Exhibit E. The plan  
1354 shall outline the Contractor's public education efforts for the coming year. The City shall review,  
1355 discuss, modify if necessary and approve the plan in a timely manner.

1356  
1357 The plan shall include a list of Residential and Commercial outreach goals (site visits, audits,  
1358 trainings, presentations, etc.) designed to increase Diversion and Customer participation in the  
1359 Contractor's programs and services.

1360  
1361 In addition, the plan shall list each public education piece (e.g., newsletters, brochures, news  
1362 releases, banners, flyers, advertisements, etc.) to be prepared, the purpose of the piece, the key  
1363 subject(s) to be covered and the anticipated date of issuance.

1364  
1365 The plan shall also list all community events the Contractor plans to attend and the public  
1366 education it intends to provide at such event (e.g., exhibit at Earth Day event, presentation at  
1367 Chamber of Commerce meeting, etc.).

1368  
1369 **D. Educational Media Requirements.** Contractor shall be responsible for designing, printing, and  
1370 distributing educational media, upon request of the City, and such material may include  
1371 brochures, newsletters, targeted direct mailings, door hangers, signage, notification tags, posters,  
1372 stickers, advertisements, and stickers.

1373  
1374 Prior to preparing public education materials, Contractor shall discuss with the City its general  
1375 approach to preparing the materials and shall determine if the City has any City-specific guidelines  
1376 to be followed and if the City wants the Contractor to work with templates prepared by  
1377 StopWaste (also known as the Alameda County Waste Management Authority and the Alameda  
1378 County Source Reduction and Recycling Board) and others. Materials shall be printed on paper  
1379 containing the highest levels of recycled-content material reasonably practical with a minimum  
1380 requirement of 30% post-consumer content based on Federal standards. Contractor shall provide  
1381 Customers the option of requesting paperless communications with the Contractor including  
1382 electronic delivery of public education and outreach materials.

1383  
1384 **E. Multi-Lingual Education Requirements.** To address the multi-lingual diversity of the City, public  
1385 education materials shall emphasize the use of visual/graphic images and English descriptions  
1386 supplemented with text in Spanish and/or other languages as determined by the City. Contractor  
1387 shall arrange for review of the multi-lingual materials by a third party to verify the accuracy and  
1388 appropriateness of the translations.

1389  
1390 **F. School Outreach.** Contractor shall prepare and make available Recycling outreach materials for  
1391 students about source reduction, reuse and Recyclable Materials.  
1392

1393 **G. City Review and Approval.** Prior to printing and distribution of any public education materials,  
1394 Contractor shall provide the City with a copy of the public education materials for the City’s review  
1395 and approval.  
1396

1397 **H. Coordination with Other Efforts.** Contractor shall cooperate and coordinate with the City and  
1398 the StopWaste (also known as the Alameda County Waste Management Authority and Alameda  
1399 Source Reduction and Recycling Board) staff on public education activities to minimize duplicative,  
1400 inconsistent, or inappropriately timed education campaigns. Contractor is aware that StopWaste  
1401 conducts regional public education and outreach for schools, self-hauled waste, home  
1402 composting, food scraps programs, etc.  
1403

1404 **I. Failure to Perform Public Education Obligations.** If Contractor fails to perform some or all of the  
1405 requirements of the public education program described in this Section, the Contractor shall pay  
1406 the City Liquidated Damages as described in Section 13.6.  
1407

1408 **7.2 BILLING**

1409  
1410 **A. Single Family Customers, Parcelized Multi-Family Customers, Non-Parcelized Multi-Family**  
1411 **Customers, and Commercial Customers.** Contractor shall establish the Maximum Rates and fees  
1412 charged for Recyclable Materials Collection and Processing services performed pursuant to this  
1413 Agreement, and said Rates shall be approved by the City in conjunction with the City’s  
1414 consideration and approval of Contractor’s Compensation Application.. Commencing Rate Year  
1415 21 (FY 2025-2026) the City’s Solid Waste Contractor shall commence all billing activity that is  
1416 currently performed by the City through the property tax bill. In addition, Solid Waste Contractor  
1417 shall continue to bill all Customers that were not billed by the City through the property tax bill.  
1418 Contractor shall coordinate with the Solid Waste Contractor to provide, on or before the fifteenth  
1419 calendar day of each month, a list of the Non-Parcelized Multi-Family and Commercial Customers  
1420 currently receiving Recyclable Materials Collection and Processing services from Contractor.  
1421 Contractor shall include in the Customer list each Customer’s service level (i.e., number and size  
1422 of Containers and frequency of Collection), the Rate(s) for service charged by Contractor, and the  
1423 total amount of monthly charges, and any special services provided which is associated with a  
1424 Rate established by Contractor and approved by the City). The Solid Waste Contractor shall bill  
1425 these Customers and remit gross receipts from these billings to the City monthly.  
1426

1427 Solid Waste Contractor shall include in its billing to Customers, Contractor’s Maximum Rates  
1428 established by Contractor. The City shall direct Solid Waste Contractor to remit Contractor’s rate  
1429 revenue directly to the City, and City shall remit Contractor’s Compensation directly to Contractor  
1430 monthly, net of City Fees which shall be retained by the City.  
1431

1432 **7.3 CUSTOMER SERVICE PROGRAM**

1433

1434 **7.3.1 Program Requirements**  
1435

- 1436 **A. Office Location.** Contractor shall maintain a business office in the City. The office shall be staffed  
1437 with at least one customer service representatives capable of answering service questions,  
1438 changing Residential and Commercial Customer service levels, and resolving other Customer  
1439 service issues. If another office located outside of the City assists with Customer service issues  
1440 related to this Agreement, Contractor must ensure that telephone calls to it from locations within  
1441 the City are billed to Customer as “local calls” by all telephone companies.  
1442
- 1443 **B. Office Hours.** Contractor’s Customer service office shall be open to the public from 8:00 a.m. to  
1444 5:00 p.m. Mondays through Fridays. The office may be closed on Saturdays, Sundays and  
1445 Holidays.  
1446
- 1447 **C. Availability of Representatives.** A representative of the Contractor shall be available from 8:00  
1448 a.m. to 5:00 p.m. Mondays through Fridays (excluding Holidays) to communicate with the public  
1449 in person and by telephone. A message machine shall be available for Customers to leave  
1450 messages during non-business hours. Contractor shall return calls received during non-business  
1451 hours no later than noon of the following Business Day. If Contractor fails to perform some or all  
1452 of the requirements described in this Section, the Contractor shall pay the City Liquidated  
1453 Damages as described in Section 13.6.  
1454
- 1455 **D. Telephone.** Contractor shall maintain a telephone system in operation at its office and shall have  
1456 staff available to answer calls from 8:00 a.m. to 5:00 p.m. Contractor shall install telephone  
1457 equipment sufficient to handle the volume of calls typically experienced on the busiest days and  
1458 such telephone equipment shall be capable of recording the responsiveness to call. If Persons are  
1459 unable with reasonable effort to reach Contractor’s office by phone, or are subject to waiting time  
1460 “on hold” of more than three minutes prior to reaching a Customer service representative, City  
1461 may require that Contractor install additional telephone lines or hire additional Customer service  
1462 representatives. An answering machine shall record Customer calls and voice messages between  
1463 5:00 p.m. and 8:00 a.m. If Contractor fails to meet the requirements described in this Section, the  
1464 Contractor shall pay the City Liquidated Damages in accordance with Section 13.6.  
1465
- 1466 **E. Web Site.** Contractor shall develop and maintain a web site describing services provided in the  
1467 City that is accessible by the public. The site shall include answers to frequently asked questions,  
1468 Maximum Rates, Recyclable Materials specifications, Collection service schedule and map, and  
1469 other related topics. Contractor shall arrange for the City’s web site to include a link to  
1470 Contractor’s web site and Contractor’s e-mail. The Contractor’s web site shall provide the public  
1471 the ability to e-mail Contractor.  
1472
- 1473 **F. Customer Satisfaction Survey.** The City may conduct a Customer satisfaction survey every year.  
1474
- 1475 **G. Training.** Customer service representatives shall receive training during each quarter of the  
1476 calendar year on City-specific service requirements. During the training, a City-specific Collection  
1477 service and Maximum Rate information sheet, training agenda, and associated documentation  
1478 shall be provided to employees.  
1479

1480 **7.3.2 Service Complaints**

1481 Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable  
1482 resolution of, all Complaints. Contractor shall record in a separate log all Complaints, noting the name  
1483 and address of complainant, date and time of Complaint, nature of Complaint, and nature and date of  
1484 resolution. The Contractor shall retain this Complaint log for the Term. In addition, Contractor shall  
1485 compile a summary statistical table of the Complaint log, satisfactory to the City, and submit the table to  
1486 City each month.

1487  
1488 Contractor shall respond to all Complaints received within 24 hours, weekends and Holidays excluded. In  
1489 particular, if a Complaint involves a failure to Collect Recyclable Materials from a Premises in the City,  
1490 Contractor shall Collect the material in question within 24 hour of receipt of the Complaint, provided that  
1491 Generator has properly placed materials for Collection in accordance with the City's Municipal Code.  
1492 Contractor shall have e-mail capabilities (accessible through the Contractor's website) to enable Persons  
1493 to communicate Complaints to Contractor via e-mail.

1494  
1495

1496 **ARTICLE 8.**  
1497 **STANDARDS AND REQUIREMENTS FOR**  
1498 **SERVICES, EQUIPMENT, AND PERSONNEL**  
1499

1500 **8.1 OPERATING HOURS AND SCHEDULES**

1501  
1502 **A. Hours of Collection**

- 1503
- 1504 1. **Residential Premises.** Collection from Residential Premises shall only occur between the  
1505 hours of 6:00 a.m. and 6:00 p.m., Mondays through Fridays excluding Holidays.  
1506
  - 1507 2. **Commercial Premises.** Collection from Commercial Premises that are one hundred (100)  
1508 feet or less from Residential Premises shall only occur between the hours of 6:00 a.m. and  
1509 6:00 p.m., Mondays through Saturdays (excluding Holidays). Collection from Commercial  
1510 Premises more than one hundred (100) feet from Residential Premises shall only occur  
1511 between the hours of 3:30 a.m. and 6:00 p.m., Mondays through Saturdays (excluding  
1512 Holidays). The City Manager may require modifications to hours for Collection from  
1513 Commercial Premises to resolve noise Complaints, and, in such case, the City Manager may  
1514 change the allowable operating hours.  
1515
  - 1516 3. **Exceptions.** In the event of an unforeseen circumstance, the Contractor may Collect from  
1517 Residential Premises or Commercial Premises that are 100 feet or less from Residential  
1518 Premises between the hours of 5:00 a.m. and 10:00 p.m., Mondays through Fridays, upon  
1519 prior written approval from the City Manager.

- 1520
- 1521 **B. Route Schedules.** For Single-Family and Parcelized Multi-Family Customers, Contractor shall  
1522 coordinate route schedules and Customers' day of service with the Solid Waste Contractor, and  
1523 the Solid Waste Contractor shall have the right to specify the schedules and service days.  
1524 Contractor shall provide City with route maps and daily schedules for Collection service. The City  
1525 shall review and approve such maps and schedules.

1526  
1527 Contractor may not change its regularly scheduled Single-Family or Parcelized Multi-Family  
1528 Customers' Collection days without prior written approval from the City. Contractor shall obtain  
1529 such written approval from the City 30 calendar days before the effective date of the schedule  
1530 change. Once approved, Contractor shall notify any Single-Family or Parcelized Multi-Family  
1531 Customer four weeks before any Collection schedule changes.

1532  
1533 Contractor may not change any Parcelized Multi-Family, Non-Parcelized Multi-Family, and  
1534 Commercial Customer's regularly scheduled Collection days without prior written notice to the  
1535 Customer.

1536  
1537 Contractor shall not permit any Customer to go more than seven calendar days without service  
1538 during a Collection schedule change.

1539  
1540 **C. Holiday Collection Schedule.** Contractor shall not provide Collection services on a Holiday.  
1541 Contractor shall provide Collection services on the day following the Holiday. The Contractor shall  
1542 provide Customers notice of Holiday-related changes in Collection schedules at least two weeks  
1543 prior to the change; but in no case, shall Contractor notice Customers three weeks prior to the  
1544 change. When a Holiday occurs on normal work day (i.e., Monday through Friday), Contractor  
1545 shall adjust the Collection schedule to serve the Customers on the day following the Holiday and  
1546 shall adjust other Customers Collection day resulting in Collection services on normal work days  
1547 plus the Saturday following the Holiday. Contractor shall coordinate its Collection schedule  
1548 adjustments with the Solid Waste Contractor so that both parties operate with the same modified  
1549 Collection schedule.

1550

1551 **8.2 COLLECTION STANDARDS**

1552  
1553 **8.2.1 Implementation of Services**  
1554 The Contractor's implementation of the services required under this Agreement shall occur in a smooth  
1555 and seamless manner so that Customers and/or Generators do not experience disruption in Collection  
1556 services.

1557  
1558 **8.2.2 Servicing Containers**  
1559 Contractor shall pick up and return each Container to the location where the Occupant properly placed  
1560 the Container for Collection. Contractor shall place the Containers upright with lids properly secured and  
1561 closed. The City may levy fines for repeat occurrences of Container misplacement in accordance with  
1562 Section 13.6 of this Agreement.

1563  
1564 Contractor shall use due care when handling Containers. Contractor shall not throw, roughly handle,  
1565 damage, or break Containers.

1566  
1567 Contractor, at the request of Customers, shall provide special services for Non-Parcelized Multi-Family  
1568 and Commercial Customers including: unlocking Containers; accessing Container enclosures with a key;  
1569 or pulling or pushing Containers to the Collection vehicle. Pursuant to Section 7.2.B, Contractor shall  
1570 inform the Solid Waste Contractor of special services provided to each Customer for the purposes of  
1571 billing.

1572

1573 **8.2.3 Allocation of City Materials**

1574 Recyclable Materials Collected in the City, which are combined with materials Collected from other  
1575 jurisdictions, shall be allocated by Contractor to the City’s Collection program based on volume or Tonnage  
1576 using the following City-approved method:

1577  
1578 Collection vehicles containing Recyclable Materials from only one jurisdiction or agency shall be weighed  
1579 and the amount of Recyclable Materials Collected and delivered for Processing are recorded by vehicle  
1580 identification number, date, and time. If the Collection vehicles Collect Recyclable Materials from two or  
1581 more jurisdictions or agencies, the Tonnage of Recyclable Materials Collected shall be allocated to each  
1582 jurisdiction or agency based proportionally on the volume of Recyclable Materials serviced in each  
1583 jurisdiction.

1584  
1585 To allocate the specific material types recovered for the Processing activities, the Tonnage of the material  
1586 shall be allocated to each jurisdiction proportionally based on the jurisdiction’s Tonnage as a percentage  
1587 of the Total Tonnage Processed at the Approved Recyclable Materials Processing Facility. For example, if  
1588 the Tonnage of the Recyclable Materials from the City is 40% of the total Tonnage of Recyclable Materials  
1589 Collected and Processed; then, the City shall be allocated 40% of the Tonnage of each specific material  
1590 type recovered (e.g., newspaper, mixed paper, cardboard, glass, etc.). This method assumes that there is  
1591 substantially no difference between the composition of Recyclable Materials Collected in other  
1592 jurisdictions.

1593  
1594 Recyclable Materials from the buy-back program shall be separately weighed when received and the  
1595 transaction shall be recorded to provide a record for the Processing and marketing of the buyback’s  
1596 commodities.

1597

1598 **8.2.4 Contamination Monitoring and Instructions to Customer with Contaminated Containers**

1599  
1600 Contractor will utilize truck cameras and fleet management software to monitor contamination  
1601 in Recyclable Materials Carts. Contractor’s public education and outreach materials shall instruct  
1602 Customers on the preparation of Recyclable Materials to be placed in Contractor’s Containers  
1603 and the proper placement of Containers at the curbside (i.e., placed at curblines, two (2) feet  
1604 apart, lids closed) or alternative location for Collection. If Customers are not adhering to  
1605 Contractor’s instructions on the preparation of Recyclable Materials to be placed in Contractor’s  
1606 containers and the proper placement of Containers at the curbside, Contractor shall notify such  
1607 Customers promptly. If Recyclable Materials set out for Collection contain ten percent (10%) or  
1608 greater by volume of non-Recyclable Materials, Contractor shall Collect materials and leave a  
1609 warning notice for the Customer which states the reasons the Customer did not properly adhere  
1610 to Contractor’s Recyclable Materials preparation instructions and provide Customer instructions  
1611 to rectify the issue(s) identified by Contractor.

1612  
1613 The monitoring of Containers set-out for Collection by Contractor shall use the truck camera. In  
1614 cases of extreme or repeated failure to comply with the instructions and Contractor has provided  
1615 Customer with three (3) warning notices, Contractor may decline to pick-up the Recyclable  
1616 Materials provided that Contractor leaves a stop service notice at least two inches by six inches  
1617 (2” x 6”) in size on the Container indicating the reason for refusing to Collect the material. The  
1618 aforementioned stop service notice shall clearly explain to the Customer the actions that

1619 Customer must take in order for Contractor to resume providing Collection. Specifically, the  
1620 warning notice shall define the Customer's actions to facilitate Contractor resuming Collection  
1621 service, as follows: Customer shall demonstrate that they have properly prepared the set-out for  
1622 Collection in accordance with Contractor's materials preparation requirements by removing the  
1623 non-Recyclable Materials from Contractor's Container that exceeds 10% by volume of the set-out.  
1624 Contractor shall make a reasonable assessment every week regarding Customer's compliance  
1625 with Contractor's Recyclable Materials preparation guidelines as defined herein and if Customer  
1626 is determined to comply Contractor shall resume Collection on the next regular Collection service  
1627 day. Said reasonable assessment performed weekly for Customers who have received three (3)  
1628 prior warning notices shall be performed by Contractor's driver serving the route of these  
1629 customers daily.

1630  
1631 **8.2.5 Overages**

1632 Contractor shall direct its employees not to Collect Recyclable Materials beyond each Customer's  
1633 subscription level of service unless the business office of Contractor has granted prior authorization to  
1634 make such Collection. Contractor shall document with photographs and report to City all events when  
1635 Contractor does not Collect Recyclable Materials beyond each Customer's subscription level.

1636  
1637 **8.2.6 Care of Private Property**

1638 Contractor shall not damage private property. Contractor shall ensure that its employees: (i) close all  
1639 gates opened in making Collections, unless otherwise directed by the Customer, (ii) do not cross  
1640 landscaped areas, and (iii) do not climb or jump over hedges and fences.

1641  
1642 City shall refer Complaints about damage to private property to Contractor. Contractor shall repair, to its  
1643 previous condition, all damage to private or public property caused by its employees. In the event of  
1644 repeat occurrences of property damage, the Contractor shall pay Liquidated Damages in accordance with  
1645 Section 13.6.

1646  
1647 **8.2.7 Collection Route Audits**

1648 City reserves the right to conduct audits of Contractor's Collection routes. Contractor must cooperate with  
1649 City in connection therewith, including permitting City employees or agents designated by the City  
1650 Manager to ride in the Collection Vehicles to conduct the audits. City will provide Contractor with two (2)  
1651 business days notice of any ride along request. Contractor has no responsibility or liability for the salary,  
1652 wages, benefits, or worker compensation claims of any person designated by the City Manager to conduct  
1653 such audits.

1654  
1655 **8.2.7 Litter Abatement**

1656  
1657 **A. Minimization of Spills.** Contractor shall use due care to prevent Recyclable Materials, vehicle oil  
1658 and vehicle fuel from being spilled or scattered during Collection and Transportation operations.  
1659 If any materials are spilled or scattered during Collection and Transportation operations, the  
1660 Contractor shall promptly clean up all spilled and scattered materials.

1661  
1662 Contractor shall not transfer loads from one vehicle to another on any public street, unless it is  
1663 necessary to do so because of mechanical failure, emergency (e.g., combustion of material in the  
1664 truck), accidental damage to a vehicle, or unless approved by the City.

1665

1666 If Contractor fails to perform some or all of the requirements described in this Section, the  
1667 Contractor shall pay the City Liquidated Damages as described in Section 13.6.  
1668

1669 **B. Clean-Up.** During Collection, the Contractor shall clean-up litter in the immediate vicinity of any  
1670 Container storage area (including the areas where Containers are delivered for Collection)  
1671 whether or not Contractor has caused the litter. Each Collection vehicle shall carry protective  
1672 gloves, a broom, and shovel at all times for cleaning up litter. Cat-litter or similar absorbent  
1673 material shall be provided by Contractor for cleaning up liquid spills. The Contractor shall discuss  
1674 instances of repeated spillage not caused by it with the Customer of the Premise where spillage  
1675 occurs, and Contractor shall report such instances to City. If the Contractor has attempted to have  
1676 a Customer stop creating spillage but is unsuccessful, the City will attempt to rectify such situation  
1677 with the Customer. Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris  
1678 resulting from Contractor’s operations or equipment repair must be covered immediately with an  
1679 absorptive material and removed from the street surface. Contractor must document spillage and  
1680 notify City’s stormwater compliance coordinator within ninety (90) minutes of any spills resulting  
1681 from Contractor’s operations or equipment. When necessary, Contractor must apply a suitable  
1682 cleaning agent and cleaning technique to the street surface to provide adequate cleaning as  
1683 approved by the City’s stormwater compliance coordinator to be compliant with the City’s  
1684 stormwater permit.  
1685

1686 **8.2.8 Noise**

1687 All Collection operations shall be conducted as quietly as possible and shall conform to applicable Federal,  
1688 state, county, and City noise level regulations. Contractor will promptly resolve any Complaints of noise  
1689 during the morning or evening hours of the day to the satisfaction of the City.  
1690

1691 **8.3 VEHICLE REQUIREMENTS**

1692  
1693 **8.3.1 General**

1694 Contractor shall provide a fleet of Collection vehicles sufficient in number and capacity to efficiently  
1695 perform the work required by the Agreement in strict accordance with its terms. Contractor shall have  
1696 available sufficient back-up vehicles for each type of Collection vehicle used (e.g., side loader, front loader,  
1697 roll-off vehicles) to respond to Complaints and emergencies.  
1698

1699 Contractor shall confer with the City before purchasing any new Collection vehicles during the Term,  
1700 including extensions, as described in Section 3.4. Note that the depreciation expense for new Collection  
1701 vehicles (required pursuant to Section 8.3.2) is an allowable annual expense that has been agreed-upon  
1702 by the Parties (refer to Section D of Exhibit C) and included in Contractor’s Compensation. Rate  
1703 Year Vehicles shall be the property of Contractor at the expiration of the Term of the Agreement.  
1704

1705 **8.3.2 Specifications**

1706 Contractor shall operate Collection vehicles for all of its Recyclable Materials Collection routes and such  
1707 vehicles shall be fueled by compressed natural gas (CNG). Contractor can purchase CNG at a City-owned  
1708 fueling facility. Contractor shall register all vehicles with the California Department of Motor Vehicles. All  
1709 such vehicles shall have watertight bodies designed to prevent leakage, spillage, or overflow. All such  
1710 vehicles shall comply with California Environmental Protection Agency (EPA) noise emission and air quality  
1711 regulations and other applicable noise control regulations.  
1712

1713 Collection vehicles shall comply with the proposed rule adopted by the State of California Air Resources  
1714 Control Board on September 25, 2003 requiring the implementation of “Diesel Particulate Matter Control  
1715 Measure for On-Road Heavy-Duty Residential and Commercial Solid Waste Collection Vehicle Diesel  
1716 Engines.” The City prohibits use of vehicles that use biodiesel fuel. Contractor agrees to coordinate and  
1717 cooperate with the City to meet its Recovered Organic Waste Product procurement target, as defined in,  
1718 and required by Applicable Law. In support of that objective, the City will receive any applicable SB 1383  
1719 Recovered Organic Waste Product procurement credits for all RNG used by the Contractor to power  
1720 Contractor’s Collection vehicles as allowed by the Applicable Law and within the time provided therein.  
1721

1722 Contractor must use Collection Vehicles fitted with GPS tracking devices that can be used to record start  
1723 and stop times, vehicle locations, and maximum speed. Contractor shall furnish to the City, at no  
1724 additional cost or expense, any software and equipment necessary for City to track the location of  
1725 Collection Vehicles in real time and to generate reports as needed. Collection Vehicles must also be fitted  
1726 with cameras that are programmed to take photos, date and location stamped, to document violations,  
1727 including contamination, overfilling, and lids not closed. GPS and camera data must be made available to  
1728 City upon request.  
1729

1730 **8.3.3 Vehicle Identification**

1731 Contractor’s name, local telephone number, and a unique vehicle identification number for each vehicle  
1732 shall be prominently displayed on all vehicles, in letters and numbers that are a minimum of four inches  
1733 high. Contractor shall not place the City’s logo on its vehicles. Contractor shall not use vehicles identified  
1734 for use in the City in any other jurisdiction without prior approval from the City.  
1735

1736 **8.3.4 Inventory**

1737 Contractor shall furnish sufficient equipment to provide all service required by this Agreement.  
1738 Contractor shall furnish the City a written inventory of all vehicles used in providing service, and shall  
1739 update the inventory report annually. The inventory shall list all vehicles by manufacturer, ID number,  
1740 date of acquisition, type, capacity, decibel rating, average weight of load, and average loaded axle weights.  
1741

1742 **8.3.5 Cleaning and Maintenance**

1743  
1744 **A. General.** Contractor shall maintain all of its properties, facilities, and equipment in a safe, neat,  
1745 clean and operable condition at all times.  
1746

1747 **B. Cleaning.** Collection vehicles shall be thoroughly washed and thoroughly steam cleaned as  
1748 necessary, to present a clean appearance of the exterior and interior compartment of the vehicle.  
1749 City may inspect vehicles at any time to determine compliance with sanitation requirements.  
1750 Contractor shall make vehicles available to the Alameda County Health Department for  
1751 inspection, at any frequency it requests.  
1752

1753 **C. Maintenance.** Contractor shall inspect each vehicle daily to ensure that all equipment is operating  
1754 properly. Vehicles that are not operating properly shall be taken out of service until they are  
1755 repaired and operate properly. Contractor shall perform all scheduled maintenance functions in  
1756 accordance with the manufacturer’s specifications and schedule or in accordance with California  
1757 Highway Patrol standards whichever are more stringent. All vehicles shall be painted in a uniform  
1758 manner that does not create a resemblance between Contractor’s vehicles and City utility  
1759 vehicles. Contractor shall keep accurate records of all vehicle maintenance, recorded according

1760 to date and mileage, and shall make such records available to the City upon request to the extent  
1761 necessary to perform the inspections described in Sections 8.8 and 9.1.3.

