



**Amended and Restated Franchise Agreement
between
the City of Indio
And
Burrtec Waste and Recycling Services, LLC
For
Solid Waste Collection Service**

July 1, 2022

**AMENDED AND RESTATED FRANCHISE AGREEMENT BETWEEN THE
CITY OF INDIO AND BURRTEC WASTE AND RECYCLING SERVICES, LLC FOR
SOLID WASTE COLLECTION SERVICE**

This **AGREEMENT FOR SOLID WASTE COLLECTION SERVICE** ("Agreement") is entered into this 1st day of July , 2022, by and between the **City of Indio** ("**City**"), a City and California municipal corporation, and Burrtec Waste and Recycling Services LLC ("**Contractor**"), for the collection, transportation, recycling, processing, composting, and disposal of Solid Waste, recyclables and organic materials.

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (Act) (California Public Resources Code Section 40000 et seq.), has declared that it is in the public interest to authorize and require cities to make adequate provisions for Solid Waste collection within their jurisdiction.

WHEREAS, Public Resources Code Section 40059 authorizes the cities to determine (i) all aspects of Solid Waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location and extent of providing Solid Waste handling service; (ii) whether the services are to be provided by means of non-exclusive franchise, contract, license, permit, or otherwise, either with or without competitive bidding, or if, in the opinion of its governing body, the public health, safety and well-being so require by partially exclusive or wholly exclusive franchise, contract, license, permit or otherwise, either with or without competitive bidding; and,

WHEREAS, SB 1383 establishes regulatory requirements for jurisdictions, generators, haulers, Solid Waste facilities, and other entities to support achievement of State-wide organic waste disposal reduction targets; and,

WHEREAS, SB 1383 requires the City to implement Collection programs, meet Processing facility requirements, conduct contamination monitoring, provide education, maintain records, submit reports, monitor compliance, conduct enforcement, and fulfill other requirements; and, the City has chosen to delegate some of its responsibilities to the Contractor, acting as the City's designee, through this Agreement; and,

WHEREAS, Public Resources Code Section 40900 et. seq. establishes a Solid Waste management process that requires cities and other local jurisdictions to implement plans for source reduction, reuse and recycling as integrated waste management practices; and,

WHEREAS, the City is obligated to protect the public health and safety of the residents and businesses of the City of Indio, and collection of Solid Waste should be undertaken in a manner consistent with the exercise of the City's obligations for the protection of public health and safety; and,

WHEREAS, the City and contractor are mindful of the provisions of the laws governing the safe collection, transport, recycling and disposal of Solid Waste, including but not limited to California Public Resources Code Section 40000 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 et seq. and the Comprehensive Environmental Response, Compensation and Liability Act (" "), 42 U.S.C. §§ 9601 et seq.; and

WHEREAS, the City and contractor desire to leave no doubts as to their respective roles and to make it clear that by entering into this Agreement, City is not thereby becoming a "generator" or an "arranger" as those terms are used in the context of CERCLA § 107(a)(3) and that it is contractor, an independent entity, and not City, which shall collect from premises in the City of Indio, transport and dispose of Solid Wastes (which may contain small amounts of consumer products with the characteristics of hazardous substances); collect, transport, and recycle and/or compost organic waste and recyclable Solid Wastes collected from premises in the City of Indio; and

WHEREAS, City and contractor are mindful of new laws adopted by the State of California intended to divert recyclables and organic materials from being landfilled. AB 341 mandates that commercial waste generators arrange for recycling services. AB 1826 mandates that commercial waste generators recycle their organic waste. AB 1594 will end the practice of excluding organic material used as Alternative Daily Cover (ADC) from the calculation of a jurisdiction's total per capita amount of waste disposed. SB 1383 allows the Department of Resources Recycling and Recovery (CalRecycle) to implement new regulations on local jurisdictions if significant progress has not been made in certain waste reduction goals by 2020, and;

WHEREAS, Contractor represents and warrants to City that it has the experience, responsibility and qualifications to: 1) conduct recycling programs, 2) provide City with information sufficient to meet the City's reporting requirements under all applicable laws and regulations including AB 939, AB 341, AB 1826, and SB 1383, 3) Collect, transport and dispose of Solid Waste in a safe manner which will minimize the adverse effects of Collection vehicles on air quality and traffic, and, 4) has the ability to indemnify the City against liability under CERCLA; and

WHEREAS, the City Council of the City of Indio determines and finds pursuant to California Public Resources Code Section 40059(a)(1), that the public health, safety and well-being, including the minimization of adverse impacts on air quality and traffic from excessive numbers of collection vehicles, and the protection of the City against CERCLA

liability, justify awarding to contractor a contract for collection, recycling and disposal of Solid Waste from premises in the City of Indio.

WHEREAS, the City's primary goals in entering into this agreement are to ensure that 1) collection services are of the highest caliber, 2) customer satisfaction remains at the highest level, 3) the environment is protected, 4) maximum Diversion levels are achieved, 5) Indio does its part to reduce greenhouse gas (GHG) emissions generated from waste Collection and disposal as part of Indio's implementation of federal, state, and local efforts to address climate change, and, 6) that materials collected are put to the highest and best use.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, the parties hereby agree as follows:

1 DEFINITIONS

The terms used in this Agreement shall have the meaning set forth in this section. In the event a term is not defined in this section, then it shall have the meaning set forth in the Indio Municipal Code or in Division 30, Part 1, Chapter 2 of the California Public Resources Code (with precedence given to definitions in the Indio Municipal Code over conflicting definitions contained in the Public Resources Code). Unless otherwise stated in this Agreement, any reference in this Agreement to any federal, state or local statute, ordinance, or regulation shall be to such legislation or regulation as it now exists or may be amended, or to any successor legislation or regulation.

1.1 AB 341

"AB 341" means collectively the act to amend Sections 41730, 41731, 41734, 41735, 41736, 41800, 42926, 44004, and 50001 of, to add Sections 40004, 41734.5, and 41780.01 to add Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of, and to add and repeal Section 41780.02 of, the California Public Resource Code, which mandates businesses and public entities generating four (4) cubic yards or more of waste per week and Multi-family Residential Dwellings with five (5) units or more to Recycle.

1.2 AB 939

'AB 939' means the California Integrated Waste Management Act of 1989, codified in part at Public Resources Code section 40000 et. seq., as it may be amended from time to time and as implemented by the regulations of the California Department of Resources Recycling and Recovery (CalRecycle), or its successor agency.

1.3 AB 1826

"AB 1826" means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 modifying Division 30 of the California Public Resources Code), also commonly referred to as "AB 1826," as amended, supplemented, superseded, and replaced from time to time.

1.4 Abandoned Items

"Abandoned Items" means items abandoned in the public right-of-way, and on public premises including but not limited to Bulky Waste items and Yard Trimmings, to be Collected by Contractor pursuant to Section 5.5.11

1.5 Affiliate

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

1.6 Agreement

"Agreement" means this agreement between City and Contractor, including all exhibits, and any future amendments hereto.

1.7 Back-haul

'Back-haul' means generating and Transporting C&D Materials, Recyclables Materials and/or Organic Waste to a destination owned and operated by the Generator using the Generator's own full-time employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A)

1.8 Backyard Service

'Backyard Service' means that the Contractor moves all Collection Carts, from a Customer's designated Collection location other than curbside, such as backyard, side yard, or driveway, for Collection, and returns Carts when Collection is complete.

1.9 Bin

'Bin' means a container with hinged lids and a capacity from two (2) to six (6) cubic yards, which is typically emptied by a front-loading Collection vehicle.

1.10 Bin Collection Service

'Bin Collection Service' means using Bins to provide Solid Waste Collection Services to residential, retail, commercial, and industrial facilities that require Bin Collection service on a regular, ongoing, and indefinite basis.

1.11 Blue Container

'Blue Container' or 'Blue Cart' means a container used for storage and Collection of Source Separated Recyclables Materials or Source Separated Blue Container Organic Waste. A Blue Container means a container where either: 1) the lid of the container is blue in color, or, 2) the body of the container is blue in color and the lid is either blue, gray, or black in color.

1.12 Bulky Items

'Bulky Items' means Solid Waste that cannot or would not typically be accommodated within a Cart including specifically: furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as 'white goods'); electronic waste (including stereos, televisions, laptop computers, computers and computer monitors, microwaves and other similar items discarded from Premises; fluorescent bulbs; household batteries; and clothing. Bulky Items include tree trunks and large branches that do not exceed two (2) feet in diameter or four (4) feet in length. Bulky Items do not include Green Waste that is bundled and placed for Collection. Bulky Items do not include car bodies, auto parts, tires, Construction and Demolition Debris, or items requiring more than two persons to remove.

1.13 C&D

'C&D' means Construction and Demolition Debris.

1.14 C&D Processing Facility

'C&D Processing Facility' means any facility that is designed, operated and legally permitted for the purpose of receiving and Processing Construction and Demolition Debris.

1.15 CalRecycle

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

1.16 Cart

'Cart' means a plastic Container with wheels and a hinged lid with a capacity from 32 to 101 gallons, which is typically emptied by an automated side-loading Collection vehicle.

1.17 Cart Collection Service

'Cart Collection Service' means collection service using Carts. This includes service provided to Single-Family Premises (excluding those single-family customers that elect to use Bin collection service), Customers on Commercial Premises that generate small quantities of waste and elect to use cart collection service, and Customers on Multi-family Premises with individual storage capacity to store Carts with access to curbside service from side-loading collection vehicles.

1.18 City

'City' means the City of Indio, California, a Charter City and municipal corporation, and all the territory lying within the municipal boundaries of the City as it currently exists over which the City has jurisdiction, or as such boundaries may be adjusted.

1.19 City Manager

'City Manager' means the City Manager or the person designated by the City Manager to administer this Agreement.

1.20 Collection

'Collect or Collection' means the act of collecting Solid Waste, recyclable materials, Green Waste, Organic Waste, C&D Debris, Bulky Items, and other material from the designated collection location in the City and delivering that material to a Disposal facility, Material Recovery Facility, organics processing facility, or other approved facility pursuant to this Agreement.

1.21 Commercial Customer

‘Commercial Customer’ means any Person owning or occupying a Commercial Premises and receiving Solid Waste Collection Services from Contractor within the City pursuant to this Agreement.

1.22 Commercial Edible Food Generators

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

1.23 Commercial Premises

‘Commercial Premises’ means all premises in the City, other than residential premises, where Solid Waste is generated or accumulated. The term ‘Commercial Premises’ is a reference to location, and not to ownership.

1.24 Community Composting

‘Community Composting’ means any activity that composts green material, agricultural material, food material, and vegetative food material, alone or in combination, and the total amount of feedstock and Compost on-site at any one time does not exceed 100 cubic yards and 750 square feet.

1.25 Compactor

‘Compactor’ means any Bin or Roll-off Box that has a compaction mechanism, whether stationary or mobile.

1.26 Complaint

‘Complaint’ means a communication received by Contractor from a Customer or City indicating services have not been performed in accordance with this Agreement, or otherwise expressing dissatisfaction with service.

1.27 Compostable Plastics

‘Compostable Plastics’ means plastic material that meets the American Society for Testing and Materials (ASTM) D6400 standard for compostability (sections 5.1 through 6.4.2 published May 2019).

1.28 Composting or Compost

‘Composting or Compost’ means the controlled biological decomposition of Green Waste or organic materials into fertilizer, soil amendments, or other useful products.

1.29 Construction and Demolition Debris

'Construction and Demolition Debris' or 'C&D Debris' means waste building materials, asphalt, concrete, drywall, metals, roofing materials, soils, wood, packaging, and rubble resulting from construction, remodeling, repair and demolition operations on pavement, houses, commercial, industrial or institutional buildings and other properties or structures such as seawalls, piers, and jetties.

1.30 Container

'Container' means any Cart, Bin, Roll-off Box, or other approved receptacle used or intended to be used for holding Solid Waste for Collection.

1.31 Contamination Fee

'Contamination Fee' shall mean an amount charged by Contractor to Customers to offset Contractor's additional costs or diminished revenue due to contamination of Refuse, Recyclable Materials, Organics, or Green Waste placed in Containers.

1.32 Contractor

'Contractor' means, Burrtec Waste and Recycling LLC, the corporation and its officers, directors, employees, agents, companies and subcontractors.

1.33 Contractor Compensation

'Contractor Compensation' means the revenue received by the Contractor from billings in return for providing services in accordance with this Agreement and any amendments to this Agreement.

1.34 CPI

'CPI' means the Consumer Price Index, Series ID: CUURS49CSA0, All items in Riverside-San Bernardino-Ontario, CA, all urban consumers, not seasonally adjusted (U.S. Department of Labor, Bureau of Labor Statistics).

1.35 Customer

'Customer' means any Person receiving Solid Waste Collection Service from Contractor within the City pursuant to this Agreement.

1.36 Disaster

'Disaster' means a sudden regional, statewide, nationwide, or worldwide event, such as an accident or a natural catastrophe, that causes great damage or loss of life, and that significantly stops, or impacts the normal ongoing operations of Solid Waste Collection in the City. Disaster does not include Labor Unrest as described in Section 12.5.

1.37 Disposal

'Disposal' means the final deposition of Solid Waste at a permitted Landfill that is in full compliance with all laws and regulations.

1.38 Disposal Site

'Disposal Site' means the place, location, tract of land, area, or premises in use, intended to be used, or which has been used, for the Disposal of Solid Waste.

1.39 Diversion

'Diversion' means any combination of recycling and composting activities conducted that reduces waste disposed of at a Landfill.

1.40 Duplex

'Duplex' means any Residential Premises in the City with two (2) dwelling units each used by one (1) family living independently of each other. The two dwelling units may be attached or separate.

1.41 Dwelling Unit

'Dwelling unit' means a building or a portion thereof, designated for residential occupation by one person or a group of two or more persons living together as a domestic unit. Types of dwellings include single-family dwellings, duplexes, multifamily dwellings, mobile homes, condominiums and townhouses.

1.42 Edible Food

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

1.43 Effective Date

'Effective Date' means the date on which the Agreement becomes binding upon the parties, which is the date when all the conditions set forth below in Section 3.4 have been met, and both parties have properly executed the Agreement.

1.44 Electronic Waste or E-Waste

'Electronic Waste' or 'E-Waste' means discarded electronic equipment and includes, but is not limited to, stereos, televisions, CRTs, computers and computer monitors,

VCRs, cellular phones, fax machines, household copiers, computer printers, video game consoles, other items with electric plugs that are banned from Landfilling, and other similar items commonly known as 'brown goods.'

1.45 Environmental Laws

'Environmental Laws' means all federal and State statutes, county, local and City ordinances concerning public health, safety and the environment applicable to the City including, by way of example and not limitation, The National Environmental Policy Act (NEPA), the California Environmental Quality Act (CEQA), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6902 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §1601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the California Toxic Substances Control Act, California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; as currently in force or as subsequently amended, and all rules and regulations promulgated thereunder.

1.46 Excluded Waste

'Excluded Waste' means Hazardous Substance, Hazardous Waste, Infectious waste, designated waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that approved/designated facility operator(s) reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or Disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be disposed of in Class III Landfills or accepted at the facility by permit conditions, waste that in Contractor's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or Jurisdiction to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in single-family or Multi-family Solid Waste after implementation of programs for the safe collection, processing, recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code. Excluded waste does not include used motor oil and filters, household batteries, universal wastes, and/or latex paint when such materials are defined as allowable materials for collection through this Agreement and the Waste Generator or Customer has properly placed the materials for Collection pursuant to instructions provided by the City or Contractor as set forth in this Agreement.

1.47 Facility

'Facility' means any properly permitted plant or site, owned or leased and maintained, operated or used by the Contractor for purposes of performing under this Agreement.

1.48 Food Recovery

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

1.49 Food Recovery Organization

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

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

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

1.50 Food Recovery Service

'Food Recovery Service' means a Person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery.

1.51 Food Scraps

'Food Scraps' means discarded food that will decompose and/or putrefy and is segregated for Collection and Recycling. Food scraps includes, but is not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells. Food Scraps excludes fats, oils, and grease when such materials are Source Separated from other Food Scraps.

1.52 Food-Soiled Paper

‘Food-Soiled Paper’ means compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, and pizza boxes.

1.53 Food Waste

‘Food Waste’ means Food Scraps, Food-Soiled Paper, and Compostable Plastics.

1.54 Franchise

‘Franchise’ means the exclusive right and privilege to provide Solid Waste Collection Services within the City granted by City to Contractor pursuant to the City’s authority under Article 11, Section 7 of the State of California Constitution, and Section 40059 of the Public Resources Code.

1.55 Franchise Fee

‘Franchise Fee’ means the fee paid by Contractor to City pursuant to Section 9.1 of this Agreement as consideration for the exclusive right and privilege to Collection Solid Waste Services in the City.

1.56 Garbage

‘Garbage’ means all putrescible waste that generally includes, but is not limited to, animal, vegetative, food or any other waste that is attendant with, or results from the storage, preparation, cooking or handling of food materials attributed to normal activities of a service unit. Garbage does not include those items defined in this Agreement as Food Waste or Excluded Waste.

1.57 Gray Container

‘Gray Container’ or ‘Gray Cart’ means a Container used to store and collect refuse, mixed waste, gray container waste. A gray container means a container where either: 1) the lid of the container is gray or black in color, or, 2) the body of the container is gray or black in color and the lid is gray or black in color.

1.58 Gray Container Waste

‘Gray Container Waste’ means Refuse or mixed waste that is Collected in a gray Container that is part of a Collection service that prohibits the placement of Recyclable Materials or organic waste in the Gray Container.

1.59 Green Container

'Green Container' or 'Green Cart' means a Container used to store and collect Source Separated Green Container Organic Waste. A green container means a container where either: 1) the lid of the container is green in color, or, 2) the body of the container is green in color and the lid is either green, gray, or black in color.

1.60 Green Waste

'Green Waste' means non-contaminated material composed of organic matter or plant matter that is the result of seasonal variations or landscape and gardening activities. Green waste includes, without limitation, grass clippings, shrubbery, leaves, tree trimmings, branches, flowers, plant stalks, wood and other plant material. Green Waste does not include yucca, cactus, palm fronds, or stumps or branches exceeding six inches (6") in diameter or four feet (4') in length.

1.61 Green Waste Processing Facility

'Green Waste Processing Facility' means any facility that is designed, operated and legally permitted for the purpose of receiving and processing Green Waste.

1.62 Gross Receipts

'Gross Receipts' means any and all revenue or compensation in any form derived directly or indirectly by Contractor, its Affiliates, subsidiaries, parents and any Person or entity in which Contractor has a financial interest, from the Collection, Transportation, Processing, Disposal and other services with respect to Solid Waste collected within the City of Indio, including Recyclable Materials, Food Waste and Green Waste, pursuant to this Agreement. 'Gross Receipts' include, but are not limited to, monthly Customer fees for Collection of Solid Waste, including recyclable Solid Waste, Food Waste and Green Waste, special pickup fees, Roll-off Box Container rental and Collection fees and fees for redelivery of roll-off box containers without subtracting Franchise Fees or any other cost of doing business, but excludes any grant revenues, and revenues from the sale of Recyclable Materials.

1.63 Hauler Route

'Hauler Route' means the designated itinerary or sequence of stops for each segment of the City's Collection service area.

1.64 Hazardous Substance

'Hazardous Substance' means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as 'Hazardous Substances', 'hazardous materials', 'Hazardous Waste', 'toxic waste', 'pollutants' or 'toxic substances' or similarly

identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §5101, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, 25316, 25501 and 25501.1; (vi) the Clean Air Act, 42 USC §7401 et seq.; and (vii) California Water Code §13050; (b) any substances defined, regulated or listed by any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or subsequently enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local environmental laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ('PCBs'), petroleum, natural gas and synthetic fuel products, and by-products.

1.65 Hazardous Waste

'Hazardous Waste' means a waste, or combination of wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics, may do either of the following: (1) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; (2) pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported or disposed of or otherwise managed. 'Hazardous Waste' includes all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes, or identified and listed as Hazardous Waste by the US Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated there under. Where there is a conflict in the definitions employed by two or more agencies having jurisdiction over hazardous or Solid Waste, the term 'Hazardous Waste' shall be construed to have the broader, more encompassing definition.

1.66 High Diversion Organic Waste Processing Facility

'High Diversion Organic Waste Processing Facility' means a high Diversion organic waste processing facility as defined in 14 CCR Section 18982(a)(33).

1.67 Holiday

'Holiday' means New Years' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas and any additional official holidays declared in the future by the state or federal government that apply to municipalities.

1.68 Household Sharps Waste

'Household Sharps Waste' shall mean home-generated sharps, as defined in Section 117671 of the California Health & Safety Code, including hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications, which are generated by a single-family or Multi-family residence. 'Household Sharps Waste' does not include any waste generated in the course of operating a business concern at a residence, business generated waste, or medical waste not described in this Agreement

1.69 Household Hazardous Waste

'Household Hazardous Waste' means Hazardous Waste generated at a Single-Family and Multi-family Residential Premises.

1.70 Institutional

[This term is used many times in the Agreement but is never defined. A definition should therefore be added here.]

1.71 Landfill

'Landfill' means a 'Solid Waste Landfill' defined by Public Resources Code Section 40195.1.

1.72 Large Event

'Large Event' means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event.

1.73 Large Venue

'Large Venue' means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of 14 CCR, Division 7, Chapter 12 and this Agreement, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of 14 CCR, Division 7, Chapter 12 and this Agreement, a site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue.

1.74 Local Education Agency

'Local education agency' means a school district, charter school, or county office of education that is not subject to the control of City or county regulations related to Solid Waste.

1.75 Material Recovery Facility

'Material Recovery Facility' means a facility licensed or permitted in accordance with AB 939 which separates Recyclable Materials, and processes them for sale to brokers and end users.

1.76 Mulch

'Mulch' means a layer of material applied on top of soil, and, for the purposes of the Agreement, Mulch shall conform with the following conditions, or conditions as otherwise specified in 14 CCR Section 18993.1(f)(4):

- A. Meets or exceeds the physical contamination, maximum metal concentration, and pathogen density standards for land application specified in 14 CCR Section 17852(a)(24.5)(A)(1) through (3).
- B. Was produced at one or more of the following types of Facilities:
 - i. A compostable material handling operation or facility as defined in 14 CCR Section 17852(a)(12), that is permitted or authorized under 14 CCR, Division 7, other than a chipping and grinding operation or facility as defined in 14 CCR Section 17852(a)(10);
 - ii. A Transfer/Processing Facility or Transfer/Processing operation as defined in 14 CCR Section 17402(a)(30) and (31), respectively, that is permitted or authorized under 14 CCR, Division 7; or,
 - iii. A Solid Waste Landfill as defined in PRC Section 40195.1 that is permitted under 27 CCR, Division 2.

1.77 Multi-family Premises

'Multi-family Premises' means of, from, or pertaining to residential premises with five (5) or more dwelling units. Multi-Family premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial Businesses.

1.78 Non-collection Notice

‘Non-Collection Notice’ means a form developed by Contractor, and approved by City, to notify Customers of the reason for non-collection of materials set out by the Customer for Collection by Contractor pursuant to this Agreement.

1.79 Non-Compostable Paper

‘Non-Compostable Paper’ includes, but is not limited to, paper that is coated in a plastic material that will not breakdown in the composting process.

1.80 Non-Organic Recyclables

‘Non- Organic Recyclables’ means non- putrescible and non- hazardous recyclable wastes including, but not limited to, bottles, cans, metals, plastics, and glass, or as otherwise defined in 14 CCR Section 18982(a)(43). Non-Organic Recyclables are a subset of Source Separated Recyclable Materials.

1.81 Organic Materials

‘Organic Materials’ means Yard Trimmings and Food Waste, individually or collectively. No Discarded Material shall be considered to be Organic Materials, however, unless it is separated from Recyclable Material and Solid Waste. Organic Materials are a subset of Organic Waste.

1.82 Organic Waste

‘Organic Waste’ or ‘Organics’ means Green Waste, Food Waste, manure, and any other organic waste material which is acceptable to be delivered to an organics processing facility such as an anaerobic digester, or composting facility.

1.83 Owner

‘Owner’ means the Person holding the legal title to the real property constituting the Premises to which Solid Waste collection service is to be provided under this Agreement or the Person holding legal title to the Disposal Site, depending upon the context used in this Agreement.

1.84 PARIS Code

‘PARIS Code’ means the program codes used by the California Integrated Waste Management Board's Office of Local Assistance and stands for Planning Annual Report Information System database to track jurisdictions' AB 939 program information. Program codes assign a specific numerical reference to a specific type of Diversion program. These program codes are used to describe typical Diversion programs implemented by a jurisdiction. As an example, PARIS Code 2030-RC-OSP is the program

code for the Commercial Onsite Pickup program that collects cardboard, office paper, beverage containers and similar items from commercial businesses. A complete list of the PARIS Codes may be found at www.Ciwmb.ca.gov/lgcentral/paris.

1.85 Permanent Roll-off Box Service

‘Permanent Roll-off Box Service’ means the Collection of Solid Waste generated from on-going operations at a Customer’s place of business using Roll-off Boxes or large Compactors. This includes, for example, the Collection of Solid Waste from a Commercial Premises that would otherwise be collected using Bin service if the volume of Solid Waste generated were less. This does not include Roll-off Box service used for occasional higher volumes of waste due to special clean-up or other projects, or on construction or demolition sites.