1762

1763 **D. Repairs.** Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for  
1764 which repairs are needed because of accident, breakdown or any other cause so as to maintain  
1765 all equipment in a safe and operable condition. If an item of repair is covered by a warranty,  
1766 Contractor shall obtain warranty performance. Contractor shall maintain accurate records of  
1767 repair, which shall include the date/mileage, nature of repair and the signature of a maintenance  
1768 supervisor that the repair has been properly performed.

1769

1770 **E. Storage.** Contractor shall arrange to store all vehicles and other equipment in safe and secure  
1771 location(s) in accordance with City's applicable zoning regulations.

1772

1773 **F. RNG.** Contractor agrees to coordinate and cooperate with the City to meet its Recovered Organic  
1774 Waste Product procurement target, as defined in, and required by Applicable Law. In support of  
1775 that objective and contingent on availability, the City may request any applicable SB 1383  
1776 Recovered Organic Waste Product procurement credits for all RNG used by the Contractor to  
1777 power Contractor's Collection vehicles within the City as allowed by the Applicable Law and within  
1778 the time provided therein.

1779

1780 **G. Zero Emission Vehicles.** Contractor shall proactively take such steps as are necessary to plan for,  
1781 and upon City direction execute, transition of the Contractor's Collection Vehicles to reliance on  
1782 electricity or other zero emission technologies as a fuel source. Contractor shall report to the City  
1783 no less than annually on the status of the transition. The City and Contractor shall, no less than  
1784 annually, confer on the degree to which it is technologically and economically feasible to  
1785 transition some or all Collection Vehicles to electricity or other zero emission technology. Upon a  
1786 determination by the City that it is technologically and economically feasible to transition some  
1787 or all Collection Vehicles to electricity or other zero emissions technology, Contractor shall  
1788 proceed to purchase and operate such vehicles on a schedule mutually agreed to by Contractor  
1789 and City, and subject to agreement regarding changes in Contractor's Compensation that are  
1790 reasonable and necessary for the transition. Contractor shall be entitled to a change in  
1791 Contractor's Compensation for construction of an electric charging or other fueling station,  
1792 subject to the mutual agreement of the City and Contractor and approval of the City Council.  
1793 Contractor will coordinate with the City in finding or constructing a suitable charging or other  
1794 fueling station for Contractor's electric or other zero emission Collection Vehicles.

1795

1796 **H. GPS Tracking of Vehicles.** Contractor must use Collection Vehicles fitted with GPS tracking devices  
1797 that can be used to record start and stop times, vehicle locations, and maximum speed.  
1798 Contractor shall furnish to the City, at no additional cost or expense, any software and equipment  
1799 necessary for City to track the location of Collection Vehicles in real time and to generate reports  
1800 as needed. Collection Vehicles may also be fitted with cameras that are programmed to take  
1801 photos, date and location stamped, to document violations, including contamination and  
1802 overfilling. Should Contractor commence the use of such technology on their collection vehicles,  
1803 GPS and camera data must be made available to City upon request.

1804

### 1805 **8.3.6 Operation**

1806 Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and  
1807 local ordinances. Contractor shall not load vehicles in excess of the manufacturer's recommendations or

1808 limitations imposed by State or local weight restrictions for vehicles and roads. Annually, Contractor shall  
1809 have each Collection vehicle weighed at the Approved Recyclable Materials Processing Facility to  
1810 determine the unloaded weight (“tare weight”) of the vehicle, and the total loaded weight of each load  
1811 delivered to the Approved Recyclable Materials Processing Facility. Upon a major repair that could affect  
1812 the vehicle’s tare weight, Contractor shall have the vehicle re-weighed to establish a new tare weight.  
1813

1814 Contractor may not use any Collection Vehicle in violation of weight limitations in Applicable Law,  
1815 including any weight limitation placed on any public roadway or alley as adopted and posted by City. The  
1816 Contractor may exceed the Collection Vehicle size limitation for a limited time due to extraordinary  
1817 circumstances or conditions with the prior written consent of the Agreement Administrator. The limited  
1818 time may not exceed 120 days. Contractor must report all instances of overweight vehicles to City as part  
1819 of its quarterly reporting, and as part of its Annual Reports to the City. Contractor may be assessed  
1820 Administrative Charges and Penalties as a result of exceeding an overweight vehicle rate of five percent  
1821 (5.0%) in any Calendar Year during the Term of the Agreement. The overweight vehicle rate will be  
1822 calculated as the total number of overweight Collection Vehicle instances during the Calendar Year divided  
1823 by the total number of Collection Vehicle loads transported during the Calendar Year. Prior to collecting  
1824 Administrative Charges and Penalties for overweight vehicles, the City shall afford Contractor a reasonable  
1825 opportunity to provide the City with documentation of the extraordinary circumstance that caused the  
1826 overweight vehicles. Extraordinary circumstances in this case may include, but are not limited to, heavy  
1827 rains or high winds that caused excess Green Waste to be generated, rain to accumulate in open  
1828 Containers, or normal Collection routes to be delayed or shortened due to extreme weather conditions.  
1829 The City shall have authority to consider Contractor’s documentation and uphold and collect the assessed  
1830 charge, to reduce the charge, or to waive and dismiss the charge. The City shall also have the authority to  
1831 waive charges in advance of an anticipated, or in response to an actual, emergency event.  
1832

#### 1833 **8.4 CONTAINER REQUIREMENTS**

1834  
1835 **A. General.** Contractor shall provide all Carts to all Customers as part of its services. Contractor-  
1836 provided Carts shall be designed and constructed to be watertight and prevent the leakage of  
1837 liquids. All Carts shall be manufactured by injection or rotational molding methods and shall meet  
1838 the Cart design and performance requirements provided in Exhibit F. Contractor shall use Carts  
1839 with a blue color or obtain City’s written approval for Carts of any other color before acquisition.  
1840 The useful life of Carts provided to Customers shall be equal to or longer than the initial Term of  
1841 the Agreement. Carts shall be depreciated over eleven (11) years. Carts shall have Contractor’s  
1842 name molded, hot stamped, or displayed using an adhesive label.  
1843

1844 **B. Cleaning, Painting, and Maintenance.** All Containers shall be maintained in a safe, serviceable,  
1845 and functional condition. Customers shall be responsible for cleaning Carts.  
1846

1847 **C. Repair and Replacement.** Contractor shall repair or replace all Carts that are not in a safe,  
1848 serviceable, or functional condition, or are damaged by Collection operations, within one week of  
1849 Customer’s request. If the repair or replacement cannot be completed within one week, the  
1850 Contractor shall notify Customer and a Cart of the same size or larger shall be made available until  
1851 the proper Cart can be replaced. Contractor has planned for Container replacements over the  
1852 Term and an annual expense for the Cart replacement costs has been included in the Contractor’s  
1853 Compensation; accordingly, Contractor shall not be entitled to additional compensation for such  
1854 replacements.

1855  
1856 **D. City's Rights to Containers.** Upon expiration or early termination of this Agreement, all Carts  
1857 acquired by Contractor and put into service at Customer's Premises before the first anniversary  
1858 of the Commencement Date or during the Term of the Agreement shall become property of the  
1859 City, at the City's option.

1860  
1861 At its sole discretion, the City may elect not to exercise its rights with regard to this Section and,  
1862 in such case, the Containers shall become the property of the Contractor upon the expiration date  
1863 of this Agreement or date of its earlier termination of this Agreement. In such case, Contractor  
1864 shall be responsible for removing all Containers in service from Premises and reusing or Recycling  
1865 such Containers.  
1866

1867 **8.5 PERSONNEL**

1868  
1869 **A. General.** Contractor shall furnish such qualified drivers, mechanical, supervisory, Customer  
1870 service, clerical and other personnel as may be necessary to provide the services required by this  
1871 Agreement in a safe and efficient manner and shall provide, at a minimum, the number and type  
1872 of personnel listed in Section A of Exhibit C.  
1873

1874 **B. Provision of Field Supervision.** Contractor shall designate at least one qualified employee as  
1875 supervisor of field operations. The field supervisor will devote at least 50% of his or her time in  
1876 the field checking on Collection operations, including responding to Complaints.  
1877

1878 **C. Driver Qualifications.** All drivers shall be trained and qualified in the operation of Collection  
1879 vehicles, and must have in effect a valid license, of the appropriate class, issued by the California  
1880 Department of Motor Vehicles. Contractor shall use the Class II California Department of Motor  
1881 Vehicles employer "Pull Notice Program" to monitor its drivers for safety.  
1882

1883 **D. Customer Service Representative Training.** Customer service representatives shall be trained on  
1884 specific City service requirements, a minimum of once per quarter. A City information sheet shall  
1885 be provided to each Customer service representative for easy reference of City requirements and  
1886 general Customer needs. The information sheet, training agenda, and associated documentation  
1887 shall be forwarded to the City each quarter after the training.  
1888

1889 **E. Safety Training.** Contractor shall provide suitable operational and safety training for all of its  
1890 employees who operate Collection vehicles or equipment or who are otherwise directly involved  
1891 in such Collection, Disposal, or Processing. Contractor shall train its employees involved in  
1892 Collection to identify, and not to collect, Hazardous Waste or Infectious Waste. Upon the City's  
1893 request, Contractor shall provide a copy of its safety policy and safety training program, the name  
1894 of its safety officer, and the frequency of its trainings.  
1895

1896 **F. No Gratuities.** Contractor shall not permit its employees to demand or solicit, directly or  
1897 indirectly, any additional compensation, or gratuity from members of the public for Collection  
1898 services.  
1899

1900 **G. Employee Conduct and Courtesy.** Contractor shall use its best efforts to assure that all employees  
1901 present a neat appearance and conduct themselves in a courteous manner. Contractor shall

1902 regularly train its employees in Customer courtesy, shall prohibit the use of loud or profane  
1903 language, and shall instruct Collection employees to perform the work as quietly as possible. If  
1904 any employee is found not to be courteous or not to be performing services in the manner  
1905 required by this Agreement, Contractor shall take all appropriate corrective measures. The City  
1906 may require Contractor to reassign an employee, if the employee has conducted himself or herself  
1907 inconsistently with the terms of this Agreement.  
1908

1909 **H. Uniforms.** While performing services under this Agreement, all of the Contractor’s employees  
1910 performing field service shall be dressed in clean uniforms and shall wear identification that  
1911 include the employee’s name and/or employee number, and Contractor’s name, as approved by  
1912 the City.  
1913

1914 **8.6 HAZARDOUS WASTE INSPECTION AND HANDLING**

1915  
1916 **A. Inspection Program and Training.** Contractor shall develop a load inspection program that  
1917 includes the following components: (i) Personnel and training; (ii) Load checking activities; (iii)  
1918 Management of wastes; and (iv) Record keeping and emergency procedures.  
1919

1920 Contractor’s load checking personnel, including its Collection vehicle drivers, shall be trained in (i)  
1921 the effects of Hazardous Substances on human health and the environment; (ii) identification of  
1922 prohibited materials; and (iii) emergency notification and response procedures. Collection vehicle  
1923 drivers shall inspect Containers before Collection when practical.  
1924

1925 **B. Response to Hazardous Waste Identified During Collection.** If Contractor determines that  
1926 material placed in any Container for Collection is Hazardous Waste, Designated Waste, or other  
1927 material that may not legally be handled at the Approved Recyclable Materials Processing Facility,  
1928 or presents a hazard to Contractor’s employees, the Contractor shall have the right to refuse to  
1929 accept such material. The Generator shall be contacted by the Contractor and requested to  
1930 arrange proper Disposal. If the Generator cannot be reached immediately, the Contractor shall,  
1931 before leaving the Premises, leave a tag at least two inches by six inches (2” x 6”) in size, which  
1932 indicates the reason for refusing to Collect the material and lists the phone number for the  
1933 Alameda County Household Toxic Waste Facility. Contractor’s environmental technician shall be  
1934 notified to handle the issue with the Generator. The Contractor’s environmental technician shall  
1935 be notified by the Contractor and shall guide the Generator to safely containerizing the Hazardous  
1936 Waste and shall explain the Generator’s options for proper disposition of such material. Under  
1937 no circumstances shall Contractor’s employees knowingly Collect Hazardous Waste or remove  
1938 unsafe or poorly containerized Hazardous Waste from a Container.  
1939

1940 If Hazardous Waste is found in a Container or Collection area, that could possibly result in  
1941 imminent danger to people or property, the Contractor shall immediately notify the City’s Fire  
1942 Department using the 911 emergency number. The Contractor shall notify the City of any  
1943 Hazardous Waste identified in Containers or left at any Premises within 24 hours of identification  
1944 of such material.  
1945

1946 **C. Response to Hazardous Waste Identified At Disposal Site or Processing Site.** If materials  
1947 Collected by Contractor are delivered to a facility owned by Contractor for purposes of Processing,  
1948 load checkers and equipment operators at such facility shall conduct inspections in areas where

1949 Collection vehicles unload Recyclable Materials to identify Hazardous Wastes. Facility personnel  
1950 shall remove these materials for storage in approved, on-site, hazardous materials storage  
1951 Container(s). Contractor shall make reasonable efforts to identify and notify the Generator.  
1952 Contractor shall arrange for removal of the Hazardous Wastes by permitted haulers in accordance  
1953 with Applicable Laws and regulatory requirements.

1954  
1955 **D. Regulations and Record Keeping.** Contractor shall comply with emergency notification  
1956 procedures required by Applicable Laws and regulatory requirements. All records required by  
1957 regulations shall be maintained at the Contractor’s facility. These records shall include waste  
1958 manifests, waste inventories, waste characterization records, inspection records, incident  
1959 reports, and training records.

1960  
1961 **8.7 NON-DISCRIMINATION**

1962 Contractor shall not discriminate in the provision of service, or the employment of Persons engaged in  
1963 performance of this Agreement on account of race, color, natural origin, ancestry, religion, gender, marital  
1964 status, sexual orientation, age, physical or mental disability in violation of any Applicable Law.  
1965

1966 **8.8 COMMUNICATION AND COOPERATION WITH CITY**

1967  
1968 **A. Communications.** If requested, the Contractor shall meet with the City or its agent at least once  
1969 each month to discuss service issues. The Contractor’s general manager shall have e-mail  
1970 capabilities to enable the City and the Contractor’s general manager to communicate via e-mail.  
1971

1972 **B. Inspection by City.** The City or its designated representatives shall have the right to observe and  
1973 review Contractor operations and Processing facilities and enter Premises for the purposes of  
1974 such observation and review during reasonable hours without advance notice.  
1975

1976 **C. Cooperate with City-Initiated Studies.** Contractor shall cooperate with and assist the City or its  
1977 agent with performance of City-initiated studies of Recyclable Materials such as, but not limited  
1978 to, material characterization and composition studies.  
1979

1980 **8.9 ROUTE AUDITS/ROUTE REVIEWS**

1981  
1982 **General Requirement.** At least once annually, beginning in 2026, Contractor or its approved designee shall  
1983 conduct a Route Review for each Route. The number of Containers to review per Route shall be calculated  
1984 on the basis of the number of accounts provided service by a specific Route for one week. For example,  
1985 “Route A” collects from two-hundred and fifty (250) accounts, four (4) days per week, for a total of one-  
1986 thousand (1,000) accounts per week; include a minimum of twenty-five (25) accounts for Route Review  
1987 of “Route A”. For each Route Review of a Route, Contractor shall inspect at least the following minimum  
1988 number of Containers but may inspect more if Contractor deems necessary; and shall inspect all  
1989 Containers placed for Collection. Each inspection shall involve lifting the Container lid and observing the  
1990 contents but shall not require Contractor to disturb the contents or open any bags. Contractor may select  
1991 the Containers to be inspected at random, or (if mutually agreed with City) by any other method not  
1992 prohibited under the SB 1383 Regulations. For the avoidance of doubt, Contractor shall not be required  
1993 to annually inspect every Container on a Route. Contractor shall include the results of each Route Review  
1994 in its next regularly scheduled report to City.

<b>Route Size (Number of Recyclable Materials Collection accounts / week)</b>	<b>Minimum Number of Accounts</b>
Fewer than 1,500	25
1,500-3,999	30
4,000-6,999	35
7,000 or more	40

1995

1996

1997

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**ARTICLE 9.**  
**RECORD KEEPING AND REPORTING**

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1999

**9.1 GENERAL**

2000

2001

**9.1.1 Maintenance of Records**

2002

Contractor shall maintain accounting, statistical, and other records related to its performance as shall be necessary to develop the financial statements and other reports required by this Agreement. Also, Contractor agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with and to meet the reporting and Solid Waste and Diversion program management needs of City, the Act, and other Applicable Laws, and the requirements of this Agreement.

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To the extent, such requirements are set out in this and other Articles of this Agreement, they shall not be considered limiting or necessarily complete. In particular, this Article is intended to only highlight the general nature of records and reports and their minimum content and is not meant to comprehensively define what the records and reports are to be and their content. Further, with the written direction by or approval of City, the records, and reports to be maintained and provided by Contractor in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency. Records and reporting may be revised to reflect current record keeping and reporting requirements.

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2015

In order to set Contractor’s Compensation as described in Article 11, it is necessary for Contractor to maintain accurate, detailed financial and operational information in a consistent format and to make such information available to the City in a timely fashion, and in accordance with reporting requirements specified in this Article.

2016

2017

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2019

2020

2021

**9.1.2 Retention of Records**

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2026

2027

Unless otherwise required in this Article, Contractor shall retain all records and data required to be maintained by this Agreement for the Term of this Agreement plus 5 years after its expiration or earlier termination. Records and data shall be in chronological and organized form and readily and easily interpreted. At the City’s request, records and data required to be maintained that are specifically directed to be retained shall be retrieved in a timely manner by Contractor and made available to the City.

2028

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Records and data required to be maintained that are not specifically directed to be retained and that are not material to determination of an adjustment to Contractor’s Compensation and/or not required for the determination of the Contractor’s performance do not need to be retrieved by Contractor. In such a case and when such records and data are required to but are not retained by the Contractor, the City may make reasonable assumptions regarding what information is contained in such records and data, and such assumption(s) shall be conclusive in whatever action the City takes.

2035 **9.1.3 Inspection of Records**

2036 The City, its auditors and other agents, shall have the right, during regular business hours, to conduct  
2037 unannounced on-site inspections of accounting systems, federal tax returns, payroll tax reports, specific  
2038 documents or records required by this Agreement, or any other similar records or reports of the  
2039 Contractor and all companies conducting operations addressed in this Agreement, that the City shall  
2040 deem, at its sole discretion, necessary to evaluate annual reports, applications for adjustment to  
2041 Contractor’s Compensation, and the Contractor’s performance provided for in this Agreement. The City  
2042 may make copies of any documents it deems relevant to this Agreement.  
2043

2044 **9.1.4 Record Security**

2045 Contractor shall maintain adequate record security to preserve records from events that can be  
2046 reasonably anticipated such as a fire, theft, and an earthquake. Electronically maintained data and  
2047 records shall be protected and backed-up.  
2048

2049 **9.1.5 California Public Records Act.** Contractor acknowledges that City is legally obligated to comply  
2050 with the California Public Records Act (“CPRA”). City acknowledges that Contractor may consider certain  
2051 records, reports, or information contained therein (“Records”) which Contractor is required to provide to  
2052 City under this Agreement to be of a proprietary or confidential nature. In such instances, Contractor will  
2053 inform City in writing of which records are considered propriety or confidential and shall identify the  
2054 statutory exceptions to disclosure provided under the CPRA that legally permit non-disclosure of the  
2055 Records. At such time as City receives a request for records under the CPRA or Federal Freedom of  
2056 Information Act (“FOIA”), or a subpoena or other court order requesting disclosure of the Records, City  
2057 will notify Contractor of the request, subpoena, or order and of City’s obligation and intent to provide a  
2058 response within ten (10) calendar days. Contractor shall within five (5) calendar days either: (i) consent in  
2059 writing to the disclosure of the Records; or (ii) seek and obtain, at Contractor’s sole cost and expense, the  
2060 order of a court of competent jurisdiction staying or enjoining the disclosure of the Records. If Contractor  
2061 fails to respond within the timeframe stipulated, then City may proceed to disclosure the Records, in  
2062 which event Contractor agrees, waives, and releases City of any liability for the disclosure of the Records.  
2063 In the event Contractor seeks a court order to stay or enjoin the disclosure of the Records, Contractor  
2064 agrees to indemnify, defend, and hold harmless the City, its Council, elected and appointed board or  
2065 commission members, officers, employees, volunteers, and agents (collectively, "Indemnitees") from and  
2066 against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding, or suit in law or  
2067 equity of any and every kind and description, whether judicial, quasi-judicial, or administrative in nature,  
2068 arising or resulting from or in any way connected with the subject CPRA, FOIA request, or subpoena for  
2069 the Records. This indemnity obligation shall survive the expiration or termination of this Agreement.  
2070

2071 **9.2 RECORD KEEPING REQUIREMENTS**

2072  
2073 **9.2.1 Financial and Operational Records**  
2074

2075 Contractor shall maintain accurate and complete accounting records containing the underlying financial  
2076 and operating data relating to and showing the basis for computation of all costs associated with providing  
2077 services. The accounting records shall be prepared in accordance with Generally Accepted Accounting  
2078 Principles (GAAP) consistently applied.  
2079

2080 **9.2.2 Collection Service Records**

2081 Records shall be maintained by Contractor for City relating to:

- 2082
- 2083 **A.** Customer services including service exemption information;
- 2084
- 2085 **B.** Weight and volume of Recyclable Materials Collected;
- 2086
- 2087 **C.** Routes;
- 2088
- 2089 **D.** Facilities, equipment and personnel used;
- 2090
- 2091 **E.** Facilities and equipment operations, maintenance and repair;
- 2092
- 2093 **F.** Tonnage of Recyclable Materials, listed by Processing Site where such materials were delivered;
- 2094
- 2095 **G.** Recyclable Materials Collection Customer participation and weekly Cart setout rates;
- 2096
- 2097 **H.** Tonnage of Recyclable Materials Collected and Diverted from Disposal by Contractor;
- 2098
- 2099 **I.** Diversion Level;
- 2100
- 2101 **J.** End use and markets for recovered materials; and,
- 2102
- 2103 **K.** Quantity of E-Waste, Batteries, and cell phones accepted by Contractor.
- 2104

**9.2.3 Transfer, Processing, Diversion, and Disposal Records**

Contractor shall maintain records of transfer, Processing, Diversion, and Disposal of all Recyclable Materials Collected by Contractor.

**9.2.4 Other Programs Records**

Records for other programs shall be tailored to specific needs. In general, the records shall include:

- A.** Plans, tasks, and milestones; and
- B.** Accomplishments in terms such as dates, activities conducted, quantities of products used, produced or distributed, and numbers of participants and responses.

**9.2.5 Customer Service Records**

Records shall be maintained by Contractor for City related to:

- A.** Number of calls;
- B.** Categories (missed pickups, Complaints, damage, etc.) of calls;
- C.** Training materials and records;
- D.** Complaint log noting the name and address of complainant, date and time of Complaint, nature of Complaint, and nature and date of resolution; and,
- E.** New Customer log.

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**9.2.6 CERCLA Defense Records**

City views its ability to defend itself against Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, the City regards its ability to prove where Residue from Recyclable Materials Processing is taken for transfer or Disposal, as well as where they are not taken, to be matters of concern. Contractor shall maintain, retain and preserve records which can establish where Residue was Disposed (and therefore establish where they were not). This provision shall survive the expiration or earlier termination of this Agreement. Contractor shall maintain these records for a minimum of 10 years beyond expiration or earlier termination of the Agreement. Contractor shall provide these records to City (upon request or at the end of the record retention period) in an organized and indexed manner rather than destroying or disposing of them.

**9.3 GENERAL REPORTING REQUIREMENTS**

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

- 2147
- 2148 **A.** Determine Contractor’s Compensation;
- 2149
- 2150 **B.** Set Maximum Rates;
- 2151
- 2152 **C.** Evaluate the financial efficacy of operations;
- 2153
- 2154 **D.** Evaluate Diversion performance and Residue Level;
- 2155
- 2156 **E.** Determine needs for adjustment to programs;
- 2157
- 2158 **F.** Evaluate Customer service and Complaints; and
- 2159
- 2160 **G.** Provide concise and comprehensive program information and metrics for use in fulfilling reporting requirements under AB 939, AB 341, AB 1826, and the Alameda County Mandatory Recycling Ordinance.
- 2161
- 2162
- 2163

Contractor may propose report formats that are responsive to the objectives and audiences for each report. The format of each report shall be approved by City. The City may, from time to time during the Term, review and request changes to Contractor’s report formats and content and the Contractor shall not unreasonably deny such requests. Contractor agrees to submit all reports in electronic format by e-mail or web-based platform in a manner compatible with City’s software and computers at no additional charge. Contractor shall provide a certification statement, under penalty of perjury, by the responsible Contractor official, that the report being submitted is true and correct to the best knowledge of such official after their reasonable inquiry. Upon the City’s request, Contractor shall provide signed original reports and other required documents.

Contractor shall submit quarterly reports within forty-five (45) calendar days after the end of the report quarter. Contractor shall submit annual reports no later than forty-five (45) calendar days after the end of the each Rate Year.

2177  
2178 Contractor shall submit (via e-mail) all reports to:

2179  
2180 Recycling and Solid Waste Manager  
2181 City Manager's Office  
2182 City of Union City  
2183 34009 Alvarado-Niles Road  
2184 Union City, CA 94587-4497  
2185

2186 **9.4 QUARTERLY REPORTS**

2187 Reports shall present the following information by each month's data in the reported quarter and include  
2188 a quarterly average. In addition, each quarterly report shall show the past twelve months of data and  
2189 past four quarters' averages for data comparison (the first three quarters of the Agreement shall only  
2190 include the available monthly and quarterly information).

- 2191  
2192 **A. Recyclable Materials Services**  
2193  
2194 1. Number of Customers and service levels for each Service Type.  
2195 2. Participation percentage by Service Type (number of accounts actually serviced / number of  
2196 accounts scheduled for service).  
2197 3. Tonnage Collected by Service Type listed separately by material type and Tonnage of Residue  
2198 Disposed by Service Type.  
2199 4. Identification of severe market depressions for Recyclable Materials, if any, and contingency  
2200 plans for such events.  
2201 5. A list of Recyclable Materials brokers and buyers used by the Contractor or Subcontractor.  
2202

- 2203 **B. Batteries, Used Motor Oil and Used Motor Oil Filters Curbside Collection Services for Single  
2204 Family and Parcelized Multi-Family Customers**  
2205  
2206 1. Data shall include the pounds of Batteries Collected, gallons of Used Motor oil Collected and  
2207 the number of pounds of Used Oil Filters Collected.  
2208 2. Provide the number of setouts of Batteries, Used Motor Oil and Used Motor Oil Filters.  
2209

- 2210 **C. Recyclable Materials Processing.**  
2211  
2212 1. Inbound Recyclable Materials weight tickets  
2213 2. Residue disposal records  
2214 3. Daily bale production count  
2215 4. Commodity sales and shipping records  
2216 5. Downtime logs  
2217 6. Employee roster (names, description, role, etc.)  
2218 7. Operating schedule  
2219 8. Safety Plan  
2220 9. Contractor's performance assessment

- 2221  
2222 **D. Customer Service**  
2223

- 2224 1. Number of calls received from Customers by category (e.g., missed pickups, damage claims,  
 2225 requests for information, etc.).
- 2226 2. Number of resolved Complaints and the number of Complaints which were unresolved for  
 2227 more than five Business Days. Provide explanations on unresolved Complaints.
- 2228 3. Number of new Recyclable Materials Customers.
- 2229 4. Customer Service overview sheet, training agenda, and other training supplements provided  
 2230 at the quarterly Customer service meeting.
- 2231 5. Call center reports documenting the number of calls received per month (or quarter).  
 2232  
 2233
- 2234 **E.** Annual Public Education Plan. As part of Contractor’s third quarterly report, Contractor shall  
 2235 submit a plan outlining its public education efforts for the upcoming calendar year, as required  
 2236 pursuant to Section 7.1.**Notices for High Contamination.** List of Customers that received warning  
 2237 notices from Contractor for contamination levels in excess of standards specified in Section 8.2.4.  
 2238
- 2239 **F. Education Activities.** Provide a status report of Contractor’s actual public education and outreach  
 2240 activities completed compared to the efforts outlined in the annual public education plan for that  
 2241 year. Pursuant to the requirements of Exhibit E and for each education program (Single Family,  
 2242 Multi-Family, Commercial, Special Events), document the results including the dates of activities  
 2243 during the quarter, how many Customers were visited/targeted or participated, and what  
 2244 methods were used to accomplished the tasks if different from the plan.  
 2245
- 2246 **G. Customer Notices for High Contamination.** List of Customers that received warning notices from  
 2247 Contractor for contamination levels in excess of standards specified in Section 8.2.4.  
 2248
- 2249 **H. Pilot and New Programs.** For each pilot and/or new program, activity-related and narrative  
 2250 reports on goals and milestones and accomplishments; description of problems encountered,  
 2251 actions taken, and any recommendations to facilitate progress; and description of vehicles,  
 2252 personnel, and equipment utilized for each program.  
 2253
- 2254 **I. Summary Assessment**  
 2255
- 2256 1. Summary assessment of the overall Recyclable Materials Collection and Processing from  
 2257 Contractor’s perspective relative to financial and physical status of program.
- 2258 2. Description of the physical status of how well the program is operating for efficiency,  
 2259 economy, and effectiveness relative to meeting all the goals and objectives of this Agreement  
 2260 including particularly the Contamination and Residue Levels and Contractor’s Recycling  
 2261 Processing performance.
- 2262 3. Recommendations and plans to improve.
- 2263 4. Highlights of significant accomplishments and problems.  
 2264
- 2265 **J. Overweight Vehicle Reporting.** The quarterly report must include a summary total of all instances  
 2266 of overweight Collection Vehicles. This summary must include the number of overweight vehicle  
 2267 instances expressed as a percentage of the total number of Collection Vehicle loads transported  
 2268 during the reported Quarter.
- 2269 **9.5 ANNUAL REPORTS**  
 2270

2271 **9.5.1 Annual Report Requirements**  
2272 The annual report shall be in the form of the quarterly reports and shall provide the same information as  
2273 required pursuant to Section 9.4 of this Agreement, summarized for the preceding four quarters. The  
2274 annual report shall also include a complete inventory of equipment used to provide all services.  
2275

2276 **9.5.2 Contractor Officers and Board Members**  
2277 Provide a list of Contractor's officers and members of its board of directors with the annual report.  
2278

2279 **9.5.3 Financial Information**  
2280 Within seven (7) calendar days of City request, Contractor shall provide the City a copy of Contractor's  
2281 most recently-completed Federal Internal Revenue Service (IRS) Form 990 (or other form required by the  
2282 IRS).  
2283

2284 **9.5.4 Related-Party Entities**  
2285 Contractor agrees that all financial transactions with all Related-Party Entities shall be approved in  
2286 advance in writing and disclosed annually to the City in a separate disclosure letter to the City. This letter  
2287 shall include, but not be limited to, the following information:  
2288

2289 A general description of the nature of each Related-Party Entity transaction, or type of (for many  
2290 similar) transaction, as applicable. Such description shall include for each (or similar) transaction,  
2291 amounts, specific Related-Party Entity, basis of amount (how amount was determined),  
2292 description of the allocation methodology used to allocate any common costs, and profit amount.  
2293 Amounts shall be reconciled to the Related-Party Entity disclosures made in Contractor's financial  
2294 statements referred to in Section 9.5.3.  
2295

2296 At the City's request, Contractor shall provide the City with copies of working papers or other  
2297 documentation deemed relevant by the City relating to information shown in the annual disclosure letter.  
2298 The annual disclosure letter shall be provided to the City within 120 calendar days after the end of the  
2299 Contractor's fiscal year.  
2300

2301 **9.5.5 Operational Information**  
2302 In addition to requirements stated elsewhere in this Agreement, the annual report shall include the  
2303 following information:  
2304

2305 **A. Routes by Service Type**  
2306

- 2307 1. Number of routes per day
- 2308 2. Types of vehicles
- 2309 3. Crew size per route
- 2310 4. Number of full time equivalent (FTE) routes
- 2311 5. Number of accounts per route
- 2312 6. Total hours per Service Type per day and per year
- 2313 7. Average cost per route
- 2314 8. Route maps

2315 **B. Personnel**  
2316

- 2317 1. Organizational chart  
2318

- 2319 2. Job classifications and number of employees (e.g. administrative, Customer service  
2320 representatives, drivers, supervisors, educational staff)  
2321 3. Annual wages by job classification including benefits  
2322 4. Number of full time equivalent (FTE) positions for each job classification  
2323 5. Number of hours per job classification per day and per year  
2324

2325 **C. Productivity Statistics**

- 2326  
2327 1. Number of accounts per Service Type per week  
2328 2. Number of setouts per Service Type per week  
2329 3. Tons per route per day  
2330

2331 **D. Operational Changes**

- 2332  
2333 1. Number of routes  
2334 2. Staffing  
2335 3. Supervision  
2336 4. Collection services.  
2337

2338 **E. Equipment.** An inventory of equipment in accordance with Section 8.3.4.  
2339

2340 **F. Materials Recovery Facility Safety Plan**  
2341

2342 **9.5.6 Summary Assessment**

2343 A status assessment of the overall Recyclable Materials program from Contractor's perspective relative to  
2344 the financial status of the program. The status assessment shall reflect how well the program is operating  
2345 for efficiency, economy and effectiveness relative to meeting all goals and objectives of this Agreement.  
2346 Provide recommendations and plans to improve. Highlight significant accomplishments and problems.  
2347

2348 **9.5.7 Additional Reporting**

2349 Contractor shall provide the City with any additional data and information requested by the City that is  
2350 maintained by, or readily available to, Contractor and that is specifically related to the Collection Services.  
2351 Such Reports shall be provided within a reasonable time following the request.  
2352

2353 **ARTICLE 10.**  
2354 **FRANCHISE FEES AND OTHER FEES**  
2355

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2356 **10.1 GENERAL**

2357 Contractor shall remit the fees described in this Section to City on a monthly basis. Such fees shall be  
2358 treated as Pass-Through Costs for which Contractor does not receive profit or any additional mark-up,  
2359 expense, or administrative charge. For administrative convenience, Contractor agrees to have City deduct  
2360 such fees from Contractor's Compensation payments made by City to Contractor.  
2361

2362 **10.2 FRANCHISE FEE**

2363 In consideration of the exclusive rights provided Contractor herein, Contractor shall include in  
2364 Contractor’s Compensation Application and Maximum Rates established by Contractor a Franchise Fee to  
2365 be paid to the City each month.  
2366

2367 **10.3 OTHER CITY FEES**

2368 Contractor shall annually include in the Maximum Rates established by Contractor and approved by City,  
2369 City Fees as directed and adjusted by City. City shall direct Contractor to include City Fees in its annual  
2370 Compensation Application and the Maximum Rates established by Contractor.  
2371

2372 **10.6 FEE DISPUTES**

2373  
2374 In the event of any disputes between the Contractor and the City with respect to the fees  
2375 described in this Article, the City shall provide the Contractor with written objection  
2376 describing the dispute amount. The City shall state its objections in writing with reference to  
2377 the applicable portion(s) of the report and its reasons then known for its dispute. The Parties  
2378 agree to meet and confer regarding any such dispute.  
2379

2380 In the event any City imposed fee (hereinafter “CIF”) is determined by a court of final  
2381 jurisdiction to be excessive, invalid, or unenforceable, then: (i) Contractor shall not charge or  
2382 or include in Maximum Rates established by Contractor the future portion of such CIF.  
2383

2384 **ARTICLE 11.**  
2385 **CONTRACTOR’S COMPENSATION**  
2386

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2387 **11.1 GENERAL**

2388 Contractor’s Compensation provided for in this Article shall be the full, entire and complete compensation  
2389 due to Contractor for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead,  
2390 operations, profit, and all other things necessary to perform all the services in the manner required by  
2391 this Agreement. Contractor’s Compensation shall include all operating costs, profit, Franchise Fees,  
2392 vehicle impact fees, Pass-Through Costs, fees described in Article 10, and all costs and expenses of every  
2393 kind necessary to perform all the services in the manner required by this Agreement. Costs shall reflect  
2394 depreciation of vehicles, purchase of replacement Containers, and depreciation of other equipment  
2395 necessary to perform all the services in the manner required by this Agreement.  
2396

2397 Contractor will perform the responsibilities and duties described in this Agreement in consideration of the  
2398 annual Contractor’s Compensation determined pursuant to this Article and paid to Contractor by the City.  
2399 Subject to Section 11.8, City shall pay Contractor the annual Total Contractor’s Compensation less City  
2400 fees (Franchise Fees) in twelve (12) monthly payments for each Rate Year. The annual Total Contractor’s  
2401 Compensation determined for each Rate Year shall be fixed (with the exception of the first two (2) years  
2402 of the Term) and shall not be increased to reflect any increases in costs above those anticipated by  
2403 Contractor, nor decreased to reflect any decreases in costs below those anticipated by Contractor.  
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**11.2 CONTRACTOR'S COMPENSATION**

Total Contractor's Compensation for Rate Year 21 commencing July 1, 2025 and ending June 30, 2026 is presented in Exhibit G and was determined by Contractor and City through a cost-based adjustment process completed concurrently with negotiations of this Agreement. For subsequent Rate Years during the Term and any Term extensions, Total Contractor's Compensation shall be determined by Contractor and City through a index-based adjustment process as defined herein.

**11.2.1 Minde-Based Rate Adjustment Methodology.**

In any Rate Year 22 beginning on July 1, 2026, and for subsequent Rate Years thereafter, Contractor's Compensation (excluding depreciation, interest and pass-through expenses) and the Maximum Rates established by Contractor shall be adjusted based on one hundred percent (100.0%) of the average change in the CPI for the 12-month period from January to December of the previous year. Therefore, the first rate adjustment, effective July 1, 2026, will be based on the percentage change in CPI for the average CPI value from January 1, 2025, through December 31, 2025, compared to the average CPI value from January 1, 2024, through December 31, 2024, rounded to the nearest hundredth of a percent. The index to be used shall be the series CUSR0000SEHG, Water and Sewer and Garbage Collection Services in U.S. city average, all urban consumers, seasonally adjusted.

**11.2.2 Annual Rate Increase Cap On Maximum Rates (Compensation Cap).**

In any Rate Year that the calculation of the CPI exceeds five percent (5.0%), the total adjustment for that year will equal five (5) percent. If the CPI exceeds five percent (5.0%), the amount above five percent (5.0%) shall be rolled over to the subsequent Rate Year only. If the CPI is negative (after accounting for any applicable rollover percentages from the prior year), there will be no CPI adjustment for that Rate Year and the amount below negative five percent (5.0%) shall be rolled over to the subsequent Rate Year.

**11.3 COMPENSATION ADJUSTMENT APPLICATION**

On or before March 1 of each year of the Term, Contractor shall deliver to City an application for its proposed adjustment to compensation and Maximum Rates for the subsequent Rate Year (the "Compensation Adjustment Application"). The Compensation Adjustment Application shall be in a format as may be mutually agreed on between the City and Contractor and must contain or be accompanied by Contractor's adjustment calculations for the specific services performed under this Agreement during the preceding Rate Year in Microsoft Excel or another electronic format acceptable to the City. Contractor shall be solely responsible for the cost of preparing the Compensation Adjustment Application.

**A. City Review of Application.** The Contractor's Compensation Adjustment Application and associated Maximum Rates established by Contractor shall be reviewed by the City in a timely manner. The City Council shall consider and make a decision on Contractor's Compensation Application and proposed Maximum Rates. The City Council shall act in good faith to consider and approve such compensation adjustments and Maximum Rates established by Contractor by commencement date of the Rate Year. The adjusted Maximum Rates shall not take effect until the City Council has approved such Maximum Rates.

2451 B. **Corrections.** In the event the City determines the Compensation Adjustment Application or  
2452 Maximum Rates established by Contractor contain substantial errors or omissions, Contractor shall, at its  
2453 sole cost, provide a corrected report to the City. A corrected report submitted after April 1 shall be treated  
2454 as a late report.

2455 1. **Late Report.** If Contractor fails to submit the Compensation Adjustment Application  
2456 and Maximum Rates by April 1, the City may: (1) accept and consider the late Compensation Adjustment  
2457 Application if the City, in its sole and reasonable discretion, deems there is sufficient time to review and  
2458 approve the proposed adjustment in time for it to be implemented on July 1; or (2) accept and consider  
2459 the late Compensation Adjustment Application at its earliest convenience, in which case any approved  
2460 rate adjustment shall only go into effect prospectively thirty (30) days after the City's approval. In no event  
2461 shall Contractor request that the City apply any rate adjustment retroactively.

2462  
2463 2. **No Report.** If Contractor fails to provide any Compensation Adjustment Application,  
2464 the Maximum Rates shall remain unchanged for the next Rate Year.

2465  
2466 C. **City Approval.** If Contractor provides a timely Compensation Adjustment Application and  
2467 Maximum Rates, the City Manager shall notify Contractor on or before May 1 whether the City has  
2468 approved the requested adjustments to the compensation and Maximum Rates for the next Rate Year.  
2469 Approval of the City Council shall be required for any requested compensation adjustment of more than  
2470 five percent (5%), which shall only be permitted pursuant to Section 11.6 (Extraordinary Compensation  
2471 Adjustments) below. The City Manager may approve all other requests or refer them to the City Council  
2472 at his or her discretion.

2473  
2474 E. **Contractor Payment for CPI review.** If the City determines that Contractor has made substantial  
2475 errors and has not properly submitted or correctly calculated the CPI adjustment, the City may charge  
2476 costs up to Fifteen Thousand (\$15,000) to conduct a second review and analysis. This payment amount  
2477 shall increase annually by the CPI Adjustment Calculation described in this Section.

2478  
2479 **11.3.1 Recycling Processing Expense Deduction.** For Rate Year 23 (FY 2027-2028), Contractor shall  
2480 reduce the Recycling Processing Expense delineated in Contractor's Compensation Adjustment  
2481 Application by thirteen and one-tenth percent (13.1%) and this deduction shall reset Contractor's  
2482 Recycling Processing expense included in its Compensation Adjustment Application for the duration of the  
2483 Term.

2484  
2485 In the event Contractor is awarded grant funds for expenses related to the Approved Recyclable Materials  
2486 Processing Facility, Contractor agrees to reduce its Recycling Processing Expense included in Contractor's  
2487 Compensation commensurate with the amount of grant funds awarded. The parties agree that the  
2488 Recycling Processing Expense reduction shall be accomplished by deducting the City's proportional share  
2489 of depreciation and interest associated with Contractor's costs to purchase and install new materials  
2490 recovery facility processing equipment. This deduction will be made by reducing Total Contractor's  
2491 Compensation before City Fees by the total amount of depreciation and interest attributable to the award  
2492 of grant funds for the processing equipment.

2493  
2494 **11.3.2 Bad Debt Risk Sharing.** For Rate Years 21 and 22, the initial two (2) years of this Agreement,  
2495 Contractor shall equitably share the risk associated with Bad Debt, and Contractor willfully acknowledges  
2496 and accepts that said risk may result in a reduction in Contractor's Compensation calculated in  
2497 Contractor's Compensation Application. The sharing of Bad Debt or reduction in Contractor's  
2498 Compensation resulting from Bad-Debt accrued for the initial two (2) Rate Years of this Agreement shall

2499 be included as a pass-through expense (reduction) in Contractor's Compensation Adjustment Application.  
2500 An example of the Bad Debt Risk Sharing calculations that shall be applied each Rate Year is provided as  
2501 **Exhibit N**. The City shall administer the Bad Debt Escalation Plan (included in Exhibit M) included in Solid  
2502 Waste Contractor's Franchise Agreement with the City in an effort to ensure Customer Bad Debt is  
2503 minimized to the furthest extent feasible.  
2504

2505 **11.3.3 Contractor's Actual Cost**

2506 If Contractor's actual costs are less than Contractor's Compensation for a particular Rate Year, Contractor  
2507 shall retain the difference; however, Contractor shall not be entitled to an increase in Contractor's  
2508 Compensation to account for actual costs being more than Contractor's Compensation.  
2509

2510 **11.4 EXTRAORDINARY COMPENSATION ADJUSTMENT OVERVIEW**

2511 If the City directs the Contractor to change its operations in accordance with Sections 4.5 and 6.1.D, or if  
2512 an extraordinary or unanticipated event occurs including a Change in Law, and such event materially  
2513 affects Contractor's Compensation, then the Contractor or the City may submit a request for an interim  
2514 Compensation adjustment. In such case, Contractor shall prepare an application for an adjustment to  
2515 Contractor's Compensation in accordance with Section 11.3.2, unless otherwise agreed to by the City. The  
2516 adjustment application shall clearly document the reason for the proposed adjustment, calculation of the  
2517 proposed cost adjustments, and supporting documentation. For the purposes of analyzing cost impacts  
2518 of changes in scope, the Contractor's profit shall be calculated using an operating ratio of 93.0% of actual  
2519 reasonable and necessary costs net of Pass-Through Costs. For the purposes of this Section, cyclical  
2520 fluctuations in the market price or supply and demand of Recyclable Materials, periodic strikes,  
2521 transportation issues, and other reasonably foreseeable events will not be deemed an extraordinary or  
2522 unanticipated event. If such events occur during the term of this Agreement, Contractor shall be solely  
2523 responsible for mitigating any potential economic impacts and shall not look to the City for compensation  
2524 adjustments.  
2525

2526 **11.4.1 Extraordinary Compensation Adjustment**

2527  
2528 **A.** Contractor and City acknowledge that there may be infrequent extraordinary events, including  
2529 Change in Law, which, although they do not prevent either party from performing, and thus do  
2530 not implicate the force majeure provisions hereof, nevertheless increase the cost of providing  
2531 services above the maximum compensation articulated in Section 11.3. The obligation of the  
2532 Parties in such event is to act reasonably toward each other in arriving at an appropriate  
2533 adjustment in rates. Accordingly, either Contractor or City may proceed not more frequently than  
2534 twice by either Party during the Term for an extraordinary compensation adjustment should an  
2535 event or circumstance arise which negatively impacts the economic operation of Contractor or  
2536 impacts the City and which is in excess of the compensation adjustment resulting from the  
2537 application of Section 11.3. An Extraordinary Compensation Adjustment in Contractor's  
2538 Compensation and Maximum Rates will be deemed justified if it is necessary for the Contractor  
2539 to make a substantial change in its operations, or substantial capital expenditure or investment  
2540 to perform its obligations under this Agreement due to the occurrence of an event or  
2541 circumstance which is beyond the reasonable control of Contractor. An Extraordinary  
2542 Compensation Adjustment in rates will be deemed justified if it is necessary for the City due to  
2543 circumstances, events or other rationale determined by the sole discretion of City. Extraordinary  
2544 rate adjustments shall only be effective after approval by the City Council.  
2545

2546 The Contractor is entitled to apply to the City for consideration of an Extraordinary Compensation  
2547 Adjustment or City may initiate such a review, should such occurrence have a material effect of  
2548 one percent (1.0%) or more annually on the Contractor's Compensation for the then-current Rate  
2549 Year.

2550  
2551 B. **Review of Costs.** If the Contractor or the City requests an Extraordinary Compensation  
2552 Adjustment, the City shall have the right to review any or all financial and operating records of  
2553 Contractor and related-party entities.

2554  
2555 C. **Submittal of Request.** If the Contractor is requesting an Extraordinary Compensation Adjustment,  
2556 the Contractor must submit its request for a special review of cost and operational data, in a form  
2557 and manner specified by the City, at least six months before the proposed effective date of any  
2558 compensation adjustment. The City may waive the six-month submittal requirement if the reason  
2559 for the special compensation review is a Change in Law that will become effective in less than a  
2560 six-month period.

2561  
2562 If City is requesting an Extraordinary Compensation Adjustment, the City shall notify the  
2563 Contractor at least seven months before the proposed effective date of any adjustment to  
2564 Maximum Rates. Upon such notification, Contractor shall, within thirty (30) calendar days, submit  
2565 reasonable cost and operational data as requested by the City, in a form and manner specified by  
2566 the City.

2567  
2568 A request for an Extraordinary Compensation Adjustment shall include a proposal on whether the  
2569 compensation adjustment resulting from the review shall be an adjustment in addition to or in  
2570 lieu of the annual compensation adjustment.

2571  
2572 D. **Burden of Justification.** In the event of such an application for an extraordinary compensation  
2573 and rate increase, it is understood that the Contractor shall have the burden of demonstrating to  
2574 the reasonable satisfaction of the City the basis for the extraordinary increased cost. Contractor  
2575 shall bear the burden of justifying its request and shall be solely responsible for the cost of  
2576 preparing and submitting sufficient documentation in support of its request. City in its sole  
2577 reasonable discretion may request Contractor to provide any additional information it deems  
2578 necessary to fully evaluate the request, and Contractor shall be solely responsible for the cost of  
2579 providing such additional information. Contractor shall allow City to review a report of its annual  
2580 revenues and expenses for the services provided in the City. City shall have the right to review  
2581 this information in connection with the City's review of Contractor's extraordinary rate  
2582 adjustment request. With respect to any financial statements or any other information Contractor  
2583 specifically designates as non-public information ("Confidential Information"), City agrees that,  
2584 except as otherwise set forth in this Section: (a) it will hold in confidence all Confidential  
2585 Information; (b) it will restrict the disclosure of Confidential Information within its own  
2586 organization and to its agents or representatives who need to know the Confidential Information  
2587 for the purposes of the request; (c) it will not disclose Confidential Information to any third party  
2588 without the prior written consent of the Contractor; (d) it will not copy or reproduce any written  
2589 or electronically stored Confidential Information without the prior written approval of the  
2590 Contractor; and (e) it will not use Confidential Information except as required for consideration  
2591 of the request. City may consider increases or decreases in Contractor's total revenues and total  
2592 cost of services when reviewing an extraordinary rate adjustment request. Notwithstanding any  
2593 other provision in this Section, the City will inform the Contractor upon receiving a California

2594 Public Records Act request or a subpoena for any Confidential Information by written notice  
2595 delivered to the Contractor (“Notice”). The Contractor will have five (5) days from the date of the  
2596 Notice to inform the City in writing of its intent to assert its confidentiality rights under this  
2597 Agreement. The Contractor will then have fifteen (15) days from the date of the Notice to seek  
2598 and obtain a court order or other judicial ruling to prevent the disclosure of the Confidential  
2599 Information. If the Contractor fails to act within the five (5) or fifteen (15) day windows described  
2600 above, the City may disclose the requested Confidential Information to the requestor or  
2601 subpoenaing party. In the event Contractor seeks a court order to stay or enjoin the disclosure of  
2602 the Records, Contractor agrees to indemnify and hold harmless the City, its Council, elected and  
2603 appointed board or commission members, officers, employees, volunteers, and agents  
2604 (collectively, "Indemnities") from and against any and all loss, liability, penalty, forfeiture, claim,  
2605 demand, action, proceeding, or suit in law or equity of any and every kind and description,  
2606 whether judicial, quasi-judicial, or administrative in nature, arising or resulting from or in any way  
2607 connected with the subject of a CPRA, FOIA request, or subpoena for the Confidential Records.  
2608 For the purposes of this Section, “Records” shall mean records created or maintained by  
2609 Contractor in accordance with this Agreement, including those records that may include financial  
2610 statements or Confidential Information of Contractor. Contractor’s indemnity obligation shall  
2611 survive the expiration or termination of this Agreement. Contractor shall bear the burden of  
2612 justifying to the City by substantial evidence any entitlement to current, as well as increased,  
2613 Maximum Rates under this Section 11.4. If the City determines that the Contractor has not met  
2614 its burden, the Contractor may request one hearing to produce additional evidence. Upon such  
2615 request, the City shall permit said additional hearing. In the event the City denies Contractor’s  
2616 request, Contractor shall have the right to present its claim in a court of competent jurisdiction.  
2617

2618 E. **Grant of Request.** City shall review the Contractor’s request and, in the City’s sole and reasonable  
2619 judgment, make the final determination as to whether an adjustment to the Contractor  
2620 Compensation will be made, and, if an adjustment is permitted, the appropriate amount of the  
2621 adjustment. Approval of the City Council shall be required for any Extraordinary Compensation  
2622 Adjustments. The City shall notify Contractor of its decision within ninety (90) calendar days  
2623 regarding whether it accepts Contractor’s request. Except as provided herein, any such change  
2624 approved by the City shall not be implemented until July 1 of the next Rate Year unless a different  
2625 timeframe is approved by the City Council. Based on evidence the Contractor submits, the City  
2626 Council may grant some, all, or none of the requested increase and approve adjusted Maximum  
2627 Rates.  
2628

2629 **Compensation.** The Party requesting the Extraordinary Compensation Adjustment shall bear all  
2630 reasonable costs of both Parties for participating in such review up to a maximum of twenty-five  
2631 thousand dollars (\$25,000) per Party and such costs shall not be reimbursed through Rates  
2632 charged customers. If an Extraordinary Compensation Adjustment occurs in response to a City-  
2633 directed change in scope or City-initiated changes to the amount of the Franchise Fee or other  
2634 fees, the City shall be considered the Party requesting the special Rate review.  
2635

2636 **11.5 PAYMENT OF CONTRACTOR’S COMPENSATION**

2637 A. City shall remit to Contractor its compensation based on the actual amount of Contractor’s Rate  
2638 Revenue received from Solid Waste Contractor’s quarterly billing of Customers, excluding City  
2639 fees included in Rates established by Contractor. The Parties acknowledge and understand that  
2640 Rate Revenue received monthly from Solid Waste Contractor shall fluctuate due to various

2641 factors. The Parties further acknowledge and anticipate that quarterly Rate Revenue received  
2642 from Solid Waste Contractor shall be the highest of each month per quarter during the first  
2643 month of each quarter and then be less the subsequent two (2) months of the quarter.  
2644

2645 B. Irrespective of the amount of Contractor's Rate Revenue received by City monthly from Solid Waste  
2646 Contractor's billings, Contractor's Compensation shall be paid based on a fixed amount the first two  
2647 (2) months of each quarter and then payment for the third month of each quarter shall be  
2648 reconciled or adjusted to reflect the total amount of actual Contractor's Rate Revenue received by  
2649 City for that quarter. The fixed amount remitted to Contractor by City for the first two (2) months of  
2650 each quarter shall be equal to one-twelfth of Total Contractor's Compensation for that Rate Year.  
2651 The compensation remitted to Contractor by City for the third month of each quarter shall be  
2652 adjusted to reflect the actual Contractor's Rate Revenues received by City from Solid Waste  
2653 Contractor for that quarter. The Parties acknowledge that the compensation remitted to Contractor  
2654 by City for the third month of each quarter shall be adjusted to account for the accrual of Bad Debt  
2655 for that quarter that is attributable to Contractor's Rate Revenue received by City from Solid Waste  
2656 Contractor for Rates established by Contractor. Upon request by Contractor, City shall provide  
2657 timely all revenue and billing related documentation received from Solid Waste Contractor.  
2658

2659 C. Total Contractor's Compensation shall be paid in monthly installments as prescribed in Section  
2660 11.5.B and shall be increased or decreased annually in Contractor's Compensation Application  
2661 pursuant to the Bad Debt Cost Sharing model prescribed in **Exhibit N**. For Rate Year 21 and Rate  
2662 Year 22, Total Contractor's Compensation paid monthly to Contractor shall initially (at the onset of  
2663 the Rate Year) be increased by the amount of prospective Bad Debt included to Contractor's  
2664 Compensation. For Rate Year 23 through Rate Year 30, Total Contractor's Compensation paid  
2665 monthly to Contractor shall include the accrual in arrears of Bad Debt from the prior Rate Year. The  
2666 prior Rate Year's accrual in arrears of Bad Debt shall be included in Contractor's Compensation  
2667 Adjustment Application for the following Rate Year.  
2668

2669 D. In the event the City determines that Contractor is in default of this Agreement, and Contractor has  
2670 not properly cured the default in accordance with Article 13, then the City reserves the right, in its  
2671 sole and reasonable discretion, to cancel and forego any further monthly payments of Contractor's  
2672 Compensation that were otherwise payable under this Article. The City's right to cancel and forego  
2673 any future monthly payments of Contractor's Compensation upon failure to cure a validated default,  
2674 shall constitute a portion of the Performance Security requirements of the City for this Agreement  
2675 as set forth in Section 12.3.  
2676

## 2677 **11.6 DISCOUNTED RATES**

2678  
2679 **A. Low Income (Life-Line) Rates.** Contractor shall provide Recyclable Materials Collection at a Rate  
2680 that is fifteen (15.0%) less than the Rate it charges other Customers for comparable level of service  
2681 for eligible, low income subscribers demonstrating that they receive assistance under PG&E's  
2682 California Alternate Rates for Energy ("CARE") ratepayer assistance program. Contractor shall

2683 determine who is eligible for this Rate. Contractor shall require that life-line Customers submit  
2684 applications annually to Contractor, and Contractor shall verify continued eligibility each year by  
2685 review of applications. The Contractor’s Life-Line Rate shall not exceed the Maximum Rate  
2686 approved by the City.