1.86 Person

‘Person’ means any individual, firm, association, organization, partnership, corporation, business trust, or joint venture.

1.87 Premises

‘Premises’ means a tract or lot of land within the City where Solid Waste is generated or accumulated.

1.88 Process, Processed, or Processing

‘Processing’ means the controlled separation, recovery, volume reduction, conversion, or Recycling of Solid Waste including, but not limited to, organized, manual, automated, or mechanical sorting, the use of vehicles for spreading of waste for the purpose of recovery, and/or includes the use of conveyor belts, sorting lines, or volume reduction equipment.

1.89 Prohibited Container Contaminants

‘Prohibited Container Contaminants’ means the following: (i) Discarded Materials placed in the Blue Container that are not identified as acceptable Source Separated Recyclable Materials for the City’s Blue Container; (ii) Discarded Materials placed in the Green Container that are not identified as acceptable Source Separated Organic Waste for the City’s Green Container; (iii) Discarded Materials placed in the Gray Container that are acceptable Source Separated Recyclable Materials and Organic Materials to be placed in City’s Green Container and/or Blue Container ; and (iv) Excluded Waste placed in any Container.

1.90 Putrescible Waste

'Putrescible Waste' means wastes that are capable of being decomposed by micro-organisms with sufficient rapidity as to cause nuisances because of odors, gases, or other offensive conditions.

1.91 Rate Year

'Rate Year' means the twelve-month period from July 1st to June 30th, each year of the Agreement.

1.92 Recyclables or Recyclable Materials

'Recyclables' or 'Recyclable Materials' means those materials which are capable of being recycled and which would otherwise be processed or disposed of as Garbage. Recyclable Materials include those materials defined by the City, including newsprint (including inserts); mixed paper (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, brown bags and paper, paperboard, paper egg cartons, office ledger paper, and telephone books); glass containers; aluminum beverage containers; small scrap and cast aluminum (not exceeding forty (40) pounds in weight nor two (2) feet in any dimension for any single item); steel including 'tin' cans, aerosol cans (empty, non-toxic products) and small scrap (not exceeding forty (40) pounds in weight nor two (2) feet in any dimension for any single item); bimetal containers; #1-7 plastics regardless of form or mold (including but not limited to plastic containers, bottles, wide mouth tubs, plastic bags, film plastic, and polystyrene), aseptic containers, aluminum foil and pans; and those materials added by Contractor from time to time.

1.93 Recycle or Recycling

'Recycle' or 'Recycling' means the process of collecting, sorting, cleaning, treating and -reconstituting materials that would otherwise become waste and returning those materials to the economic mainstream in the form of raw materials for new, reused or -reconstituted products that meet the quality standards to be used in the marketplace. Recycling does not include Transformation as defined in Public Resources Code Section 40201.

1.94 Refuse

'Refuse' means Garbage, Rubbish, and mixed waste. Refuse is collected in a Gray Container.

1.95 Renewable Natural Gas (RNG)

‘Renewable Natural Gas’ or ‘RNG’ means gas derived from Organic Waste that has been Diverted from a Landfill and Processed at an in-vessel digestion facility that is permitted or otherwise authorized by 14 CCR to recover Organic Waste.

1.96 Residential

‘Residential’ means property, or Owners of property, which is used for residential purposes including Single-Family and Multi-family dwelling units, irrespective of whether such dwelling units are rental units or are Owner-occupied.

1.97 Residential Premises

‘Residential’ or ‘Residential Premises’ means single-family residences, duplexes, triplexes, and multifamily residences, including apartments and condominiums (in which each unit has separate cooking and bathing facilities). The terms do not include hotels, motels, rooming houses, hospitals, nursing homes, convalescent centers, dormitories or barracks or other group living places. ‘Residential’ or ‘residential Premises’ is a reference to location, and not to ownership or to an interest in property.

1.98 Roll-off Box

‘Roll-off Box’ means an open top metal Container with a capacity from 10 to 40 cubic yards, which is designed to be pulled onto a Roll-off vehicle.

1.99 Roll-off Collection Service

‘Roll-off Collection Service’ means providing Solid Waste Collection Services using Roll-off Boxes or Roll-off Compactors.

1.100 Roll-off Compactor

‘Roll-off Compactor’ means an enclosed metal Container equipped with a hydraulic packing ram with a capacity from 15 to 35 yards, which is designed to be pulled onto a Roll-off vehicle.

1.101 Route Review

‘Route Review’ means a procedure in which individual containers set out for collection along the Company’s routes are visually or electronically inspected on a representative sample basis to determine the degree to which they are contaminated.

1.102 Rubbish

‘Rubbish’ means, without limitation, the following items: waste and refuse capable of burning readily, including straw, packing materials, leather, rubber, clothing, bedding,

books, rags and all similar articles which will burn by contact with flames or ordinary temperatures; and ashes, crockery, china, pottery, metal wire and other similar materials.

1.103 SB 1383

‘SB 1383’ means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

1.104 SB 1383 Regulations

‘SB 138 Regulations’ or ‘SB 1383 Regulatory’ refers to the Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle and adopted in 2020 that created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.

1.105 Scavenging

‘Scavenging’ means the unauthorized removal of Recyclables that have been set out for Collection.

1.106 Self-Hauler (or Self-Haul)

‘Self-Hauler’ or ‘Self-Haul’ means a Person who hauls Solid Waste, Organic Waste, or recovered material they have generated to another Person, or as otherwise defined in 14 CCR Section 18982(a)(66).

1.107 Service Level

‘Service Level’ refers to the number and size of a Customer’s Container(s) and the frequency of Collection service, as well as ancillary services such as lock/unlock service, Container push/pull service, etc.

1.108 Single-family Residential Premises

‘Single-family Residential Premises’ means a detached building used exclusively for occupancy by one family (including their guests, servants, and employees) and containing one dwelling unit.

1.109 Solid Waste

‘Solid Waste’ means all putrescible and non-putrescible solid, semi-solid wastes, including Garbage, trash, Refuse, paper, Rubbish, ashes, industrial wastes, Construction and Demolition Debris, discarded home appliances, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes. ‘Solid Waste’ includes Recyclable Materials, Organics, Green Waste, Construction and Demolition Debris, and Bulky Items. Solid Waste does not include Hazardous Waste, or untreated Medical Waste.

1.110 Solid Waste Facility

‘Solid Waste Facility’ means a Solid Waste transfer or processing station, a composting facility, a gasification facility, a Transformation Facility, or a Disposal Site.

1.111 Solid Waste Collection Services

‘Solid Waste Collection Services’ means the Collection, Transportation, storage, Transfer, Processing, and Disposal of Solid Waste.

1.112 Source Separated Blue Container Organic Waste (SSBCOW)

‘Source Separated Blue Container Organic Waste’ or ‘SSBCOW’ means Source Separated Organic Waste that can be placed in a Blue Container that is limited to the Collection of those Organic Wastes and Non-Organic Recyclables.

1.113 Source Separated Green Container Organic Waste (SSGCOW)

‘Source Separated Green Container Organic Waste’ or ‘SSGCOW’ means Source Separated Organic Waste that can be placed in a Green Container that is specifically intended for the separate Collection of Organic Waste by the Waste Generator, excluding SSBCOW, carpets, Non-Compostable Paper, and textiles. SSGCOW is a subset of Organic Waste.

1.114 Special Services

"Special Services" means non-routine services that are requested of Contractor by either Customers or the City.

1.115 Split Bin

‘Split Bin’ means a Bin that is split or divided into segregated sections, instead of an entire Bin.

1.116 State

‘State’ means the State of California

1.117 Term

'Term' means the Term of this Agreement, including any agreed upon extension periods, as provided for in Section 3.3.

1.118 Tier One Commercial Edible Food Generators

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

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

1.119 Tier Two Commercial Edible Food Generators

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

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

1.120 Temporary Service

'Temporary Service' means Solid Waste Collection services provided on a project basis, such as Construction and Demolition projects and occasional clean-up projects using a Roll-off Box or Bin.

1.121 Transfer

‘Transfer’ means the act of transferring Solid Waste Collected by Contractor from Contractor’s Collection vehicles into larger vehicles at a Transfer Facility for Transport to other Facilities for Processing or Disposing of such materials.

1.122 Transportation or Transport

‘Transportation’ or ‘Transport’ means the act of conveying Collected materials from one location to another.

1.123 Transformation

‘Transformation’ means incineration, pyrolysis, distillation, or biological conversion other than composting. ‘Transformation’ does not include composting, or biomass conversion.

1.124 Transformation Facility

‘Transformation Facility’ means a facility whose principal function is to convert, combust, or otherwise process Solid Waste by incineration, pyrolysis, distillation, or biological conversion other than composting. A ‘Transformation Facility’ does not include a composting facility or a biomass conversion facility.

1.125 Universal Waste

‘Universal Waste’ means any of the following waste that are conditionally exempt from classification as Hazardous Wastes pursuant to Title 22 of the California Code of Regulations (22 CCR), section 66261.9: (i) batteries as described in 22 CCR section 66273.2; (ii) thermostats as described in 22 CCR section 66273.4; (iii) lamps as described in 22 CCR section 66273.5; and (iv) cathode ray tube materials as described in 22 CCR section 66273.6.

1.126 Waste Evaluation

‘Waste Evaluation’ means a procedure in which representative samples of waste and recyclables are taken from vehicle loads and sorted at a permitted facility to determine the degree to which the material is contaminated.

1.127 Waste Generator

‘Waste Generator’ means the owner or occupant of premises whose act initially produces Solid Waste that is subject to regulation under federal, State, or local regulations.

1.128 Work Day

'Work Day' means any day, Monday through Saturday, which is not a Holiday designated as set forth in Section 7.3 of this Agreement.

1.129 Yard Trimmings

'Yard Trimmings' means types of Source Separated Green Container Organics Waste (SSGCOW) resulting from normal yard and landscaping installation, maintenance, or removal that the Waste Generators Source Separate and set out in Green Containers for Collection for Processing by the Contractor.

2 REPRESENTATION AND WARRANTIES OF CONTRACTOR

Contractor hereby covenants, represents, and warrants the following in order to induce City to enter into this Agreement, all of which shall be true as of the Effective Date of this Agreement and remain so throughout the Agreement, except as may be excused in writing by City.

The information supplied by Contractor in all submittals made in connection with negotiation and execution of this Agreement, including all materials in its proposal to the City, and all representations and warranties made by Contractor throughout this Agreement are true, accurate, correct and complete in all material respects on and as of the Effective Date of this Agreement

2.1 Corporate Status

The Contractor represents and warrants that it is duly organized, validly existing and in good standing under all applicable laws. It is duly licensed and qualified to transact business in the State of California, has and will maintain a City of Indio business license in good standing, and has the power to provide services as required by this Agreement.

2.2 Corporate Authorization

The Contractor has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners/joint venturers of the Contractor (or the shareholders, if applicable) have taken all actions required by law to authorize the execution of this Agreement. The Persons signing this Agreement on behalf of the Contractor have authority to do so. Contractor shall authorize one employee as a single point of contact for the City for issues arising under this Agreement as described in Section 13.17. City may accept that this employee's actions are taken on behalf of and with the full approval of the Contractor.

2.3 Agreement Will Not Cause Breach

There is no action, suit or other proceeding as of the Effective Date of this Agreement, at law or in equity, or to the best of the Contractor's knowledge, any investigation, before or by any court or governmental authority, pending or threatened against the Contractor which may result in an unfavorable decision, ruling or finding which would in any way adversely affect the validity or enforceability of this Agreement or any such agreement or instrument entered into by Contractor in connection with the transactions contemplated hereby, or which could in any way adversely affect the ability of Contractor to perform its obligations under this Agreement or which would have any adverse effect on the financial condition of Contractor.

Neither the execution of this Agreement nor the delivery by Contractor of services nor the performance by Contractor of its obligations in this Agreement: (1) conflicts with, violates or results in a breach of any applicable law; (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of Contractor) or instrument to which Contractor is a party or by which the Contractor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument; or (3) will result in the creation or imposition of any encumbrance of any nature whatsoever upon any of the properties or assets of Contractor.

2.4 No Litigation

Contractor has made an independent investigation, satisfactory to it, of the conditions and circumstances surrounding this Agreement and the work to be performed by it, and is satisfied that those conditions and circumstances will not impair its ability to perform the work and provide the Solid Waste Collection Services required by this Agreement.

Contractor has no knowledge of any applicable law, administrative regulation or order, in effect as of the date of this Agreement that would prohibit the performance by Contractor of any of the services or obligations contemplated under this Agreement.

3 TERMS OF AGREEMENT

3.1 Grant of Exclusive Rights

This Agreement grants to the Contractor for the Term of this Agreement during which Solid Waste Collection Service is to be provided, the exclusive right and privilege to Collect, Transport, process, recycle, Compost, retain and dispose of Solid Waste Collected from Single-Family, Multi-family, Commercial, Institutional, and Roll-off Customers, as defined in this Agreement, produced, generated and/or accumulated within the City, except as otherwise provided below. No other services shall be exclusive to the Contractor.

The administration of this Agreement by the City shall be under the supervision and direction of the City Manager, and the City actions specified in this Agreement, unless otherwise stated, shall be taken by the City Manager.

3.2 Limitations to Scope of Exclusive Agreement

The exclusive franchise, right and privilege to provide Solid Waste Collection Services at Premises within City granted to Contractor by this Agreement specifically excludes the following services, which services may be provided by Persons other than Contractor or which may be the subject of other permits, licenses, franchises or agreements issued or entered by City:

- A. The sale or donation of source-separated Recyclable Material by the Waste Generator or Customer to any Person other than Contractor; provided, however, to the extent permitted by law, if the Waste Generator or Customer is required to pay monetary or nonmonetary consideration for the Collection, Transportation, Transfer, or Processing of Recyclable Material, then it shall not be considered a sale or donation.
- B. Solid Waste, including Recyclable Materials and Green Waste, which is removed from any Premises by the Waste Generator, and which is transported personally by such Waste Generator (or by his or her full-time employees) to a processing Facility or Disposal Site in a manner consistent with all applicable laws and regulations.
- C. Recyclable Materials, Organic Waste or Bulky Items that are source separated at any Premises by the Waste Generator and donated to youth, civic or charitable organizations.
- D. Recyclables delivered to a recycling center or drop-off station by the Waste Generator for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et seq.
- E. Green Waste removed from a Premise by a gardening, landscaping, or tree trimming Contractor, utilizing its own equipment, as an incidental part of a total service offered by that Contractor rather than as a hauling service.
- F. The Collection, Transfer, Transport, Recycling, and Processing of animal by-products, fats, oils, or grease to be rendered and used as tallow.
- G. The Collection, Transfer, Transport, Recycling, Processing, and Disposal of byproducts of sewage treatment, including sludge, sludge ash, grit and screenings.

- H. The Collection, Transfer, Transport, Recycling, Processing, and Disposal of Hazardous Substances, Hazardous Waste, untreated Medical Waste, and radioactive waste regardless of its source.
- I. Construction and Demolition Debris demolition debris that is removed by a duly-licensed construction or demolition Contractor (e.g., with a State contractor license type C-21) or as part of a total service offered by said licensed Contractor or by the City, where the licensed Contractor utilizes its own loaders and dump trucks.
- J. The Collection, Transfer, Transport, Recycling, Processing, and Disposal of Solid Waste by City through City officers or employees in the normal course of their City employment.
- K. Solid Waste Collection Services for governmental agencies other than City, which may have facilities in City, but over which City has no jurisdiction in connection with the regulation of Solid Waste.
- L. Self-Hauled materials. A Commercial business Owner or resident may Dispose of Recyclable Materials, and Organic Materials, generated in or on their own Premises with their own vehicle.
- M. Edible Food. Edible Food which is collected from a Waste Generator by other Person (s), such as a Person from a Food Recovery Organization or Food Recovery Service, for the purposes of Food Recovery; or which is Self-Hauled by the Customer to another Person(s), such as a Person from a Food Recovery Organization, for the purposes of Food Recovery, regardless of whether the Customer donates, sells, or pays a fee to the other Person(s) to collect or receive the Edible Food.
- N. Byproducts from the processing of food or beverages which meet all of the conditions set forth in California Public Resources Code Section 40059.4(b).
- O. On-site or Community Composting. Organic materials composted or otherwise legally managed at the site where it is generated (e.g., backyard composting, or on-site anaerobic digestion) or at a Community Composting site.

The exclusive franchise, right and privilege to provide Solid Waste Collection Services within City granted to Contractor by this Agreement shall be interpreted to be consistent with all applicable state and federal laws, now in effect and adopted during the Term of this Agreement, and the scope of this Agreement shall be limited by all applicable current and developing laws and regulations. In the event that future interpretations of current law, future enactments or developing legal trends limit the ability of City to lawfully grant Contractor the scope of services as specifically set forth in

this Agreement, the scope of this Agreement shall be limited to those services and materials which may be lawfully provided, and that City shall not be responsible for any lost profits claimed by Contractor resulting from any change in law.

3.3 Effective Date, Term, and Extension of this Agreement

The 'Effective Date' of this Agreement shall be the date upon which all the conditions set forth below in Section 3.4 have been met, and both parties have properly executed the Agreement. Contractor shall provide Solid Waste Collection Services and Disposal Services in accordance with this Agreement for a period of fourteen (14) years beginning July 1, 2022 through midnight on June 30, 2036 (the 'Term'), unless this Agreement is terminated sooner pursuant to Section 12 of this Agreement. The City shall have the sole right and option to extend the term of this Agreement for an additional five (5) years beginning July 1, 2036. If the City desires to extend the term, it shall notify the Contractor in writing of its intent to extend the term no later than June 30, 2032. If the City does not notify the Contractor in writing by June 30, 2032 of its intent to extend the term, it shall lose its right to extend the term.

3.4 Conditions to Effectiveness of Agreement

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

- A. Accuracy of Representation - All representations and warranties made by Contractor and set forth in this Agreement shall be accurate, true, and correct on and as of the Effective Date of this Agreement and shall remain true throughout its term, including any extension, unless waived by the City.
- B. Absence of Litigation - There shall be no litigation or administrative proceedings pending in any court or venue challenging the award of this Agreement to Contractor or the execution of this Agreement or seeking to restrain or enjoin its performance.
- C. Furnishing of Insurance, bond, and letter of credit - Contractor shall have furnished, and shall maintain in good standing throughout the Term and any extension, the evidence of insurance, letter of credit, and performance bond required by this Agreement.
- D. Effectiveness of City Council Action - City Council's resolution approving this Agreement shall have become effective pursuant to California law and the time for any legal challenge shall have expired.

3.5 Relation of New Agreement to Prior Agreement

Prior to the execution of this Agreement, City and Contractor were bound by the terms and conditions of that certain "EXCLUSIVE FRANCHISE FOR INTEGRATED SOLID WASTE MANAGEMENT SERVICES" dated March 31, 2002, amended by that certain "FIRST AMENDMENT TO EXCLUSIVE FRANCHISE AGREEMENT" dated March 15, 2006, and assigned to and assumed by Contractor via that certain "INTEGRATED SOLID WASTE MANAGEMENT SERVICES FRANCHISE ASSIGNMENT AGREEMENT," also dated March 15, 2006. Each of these agreements is maintained as a public record by the City Clerk. Contractor and City agree that this Agreement must address Contractor's legal and/or practical capacity to commence and continue to provide all services within Contractor's scope of work hereunder, in an on-going and uninterrupted manner, as the parties transition from operation per these prior agreements to operation per this Agreement. To the limited extent that any aspect of Contractor's lawful and efficient performance hereunder depends upon Contractor's various agreements and understandings with City, and/or Contractor's various rights, duties, adopted rates, and established practices under these prior agreements, Contractor and City hereby affirm and ratify same. However, to the full extent that this Agreement may reasonably be deemed different from or inconsistent with these prior agreements, this Agreement shall supersede all prior agreements and shall prevail.

3.6 Enforcement of Exclusive Rights

Contractor shall be responsible for enforcing the exclusive rights in this Agreement. City shall reasonably assist Contractor in its efforts to enforce the exclusivity of this Agreement. Upon request of Contractor, City shall issue a letter directing that any person, reasonably deemed by Contractor and verified by City to have engaged or appeared to engage in providing services that are included in Contractor's scope of work, cease and desist providing same. In addition, City may adopt such ordinances or other regulations as it deems to be necessary or desirable to protect the exclusive rights granted in this Agreement. City shall have the right, but not the obligation, to enforce the exclusivity in this Agreement, including by instituting appropriate legal proceedings, and/or to request that Contractor do so. If Contractor has requested City's assistance, Contractor shall reimburse City for its reasonable legal costs, extraordinary administrative costs (including staff time), or other expenses incurred in connection with City's actions to either enforce the exclusivity in this Agreement, or to assist Contractor in doing so.

4 GENERAL AGREEMENTS

4.1 Responsibility for Materials

Once Solid Waste, Recyclable Materials, and Organic Materials are placed in the Contractor's Containers and at the Collection location, the responsibility for their proper

handling shall Transfer directly from the Customer to Contractor, except for Excluded Waste if the Contractor can identify the Waste Generator. Once Recyclable Materials, Organic Materials, and/or Solid Waste are deposited by Contractor at the appropriate approved Facility, such materials shall become the responsibility of the Owner or operator of the approved Facility except for Excluded Waste. Responsibility for Excluded Waste that has been inadvertently Collected by the Contractor shall remain with the Contractor if it cannot identify the Waste Generator, and Contractor shall assume all responsibility for its proper Disposal.

4.2 Subcontracting

The Contractor shall not engage any companies or subcontractors for Collection, Transfer, Processing, Recycling or Disposal of Solid Waste without the prior written consent of the City, which consent shall not be unreasonably withheld.

4.3 City-Directed Change in Scope

City may direct Contractor to perform additional services (including new Diversion programs and additional public education activities), eliminate programs, or modify the manner in which it performs existing services. Changes in law, changes in the minimum Diversion requirement set forth in this Agreement, direction of waste to a Disposal Facility other than that originally selected by the City, direction of Recyclable Materials, Food Waste or Green Waste to a processing facility other than that designated at the start of this Agreement pursuant to Section 6.1, pilot programs and innovative services, which may entail new Collection methods, targeted routing, different kinds of services, different types of Collection vehicles, and/or new requirements for Customers are included among the kinds of changes which City may direct. Contractor and City shall be entitled to an increase or decrease in Contractor's compensation for providing such additional or modified services, or for eliminating programs. Contractor shall not be reimbursed for the preparation of its proposal to perform such services. Any such upward adjustments to rates due to City-directed changes shall require a notice and hearing pursuant to Proposition 218. Contractor will not be responsible for the cost of the Proposition 218 compliance.

4.4 City's Right to Acquire Services

Contractor acknowledges and agrees that City may permit other Persons besides Contractor to provide additional Solid Waste services not otherwise included or contemplated under this Agreement. If pursuant to this Section 4.4, Contractor and City cannot agree on terms and conditions of such services within ninety (90) days from the date when City first requests a proposal from Contractor to perform such services, or compensation cannot be provided due to Proposition 218 restrictions, Contractor acknowledges and agrees that City may permit Persons other than Contractor to provide such services

4.5 Annexations

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

4.6 Mandatory Recycling

As of this Contract's execution, the City has two mandatory diversion regulations, §151.050, which requires a Diversion rate of sixty-five percent (65%) for construction sites and Ordinance No. 1778, Mandatory Organic Waste Disposal Reduction, which contains recycling language. Contractor explicitly agrees to cooperate with City in implementing same, said cooperation to include but not be limited to modifications of the scope of Contractor's work.

4.7 Proposals for New or Expanded Diversion Program.

Contractor shall, at no additional cost payable by City or any Customer, within forty-five (45) days of a request by City, submit a written proposal on providing additional or expanded Diversion services. The proposal shall contain a complete description of the following: (A) Collection methodology to be employed; (B) equipment to be used and staffing requirements by number and classification; (C) type of Container(s) to be used; (D) informational/promotional campaign; (E) projection of amount of new Diversion tonnage expected; (F) projection of annual operating costs, including documentation of and support for key assumptions underlying projections.

4.8 Marketing and Sale of Recyclable Materials

The Contractor shall be responsible for marketing and sale of all Recyclable Materials Collected pursuant to this Agreement. Contractor shall retain proceeds from sales of Recyclable Materials, except to the extent that source separated Recyclable Materials are purchased from Customers and revenues from their sale is remitted, or credited, to Customers. Contractor is prohibited from marketing Recyclable Materials to vendors that export Recyclable Materials to countries that do not process the material in an environmentally responsible manner or do not properly process the material for reuse.

5 SCOPE OF SERVICE

5.1 General

5.1.1 Overall Performance Obligations.

The scope of services to be performed by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform all requirements of the Agreement. The scope of services to be performed by Contractor pursuant to this Agreement shall be accomplished in a manner so that Customers are provided reliable, courteous, and high-quality Collection services and other services described in this Agreement at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects in the manner generally provided in this Article for the delivery of services, whether such other aspects are enumerated elsewhere in the Agreement or not. Contractor shall not knowingly Collect from Blue, Green, or Gray Containers that include Prohibited Container Contaminants. Contractor shall not comingle in a vehicle any of: Gray Container Waste, Source Separated Blue Container Waste, or Source Separated Green Container Waste.