2687  
2688 **C. Senior Rates.** Contractor shall bill Customers whose heads of household qualify as Seniors  
2689 (meaning that they are 65 or more years of age) at a Rate that is fifteen percent (15.0%) less than  
2690 the Rate it charges other Customers for comparable level of service. Contractor shall verify  
2691 Customer’s eligibility for the Senior discount using driver’s license or birth certificate. Contractor  
2692 shall require that Customers with Senior discounts submit verification of eligibility every two (2)  
2693 years to Contractor for review.

2694  
2695 Discounted rates eligibility requirements are only intended to apply to current residents of the  
2696 Dwelling.

2697  
2698 **ARTICLE 12.**  
2699 **INDEMNITY, INSURANCE, AND**  
2700 **PERFORMANCE ASSURANCE**  
2701

---

2702 **12.1 INDEMNIFICATION**

2703 Contractor shall indemnify, defend with counsel acceptable to the City, and hold harmless (to the  
2704 full extent permitted by law) the City and its City Council, officers, officials, employees, volunteers,  
2705 and agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs  
2706 (including without limitation costs and fees of litigation) (collectively, “Damages”) of every nature  
2707 arising out of or in connection with Contractor’s performance under this agreement, or its failure  
2708 to comply with any of its obligations contained in the agreement, except such loss or damage  
2709 which was caused by the sole negligence or willful misconduct of the City.

2710  
2711 Contractor’s duty to defend and indemnify herein shall include Damages arising from or  
2712 attributable to any operations, repairs, clean-up or detoxification, or other plan (regardless of  
2713 whether undertaken due to governmental action) concerning any Hazardous Substance or  
2714 Hazardous Waste Collected in the City. Notwithstanding the foregoing, Contractor shall not be  
2715 required to indemnify the City for the costs for any claims arising from the Disposal of Residue at  
2716 the Designated Transfer Station or Disposal site, including, but not limited to, claims arising under  
2717 the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) unless  
2718 such claim is a direct result of Contractor’s actions or negligence. The foregoing is intended to  
2719 operate to defend and indemnify and hold harmless indemnitees to the full extent permitted for  
2720 liability pursuant to ‘107(e) of CERCLA, 42 U.S.C. ‘9607(e) and California Health and Safety Code  
2721 ‘25364.

2722  
2723 In addition, Contractor’s duty to defend and indemnify herein includes all fines and/or penalties  
2724 imposed by the California Department of Resources Recycling and Recovery (CalRecycle), subject  
2725 to the restrictions set forth in Public Resources Code Section 40059.1, if the requirements of AB  
2726 939, AB 341, AB 1826, AB 1594, and the Alameda County Waste Management Authority  
2727 Mandatory Recycling Ordinance 2012-01 are not met by the Contractor with respect to the  
2728 Recyclable Materials Collected under this Agreement, and such failure is (i) due to the failure of

2729 Contractor to meet its obligations under this Agreement, or (ii) due to Contractor delays in  
2730 providing information that prevents Contractor or City from submitting reports required by AB  
2731 939, AB 341, AB 1826, AB 1594, and the Alameda County Mandatory Commercial Recycling  
2732 Ordinance 2012-01 in a timely manner.

2733  
2734 Providing City complies with all Applicable Laws concerning the setting of Maximum Rates  
2735 established by Contractor under this Agreement, as such laws are interpreted, on the Effective  
2736 Date, to apply to City, Contractor shall defend the City with counsel reasonably acceptable to the  
2737 City, indemnify and hold the City harmless from any and all litigation and claims, damages and  
2738 liabilities arising from the City's approval of Maximum Rates established by Contractor for service  
2739 under this Agreement or in connection with the application of California Constitution, Article XIIC  
2740 and Article XIID to the imposition, payment or collection of Rates directly related to services  
2741 provided by Contractor under this Agreement. Notwithstanding the above, this indemnity is not  
2742 intended to, and shall not extend to any addition to or increase in Rates that are not associated  
2743 with the charges by the Contractor for providing service under this Agreement, including but not  
2744 limited to, Franchise Fees and governmental fees and charges.

2745  
2746 The City shall not be in default of this Agreement, if it is determined by a court of competent  
2747 jurisdiction that it lacks the authority to set Maximum Rates established by Contractor and/or  
2748 increase Maximum Rates established by Contractor for charges related to providing service,  
2749 pursuant to this Agreement. Should a court of competent jurisdiction determine that the City  
2750 lacks authority to set and/or increase Maximum Rates established by Contractor for charges  
2751 related to Franchise Fees and governmental fees and charges then Contractor shall reduce the  
2752 Rates it charges customers a corresponding amount, providing said fees, Rates and/or charges  
2753 disallowed by the court are not related to the cost of providing service hereunder and had been  
2754 incorporated in the Rates charged by Contractor to its customers.

2755  
2756 Nothing herein is intended to imply that California Constitution, Articles XIIC or XIID, apply to the  
2757 setting of Maximum Rates for the services provided under this Agreement; rather this Section is  
2758 provided merely to allocate risk of loss as between the Parties.

2759  
2760 Contractor's duty to defend and indemnify herein shall include its obligation related to excess  
2761 Residue Level and Contamination Level pursuant to Section 6.1.E and Section 6.1.F.

2762  
2763 In addition, Contractor's duty to defend and indemnify herein shall include Damages arising from  
2764 or related to the City's request to remove or reassign any employee pursuant to Section 8.5.

2765  
2766 This provision shall survive the expiration or earlier termination of this Agreement and shall not  
2767 be construed as a waiver of rights by City to contribution or indemnity from third parties.

2768  
2769 Contractor's Guaranty Agreement shall extend to the indemnification obligation hereunder.

2770  
2771 In addition, Contractor's duty to defend and indemnify herein includes Damages from the City  
2772 approving Maximum Rates established by Contractor for service under this Agreement or in  
2773 connection with the application of Article XIIC and Article XIID of the California Constitution  
2774 (Proposition 218) to the imposition, payment, or collection of rates and fees for services provided  
2775 by Contractor under this Agreement. However, nothing herein is intended to imply that California

2776 Constitution, Articles XIII C or XIII D, apply to the setting of Maximum Rates established by  
2777 Contractor for the services provided under this Agreement.

2778  
2779 This Section 12.1 will survive the expiration or earlier termination of this Agreement and shall not  
2780 be construed as a waiver of rights by City to contribution or indemnity from third parties.

2781  
2782 **12.2 PROPOSITION 218 RELEASE**

2783  
2784 City intends to comply with all Applicable Law concerning the Contractor’s Compensation  
2785 provided under this Agreement. Upon thorough analysis, the parties have made a good faith  
2786 determination that the Contractor’s Compensation for the Solid Waste Collection provided under  
2787 this Agreement are not subject to California Constitution Articles XIII C and XIII D because, among  
2788 other reasons, such services are provided by a private corporation and not by City, Contractor  
2789 independently establishes the Maximum Rates for services within the limits established in this  
2790 Agreement, the receipt of services is voluntary and not required of any property within City, and  
2791 any owner or Customer of property within City has the opportunity to avoid the services available  
2792 under this Agreement either through Self-Hauling or use of property in such a manner that  
2793 Recyclable Material is not generated. Accordingly, in the event that a third party challenges the  
2794 Contractor’s Compensations and Maximum Rates established by Contractor as being in violation  
2795 of Article XIII C or XIII D of the California Constitution, or otherwise asserts that the Contractor’s  
2796 Compensations are an invalid tax, assessment, or fee, Contractor agrees to waive, release, hold  
2797 harmless, and defend the City Indemnitees from and against any and all claims Contractor may  
2798 have against the City Indemnitees resulting therefrom,

2799  
2800 Notwithstanding the above, this section is not intended to, and shall not extend to any addition  
2801 to or increase in Maximum Rates established by Contractor that are not associated with the  
2802 charges by Contractor for providing service under this Agreement, including but not limited to,  
2803 Franchise Fees and governmental fees or charges.

2804  
2805 This Section will survive the expiration or termination of this Agreement for claims arising prior to  
2806 the expiration or termination of this Agreement.

2807  
2808 **12.2 INSURANCE**

2809  
2810 **12.2.1 Minimum Scope of Insurance**

2811  
2812 Coverage shall be at least as broad as:

2813  
2814 **A.** Insurance Services Office form number GL 0002 covering Comprehensive General Liability and  
2815 Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General  
2816 Liability; or Insurance Services Office Commercial General Liability coverage (“occurrence” form  
2817 CG 0001).

2818  
2819 **B.** Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 “any auto”,  
2820 and endorsement CA 0025.

2821

2822 C. Workers' Compensation insurance as required by the Labor Code of the State of California and  
2823 Employers Liability insurance.

2824

2825 **12.2.2 Minimum Limits of Insurance**

2826 Providing coverage is commercially available, Contractor shall maintain limits no less than:

2827

2828 A. Comprehensive General Liability: \$7,000,000 combined single limit per occurrence for bodily  
2829 injury, personal injury, and property damage.

2830

2831 B. Automobile Liability: \$7,000,000 combined single limit per accident for bodily injury and property  
2832 damage.

2833

2834 C. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the  
2835 Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

2836

2837 D. Environmental Impairment Liability: \$3,000,000 each occurrence for liability arising from the  
2838 release of waste materials and/or irritants, contaminants or pollutants. Environmental  
2839 Impairment Liability will include coverage for all operations of Contractor and include all owned  
2840 landfills, waste Disposal sites, transfer stations, Processing Sites, and Collection operations  
2841 facilities (including vehicle parking and maintenance facilities). Such coverage shall, if  
2842 commercially available without involvement of the City, automatically broaden in its form of  
2843 coverage to include legislated changes in the definition of waste material and/or irritants,  
2844 contaminants or pollutants. The Environmental Liability policy shall contain the same  
2845 endorsements as required for Comprehensive General Liability.

2846

2847 **12.2.3 Deductibles and Self-Insured Retentions**

2848 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option  
2849 of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as  
2850 respects the City, its officials and employees; or the Contractor shall procure a bond guaranteeing  
2851 payment of losses and related investigations, claim administration and defense expenses.

2852

2853 **12.2.4 Other Insurance Provisions**

2854 The policies are to contain, or be endorsed to contain, the following provisions:

2855

2856 A. General Liability and Automobile Liability Coverages

2857

2858 1. The City is to be covered as an additional insured as respects: liability arising out of  
2859 activities performed by or on behalf of the Contractor; products and completed  
2860 operations of the Contractor; premises owned, leased or used by the Contractor; or  
2861 automobiles owned, leased, hired, or borrowed by the Contractor. The coverage shall  
2862 contain no special limitations on the scope of protection afforded to the City, its officials,  
2863 employees, or volunteers.

2864

2865 2. The Contractor's insurance coverage shall be primary insurance as respects the City, its  
2866 officials, employees, and volunteers. Any insurance or self-insurance maintained by the  
2867 City, its officials, employees, or volunteers shall be excess of the Contractor's insurance  
2868 and shall not contribute with it.

2869

- 2870 3. Any failure to comply with reporting provisions of the policies shall not affect coverage  
2871 provided to the City, its officials, employees, or volunteers.  
2872
- 2873 4. Coverage shall state that the Contractor’s insurance shall apply separately to each insured  
2874 against whom claim is made or suit is brought, except with respect to the limits of the  
2875 insurer’s liability.  
2876
- 2877 **B.** Workers’ Compensation and Employers Liability Coverage. The insurer shall agree to waive all  
2878 rights of subrogation against the City, its officers, employees, and volunteers for losses arising  
2879 from work performed by the Contractor for the City.  
2880
- 2881 **C.** All Coverages. Each insurance policy required by this clause shall be endorsed to state that  
2882 coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits  
2883 except after 30 calendar days’ prior written notice by certified mail, return receipt requested, has  
2884 been given to the City.  
2885

2886 **12.2.5 Acceptability of Insurers**

2887 The insurance policies required by this Section shall be issued by an insurance company or companies  
2888 authorized to do business in the State of California and with a rating in the most recent edition of Best’s  
2889 Insurance Reports of size category VII or larger and a rating classification of A or better, providing  
2890 insurance by such a company is commercially available.  
2891

2892 **12.2.6 Verification of Coverage**

2893 Contractor shall furnish Contractor’s insurance agent a copy of these specifications, and direct the agent  
2894 to provide the City with certificates of insurance and with original endorsements affecting coverage  
2895 required by this clause. Issuance of documentation indicates the Contractor’s insurance complies with  
2896 these provisions. The certificates and endorsements for each insurance policy are to be signed by a Person  
2897 authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be  
2898 received and approved by the City before work commences. The City may require complete, certified  
2899 copies of all required insurance policies, at any time.  
2900

2901 **12.2.7 Required Endorsements**

2902

2903 **A.** The City, its Councilmembers, directors, officers, employees, agents and volunteers are to be  
2904 covered as additional insureds with respect to liability arising out of automobiles owned, leased,  
2905 hired or borrowed by or on behalf of Contractor; products and completed operations of  
2906 Contractor; liability arising out of work or operations performed by or on behalf of Contractor,  
2907 including material parts or equipment furnished in connection with such work or operations; and  
2908 with respect to Environmental Impairment Liability. The City requires form CG2010 1185 for each  
2909 additional insured endorsement.  
2910

2911 **B.** The Workers’ Compensation policy shall contain an endorsement in substantially the following  
2912 form:

2913

2914 “Thirty calendar days’ prior written notice shall be given to the City of Union City in the event of  
2915 cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

2916  
2917 City Clerk

2918 City of Union City  
2919 34009 Alvarado-Niles Road  
2920 Union City, CA 94587  
2921

2922 **C.** The Comprehensive General Liability and Automobile Liability policies shall contain endorsements  
2923 in substantially the following form:  
2924

2925 1. "Thirty (30) calendar days' prior written notice shall be given to the City of Union City in  
2926 the event of cancellation, reduction in coverage, or non-renewal of this policy. Such  
2927 notice shall be sent to:

2928  
2929 City Clerk  
2930 City of Union City  
2931 34009 Alvarado-Niles Road  
2932 Union City, CA 94587  
2933

2934  
2935 2. "This policy shall be considered primary insurance as respects any other valid and  
2936 collectible insurance maintained by the City of Union City, including any self-insured  
2937 retention or program of self-insurance, and any other such insurance shall be considered  
2938 excess insurance only."  
2939

2940 3. "Inclusion of the City of Union City as an insured shall not affect the City's rights as  
2941 respects any claim, demand, suit or judgment brought or recovered against the  
2942 Contractor. This policy shall protect Contractor and the City in the same manner as  
2943 though a separate policy had been issued to each, but this shall not operate to increase  
2944 the Contractor's liability as set forth in the policy beyond the amount shown or to which  
2945 the Contractor would have been liable if only one party had been named as an insured."  
2946

2947 **12.2.8 Delivery of Proof of Coverage**

2948 Simultaneously with the execution of this Agreement, Contractor shall furnish the City certificates of each  
2949 policy of insurance required hereunder, in form and substance satisfactory to City. Such certificates shall  
2950 show the type and amount of coverage, effective dates and dates of expiration of policies and shall have  
2951 all required endorsements. If the City requests, copies of each policy, together with all endorsements,  
2952 shall also be promptly delivered to City.  
2953

2954 Renewal certificates will be furnished periodically to City to demonstrate maintenance of the required  
2955 coverages throughout the Term.  
2956

2957 **12.2.9 Other Insurance Requirements**  
2958

2959 **A.** If any services are delegated to a Subcontractor, the Contractor shall require such Subcontractor  
2960 to provide statutory workers' compensation insurance and employer's liability insurance for all of  
2961 the Subcontractor's employees engaged in the work in accordance with Section 12.2.2.C and  
2962 Section 12.2.4.B. The liability insurance required by Section 12.2.2 shall cover all Subcontractors  
2963 or the Subcontractor must furnish evidence of insurance provided by it meeting all of the  
2964 requirements of this Section 12.2.  
2965

2966 **B.** The Contractor shall comply with all requirements of the insurers issuing policies. The carrying of  
2967 insurance shall not relieve Contractor from any obligation under this Agreement. If any claim  
2968 exceeding the amount of any deductibles or self-insured reserves is made by any third person  
2969 against the Contractor or any Subcontractor on account of any occurrence related to this  
2970 Agreement, the Contractor shall promptly report the facts in writing to the insurance carrier and  
2971 to the City.  
2972

2973 If Contractor fails to procure and maintain any insurance required by this Agreement, the City may take  
2974 out and maintain, at the Contractor's expense, such insurance as it may deem proper and deduct the cost  
2975 thereof from any monies due the Contractor.  
2976

2977 The Comprehensive General and Automobile Liability insurance required by Sections 12.2.2 and 12.2.4.A  
2978 shall be written on an "occurrence," rather than a "claims made" basis, if such coverage is obtainable. If  
2979 it is not obtainable, Contractor must arrange for a 36 month "tail coverage" to protect the City from claims  
2980 filed after the expiration or termination of this Agreement relating to incidents which occurred prior to  
2981 such expiration or termination.  
2982

### 2983 **12.3 PERFORMANCE SECURITY**

2984 To guarantee the timely and full performance of Contractor's obligations under this Agreement, including  
2985 Contractor's indemnification obligations, Contractor shall provide the performance security prescribed in  
2986 this section. The performance security shall be comprised of two (2) separate and distinct financial  
2987 instruments in lieu of a performance bond, and shall include a Certificate of Deposit and a Letter of Credit.  
2988

2989 **A. Certificate of Deposit.** On or before the Effective Date of this Agreement, Contractor shall  
2990 place cash into a Certificate of Deposit (CD) with a local bank as a direct substitute for a  
2991 performance bond but acting in the same manner therein. The CD shall be owned by the  
2992 Contractor, with accrued interest payable to the Contractor on a monthly basis, but the CD  
2993 shall be under the direct control of and payable to the City without any approval from the  
2994 Contractor required upon the default of this agreement, the default terms of which are  
2995 specified elsewhere in this Agreement. The CD shall in-part secure the Contractor's faithful  
2996 performance of its obligations under this Agreement and such CD shall be renewed annually  
2997 if necessary so that the performance CD is maintained at all times during the Term. The  
2998 principal sum of the CD shall be Two Hundred Thousand Dollars (\$200,000). The CD shall be  
2999 held by a financial institution authorized to issue CD's in the State of California, with a financial  
3000 condition and record of service satisfactory to the City. The Certificate of Deposit is included  
3001 in Exhibit K.  
3002

3003 **B. Letter of Credit.** On or before the Effective Date of this Agreement, Contractor shall produce  
3004 an executed Letter of Credit (LC) with a local bank as a direct substitute for a performance  
3005 bond but acting in the same manner therein. The LC shall be under the direct control of and  
3006 payable to the City without any approval from the Contractor required upon the default of  
3007 this Agreement, the default terms of which are specified elsewhere in this Agreement. The  
3008 LC shall in-part secure the Contractor's faithful performance of its obligations under this  
3009 Agreement and such LC shall be renewed annually if necessary so that the performance LC is  
3010 maintained at all times during the Term. The principal sum of the LC shall be Four Hundred  
3011 Thousand Dollars (\$400,000). The LC shall be issued by a financial institution authorized to  
3012 issue LC's in the State of California, with a financial condition and record of service satisfactory

3013 to the City. The Letter of Credit is included in Exhibit K in addition to the aforementioned  
3014 Certificate of Deposit.

3015  
3016 **B.** Pursuant to and in accordance with Section 11.5.D, the City reserves the right to cancel and forego  
3017 monthly payments of Contractor’s Compensation.  
3018  
3019

3020 **ARTICLE 13.**  
3021 **DEFAULT AND REMEDIES**  
3022

---

3023 **13.1 EVENTS OF DEFAULT**

3024 Each of the following shall constitute an event of default (“Event of Default”) hereunder:  
3025

3026 **A.** Contractor fails to perform its obligations under this Agreement, or future amendment to this  
3027 Agreement, and: (i) if the failure or refusal has created an imminent threat to public health and is  
3028 not cured within two Business Days after receiving notice from the City specifying the breach; or  
3029 (ii) in the case of any other breach of the Agreement, the breach continues for more than 30  
3030 calendar days after written notice from the City for the correction thereof. Where such breach  
3031 cannot be cured within such thirty (30) day period, Contractor shall not be in default of this  
3032 Agreement if Contractor shall have commenced such action required to cure the particular breach  
3033 within ten (10) calendar days after such notice, and it continues such performance diligently until  
3034 completed.  
3035

3036 **B.** Any representation, warranty, or disclosure made to City by Contractor in connection with or as  
3037 an inducement to entering into this Agreement or any future amendment to this Agreement,  
3038 which proves to be false or misleading in any material respect as of the time such representation  
3039 or disclosure is made, whether or not any such representation, warranty, or disclosure appears as  
3040 part of this Agreement;  
3041

3042 **C.** There is a seizure or attachment (other than a pre-judgment attachment) of, or levy affecting  
3043 possession on, the operating equipment of Contractor, including without limit its vehicles,  
3044 maintenance or office facilities, or any part thereof of such proportion as to substantially impair  
3045 Contractor’s ability to perform under this Agreement and which cannot be released, bonded, or  
3046 otherwise lifted within 48 hours excluding weekends and Holidays;  
3047

3048 **D.** Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency,  
3049 debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment  
3050 of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of  
3051 equipment no longer useful to Contractor or necessary for this Agreement), trustee (other than  
3052 as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of  
3053 the Contractor for any part of Contractor’s operating assets or any substantial part of Contractor’s  
3054 property, or shall make any general assignment for the benefit of Contractor’s creditors, or shall  
3055 fail generally to pay Contractor’s debts as they become due or shall take any action in furtherance  
3056 of any of the foregoing;  
3057

- 3058 E. A court having jurisdiction shall enter a decree or order for relief in respect of the Contractor, in  
3059 any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now  
3060 or hereafter in effect, or Contractor shall consent to or shall fail to oppose any such proceeding,  
3061 or any such court shall enter a decree or order appointing a receiver, liquidator, assignee,  
3062 custodian, trustee, sequestrator (or similar official) of the Contractor or for any part of the  
3063 Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs  
3064 of Contractor;  
3065  
3066 F. Contractor fails to provide reasonable assurances of performance as required under Section 13.7.  
3067

3068 **13.2 RIGHT TO TERMINATE UPON DEFAULT**

3069 Upon a default by Contractor, the City may terminate this Agreement within ten (10) calendar days of the  
3070 default but no later than one-hundred and eighty (180) calendar days after the default. Such termination  
3071 shall be effective ten (10) calendar days following the City's written notice to Contractor, and such  
3072 termination shall be effective without the need for any hearing, suit, or legal action.  
3073

3074 **13.3 RIGHT TO CANCEL AND FOREGO MONTHLY PAYMENTS AS PERFORMANCE SECURITY**

3075 In accordance with Sections 11.5.D and 12.3, as additional performance security for this Agreement, the  
3076 City reserves the right to cancel and forego monthly payments of Contractor's Compensation.  
3077

3078 **13.4 POSSESSION OF PROPERTY UPON TERMINATION**

3079 In the event of termination for default, the City shall have the right to take possession of any and all of  
3080 Contractor's land, equipment, and other property used or useful in the Collection, Transportation,  
3081 Processing, and marketing of Recyclable Materials and to use such. The City shall have the right to retain  
3082 the possession of such property until other suitable arrangements can be made for the provision of  
3083 Recyclable Materials Collection services, which may include the award of an Agreement to another  
3084 Recyclable Materials or Solid Waste hauling company. If the City retains possession thereof after the  
3085 period of time for which Contractor has already been paid by City the monthly share of Contractor's  
3086 Compensation, the Contractor shall be entitled to the reasonable rental value of such property (which  
3087 shall be offset against any damages due the City for the Contractor's default). The City hereby recognizes  
3088 and respects that the Contractor may have other obligations related to Contractor's land, equipment and  
3089 other property described above and shall fully compensate Contractor sufficient to meet these other  
3090 obligations should the City decide to take possession of these assets.

3091  
3092 Contractor shall furnish the City with immediate access to all of its business records related to its  
3093 Customers and Billing of accounts for Collection services.  
3094

3095 **13.5 CITY'S REMEDIES CUMULATIVE; SPECIFIC PERFORMANCE**

3096 The City's rights to terminate the Agreement under Section 13.2, cancel and forego monthly payments of  
3097 Contractor's Compensation under Section 13.3 as performance security, take possession of the  
3098 Contractor's properties under Section 13.4, and/or impose Liquidated Damages under Section 13.6 are  
3099 not exclusive and shall not constitute an election of remedies. Instead, these rights shall be in addition to  
3100 any and all other legal and equitable rights and remedies which the City may have.  
3101

3102 By virtue of the nature of this Agreement, the urgency of timely, continuous and high quality service, the  
3103 lead time required to effect alternative service, and the rights granted by City to the Contractor, the  
3104 remedy of damages for a breach hereof by Contractor is inadequate and City shall be entitled to injunctive  
3105 relief.  
3106

3107 **13.6 LIQUIDATED DAMAGES**

3108  
3109 **A. General.** The Parties find that as of the time of the execution of this Agreement, it is impractical,  
3110 if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City  
3111 as a result of a breach by Contractor of its obligations under this Agreement. The factors relating  
3112 to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i)  
3113 substantial damage results to members of the public who are denied services or denied quality or  
3114 reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of  
3115 the benefits of the Agreement to individual members of the general public for whose benefit this  
3116 Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of  
3117 measurement in precise monetary terms; (iii) that exclusive services might be available at  
3118 substantially lower costs than alternative services and the monetary loss resulting from denial of  
3119 services or denial of quality or reliable services is impossible to calculate in precise monetary  
3120 terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at  
3121 best, a means of future correction and not remedies which make the public whole for past  
3122 breaches.  
3123

3124 **B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties  
3125 further acknowledge that consistent, reliable Collection services and compliance with the Residue  
3126 Level are of utmost importance to City and that City has considered and relied on Contractor's  
3127 representations as to its quality of service commitment in awarding the Agreement to it. The  
3128 Parties recognize that some quantified standards of performance are necessary and appropriate  
3129 to ensure consistent and reliable service and performance. The Parties further recognize that if  
3130 Contractor fails to achieve the performance standards, or fails to submit required documents in a  
3131 timely manner, City and its residents and businesses will suffer damages, and that it is, and will  
3132 be, impractical and extremely difficult to ascertain and determine the exact amount of damages,  
3133 which City will suffer. Therefore, without prejudice to City's right to treat such non-performance  
3134 as an event of default under this Section, the Parties agree that the Liquidated Damages amounts  
3135 established in Exhibit D of this Agreement and the following Liquidated Damage amounts  
3136 represent a reasonable estimate of the amount of such damages considering all of the  
3137 circumstances existing on the Effective Date of this Agreement, including the relationship of the  
3138 sums to the range of harm to City that reasonably could be anticipated and the anticipation that  
3139 proof of actual damages would be costly or impractical.  
3140

3141 Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in  
3142 the Schedule of Liquidated Damages, Exhibit D.  
3143

3144 City may determine the occurrence of events giving rise to Liquidated Damages through the  
3145 observation of its own employees or representative or investigation of Complaints by Customers,  
3146 Occupants, and Generators.  
3147

3148 Liquidated Damages will only be assessed after Contractor has been given the opportunity but  
3149 failed to rectify the damages as described in this Agreement. Before assessing Liquidated  
3150 Damages, City shall give Contractor notice of its intention to do so. The notice will include a brief  
3151 description of the incident(s) and non-performance. The City may review (and make copies at its  
3152 own expense) all information in the possession of Contractor relating to incident(s) and/or non-  
3153 performance. City may, within 10 calendar days after issuing the notice, request a meeting with  
3154 Contractor. City may present evidence of non-performance in writing and through testimony of  
3155 its employees and others relevant to the incident(s) and non-performance. City will provide  
3156 Contractor with a written explanation of his or her determination on each incident(s) and non-  
3157 performance prior to authorizing the assessment of Liquidated Damages under this Section 13.6.  
3158 The decision of City shall be final and Contractor shall not be subject to, or required to exhaust,  
3159 any further administrative remedies.

3160  
3161 **C. Amount.** City may assess Liquidated Damages for each calendar day or event, as appropriate,  
3162 that Contractor is determined to be liable in accordance with this Agreement in the amounts  
3163 specified in Exhibit D subject to annual adjustment described below commencing for Rate Year  
3164 21.

3165  
3166 **D. Timing of Payment.** Contractor shall pay any Liquidated Damages assessed by City within 10  
3167 calendar days of the date the Liquidated Damages are assessed. If they are not paid within the  
3168 10-day period, City may proceed against the performance assurance required by the Agreement  
3169 order the termination of the rights or “franchise” granted by this Agreement, or all of the above.  
3170

3171 **13.7 EXCUSE FROM PERFORMANCE**

3172 **A.** The Parties shall be excused from performing their respective obligations hereunder if they are  
3173 prevented from so performing by reason of floods, earthquakes, other acts of nature, war, civil  
3174 insurrection, riots, acts of any government (including judicial action), and other similar  
3175 catastrophic events which are beyond the control of and not the fault of the Party claiming excuse  
3176 from performance hereunder. Labor unrest, including but not limited to strike, work stoppage or  
3177 slowdown, sick-out, picketing, or other concerted job action conducted by Contractor’s  
3178 employees or directed at Contractor is not an excuse from performance and Contractor shall be  
3179 obligated to continue to provide service notwithstanding the occurrence of any or all of such  
3180 events. In the case of labor unrest or job action directed at a third party over whom Contractor  
3181 has no control, the inability of Contractor to provide services in accordance with this Agreement  
3182 due to the unwillingness or failure of the third party to (i) provide reasonable assurance of the  
3183 safety of Contractor’s employees while providing such services, or (ii) make reasonable  
3184 accommodations with respect to Container placement and point of Delivery, time of Collection,  
3185 or other operating circumstances to minimize any confrontation with pickets or the number of  
3186 persons necessary to make Collections shall, to that limited extent, excuse performance. The  
3187 foregoing excuse shall be conditioned on Contractor’s cooperation in performing Collection  
3188 services at different times and in different locations.

3189  
3190 **B.** The Party claiming excuse from performance shall, within two calendar days after such Party has  
3191 notice of such cause, give the other Party notice of the facts constituting such cause and asserting  
3192 its claim to excuse under this Section.  
3193

3194 C. If either Party validly exercises its rights under this Section, the Parties hereby waive any claim  
3195 against each other for any damages sustained thereby.

3196  
3197 D. The partial or complete interruption or discontinuance of Contractor's services caused by one or  
3198 more of the events described in this Article shall not constitute a default by Contractor under this  
3199 Agreement. Notwithstanding the foregoing, however, (i) the existence of an excuse from  
3200 performance will not affect the City's rights under Section 4.6; and (ii) if Contractor is excused  
3201 from performing its obligations hereunder for any of the causes listed in this Section for a period  
3202 of 30 calendar days or more, other than as the result of third party labor disputes where service  
3203 cannot be provided for reasons described earlier in this Section, the City shall nevertheless have  
3204 the right, in its sole discretion, to terminate this Agreement by giving 10 calendar days' notice to  
3205 Contractor, in which case the provisions of Section 13.3 and Section 13.4 shall apply.  
3206

3207 **13.8 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE**

3208 If Contractor (i) is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing  
3209 or other concerted job action; (ii) appears in the reasonable judgment of City to be unable to regularly  
3210 pay its bills as they become due; or (iii) is the subject of a civil or criminal judgment or order entered by a  
3211 Federal, State, regional or local agency for violation of an Applicable Law, and the City believes in good  
3212 faith that Contractor's ability to perform under the Agreement has thereby been placed in substantial  
3213 jeopardy, the City may, at its option and in addition to all other remedies it may have, demand from  
3214 Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and  
3215 substance as the City believes in good faith is reasonably necessary in the circumstances to evidence  
3216 continued ability to perform under the Agreement. If Contractor fails or refuses to provide satisfactory  
3217 assurances of timely and proper performance in the form and by the date required by City, such failure or  
3218 refusal shall be an event of default for purposes of Section 13.1.  
3219

3220 **13.9 OBLIGATION TO PROVIDE SERVICE**

3221 A. The City shall not be in default of this Agreement if it is determined by a court of competent  
3222 jurisdiction that the City lacks the authority to approve Maximum Rates established by Contractor  
3223 and/or increase Maximum Rates established by Contractor for charges related to Recyclable  
3224 Materials Collection and Processing Services. Such legal actions shall not be considered a Change  
3225 in Law or Force Majeure event excusing Contractor's performance, except as otherwise provided  
3226 herein. During the pendency of any litigation and in the event a court of competent jurisdiction  
3227 or other regulatory agency sets aside, invalidates or stays all or a portion of the Maximum Rates  
3228 established by Contractor, then the City and Contractor agree to immediately meet and confer to  
3229 negotiate in good faith any modifications to Contractor's obligations under this Agreement to  
3230 ensure that Contractor continues to provide a level of Recycling Services necessary to ensure  
3231 compliance with AB 939, AB 341, AB 1826, AB 1526, SB 1383, and the Alameda County Waste  
3232 Management Authority Mandatory Recycling Ordinance 2021-01 and Union City Municipal Code  
3233 Chapter 7.24.  
3234

3235 B. The City and Contractor agree, as more fully set forth in the Recitals to this Agreement, that  
3236 proper Collection, transfer, Transport, Processing, Diversion, and Disposal of materials Collected  
3237 by Contractor is fundamental to the protection of the public health, safety and the well-being of  
3238 the City's residents and businesses. The City's responsibility for ensuring the adequacy of these  
3239 services in part provides the justification for the granting of a Franchise to Contractor. This

3240 Franchise creates an obligation that such services continue to be provided even under difficult,  
3241 adverse, or unforeseeable circumstances, such as but not limited to, natural disaster, labor unrest,  
3242 and any period where legal actions, future judicial interpretations of current law, or new laws or  
3243 regulations impact the effectiveness of portions of this Agreement. In such an event, it shall be  
3244 the responsibility of Contractor to mitigate any potential damages to other services being  
3245 provided as much as possible. For example:

3246  
3247 Should a court of competent jurisdiction or other regulatory agency set aside, invalidate or stay  
3248 all or a portion of the Maximum Rates established by Contractor and approved by the City,  
3249 Contractor agrees to continue to perform its obligations as otherwise set forth herein, and the  
3250 City and/or Contractor shall take such urgency actions necessary to facilitate Contractor's  
3251 continuation of service.

3252  
3253 Should there be a Change in Law or a new judicial interpretation of Applicable Law, including, but  
3254 not limited to, Articles XIII C and D of the California Constitution which impacts the Maximum  
3255 Rates established by Contractor for the Collection services established in accordance with this  
3256 Agreement, Contractor agrees to meet and confer with the City to discuss the impact of such  
3257 Change in Law on either Party's ability to perform under this Agreement. Should a court of  
3258 competent jurisdiction determine that the Contractor cannot charge and/or increase its Rates for  
3259 charges related to Franchise Fees and governmental fees and charges, Contractor shall reduce the  
3260 Rates it charges Customers a corresponding amount, providing said fees, Rates and/or charges  
3261 disallowed by the court are not related to the cost of providing service hereunder and had been  
3262 incorporated in the Rates charged by Contractor to its Customers. Nothing herein is intended to  
3263 imply that California Constitution, Articles XIII C or XIII D, apply to the Maximum Rates established  
3264 by Contractor for services provided under this Agreement; rather this Section is provided merely  
3265 to allocate risk of an adverse judicial interpretation between the Parties. This provision will survive  
3266 the expiration or earlier termination of this Agreement and shall not be construed as a waiver of  
3267 rights by City to contribution or indemnity from third parties.

3268  
3269 If, as a result of a legal action, Contractor is unable to include Franchise Fees, other City fees or  
3270 expenses, governmental fees or charges in the Rates it charges Customers for its services, then  
3271 Contractor agrees, upon direction from the City, to reduce its Rates in an amount corresponding  
3272 to the disallowed fee or charge, and shall thereafter not be required to remit the amount of the  
3273 disallowed fee or charge, provided it is not collected from Customers.

- 3274  
3275 1. Nothing herein is intended to imply that California Constitution Articles XIII(C) or (D) apply to  
3276 the Maximum Rates established by Contractor for services provided under this Agreement.  
3277 The foregoing paragraphs are merely intended as a contractual allocation of risks between  
3278 the Parties.  
3279  
3280 2. This Section shall survive the expiration or earlier termination of this Agreement and shall  
3281 not be construed as a waiver of rights by the City to contribution or indemnity from third  
3282 parties.  
3283  
3284 3. This provision is intended to be consistent with and limited by California Public Resources  
3285 Code Section 40059.2.  
3286

3287 **D. Allocation of Risk.** Neither the City nor Contractor shall have the right to obtain payment from  
3288 the other Party for losses either may sustain due to a court of competent jurisdiction or other  
3289 regulatory agency invalidating, setting aside, or staying the collection of all or a portion of the  
3290 Maximum Rates established by Contractor authorized hereunder. Contractor shall bear the risk  
3291 of any lost profits or losses associated with the cost of providing continued service as a result of  
3292 such a legal action or ruling, and similarly the City shall bear the loss of payments to the City during  
3293 any period where Contractor cannot lawfully collect those payment amounts from Customers.  
3294  
3295

3296 **ARTICLE 14.**  
3297 **OTHER AGREEMENTS OF THE PARTIES**  
3298

---

3299 **14.1 RELATIONSHIP OF PARTIES**

3300 The Parties intend that Contractor shall perform the services required by this Agreement as an  
3301 independent Contractor engaged by City and not as an officer nor employee of the City, nor as a partner  
3302 of, or joint venturer with, the City. No employee or agent of Contractor shall be, or shall be deemed to  
3303 be, an employee or agent of the City. Except as expressly provided herein, Contractor shall have the  
3304 exclusive control over the manner and means of conducting the Recyclable Materials Collection,  
3305 Transportation, Processing, and marketing services performed under this Agreement, and all Persons  
3306 performing such services. Contractor shall be solely responsible for the acts and omissions of its officers,  
3307 employees, Subcontractors, and agents. Neither Contractor nor its officers, employees, Subcontractors  
3308 and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other  
3309 benefits, which accrue, to City employees by virtue of their employment with the City.  
3310

3311 **14.2 COMPLIANCE WITH LAW**

3312 Contractor shall at all times, at its sole cost, comply with all Applicable Laws, permits and licenses of the  
3313 United States, the State and the City and with all applicable regulations promulgated by Federal, State,  
3314 regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued  
3315 or amended during the Term.  
3316

3317 **14.3 GOVERNING LAW**

3318 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the  
3319 State of California.  
3320

3321 **14.4 JURISDICTION**

3322 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the  
3323 courts of Alameda County in the State of California, which shall have exclusive jurisdiction over such  
3324 lawsuits.  
3325

3326 With respect to venue, the Parties agree that this Agreement is made in and will be performed in Alameda  
3327 County.  
3328

3329 **14.5 BINDING ON SUCCESSORS**

3330 The provisions of this Agreement shall inure to the benefit to and be binding on the successors and  
3331 permitted assigns of the Parties.  
3332

3333 **14.6 ASSIGNMENT**

3334 Neither Party shall assign its rights nor delegate or otherwise transfer its obligations under this Agreement  
3335 to any other Person without the prior written consent of the other Party. Any such assignment made  
3336 without the consent of the other Party shall be void and the attempted assignment shall constitute a  
3337 material breach of this Agreement.  
3338

3339 For purposes of this Section, "assignment" shall include, but not be limited to (i) a sale, exchange or other  
3340 transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third  
3341 party; (ii) a sale, exchange or other transfer of 10% or more of the outstanding common stock of  
3342 Contractor; (iii) any reorganization, consolidation, merger, recapitalization, stock issuance or re-issuance,  
3343 voting trust, pooling Agreement, escrow arrangement, liquidation or other transaction to which  
3344 Contractor or any of its shareholders is a party which results in a change of ownership or control of 30%  
3345 or more of the value or voting rights in the stock of Contractor; and (iv) any combination of the foregoing  
3346 (whether or not in related, contemporaneous or sequential transactions) which has the effect of any such  
3347 transfer or change of ownership and/or control of Contractor. For purposes of this Section, the term  
3348 "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant  
3349 to the assignment. Assignment may exclude a change in ownership of Contractor's assets or stocks which  
3350 occurs for interfamilial planning purposes only and does not involve a change in the management of the  
3351 Agreement or services performed there under.  
3352

3353 Contractor acknowledges that this Agreement involves rendering a vital service to City's residents and  
3354 businesses, and that City has selected Contractor to perform the services specified herein based on (i)  
3355 Contractor's experience, skill, and reputation for conducting its Recyclable Materials operations in a safe,  
3356 effective, and responsible fashion, at all times in keeping with Applicable Laws, regulations and good  
3357 waste management practices, and (ii) Contractor's financial resources to maintain the required equipment  
3358 and to support its indemnity obligations to City under this Agreement. City has relied on each of these  
3359 factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under  
3360 this Agreement.  
3361

3362 If Contractor requests City's consideration of and consent to an assignment, the City may deny or approve  
3363 such request in its sole discretion. The City does not have to consider a request by Contractor for consent  
3364 to an assignment until Contractor has met the following requirements.  
3365

- 3366 **A.** Contractor shall undertake to pay City its reasonable expenses for attorney's fees and  
3367 investigation costs necessary to investigate the suitability of any proposed assignee, and to review  
3368 and finalize any documentation required as a condition for approving any such assignment;  
3369
- 3370 **B.** Contractor shall furnish City with audited financial statements of the proposed assignee's  
3371 operations for the immediately preceding three operating years;  
3372
- 3373 **C.** Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at least 10  
3374 years of Recyclable Materials management experience on a scale equal to or exceeding the scale  
3375 of operations conducted by Contractor under this Agreement; (ii) that in the last 5 years, the

3376 proposed assignee has not suffered any citations or other censure from any Federal, State or local  
3377 agency having jurisdiction over its Recycling or waste management operations due to any  
3378 significant failure to comply with state, Federal or local waste management laws and that the  
3379 assignee has provided the City with a complete list of such citations and censures; (iii) that the  
3380 proposed assignee has at all times conducted its operations in an environmentally safe and  
3381 conscientious fashion; (iv) that the proposed assignee conducts its Recyclable Materials  
3382 management practices in accordance with sound Recycling and waste management practices in  
3383 full compliance with all Applicable Laws regulating the Collection, Transportation, Processing and  
3384 marketing of Recyclable Materials, including Hazardous Waste as identified in Title 22 of the  
3385 California Code of Regulations as may be amended from time to time; and (v) that any other  
3386 information required by City demonstrates that the proposed assignee can fulfill the terms of this  
3387 Agreement in a timely, safe and effective manner.  
3388

3389 Under no circumstances shall any proposed assignment be considered by City if Contractor is in default at  
3390 any time during the period of consideration.  
3391

3392 **14.7 PARTIES IN INTEREST**

3393 Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons  
3394 other than the Parties to it and their representatives, successors and permitted assigns.  
3395

3396 **14.8 WAIVER**

3397 The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be  
3398 deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or  
3399 violation of the same or any other provision. The subsequent acceptance by either Party of any monies,  
3400 which become due hereunder, shall not be deemed to be a waiver of any pre-existing or concurrent  
3401 breach or violation by the other Party of any provision of this Agreement.  
3402

3403 **14.9 NOTICE PROCEDURES**

3404 All notices, demands, requests, proposals, approvals, consents, and other communications which this  
3405 Agreement requires, authorizes or contemplates all, except as provided in Section 4.6.1, shall be in writing  
3406 and shall either be personally delivered to a representative of the Parties at the address below or  
3407 deposited in the United States mail, first class postage prepaid, addressed as follows:  
3408

3409 **A.** If to City:

3410  
3411 City Manager  
3412 City of Union City  
3413 34009 Alvarado-Niles Road  
3414 Union City, CA 94587  
3415

3416 **B.** If to Contractor:

3417  
3418 Jason Toro TRI-CED Community Recycling  
3419 33377 Western Avenue  
3420 Union City, CA  
3421 510-471-3850

3422  
3423 The address to which communications may be delivered may be changed from time to time by a notice  
3424 given in accordance with this Section.

3425  
3426 Notice shall be deemed given on the day it is personally delivered or, if mailed, three calendar days from  
3427 the date it is deposited in the mail.

3428  
3429 **14.10 REPRESENTATIVES OF THE PARTIES**

3430 All actions to be taken by the City shall be taken by the City Council except as provided below. The City  
3431 Council may delegate, in writing, authority to the City Manager, and/or to other City officials and may  
3432 permit such officials, in turn, to delegate in writing some or all of such authority to subordinate officers.  
3433 The Contractor may rely upon actions taken by such delegates if they are within the scope of the authority  
3434 properly delegated to them.

3435  
3436 The Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as  
3437 the representative of the Contractor in all matters related to the Agreement and shall inform the City in  
3438 writing of such designation and of any limitations upon his or her authority to bind the Contractor. The  
3439 City may rely upon action taken by such designated representative as actions of the Contractor unless  
3440 they are outside the scope of the authority delegated to him/her by the Contractor as communicated to  
3441 City.

3442  
3443 **14.11 CRIMINAL ACTIVITY OF CONTRACTOR**

3444  
3445 **14.11.1 Criminal Activity**

3446 For purpose of this Section, Criminal Activity shall mean any of the following events or circumstances:  
3447

3448 **A. Convictions.** The entry against any Contractor Party of a criminal conviction or a permanent  
3449 mandatory or prohibitory injunction from a court, municipality or regulatory agency of competent  
3450 jurisdiction based on acts taken in his or her official capacity on behalf of Contractor with respect  
3451 to:

- 3452
- 3453 1. Fraud or criminal offense in connection with obtaining, attempting to obtain, procuring  
3454 or performing a public or private agreement related to municipal Solid Waste, Recyclable  
3455 Materials, and Organic Materials services of any kind (including Collection,  
3456 Transportation, transfer, Processing, marketing, composting or Disposal), including this  
3457 Agreement or any amendment thereto;
  - 3458
  - 3459 2. Bribery or attempting to bribe a public officer or employee of a local, State, or Federal  
3460 agency;
  - 3461
  - 3462 3. Embezzlement, extortion, racketeering, false claims, false statements, forgery,  
3463 falsification, or destruction of records, obstruction of justice, knowingly receiving stolen  
3464 property, theft, or misprision (failure to disclose) of a felony;
  - 3465
  - 3466 4. Unlawful disposal of Hazardous Waste or Designated Waste the occurrence of which any  
3467 of Contractor Party knew or should have known;

- 3468
- 3469 5. Violation of antitrust laws, including laws relating to price-fixing, bid-rigging and sales and
- 3470 market allocation, and of unfair and anti-competitive trade practices laws, including with
- 3471 respect to inflation of fees for Solid Waste, Recyclable Materials or Organic Materials
- 3472 Collection, Transportation, Processing, marketing, or Disposal;
- 3473
- 3474 6. Violation of securities laws;
- 3475
- 3476 7. Felonies.
- 3477
- 3478 **B. Pleas.** Entry of a plea of “guilty,” “nolo contendere,” or “no contest” by a Contracting Party based
- 3479 on acts taken in his, her, or its official capacity on behalf of Contractor with respect to the conduct
- 3480 described in preceding subdivision (1) of this Section.
- 3481

3482 **14.11.2 Notice**

3483 Contractor shall notify City in writing within five (5) calendar days of occurrence of any Criminal Activity.

3484

3485 **14.11.3 Contractor’s Cure**

3486 Upon occurrence of any Criminal Activity, Contractor shall immediately do or cause to be done all of the

3487 following:

3488

- 3489 **A.** Terminate from employment or remove from office any offending individual Contractor Party,
- 3490 unless otherwise directed or ordered by a court or regulatory agency of competent jurisdiction or
- 3491 authority, and unless that termination would constitute a breach of any labor agreement entered
- 3492 into by Contractor, and
- 3493
- 3494 **B.** Eliminate participation by any individual offending Contractor Party in any management,
- 3495 supervision, or decision activity that affects or could affect, directly or indirectly, the performance
- 3496 of the Contractor under this Agreement.
- 3497

3498 **14.11.4 Transfer and Hiring**

3499 Contractor shall not allow or cause to be allowed the hire or transfer of any individual from any parent or

3500 subsidiary company or business entity of Contractor who has committed Criminal Activity as a Contractor

3501 representative, field supervisor, officer, or director who is directly or indirectly responsible for

3502 performance of this Agreement without obtaining prior written consent of City, following full disclosure

3503 to City of the facts and circumstances surrounding such Criminal Activity.