5.1.2 Name Under Which Contactor Does Business

Contractor shall do business in the City under its own legal name, or under the dba name in effect at the beginning of this Agreement. If Contractor, or any of its Affiliates, desires to operate in the City pursuant to this Agreement under a new fictitious business name, it shall obtain the City's prior written approval.

5.1.3 Ownership of Solid Waste.

Unless otherwise provided by law, once Solid Waste is placed into Containers and properly placed at the designated Collection location, ownership and the right to possession of Solid Waste shall transfer directly from the Customer to Contractor by operation of this Agreement, except where otherwise provided by Public Resources Code § 41950(c), and not as a result of this Agreement. At no time shall the City obtain any right of ownership or possession of Solid Waste or Household Hazardous Waste placed for Collection and nothing in this Agreement shall be construed as giving rise to any inference that City has any such ownership rights.

Solid Waste, or any part thereof, which is disposed of at a Disposal Site or Sites (whether Landfill, Transformation Facility, transfer station, processing Facility or Material Recovery Facility) shall become the property of the Owner or operator of the Disposal Site(s) once deposited there by the Contractor. The City may obtain ownership or possession of Refuse placed for Collection upon written notice of its intent to do so, however, nothing in this Agreement shall be construed as giving rise to any inference

that the City has such ownership or possession unless such written notice has been given to the Contractor.

5.2 Residential Cart Collection System

5.2.1 Three-Cart Collection Program

Contractor shall provide a three-Cart Collection program for the separate Collection of:

1. Gray Container Waste (Refuse) in a Gray Cart; and
2. Source Separated Recyclable Materials and Source Separated Blue Container Organic Waste in a Blue Cart; and
3. Source Separated Green Container Organic Waste in a Green Cart

Contractor shall Collect these materials on the same day each week that they are properly set out at the curb for Collection by all Single-Family Customers, and Multi-family Customers with curb access that do not receive Bin Collection service. If the designated Collection location of Carts is disputed, the City shall make the final determination. Contractor shall furnish each Residential Cart Customer with:

1. One (1) 96-gallon Gray Cart; and
2. One (1) 96-gallon Blue Cart; and
3. One (1) 96-gallon Green Cart.

Contractor may charge each Customer based on each Customer's number of Gray, Blue and Green Carts according to the monthly rate schedule in Exhibit 1. Upon Customer request, Contractor shall provide Customers with a 35-gallon or 64-gallon Gray, Blue or Green Cart, in lieu of the 96-gallon standard cart.

The Parties agree that accepted types of materials may be added to or removed from the three-cart Collection program from time to time only upon written approval from the City, and such approval shall not be unreasonably withheld.

Nothing in this section shall prohibit Contractor from meeting its compliance requirements by any reasonable alternative methods or procedures, provided it complies with SB 1383, the SB 1383 Regulations, and/or any other applicable law, as may be amended from time to time.

5.2.2 Cart Exchange and Replacement

Upon Customer request, Contractor shall exchange Customer's Carts, and replace Customer Carts, according to Sections 7.8.3 and 7.8.4, and according to the rates in **Error! Reference source not found.**Exhibit 1.

5.2.3 Cart Contamination Fee

Contractor may charge Customers the Cart contamination fee shown in Exhibit 1, **Error! Reference source not found.** for Customers that repeatedly place Prohibited Container Contaminates in their Carts. Prior to charging a Cart contamination fee, for each incident of contamination, Contractor must contact the Customer via documented phone call or tag the Customer's Cart with written notice of: (i) the Collection day on which the Container was contaminated; (ii) the nature of the contamination (e.g., which type of Container was contaminated, etc.); (iii) information regarding the Customer's obligation to properly source separate materials in the appropriate Containers; and (iv) the consequences of further contamination. If feasible, the notice should include photographic evidence of the contamination.

If the Contractor observes Prohibited Container Contaminants in a Customer's Cart on more than two occasions during a thirty (30) calendar day period, and has provided written notices on each of those two occasions, Contractor may charge a Cart contamination fee to that Customer.

5.2.4 Backyard/ Wheel-Out Service.

All basic Residential Premises services identified in Section 5.2 shall be offered back yard/wheel-out service upon Customer payment of additional fees listed in Exhibit 1. Service shall include retrieving all Containers and returning them to the backyard, side yard, garage, or other enclosure of such Customers. Customers with a valid California Department of Motor Vehicles issued Disabled Person License Plate, Disabled Veteran License Plate, or Disabled Person (i) Permanent Parking Placard, (ii) Temporary Parking Placard, or (iii) Travel Parking Placard shall receive back yard/wheel-out service for no additional fee. A Person who meets the definition of having a "disability" as that term is defined in Americans with Disabilities Act Section 902.1, subdivision (b), may file a written request with the Contractor for special consideration as to back yard/wheel-out service at no charge or at a discount. The Contractor shall consider any such request received in accord with all applicable authority, and within thirty (30) days determine whether to approve same. Contractor shall provide back yard/wheel-out service to any Person in accord with City direction as to special consideration to be provided per this Section 5.2.4.

5.2.5 Gated Developments.

The Contractor shall provide Collection of Refuse, Recyclables, and Organic Waste to a gated development as directed by the Homeowners Association (HOA) or Property Manager of the gated development in question, provided that all Solid Waste is collected a minimum of once per week. Each HOA or Property Manager may change, once in a twelve-month period, the location of Collection, the frequency of Collection, and/or the method of billing. The size and types of containers shall be consistent with the standard carts in section 5.2.

5.3 Commercial and Multi-family Collection- General

Contractor shall provide Bin service to Commercial and Multi-family Customers that uses Cans, Carts, and Bins. Contractor shall Collect and remove all Refuse, Recyclables, and Organic Waste that is placed in Cans, Carts, and Bins from Multi-family and Commercial Premises. Customers may lease from Contractor or third parties' compaction equipment that may be attached to Bins. The provision of compaction equipment is outside the scope of this Agreement.

Contractor shall replace empty Cans, Carts and Bins to their original location with gates or doors of enclosures secured after Collection is completed. A Bin shall be considered properly located for Collection if it is feasibly accessible by Contractor's front-loading Collection vehicles. A Cart shall be considered properly located for Collection if it is feasibly accessible by Contractor's automated side-loading collection vehicles. If a Customer and Contractor cannot agree upon the designated collection location, City shall make the final determination.

5.3.1 Bin Collection – Gray Container Waste (Refuse)

Contractor shall collect Gray Container Waste (Refuse) from all Commercial and Multi-family Customers no less frequently than once per week. Contractor shall provide the size and quantity of Bins as requested by Customer. Contractor shall charge the Customer for size and number of refuse Bins, and number of weekly pickups, according to the approved rate schedule in **Error! Reference source not found.**Exhibit 1.

5.3.2 Commercial Cart Service

Contractor shall collect commercial Gray Container Waste (Refuse), Source Separated Blue Container Waste, and Source Separated Green Container Waste in Contractor provided 64 or 96-gallon Carts at the Commercial Cart rates shown in Exhibit 1.

Bin Collection – Source Separated Blue Container Waste

Contractor shall provide Source Separated Blue Container Waste Collection Service to all Commercial Customers without a waiver approved by the City. Contractor shall provide recycling Bins or Carts to Customers in sufficient quantities to meet the recycling needs of each Customer. Contractor shall charge Customers that receive Source Separated Blue Container Waste Collection service at the rates in Exhibit 1.

5.3.3 Bin Collection –Source Separated Green Container Organic Waste

Contractor shall provide Source Separated Green Container Organic Waste Collection Service to all Commercial Customers without a waiver approved by the City. Contractor shall provide recycling Bins or Carts to Customers in sufficient quantities to meet the recycling needs of each Customer. Contractor shall charge Customers that receive Source Separated Green Container Organics Waste Collection service at the rates in Exhibit 1.

5.3.4 Bin Contamination Fee

Contractor may charge Customers the Bin contamination fee shown in Exhibit 1 **Error! Reference source not found.** for Customers that repeatedly place Prohibited Container Contaminates in their Bins. Prior to charging a Bin Contamination fee, Contractor must have notified the Customer by either placing a tag on the bin, or contacting the Customer via documented phone call. Contractor will educate and notify the customer with the following information: 1) the Collection day on which the Container was contaminated, 2) the nature of the contamination (e.g., which type of Container was contaminated, etc., 3) information regarding the Customer’s obligation to properly source separate materials in the appropriate Containers and, 4) the consequences of further contamination. If feasible, the notice should include photographic evidence of the contamination.

If the Contractor observes Prohibited Container Contaminants in a Customer’s Bin on more than three occasions during a three month (3) period, and has provided at least one written notice and documented phone conversations on each of the remaining occasions, Contractor may charge a Bin contamination fee to that Customer.

5.3.5 Bin Overage Fee

If Solid Waste is left beside a Commercial Bin for Collection or Contractor cleans up spilled waste from an overflowing Container, Contractor may charge the Bin overage fee in Exhibit 1 upon the third incident in one calendar year, provided Contractor has provided at least one written notice and documented phone conversations for the first two incidents. The written warnings and documented phone conversations shall include: 1) the Collection day on which the Container was overflowing, 2) information regarding the Customer’s obligation to properly fill Bins and, 3) the consequences of further overflowing Bins. If feasible, the notice should include photographic evidence of

the overflowing Bin. Contractor may charge the Bin Overage Fee for any and all spilled waste or overflowing Bins that continue to occur in the calendar year.

5.3.6 Temporary Bin and Roll-off Services

Contractor shall provide on a temporary basis two (2), three (3), four (4), and six (6) cubic yard Bins and ten (10), twenty (20), thirty (30) and forty (40) cubic yard Roll- Off Boxes for the purposes of Collection of Refuse, Recyclables, Organic Waste, and Construction and Demolition Debris (PARIS code 4060-SP-CAR) at the request of Customers. Service shall be provided at the rates set forth in Exhibit 1. Such temporary service shall be provided, by way of example but not limitation, to sites where construction and /or demolition activity, replacement of roofs or paved areas, or replacement or maintenance of landscape materials is occurring. Collection shall occur on an as-needed, on-call basis, within twenty-four (24) hours of a request, or may be regularly scheduled, as determined by Customer.

All such temporary Bins and Roll-Off Containers shall be collected, transported, and processed (PARIS codes 7000-FR-MRF and 7030-FR-CMF) at the City-designated Compost Facility, and/or Construction and Demolition Debris Processing Facility, and/or MRF.

All temporary Bins and Roll-Off Containers shall be collected and the materials transported to the City-designated Clean MRF for processing (PARIS code 7000-FR-MRF) and sale.

5.4 Roll-off Collection Service

Contractor shall offer and provide Roll-off Collection Service to Single-Family, Multi-family, Commercial, and Construction and Demolition Customers. Contractor shall Collect Solid Waste from all Roll-off Collection Customers using Contractor-furnished Roll-off Boxes or Customer-furnished Roll-off Compactors. Upon Customer request, Contractor shall furnish the size and number of Roll-off Boxes requested by Customer.

Contractor is not obligated to furnish Roll-off Compactors. Contractor may sell or lease Roll-off Compactors to Customers. Any sale or lease of Roll-off Compactors to Customers, and any associated sale or lease compensation to Contractor, shall be outside the scope of this Agreement. However, the collection service provided to those Customers with Roll-off Compactors, and the associated Gross Receipts, shall be within the scope of this Agreement.

A Roll-off Box or Roll-off Compactor shall be considered properly located for Collection if it is feasibly accessible by Contractor's roll-off collection vehicles. If a Customer and Contractor cannot agree upon the designated collection location, City shall make the final determination.

5.4.1 Regular Roll-off Collection Service

Upon request by Customer, Contractor shall collect Solid Waste from Single-Family Residential, Multi-family Residential or Commercial Premises using Roll-off Collection service. Contractor must deliver, exchange, or remove Roll-off Boxes for Customers within forty-eight hours (48) of request by the Customer. Contractor shall charge the Customer for regular Roll-off Collection service based on each load and the actual weight of each load according to Exhibit 1.

5.4.2 Construction and Demolition Debris Recycling

Contractor shall provide all services necessary to support Customer compliance with, and City's enforcement of the Indio Municipal Code requirements concerning Construction and Demolition Debris Diversion and Disposal. Such services (PARIS codes 4060-SP-CAR and 4050-SP-WDW) shall include but not be limited to: (i) informing all Customers requesting Containers and/or Bins, Roll Off Boxes and Compactor services of the requirements of the Municipal Code and State law; (ii) providing Containers and/or Bins, Roll Off Boxes, and Compactors as needed for storage and transport of Source-Separated Construction and Demolition Debris, and commingled Construction and Demolition Debris, as well as appropriate size Containers; (iii) providing Collection service of all Containers on a timely basis; and (iv) working and coordinating with Customer's job site superintendent to ensure a smooth and effective Diversion program. Contractor shall inform Customers utilizing Containers and/or Bins and Roll Off Boxes on a temporary basis, that materials being generated must be Diverted pursuant to the requirements of the Indio Municipal Code and State law. Contractor shall maintain and update as necessary the existing color brochure highlighting these requirements and describing methods of Diversion that are required. All commingled Construction and Demolition Debris collected by Contractor shall be Transported to the City designated Construction and Demolition Debris Processing Facility for processing and sale or reuse.

5.5 City Facilities and Events Collection Services

5.5.1 City Facilities

Contractor shall provide Collection of all Solid Waste generated at Premises owned and/or operated by the City (PARIS code 2060-RC-GOV), in the locations listed on Exhibit 2 or as owner and/or operator status changes, at no charge to City. Collection shall be provided at the frequencies directed by the City, and at times convenient for City, but in no event less than once per week. At any time, City may direct Contractor to change frequency of Collection, number and/or size or type of Containers provided, or method of Collection. The City shall receive all Collection and Recycling services as well as self-haul opportunities, provided to Commercial Customers and Institutional accounts. This includes by way of example, but not limitation, providing a three (3) cubic yard Bin on an on-call basis for the City's Recycling programs.

5.5.2 Community Events, Cleanup Events, and Special Events.

Each year the City may conduct litter cleanups at any location in City, cleanups in parks and open space areas and other special Cleanup Events. Contractor shall provide, at Contractor's cost, the necessary Containers and Collection service (for Collection of Refuse, Recyclables, and Organic Waste) (PARIS code 2080-RC-SPE) at three (3) Community to be determined by the City. Contractor shall provide Refuse, Recyclables, and Organic Waste Collection services for such events, including Containers for the general public to separate and Dispose of Refuse, Recyclables, and Organic Waste. Contractor shall also provide larger bins and Roll Off Containers as needed for Refuse, Recyclables, Organic Waste.

In addition to its involvement in Cleanup Events and Community Events, each year the City may sponsor or co-sponsor, host or otherwise organize or coordinate the dedication of City resources with various special events, such as parades, public building dedications, conferences of public officials, art shows, music festivals, awards ceremonies, cultural events or organized recreational activities at any of the City's facilities, parks or other venues (whether or not owned by City). If any such a special event sponsored or co-sponsored by the City serves an average of two thousand (2,000) or more individuals per day of operation of the event, or takes place at a permanent venue facility that annually seats or serves an average of two thousand (2,000) or more individuals within the grounds of the facility per day of operation, Contractor shall provide a report to the City within forty-five (45) days of the end of the special event describing in detail the Solid Waste reduction, reuse, and recycling programs that were conducted at the event, the tonnage of each material type Diverted or reduced, and copies of weight tickets showing the processing or end use facility where the materials were delivered. Said report shall also include the total tons of Solid Waste disposed from the event and the percentages of Recyclables and Organic Waste that were Diverted by Contractor from the event.

If requested by a special event operator, sponsor, the City or the owner or operator of a "Large Venue" or "Large Event" (as defined in Public Resources Code Section 42648) Contractor shall attend annual or biennial meetings to discuss the types of Solid Waste reduction, reuse, and recycling programs to be implemented at "Large Events" and "Large Venues". Upon the request of a Large Event or Large Venue owner or operator, or at the request of the City, Contractor shall prepare Diversion plans for Large Events and Diversion plans for Large Venues within the City. Said plans shall be prepared within sixty (60) days after each plan is requested and shall contain all the elements required to implement Public Resources Code Section 42648 *et seq.* Plans shall be completed and available for review by City fourteen days (14) before event.

5.5.3 Bulky Items Collection Services.

Contractor shall provide Collection services for Bulky Items at Residential Premises and Commercial Premises in the City. Customer or City may request Collection of Bulky Items

forty-eight (48) business hours in advance and Collection shall occur on or before the Customer's next regularly scheduled Collection day. Bulky Items at Residential Premises shall be collected at, or reasonably near curbside, giving due consideration to circumstances of access points; vehicular and pedestrian safety and the like, in accordance with the scheduled appointment time established by Contractor, which shall in no case be earlier than 6:00 a.m. local time. Bulky Items at Commercial and Institutional Premises shall be collected from the Solid Waste enclosure area no earlier than 6:00 a.m. local time.

Contractor shall provide an unlimited number of residential Bulky Items Collections from each Residential Customer during each year of the Term, with up to four (4) Bulky Items collected by Contractor per Collection, at no charge to the Residential Customer (PARIS code 2070-RC-SNL). For the fifth (5th) and each additional Bulky Item to be included in a Collection of Bulky Items from Residential Premises, and for any Collections of Bulky Items from Commercial and Institutional Premises, Contractor shall charge the fees set forth in Exhibit 1. Appliances containing Freon shall not be eligible for the complementary Bulky Items Collection service but shall be collected by Contractor as provided in this Agreement. Contractor shall maintain records of the Customers requesting Bulky Items Collections, the number of Collections requested by each Customer, and the number provided by Contractor. Contractor shall submit such records to the City upon request.

As part of a Bulky Items Collection, Contractor shall collect unusually large amounts of cardboard, such as moving boxes, and any other Commingled Recyclables at no additional charge.

5.5.4 Collection of Appliances Containing Freon

Contractor shall provide Collection services for Appliances (PARIS code 4030-SP-WHG) containing Freon (such as refrigerators) at Residential Premises and Commercial and Institutional Premises in City. Customer or City may request Collection of said appliances forty-eight (48) business hours in advance and Collection shall occur on or before the Customer's next regularly scheduled Collection day. Appliances containing Freon shall be collected at, or reasonably near curbside, giving due consideration to circumstances of access points, vehicular and pedestrian safety and the like, and in accordance with the scheduled appointment time established by Contractor, which shall in no case be earlier than 6:00 a.m. local time. Appliances containing Freon shall be collected from Commercial and Institutional Premises no earlier than 6:00 a.m. local time. Contractor shall be responsible for the proper removal of the Freon from said appliances in a manner consistent with federal, State and local laws and regulations, and for Recycling the metal from said appliances. Contractor may perform this service itself, or deliver the Collected appliances to a fully permitted third party for removal of the Freon and Recycling of the metal. Contractor shall charge the fees in Exhibit 1 for this service.

5.5.5 Christmas Tree Collection and Recycling

Each year, Contractor shall collect Christmas trees left curbside at Residential Premises on regular days of service for at least fourteen calendar days following Christmas (PARIS code 2070-RC-SNL). Contractor shall advertise the Christmas Tree Collection Program through the newspaper, radio, and Contractors website. Residents shall be instructed on how to prepare the trees for recycling. Trees that comply with these instructions shall be delivered by Contractor to the City designated Compost Facility. Trees that has been flocked or contaminated by tinsel shall be delivered to the City designated Disposal Facility.

Upon City request, Contractor shall provide, at City request, a written report by February 1 showing tons of Christmas Trees collected at curbside and the tons delivered to the Compost Facility and the Disposal Facility. Contractor shall provide City with copies of weight tickets from the Compost Facility and the Disposal Facility as documentation of the tons Diverted.

5.5.6 Electronic Waste and Universal Waste Collection and Drop-Off Facility (PARIS Code 9045-HH-EWA)

As part of the Bulky Items Collection program described in Section 5.5.3, Contractor shall Collect Electronic Waste that cannot legally be disposed of in a Landfill from Residential Premises and Commercial Premises in City (PARIS code 9045-HH-EWA) (See Section 5.5.3 for quantities and pricing see Exhibit 1. Customer or City may request Collection of Electronic Waste forty-eight (48) business hours in advance and Collection shall occur on or before the Customer's next regularly scheduled Collection day. Electronic Waste from Residential Premises shall be collected at curbside, in accordance with the scheduled appointment time established by Contractor, which shall in no case be earlier than 6:00 a.m. local time. Electronic Waste from Commercial Premises shall be collected in the regular Collection or enclosure, in accordance with the scheduled time established by the Contractor, which shall in no case be earlier than 6:00 a.m. local time. Contractor shall charge the fee set forth in Exhibit 1 for this service. All Electronic Waste that is Collected by Contractor shall be delivered to a fully permitted Processing Facility for Recycling and reuse.

For purposes of the rates in Exhibit 1, each one of the following constitutes a single item of Electronic Waste: television, computer monitor, computer CPU, computer keyboard, computer mouse, printer, audio speakers (2), desk copier, power source, multi-function machine (combination copier/fax/printer), VCR, Blu-ray/DVD/CD/tape player, cellular telephone, microwave oven, iron, stereo, stereo, speakers (2), cables, scanner, and all other corded appliances and corded devices that are not defined herein as Universal Waste.

Contractor shall collect Universal Waste that cannot legally be Disposed of in a Landfill at the ABOP Facility at the Indio/Coachella Transfer Station. This Collection by Contractor shall

be free to Residential Customers. Such U-Waste includes common batteries, fluorescent tubes, bulbs, and other mercury containing lamps, thermostats containing mercury, electrical switches and relays containing mercury (including those from pre-1972 washing machines, sump pumps, electric space heaters, clothing irons and silent light switches), pilot light sensors from gas appliances, mercury-added novelty items such as greeting cards that play music when opened, athletic shoes with flashing lights in the soles, mercury maze games and similar items, mercury gauges from barometers, manometers, blood pressure and vacuum gauges, mercury thermometers and aerosol cans that contain hazardous materials.

5.5.7 Emergency Services

In the event of a natural disaster or other unforeseen emergency situation (e.g., earthquake, riot, or flood) Contractor shall, to the best of Contractor's ability, provide emergency services to City within four (4) hours of notification by the City. Emergency services may include, but are not limited to, loading, collecting and hauling Solid Waste, including Construction and Demolition Debris, and large items to Processing Facilities, Landfills or stockpiles as directed by City. Contractor shall provide Collection vehicles, drivers and other personnel to City and shall be compensated directly by City for these services at the rates set forth in Exhibit 1.

In the event that Contractor is unable to provide emergency services or is unable to provide sufficient or timely emergency services to City, as determined in a reasonable exercise of discretion by the City, City reserves the right to contract with another Solid Waste enterprise on a temporary basis to collect and transport Solid Waste, including Construction and Demolition Debris, and all other materials as needed for City to protect the public health, safety, and welfare.

5.5.8 Residential Sharps Collection Program

Contractor shall design a program for the collection of used needles (the "Sharps Collection Program") that the City finds satisfactory and approves. Contractor shall be responsible to ensure the Sharps Collection Program complies with all applicable laws and regulations. It is anticipated that the Sharps Collection Program will, at a minimum, allow Customers to mail used needles to a specific collection location, in a specialized packaging provided by Contractor, and/or be provided with a specialized container for the needles and have the ability to deliver used needles to a location in or near the City, as designated by Contractor. Once approved by the City, Contractor shall implement the Sharps Collection Program within ninety (90) days. The Sharps Collection Program shall be provided at no cost to Residential Customers

5.5.9 Semi-Annual Document Shredding Event

Not less than two times per year, on dates and at locations in City agreed upon by Contractor and City, Contractor shall hold a document shredding event for Customers in the City. This event shall be structured to allow any City resident or the owner of any business in the City to bring up to four (4) "banker boxes" of documents to the designated location for shredding. Contractor shall deliver the shredded materials to an appropriate recycling facility, and shall not deliver such materials to a Landfill for Disposal. Contractor may require reasonable evidence that Persons delivering documents for shredding in connection with the event are City residents or the owners of businesses in the City.

5.5.10 Annual Curbside Clean-up

Once a year in each of the five (5) districts of the City, Contractor shall provide a Residential curbside cleanup event at no charge. Contractor shall coordinate the dates of such events with the City and shall notify Customers in writing at least thirty (30) days before any such event in their district.

5.5.11 Clean Up of Illegal and Abandoned

Contractor shall respond to all calls from City regarding spilled or illegally dumped Solid Waste during regular work hours and, in emergencies, at night and on weekends. Contractor shall, at no charge to City, Collect and deliver such material to the appropriate Disposal Site (or appropriately process Recyclable Materials and Organic Waste), provided such material does not exceed in volume the amount which can be collected by a two-person crew.

5.5.12 Medical Waste Mail Back Program

Contractor shall provide a medical prescription waste mail back program to residential Customers at no charge, to include a pre-paid return mailing box or bag for returning medical waste through the U.S. Postal Service for proper treatment and Disposal. Contractor will provide annually up to two thousand (2,000) mail back boxes to be distributed at the City.

5.5.13 Special Services

When directed by City, Contractor shall render Special Services including, but not limited to, arranging for Collection and Disposal of Hazardous Waste and special event services in accordance with this Agreement, or as otherwise agreed upon. Applicable rates may be charged in accordance with Exhibit 1, or as otherwise directed by City.

6 OTHER SERVICES

6.1 Transportation, Disposal and Processing Service

6.1.1 Transportation, Disposal of Solid Waste

Contractor shall Transport and deliver all Solid Waste collected pursuant to this Agreement to the Disposal Site(s) designated by the City. City shall have the right to direct Contractor to utilize a specific transfer station, a specific Landfill, a combination of a specific transfer station and a specific Landfill, or other Disposal Site selected by City in its sole discretion.

Contractor shall maintain accurate records of the quantities of each type of Solid Waste delivered to the Disposal Site(s) and shall cooperate with the City or its agents in any audits or investigations of such deliveries.

Contractor shall cooperate with the operator(s) of the Disposal Site(s) with regard to operations therein, including by way of example, complying with directions from the operator to unload Collection vehicles in designated areas, accommodating to maintenance operations and construction of new facilities, cooperating with the operator's Hazardous Waste exclusion program, and cooperating with the operator's tonnage tracking system.

Unless and until the City designates in writing a different Disposal Site, Contractor shall continue to deliver all Solid Waste to the Indio Coachella Transfer Station. It is the understanding of both parties that the operator of the transfer station (Burrtec Waste Industries, Inc., an affiliate of Contractor) will transport all Solid Waste to the Salton Landfill, Badlands Landfill, Lambs Canyon Landfill or the El Sobrante Landfill for ultimate Disposal.

If either party discovers that the Disposal Site has become or will become unavailable for any reason, the party shall, within two (2) business days, notify the other party in writing so an alternate Disposal Site can be located by the parties and approved by the City.

If either party believes that a change in the City-designated Disposal Site will have an impact of greater than three (3%) percent (increase or decrease) on Contractor's transportation and Disposal costs, that party will notify the other and the process set forth in Section 12.06 shall be followed.

6.1.2 Transportation and Processing of Recyclable Materials, Organics, and C&D Waste

Contractor shall transport and deliver all Recyclable Materials, Organic Waste, and Construction and Demolition Waste Collected pursuant to this Agreement to City-

designated Processing Facilities for each type of material. Contractor shall maintain accurate records of the quantities of each material delivered to the Processing Facilities and shall cooperate with the City or its agents in any audits or investigations of such deliveries.

Contractor shall cooperate with the operators of the Processing Facilities with regard to operations therein, including by way of example, complying with directions from the operator to unload Collection vehicles in designated areas, accommodating to maintenance operations and construction of new Facilities, cooperating with the operator's specifications for delivered materials, including any acceptable levels or percentages of contamination, and cooperating with the operator's tonnage tracking system.

Unless and until the City designates new or different Processing Facilities in writing, or Contractor proposes the use of a new or different Processing Facility with comparable rates and service, and in accord herewith, Contractor shall continue to deliver: (i) commingled and Source Separated Recyclable Materials to Escondido Resource Recovery Facility operated by SANCO Services, L.P., West Valley Materials Recovery Facility, Robert A. Nelson Transfer & Recovery Facility, East Valley Recycling; (ii) all Yard Trimmings and Organic Waste to the Coachella Valley Compost located in Coachella or alternatively any other facility now or in the future approved and permitted by the California Integrated Waste Management Board, or any successor government agency or entity, for composting; and (iii) all Construction and Demolition Wastes to either Desert Recycling, or Coachella Valley Compost.

6.1.3 Change of Processing Facility

- A. Contractor Proposal. In the event Contractor proposes the use of a new or different Processing Facility apart from, instead of, or in addition to the Processing Facilities currently in use, Contractor shall provide a detailed written proposal to City of the proposed Processing Facility's operation. City may require that such a proposal include, but not limited to, a clear and succinct description of the location, Owner and operator, current users, technical capacity, processing methodology, Diversion capabilities, potential advantages to the City, cost of use (including impacts of transportation costs and tipping fees).

In explaining the costs for use of a proposed new or different Processing Facility, Contractor shall provide the City with both basic cost information and with a proposed revision of Exhibit 1 (rates) showing the breakdown of costs for Collection, processing, transportation and Disposal for each rate category (e.g., Residential, Commercial/Multi-family and Roll Off) incorporating use of the proposed Processing Facility, as well as the total proposed rate change for each rate category incorporating use of the proposed Processing Facility.

In addition, Contractor shall provide to City a system of metrics and corresponding performance gauges that demonstrate the proposed Processing Facility's ability to meet the City's needs.

Concurrent with any proposal to use a new or different Processing Facility, Contractor shall submit to City true and correct copies of all permits for that facility.

B. City Evaluation of Proposal. Within ninety (90) days' time, the City will complete an evaluation of Contractor's proposal. Based on recommendation of the City Manager and Contractor's fulfillment of all procedural requirements of this Section 6.1.2, City may approve the proposal on an expedited basis in less than ninety (90) days. City may reject the proposed use of Contractor's proposed Processing Facility if any one (1) of the following five (5) issues is not addressed to the satisfaction of the City, based upon a reasonable exercise of City discretion:

1. **Costs.** Costs arising from or relating to City's use of Contractor's proposed Processing Facility are unacceptable.
2. **Approvals.** Contractor's proposed Processing Facility does not have all required federal, state and local permits, and land use approvals, and/or is not efficiently and cost-effectively operating in compliance with all federal, state and local permits, regulations and land use approvals.
3. **Performance History.** The performance history of Contractor's proposed Processing Facility is unacceptable (*e.g.* the Diversion achieved or proposed is not adequate, the quality of the materials created at the facility is substandard, *etc.*).
4. **End Materials.** The actual or proposed end use for the processed materials created by Contractor's proposed Processing Facility is unacceptable, *i.e.*, the use of materials is not the highest and best use of said materials. The parties understand and agree that facts or circumstances not at the time of this Agreement's execution may impact this determination. For example, Yard Trimmings or wood are ground and used for alternative daily cover for Landfills instead of being composted and used in landscaping or farming applications.
5. **No City Need.** The City does not need Contractor's proposed Processing Facility in order to achieve its goals.

City's ninety (90) day evaluation of any Contractor proposed Processing Facility shall commence as of the date when City receives Contractor's complete written

proposal of the use of that facility as described herein, inclusive of proposed metrics, performance gauges, and copies of permits.

City's evaluation of a Contractor proposed new or different Processing Facility shall consist of an assessment of whether the five (5) issues delineated in subsection 6.1.3 B.**Error! Reference source not found.** addressed, and likely to continue to be addressed to City's reasonable satisfaction.

- C. Delivery of Materials During City Evaluation or Processing Facility. Throughout the time dedicated to City's evaluation of a Contractor proposal of a new or different Processing Facility, or the time required by the process related to resolution of any Processing Facility Dispute in accord with this agreement, the status quo shall be preserved, i.e., there shall be no modification of City's delivery and/or direction of any material.
- D. Contractor Responses During Evaluation, City Decision upon Completion of Evaluation. During City's consideration of a contractor proposal of a new or different Processing Facility, Contractor will provide responses to any City question, concern and/or request for additional information. City will inform Contractor in writing of its decision concerning use of any proposed Processing Facility on or before the third (3rd) day after the completion of its sixty (60) day evaluation hereunder. The City's decision is final.
- E. City Reversal of Approval of Contractor Proposed Processing Facility. In the event that City unilaterally determines that the development or existence facts or circumstances unknown by City at the time of any City decision issued per subsection C warrant the reversal of that decision, City shall give written notice of that determination to Contractor, including a description of the factual or circumstantial basis of the reversal. A reversal that prompts any such written notice shall be effective thirty (30) days after the City's issuance of same, and shall be implemented and effective immediately notwithstanding the content of subsection C.

6.1.4 Processing Facility Disputes

In The event that a Processing Facility Dispute arises, the parties agree that said dispute shall be resolved in accord with this Agreement.

6.1.5 Unavailability of City-Designated Processing Facility

If Either party discovers that a City-designated Processing Facility has become or will become unavailable for any reason, the party shall, within two (2) working days, notify the other party of that discovery in writing so that City may locate, and unilaterally select/approve an alternate Processing Facility for temporary use by the City. City's

temporary use of any such alternate Processing Facility shall continue until a site is identified for sustained use hereunder, whether *via* Contractor proposing and securing City approval of a new or different Processing Facility, or City unilaterally designating a new or different Processing Facility.

6.2 Contamination Monitoring

The Contractor shall implement a contamination monitoring program to minimize Prohibited Container Contaminants in a manner that complies with the SB 1383 Regulations. The Contractor may conduct its contamination monitoring requirements through either Route Reviews or Waste Evaluations.

6.2.1 Route Reviews

If Contractor employs Route Reviews (i.e., on-route observations of individual Containers), the routes must be reviewed at least once per year. Upon finding Prohibited Container Contaminates in a Container, Contractor shall notify the Customer of the contamination. The notice of contamination may be left at the Customer's location, or mailed, e-mailed, or electronically messaged to the Customer. The notification shall include information about: 1) the Collection day on which the Container was contaminated, 2) the nature of the contamination (e.g., which type of Container was contaminated, etc.), 3) information regarding the Customer's obligation to properly source separate materials in the appropriate Containers and, 4) the consequences of further contamination. If feasible, the notice should include photographic evidence of the contamination.

6.2.2 Waste Evaluations

If Contractor employs Waste Evaluations (i.e., conducting waste characterizations of collected material at the processing facility), Waste Evaluations shall be conducted at least twice per year from vehicle loads of Source Separated Blue Container Waste and from Source Separated Green Container Organics Waste, and from vehicle loads of Gray Container Waste. Waste Evaluations shall include samples of each material type, and samples from different areas of the City, and from different seasons in the year. The Waste Evaluations shall include at least the number of samples required in Section 18984.5 (C)(1)(e) of Title 14 of the California Code of Regulations.

If the sampled weight of Prohibited Container Contaminants in the Waste Evaluations exceeds 25 percent of the measured sample for any Container type, the Company shall perform one of the following:

- A. Notify all Customers on the sampled routes of their requirement to properly separate materials into the appropriate containers. The Contractor may provide

this information by placing a notice on the Customer's Container, gate, or door, and/or by mail, e-mail, or electronic message to the Customer; or,

- B. Perform a targeted route review of containers on the routes sampled for waste evaluations to determine the sources of contamination and notify those Customers of their obligation to properly separate materials. The Contractor may provide this information to these Customers by placing a notice on the Customer's container gate, or door, and/or by mail, e-mail, or electronic message to the applicable Customers.

6.2.3 Monthly Reporting Requirements

Contractor shall maintain records and report to the City monthly on contamination monitoring activities and actions taken.

6.3 Education and Outreach

6.3.1 General

To promote public education, Contractor shall create and distribute all public education materials and conduct education programs and activities described in this Section at its expense.

6.3.2 Program Objectives

Contractor's public education and outreach strategy shall focus on improving Customers' understanding of the benefits of and opportunities for source reduction, Reuse, and Landfill Disposal reduction, and furthering climate goals. In general, Contractor-provided public education and outreach, which shall include all content required by this Section, should:

- A. Inform Customers about the services that are provided under this Agreement with specific focus on describing the methods and benefits of source reduction, Reuse, and reduction of Solid Waste Disposal;
- B. Instruct Customers on the proper method for placing materials in Containers for Collection and setting Containers out for Collection with specific focus on minimizing contamination of Source Separated Recyclable Materials and Source Separated Organic Waste;
- C. Clearly define Excluded Waste and educate Customers about the hazards of such materials and their opportunities for proper handling;
- D. Discourage Customers from buying products if the product and its packaging are not readily reusable, recyclable, or compostable;

- E. Inform Customers subject to Food Recovery requirements under SB 1383 Regulations of their obligation to recover Edible Food and actions they can take to prevent the creation of Food Waste;
- F. Encourage the use of Compost;
- G. Encourage Customers to purchase products/packaging made with Recycled-content materials; and,
- H. Explain the process by which fines and penalties may be incurred for non-compliance.

The cumulative intended effect of these efforts is to reduce each Customer's reliance on Contractor-provided Gray Container Waste/Mixed Waste service and, ultimately, Disposal.

6.3.3 Contractor Cooperation and Support for City Education Efforts

Contractor acknowledges that they are part of a multi-party effort including the City, the Contractor, and CalRecycle among others, to operate and educate the public about the integrated waste management system. Contractor shall cooperate and coordinate with the City and these other parties on public education activities to minimize duplicative, inconsistent, or inappropriately timed education campaigns.

6.3.4 Minimum Content Requirements

Contractor shall include the following education and outreach content to Customers by incorporation of this content into the public education materials.

- A. Information on the Waste Generator's requirements to properly separate materials in appropriate Containers.
- B. Information on methods for: waste prevention, recycling organic waste on-site, sending organic waste to community composting, and any other local requirements regarding organic waste.
- C. Information regarding the methane reduction benefits of reducing the Landfill Disposal of Organic Waste, and the methods of Organic Waste recovery.
- D. Information regarding how to recover Organic Waste.
- E. Information related to the public health and safety and environmental impacts associated with the Landfill Disposal of Recyclable Materials and Organic Waste.
- F. Information regarding programs for the donation of Edible Food.

6.3.5 Annual Education Plan

Contractor shall develop and submit to the City an annual public education plan. The annual public education plan shall present the education and outreach activities planned for the upcoming calendar year. This plan shall be submitted with the Contractor's annual report. The public education plan shall specify how Contractor will accomplish the education and outreach program objectives.

The City shall be allowed up to thirty (30) calendar days after receipt to review and request modifications. Contractor shall make any changes to the plan directed by the City. Contractor shall have up to fifteen (15) calendar days to revise the plan in response to any changes directed by the City.

Contractor shall obtain advance approval from the City for any education or outreach activities not included in the annual education plan. The City shall have the right to request that Contractor include City identification and contact information on public education materials and approval of such requests shall not be unreasonably withheld. The City reserves the right to direct the Contractor to modify the education and outreach program at any time.

6.3.6 Education During Program Implementation

Beginning on the Effective Date of this Agreement Contractor shall conduct an education campaign focused on informing customers of the collection program changes due to the implementation of SB 1383. For 18 months from July 1, 2022, at a minimum, Contractor shall perform the activities listed in this Section.

- A. Multi-family Premises Training to all Multi-family Premises that includes information for both managers and residents and covers at a minimum, information on Diversion, waste management and minimizing contamination.
- B. HOA program implementation to ensure all HOAs have minimum service levels consistent with SB 1383 including uniform carts and bins with automated service.
- C. Prepare a 'how-to' and 'what goes where' flyer describing how to prepare Source Separated Recyclable Materials, Gray Container Waste, and describe the acceptable materials that can be included in the Blue and Green Containers, as well as non-allowable materials. This information must be available at presentations and community meetings as well as on the contractor's website.
- D. Prepare separate flyers for Single-family, Multi-family, and Commercial Customers addressing their unique service conditions. The flyers shall be printed made available in an electronic format through the Contractor's website. The Contractor shall provide a sufficient number of flyers to each Multi-family property manager for their distribution to each tenant unit, if requested by the

property manager. Contractor may provide a Customer with an electronic version of the flyer rather than a printed version, if requested by the Customer.

- E. Prepare printed signage and posters describing Collection programs and distribute to Multi-family property managers and Commercial Customers for on-site use.
- F. Meet with up to four (4) business or non-profit associations (such as the Rotary Club, Garden Club, and other similar organizations) in separate venues to: educate customers on the Collection programs, State requirements (including SB 1383 and SB 1383 Regulatory requirements) for the City and Customers; answer questions; and, provide service and Rate information.
- G. Provide the city with monthly Recycling Program Outreach and Compliance Reports

All education material designed and/or distributed by the Contractor shall be submitted to the City for approval prior to distribution or posting on the Contractor's website.

6.3.7 On-going Education Requirements

- A. **Website.** Contractor shall create and maintain a website with information on all of the City's Solid Waste and Recycling programs (PARIS code 5000-ED-ELC,) and shall authorize City to provide a link to said website from City's website. The Website shall clearly identify the representative of Contractor (e.g. the Recycling Coordinator or other Person(s)) that Customers can call for additional information or to subscribe to any of the Recycling services. The telephone numbers and e-mail addresses for said Persons shall be clearly displayed on the Website. Contractor shall permit the City to establish a link from the City's website to the Contractor's website for the above-listed information.
- B. **Seminars, Workshops, Presentations, Meetings.** Contractor shall ensure the attendance of qualified and knowledgeable employees of Contractor, on an as-requested basis, at local seminars, workshops, presentations, meetings and the like, to provide information or discuss matters related to Solid Waste management and Recycling (PARIS code 5020-ED-OUT).
- C. **Provision of Educational Materials to Non-Compliant Entities.** Contractor shall provide educational materials to non-compliant entities under this Agreement, as further described in Section 6.3
- D. **Annual Brochure.** The contractor shall furnish an informational brochure describing the waste, recycling and organics programs as well as special services including bulky item service. The brochure shall include a detail of types of recyclable materials that will be collected and what materials should be excluded.

It shall include days of collection and other pertinent information. The City may direct that the brochure be periodically updated as needed, but not more than once annually. All costs associated with the preparation of a professional, well formatted and designed brochure, including photographic examples of recyclable materials and containers, cost of printing and labeling and mailing (first class postage) shall be borne by Contractor.

- E. **Meetings with Property Managers.** Contractor's Recycling Coordinator will contact every Property Manager of Multifamily Premises at least once per year and attend Multi-family related community meetings as requested by Property Managers to provide training and support for Diversion efforts.
- F. **Recyclable Materials Contamination Notices.** If Contamination exceeds twenty-five (25) percent in Recyclable Materials Containers for Commercial and Institutional Premises or Multi-family Premises, the Contractor shall work with the City, the Recycling Coordinator and the on-site Property Manager to reduce Contamination. Drivers of Collection trucks shall have cameras and shall take photographs of loads exceeding the twenty-five (25) percent Contamination limit. Contractor shall record Contamination incidents on Customer accounts to include date of incident, record of photograph taken, and type of Contamination. Contractor shall send the Customer a letter stating the date and nature of the Contamination and shall include a copy of the photograph(s). Contractor shall send a copy of said letter and photograph(s) to the City at the same time the letter is sent or delivered to the Customer. The City and the Recycling Coordinator will work with the Contractor to educate the Customer regarding the Contamination issue. Unless and until the City, working with Contractor and the Generator, has resolved the Contamination issue, Contractor shall continue to collect the Commingled Recyclable Materials and Yard Trimmings Containers containing any Contamination noted in the letter and photographs, and Contractor shall continue to process said materials at the Clean MRF designated by the City.

6.3.8 Materials Distribution Methods

Contractor shall use the following methods to provide education information to Customers. All materials are to be approved by the City prior to distribution.

- A. **Printed materials.** The Contractor shall be responsible for the design, printing, and distribution of these materials, subject to City approval. All Contractor-printed public education materials shall, at a minimum, use recycled paper and/or be made of recycled material.
- B. **Electronic materials and website content.** Contractor shall provide (to the City for its website content for education and outreach materials, which may include,

but are not limited to: digital graphics, digital versions of print materials, social media posts, and blog posts. The Contractor shall be responsible for the design, posting, and electronic distribution of these materials, and for assuring compliances with any applicable copyright rules and for licensing the use of these materials to the City.

- C. **Application for Mobile Devices.** Contractor shall provide an app for Residential Customers to access on their mobile devices (similar to ReCollect or Recycle Coach) program information including their Collection days, Holidays, Bulky Pickups, and recycling guidelines.

6.4 Technical Assistance Program

6.4.1 Site Visits and Waste Assessments

Contractor will provide Technical Assistance to any commercial, Multi-family, industrial customer or HOA for waste Diversion, waste reduction, food waste reduction, or any waste management issues upon request from the customer.

6.4.2 Record Keeping and Reporting Requirements

Contractor shall maintain records of all technical assistance activities and educational materials conducted pursuant to this Section and submit reports to the City.

6.5 Procurement of Products with Recycled and Organic Contents

The Contractor shall comply with the purchasing and recordkeeping requirements described in this Section.

6.5.1 Provision of Mulch or Compost

Upon City request, Contractor shall procure and provide on the City's behalf at least seven thousand three hundred thirty (7,330) tons of Mulch, or at least four thousand two hundred fifty-one (4,251) tons of Compost or the appropriate amount to comply with procurement regulations of SB 1383, per calendar year derived from recovered Organic Waste for use in City parks and facilities. Contractor shall deliver Mulch in Roll-off Boxes or via dump truck within thirty (30) calendar days of request to any accessible location within the City limits. Upon request, Contractor shall provide the City with Mulch lab results and specifications. All Mulch provided by Contractor must meet or exceed State requirements for Mulch quality, including those standards regarding Mulch maturity, reduction of pathogens, elimination of weed seeds, and concentrations of physical contaminants such as glass, plastic, metal, and other Non-Organic Recyclables. All Mulch provided by Contractor must be suitable for use in landscaping, parks, sports fields, and community gardens, and must be suitable for distribution to the general

public. The cost of the Mulch or Compost shall be borne by the City, Contractor shall work with the City on procuring the material at a reasonable cost.

6.5.2 Renewable Natural Gas

If requested by City, Contractor shall provide the name, location, and contact information of each entity, operation, or Facility from whom the Contractor procured Renewable Natural Gas (RNG). If requested by City, Contractor shall provide the total amount of RNG procured by the Contractor for use in Contractor vehicles in the City of Indio, in diesel gallon equivalents (DGE), including copies of any receipts, invoices, or other similar documentation.

6.5.3 Recordkeeping Requirements.

Contractor shall maintain records that demonstrate ongoing compliance with these requirements, including, but not limited to, copies of receipts, invoices, or other proof of purchase that describe the products purchased, by volume, date of purchase, and type for all products specified in this section; and copies of certifications or other verifications required by this Agreement and the SB 1383 Regulations. Contractor shall submit these records, upon the City request.

6.6 Billings

6.6.1 Billing of Residential Customers

Except as provided in Sections 6.6.2 and 6.6.3 City shall bill all Residential Customers *via* the County tax roll at Contractor's expense. Contractor shall submit updated residential billing information to City on or before June 1 of each year of the Term. City shall review the information and request any additional data, changes, or additions as required. Contractor shall promptly provide such additional or revised information to City such that City can review the *new* information provided and meet the County due date of August 1 for submittal of the tax roll billing data to the County. Contractor shall work with City and County staff as needed to ensure that all billing information is complete, accurate, compliant with all applicable law, and received in a format that is acceptable to the City and to the County of Riverside.

Contractor shall discontinue Collection services to Residential Customers for non-payment, and resume Collection services on the next regularly scheduled Collection day upon its determination that payment has been made. Contractor may charge a maximum of fifteen dollars (\$15.28) as a Resumption of Service Charge. Discontinuation of service for delinquent accounts not on the tax rolls shall be handled as described in section 6.6.6.

6.6.2 New Residential Customers.

For new Residential Customers, with properties that are not yet on the tax rolls, subscribing to Collection service during the Term, Contractor shall direct bill said customers on a quarterly basis in advance, and shall continue this practice until the property is added to the tax roll billing described in Section 6.6.1 Contractor shall provide information to such customers about the tax roll billing process and when they can expect the direct billing to cease and the tax roll billing to begin.

6.6.3 Residential Bin and Roll-off Box Services and Bulky Items

For Residential Customers who request Temporary Bin or Roll-off Collection Services, and additional Bulky Items services not included with Residential Collection services pursuant to Section 5, Contractor shall bill such Residential Customers directly for such services. Contractor shall accept money orders, checks, and all major credit cards for payment. Residential Customers that do not use a credit card may be required by Contractor to post a security deposit in an amount not to exceed fifty percent (50%) of the cost of such special services, or pay on a "Cash on Delivery" (COD) basis for these special services. Any unused portion of a security deposit shall be refunded to the Residential Customer within five (5) business days of the termination of the service provided.

6.6.4 Payment to Contractor for Residential Billings Collected by City.

During the Term, except for the Residential Customers billed directly by the Contractor pursuant to Section 6.6.1 above, the City shall remit the net portion due Contractor within thirty (30) days of the date the County of Riverside remits the tax roll funds to the City.

City shall deduct from the gross tax roll receipts received from the County, the Franchise Fee described in Agreement Section 9.1. The City shall retain one hundred percent (100%) of all AB 939 Fees (described in Agreement Section 9.2) billed through the tax rolls and remitted by the County to the City. In the event of a Residential Customer's termination of service, the balance due to Contractor for the billing period during which termination occurs shall be paid within thirty (30) days of the termination date unless funds are owed by the Contractor to the City, in which case said amounts due to City shall be deducted from the final payment due to Contractor.

6.6.5 City Option to Transition from Tax Roll Billing to Direct Residential Billing.

During the Term the City shall have the right to direct Contractor to transition from tax roll billing to direct billing for Residential Customers upon eighteen (18) months written notice to Contractor. In such event, City and Contractor shall work together to develop and implement a plan to switch from residential tax roll billing to monthly, bi-monthly or

quarterly direct billing of Residential Customers. The plan shall be developed in a manner to create the most convenience for the Residential Customer and to commence direct residential billing the month after billing on the tax rolls ends. Contractor shall work with and cooperate with the City in developing the specifics of any plan to transition to direct billing including billing frequency, method to notify Residential Customers, etc. City shall consider Contractor's input on these matters; however, the decision of the City shall be final with regard to the frequency of billing and whether billing is in advance or in arrears.