3504

3505 **14.11.5 City’s Remedy**

3506 In the event of any occurrence of Criminal Activity, the City, in its sole discretion, may terminate the

3507 Agreement within thirty (30) calendar days written notice to Contractor, or may impose other sanctions

3508 (which may include financial sanctions, temporary suspensions, or any other condition deemed

3509 appropriate short of termination) as it will deem proper, in the following events:

3510

- 3511 **A.** Contractor fails to comply with the foregoing obligation of this Section, or
- 3512
- 3513 **B.** The Criminal Activity concerns or relates directly or indirectly to this Agreement.
- 3514

3515 Contractor shall be given the opportunity to present evidence in mitigation during the 30-calendar day  
3516 notice period.  
3517

3518 **14.12 OFFER OF EMPLOYMENT**

3519 Contractor shall make good faith effort to offer employment to displaced workers employed by the City's  
3520 franchise contractor that provided Collection services prior to the Commencement Date of this Agreement  
3521 for vehicle drivers, mechanics, helpers, container distribution personnel, and other similar operating staff  
3522 positions to the extent such displaced workers are needed to perform the services described in this  
3523 Agreement. However, the Contractor is not required (i) to displace any of its current employees, (ii) to  
3524 modify its current job performance requirements or employee selection standards, (iii) to alter its current  
3525 wage and employment conditions, or (iv) to offer employment to more of the displaced workers than are  
3526 needed to perform the services described hereunder.  
3527

3528 **14.13 PUBLIC HEARING ON CONTRACTOR'S PERFORMANCE**

3529 At any time, but no more than once annually, the City may hold a public hearing at which Contractor may  
3530 be required by the City to attend and participate in, to review Contractor's performance and to solicit  
3531 feedback from the public regarding Contractor's performance of services under this Agreement. The  
3532 purpose of the public hearing shall be to provide for discussion and review of technological, economic,  
3533 and regulatory changes in order to achieve continuing, state-of-the-art Collection, Transportation,  
3534 Processing, and marketing services and to ensure services are being provided with adequate quality,  
3535 effectiveness, and economy. The City, at its discretion, may use input provided during the public hearing  
3536 to assess Contractor's performance.  
3537

3538 **14.14 IRAN CONTRACTING ACT CERTIFICATION**

3539 Contractor represents and warrants that it is in compliance with and has completed all requirements  
3540 necessary to become certified under the Iran Contracting Act (Public Contract Code Sec. 2200). Proof of  
3541 certification shall be included as Exhibit H of this Agreement.  
3542  
3543

3544 **ARTICLE 15**  
3545 **RESOLUTION OF DISPUTES**  
3546

---

3547 **15.1 INFORMAL RESOLUTION**

3548 Should a dispute arise with respect to the performance and obligations of the Parties hereunder, at any  
3549 time during the term of this Agreement, the provisions of this Article shall apply. Either Party shall give  
3550 the other written notice of such dispute. Such notice shall specify a date and location for the Parties to  
3551 meet and confer in good faith to resolve any dispute that may arise in a cooperative and mutually  
3552 satisfactory manner. The Parties shall attempt to resolve their disputes informally to the maximum extent  
3553 possible.  
3554

3555 **15.2 MEDIATION**

3556 In the event the Parties cannot resolve such dispute within thirty (30) calendar days of such notice, either  
3557 Party may propose the appointment of a mediator for advice and non-binding mediation, and the other  
3558 Party shall attend such mediation. If the mediator is unable, within thirty (30) calendar days thereafter,

3559 to reach a determination as to the matter in dispute in a manner acceptable to the Parties hereto, and if  
3560 the dispute does not concern “valuation items” identified in Section 15.3, then either Party may refer the  
3561 matter to a Court of competent jurisdiction. Disputes that concern valuation items shall proceed with  
3562 binding arbitration procedures set forth in Section 15.4 below.  
3563

3564 **15.3 VALUATION ITEMS**

3565 For the purposes of this Agreement, disputes over “valuation items” refers to disputes over basic financial  
3566 issues valued under five hundred thousand dollars (\$500,000) that is due or owed by either Party. If  
3567 mediation is unsuccessful, disputes concerning valuation items shall be referred to binding arbitration.  
3568

3569 **15.4 BINDING ARBITRATION**

3570 Binding arbitration proceedings shall be in accordance with California Code of Civil Procedure Section  
3571 1280 et. seq., the then-current JAMS Streamlined Arbitration Rules, and the terms of this Section. In the  
3572 event of any inconsistency, the terms of this Section shall control. The arbitration shall be administered  
3573 by JAMS and conducted in the County of Alameda. If the Parties are unable to select an arbitrator, JAMS  
3574 shall select a qualified arbitrator from its panel. If JAMS is unwilling or unable to (a) serve as the provider  
3575 of arbitration or (b) enforce any provision of this arbitration clause, the Parties may mutually designate  
3576 another arbitration organization with similar procedures to serve as the provider of arbitration. If the  
3577 parties cannot agree on the arbitration organization, the Presiding Judge of the Alameda County Superior  
3578 Court shall designate such an organization upon the petition of either Party.  
3579

3580 **A.** The arbitrator shall be independent of, and unaffiliated with, each Party and shall not ever have  
3581 been an employee of either Party, under contract with either Party in the past five (5) years or  
3582 acted as an arbitrator for such Party within the past five (5) years.  
3583

3584 **B.** Within twenty (20) calendar days after initiation of the arbitration, if not previously done so under  
3585 the terms of this Agreement, the Parties shall simultaneously submit to each other and the  
3586 arbitrator their respective best or final offer for the item subject to the valuation dispute, with  
3587 such supporting information as is reasonably necessary to support such suggested value. If the  
3588 two (2) valuations so submitted differ by less than or equal to ten percent (10.0%) of the higher  
3589 of the two (2), the average of the two (2) shall become the agreed-upon and binding amount for  
3590 purposes of this Agreement and the arbitration shall not be continued. If the two (2) valuations  
3591 differ by more than ten percent (10.0%) of the higher of the two (2), then the arbitrator shall make  
3592 a determination of the relevant value and submit such determination to both Parties. This third  
3593 valuation will then be averaged with the closer of the two (2) previous valuations and the result  
3594 shall be the relevant value. In no event shall the arbitrator award, on a quantum meruit or other  
3595 basis, an amount that is greater than any amount set forth in this Agreement. The final arbitrated  
3596 value shall be binding on the Parties.  
3597

3598 **C.** The arbitrator shall have the authority and power to award costs, including attorneys’ fees and  
3599 costs to the prevailing Party. Unless otherwise awarded by the arbitrator, the Parties shall evenly  
3600 split the cost of any arbitration under this Section.  
3601

3602 **D.** By agreeing to binding arbitration, the Parties irrevocably and voluntarily waive any right they  
3603 may have to a trial by jury to the extent permitted by law.  
3604



3647 **16.6 SEVERABILITY**

3648 If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable,  
3649 the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this  
3650 Agreement, which shall be enforced as if such invalid or unenforceable provision had not been contained  
3651 herein.  
3652

3653 **16.7 COUNTERPARTS**

3654 This Agreement may be executed in counterparts, each of which shall be considered an original.  
3655

3656 **16.8 EXHIBITS**

3657 Each of the Exhibits identified as Exhibit "A" through "L" is attached hereto and incorporated herein and  
3658 made a part hereof by this reference.  
3659

3660 IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed on the day and year first  
3661 above written.

3662  
3663

3664 **CONTRACTOR (Tri-CED)**

CITY OF UNION CITY  
A Municipal Corporation

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\_\_\_\_\_  
Jason Toro  
Chief Executive Officer

\_\_\_\_\_  
Joan Malloy  
City Manager

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3671  
3672  
3673  
3674

APPROVED AS TO FORM:

3675  
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3677  
3678  
3679

\_\_\_\_\_  
Kristopher Kokotaylo  
City Attorney

3680  
3681  
3682  
3683  
3684

\_\_\_\_\_  
Thai Nam Pham  
City Clerk

3685  
3686



**EXHIBIT B: CITY SERVICE LOCATIONS**

The City shall have the right to add or remove facilities from the list provided below after the execution of the Agreement and the Contractor is obligated to provide services to the initial facilities list and to any facilities added by the City after the execution of the Collection Agreement.

Facility Name	Address	GARBAGE			RECYCLING			ORGANICS		
		Size	Qty	Freq	Size	Qty	Freq	Size	Qty	Freq
City Hall / Police Station	34009 Alvarado-Niles Rd.	3 cy	1	3x / week	4cy	1	3x / week	64 gal	2	1x / week
Union City Main Library	34007 Alvarado-Niles Rd.	2 cy	1	1x / week	1 cy	1	1x / week	64 gal	1	1x / week
<b>Community Centers</b>										
Holly Center	31600 Alvarado Blvd.	3 cy	1	2x / week	96 gal	2	1x / week	64 gal	2	1x / week
Kennedy Center	1333 Decoto Rd.	3 cy	1	2x / week	96 gal	4	1x / week	64 gal	2	1x / week
Kennedy Pk Teen Center	1200 J Street									
Ruggieri Sr Center	33997 Alvarado Niles Rd.	3 cy	1	2x / week	2 cy	1	1x / week	64 gal	2	1x / week
Mark Green Sports Center	31224 Union City Blvd.	3 cy	2	2x / week	96 gal	4	1x / week	64 gal	2	1x / week
10 <sup>th</sup> Street Center	33948 10th St.	64 gal	1	1x / week	96 gal	2	1x / week	64 gal	1	1x / week
Teen Workshop	33623 Mission Blvd.	3 cy	1	1x / week	96 gal	1	1x / week	64 gal	1	1x / week
<b>Fire Stations</b>										
Station #30	35000 Eastin Ct.	1 cy	1	1x / week	96 gal	4	1x / week	64 gal	1	1x / week
Station #31	33555 Central Ave.	2 cy	1	1x / week	96 gal	4	1x / week	64 gal	1	1x / week
Station #32	31600 Alvarado Blvd.	2 cy	1	1x / week	96 gal	2	1x / week	64 gal	1	1x / week
Station #33	33942 Seventh St.	1 cy	1	1x / week	96 gal	1	1x / week	64 gal	1	1x / week
<b>Public Works Maint Facility (PW)</b>										
PW--MSW roll off	34650 Seventh St.	20 cy	2	on-call	7 cy	1	1x / week	64 gal	1	1x / week
PW--MSW roll off	34650 Seventh St.	14 cy	4	on-call						
PW--Greenwaste Recycling	34650 Seventh St.				40 cy	2	on-call			
PW--Mattress Recycling	34650 Seventh St.				14 cy	1	on-call			
PW--Tire Recycling	34650 Seventh St.				40 cy	1	on-call			
PW--Inert Recycling	34650 Seventh St.				6 cy	4	on-call			
Decoto- Centro de Servicios Ctr	525 H Street	4 cy	1	1x / week	2 cy	1	1x / week	2 cy	2	1x / week
Contempo Resource Center	4361 Agena Cir.	35 gal	1	1x / week	96 gal	1	1x / week	64 gal	1	1x / week
Union City Historical Museum	3841 Smith Street	96 gal	1	1x / week	96 gal	1	1x / week			

\* Recycling Carts to be serviced by Contractor; Solid Waste Containers, Recycling Bins and Organics Bins to be serviced by City's Solid Waste Contractor.

1 EXHIBIT C

2  
3 CLARIFICATION OF CONTRACTOR’S COMPENSATION

4  
5 This Exhibit provides information that shall be used in determining Contractor’s Compensation. Rate Year

6  
7 A. ALLOWABLE PERSONNEL AND LABOR HOURS

8 Contractor developed Contractor’s Proposal and estimated its compensation requirement based on  
9 numerous assumptions related to provision of Collection services in the City, including assumptions with  
10 regards to the number of personnel and the number of labor hours (payroll hours) that its personnel will  
11 incur. Award of this Agreement to the Contractor was based on several factors including its proposed  
12 compensation requirements of which a significant portion is attributed to labor costs. In order to ensure  
13 that the City continues, over the Term of the Agreement, to benefit from the Contractor’s Proposal, labor  
14 costs shall not increase as a result of an increase in the number of personnel or the number of labor hours  
15 unless Contractor can demonstrate that the increased labor personnel and/or hours are necessary to  
16 provide service to additional Customers due to growth in the City or to adjust for changes in labor hours  
17 due to a City-approved extraordinary compensation adjustment as described in Section 11.3. In  
18 recognition of this limitation on Contractor’s Compensation, the personnel and labor hours listed in the  
19 following table shall be considered allowable personnel and labor hours for the purpose of determining  
20 Contractor’s Compensation.  
21

	Quantity	Labor Hours per Day per Person	Total Annual Labor Hours
Residential Recyclable Materials (weekly)	4.50	10	11,700
Chief Executive Officer (CEO)	0.20	8	416
Chief Administrative Officer (CAO)	0.20	8	416
Chief Operations Officer (COO)	0.20	8	416
Operations Manager/Route Supervisor	0.20	8	416
Director of Environmental, Health & Safety	0.20	8	416
Human Resources	0.00	8	0.00
Director of Finance/Payroll Director	0.20	8	416
Assistant Route Supervisor/Lead Driver	0.25	8	520
Recycling Coordinator	1.00	8	2,080
Recycling Field Auditor	0.00	8	0.00
Customer Service Lead/Office Manager	0.20	8	416
Customer Service Representative	0.50	8	1,040
Customer Service/Dispatch	0.25	8	520
Mechanic Supervisor	0.20	8	416
Mechanic I	0.20	8	416
Mechanic II	0.20	8	416
Battery Program Personnel	0.20	8	416
Recycling Processing Center (weekly)	22.0	8	47,872

22  
23 The Contractor shall not be compensated for labor costs associated with any personnel and labor hours  
24 other than those listed in the table above unless the number of route drivers is increased based on the

25 Contractor's demonstration to the City of the need to increase the number of routes in accordance with  
 26 Section B of this Exhibit.

27

28 **B. ALLOWABLE ROUTES**

29 The number of allowable routes that shall serve as the basis for the Contractor's Compensation are listed  
 30 in the table below. Note that the route list was prepared based on the Contractor's Proposal.

31

Routes	Quantity/Day
Residential Recyclable Materials	4.0
Commercial Recyclable Materials	Included Above
<b>Total</b>	<b>4.0</b>

32

33

34 The Contractor shall not be compensated for an increase in the number of routes unless the Contractor  
 35 demonstrates to the City the increase is a direct result of growth in the number of Customers served in  
 36 the community or is a result of changes due to a City-approved extraordinary compensation adjustment  
 37 as provided in Section 11.3 of the Agreement.

38

39 **C. ALLOWABLE DRIVER LABOR HOURS**

40 The Contractor developed Contractor's Proposal and estimated its compensation requirement based on  
 41 numerous assumptions related to provision of Collection services in the City, including assumptions with  
 42 regards to the number of labor hours that will be incurred by Collection vehicle drivers. The number of  
 43 driver labor hours significant impacts the Contractor's Compensation because it impacts vehicle-related  
 44 costs such as fuel, tires and tubes, parts, and supplies. In order to ensure that the City continues, over the  
 45 Term of the Agreement, to benefit from the Contractor's Proposal, vehicle-related costs shall not increase  
 46 as a result of an increase in driver labor hours unless Contractor can demonstrate that the increased driver  
 47 labor hours are necessary to provide service to additional Customers due to growth in the City or to adjust  
 48 for changes in route hours due to a City-approved extraordinary compensation adjustment as described  
 49 in Section 11.3 of this Agreement. In recognition of this limitation on Contractor's Compensation, the  
 50 total driver labor hours listed in the following table shall be considered allowable driver labor hours for  
 51 the purpose of determining Contractor's Compensation.

52

53

Routes	Allowable Driver Labor Hours	
	Labor Hours per Day per Route	Total Labor Hours Annually for All Routes
Residential Recyclable Materials	10.0	10,400
Commercial Recyclable Materials	Included Above	Included Above
<b>Total</b>		<b>10,400</b>

54

55 **D. ALLOWABLE DEPRECIATION, INTEREST, AND LEASE AMOUNTS**

56 Contractor shall depreciate equipment over a ten (10) year period (with the exception of Carts which shall  
57 be depreciated over an eleven (11) year period). Allowable annual depreciation and interest expense to  
58 be included in the Contractor's Compensation over the Term of the Agreement include the following:  
59  
60 The above depreciation and interest expense includes compensation for new Carts and Collection vehicles  
61 for all of its Recyclable Materials Collection routes, which Contractor shall operate for the Term.

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**EXHIBIT D**  
**SCHEDULE FOR LIQUIDATED DAMAGES**

Contractor may be assessed Liquidated Damages if Contractor fails to fulfill its obligations with regards to the events listed in this Exhibit in accordance with the terms and conditions of the Agreement with regards to the time frame for accomplishing each event and nature of the responsibility associated with the event unless otherwise stated in this Exhibit.

**COLLECTION RELIABILITY**

1.	<b>Start New Customer.</b> For each failure over 12 during Rate Year to commence service to a new Customer within 7 calendar days after order received and account number established	\$201.86/ event
2.	<b>Missed Pick-Ups.</b> For each failure over 24 during Rate Year to Collect Recyclable Materials that have been properly set out for Collection by a Customer on the scheduled Collection day	\$201.86/ event
3.	<b>Missed Contamination Monitoring.</b> For each failure over 24 during Rate Year to monitor and document the status of monitoring Customer Carts set-out for Collection service that are not collected due to previously providing Customer a notice of prior contamination identified in said Cart(s).	\$201.86/ event
4.	<b>Consecutive Missed Pick-Ups.</b> For each failure to Collect Recyclable Materials that have been properly set out for Collection, from the same Customer on 2 consecutive scheduled pick ups	\$201.86/ event

**COLLECTION QUALITY**

4.	<b>Leaks, Litter or Spills.</b> For each occurrence over 24 during the Rate Year of unreasonable leaks, litter, or spills of Recyclable Materials near Containers or on public streets and failure to pick up or clean up such material immediately	\$201.86/ event
5.	<b>Improper Container Placement.</b> For each occurrence over 24 during the Rate Year of failure to replace Containers in original position, upright, with lids attached to or on Carts	\$201.86/ event
6.	<b>Care of Private Property.</b> For each failure over 24 during the Rate Year of not closing a Customer's gate, crossing planted areas, or damaging private property (including private vehicles)	\$201.86/ event
7.	<b>Repair of Private Property.</b> For each occurrence over 5 during the Rate Year of failure to repair damage to property within 30 days of the date the damage was reported	\$201.86/ event
8.	<b>Unauthorized Collection Hours.</b> For each occurrence over 12 the during Rate Year of Collecting Recyclable Materials during unauthorized hours	\$201.86/ event
9.	<b>Excessive Noise.</b> For each occurrence over 12 during the Rate Year of excessive noise	\$201.86/ event

10.	<b>Non-Collection Tags.</b> For each failure over 12 during the Rate Year of not tagging Containers which have not been Collected explaining the reason for non-Collection	\$201.86/ event
11.	<b>Discourteous Behavior.</b> For each occurrence of discourteous behavior by collection vehicle personnel, customer service personnel, or other employees of Contractor	\$201.86/ event
12.	<b>Injuries to Others.</b> For each incident of personal injury to a Person requiring medical treatment or hospitalization, where the negligence of the Contractor or its personnel was a contributing factor to the injury	\$6,728.69/ incident

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**CUSTOMER SERVICE RESPONSIVENESS**

13.	<b>Call Responsiveness.</b> For each failure to answer the telephone during business hours specified in the Agreement or failure for answering machine to record call during non-business hours specified in the Agreement	\$403.72/ event
14.	<b>After-Hours Call Returns.</b> Failure to return one-hundred percent (100.0%) of calls received on Contractor’s answering machine by 5:00 p.m. of the Business Day following receipt of the Complaint	\$2.69 per call not returned in accordance with the standard
15.	<b>Respond to Complaint or Service Request.</b> For each failure over 24 during the Rate Year to inform Customer, within one Business Day of receipt of the Complaint or service request, of the action Contractor will take to remedy a Complaint or to respond to a service request	\$201.86/ event
16.	<b>Resolve Complaint or Service Request.</b> For each failure to resolve or remedy a Complaint or Service Request within five Business Days of receipt of Complaint or Service Request with the exception of missed pick-ups which are addressed below	\$201.86/ event

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**REPORTING AND NOTICING**

17.	<b>Quarterly Reports.</b> Failure to submit quarterly reports in the timeframe specified in this Agreement	\$336.43/ day report is overdue
18.	<b>Annual Reports.</b> Failure to submit annual reports in the timeframe specified in this Agreement.	\$336.43/ day report is overdue
19.	<b>Inaccurate Data.</b> For submittal of substantially inaccurate data in the quarterly and annual reports	\$672.87/occ urrence
20.	<b>Application for Contractor’s Compensation.</b> Failure to submit application for Contractor’s Compensation in accordance with the timeframe established in the Agreement	\$403.72/ day report is overdue
21.	<b>Notification of Compliance Inspection.</b> Failure to provide City timely notice of any regulatory compliance inspection as prescribed herein.	\$336.43/ day notice is overdue

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**PUBLIC EDUCATION**

21.	Failure to submit the annual public education plan required by Section 7.1	\$201.86/ day for each day until plan is submitted
22.	Failure to perform a task specified in the annual public education plan or in Exhibit E	\$201.86/ day for each day until task is completed
23.	Failure to prepare and distribute to residents door hanger, flyer or mailer to Customers regarding specific Collection day, Holiday, holiday tree, and cleanup events	\$201.86/ day for each day until mailer is sent
24.	Failure to distribute periodic update for Holiday tree Recycling on or before December 25 of each year	\$201.86/ day for each day until mailer is sent (not to exceed \$1,345.74)
25.	Failure to develop outreach program for individual Commercial sectors	\$201.86/ day for each day until task is completed
26.	Failure to prepare and during Rate Year update a Recycling resource guide	\$201.86/ day for each day until task is completed
27.	Failure to participate in special events listed in this Agreement	\$403.72/ event-day

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**OTHER**

28.	<b>Disposal of Recyclables.</b> For each Ton of E-Waste or Recyclable Materials Disposed of without written approval of the City	\$336.43/ ton
29.	<b>Use of Unauthorized Facilities.</b> For each Ton of Recyclable Materials or E-Waste Disposed or Processed at a facility not approved for use under the provisions of this Agreement	\$336.43/ ton

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In placing Designee’s initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of liquidated damage provisions of the time that the Agreement was made.

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City  
Initial Here: \_\_\_\_\_

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**Exhibit E**  
**Public Education Program Requirements**

The Contractor’s public education program shall include on-going educational activities throughout the Term of the Agreement. Specific program requirements shall include, at a minimum, the following activities:

**Collaboration with Solid Waste Contractor**

Contractor shall partner with the Solid Waste Contractor to produce and distribute the following educational materials:

1. Biennially (every two years), two separate brochures describing how to prepare Recyclable Materials for Collection, targeted at Single Family residents and Multi-Family residents, respectively. The costs of production and distribution are to be shared equally (i.e. 50/50) between Contractor and the Solid Waste Contractor.
  - a. The brochure for Single Family residents shall inform residents as to the acceptable materials that can be included in the Recyclable Materials Containers and any common contaminants to be excluded from Collection. The brochure shall set out instructions, contact info, additional services, and other relevant information as determined by the Contractor and the Solid Waste Contractor, and City shall also be included. The brochure shall be printed in sufficient numbers to be distributed to all affected residential Customers and to be used for public outreach activities.
  - b. The brochure for Multi-Family residents shall inform residents as to the acceptable materials that can be included in the Recyclable Materials Containers (Carts and Bins), any common contaminants to be excluded from Collection, and how to prepare Recyclable Materials for Collection. The brochure shall be printed in sufficient numbers to be distributed to all affected residential Customers and to be used for public outreach activities.
2. A semi-annual newsletter shall be prepared and distributed to all Single Family and Multi-Family residents promoting and explaining the Recyclable Materials Collection program. This semi-annual newsletter is also the Solid Waste Contractor’s quarterly residential newsletter. The costs of production and distribution of the newsletter are to be shared as follows: 33.3% Contractor and 66.6% Solid Waste Contractor.

**Single-Family Residential Education Program**

1. A member of Contractor’s staff who is trained to provide technical assistance to Customers is required and shall be available by telephone during regular business hours. On request from the City’s contract administrator or a Customer, technical assistance staff may also be required to provide presentations to Customers on Saturdays for the services described herein.

- 136 2. An employee of Contractor shall visit homeowner associations or other neighborhood groups to  
137 promote and explain the program as requested by the associations or scheduled by Contractor or  
138 the City.  
139
- 140 3. Conduct on-going monitoring and reporting of Customer’s participation to determine level of  
141 compliance with local and State regulations including, but not limited to, AB 939, AB 341, AB 1594,  
142 AB 1826, Alameda County Waste Management Authority Mandatory Commercial Recycling  
143 Ordinance 2012-01 (Phases 1 and 2), and Alameda County Measure D Adequate Commercial  
144 Recycling standards.  
145
- 146 4. Produce corrective actions notices for use in instances where the Resident sets out inappropriate  
147 materials.  
148
- 149 5. Prepare and distribute public service announcements (PSA) for local radio, cable and broadcast  
150 television. Advertisements for local newspapers also shall be produced.  
151
- 152 6. Prepare and distribute presentation posters for distribution at local and busy public venues (City  
153 Hall, Public Library, Post Office, Union Landing, etc.)  
154
- 155 7. Deliver the appropriate program brochure and other City-selected materials each time a  
156 Container is delivered upon implementation of services.  
157
- 158 8. Contractor shall prepare and make available through Contractor’s website how-to information  
159 on Recycling and proper container set-outs in PDF and/or video format, and provide Single-Family  
160 Customers with links to click on for additional resources.  
161

162 **Multi-Family Education Program**  
163

- 164 1. At a minimum, the Contractor’s Recycling Coordinator shall meet with Multi-Family every  
165 property manager once annually to work with the property manager to improve Recycling  
166 participation levels in terms of the quantity and quality of Recyclable Materials Collected.  
167 Contractor shall document each site visit using a form approved by the City identifying the name  
168 and address of the premises, number of tenant units, date of the visit, name of the property  
169 manager and contact information, current Recyclable Materials, Organic Materials, and Solid  
170 Waste service levels and calculated weekly Recycling capacity per tenant unit, property manager  
171 concerns and requests and action items. Site visit audit forms shall be provided to the City in  
172 accordance with Article 9. During annual site visits or upon request, Contractor shall restock  
173 posters, Alameda County Mandatory Recycling Ordinance notices, “How to Guides,” and any  
174 other materials and provide new Container/Recycling area signage if necessary. Contractor shall  
175 provide a record of the required outreach to the City contract administrator prior to monthly  
176 Contractor/City meeting.  
177
- 178 2. Prepare and distribute “move-in / move-out” kits for property managers and owners of Multi-  
179 Family complexes to provide new tenants. Kits shall provide Recycling information, resources and  
180 Contractor’s customer service phone number where questions can be answered.  
181

- 182 3. Schedule, promote, manage and staff Recycling outreach events (workshops, presentations,  
183 Recycling parties, etc.) to show property managers and residents, in a hands-on interactive  
184 format, how to use the Recycling and Organic Materials Collection program and provide resources  
185 with additional information and support.  
186
- 187 4. As part of Contractor’s website, Contractor shall provide tenants and property managers with  
188 access to a multi-family webpage on Contractor’s website which will present how-to information  
189 in PDF and/or video formats for tenants and property managers as well as links to other resources.  
190 Property managers and landlords will be able to find helpful tips for keeping Collection points  
191 clean and will be able to order enclosure posters for Recyclable Materials).  
192

193 **Commercial Education and Technical Assistance Program**  
194

- 195 1. Contractor shall perform Recycling outreach for Commercial Customers requesting Commercial  
196 Recycling Cart Service. Contractor shall continue to provide support to each Customer as  
197 requested and periodically contact the Customer to offer technical assistance and answer  
198 questions.
- 199 2. Conduct assessments of Commercial Customers’ premises. Assessments shall include: (A) Meeting  
200 with the Customer, Owner, property manager, and/or party responsible for the day-to-day  
201 operations of the on-site Commercial activities to discuss the Collection program options, review  
202 the types of materials generated, promote Recycling services, respond to questions, agree upon  
203 the appropriate Solid Waste, Recyclable Materials, and Organic Materials service levels, etc., (B)  
204 Visual inspection of the types of Solid Waste, Recyclable Materials, and Organic Materials  
205 generated at the Premises and estimation of the appropriate level of service for Solid Waste,  
206 Recyclable Materials, and Organic Materials Collection service; and, (C) Distribution of public  
207 education materials, signage, and posters, to Customers at the time of the assessment or upon  
208 request.
- 209 3. Provide technical assistance, make presentations, conducting employee training, sessions to  
210 educate customers and encourage participation in the Commercial Single Stream Recycling  
211 Program.
- 212 4. As requested by the associations or as scheduled by the City, Contractor shall reach out to various  
213 organizations such as the Chamber of Commerce, Lions Club, Business Expo, business associations  
214 and other appropriate groups to promote and explain the Commercial Single Stream Recycling  
215 Cart Collection Program and the State and County mandatory recycling requirements including,  
216 but not limited to, requirements of AB 341, AB 1826, Alameda County Waste Management  
217 Authority Mandatory Commercial Recycling Ordinance 2012-01 (Phases 1 and 2), and Alameda  
218 County Measure D Adequate Commercial Recycling standards.
- 219 5. The City allows Contractor to partner with the Solid Waste Contractor to prepare and distribute a  
220 semi-annual newsletter to all Commercial Customers promoting and explaining Recyclable  
221 Materials Diversion programs, however Contractor is not required to prepare and distribute such  
222 newsletter. In the event Contractor and the Solid Waste Contractor partner together, they shall  
223 determine how to share the costs of production and distribution between them.  
224
- 225 6. Develop and use a corrective action notice for use situations where businesses set out  
226 inappropriate materials.