6.6.6 Commercial, Institutional and Multi-family Billing

Contractor shall bill all Commercial, Institutional and Multi-family Customers directly for services provided pursuant to this Agreement. Contractor shall bill Commercial, Institutional and Multi-family Customers on a monthly basis, thirty (30) days in advance, based upon the size of their Containers and the frequency of Collection, at the rates listed in Exhibit 1. To start service, new Customers will pay for one month's service in advance. Contractor shall notify customers who have not remitted payments within thirty (30) days after the date of billing. The notice shall state that service may be discontinued fifteen (15) days from the date of the notice if payment is not made before that time. If requested, Contractor shall notify the City on a monthly basis of accounts whose service has been suspended for non-payment. Upon customer payment of delinquent fees, Contractor shall resume service on the next regularly scheduled Collection day. Contractor may charge a Resumption of Service Charge, as shown in Exhibit 1, but may not charge for service during the period that service was suspended.

6.6.7 Roll-off Box Customer Billing.

For Roll Off Box Customers, Contractor shall invoice for services rendered monthly, or semi-monthly for Customers who have received past services but have accounts in arrears. Roll Off Customer payments shall be due within fifteen (15) or thirty (30) days from the invoice date (i.e., the beginning of the month or the inception of service). Delinquent accounts shall be handled in the same manner as Commercial Customers as described in Section 6.6.6. Contractor may require a security deposit for temporary Roll Off Boxes with the unused portion of said deposit refunded to the Customer within five (5) business days of the termination of Roll Off service.

6.6.8 Bill Format

Contractor shall provide Customers with an option to receive invoices via paper invoices, or electronically using paperless invoices. For either method, Contractor shall include in invoices information about the type of service, the number and size of Containers, and the frequency of service. For services provided, all applicable amounts shown shall be itemized on the invoice. Invoices for on-call services (including Roll-off) shall be itemized to include the service date, work order number, service description,

and amount charged. Contractor shall not itemize any amount for Franchise Fees or any other fees paid to local governments. The format of Customer invoices shall be subject to the City's approval.

6.6.9 Bad Debt

Contractor shall be solely responsible for following all prudent business practices for collection of payments from customers it bills. Contractor assumes the business risk of inability to collect bills rendered to Customers it bills directly for any reason including but not limited to a Customer's insolvency.

6.6.10 Billing of Container Contamination Fees

Any Cart Contamination Fees charged to a Residential Customer shall be direct billed by Contractor to Customer. Any Bin Contamination Fees charged to a Commercial or Multi-family Customer shall be included and itemized on the Customer's invoice for the billing period in which the Contractor notified the Customer of the assessment of the Contamination Fee

6.6.11 Review of Billings

Contractor shall annually review and audit all amounts billed to each Customer to compare the amount being charged with the level of service, including the size(s) of Container(s) and the frequency of service, with the first such annual review and audit beginning in January 2023. Upon request by the City, issued to Contractor on or before March 31 of each year during the Term, Contractor shall submit a written report to City documenting the results of the audit and noting any discrepancies identified and the date upon which the discrepancies were corrected. The report's format shall be presented in accord with City's reasonable direction, and further shall be amended by Contractor as reasonably deemed necessary by the City. Contractor shall submit each annual report requested by the City by April 30 in of the year of the Term in question. Contractor shall perform the annual audit regardless of whether City requests a copy of the report.

6.6.12 Billing Record and Access by City

Contractor shall maintain copies of all billing records and receipts, including, but not limited to invoices, Customer payment coupons mailed with the invoice and collection notices, in chronological order, for a period of five (5) years after the date of service, for inspection by the City upon request. The Contractor may maintain these records in electronic form or hard copy, provided records can be preserved and retrieved for inspection and verification in a timely manner, are sufficient to verify accuracy of all billings, payments of City Franchise and AB 939 Fees and any other City fees, and may be produced in a form and manner sufficient to establish the existence of Customer obligations in a court of law.

6.7 Customer Waiver Program Coordination

The City has the authority to grant to individual Customers waivers from the requirement to subscribe to Recyclable Materials and Organic Waste Collection service. These waivers may be granted for de minimis generation or lack of space. The City cannot delegate to a private entity (e.g., Contractor) the authority to grant these waivers. However, Contractor can advise the City in determining which Customers shall qualify for a waiver.

6.7.1 Contractor Waiver Request on Behalf of Customer

Upon reasonable belief that a Customer may qualify for a de minimis or physical space waiver, the Contractor may submit a request to the City to grant a waiver to the Customer, provided that adequate evidence for the de minimis or physical space waiver is included with the request. The City shall review and approve or deny the waiver request. Contractor's request for consideration of a waiver shall include the Customer's name and address, type of Commercial Customer, or number of Multi-family units if Customer is a Multi-family Premises, reasons Customer may be eligible for the waiver, and evidence such as, but not limited to: Service Level data, photo documentation, weight records, and technical assistance assessment results.

6.7.2 Waiver Reverification

It shall be the responsibility of the Contractor to verify that the Customers with de minimis or physical space constraint waivers continue to meet the waiver requirements set forth in this Section. Contractor shall conduct such reverifications of waivers through inspection of each Customer's Premises and review of applicable records at least once every five (5) years for de minimis and physical space constraint waivers. The Contractor shall maintain a record of each waiver verification and provide a monthly report to the City documenting the waiver reverifications performed and recommendations to the City on those waivers that Contractor concludes are no longer warranted. The City shall make a final determination of the waiver eligibility of Customers.

6.7.3 Contractor Recordkeeping of Customer Granted Waivers

Upon Contractor request, no more than four (4) times per year, the City shall provide Contractor an updated listing of waivers approved by the City, including the Customers' names, mailing address, service address, and type of waiver. Contractor shall maintain waiver-related records and report on waiver verifications.

6.8 Inspections and Enforcement

6.8.1 Annual Compliance Reviews

- A. **General.** Contractor shall perform compliance reviews described in this Section commencing July 1, 2022, and at least annually thereafter, unless otherwise noted.
- B. **Commercial Customer Compliance Reviews.** The Contractor shall complete a compliance review of all Multi-family and Commercial Customers that generate two (2) cubic yards or more per week of Solid Waste, including Organic Waste, to determine their compliance with: Customer requirements under the City's Solid Waste Collection program. The compliance review may mean a 'desk' review of records to determine Customers' compliance with the above requirements and does not necessarily require on-site observation of service; however, the City may require that the Contractor perform an on-site observation of service in addition to or in lieu of the desk review if needed to obtain the required information.

6.8.2 Compliance Review Process

- A. **Number of Reviews.** The Contractor shall conduct enough compliance reviews, Hauler Route reviews, and inspections of Customers, to adequately determine the Customers' overall compliance with SB 1383 Regulations, AB 1826, AB 341, and the Municipal Code. The number of reviews shall be no less than one (1) per year. The City reserves the right to require additional inspections, if the City determines in its sole discretion that the number of inspections conducted by the Contractor is insufficient. The City may require the Contractor to prioritize inspections of entities that the City determines are more likely to be out of compliance.
- B. **Non-Compliant Entities.** From July 1, 2022 through June 30, 2023, Contractor shall provide educational materials in response to non-compliant Customers. Contractor shall provide these educational materials to the non-compliant Customers within thirty (30) days of determination of non-compliance or immediately upon determination of non-compliance if such non-compliance is determined during an inspection or a Route review. Contractor shall document the non-compliant Customers and the date and type of education materials provided, and shall report such information to the City. Beginning January 1, 2024, the Contractor shall, in addition to providing the education materials described in this subsection, document non-compliant Customers and Customers determined through Contractor's compliance reviews pursuant to Section 6.8 and shall report all Customers and Customers with violations of SB 1383 Regulations

to the City. The City shall be responsible for subsequent enforcement action against the Customers.

- C. **Documentation of Inspection Actions.** The Contractor shall generate a written and/or electronic record and maintain documentation for each inspection, Hauler Route review, and compliance review conducted and shall provide copies to the City on request.

6.9 Service Complaints

6.9.1 General

The Contractor agrees to maintain a computer database log of all oral and written complaints received by Contractor from Customers or other Persons. Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all Customer complaints. Contractor shall maintain a log of all complaints received including, but not limited to, the date and time of the complaint, the nature of the complaint, the person making the complaint and their contact information, and how and when the complaint was resolved. Contractor agrees to maintain for a period of at least five (5) years all Complaints registered by Customers and Persons.

6.9.2 Investigation of SB 1383 Regulatory Non-Compliance Complaints

Contractor shall commence an investigation, within thirty (30) days of receiving a Complaint in the following circumstances: (i) upon Contractor receipt of a Complaint that a Customer may not be compliant with SB 1383 Regulations and if City determines that the allegations against the Customer, if true, would constitute a violation of SB 1383 Regulations; and, (ii) upon City request to investigate a Complaint received by the City, in which the City determines that the allegations against the Customer, if true, would constitute a violation of SB 1383 Regulations. Contractor is required to investigate Complaints against Customers, but not against Food Recovery Organizations, or Food Recovery Services.

Contractor shall investigate the Complaint using one or more of the methods:

- A. Reviewing the Service Level of the Customer that may not be compliant with SB 1383 Regulations;
- B. Reviewing the waiver list to determine if the Customer has a valid de minimis or physical space constraint.
- C. Reviewing the Self-Haul registration list to determine if the Customer has registered and reviewing the Customer's reported Self-Haul information;

- D. Inspecting Premises of the Customer identified by the complainant, if warranted; and/or,
- E. Contacting the Customer to gather more information, if warranted.

6.9.3 Reporting

Within ten (10) working/calendar days of completing an investigation of an SB 1383 Regulatory non-compliance Complaint, Contractor shall submit an investigation Complaint report that documents the investigation performed and recommends to the City on whether or not the Customer investigated is in violation of SB 1383 Regulations based on the Contractor's investigation. The City Manager or his or her delegate shall make a final determination of the allegations against the Customer.

6.10 Report of Abandoned Items or Illegal Dumping

Contractor shall direct its drivers to note: (i) the addresses of any Premises at which they observe that Solid Waste is accumulating and is not being Delivered for Collection; and (ii) the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. Contractor shall deliver the address or description to City within two (2) working days of such observation.

6.11 Solid Waste Composition Studies

Contractor acknowledges that City may need to perform Solid Waste generation and Disposal characterization studies occasionally to comply with the requirements of AB 939 and other applicable laws and regulations. Upon City request, but not more than once every two years, Contractor, at its sole expense, shall conduct such studies to satisfy the requirements of AB 939 and other applicable laws and regulations.

6.12 Emergency Services

6.12.1 Preparedness

Upon request, Contractor shall provide its management expertise and contribute to City's emergency preparedness planning efforts at no additional charge to City.

6.12.2 Assistance with Disaster Recovery

In the event of any natural or man-caused emergency or Disaster, Contractor shall Collect and dispose of Solid Waste resulting from the emergency or Disaster. Contractor shall help City and Customers recover from the Disaster in a prompt and cost-effective manner. Contractor shall provide the Collection equipment and personnel normally assigned to the City for the number of Work Days that that equipment and personnel typically work in the City.

6.12.3 Additional Costs; Reimbursement for Disaster Recovery Services

If the emergency or Disaster requires the Contractor to rent additional equipment, employ additional personnel, or work existing personnel overtime to Collect additional Solid Waste resulting from the event, Contractor shall receive additional compensation, above its normal compensation in this Agreement, to reimburse Contractor for its additional costs. The Contractor's additional costs shall be based on the incremental amount of labor and equipment used by Contractor to Collect Solid Waste resulting from the event. For its additional labor and equipment, City shall reimburse Contractor based on the emergency service rates shown below in Table 1. The Rates in Table 1 shall be adjusted each year on July 1st based on the same rate adjustment percent increase calculated pursuant to Section 10.4. Prior to incurring any such additional costs, Contractor shall obtain City's written authorization to incur such costs.

Table 1 – Emergency Service Rates

Labor Position or Equipment Type	Hourly Rate
Helper/Laborer	\$65.00
Driver	\$65.00
Supervisor	\$85.00
Automated Side-loader	\$155.00
Front-loader	\$155.00
Roll-off	\$125.00

6.12.4 City-wide Effort to Manage Disaster Debris

If the City decides to oversee a coordinated effort to manage the Collection and Recycling of Disaster-related Solid Waste on a City-wide basis, Contractor shall provide City with its management expertise, including a full-time recycling coordinator with the background, knowledge and capability to assist in such an effort. Contractor shall provide this individual at no additional cost to City or its Customers.

6.12.5 Record Keeping and Reimbursement

Contractor shall assist the City and Customers in obtaining any applicable Disaster reimbursement and/or insurance claims by providing accurate records regarding the cost of services it provided during the aftermath of the Disaster, and the amount of Solid Waste resulting from the Disaster.

7 STANDARD OF PERFORMANCE

7.1 General

Contractor shall always comply with applicable law and regulations as the same exist at the time and provide services in a manner that is safe to the public and the Contractor's employees.

7.2 Operating Hours and Schedule

To preserve peace and quiet, no Refuse, Recyclables or Organic Waste shall be collected between the hours of 6:00 A.M. and sunset. Site and route-specific exemptions may be made to this limitation by the City Manager, or the City Manager's designee. The Contractor shall adjust the early morning start point of collection routes to address and minimize service Complaints when warranted and as practicable. If the regularly scheduled collection day falls on a Holiday, alternate Collection shall be performed on the following Work Day, with collection delayed for one Work Day for the remainder of the calendar week. The contractor shall give advance notice to all customers affected by delay in their regular service due to a Holiday reschedule. All other Collection days falling on a legal holiday (other than those defined in Section 1.67) shall remain as scheduled. Residential Collection shall only take place Monday through Friday, except when Saturday Collection is necessary due to a Holiday.

For example, a Wednesday holiday would delay Wednesday, Thursday, and Friday collection each to the following Work Day. Friday Residential Collection would be permitted on Saturday.

The Contractor shall be prepared to review its operations plan outlining the collection routes, intervals of Collection and collection times for all materials collected under this Agreement with the City once annually upon thirty (30) calendar days written notice requesting said review. More frequent reviews may be required if operations are not satisfactory based on documented observations or reports of Complaints. If the plan is determined to be inadequate by the City, the Contractor shall revise its plan incorporating any changes into a revised plan and review said revised plan with the City within thirty (30) calendar days.

7.3 Holidays

Contractor shall not collect Solid Waste on the following Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. In any week in which one of these holidays falls on a weekday, collection services for the Holiday and each Work Day thereafter will be delayed one Work Day for the remainder of the week. Friday collection services shall be performed on Saturday.

7.4 Complaints for Missed Collections

In the case of a Complaint for a missed Collection received on a collection day, Contractor shall make the Collection not later than 5:00 P.M. if it has been notified by noon, or on the first collection day after the Complaint is received, if the Complaint was received after noon.

7.5 Missed Pick-ups

When notified of a missed pick-up, the Contractor shall collect the Refuse, Recyclable Materials, and Organics Waste the same Work Day, if notified by 12:00 noon, otherwise by 5:00 P.M. of the following Work Day, unless the Contractor can provide documentation that Container(s) was not placed for Collection in a timely manner (evidence may include a report by the driver, provided at time of normal Collection, indicating no Container had been placed out for Collection). A summary of missed pickups shall be submitted to the City monthly.

7.6 Collection Standards

Contractor shall provide commercial Collection service with as little disturbance as possible and shall leave any Cart in an upright position and leave Cans, Carts, and Bins at the same point it was collected without obstructing alleys, roadways, driveways, sidewalks or mailboxes.

7.7 Collection Vehicle Requirements

7.7.1 General

Contractor shall provide vehicles that are sufficient in number and capacity to efficiently perform the work required by this Agreement. Contractor shall always own and maintain reserve collection equipment which can be put into service within one (1) hour of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by Contractor to perform its regular Collection services.

The City has several narrow, windy roads and alleys that can be difficult to navigate with a standard collection route vehicle. Contractor shall provide vehicles and equipment that can safely navigate all City roads, streets and alleys, both public and private.

Contractor shall equip vehicles to prevent Solid Waste from being blown or otherwise escape from the vehicle. Contractor shall be responsible to promptly clean any spillage or Solid Waste that leaks or otherwise escapes its vehicles.

No vehicles shall be utilized if it is leaking fluids. Contractor shall clean up any leaks or spills from its vehicles. Contractor shall equip all collection vehicles with absorbent for such cleanups. No fluids shall be washed into storm drains at any time.

7.7.2 Appearance

Contractor shall paint each vehicle periodically (including performing all necessary body work), as frequently as necessary to maintain a positive public image. Contractor shall mark the rear, and both sides of each vehicle with the Contractor's name, telephone number, and a vehicle number in letters not less than six (6) inches in height on the

sides and three (3) inches on the rear of the vehicle. Contractor shall maintain each vehicle in a clean and sanitary condition both inside and out.

7.7.3 Maintenance

Contractor shall perform all scheduled maintenance functions upon collection vehicles in accordance with the manufacturer's specifications and schedule. Contractor shall repair, or arrange for the repair of, all its vehicles and equipment for which repairs are needed because of accident, breakdown, or any other cause so as to maintain all equipment in a safe and operable condition. Contractor shall keep accurate records of all collection vehicles maintenance and repair, recorded according to date, including signed verifications that repairs and maintenance has been performed, and shall make such records available to City upon request.

7.7.4 Emissions

The Contractor shall comply with all federal, State and local laws, including, but not limited to, the requirements of the California Air Resources Board and the South Coast Air Quality Management District that are currently in effect or as may be revised or amended during the Term.

7.7.5 Noise

Contractor's vehicles using compaction mechanisms during the stationary compaction process shall not exceed a noise level of seventy-five (75) decibels (dB) twenty-five (25) feet from the collection vehicle measured at an elevation of five (5) feet above ground level. Contractor shall submit to City, upon City's request, a certificate of vehicle noise level testing, by an independent testing entity, for any Collection vehicle which City or Contractor has received more than one Complaint regarding excessive noise in a twelve-month period.

7.7.6 Safety

Contractor shall equip each vehicle with appropriate safety equipment, including any new safety related technologies that become standard in the waste industry during the Term of this Agreement. Collection vehicles shall be well marked and highly visible. At a minimum, collection vehicles shall have a back-up warning alarm, and a video back-up system, or its equivalent.

7.7.7 Vehicles Used for Bulky Items

Vehicles used for Collection of Bulky Items shall not use compactor mechanisms or mechanical handling equipment that may damage reusable goods or release Freon or other gases from pressurized appliances. Contractor may use vehicles with mechanical

packing mechanisms if used for the purpose of collecting Bulky Items that are not deemed recyclable or reusable or do not contain Freon or other gases.

7.7.8 Inspection of Vehicles

Contractor shall inspect each Collection vehicle daily to ensure that all equipment is operating properly. Collection vehicles that are not operating properly shall be removed from service until repaired and operating properly.

Contractor shall regularly inspect each Collection vehicle to ensure it meets the requirements of the California Vehicle Code and the California Highway Patrol. Contractor shall provide to the City copies of its Biannual Inspection of Terminal ('BIT') inspection reports to City within thirty (30) days of any failed rating. Contractor shall make all records related to its vehicles available to City upon request by the City Manager.

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

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

Any collection vehicles that the City Manager deems inappropriate for use in City for any reason (including its appearance) shall be removed from service in City, until such time as the City Manager determines the issue regarding said Collection vehicle is corrected.

7.7.9 Litter Abatement

- A. **Minimization and Reporting of Spills.** The Contractor shall use due care to prevent Solid Waste or fluids from leaking, being spilled and/or scattered during the Collection or transportation process. If any Refuse, Recyclables, Organic Waste, or fluids leak or are spilled during Collection, the Contractor shall promptly clean up all such materials. Each collection vehicle shall always carry a broom and shovel for this purpose.

Contractor shall notify City within thirty (30) minutes of spill of any material with the potential to reach the storm drains, including all liquids. Upon direction by City, Contractor shall notify the Colorado River Basin Regional Water Quality Control Board of any such spills with the potential to reach storm drains.

Contractor shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, accidental damage to a vehicle, or a pre-approved method of Solid Waste transfer between vehicles, without prior written approval by the City.

- B. Clean Up.** During the Collection or Transportation process, the Contractor shall clean up litter in the immediate vicinity of any Refuse, Recyclables or Organic Waste storage or Collection area whether the Contractor has caused the litter. The Contractor shall identify instances of repeated spillage not caused by it directly with the Customer responsible and will report such instances to the City. The City will attempt to rectify such situations with the Customer if the Contractor has already attempted to do so without success.

7.8 Containers

7.8.1 Containers for Residential Premises

Contractor will provide each Residential Customer, at Contractor's sole cost, with three (3) ninety-six (96) gallon Carts for the basic level of service at Residential Premises: one (1) Gray Container, one (1) Blue Container, and one (1) Green Container, for the rates set forth in Exhibit 1. After ninety (90) days of delivery of these Carts for the basic level of service, each Customer may keep each ninety-six (96) gallon Gray Container provided, or may down-size any Cart provided for the basic level of service to thirty-five (35) gallons, or sixty-five (65) gallons however, the basic level of service cart rate will not change.

Contractor shall provide each Residential Customer with a second (2nd) Gray, Blue, or Green Container of any size, i.e., thirty-five (35) gallons, sixty-five (65) gallons, or ninety-six (96) gallons, at the rates set forth in Exhibit 1.

At any time when a Cart is distributed to any Residential Premises, Contractor shall also deliver to that Residential Premises informational material (PARIS code 5010-ED-PRN), describing the curbside Diversion programs. The informational material shall include a listing in detail of all types of Recyclable Materials and Organic Waste that will be collected and how they are to be prepared, items to include and exclude for each Diversion program, days of Collection, and other pertinent information. City may direct that the informational material be periodically updated as needed, but not more often than once annually unless otherwise necessary to comply with applicable law. All costs associated with the preparation of a professional, well formatted and designed informational material, including photographic examples of Recyclable Materials, Organic Waste, and Containers, costs of printing, labeling shall be borne by Contractor.

7.8.2 Containers for Commercial Institutional and Multi-family Customers and City Facilities

Upon Customer request, Contractor shall furnish, at the rate set forth in Exhibit 1, ninety-six (96) gallon, wheeled Carts with lids for Gray Container Waste, Recyclable Materials, and 65 gallon carts for Organic Waste Collection, to Commercial, Institutional and Multi-family Customers. Commercial, Institutional and Multi-family Customers will have the option to reduce cart size to a 65 gallon or 35 gallon however, the per cart rate will not change from the 96 gallon rate. Contractor shall do the same for City with respect to City Facilities Collection in accord with this Agreement.

The Carts for Commercial, Institutional, Multi-family Customers, and those for City Facilities shall be color-coded consistent with Carts for Residential Premises. Contractor shall also furnish to such Customers, at the rate set forth in Exhibit 1, and to City at no charge: (i) two (2) cubic yard, three (3) cubic yard, four (4) cubic yard, and six (6) cubic yard Bins; and (ii) ten (10) cubic yard, twenty (20) cubic yard, thirty (30) cubic yard and forty (40) cubic yard Roll Off Boxes.

In addition, Contractor shall provide Compactor pull service for Commercial Customers, at the rate set forth in Exhibit 1, and for City at no charge, except that Commercial, Institutional and Multi-family Customers may, at their respective Premises and at their sole discretion, lease and/or purchase Compactors from any Person, company, manufacturer, or distributor, including, but not limited to, Contractor.

Contractor may provide Compactor repair and maintenance services, to any Commercial, Institutional and Multi-family Customers requesting such services for a Compactor whether or not said Compactor is owned by Contractor. Contractor shall provide Compactor repair and maintenance services at no charge to City for any Compactor that is Contractor's property and located at any City Facility.

7.8.3 Cart Exchange

Upon notification to the Contractor by the City or a Customer that a change in the size or number of Carts is required, the Contractor shall deliver such Carts to such Customer by the next regularly scheduled collection day provided that the Customer notifies the Contractor two (2) Work Days in advance of the next collection day. Customers may request one Cart size exchange at no charge each year. One Cart exchange shall consist of all Cart adjustments requested at one time, and multiple Carts and Cart types (Refuse, Recycling, Yard Trimmings) may be exchanged. For exchanges that exceed one (1) exchange per year, Contractor may charge Customers the cart exchange fee shown in Exhibit 1.

7.8.4 Cart Replacement

Any Cart damaged by the Contractor shall be replaced or repaired by the Contractor, at the Contractor's expense. If a Cart is lost, stolen or damaged beyond repair through no fault of the Contractor, the Contractor shall deliver replacement Cart to Customer by the next regularly scheduled collection day provided that the Customer notifies the Contractor two (2) Work Days in advance of the next collection day. Each Cart Customer shall be entitled to the replacement of three (3) lost, destroyed, or stolen Refuse Cart, three (3) lost, destroyed, or stolen recycling cart, and three (3) lost, destroyed, or stolen organics cart during the initial Term of this Agreement at no cost. For replacements of more than three (3) lost, destroyed, or stolen Cart of each type during the initial Term, Contractor may charge Customer the Cart replacement fee shown in Exhibit 1.