227  
228 7. Specially designed public education materials, including but not limited to flyers, posters, stickers,  
229 etc., to reach Commercial Recycling Customers shall be prepared.

230 8. Prepare and make available through the Contractor’s website “how-to” information for  
231 commercial Generators on Recycling, composting and Disposal in Adobe Acrobat PDF.

232  
233 **Special Events**

234  
235 1. Contractor shall participate and staff a booth or table at City or community events to promote  
236 source reduction, reuse, Recycling, and composting and to answer questions about Recyclable  
237 Materials Collection services. Contractor to provide educational components that can be used to  
238 educate Customers and the general public about Recycling in general and Contractor and City  
239 waste Diversion programs. At a minimum, Contractor shall provide this outreach service at up to  
240 four (4) events annually to be determined with input from the City. Contractor may choose to  
241 partner with the Solid Waste Contractor at such events.

242 **EXHIBIT F**

243 **CART SPECIFICATIONS**

244

245

246 **A. CART DESIGN REQUIREMENTS**

247

248 **1. General**

249 The Carts shall be manufactured by injection or rotational molding and meet the Cart design and  
250 performance requirements as specified below. All Carts selected shall be subject to City approval.

251

252 **2. Cart Handles**

253 The Cart handles and handle mounts may be an integrally molded part of the Cart body or molded as part  
254 of the lid. The Cart handles will provide comfortable gripping area for pulling or pushing the Cart or lifting  
255 the lid. Pinch points are unacceptable.

256

257 **3. Cart Lid**

258 Each Container shall be provided with a lid that continuously overlaps and comes in contact with the  
259 Container body or otherwise causes an interface with the Container body that simultaneously:

- 260
- 261 • Prevents the intrusion of rainwater, rodents, birds, and flies;
  - 262 • Prevents the emission of odors;
  - 263 • Enables the free and complete flow of material from the Container during the dump cycle  
264 without interference with the material already deposited in the truck body or the truck body  
265 itself and its lifting mechanism;
  - 266 • Permits users of the Container to conveniently and easily open and shut the lid throughout  
267 the serviceable life of the Container;
  - 268 • The lid handle shall be an integrally molded part of the lid;
  - 269 • The lid (and body) must be of such design and weight that would prevent an empty Container  
270 from tilting backward when flipping the lid open; and,
  - 271 • The lid shall be hinged to the Cart body in such a manner so as to enable the lid to be fully  
272 opened, free of tension, to a position whereby it may rest against the backside of the  
273 Container body.

274

275 **4. Cart Colors**

276 Recyclable Materials Carts shall be blue in accordance with SB 1383. Contractor may propose other colors  
277 for Carts, which are subject to approval by the City. For all colors including those prescribed in this  
278 paragraph, the Contractor shall obtain written approval from the City for the Cart color before  
279 Contractor's purchase of the Carts.

280

281 **5. Identification Markings**

282 All markings on the Containers shall be approved by the City in advance of ordering Carts. An arrow (at  
283 least 3 inches by 5 inches) hot stamped in white color shall be placed on the lid, indicating the direction  
284 of Cart placement.

286 In character size of no less than 3/16 inch, the phrase:

287

288 **PLACE CONTAINER WITH ARROW FACING**

289 **STREET FOR COLLECTION**

290 **COLOQUE EL RECIPIENTE CON LAS FLECHAS**

291 **HACIA LA CALLE**

292

293 Additionally, **RECYCLING** must be hot stamped in white color on the front or sides of the Cart in characters  
294 no less than one inch.

295

296 **B. CART PERFORMANCE REQUIREMENTS**

297

298 **1. General**

299 All Carts shall be designed and manufactured to meet the minimum performance requirements described  
300 below.

301

302 **2. Cart Load Capacity**

303 Depending on the capacity, the Carts shall have a minimum load capacity as noted below without  
304 Container distortion, damage, or reduction in maneuverability or any other functions as required herein.

<b>Cart Size (Gallons)</b>	<b>Minimum Load Capacity (LBS)</b>
<b>90-101</b>	<b>200</b>
<b>60-68</b>	<b>130</b>
<b>30-35</b>	<b>70</b>
<b>20</b>	<b>40</b>

305

306 **3. Cart Durability**

307 Carts shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy  
308 its intended use and performance, for the term of this Contract:

309

- 310 • Maintain its original shape and appearance;
- 311 • Be resistant to kicks and blows;
- 312 • Require no routine maintenance and essentially be maintenance free;
- 313 • Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will  
314 interfere with its intended use;
- 315 • Resist degradation from ultraviolet radiation;
- 316 • Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- 317 • The bottoms of Cart bodies must remain impervious to any damage, that would interfere with  
318 the Cart’s intended use after repeated contact with gravel, concrete, asphalt, or any other  
319 rough and abrasive surface;
- 320 • All wheel and axle assemblies are to provide continuous maneuverability and mobility as  
321 originally designed and intended; and,

- 322           • Resist degradation by other airborne gases or particulate matter currently present in the  
323           ambient air of the City.

324

325   **4.     Chemical Resistant**

326   Carts shall resist damage from common household or Residential products and chemicals. Carts, also,  
327   shall resist damage from human and animal urine and feces.

328

329   **5.     Stability and Maneuverability**

330   The Carts shall be stable and self-balancing in the upright position, when either empty or loaded to its  
331   maximum design capacity with an evenly distributed load, and with the lid in either a closed or an open  
332   position.

333

334   The Carts shall be capable of maintaining its upright position in sustained or gusting winds of up to 25  
335   miles per hour as applied from any direction.

336

337   The Carts shall be capable of being easily moved and maneuvered, with an evenly distributed load equal  
338   in weight to its maximum design capacity on a level, sloped or stepped surface.

339

340   **6.     Lid Performance**

341   Cart lid assemblies shall meet the following minimum requirements:

342

- 343           • Prevent damage to the Cart body, the lid itself or any component parts through repeated
- 344           opening and closing of the lid by residents or in the dumping process as intended;
- 345           • Remain closed in winds up to 25 miles per hour from any direction. All lid hinges must remain
- 346           fully functional and continually hold the lid in the original designed and intended positions
- 347           when either opened or closed or any position between the two extremes; and,
- 348           • Lid shall be designed and constructed such that it prevents physical injury to the user while
- 349           opening and closing the Container.

350

351   **7.     Reparability**

352   Minor cracks, holes, and other damages to hinges, wheels, axle, hardware, and other component parts  
353   shall be readily repairable by the contractor personnel. All repairs must restore the Container to its full  
354   functionality to meet the design and performance requirements as set for herein.

355  
356  
357  
358  
359  
360  
361

**EXHIBIT G**

**CONTRACTOR'S COMPENSATION FOR RATE YEAR TWENTY-ONE (21)**

This **Exhibit G** shall be populated to include Contractor's Compensation Application approved by the City for Rate Year 21.

<b>Tri-City Community Economic Development Corporation (Tri-CED) FY 2025-2026 Compensation Adjustment Application</b>		
Description	FY 24-25 Approved	FY 2025-2026 FINAL
<b>Cost of Operations</b>		
Route Drivers' Labor-related Costs	\$ 1,355,422	\$ 1,439,954
Route Drivers' medical costs	\$ 118,022	\$ 115,039
Route Drivers' workers' Compensation	\$ 113,280	\$ 79,129
Subtotal Wages	\$ 1,586,724	\$ 1,634,122
Vehicle-related costs (excluding fuel)	\$ 227,086	\$ 357,344
Fuel costs	\$ 94,691	\$ 95,140
Direct Depreciation	\$ 293,520	\$ 160,321
Other Cost	\$ 258,422	\$ 311,463
Recycling Processing Cost	\$ 531,676	\$ 558,196
<b>Total Annual Cost of Operations</b>	<b>\$ 2,992,119</b>	<b>\$ 3,116,587</b>
<b>Profit*</b>	<b>\$ 225,213</b>	<b>234,582</b>
<b>Pass-Through Costs:</b>		
Other Costs		\$ 71,213
Interest expense	\$ 57,857	\$ 11,222
Recycling Processing Disposal	\$ 174,414	\$ 183,114
<b>Total Pass-Through Costs</b>	<b>\$ 232,271</b>	<b>\$ 194,336</b>
<b>Contractor's Comp before City Fees &amp; Bad Debt</b>	<b>\$ 3,449,603</b>	<b>\$ 3,545,505</b>
Bad Debt		\$ 35,455
<b>Contractor's Comp w/ Bad Debt before City Fees</b>		<b>\$ 3,652,173</b>
<b>City Fees:</b>		
Franchise Fees	\$ 799,851	\$ 838,674
<b>City Fees Before Bad Debt</b>	<b>\$ 799,851</b>	<b>\$ 838,674</b>
Bad Debt		\$ 8,222
<b>City Fees w/ Bad Debt</b>		<b>\$ 846,896</b>
<b>Total Contractor's Compensation w/ City Fees</b>	<b>\$ 4,249,454</b>	<b>\$ 4,384,179</b>
<b>Total Contractor's Compensation w/ City Fees &amp; Bad Debt</b>		<b>\$ 4,499,069</b>
<b>Proposed 2025/2026 Rate Adjustment</b>		<b>5.87%</b>
<b>Operating Ratio</b>	<b>93.00%</b>	<b>93.00%</b>

363 **EXHIBIT H**

364 **IRAN CONTRACTING CERTIFICATION**

365 Pursuant to Public Contract Code Section 2200 et seq., (“Iran Contracting Act of 2010”), Contractor  
366 certifies that:

- 367 (1) Contractor is not identified on the list created by the California Department of General Services  
368 (“DGS”) pursuant to California Public Contract Code Section 2203(b) as a Person engaging in  
369 investment activities in Iran; and  
370  
371 (2) Contractor is not a financial institution that extends twenty million dollars (\$20,000,000) or  
372 more in credit to another Person, for forty-five (45) Days or more, if that Person will use the  
373 credit to provide goods or services in the energy sector in Iran and is identified on the DGS list  
374 made pursuant to Section 2203(b).  
375  
376

377 As used herein, “Person” shall mean a “Person” as defined in Public Contract Code Section 2202(e).

378  
379 I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally  
380 bind the Contractor to this Certification, which is made under the laws of the State of California.

381 \_\_\_\_\_ (“Contractor”)

382 By: \_\_\_\_\_ (Signature)

383 Name: \_\_\_\_\_ (Printed Name)

384 Title: \_\_\_\_\_

385 Date: \_\_\_\_\_

387 EXHIBIT I

388  
389 PROTOCOLS FOR CONTAMINATION AND RESIDUE MANAGEMENT

390  
391 E. CONTAMINATION MANAGEMENT

392  
393 1. Characterization Process

394 Contractor shall, at the time intervals required and further specified herein, conduct Characterizations of  
395 Source Separated Recyclable Materials to determine the Contamination Level. The constituent materials  
396 Characterization of Contractor's inbound Recyclable Materials shall be conducted using a standard  
397 sorting table method(hereinafter "Characterization"). The Characterization must include representative  
398 samples of the inbound Recyclable Materials collected by Contractor from City, which means that said  
399 representative samples shall include materials from multiple loads, on varying days or routes. Each  
400 Characterization shall be certified by authorized personnel or officer of the owner or operator of the  
401 Approved Recyclables Materials Processing Facility.

402  
403 Contractor shall submit to the City a Characterization Plan delineating all aspects of the Characterization  
404 process fifteen (15) Business Days prior to scheduling Characterization. City will provide written comments  
405 within seven (7) Business Days and Contractor shall address all comments to the City's satisfaction in  
406 advance of the Characterizations. City shall be allowed to attend and observe all aspects of the  
407 Characterizations. The results of the Characterizations shall be delivered to the City within one (1) week  
408 of the date the Characterization was performed. The results of the Characterizations shall be used to  
409 determine the Contamination Level for the Recyclable Materials, until the next Characterization is  
410 performed.

411  
412 At a minimum, Contractor shall conduct Characterizations every six (6) months. The Contractor may, at  
413 its discretion, perform Characterizations more frequently and at any time, notwithstanding any potential  
414 defaults described in paragraph 3 herein.

415  
416 2. Contamination Level Less than Ten Percent

417 Contractor shall begin Processing all Source Separated Recyclable Materials it Collects in the City upon the  
418 Commencement Date. The Contamination Level is required to be less than ten percent (10.0%) by weight  
419 for all material streams.

420  
421 3. Consequence of Contamination Level Equal to or Greater than Ten Percent

422 Although the City does not construe the agreement between the City and the Designated Transfer Facility,  
423 dated September 27, 2007, to mean that any Source Separated Recyclable Material load or any other  
424 Recyclable Material load composed of ten percent (10.0%) or greater Contamination by weight shall be  
425 considered Mixed Municipal Waste and/or Solid Waste, the City and Contractor agree that in the event  
426 the Characterization of the Recyclable Materials results in a Contamination Level equal to or greater than  
427 ten percent (10.0%) by weight, Contractor shall develop a procedure for warning residents or businesses  
428 that are contaminating the Recyclable Materials. Any and all such procedures require City approval prior  
429 to implementation by Contractor.

- 430 A. The Contractor shall automatically be deemed on notice of default by City of its potential failure  
431 to meet Residue Level requirements stated in the Agreement as of the date the Characterization  
432 is performed.  
433
- 434 B. The Contractor shall have one hundred eighty (180) days from the date of said Characterization  
435 to modify its Processing methods, perform outreach to Customers, take other corrective  
436 measures, and/or conduct other public relations acts all with the goal of reducing the Residue  
437 Level to less than ten percent (10.0%).  
438
- 439 C. If at any time during this one hundred eighty (180) day period, the Contractor performs a  
440 Characterization that indicates the Residue Level is less than ten percent (10.0%), the one hundred  
441 eighty (180) day default notice is automatically rescinded and such Residue Level from the most-  
442 recent Characterization shall be effective for the next six (6) month period.  
443
- 444 D. The Contractor shall perform a Characterization within one (1) week of the expiration of the one  
445 hundred eighty (180) day automatic notice period. If said Characterization results in a Residue  
446 Level equal to or greater than ten percent (10.0%) for the Recyclable Materials, the Contractor  
447 shall be in default of this Agreement.  
448
- 449 E. The Contractor shall develop a procedure for warning residents or businesses that are  
450 contaminating the Recyclable Materials. Any and all such procedures require City approval prior  
451 to implementation by Contractor.  
452

453  
454 **F. RESIDUE MANAGEMENT**

455  
456 **1. Residue Calculation**

457 Contractor shall monitor the amount of Residue generated from processing Collected Recyclable  
458 Materials on a regular basis. Residue shall be the total weight of materials separated from or resulting  
459 from processing Collected Recyclable Materials that are sent to the Designated Transfer Facility or any  
460 other destination that results in said material being transferred for disposal at landfill or an alternative  
461 disposal method.  
462

463 For the purposes of determining the Acceptable Residue Level and the imposition of related  
464 consequences, as delineated in the below sections B.2 and B.3, respectively, the Residue calculation shall  
465 be total Residual delivered for disposal divided by total inbound Recyclable Materials generated during  
466 the Rate Year prior to submittal of Contractor's Compensation Adjustment Application. The following  
467 provides an example of the annual Residue calculation:  
468

469 **Rate Year 18 (FY 2022-2023)**

- 470 • Total Inbound Recyclable Materials = 9,742.99 tons
  - 471 • Total Residuals Delivered for Disposal = 5,607.13
  - 472 • **Residue Level = 57.55%**
- 473

Year	Month	Union City Inbound Tons	Hayward Inbound Tons	Total Inbound (Processed) Tons	Residual Tons	Calculated Residue Level
2022	July	478.12	1,105.45	1,583.57	975.24	61.58%
	August	489.80	1,204.36	1,694.16	894.70	52.81%
	September	492.00	1,112.64	1,604.64	892.14	55.60%
	October	460.56	1,001.68	1,462.24	896.52	61.31%
	November	499.05	1,180.75	1,679.80	925.72	55.11%
	December	509.89	1,208.69	1,718.58	1,022.81	59.51%
2023	January	554.27	1,310.45	1,864.72	1,141.47	61.21%
	February	427.91	1,009.00	1,436.91	893.23	62.16%
	March	506.51	1,046.49	1,553.00	1,056.47	68.03%
	April	427.41	961.35	1,388.76	799.38	57.56%
	May	505.90	1,105.70	1,611.60	799.11	49.58%
	June	480.75	1,063.39	1,544.14	742.69	48.10%
	Totals	2,929.42	6,813.57	9,742.99	5,607.13	57.55%

474  
475  
476

**2. Reporting of Residue Level**

477 Contractor shall include the Residue Level in its Monthly and Annual Reports submitted to the City as set  
478 forth in this Agreement. Contractor shall include in its Monthly and Annual Reports submitted to the City  
479 a list of all inbound Recyclable Materials loads. Upon City request, Contractor shall provide all of  
480 Contractor’s inbound Recyclable Materials weight tickets and all weight tickets of Residue delivered to  
481 the Designated Transfer Facility or alternative disposal location within three (3) Business Days.

482  
483

**3. Acceptable Residue Level**

484 Commencing with Rate Year 2 beginning on July 1, 2026, Contractor shall annually be required to achieve  
485 the following Acceptable Residue Levels:

- 486 • Rate Year 21 – Not Applicable
- 487 • Rate Year 22 – 35.0% Acceptable Residue Level
- 488 • Rate Year 23 – 30.0% Acceptable Residue Level
- 489 • Rate Year 24 through 30 – 25.0% Acceptable Residue Level

490

**4. Consequence of Exceeding Acceptable Residue Level**

492 Contractor’s Compensation for the applicable Rate Year shall be reduced by \$30,000.00 for each one  
493 percent (1.0%) or fraction thereof when the Residue Level exceeds the Acceptable Residue Levels  
494 prescribed in Section B.3 of this Exhibit I. The annual cap on the compensation reduction due to exceeding  
495 the Acceptable Residue Level for any Rate Year shall be \$150,000.00. The City shall impose any calculated  
496 compensation deduction over a ten (10) month period. Contractor’s Compensation deduction for  
497 exceeding the Acceptable Residue Levels shall occur in accordance with the following schedule:

498

**Rate Year 21 - FY 2025-2026**

- 500 • Compensation Adjustment Application due 3/1/2025

- 501 • Residue Level calculation based on 1/1/2025-12/31/2025
- 502 • Compensation deduction – Not Applicable
- 503
- 504 **Rate Year 22 -FY 2026-2027**
- 505 • Compensation Adjustment Application due 3/1/2026
- 506 • Residue Level calculation based on 7/1/2025 through 6/30/2026
- 507 • Compensation deduction applied 9/1/2026 through 6/30/2027
- 508
- 509 **Rate Year 23 - FY 2027-2028 – Year 4 = Year 3 below**
- 510 • Compensation Adjustment Application due 3/1/2027
- 511 • Residue Level calculation based on 7/1/2026 through 6/30/2027
- 512 • Compensation deduction applied 9/1/2027 through 6/30/2028
- 513
- 514 **Rate Year 24 - FY 2028-2029**
- 515 • Compensation Adjustment Application due 3/1/2028
- 516 • Residue Level calculation based on 7/1/2027 through 6/30/2028
- 517 • Compensation deduction applied 9/1/2028 through 6/30/2029
- 518
- 519 **Rate Year 25 - FY 2029-2030**
- 520 • Compensation Adjustment Application due 3/1/2029
- 521 • Residue Level calculation based on 7/1/2028 through 6/30/2029
- 522 • Compensation deduction applied 9/1/2029 through 6/30/2030
- 523
- 524 **Rate Year 26 - FY 2030-2031**
- 525 • Compensation Adjustment Application due 3/1/2030
- 526 • Residue Level calculation based on 7/1/2029 through 6/30/2030
- 527 • Compensation deduction applied 9/1/2030 through 6/30/2031
- 528
- 529 **Rate Year 27 - FY 2031-2032**
- 530 • Compensation Adjustment Application due 3/1/2031
- 531 • Residue Level calculation based on 7/1/2030 through 6/30/2031
- 532 • Compensation deduction applied 9/1/2031 through 6/30/2032
- 533
- 534 **Rate Year 28 - FY 2032-2033**
- 535 • Compensation Adjustment Application due 3/1/2032
- 536 • Residue Level calculation based on 7/1/2031 through 6/30/2032
- 537 • Compensation deduction applied 9/1/2032 through 6/30/2033
- 538
- 539 **Rate Year 29 - FY 2033-2034**
- 540 • Compensation Adjustment Application due 3/1/2033
- 541 • Residue Level calculation based on 7/1/2032 through 6/30/2033
- 542 • Compensation deduction applied 9/1/2033 through 6/30/2034
- 543
- 544 **Rate Year 30 - FY 2034-2035**
- 545 • Compensation Adjustment Application due 3/1/2034
- 546 • Residue Level calculation based on 7/1/2033 through 6/30/2034

- 547           • Compensation deduction applied 9/1/2034 through 6/30/2035  
548

549   **5.        Appeal of Consequence of Exceeding Acceptable Residue Level**

550 Contractor may appeal the imposition of a deduction to Contractor’s Compensation due to exceeding the  
551 Acceptable Residue Level, due to unforeseen events or circumstances that occurred during the Rate Year  
552 that were beyond Contractor’s reasonable control or influence, and that impacted Contractor’s recycling  
553 processing performance and the associated calculated Residue Level, and the City Manage will consider  
554 Contractor’s appeal timely.

555  
556 Contractor shall be obligated to submit its appeal to the City Manager for an adjustment, suspension or  
557 waiver of the calculated deduction to Contractor’s Compensation for exceeding the Acceptable Residue  
558 Level within five (5) Business Days after submittal of Contractor’s June Monthly Report to the City.  
559 Contractor’s appeal must include all relevant details, assumptions, documentation and other data and  
560 information necessary to provide justification for said appeal. The City Manager will review Contractor’s  
561 appeal timely, request additional details and information if necessary, and make a determination. The City  
562 Manager’s determination shall be final. In the event Contractor appeals to the City for relief of the  
563 imposition of a compensation deduction for Contractor exceeding the Acceptable Residue Level, the City  
564 may, at its sole discretion, delay the imposition of said deduction to Contractor’s Compensation until the  
565 City makes its final determination on Contractor’s appeal. At the sole discretion of the City Manager, the  
566 consequences for exceeding the Acceptable Residue Level may be reduced, suspended or waived.  
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**EXHIBIT J**

**RESERVED**

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**EXHIBIT K**  
**PERFORMANCE SECURITY**

577

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**EXHIBIT L  
RESERVED**

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## EXHIBIT M BAD DEBT RECOVERY ESCALATION PLAN

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584 This **Exhibit M** is populated to include the Bad Debt Recovery Escalation Plan included in the Franchise  
585 Agreement with Solid Waste Contractor, as follows:

586  
587 Republic Services commits to executing a Bad Debt Recovery Escalation Plan to minimize the effects of  
588 bad debt on all parties involved. The plan is outlined below and will be followed for residential accounts  
589 that are past due on payment:

- 590 • Five (5) days past due –
  - 591 • First (1<sup>st</sup>) Email Notice sent to customer notifying customer that they are past due. If no
  - 592 email on file, customer shall receive a phone call.
- 593 • Ten (10) Days Past Due –
  - 594 • First (1<sup>st</sup>) Direct Phone Contact by Republic Services representative
  - 595 • Second (2<sup>nd</sup>) Email Notice sent to customer notifying customer that they are past due.
- 596 • Fifteen (15) Days Past Due –
  - 597 • Third (3<sup>rd</sup>) Email Notice
  - 598 • First (1<sup>st</sup>) Demand Intent Letter sent via certified mail to customer. This correspondence
  - 599 shall include an explanation of payment options to facilitate collection of past due
  - 600 monies, while ensuring service continues uninterrupted.
- 601 • Forty-Five (45) Days Past Due –
  - 602 • Fourth (4<sup>th</sup>) Email Notice
  - 603 • Second (2<sup>nd</sup>) Direct Phone Contact to establish a payment plan with the customer.
  - 604 • Second (2<sup>nd</sup>) Demand Intent Letter sent via certified mail to customer.
- 605 • Sixty (60) Days Past Due –
  - 606 • Third (3<sup>rd</sup>) and Final Direct Phone Contact to establish payment plan and notify customer
  - 607 of pending service interrupt, and transfer of account to collection agency.
  - 608 • Fifth (5<sup>th</sup>) Email Notice
  - 609 • First (1<sup>st</sup>) Service Interrupt Intent Letter sent via certified mail notifying customer that
  - 610 their service will be suspended if the outstanding balance is not paid.
- 611 • Seventy (70) Days Past Due –
  - 612 • Account placed on "Service Interrupt"
- 613 • Seventy (70) Days Past Due –
  - 614 • Robo-call Phone Message every other day (13 Calls)
- 615 • Ninety (90) Days Past Due –
  - 616 • Final Direct Phone Contact
  - 617 • Final Email Notice
  - 618 • Final Service Interrupt Intent Letter sent via certified mail. This Letter shall include the
  - 619 following:
    - 620 • payment plan options
    - 621 • notice of service interrupt
    - 622 • notice of transfer of account to collection agency
    - 623 • notice of violation of City Municipal Code and potential Code Enforcement
    - 624 actions
- 625 • Ninety-Five (95) Days Past Due –
  - 626 • Submit past-due amount to collection agency

627

628 In addition to the process above, Republic Services will submit a Bad Debt Aging report to the City on a  
629 monthly basis.