7.8.5 Ownership of Carts

Contractor shall own all Carts provided under this Agreement. In the event this Agreement is not extended or renewed, Contractor shall remove all Carts in service from the City within 30 days after termination of this Agreement.

7.8.6 Bins

Contractor shall provide Bin Collection Customers with Bins required during the Term of this Agreement. The size and quantity of Bins shall be determined by mutual agreement between the Customer and Contractor and shall be subject to City approval. The Contractor shall maintain Bins in a clean condition and free from Putrescible residue. Bins shall be watertight, and constructed of heavy metal, or other durable material. Bins shall be well painted and maintained in good repair.

Contractor shall mark each Bin with the name of Contractor and phone number in letters not less than three (3) inches high. Bins shall be labeled to include instructions on what materials should and should not be placed in the Bin. All Bins shall be painted a uniform color to comply with the Container color requirements of the SB 1383 Regulations.

7.8.7 Bin Replacement

If required to maintain the Bins in a clean condition, Contractor shall replace all Bins once per year at no additional charge. Contractor shall provide replacement Bins more frequently if directed by City to prevent a nuisance caused by odors or vector harborage. Contractor shall remove graffiti from any Container within two (2) Work Days of request by City or Customer.

7.8.8 Locking Bins

Contractor shall provide locking Bins upon Customer request. Contractor shall be entitled to the monthly charge for locking Bins shown in the approved rate schedule.

7.8.9 Roll-off Boxes

Contractor shall provide Roll-off Boxes to Customers sufficient to meet Customer demand throughout the Term of this Agreement. Contractor shall keep all Roll-off Boxes clean, well-painted free from graffiti, and in good repair. Contractor shall display the name and phone number of Contractor in letters not less than three (3) inches high on Roll-off Boxes. Colors and labelling shall be approved in advance by the City.

7.8.10 Roll-off Compactors

Maintenance of Customer-owned Roll-off Compactors shall be the responsibility of the Customer, and not the Contractor. Contractor may sell, or lease Roll-off Compactors to Customers. Any such sale or lease shall be outside the scope of this Agreement. Any proceeds to Contractor from the sale or lease of Roll-off Compactors are not included in Gross Receipts.

7.9 Personnel

The Contractor shall furnish such qualified drivers, mechanical, supervisory, clerical, management and other personnel as may be necessary to provide the services required by this Agreement in a satisfactory, safe, economical, and efficient manner. All drivers shall be trained and qualified in the operation of vehicles they operate and must possess a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

The Contractor also agrees to establish and vigorously enforce an educational program that will train the Contractor's employees in the identification of Hazardous Waste. The Contractor's employees shall not knowingly place such Hazardous Waste in the Collection vehicles, nor knowingly dispose of such Hazardous Waste at the processing Facility or Disposal Site.

Contractor shall provide suitable operational, health, and safety training for all its employees who use or operate equipment or who are otherwise directly involved in Collection or other related operations.

7.9.1 Conduct

Contractor's employees shall conduct themselves in a competent, thorough, and courteous manner. Upon direction by the City, Contractor shall transfer out of the City any employee who materially violates any provision in this Agreement, or who is

negligent, careless, or discourteous in the performance of their duties. Contractor's field operations personnel shall wear a clean uniform with the employee and Contractor's name. Contractor's employees, who normally meet the public, shall bear a Contractor photo identification card. Contractor's employees shall not in any way represent themselves as employees of City.

7.9.2 Fees and Gratuities

Contractor shall not, nor shall it permit any officer, agent, or employee to, request, solicit, demand, or accept, either directly or indirectly, any fee or gratuity for the performance of services required under this Agreement.

7.9.3 Drug and Alcohol Testing

Contractor shall prescreen all applicants seeking employment that would result in the applicant, if hired, driving Contractor's vehicles within City. The prescreening shall include drug and alcohol testing by a certified independent testing laboratory. Contractor shall reject any applicant for employment within City who tests positively for any prohibited substance. In addition, Contractor shall conduct unannounced random drug and alcohol testing of all employees performing driving duties within City pursuant to the regulations administered by the Federal Motor Carrier Safety Administration (49 CFR, Part 40). The random testing shall be conducted by a certified independent testing laboratory. Any employee who tests positive for prohibited substances or alcohol shall be immediately and permanently removed from any assignment to perform duties under this Agreement.

7.9.4 Government Liaison

Contractor shall designate in writing a "Government Liaison" to work with the City and/or the City's designated representative(s) on contractual matters and to resolve Customer complaints. The designated Liaison shall be well versed in City's programs and have the authority to implement corrective actions requested by the City. City shall be able to contact the Liaison *via* e-mail, telephone, and in-person as needed. Contractor shall designate in writing one or more Field Representatives, including but not limited to the "Recycling Coordinator" as described below, who will contact each Commercial, Institutional and Multi-family Premises Customer once per year to Inform them of the requirements of SB 1383 and their obligation to participate in accordance with the City's Ordinance. Contractor shall maintain a log of such contacts and submit to the City, not less than annually, upon City request. Field Representatives shall visit civic groups, building managers at Multi-family Premises, and Commercial Premises and Institutional Customers to promote and explain Recycling and other Diversion and Solid Waste and programs. Recycling Coordinator

Contractor shall provide a Recycling Coordinator to (1) be a liaison between Contractor's Recycling and Solid Waste operations and the City; (2) formulate, communicate and coordinate public education campaigns; (3) produce educational material regarding all Recycling, Yard Trimmings, Construction and Demolition Debris Diversion, Organics and all other Diversion programs as well as concerning all Collection programs being implemented by the Contractor and the City; (4) develop an annual calendar of milestones and be responsible for informing the public of events and deadlines; and (5) assist in preparing grant applications for funding and materials to enhance public education with regard to Diversion programs, Solid Waste issues and related activities.

All personnel identified above shall be designated in writing by Contractor to City within thirty (30) days of the effective date of this Agreement. City shall be notified in writing of relevant personnel changes during the Term.

7.9.5 Non-discrimination

Contractor shall not discriminate against any Person based on such Person's race, sex, color, national origin, religion, marital status, age, disability, or sexual orientation. Contractor shall comply with all applicable local, state, and federal laws and regulations regarding nondiscrimination, including those prohibiting discrimination in employment.

7.9.6 Lockouts

Contractor shall not institute a lockout of any or all of its employees unless Contractor has previously provided an alternate plan of continuing the highest level of services during the entire possible period of such a lockout with ample fully trained substitutes for all such locked-out employees, and City has approved such alternate plan in writing prior to such lockout being instituted by Contractor.

7.10 Hazardous Waste Inspection and Handling

Contractor has the right and obligation to inspect Solid Waste put out for Collection and to reject Solid Waste observed to be contaminated with Household Hazardous Waste or Hazardous Waste. In the event a Customer sets out for Collection any Household Hazardous Waste or Hazardous Waste, Contractor shall reject the material, tag the Container with instructions to the Customer for the proper method to discard of Hazardous Waste, and record the event in the Customer's profile in Contractor's billing system.

Contractor shall notify all agencies with the City, if appropriate, including the California Department of Toxic Substances Control and Local Emergency Response Providers and the National Response Center of reportable quantities of Hazardous Waste, found, or observed in Solid Waste anywhere within the City. In addition to other required notifications, if Contractor observes any substances which it or its employees reasonably

believe or suspect to contain Hazardous Wastes unlawfully disposed of or released on any City property, including storm drains, streets or other public rights of way, Contractor will take a digital photo of the material and Container, and immediately notify the City Manager.

7.11 Refusal to Collect

When Solid Waste is not collected from any Customer, Contractor shall notify its Customer in writing, at the time Collection is not made, using a 'tag' or otherwise, of the reasons why the Collection was not made.

7.12 Load Weight

Contractor shall not load its collection vehicles such that the vehicle's gross weight (the total weight of the load and the vehicle) exceeds the manufacturer's gross vehicle weight rating (GVWR) or exceeds any other weight limits imposed by state or local laws or regulations.

7.13 Care of Private Property.

Contractor shall use due care when handling all Containers. Containers shall not be thrown from trucks, roughly handled, damaged or broken. Containers shall be returned to the Collection point upright, with lids properly secured. Contractor shall ensure that its employees close all gates opened by them in making Collections, unless otherwise directed by the Waste Generator, and avoid crossing landscaped areas and climbing or jumping over hedges and fences. City shall refer complaints about damage to private property, including private streets and common areas in common-area subdivisions, to Contractor. Contractor shall promptly repair, or arrange for the repair of, all damage to private property caused by its employees.

7.14 Property Damage

If Contractor's employees or subcontractors cause any injury, damage, or loss to public or private property, including but not limited to City streets or curbs, Contractor shall reimburse City or private property for City's repairing such injury, damage or loss. Such reimbursement is not in derogation of any right of City to be indemnified by Contractor for any such injury, damage, or loss. Contractor may repair the damage at Contractor's sole cost and expense.

7.15 Route Maps and Changes

Upon request by City, Contractor shall provide the City with maps of Contractor's routes in a format acceptable to the City. Contractor shall submit to the City, in a format acceptable to City, maps of any proposed route changes at least sixty (60) calendar days prior to the proposed date of implementation. Contractor shall not implement any route

changes without the prior review of the City. Contractor shall provide Customers with at least thirty (30) calendar days advance notice of any changes in their collection day.

7.16 Change in Collection Schedule

Contractor shall be responsible for: (i) establishing services for new Customers; (ii) stopping services and preparing a final billing on a pro rata basis for a Customer permanently discontinuing service; (iii) suspending services at an individually-billed Residential Premises, Commercial Premises or Institutional Premises one time in a calendar year for a period not to exceed one hundred twenty (120) calendar days for temporary vacation stops. During temporary vacation stops, the Customer shall be subject to no charges for Collection services not provided, however, a restart fee would apply upon start up. When a Customer is due a refund and/or a credit because that Customer has already made payment for a period of time taking place during a temporary vacation stop, or because that Customer is being billed on the tax rolls, Contractor shall issue a timely refund or credit for the vacation stop period.

Contractor shall, for approval of City, develop a procedure and confirmation form to document requests for commencement and termination of, and changes in, service. Customers shall be provided a copy of confirmation form noting effective date of start-up, change, suspension or termination in Collection services and other pertinent details, such as data of issuance of refund for services not provided but for which Customer has paid discontinued.

7.17 Changes in Scheduled Days of Collection

Once a schedule of Collection days for waste, recycling and organic Materials has been established for Residential Premises, the schedule shall not be changed without the prior written approval of City. Contractor shall request approval from City not less than forty-five (45) days prior to a planned change in a scheduled day of Collection for Residential Premises. As a condition of approval of such a change, City may require Contractor, at Contractor's sole expense, to notify Residential Customers of the change by mailing a flyer, postcard or brochure to all residents by first-class postage. All details and scheduling of such notice shall be subject to approval by the City.

Scheduled Collection days for Refuse, Recyclables, and/or Organic Waste may be changed at the request of the occupant or Property Manager of any Commercial Premises, Institutional Premises or Multi-family Premises, without the approval of City. This includes Special Services (such as collection on a specific day) requested by a Homeowners Association or other centrally billed residences provided that the Special Services are provided at the rates set forth in Exhibit 1. The City will determine the final schedule of Collection days, in the event a disagreement arises between Contractor and a Customer or Solid Waste generator at Commercial Premises or Multi-family Premises.

7.18 Route Audits

If requested by City, Contractor shall conduct a biennial route audit, during the month of February (or during a different month as directed by City) of all collection routes Refuse, Recyclables, Organic Waste, and Construction and Demolition Waste. The audit shall include, at a minimum, the route number, identification number of vehicles servicing each route, number and type of accounts service by route and by truck, number and sizes of Containers collected together with the frequency of Collection by route and by truck, weight of Refuse, Recyclables, Organic Waste, or Construction and Demolition Waste by route and by truck, and any pertinent operational details. Results of the route audit shall be delivered to City in their entirety, including, but not limited to, maps of routes with each route numbered, survey sheets, logs, route lists, forms used to gather information, and the like, within ten (10) working days of completion of the audit, and in no event later than March 20 of each year of the Term. Said audit may be undertaken directly by Contractor or on behalf of Contractor by another party, but in either event shall be completed at Contractor's sole expense.

7.19 Dedicated Routes

The City does not require that routes be dedicated entirely to the City. However, the City does expect accurate and fully transparent tracking in the allocation of tonnage to the City of Indio for accurate Disposal reporting purposes. As a small city, for whom even small Disposal reporting errors can have a negative impact, vigilant accuracy in Disposal tracking is imperative.

7.20 Diversion Requirements

Should the City not significantly exceed the City-wide AB 939 Diversion minimum or that of any subsequent State requirements (e.g., AB 1826 or SB 1383 or other new laws) for its entire waste stream (excluding Fairgrounds), and if the City determines that the Contractor has not maximized Diversion from the services and programs contemplated under this Agreement, the Contractor agrees to undertake its Commercially reasonable efforts to implement programs and provide equipment necessary in order for the City to significantly exceed the State requirement.

8 RECORD KEEPING AND REPORTING

8.1 Record Keeping

Contractor shall maintain Customer contact data, customer service, accounting, statistical, operational, and other records related to its performance as shall be necessary to provide reporting required by this Agreement and applicable laws, and to demonstrate compliance with this Agreement and applicable laws (such as, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, and SB 1383 statutes and corresponding regulations).

Contractor shall maintain adequate records, and corresponding documentation, of information required by Sections 8.2 and 8.4 of this section, such that the Contractor is able to produce accurate monthly, quarterly, and annual reports, and is able to provide records to verify such reports. Contractor will make these records available and provide to the City any record or documentation necessary for the City to fulfill obligations under applicable law including, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, and SB 1383 statutes and corresponding regulations; and, other current or future federal, State, or local statutes and regulations, as amended. Upon request by the City, the Contractor shall provide access to Contractor's requested records in a timely manner, not to exceed ten (10) business days from the time of the City's request to Contractor.

8.1.1 Record Retention and Security

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports. Contractor's records shall be stored in one central location, physical or electronic, that can be readily accessed by the Contractor. The City reserves the right to require the Contractor to maintain the records required in this Agreement through the use of a City-selected web-based software platform, at Contractor's expense. Contractor shall retain all records and data required to be maintained by this Agreement for the Term of this Agreement plus five (5) years after its expiration or earlier termination.

Records and data shall be in chronological and organized form and readily and easily interpreted. Contractor shall maintain adequate record security to preserve records from events that can be reasonably anticipated such as a fire, theft, and an earthquake. Electronically-maintained data and records shall be protected and backed-up. To the extent that Contractor utilizes its computer systems to comply with record keeping and reporting requirements under this Agreement, Contractor shall, on a monthly basis, save all system-generated reports supporting those record keeping and reporting requirements in a static format in order to provide an audit trail for all data required.

8.1.2 Billing Records

The Contractor shall maintain records of billings and receipts for a period of five (5) years after the date of service for inspection by the City upon request at no cost.

8.1.3 CERCLA Defense Records

The City views the ability to defend against the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), State Hazardous Substance Law, and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be of utmost importance. The Contractor shall

maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was Landfilled (and therefore establish where it was not Landfilled) and provide a copy of the tonnage reports required in Section 8.4 for twenty five (25) years after the Term during which Collection services are to be provided pursuant to this Agreement, or to provide copies of such records to the City. The Contractor agrees to notify the City at least ninety (90) days before destroying such records. This provision shall survive the expiration of the term of this Agreement.

8.1.4 Compilation of Information for State Law Purposes

Contractor shall maintain accurate records for its operation, including, but not limited to, discarded materials quantities Contractor collected and quantities transported to Contractor or transferred to each approved Facility, listed separately by material type, Customer type, and Facility. Records shall be maintained in such form by methods that facilitate the use of data for the production of reports as needed. Contractor The Contractor will make these records available and provide Contractor to the City any record or documentation necessary for the City to fulfill obligations under Applicable Law including, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, AB 1595, and SB 1383 statutes and corresponding regulations; and, other current or future local, Federal or State statutes and regulations, as amended.

8.2 Audit And Performance Reviews

The City shall have the right to inspect or review the specific documents or records required expressly or by inference pursuant to this Agreement, or any other similar records or reports of the Contractor or its Affiliates that the City shall deem, in its reasonable discretion, necessary to evaluate annual reports, reports to federal, state or local authorities, and compensation applications provided for in this Agreement and the Contractor's performance provided for in this Agreement. Contractor shall cooperate fully with any information requests. Failure to make such records readily available shall be deemed a material breach of this Agreement.

City has the option to audit the Contractor's operations, services, and billings provided under this Agreement. Should such an audit disclose that Contractor collectively overbilled its customers in the City by two percent (2%) or more, or if Contractor underpaid its fees due the City by two percent (2%) or more (after adjustments made pursuant to Section 9.1.1), or if Contractor had failed or was failing to substantially fulfill its obligations under this Agreement, Contractor shall reimburse the City for the cost of the audit and shall correct any deficiency revealed in the audit.

8.3 Payments and Refunds

Should an audit by the City or Contractor disclose that the Contractor's payments to the City or to Customers were underpaid, or that Customers were overcharged, for any reason, Contractor shall reimburse the City, or Customers, within thirty (30) calendar days following the date of the audit.

8.4 Reporting and Information Transfer

8.4.1 Reports and Data – Purpose and Format

Contractor shall maintain records and data in forms that facilitate preparation of useful reports, and the efficient transfer of needed data. All reports and data shall be adequate to enable the City to:

- A. Meet current and future reporting requirements to CalRecycle, including but not limited to AB 939, AB 341, AB 1826, and SB 1383.
- B. Monitor the individual SB 1383 compliance of the Contractor's Commercial and Multi-family Customers.
- C. Determine and set rates and evaluate the efficiency of operations.
- D. Evaluate progress toward the City's waste Diversion and climate goals.
- E. Evaluate customer service and complaints.

The Contractor may propose report formats that are responsive to the City's objectives. The City reserves the right to approve or modify the format of each report. The Contractor will provide a statement with each report that the report is true and correct.

8.4.2 Delivery

Contractor shall deliver all reports required by this Agreement to the City in a readily accessible electronic format to the City to the City Manager or the City Manager's designee

8.4.3 Customer Data Transfer

The Contractor shall submit all reports by electronic means in a format compatible with the City's computers and software. The City reserves the right to require Contractor to periodically transfer Customer data via an Application Program Interface (API) to a City-selected web-based software platform (similar to 'Minerva®' or 'Recyclist'), at Contractor's expense.

8.4.4 Reports – Schedule

Contractor shall submit monthly reports within thirty (30) calendar days after the end of each month. Contractor shall submit annual reports before February 15 following the reporting year. If requested by the City, the Contractor shall submit to the City its Complaint summary, described in Section 6.9, within five (5) days of request.

8.4.5 Reports - Monthly

Monthly reports shall include, at a minimum, the following information:

- A. The amount in tons of material collected by the Contractor for the month, sorted by type of material (Refuse, Recycling, Organics, Bulky Waste, etc.) and type of Customer (Residential, Commercial, Roll-off, etc.).
- B. The number of tons taken during the month to each Facility and where the tons were processed or disposed.
- C. A summary of Residential Customer information, including:
 - 1. The number of customers subscribed to each Cart size;
 - 2. The number of Bulky Item collections performed during the month;
 - 3. A summary of the number of missed pickups.
- D. A summary of Commercial and Multi-family Customer information, including for each type of Customer:
 - 1. Total number of Commercial and Multi-family Customers;
 - 2. Number of each type of account subject to (i.e., 'covered') under AB 341 and AB 1826;
 - 3. Number of accounts compliant with SB 1383 via participation in Contractor's recycling programs;
 - 4. Number of customers with waivers by type of waiver (de minimis, physical space);
 - 5. Number of Customers participating in an Edible Food recovery program;
 - 6. The total number of Containers disposed due to the observation of Prohibited Container Contaminants.
 - 7. Number of Compliance Reviews (pursuant to Section 6.8) conducted during the month with a summary of the results; and,

8. The number of Customers that received a Notice of Violation.
- E. A Summary of Roll-off Customer information, including the number of loads hauled by type of Customer (permanent, C&D), and by material type.
- F. A summary of contamination monitoring activities, including:
 1. Results of Route Reviews (Section 6.2.1) performed during the month;
 2. Results of Waste Evaluations (Section 6.2.2) performed during the month;
 3. A list of all customers issued warning notices for contamination; and,
 4. A list of all Customers assessed contamination fees, if applicable.
- G. Monthly status of the Contractor's public education and outreach activities;
- H. Narrative summary of any problems encountered (including scavenging) during the month and actions taken with recommendations for the City, as appropriate.
- I. Any other information requested by the City.

8.4.6 Annual Reports

Contractor shall prepare and submit an annual report that summarizes the information in the monthly reports on an annual basis. In addition to the information in the monthly reports, the annual report shall include, at minimum:

- A. The Hauler's annual waste Diversion rate calculated as follows: The total amount of Recycled Materials and Organic Waste Collected and Diverted from Landfills, divided by the total amount of Solid Waste Collected;
- B. A recap of key events and accomplishments during the year;
- C. Copy of Hazardous Waste Diversion records showing types and quantities, if any, of Hazardous Waste that was inadvertently collected, but Diverted from Landfilling;
- D. A summary of the Contractor's education and outreach accomplishments during the year.
- E. A summary of information recorded in the Contractor's Complaint log (See Section 6.9);
- F. A summary of the quantity of recycled-content products and recovered-organic products procured by Contractor on behalf of the City pursuant to this Agreement.

- G. Any "failed" Contractor's terminal inspection reports resulting from the California Highway Patrol's Basic Inspection of Terminals (BIT) program ; and,
- H. A summary of Contractor's gross receipts collected from Customers, and all fees paid to the City, during the previous calendar year.
- I. Any other information reasonably requested by the City.

8.4.7 Reports are Subject to Public Records Act

Contractor agrees that any documents provided by the Contractor to the City shall be subject to the California Public Records Act (Government Code Title 1, Division 7, Chapter 3.5 et. seq.), and unless a particular record is exempted from disclosure by the California Public Records Act, may be disclosed pursuant to a proper public records request. If Contractor believes that it is entitled to an exemption from disclosure under the Public Records Act, it will (1) clearly designate such information as confidential when submitted to City, and (2) identify the section of the Public Records Act under which it is exempt. If City receives a request from a third party to inspect confidential information, City will inform Contractor within forty eight (48) hours. City will assert applicable exemptions to disclosure under the Public Records Act and Contractor will provide information in support of the City's position. If a third party initiates litigation challenging the City's refusal to disclose Contractor's financial statements, City is not obligated to defend the case at its expense, but will do so if Contractor pays all costs incurred by City in the proceedings, including the costs of City's attorneys and any fees awarded against City by the court. If the trial court decides against City and orders the release of the financial statements, City is not obligated to appeal the decision but will do so if Contractor requests it to appeal and agrees to pay all of the costs thereof. Alternatively, if Contractor has intervened in the case and taken over the defense of the City in the trial court, City will not object to Contractor's decision to appeal and will support the Contractor's position on appeal, provided it is not required to expend public funds in doing so.

8.4.8 Reporting of Adverse Information

Contractor shall provide to City two copies (one to City Manager and one to City Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating specifically to Contractor's performance of services pursuant to this Agreement, submitted by Contractor to, or received by Contractor from, the United States or California Environmental Protection Agency, the California Integrated Waste Management Board (or its successor agency), the Securities and Exchange Commission or any other federal, state or local agency, including any federal or state court. Copies shall be submitted to the City simultaneously with Contractor's filing or submission of such matters with said agencies. Contractor's routine day-to-day correspondence to and from said agencies need not be submitted to the

City, but shall be made available to City for inspection promptly upon City's written request.

8.4.9 Failure to Report

City shall have the right to inspect or review the payroll tax reports, specific documents or records required expressly or by inference pursuant this Agreement, or any other similar records or reports of Contractor or its related party entities that the City shall deem, in its reasonable discretion, necessary to evaluate annual requests for adjustments to Contractor's Compensation and Contractor's performance provided for in this Agreement. City, and auditors and other agents selected by the City, shall have the right, during regular business hours, to conduct onsite inspections of the records and accounting systems of the Contractor and to make copies, at the expense of City, of any documents relevant to this Agreement.

9 CITY FEES

9.1 Franchise Fee

Contractor shall pay the City for the privilege, and as the sole and exclusive consideration of the licenses granted hereby, an eleven and one-half percent (11.5%) Franchise Fee on all Gross Receipts generated as a result of Contractor providing services in the City pursuant to and during the Term of this Agreement.

9.1.1 Time and Method of Payment

Contractor shall remit the Franchise Fee on or before the twentieth (20th) day of every month during the Term, based on the estimated Gross Receipts from all Customers billed by Contractor for that month. In the event of termination, the balance due for the billing period during which termination occurs shall be paid to the City within thirty (30) days of the termination date. Contractor shall provide the City annually, within ninety (90) days after March 31st, a certified statement, to be filed with the Director of Finance of the City, setting forth the total Gross Receipts collected by Contractor and the computation of the Franchise Fees due for the preceding calendar year. The difference between the computed Franchise Fees and the submitted estimated payments will be remitted with the certified statement attested to by an independent Certified Public Accountant or independent licensed Public Accountant who has no affiliation or financial connection with Contractor.