630

631  
632

## EXHIBIT N BAD DEBT COST SHARING MODEL

633 This Exhibit N is populated to include the Bad Debt Cost Sharing Model included in the Franchise  
634 Agreement with Solid Waste Contractor, as follows:

635  
636 Tables 1-5 below provides an example of the Bad Debt calculations for Rate Years 21 (2025-2026) through  
637 23 (2027-2028). This example is provided to memorialize the calculations agreed to by the parties to  
638 potentially mitigate the loss of revenue that may be associated with Bad Debt aging from direct billing of  
639 Residential Customers.  
640

<b>1. 2024-25 &amp; 2025-26 BASE DETAIL</b>			
<u>Contractor's Compensation and City Fees</u>	<b>2024-25 Actual</b>	<b>2025-26 Estimate</b>	
<u>Republic Services</u>			<b>% Increase</b>
Total Contractor's Compensation (Residential and Commercial)	\$ 15,513,803	\$ 17,375,459	12.0%
Total City Fees	\$ 7,149,413	\$ 7,675,734	7.4%
Revenue Requirement	\$ 22,663,216	\$ 25,051,193	10.5%
Residential Only (tax roll) Revenue (includes City Fees)	\$ 8,382,783	\$ 9,388,717	12.0%
City Fees - Franchise Fees	\$ 7,149,413	\$ 7,675,734	7.4%
RS - Residential (tax roll) Compensation (includes City Fees)	\$ 8,382,783	\$ 9,388,717	12.0%
City Fees	\$ 2,699,123	\$ 2,900,308	7.5%
<u>Tri-CED</u>			
Residential Only (tax roll) Revenue (includes City Fees)	\$ 4,083,988	\$ 4,574,066	12.0%
Total Contractor's Compensation	\$ 3,449,604	\$ 3,863,556	12.0%
Total City Fees	\$ 799,851	\$ 882,641	10.4%
Revenue Requirement	\$ 4,249,455	\$ 4,746,197	11.7%
City Fees - Franchise Fees	\$ 799,851	\$ 882,641	10.4%
<u>Combined</u>			
Total Contractor's Compensation	\$ 18,963,407	\$ 21,239,016	12.0%
Total City Fees	\$ 7,949,264	\$ 8,558,375	7.7%
Revenue Requirement	\$ 26,912,671	\$ 29,797,391	10.7%

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642

<b>2. 2025-26 CALCULATION</b>					
<b>Residential Only</b>	<b>2024-25 Tax Roll Actual</b>	<b>% City Fees</b>	<b>2025-26</b>	<b>% Revenue</b>	<b>% City Fees</b>
Republic Services (RS) Revenue Requirement (includes City Fees)	\$ 8,382,783		\$ 9,388,717	66.42%	
City Fees	\$ 2,699,123	32.20%	\$ 2,900,308		30.89%
Tri-CED (TC) Revenue Requirement (includes City Fees)	\$ 4,249,455		\$ 4,746,197	33.58%	
City Fees	\$ 799,851	18.82%	\$ 882,641		18.60%
<b>Total Revenue Requirement</b>	<b>\$ 12,632,238</b>		<b>\$ 14,134,914</b>	<b>\$ 14,134,914</b>	<b>Ck</b>
<b>Total City Fees</b>	<b>\$ 3,498,974</b>		<b>\$ 3,782,949</b>		
Bad Debt %			1.00%		
Total Bad Debt Included in Compensation			\$ 141,349		
RS - Bad Debt Allocation			\$ 93,887		
City Fees			\$ 29,003		
<b>RS - Prospective Bad Debt Compensation</b>			<b>\$ 64,884</b>		
TC - Bad Debt Allocation			\$ 47,462		
City Fees			\$ 8,826		
<b>TC - Prospective Bad Debt Compensation</b>			<b>\$ 38,636</b>		
<b>City Fees - Prospective Bad Debt Allocation</b>			<b>\$ 37,829</b>		
<b>Revenue Requirement</b>					
RS - Revenue Requirement (includes City Fees & Bad Debt)			\$ 9,482,604		
TC - Revenue Requirement (includes City Fees & Bad Debt)			\$ 4,793,659		
Total Revenue Requirement			\$ 14,276,264		
<b>Contractor's Compensation</b>					
RS - Total Contractor's Compensation (excludes Bad Debt)			\$ 6,488,409		
City Fees			\$ 2,900,308		
TC - Total Contractor's Compensation (excludes Bad Debt)			\$ 3,863,556		
City Fees			\$ 882,641		
RS - Total Contractor's Compensation (includes Bad Debt)			\$ 6,553,293		
TC - Total Contractor's Compensation (includes Bad Debt)			\$ 3,902,192		
Total City Fees (includes Bad Debt)			\$ 3,820,778		
Total Revenue Requirement			\$ 14,276,264		

643  
644

<b>3. 2026-27 CALCULATION</b>					
<b>Residential Only</b>	<b>2025-26</b>	<b>2026-27</b>	<b>% Revenue</b>	<b>% City Fees</b>	<b>% Increase</b>
Republic Services (RS) Revenue Requirement (includes City Fees)	\$ 9,388,717	\$ 9,858,153	66.21%		5.0%
RS Total Contractor's Compensation	\$ 6,488,409	\$ 6,812,829			5.0%
City Fees - Franchise Fee	\$ 2,900,308	\$ 2,994,195		30.37%	3.2%
<b>Tri-CED</b>					
Tri-CED (TC) Revenue Requirement (includes City Fees)	\$ 4,746,197	\$ 5,032,101	33.79%		6.0%
TC Total Contractor's Compensation	\$ 3,863,556	\$ 4,056,734			5.0%
City Fees - Franchise Fees	\$ 882,641	\$ 975,367			
Total City Fees	\$ 882,641	\$ 975,367		19.38%	
<b>Actual Bad Debt</b>	<b>\$ 280,000</b>				
Projected Bad Debt	\$ 141,349				
50% of Variance		\$ 69,325			
RS - Bad Debt Allocation		\$ 45,897	66.21%		
City Fees		\$ 13,940		30.37%	
<b>RS - Prospective Bad Debt Compensation</b>		<b>\$ 31,957</b>			
TC - Bad Debt Allocation		\$ 23,428	33.79%		
City Fees		\$ 4,541		19.38%	
<b>TC - Prospective Bad Debt Compensation</b>		<b>\$ 18,887</b>			
RS - Contractor's Compensation	\$ 6,488,409	\$ 6,812,829			5.00%
RS - Prospective Bad Debt	\$ 64,884	\$ 96,841			49.25%
Total RS Contractor's Compensation	\$ 6,553,293	\$ 6,909,670			5.44%
TC - Contractor's Compensation	\$ 3,863,556	\$ 4,056,734			5.00%
TC - Prospective Bad Debt	\$ 38,636	\$ 57,523			48.89%
Total TC Contractor's Compensation	\$ 3,902,192	\$ 4,114,257			5.43%
City Fees	\$ 3,782,949	\$ 3,969,562			4.93%
<b>City Fees Prospective Bad Debt Allocation</b>	<b>\$ 37,829</b>	<b>\$ 56,311</b>			48.85%
Total City Fees	\$ 3,820,778	\$ 4,025,873			5.37%
<b>Revenue Requirement</b>					
RS - Revenue Requirement (includes City Fees & Bad Debt)	\$ 9,482,604	\$ 9,917,806			4.59%
TC - Revenue Requirement (includes City Fees & Bad Debt)	\$ 4,793,659	\$ 5,094,165			6.27%
Total Revenue Requirement	\$ 14,276,264	\$ 15,011,971			5.15%
<b>Contractor's Compensation (excludes Bad Debt)</b>					
RS - Total Contractor's Compensation	\$ 6,488,409	\$ 6,812,829			5.00%
City Fees	\$ 2,900,308	\$ 2,994,195			3.24%
TC - Total Contractor's Compensation	\$ 3,863,556	\$ 4,056,734			5.00%
City Fees (excludes Bad Debt)	\$ 882,641	\$ 975,367			10.51%
<b>Contractor's Compensation (includes Bad Debt)</b>					
RS - Total Contractor's Compensation	\$ 6,553,293	\$ 6,909,670			5.44%
TC - Total Contractor's Compensation	\$ 3,902,192	\$ 4,114,257			5.43%
Total City Fees	\$ 3,820,778	\$ 4,025,873			5.37%
Total Revenue Requirement	\$ 14,276,264	\$ 15,049,800			5.42%

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646

<b>4. 2027-28 CALCULATION</b>					
<b>Residential Only</b>	<b>2026-27</b>	<b>2027-28</b>	<b>% Revenue</b>	<b>% City Fees</b>	<b>% Increase</b>
Republic Services (RS) Revenue Requirement (includes City Fees)	\$ 9,858,153	\$ 10,351,060	65.97%		5.0%
RS Total Contractor's Compensation	\$ 6,812,829	\$ 7,153,471			5.0%
City Fees					
Storm Water Fee	\$ 1,278,206	\$ 1,278,206			0.0%
Franchise Fees (@ 20.0% of gross revenues)	\$ 1,715,989	\$ 1,814,571			5.7%
Total City Fees	\$ 2,994,195	\$ 3,092,777		29.88%	3.3%
<b>Tri-CED</b>					
Tri-CED (TC) Revenue Requirement (includes City Fees)	\$ 5,032,101	\$ 5,338,790	34.03%		6.1%
TC Total Contractor's Compensation	\$ 4,056,734	\$ 4,259,571			5.0%
Total City Fees					
Vehicle Impact Fee	\$ 109,930	\$ 109,930			
Franchise Fees (@ 20.0% of gross revenues)	\$ 865,437	\$ 969,289			12.0%
Total City Fees	\$ 975,367	\$ 1,079,219		20.21%	
<b>Actual Bad Debt</b>	<b>\$ 320,000</b>				
RS - Bad Debt Allocation		\$ 211,114	65.97%		
City Fees		\$ 63,078		29.88%	
<b>RS - Prospective Bad Debt Compensation</b>		<b>\$ 148,035</b>			
TC - Bad Debt Allocation		\$ 108,886	34.03%		
City Fees		\$ 22,011		20.21%	
<b>TC - Prospective Bad Debt Compensation</b>		<b>\$ 86,875</b>			
RS - Contractor's Compensation	\$ 6,812,829	\$ 7,153,471			5.00%
RS - Prospective Bad Debt	\$ 96,841	\$ 148,035			52.86%
Total RS Contractor's Compensation	\$ 6,909,670	\$ 7,301,506			5.67%
TC - Contractor's Compensation	\$ 4,056,734	\$ 4,259,571			5.00%
TC - Prospective Bad Debt	\$ 57,523	\$ 86,875			51.03%
Total TC Contractor's Compensation	\$ 4,114,257	\$ 4,346,446			5.64%
City Fees	\$ 3,969,562	\$ 4,171,996			5.10%
<b>City Fees Prospective Bad Debt Allocation</b>	<b>\$ 56,311</b>	<b>\$ 85,089</b>			51.11%
Total City Fees	\$ 4,025,873	\$ 4,257,085			5.74%
<b>Revenue Requirement (includes City Fees and Bad Debt)</b>					
RS - Revenue Requirement	\$ 9,917,806	\$ 10,457,361			5.44%
TC - Revenue Requirement	\$ 5,094,165	\$ 5,447,677			6.94%
Total Revenue Requirement	\$ 15,011,971	\$ 15,905,038			5.95%
<b>Contractor's Compensation (excludes Bad Debt)</b>					
RS - Total Contractor's Compensation	\$ 6,812,829	\$ 7,153,471			5.00%
City Fees	\$ 2,994,195	\$ 3,092,777			3.29%
TC - Total Contractor's Compensation	\$ 4,056,734	\$ 4,259,571			5.00%
City Fees	\$ 975,367	\$ 1,079,219			10.65%
<b>Contractor's Compensation (includes Bad Debt)</b>					
RS - Total Contractor's Compensation	\$ 6,909,670	\$ 7,301,506			5.67%
TC - Total Contractor's Compensation	\$ 4,114,257	\$ 4,346,446			5.64%
Total City Fees	\$ 4,025,873	\$ 4,257,085			5.74%
Total Revenue Requirement	\$ 15,049,800	\$ 15,905,038			5.68%

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648

<b>5. BAD DEBT SHARING RESULTS SUMMARY</b>						
<b>Residential Only</b>	<b>2025-26</b>	<b>2026-27</b>	<b>2027-28</b>			
<b>Calculated Contractor's Compensation (includes Bad Debt)</b>						
RS - Total Contractor's Compensation	\$ 6,553,293	\$ 6,909,670	\$ 7,301,506			
TC - Total Contractor's Compensation	\$ 3,902,192	\$ 4,114,257	\$ 4,346,446			
Total City Fees	\$ 3,820,778	\$ 4,025,873	\$ 4,257,085			
Total Revenue Requirement	\$ 14,276,264	\$ 15,049,800	\$ 15,905,038			
<b>Actual Bad Debt</b>	\$ 280,000	\$ 320,000				
<b>Prospective Bad Debt Compensation and City Fees</b>	\$ 141,349	\$ 210,675				
<b>Net Actual Bad Debt</b>	\$ 138,651	\$ 109,325				
<b>RS Allocation</b>	\$ 92,095	\$ 72,379				
City Fees Allocation	\$ 28,449	\$ 21,984				
Net RS Allocation	\$ 63,645	\$ 50,396				
<b>TC Allocation</b>	\$ 46,556	\$ 36,946				
City Fees Allocation	\$ 8,658	\$ 7,161				
Net TC Allocation	\$ 37,898	\$ 29,785				
<b>Actual Contractor's Compensation</b>						
RS	\$ 6,489,648	\$ 6,859,275				
TC	\$ 3,864,294	\$ 4,084,472				
City Fees	\$ 3,783,671	\$ 3,996,728				
<b>Bad Debt Sharing Result</b>						
RS	\$ (63,645)	\$ (50,396)				
TC	\$ (37,898)	\$ (29,785)				
City Fees	\$ (37,107)	\$ (29,145)				
CK	\$ (138,651)	\$ (109,325)				

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## EXHIBIT O INDEX-BASED COMPENSATION METHODOLOGY

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654

**1. GENERAL**

655 The City shall use the index-based Rate adjustment method described in this Exhibit to determine  
656 Maximum Rates for Rate Years 22 through 30 and if applicable, Rate Years 31 through 35.

657

658 The index-based adjustment involves application of an index to various costs that comprise the Total  
659 Contractor’s Compensation for the current Rate Year to determine the Total Contractor’s Compensation  
660 for the coming Rate Year. The difference (measured as a percentage) between the Total Contractor’s  
661 Compensation for the coming Rate Year and the Total Contractor’s Compensation for the then-current  
662 Rate Year is the Rate Adjustment Factor. The Rate Adjustment Factor is applied to the current Maximum  
663 Rates to determine the Maximum Rates for the coming Rate Year.

664

**2. DEFINITIONS**

665 Terms in upper case not otherwise defined in Article 1 of the Agreement or in this Exhibit are defined by  
666 reference to the line items in upper case as they appear in the Indexed Adjustment Example chart  
667 attached to this Exhibit (for example, Total Contractor’s Compensation, Cost of Operations, Profit, Pass-  
668 Through Costs). In addition, the following terms are defined for the purposes of this Exhibit.

669

670 A. **“Annual Percentage Change”** means the average CPI value for the 12-month period from January  
671 through December of the then-current Rate Year minus the average CPI value for 12-month  
672 period from January through December of the most-recently completed Rate Year, divided by the  
673 average CPI value for the 12-month period from January through December of the most-recently  
674 completed Rate Year; or 5.0 percent whichever is less. The Annual Percentage Change shall be  
675 rounded to the nearest thousandth.

676

677 For Rate Year 22 (Fiscal Year 2026-2027), beginning on July 1, 2026, and for subsequent Rate Years  
678 thereafter, the rates shall be adjusted based on one-hundred percent (100.0%) of the average  
679 change in the CPI for the twelve (12) month period from January to December. Therefore, the first  
680 rate adjustment subject to this Index-based Rate adjustment method, effective July 1, 2026, will  
681 be based on the percentage change in CPI for the average CPI value from January 1, 2025, through  
682 December 31, 2025, compared to the average CPI value from January 1, 2024, through December  
683 31, 2024, rounded to the nearest one-hundredth of a percent (1/100%). The CPI to be used shall  
684 be the series CUSR0000SEHG, Water and Sewer and Garbage Collection Services in U.S. city  
685 average, all urban consumers, seasonally adjusted.

686

687 For example, if the Contractor is preparing its rate application for Maximum Rates to be effective  
688 for Rate Year 22 (Rate Year 2026/2027), the Annual Percentage Change shall be calculated as  
689 follows: [(Average CPI for January 2024 through December 2025) – (Average CPI for January 2023  
690 through December 2024)] / (Average CPI for January 2023 through December 2024).

691

692 B. **“CPI”** means the consumer price index and shall be the series CUSR0000SEHG, Water and Sewer  
693 and Trash Collection Services in U.S. City Average, all urban consumers, seasonally adjusted,  
694 compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its  
695 successor agency., using the following parameters:

696

697 CPI Parameters:

698 Area – U.S. City Average

699 Item – All Items  
700 Base Period – index 1997 = 100  
701 Seasonally adjusted  
702 Frequency - Monthly  
703 Series ID – CUSR0000SEHG  
704

- 705 **E. “Rate Cap Adjustment”** means the amount to be included the Total Contractor’s Compensation  
706 if a cap on the Rate Adjustment Factor is applicable pursuant to Section 5 of Exhibit O.  
707  
708 **F. “Total Contractor’s Compensation”** means the total amount to be used as a basis for determining  
709 the Rate Adjustment Factor. The Total Contractor’s Compensation does not reflect or in any way  
710 guarantee the Gross Rate Revenues that will be generated by Rates or retained by the Contractor.

711 **3. TOTAL CONTRACTOR’S COMPENSATION FOR RATE YEAR TWENTY-ONE**

712 The Total Contractor’s Compensation for Rate Year Twenty-One is presented in Exhibit G.

713

714 Profit is calculated using a 93.00% operating ratio for all costs.

715 **4. ADJUSTMENT OF TOTAL CONTRACTOR’S COMPENSATION**

716 The cost components of the Total Contractor’s Compensation shall be adjusted in the following manner..

717

718 **A. Total Annual Cost of Operations**

719

720 (1) **Route Drivers Labor-Related Costs, Route Drivers Medical Costs, Route Drivers Workers**  
721 **Compensation.** The Route Drivers Labor-Related Costs, Route Drivers Medical Costs, Route  
722 Drivers Workers Compensation costs of the then-current Total Contractor’s Compensation  
723 shall be multiplied by 1 plus the Annual Percentage Change in the CPI.

724

725 (2) **Vehicle Related Cost (excluding fuel).** The Vehicle Related Cost (excluding fuel) of the then-  
726 current Total Contractor’s Compensation shall be multiplied by 1 plus the Annual Percentage  
727 Change in the CPI.

728

729 (3) **Fuel Costs.** The Fuel Costs of the then-current Total Contractor’s Compensation shall be  
730 multiplied by 1 plus the Annual Percentage Change in the CPI.

731

732 (4) **Direct Depreciation.** Direct Depreciation is \$160,321 per year for Contractor and \$133,071  
733 for Recyclable Materials Cart Contractor and shall not be adjusted over the Term of the  
734 Agreement.

735

736 (5) **Other Cost.** Other Cost of the then-current Total Contractor’s Compensation shall be  
737 multiplied by 1 plus the Annual Percentage Change in the CPI Rate Year.

738

739 (6) **Recycling Processing Cost.** The Recycling Processing Cost of the then-current Total  
740 Contractor’s Compensation shall be multiplied by 1 plus the Annual Percentage Change in  
741 the CPI.

742

743 (7) **Total Annual Cost of Operations.** The Total Annual Cost of Operations for the coming Rate  
744 Year shall equal the sum of costs calculated in subsections (1) through (6) above.

745

746 **B. Profit.** Profit for the coming Rate Year shall be determined by calculating profit on Contractor's  
747 costs. The profit shall be calculated in the following manner:

748  
749 (1) **Profit on Contractor's costs excluding Tri-CED costs** = [(Total Cost of Operations for the  
750 coming Rate Year / 93.00%) – (Total Cost of Operations for the coming Rate Year)].

751  
752 **C. Pass-Through Costs**

753  
754 (1) **Other Costs.** The Other Costs of the then-current Total Contractor's Compensation shall be  
755 multiplied by 1 plus the Annual Percentage Change in the CPI.

756  
757 (2) **Interest Expense.** Interest Expense is \$11,222 per year and shall not be adjusted over the Term  
758 of the Agreement.

759  
760 (3) **Recycling Processing Disposal.** The Recycling Processing Disposal of the then-current Total  
761 Contractor's Compensation shall be multiplied by 1 plus the Annual Percentage Change in the CPI.

762  
763 (4) **Bad Debt Reconciliation.** Bad Debt shall be included in Contractor's Compensation as a pass-  
764 through expense and shall be calculated as follows for the Term.

765  
766 a) Rate Year 21 – one (1) percent of the calculated Revenue Requirement approved by  
767 the City for Contractor.

768 b) Rate Year 22 – the amount calculated for Rate Year 21 plus fifty (50) percent of the  
769 actual Bad Debt accrued by Contractor during July 1 through April 1 of Rate Year 21  
770 (July 1, 2025 through April 1, 2026)

771 c) Rate Year 23 – the actual amount accrued by Contractor during July 1 through April  
772 1 of Rate Year 22 (July 1, 2026 through April 1, 2027).

773 d) Rate Year 24 through 30 – the actual amount accrued from July 1 through April 1 of  
774 the previous Rate Year.

775  
776 Contractor's Compensation Application due on March 1 shall include Contractor's projected  
777 Bad Debt calculations. City shall approve an amendment to Contractor's Compensation  
778 Application submitted timely (by March 1) with regard to the amount of Bad Debt calculated  
779 pursuant to the above prescribed schedule and process since the applicable Bad Debt is  
780 accrued through April 1, while Contractor's Compensation Adjustment Application is due on  
781 March 1.

782  
783 The above process to adjust for and include projected or calculated Bad Debt in the annual  
784 Revenue Requirements shall be predicated on Solid Waste Contractor adhering to the Bad  
785 Debt Recovery Escalation Plan (Exhibit M) to the City's reasonable satisfaction. If the City  
786 deems for good cause that the Bad Debt Recovery Escalation Plan was not managed to the  
787 City's reasonable satisfaction, the City reserves the right to deny an increase in the next  
788 annual adjustment to Bad Debt compensation paid to Contractor and the City may reduce  
789 the Bad Debt compensation paid to Contractor based on the City's good cause  
790 determination.

791  
792 (5) **Total Pass-Through Costs.** Total Pass-Through Costs for the coming Rate Year shall equal  
793 costs calculated in subsections (1) through (4) above.

794

795 **D. Rate Cap Adjustment.** The Rate Cap Adjustment amount (if applicable) shall be the “Contractor’s  
796 share of the Rate Cap Adjustment” determined in accordance with Section 5 (Step 4.a.i) of this  
797 Exhibit.

798  
799 **E. Total Contractor’s Compensation before City Fees.** The Total Contractor’s Compensation before  
800 City Fees shall be the sum of the Total Annual Cost of Operations, Profit, Total Pass-Through Costs,  
801 and Rate Cap Adjustment for the coming Rate Year.

802  
803 **F. City Fees**  
804  
805 (1) **Franchise Fee.** Franchise Fee shall be determined by City.  
806  
807 (2) **Total City Fees.** The Total City Fees including the Franchise Fee and other City Fees for the  
808 coming Rate Year shall be determined by the City.

809  
810 **G. Total Contractor’s Compensation.** The Total Contractor’s Compensation for the coming Rate Year  
811 shall equal the sum of the Total Annual Cost of Operations, Profit, Total Pass-Through Costs, Rate  
812 Cap Adjustment, and Total City Fees for the coming Rate Year.

813 **5. RATE CAP ADJUSTMENT**

814  
815 **A. Annual Rate Cap On Maximum Rates.** In any Rate Year that the calculation of the CPI exceeds  
816 five percent (5.0%), the total adjustment in Contractor’s Compensation for that year shall be a  
817 maximum of five percent (5.0%). If the CPI exceeds five percent (5.0%), the amount above five  
818 percent (5.0%) shall be rolled over to the subsequent Rate Year. If the CPI is negative (after  
819 accounting for any applicable rollover percentages from prior years), there will be no CPI  
820 adjustment to Contractor’s Compensation for that year.

821 **6. ADJUSTMENT OF MAXIMUM RATES**

822 Each then-current Maximum Rate shall be multiplied by the Final Rate Adjustment Factor  
823 (determined in accordance with Section 5 of this Exhibit) to calculate the effective Maximum Rate  
824 for the coming Rate Year.

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**EXHIBIT P**  
**RATE YEAR TWENTY-ONE RATES**

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**City of Union City**  
**Service Provided by Tri-CED**  
**Recycle Rates**  
(Includes Multi-Family Dwellings )

**Parcelized Single-Family and Parcelized Multi-Family Dwelling: Regularly Scheduled Curbside Collection Services**

**Basic Service** (Monthly Rate for Recycle Collection Services)

Type of Service	Level of Service	2025 Rates (July 1, 2025 - June 30, 2026)
Per Dwelling Unit	Each unit receives a cart	\$22.01
Senior or Low-Income Per Dwelling Unit <sup>1</sup>	Each unit receives a cart	\$18.71

<sup>1</sup> Senior and Low-Income Dwellings that meet eligibility requirements receive a 15.0% discount. Eligibility requirements are only intended to apply to current residents of the Dwelling.

**Multi-Family Dwelling: Regularly Scheduled Collection Services**

**Basic Service** (Monthly Rate for Recycle Collection Services)

Type of Service	Level of Service	2025 Rates (July 1, 2025 - June 30, 2026)
Non-Parcelized Per Unit	Each unit receives a cart	\$22.01
Senior or Low-Income Per Dwelling Unit <sup>1</sup>	Each unit receives a cart	\$18.71
Non-Parcelized Per Unit	Shared services	\$13.35

<sup>1</sup> Senior and Low-Income Dwellings that meet eligibility requirements receive a 15.0% discount. Eligibility requirements are only intended to apply to current residents of the Dwelling.

**Commercial: Regularly Scheduled Recycle Cart Services (Monthly Rate)**

**Basic Service** (Monthly Rate for Recycle Collection Services)

Type of Service	Receptacle	2025 Rates (July 1, 2025 - June 30, 2026)
Recycling 1 x per week	64 or 96 Gallon Cart	\$30.72
Recycling 2 x per week	64 or 96 Gallon Cart	\$62.03
Recycling 3 x per week	64 or 96 Gallon Cart	\$84.90
Recycling 4 x per week	64 or 96 Gallon Cart	\$107.77
Recycling 5 x per week	64 or 96 Gallon Cart	\$149.32