9.1.2 Collection of Fees for Residential Customers

Residential Customers will be billed on the Riverside County tax rolls for Collection services. The City shall be responsible for deducting the Franchise Fee from the Gross Receipts from such billings at the time of receipt, and promptly remitting the balance to Contractor.

9.2 Collection of City AB 939 Fee; Other City Fees

This AB 939 Fee is used by the City for preparing, adopting and implementing Solid Waste reduction, Recycling and reuse programs, including but not limited to those described in the City's Source Reduction and Recycling Element prepared pursuant to the Act. Contractor shall remit estimated AB 939 Fees collected from Customers billed by Contractor, to City on or before the twentieth (20th) day of every month based upon the estimated Gross Receipts for that month. In the event of termination, the balance due for the billing period during which termination occurs shall be paid to the City within thirty (30) days of the termination date. Contractor shall provide the City annually, within ninety (90) days after March 31st, a certified statement, to be filed with the City, setting forth the total Gross Receipts collected by Contractor and the computation of the AB 939 Fees due. The difference between the computed AB 939 Fees due and the submitted estimated payments will be remitted with said certified statement, attested to by a Certified Public Accountant. With regard to Residential Customers billed on the tax rolls, City shall deduct the AB 939 fee prior to making payment to Contractor, as described in Section 6.6.12.

The City shall establish and adjust the AB 939 Fee as may prove necessary and appropriate, in accord with all applicable law. Proposition 218 does not apply to the City's consideration of the establishment or adjustment of the City's AB 939 Fee. To the extent practicable, the City shall consider any AB 939 Fee adjustment annually, on or before July 1 of each year of the Term beginning during 2023. City and Contractor shall use best efforts to ensure that any AB 939 Fee adjustment occurs concurrent with the adjustment of rates per this Agreement. However, the City reserves the right to make other adjustments to the AB 939 Fee at any time during the Term and to direct Contractor to collect the adjusted amount of the AB 939 Fee.

City reserves the right, in its sole and absolute discretion, to establish or eliminate City-imposed fees, to adjust rates accordingly and to direct Contractor as to the collection of such fees, with no additional compensation to Contractor. Contractor shall remit such fees to City in accord with the schedule established by the City for such any additional fees.

In the event that City seeks or is mandated by the State of California or County of Riverside to levy any additional fees arising from or related to Contractor's services per this Agreement, City and Contractor shall meet and confer for the purpose of agreeing upon an amendment to this Agreement that provides for the procedures that will be associated with the collection of such additional fees. Contractor shall fully cooperate with City throughout City's process of considering the adoption of such additional fees. No additional fee shall be levied by City except upon compliance with all applicable law.

10 COMPENSATION AND RATE ADJUSTMENTS

10.1 General

Contractor shall perform the services and provide the equipment, materials and supplies required by this Agreement in consideration for: (a) the right to charge Customers up to but no more than the rates set forth on Exhibit 1 and as they may be adjusted as provided in this Article, including Customers billed *via* the County tax rolls in accord with all applicable law, and (b) Contractor's right to retain revenues, if any, from the sale of Recyclable Materials, grants, recycling credits, California Redemption Value, curbside Recycling payments, recycling incentive payments or electronic waste recovery and recycling payments. The revenues received from these two (2) sources shall be the full, entire and complete compensation due to Contractor for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, profit and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed. Contractor does not look to City for any other payments under this Agreement.

10.2 Initial Rates

The rates for the Rate Year ending June 30, 2023 shall not exceed those set forth in Exhibit 1 hereto, unless amended by a written amendment to this Agreement entered into by and between the City and the Contractor. Contractor has reviewed these maximum rates and agrees they are reasonably expected to generate sufficient revenues to provide adequate Contractor Compensation. Unless and until the maximum rates set forth on Exhibit 1 are adjusted, Contractor will provide the services required by this Agreement, charging no more than the maximum rates authorized by Exhibit 1 except as provide herein in this Section.

10.3 Schedule of Future Adjustments

Beginning with the Rate Year commencing on July 1, 2023, and for all subsequent Rate Years during the Term of this Agreement, Contractor shall be entitled to an annual adjustment to the Contractor's compensation for all rate categories in Exhibit 1. All rate adjustments shall be effective on July 1st. The Contractor shall submit a request for rate adjustment in a form acceptable to City, at least ninety (90) calendar days prior to the start of the new Rate Year based on the method of adjustment described in this Section. Failure to submit a written request at least ninety (90) calendar days prior to the start of the new Rate Year shall result in the Contractor waiving the right to request such an increase for that Rate Year.

10.4 Method of Adjustments

For Rate Year beginning July 1, 2023, Contractor may request an adjustment to Contractor compensation for all rate categories according to the method described below in this Section.

10.5 Rate Adjustments

Rate increases after July 1, 2023 shall only take place per this Section 10.5 in a manner consistent with all applicable law. Each year of the Term thereafter, upon Contractor's written request, City shall consider a single annual adjustment to each rate set forth in Exhibit 1, calculated based upon the most recent available October to October Producer Price Index PPI for Finished Goods, including fuel costs ("PPI"), but subject to a cap of five percent (5%), *i.e.*, there shall be no annual adjustment to the Service rates set or calculated under this Agreement in excess of five percent (5%).

A. Program Residential Rate Phase-In

In an effort to reduce the initial rate impact to ratepayers, the Contractor shall receive the following compensation, in addition to the adjustment calculated in Section 10.5, as described below:

- July 1, 2023, direct bill rates will increase to \$27.43 and tax roll rates will increase to \$22.43.
- July 1, 2024, direct bill rates will increase to \$29.23 and tax roll rates will increase to \$23.97.

10.6 Potential Pass Through Adjustments

Rate adjustments attributable to increased Disposal Charges or Processing Fees shall take place when third party fees and charges rise based upon new taxes, regulation, or independent action. Such pass through adjustments shall not be limited as to timing, process or scope as described in this Agreement, but only by applicable law.

10.7 Disposal Charge and Processing Fee Reconciliation

Contractor's Processing Fees at the Coachella/Indio Waste Transfer Station Authority Disposal Charge are included in the rates reflected in Exhibit 1. The portion of the rates attributable to Disposal costs is called the Disposal Charge and appears in the Disposal Component of the rates. The costs for processing Organic Waste are also included in the Disposal Component of the residential rates in Exhibit 1. The costs for processing of

Organics and Construction and Demolition Waste at the City-Designated Processing Facilities for commercial and Institutional Customers are included in the Processing Component of the rates set forth in Exhibit 1. It is the intention of the parties that actual Disposal Charges and the actual Processing Fees paid by Contractor be reconciled to the amounts of tons billed by Contractor for the Disposal Charges and Processing Fees. (Note: The cost for processing of Recyclable Materials is currently included in the rates, therefore no reconciliation is currently required for these costs.)

In April of each year, commencing April 2023, Contractor and City shall reconcile the Disposal Charges and Processing Fees for the preceding calendar year as follows. The actual Disposal Charges and actual processing fees paid by Contractor for the immediately preceding calendar year shall be calculated using the following records:

- A. The Tons reported as delivered to the Disposal Site on behalf of the City by the operator of the Disposal Site, and the Tip Fee in effect for the preceding year;
- B. The Tons reported as delivered to the Disposal Site on behalf of City;
- C. The Tons reported as delivered to each of the City-Designated Processing Facilities on behalf of the City, by the operator of each facility, and the processing fee in effect for each material during the preceding year; and
- D. The Tons reported as delivered to the Disposal Site and to each Processing Facility on behalf of the City by the owner or operator of each Disposal Site and Processing Facility to CalRecycle as required by the Disposal Reporting System regulations (Title 14, California Code of Regulations, Chapter 9, Article 9.2, Section 18800 *et seq.*); and (4) Contractor's records of Tons delivered to the Disposal Site and to each of the City-designated Processing Facilities.

The total Tons delivered to the Disposal Site will be multiplied by the Tip Fee that was in effect during the calendar year for which Disposal Charges are being reconciled. The total Tons of each type of material (Organics, wood, concrete, asphalt, dirt and sand, etc.) delivered to each of the Processing Facilities will be multiplied by the processing fee for the specified material that was in effect during the calendar year for which processing fees are being reconciled. The sum of the actual Disposal Charges plus the actual Processing Fees shall be reconciled to the amount collected by Contractor from billings to Customers for Disposal Charges and Processing fees. Contractor's payment of AB 939 Fees and all other City-imposed fees described in this Agreement will be tried up in separate processes and on separate schedule.

The City reserves the right to verify the amount of the Disposal Charges and Processing Fees billed and Tip Fees and Processing Fees paid by Contractor using documents including, but not limited to, the following:

- A. Copies of weight tickets from Disposal Sites (including Landfills and transfer stations);
- B. Copies of weight tickets from Processing Facilities;
- C. Copies of Contractor's internal allocation factors and all calculations used to calculate Tons delivered to each of the City-Designated Disposal Sites and Processing Facilities, and amounts billed to Customers for Disposal Charges and Processing Fees; and
- D. Contractor's audited financial statements, billing records, and other financial documentation deemed necessary by City to complete the reconciliation process.

The difference (whether positive or negative) between the amount collected by Contractor to Customers for Disposal Charges and Processing Fees, and the actual Disposal Charges and Processing fees paid, shall be taken into account as a separate cost or revenue line item by City in setting Collection rates for the following Fiscal Year.

The Disposal Charge/Processing Fee Reconciliation will be calculated on a calendar year basis. Therefore, the April 2023 reconciliation shall be for the twelve (12) month period January 1, 2022 through December 31, 2022. Thereafter the reconciliation will be performed in April of each year for the preceding calendar year. The last reconciliation will be in April 2036 for calendar year 2035.

10.8 Extraordinary Adjustments

The Contractor may request an adjustment to the Contractor compensation at reasonable times other than that required in Section 10.3 to recover increased costs arising from extraordinary changes in the cost of providing service under this Agreement. Such changes may include, but are not limited to, changes in service required by the City, revisions to the Indio Municipal Code that affect the performance of services, the City's designation of a Solid Waste facility under Section 6.1, increases in cost to deliver material (e.g., tipping fees) collected under this Agreement to facilities not owned or operated by the Contractor and which the Contractor is required by City or otherwise under this Agreement to use, or additional costs imposed by or arising from changes in law or actions by Federal, State or local regulatory agencies, including additional Diversion requirements. The Contractor is expected to comply with the South Coast Air Quality Management District (SCAQMD) Rules and the Air Resource Board's existing emission standards for Refuse removal vehicles with no additional compensation.

For each request for an extraordinary adjustment to the Contractor compensation, Contractor shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to City with support for assumptions made by the Contractor in preparing the estimate. City shall review the Contractor's request and in City's reasonable discretion make the final determination as to whether an adjustment to the compensation will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment. The Disposal component of the rate is considered to be a pass-through cost, and annual adjustments to the Landfill Disposal component of the rate as governed by the City's JPA agreement are permitted. The Contractor acknowledges that any rate adjustment approved by the City is contingent upon compliance with the Proposition 218 process.

10.9 Extraordinary Rate Request – Prop 218 Costs

The Contractor acknowledges that any extraordinary rate adjustment outside of the rate increase mechanism subject to the City's Proposition 218 notification process will cause the City to incur material costs in conducting an additional Proposition 218 process, and making any additional changes to the City billing system. The Contractor agrees to reimburse City of actual direct and indirect City costs incurred in implementing an Extraordinary Rate Request, including the corresponding Proposition 218 process extraordinary rate request.

10.10 Proposition 218 Protest Contractual Remedy

If a rate adjustment requested in accordance with Section 10 is verified for accuracy by the City and not implemented solely as a result of a 50% protest in accordance with Proposition 218, or if rates in effect are reduced as a result of an initiative measure authorized by Prop 218, the parties shall promptly meet and confer in good faith to determine how best to respond to such an occurrence, including reductions in service. If a mutually satisfactory arrangement cannot be agreed upon within sixty (60) days from the protest or initiative, Contractor may either: 1) accept that the rate will remain at the rates in effect prior to the requested rate increase, or 2) submit in writing to the City its intent to terminate the Agreement not less than one year after the date of such notice.

11 INDEMNITY, INSURANCE, PERFORMANCE BOND

11.1 Indemnification of City

The Contractor shall defend, with counsel acceptable to the City, indemnify and hold harmless, to the fullest extent allowed by law, City, its officers, officials, employees, volunteers agents and assignees (indemnitees), from and against any and all loss, liability, penalties, forfeitures, claims, demands, actions, proceedings or suits, in law or in equity, of every kind and description, (including, but not limited to, injury to and

death of any person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from or in any way connected with any or all of the following:

- A. The City's grant of this Franchise to Contractor;
- B. The acts and omissions of Contractor, its agents, employees, Contractors, and/or subcontractors, in exercising the privileges granted to it by this Agreement;
- C. The failure of Contractor, its agents, employees, Contractors, and/or subcontractors to comply with the provisions and requirements of this Agreement, applicable laws, ordinances and regulations, and/or applicable permits and licenses; and,
- D. The acts and omissions of Contractor, its agents, employees, Contractors, and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law.

The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, action, suit injury, death or damage is also caused in part by any of the indemnitees' active or passive negligence.

Contractor's indemnification obligations shall not be limited by the insurance provisions of this Agreement. Further, the Contractor's obligation to defend, hold harmless, and indemnify shall not be excused because of Contractor's inability to evaluate liability or because Contractor evaluates liability and determines that Contractor is not liable to the claimant. The Contractor must respond within thirty (30) days to the tender of a claim for defense and indemnity by the City, unless this time has been extended by the City.

The indemnity provisions of this Agreement shall survive the expiration of the period during which collection services are to be provided under this Agreement.

11.2 Hazardous Substance Indemnification

Without limiting the generality of Contractor's indemnity obligations pursuant to foregoing Section 11.1, The Contractor shall indemnify, defend with counsel acceptable to the City, protect and hold harmless the City, its officers, officials, employees, agents, assigns and any successor or successors to the City's interest from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages) injuries, hazardous materials response mediation and removal costs, losses, demands, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including but not limited to attorney's and expert witness fees and costs incurred in connection with defending against any of the foregoing or enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against City

or its officers, officials, employees, agents, assigns, or contactors arising from or attributable to acts or omissions including but not limited to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance or Hazardous Wastes at any place where the Contractor Transports, Transfers, Processes, stores, or disposes of Garbage pursuant to this Agreement except to the extent that Contractor can demonstrate that such Claim arises solely from the collection or deposit of Hazardous Wastes through the active negligence or willful misconduct by City employees acting within the ordinary course and scope of their employment. The foregoing indemnity is intended to operate as an agreement pursuant to section 107(e) of CERCLA, 42 U.S.C. section 9607(c) and California Health and Safety Code section 25364, to defend insure, protect, hold harmless and indemnify the City from liability under CERCLA, RCRA, other statutes or common law for any and all matters addressed in this section

11.3 Compliance Indemnification

Without limiting the generality of Contractor's indemnity obligations pursuant to foregoing Section 11.1, The Contractor's duty to defend and indemnify herein includes payments all fines and/or penalties imposed by CalRecycle, subject to the restrictions set forth in Public Resource Code Section 40059.1., if the requirements of AB 939, AB 341, AB 1826, and/or SB 1383 and corresponding regulations are not met by the Contractor with respect to the Contractors obligations under this Agreement, and such failure is: (i) due to the failure of Contractor to meet its obligations under this Agreement; or, (ii) due to Contractor delays in providing information that prevents Contractor or City from submitting reports required by AB 939, AB 341, AB 1826, and/or SB 1383 and corresponding regulations in a timely manner. This provision of this Section shall survive the termination or expiration of this Agreement.

11.4 Negligence or Willful Misconduct of City

Notwithstanding Sections 11.1, 11.2 and 11.3, the Contractor's obligation to indemnify, hold harmless and defend City, its officers and employees shall not extend to any loss, liability, penalty, pain, damage, action or suit arising or resulting from active acts or omissions constituting willful misconduct or negligence on the part of the City its officers or employees.

11.5 Indemnification by Subcontractors

Contractor shall require all subcontractors to enter into an agreement containing the indemnification provisions set forth Sections 11.1 through 11.3 in their entirety in which the subcontractor fully indemnifies the City in accordance with this Agreement.

11.6 Separate Counsel

City may elect to have separate legal counsel from the Contractor at any time at its sole discretion.

11.7 Proposition 218 Indemnification

Without limiting the generality of Contractor's indemnity obligations pursuant to foregoing Section 11.1, The Contractor shall defend with counsel acceptable to the City, hold harmless, and indemnify City, its officers, officials, employees, volunteers, agents and assignees (indemnitees) from and against any loss, liability, penalties, forfeiture, claims, damages, demands, actions, proceedings or suits, in law or equity, of every kind and description, arising from the City's setting of maximum service rates for collection services under this Agreement and/or in connection with the application of Article XIIC and Article XIID of the California Constitution to the imposition, payment, or collection of service rates and fees for services provided by Contractor under this Agreement, and/or in connection with the imposition or payment of Franchise Fees under this Agreement.

11.8 Insurance

11.8.1 General Requirements

The Contractor shall secure and maintain throughout the term of this Agreement insurance acceptable to City against claims for injuries to persons or damages to property which may arise from or in connection with the Contractor's performance of work or services under this Agreement. The Contractor's performance of work or services shall include performance by the Contractor's employees, agents, representatives and subcontractors.

11.8.2 Coverage and Limits

Insurance coverage shall include the following policies and minimum coverage amounts:

General Liability – A broad form comprehensive general liability policy with a minimum combined single limit of ten million dollars (\$10,000,000.00) per occurrence for bodily injury, personal injury, and property damage which may arise from operations, performed pursuant to this Agreement.

Automobile Liability – An auto liability policy with a minimum combined single limit of ten million dollars (\$10,000,000.00) per occurrence for bodily injury and property damage (include coverage for Hired and Non-owned vehicles) which may arise from operations, performed pursuant to this Agreement.

Workers' Compensation and Employers' Liability – A workers compensation policy with limits as required by the Labor Code of the State of California, and an employer's liability policy with a limit of three million dollars (\$3,000,000.00).

Employee Blanket Fidelity Bond – An employee blanket fidelity bond in the amount of one hundred thousand dollars (\$100,000.00), covering dishonesty, forgery, alteration, theft, disappearance, or destruction (inside or outside).

Hazardous Waste and Environmental Liability – A Hazardous Waste and environmental liability policy (or an endorsement to its general liability policy) covering environmental pollution and contamination. Said coverage shall be in the amount of not less than three million dollars (\$3,000,000.00) per occurrence, and ten million dollars (\$10,000,000.00) in the aggregate for Transportation, bodily injury and property damage and regulatory fines as a result of pollution conditions which may arise from operations, performed pursuant to this Agreement. This policy shall cover liability arising from the release of waste materials and/or irritants, contaminants or pollutants. Such coverage shall, if commercially available without involvement of City, automatically broaden in its form of coverage to include legislated changes in the definition of waste material and/or irritants, contaminants or pollutants. This policy shall stipulate this insurance is primary and no other insurance carried by City will be called upon to contribute to the loss suffered by the Contractor under this Agreement and waive subrogation against the City and other additional insureds.

11.8.3 Deductibles and Self-insured Retention

Any deductibles or self-insured retention must be declared to, and approved by, City. City shall not unreasonably withhold approval of any deductible or self-insured retention amounts where the Contractor can demonstrate a successful history of managing such deductibles or self-insured retention amounts.

11.8.4 Other Insurance Provisions

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

A. General Liability and Automobile Liability Coverages

1. The City of Indio, its elective and appointive boards, commissions, officers, employees, contractors, agents and volunteers are to be named as additional insureds on each of the policies and policy endorsements as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; Premises owned, leased or used by the Contractor; or vehicles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of

Indio, its elective and appointive boards, commissions, officials, employees, contractors, agents or volunteers.

2. The insurance required by this Agreement shall be with insurer carriers that are rated by Best as A- or better, and admitted to write insurance by the State of California. The insurance required by this Agreement is in addition to, and not in lieu or limitation of, the indemnification provisions above in this Agreement.
3. This policy shall be considered primary insurance as respects any other valid and collectible insurance the City of Indio may possess including any self-insured retention the City of Indio may have, and any other insurance the City does possess shall be considered excess insurance and shall not contribute with it.
4. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City of Indio, its officials, elective and appointive boards, commissions, employees, agents or volunteers.
5. This policy shall act for each insured, as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring the Contractor.

B. **Workers' Compensation and Employers Liability Coverage** - The insurer shall agree to waive all rights of subrogation against the City of Indio, its officials, elective or appointed officials, commissions, employees, agents and volunteers for losses arising from any work performed by the named insured for the City.

C. **All Coverages** - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party for whatever reason except after thirty (30) days' prior written notice (ten (10) days in the event of termination for non-payment) by certified mail, return receipt requested, has been given to City of Indio. Such notice shall be sent to the City Manager, City Attorney and City Clerk.

11.8.5 Subcontractors Required to Carry Insurance

In the event any services required under this Agreement are provided by a subcontractor, Contractor shall require any such subcontractor to provide insurance coverages in accordance with this insurance coverages required by this Agreement. The Contractor shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

11.8.6 Rights of Subrogation

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

11.8.7 Modification of Insurance Requirements

The insurance requirements provided in this Agreement may be modified or waived by the City, in writing, upon the request of the Contractor if the City determines such modification or waiver is in the best interest of City considering all relevant factors, including exposure to City.

11.8.8 Evidence of Coverage; Insurance Repository

Contemporaneously with the execution of this Agreement, the Contractor shall file certificates and/or endorsements of insurance evidencing the above-required insurance coverage with the City Clerk. From time to time thereafter, Contractor shall provide substitute certificates or endorsements at least thirty (30) days prior to any changes in coverage or limits, or a change in the carrier. In addition, City shall have the right of inspection of all insurance policies required by this Agreement. The Contractor shall establish an insurance policy repository and to maintain copies of insurance policies required pursuant to this Agreement for fifty (50) years after the end of the Term during which collection services are to be provided pursuant to this Agreement. The Contractor shall notify City's Risk Manager and City Attorney before destroying copies of such policies, and the Contractor shall provide copies or originals of such policies to City. This provision shall survive the expiration of the Term of this Agreement.

11.9 Performance Bond or Letter of Credit

Upon the Effective Date of this Agreement, Contractor shall provide a performance bond or letter of credit bond (collectively 'performance bond') in a form acceptable to City. Performance Bond shall be an amount equal to two million dollars (\$2,000,000). City shall decide whether the Contractor shall provide a performance bond or a letter or credit.

11.10 Performance Bond

If selected by City, the performance bond shall be executed by a surety by the Contractor that is acceptable to the City; an admitted surety Contractor licensed to do business in the State of California; has an 'A:V11' or better rating by A. M. Best or Standard and Poor's; and is included on the list of surety companies approved by the Treasurer of the United States. The performance bond shall be on terms and in a form acceptable to the City Attorney. The performance bond shall serve as security for the faithful performance by the Contractor of all the provisions and obligations of this Agreement.

11.11 Letter of Credit

Contractor may furnish a letter of credit in lieu of a performance bond subject to City approval. The letter of credit must be issued by an FDIC insured banking institution chartered to business in the state of California, in the City's name, and be callable at the discretion of the City. Nothing in this section shall, in any way, obligate the City to accept a letter of credit in lieu of the performance bond.

11.12 Failure to Perform; Forfeiture of Performance Bond

Upon Contractor's failure to pay the City an amount due, or to perform any services under this Agreement, the performance bond may be assessed by the City, for purposes including, but not limited to:

- A. Reimbursement of costs borne by the City to correct any violations of this Agreement not corrected by Contractor, after City provides notice in accordance with Section 12.
- B. To provide monetary remedies or to satisfy damages assessed against Contractor due to a material breach of this Agreement; or
- C. To satisfy an order of a court or a mediator.

The Contractor shall deposit a replacement instrument sufficient to restore the performance bond to the original amount within thirty (30) days after notice from the City that any amount has been levied against the performance bond. Contractor shall be relieved of the foregoing requirement to replenish the Performance Bond during the pendency of an appeal from the City's decision to draw on the Performance Bond.

In the event the City draws on the performance bond, all of City's costs of collection and enforcement of the provisions relating to the performance bond called for by this section, including reasonable attorneys' fees and costs, shall be paid by the Contractor.

12 DEFAULT AND REMEDIES; ADMINISTRATIVE REMEDIES; TERMINATION

12.1 Events of Default

All provisions of this Agreement to be performed by the Contractor are considered material. Without limiting the generality of the foregoing, each of the following shall constitute an event of default.

- A. **Fraud or Deceit or Misrepresentation.** If the Contractor engages in, or attempts to practice, any fraud or deceit upon the City or makes an intentional misrepresentation regarding material information to the City.
- B. **Insolvency or Bankruptcy.** If the Contractor becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition or takes steps to liquidate its assets.
- C. **Failure to Maintain Coverage.** If the Contractor fails to provide or maintain in full force and effect the workers' compensation, liability, or indemnification coverage as required by this Agreement.
- D. **Violations of Regulation.** If the Contractor violates any law or regulation or orders or filings of any regulatory body having jurisdiction over the Contractor or City relative to the performance of this Agreement, provided that the Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise and this Agreement shall be deemed to have occurred until a final decision adverse to the Contractor is entered.
- E. **Failure to Perform.** If the Contractor ceases to provide Collection, processing or Recycling services as required under this Agreement over all or a substantial portion of its franchise area for a period of two (2) consecutive days or more, unless excused per 12.4 or 12.5.
- F. **Failure to Pay.** If the Contractor fails to make any payments required under this Agreement and/or refuses to provide the City, within ten (10) days of the demand, with required information, reports, and/or records in a timely manner as provided for in the Agreement.
- G. **Acts or Omissions.** Any other act or omission by the Contractor related to performance under this Agreement which violates the terms, conditions, or requirements of this Agreement, the California Integrated Waste Management Act of 1989, any Environmental Law as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the Contractor cannot reasonably correct or

remedy the breach within the time set forth in such notice, if the Contractor should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

- H. **False or Misleading Statements.** Any representation or disclosure made to the City by the Contractor in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.
- I. **Attachment.** There is a seizure of, attachment of, or levy on, the operating equipment of the Contractor, including without limits its equipment, maintenance or office Facilities, or any part thereof, which make the Contractor's performance under this Agreement impracticable.
- J. **Failure to Provide Assurance of Performance.** If the Contractor fails to provide reasonable assurances of performance as required under Section 12.7.
- K. **Failure to Implement Collection Program.** If the Contractor fails to implement a collection program that complies with the requirements.
- L. **Failure to Provide Processing Capacity.** If the Contractor fails to provide adequate processing capacity.
- M. **Failure to Comply with Other Requirements of SB 1383 Regulations.** If the Contractor fails to comply with other requirements of the Agreement including public education, reporting, contamination monitoring, recordkeeping, or other obligations of this Agreement that delegate the City's responsibility and/or authority under SB 1383 Regulations.

The Contractor shall be given seventy-two (72) hours from notification by the City to cure any default arising under subsections C, D, E, F, G, H, I J, K, L, M, and N provided, however, that the City shall not be obligated to provide the Contractor with a notice and cure opportunity if the Contractor has committed the same or similar breach within a six-month period. City is not obligated to provide an opportunity to cure a default arising under the other subsections.

12.2 Criminal Activity of Contractor

Should any of the Contractor's officers, directors or managerial employees with oversight over this Agreement be found guilty of embezzlement, extortion, racketeering, false claims, false statements, forgery or any other similar felony involving business dishonesty, the Contractor shall either terminate from

employment or remove from office the convicted employee, officer or director and eliminate the ability of such employee, officer or director to manage, supervise or influence the decisions or actions of the Contractor or any parent company of the Contractor. If the Contractor fails to comply with the foregoing obligation, the Contractor may be considered in breach of this Agreement and subject to the City's remedies for default as set forth under this Agreement.

12.3 Right to Terminate Upon Default

Upon an uncured default or breach of the Agreement by the Contractor, the City shall have the right to terminate this Agreement upon ten (10) calendar days' notice if the public health or safety is threatened, or otherwise a thirty (30) calendar days' notice, but without the need for any hearing, suit or legal action.

The City's rights to terminate this Agreement, or to take possession of the Contractor's Facility are not exclusive, and the City's termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies which the City may have.

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

12.4 Force Majeure

Contractor shall not be in default under Section 12.1 this Agreement in the event that the Collection, Transportation and/or Disposal services of Contractor are temporarily interrupted for any of the following reasons: riots; war or national emergency declared by the President or Congress and affecting the City of Indio; sabotage; civil disturbance; insurrection; explosion; natural Disasters such as floods, earthquakes, landslides and fires (including brushfires); pandemics, quarantines, or other catastrophic events which are beyond the reasonable control of Contractor. 'Other catastrophic events' does not include the financial inability of Contractor to perform or failure of Contractor to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public entity where such failure occurs where Contractor has failed to exercise reasonable diligence.

12.5 Labor Unrest

Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by the Contractor's employees or directed at the Contractor may be considered an excuse from performance to the

extent that the Contractor meets the terms of this Agreement including this Section and Section 12.6 (Procedures in Event of Excused Performance).

Within ninety days after the Effective Date, Contractor shall prepare (at its own expense) and provide to the City a Labor Unrest Contingency Plan describing how services will be provided during a period of labor unrest. The Labor Unrest Contingency Plan is subject to City approval and Contractor shall amend the plan to meet City requirements, including reasonably demonstrating how City's basic Collection and sanitary needs will be met to the City's satisfaction. The Labor Unrest Contingency Plan shall address, at a minimum, the priority of Collection by Customer type (residents, hospitals, restaurants, nursing homes, etc.) and waste streams, additional collection options to be provided (drop-off sites, etc.), source of additional personnel to be utilized and detailed communications procedures to be used.

During the Term of this Agreement, Contractor shall notify City Manager one hundred eighty (180) days prior to the expiration of any labor agreement. Thereafter, Contractor shall keep City informed on a monthly basis of the status of Contractor's labor agreement negotiations.

Notwithstanding other remedies to which the City shall be entitled under this Agreement, in the event of Contractor's failure to perform, or anticipated failure to perform, due to labor unrest, Contractor shall: (i) meet the requirements agreed to in the Labor Unrest Contingency Plan; (ii) meet requirements of Section 12.6 (Procedures in Event of Excused Performance).

Contractor shall meet all requirements under this section or City may choose to revoke the excuse from performance offered under Section 12.6 (Procedures in Event of Excused Performance) of this Agreement and may choose to use enforcement provisions under this Agreement, including Sections 12.1 and 12.3 in which case Contractor is not excused from performance and Contractor shall be obligated to continue to provide service notwithstanding the occurrence of any or all such events. The City, in its sole discretion, may deem any failure to continue performance an event of default pursuant to Section 12.1 (Events of Default).

12.6 Procedures in Event of Excused Performance

Contractor shall have the right to request an excuse from performance for interruption or stoppage of its services under this Agreement. If Contractor claims an excuse from performance under Section 12.5 (Labor Unrest) or Section 12.4 (Force Majeure) Contractor shall, no later than two (2) days after service has stopped, notify the City of the facts constituting such cause and asserting its claim to excuse under this Section.

Throughout the service disruption, Contractor shall: (i) Provide City with a minimum of daily service updates; and (ii) notify customers on a real-time basis as to alternative

Collection procedures. At a minimum, the Contractor shall update its website and shall provide ongoing updates to City for use on its website, and a 'reverse 911' contact method to reach all possible Customers. Should enhanced contact technologies become available, the Contractor shall use such methods upon approval from City.

The interruption or discontinuance of the Contractor's services caused by one or more of the events excused shall not constitute a default by the Contractor under this Agreement. Notwithstanding the foregoing, if the Contractor is excused from performing its obligations under this Agreement for any of the causes listed in this section for a period of thirty (30) days or more, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days written notice.

12.7 Assurance of Performance

The City may, at its option and in addition to all other remedies it may have, demand from the Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the City may reasonably require. If the Contractor fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by the City, such failure or refusal shall be an event of default.

12.8 Liquidated Damages

12.8.1 General.

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

12.8.2 Service Performance Standards; Liquidated Damages

The parties further acknowledge that consistent, reliable Solid Waste Collection Service is of utmost importance to the City and that the City has considered and relied on the Contractor's representations as to its quality-of-service commitment in awarding the Franchise to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if the Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, the City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which the City will suffer. Therefore, without prejudice to the City's right to treat such non-performance as an event of default under this section, the parties agree that the following liquidated damage amounts shown below in Table 2 represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to the City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

Table 2 – Liquidated Damages

Event of Non-Performance		Liquidated Damage
1.	Use of Unauthorized Facilities. For each individual occurrence of delivering Solid Waste to a Facility other than an Approved/Designated Facility for each Discarded Material type under this Agreement.	\$5,000 First offense \$25,000 each subsequent offense.
2.	Failure to provide Recyclable Material and Organic Material Collection services to every Customer.	\$500/ per Customer
3.	Failure of the Approved Source Separated Recyclable Materials Processing Facility or Approved Organic Waste Processing Facility to meet SB 1383 Regulatory definition of a Designated Source Separated Organic Waste Processing Facility.	\$50/ Ton in the quarterly reporting period when the failure occurred
4.	Failure of Approved Facility to Meet Limits on Organic Waste in Materials Sent to Disposal sent to Disposal exceeds the thresholds.	\$50/ per ton in the quarterly reporting period when the failure occurred

5.	Failure to Perform Contamination Monitoring Requirements. For each failure to conduct Hauler Route contamination monitoring.	\$150.00/ per Hauler Route/ per occurrence
6.	Failure to Comply with Container Labeling and Colors. For each occurrence of Contractor's failure to comply with Container labeling and color requirements.	\$50.00/ per Container/ per occurrence
7.	Failure to Perform Public Education and Outreach. For each failure to perform any individual education and outreach activity as required and, in the timeframe, specified by this Agreement.	\$500.00/ per activity
8.	Failure to Submit Reports or Allow Access to Records. For each failure to submit any individual report or provide access to records in compliance with and in the timeframe specified in this Agreement. Incomplete and/or inaccurate reports shall be considered a failure to submit until such time as all information in the report has been provided in a complete and accurate form. In the event City determines an errant or incomplete report more than ten (10) Business Days after submittal by Contractor, Contractor shall be given ten (10) Business Days to complete and correct and any pending Liquidated Damages shall be tolled during that period.	\$500.00/ per report/ per occurrence
9.	Failure to Conduct Compliance Tasks. For each failure to conduct any compliance review, Solid Waste evaluations.	\$500.00/ per occurrence
10.	Failure to Issue Contamination Notices. For each failure of Contractor Collection personnel to issue contamination notices and contaminating Processing fee notices and maintain documentation of issuance.	\$50.00/ per Hauler Route/ per day
11.	Failure to Conduct Follow-Up Inspections. For each failure to conduct a follow-up inspection.	\$50.00/ per occurrence
12.	Failure or neglect to resolve each Complaint within the time set forth in this Agreement.	\$100.00/ per occurrence/ per customer

13.	Failure to clean up spillage or litter caused by Contractor.	\$500.00/ per occurrence/ per location
14.	Failure to repair damage to customer property caused by Contractor or its personnel.	\$500.00/ per occurrence/ per location
15.	Failure to repair damage to City property caused by Contractor or its personnel.	\$500.00/ per occurrence
16.	Failure to repair damage to City streets caused by Contractor or its personnel.	\$1,500.00/ per occurrence plus actual cost of repair to City's satisfaction
17.	Failure to maintain equipment in a clean, safe, and sanitary manner	\$250.00/ per occurrence/ per day
18.	Failure to have a vehicle operator properly licensed.	\$250.00/ per occurrence per day
19.	Failure to maintain or timely submit to City all documents and reports required under the provisions of this Agreement.	\$250.00/ per occurrence per day
20.	Failure to repair or replace damaged carts within the time required by this Agreement.	\$100.00/ per occurrence per day

The City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of Customer Complaints. Prior to assessing liquidated damages, the City shall give the Contractor notice of its intention to do so. The notice will include a brief description of the incident(s)/nonperformance. The Contractor may review (and make copies at its own expense) all non-confidential information in the possession of the City relating to incident(s)/nonperformance. The Contractor may, within ten (10) days after receiving the notice, request a meeting with the City Manager or his or her designee. The Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. The City Manager or his or her designee will provide the Contractor with a written explanation of his or her determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of the City Manager or his designee, acting reasonably and in good faith, shall be final.

12.8.3 Amount

The City may assess liquidated damages for each calendar day or event, as appropriate, that the Contractor is determined to be liable in accordance with Table 2 this Agreement.

12.8.4 Timing of Payment

The Contractor shall pay any liquidated damages assessed by the City within ten (10) days after they are assessed. If they are not paid within the ten (10) calendar day period, the City may withhold amount due from the next monthly payment to Contractor, may proceed against the bond required by the Agreement or order the termination of the franchise granted by this Agreement, or exercise any other right or remedy available to City under this Agreement or at law or in equity, or any combination of these remedies.

12.9 Review of Service and Performance

The City may hold a public hearing on or about the two-year anniversary of the start of this Agreement, and annually thereafter, at which time the Contractor shall be present and shall participate, to review the services provided under this Agreement, source reduction, processing and other Diversion services and overall performance. The purpose of the hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, Recycling, Processing and Disposal to achieve a continuing, advanced Solid Waste collection and Diversion services, source reduction and recycling and Disposal system; and to ensure services are being provided with adequate quality, effectiveness and economy.

Forty-five (45) days after receiving notice from the City of a performance review hearing, the Contractor shall, at a minimum, submit a report to the City includes: (i) recommendations for changes and/or new services to improve the City's ability to significantly exceed the goals of AB 939 and to contain costs and minimize impacts on rates; and (ii) any specific plans for provision of changed or new services by the Contractor.

The reports required by this Agreement regarding Customer Complaints shall be used as one basis for review. The Contractor may submit other relevant performance information and reports for consideration. The City may request the Contractor to submit specific information for the hearing. In addition, any Customer may submit comments or Complaints during or before the hearing, either orally or in writing, and these shall be considered.

Topics for discussion and review at the performance review hearing shall include, but shall not be limited to, services provided, route audit results, feasibility of providing

new services, application of new technologies, Customer Complaints, amendments to this Agreement, developments in the law, new initiatives for significantly exceeding AB 939's goals, regulatory constraints, and the Contractor's performance. The City and the Contractor may each select additional topics for discussion at any performance review hearing.

Not later than sixty (60) days after the conclusion of each performance review hearing, the City may issue a report. As a result of the review, the City may require the Contractor to provide expanded or new services within a reasonable time and for reasonable rates and compensation and the City may direct or take corrective actions for any performance inadequacies.

12.10 Performance Satisfaction Survey

If requested by the City, the Contractor will create and conduct a survey at the Contractor's expense in preparation for any performance review meeting. City shall notify the Contractor of its desire for such a survey at least ninety (90) days in advance of the performance review meeting. The purpose of the survey is to determine Customer satisfaction with current Collection services and Customer service provided by Contractor. The survey will be distributed to a minimum of ten percent (10%) of the Residential Customers and ten percent (10%) of the Commercial Customers, selected at random. The City may instruct the Contractor to send out separate Single-Family and Multi-family/Commercial surveys. The Contractor shall obtain City's approval of each survey's content, format, and mailing list prior to its distribution. The City may choose to write or re-write the survey.

City may require that Contractor have Customer responses to the survey returned directly to City. The survey results shall be made available to the City thirty (30) days prior to the Solid Waste and Diversion services and performance review meeting.

13 OTHER AGREEMENT OF THE PARTIES

13.1 Relationship of Parties

The parties intend that Contractor shall perform the services required by this Agreement as an independent Contractor engaged by the City and not as an officer or employee of the City nor as a partner of or joint venture with the City. No employee or agent or Contractor shall be or shall be deemed to be an employee or agent of the City. Except as expressly provided in this Agreement, the Contractor shall have the exclusive control over the manner and means of conducting the Solid Waste Collection Services performed under this Agreement, and all Persons performing such services. The Contractor shall be solely responsible for the acts and omissions of its officers, employees, companies, subcontractors, Affiliates and agents. Neither the Contractor nor its officers, employees, companies, subcontractors, Affiliates and agents shall obtain any rights to retirement

benefits, workers' compensation benefits, or any other benefits which accrue to the City employees by virtue of their employment with the City.

13.2 Permits and License

Contractor shall obtain, at its own expense, all permits and a City of Indio business license required by law or ordinance and maintain same in full force and effect throughout the term of this Agreement. Contractor shall provide proof of such permits, business license or approvals and shall demonstrate compliance with the terms and conditions of such permits, business license and approvals upon the request of the City Manager.

13.3 Ownership of Electronic and Written Materials

All reports, documents, brochures, public education materials, and other written, printed, electronic or photographic materials developed by City or Contractor in connection with the services to be performed under this Agreement, whether developed directly or indirectly by City or Contractor shall be and shall remain the property of City without limitation or restrictions on the use of such materials by City. This section does not apply to ideas or concepts described in such materials and does not apply to the format of such materials.

13.4 Compliance with Law

In providing the services required under this Agreement, the Contractor shall at all times during the Term of this Agreement, at its sole cost, comply with all applicable laws and regulations of the United States, the State of California, and local agencies. The City shall comply with all applicable regulations promulgated by federal, State, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term.

13.5 Governing Law

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

13.6 Conflict of Interest

The Contractor warrants that it has not employed any Officer or employee of the City nor offered any gift, gratuity, contingent fee nor any other thing of value to such Officer or employee of the City in order to secure his or her assistance in obtaining this Agreement. The Contractor agrees that it will not, during the Term, give or offer anything of value to a City Officer or employee, the offer or receipt of which would violate California law.

13.7 Mediation and Arbitration

Any controversy or claim arising out of or relating to this Agreement, the relationship resulting in or from this Agreement, or breach of any duties under this Agreement shall be settled by arbitration in accordance with the arbitration rules of the American Arbitration Association which may be found at www.adr.org. All hearings will be held in Indio, California before an arbitrator who is a licensed attorney with at least 15 years of experience. A judgment upon the award rendered by the arbitrator shall be entered in a court with competent jurisdiction. The Federal Arbitration Act (Title 9 U.S. Code Section 1 et. seq.) shall govern all arbitration and confirmation proceedings.

As a condition precedent to the filing of an arbitration claim, the parties agree to first mediate any claims between them. Any party refusing to mediate shall not prevent the other party or parties from pursuing their claims in arbitration. The parties shall share the cost of mediation equally. Nothing in this Agreement shall be construed to prevent any party's use of injunction, and/or any other prejudgment or provisional action or remedy. Any such action or remedy will not waive the moving party's right to compel arbitration of any dispute.

13.8 Jurisdiction

Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits.

With respect to venue, the parties agree that this Agreement is made in and will be performed in Riverside County.

13.9 Assignment

Except as may be provided for in Section 12, neither party shall assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this section when used in reference to the Contractor, 'assignment' shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of the Contractor's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of the Contractor to a third party provided said sale, exchange or transfer may result in a change of control of the Contractor; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which results in a change of ownership

or control of the Contractor; (iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of the Contractor's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of the Contractor.

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

If the Contractor requests the City's consideration of and consent to an assignment, the City may deny or approve such request in its complete discretion, except for an assignment to an Affiliate, which the City shall deny or approve in its reasonable discretion. No request by the Contractor for consent to an assignment need be considered by the City unless and until the Contractor has met the following requirements:

- A. Contractor shall pay City its reasonable expenses for attorney's and/or consultant's fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment. An advance payment towards expenses may be requested by City prior to City consideration of any assignment request and Contractor shall be responsible to pay all costs incurred by City in considering a request for assignment, including those in excess of the aforesaid deposit amount, regardless of whether City consents to the assignment.
- B. The proposed assignee must furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years. If assignment is to an Affiliate and Affiliate provides a performance guarantee from the parent Contractor, the parent Contractor's audited financial statements may be provided;
- C. A pro forma financial statement (income statement and balance sheet) for the proposed assignee with the projected results of operations assuming that the assignment is completed. Such pro forma financial statement shall reflect any

debt to be incurred by the assignee as part of the acquisition of Contractor's operations.

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

Under no circumstances shall the City be obliged to consider any proposed assignment by the City if the Contractor is in default at any time during the period of consideration.

13.10 Contracting or Subcontracting

Contractor shall not engage any subcontractors to perform any of the services required by it under this Agreement without the prior written approval of the City. Contractor shall notify the City no later than ninety (90) days prior to the date on which it proposes to enter into a subcontract. City may approve or deny any such request in its sole discretion if the proposed subcontractor is to perform serviced required under Articles 5, 4, 5 or 6. City's consent to a subcontract and/or subcontractor shall not be unreasonably withheld as to other aspects of this Agreement which are not deemed to involve essential services to the City.

Contractor may, in cases of emergency, engage subcontractors for up to seven (7) consecutive days. Contractor shall give prompt notice to City of any such emergency subcontracting and any such engagement must be approved by City in writing if it is to extend beyond seven (7) days.

13.11 Binding on Assigns

The provisions of this Agreement shall inure to the benefit of and be binding on the permitted assigns of the parties.

13.12 Transition to the Next Contractor

If the transition of services to another Contractor occurs through expiration of the Term, default by the Contractor and termination by City, or otherwise (other than breach by City), the Contractor will cooperate with the City and subsequent Contactor(s) to assist in an orderly transition which will include, but not be limited to, the Contractor providing detailed route lists, billing and service-level information and other operating records needed to service all properties covered by this Agreement. The failure to cooperate with City following termination shall be conclusively presumed to be grounds for specific performance of this covenant and/or other equitable relief necessary to enforce this covenant.

Contractor shall provide a new service provider with all keys, security codes and remote controls used to access garages and Bin enclosures. Contractor shall be responsible for coordinating transfer immediately after Contractor's final pickups, so as not to disrupt service. Contractor shall provide City with detailed route sheets containing service names and addresses, Billing names and addresses, monthly rate and Service Levels at least ninety (90) days prior to the transition date, and provide an updated list two (2) weeks before the transition and a final list of changes the day before the transition. Contractor shall provide means of access to the new service provider at least one full Work Day prior to the first day of Collection by another party, and always within sufficient time so as not to impede in any way the new service provider from easily servicing all Containers.

Contractor shall cooperate in good faith with City and new service provider in scheduling exchanges of Contractor containers with Containers provided by the new service provider so as to assure that Customers neither need to find storage for two (2) sets of Containers nor go without a Container for an inconvenient length of time.

13.13 Parties in Interest

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

13.14 The Contractor's Investigation

The Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed by it.

13.15 Condemnation

The City fully reserves the rights to acquire the Contractor's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of

eminent domain. This provision is additive, and not intended to alter the rights of the parties.

13.16 Notice

All notices, demands, requests, proposals, proposals approvals, consents and other communications which this Agreement requires, authorizes or contemplates shall be in writing and shall either be personally delivered to a representative of the parties at the address below, sent overnight through a national courier, or, addressed as follows:

If to the City:

If to Contractor:

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this section. Notice shall be deemed given on the day it is personally delivered, or, if sent via courier the day received, or five (5) business days from the date it is deposited in the mail.

13.17 Representatives of the Parties

The City Council may delegate, in writing, authority to the City Manager, and/or to other City employees and may permit such employees, in turn, to delegate in writing some or all of such authority to subordinate employees. The Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

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

13.18 City Free to Negotiate with Third Parties

Notwithstanding the exclusive nature of the franchise, the City may investigate all options for the Collection, transporting, Recycling, Processing and Disposal of Solid Waste at any time prior to the expiration of the Term. Without limiting the generality of the foregoing, the City may solicit proposals from the Contractor and

from third parties for the provision of Collection, Disposal, Recycling, Organic waste services and Processing, and any combination thereof, and may negotiate and execute agreements for such services which will take effect upon the expiration or earlier termination under Section 12 of this Agreement.

13.19 Compliance with Municipal Code

The Contractor shall comply with those provisions of the municipal code of the City which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement. In the event that Contractor believes any such amendment is inconsistent with this Agreement, the parties agree to meet and confer in good faith to find a mutually acceptable resolution.

13.20 Privacy

The Contractor shall strictly observe and protect the rights of privacy of Customers. Information identifying individual Customers or the composition or contents of a Customer's waste stream shall not be revealed to any Person, governmental unit, private agency, or Contractor, unless upon the authority of a court of law, by statute, or upon valid authorization of the Customer. This provision shall not be construed to preclude the Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by AB 939. This provision shall not apply to reports or records provided to City pursuant to this Agreement so long as City maintains reports or records with Customer identification or confidential information in accordance with this section, in which case this section shall apply to City in the same manner to which it applies to Contractor.

13.21 Compliance with Immigration Laws.

The Contractor agrees that, in the performance of this Agreement, it will comply with all immigration laws.

13.22 Guarantee of Contractor's Performance

_____, a corporation which owns all of the issued and outstanding common stock of Contractor has entered into a separate agreement (in a form acceptable to City Attorney) to guarantee the Contractor's performance of this Agreement. The Guarantee is being provided concurrently with the Contractor's execution of this Agreement.

13.23 Attorney's Fees

In any action or proceeding to enforce or interpret any of the terms or conditions of this Agreement the prevailing party shall be entitled to an award to attorney's fees and expert witness fees in the amount reasonably incurred in the prosecution or defense

of such action. The term “prevailing party” shall mean the party entitled to recover costs of suit, upon the conclusion of the matter, in accordance with the laws of the State of California.

14 MISCELLANEOUS AGREEMENTS

14.1 Entire Agreement

This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered in this Agreement. No verbal agreement or conversation with any office, agent, or employee of the City, either before, during, or after the execution of this Agreement, shall affect or modify any of the Terms or obligations in this Agreement contained nor such verbal agreement or conversation entitle the Contractor to any additional payment whatsoever under the terms of this Agreement.

14.2 Section Headings

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

14.3 Waiver

Waiver of any term or condition contained in this Agreement by any party to the Agreement shall be in writing and shall not be construed as a waiver of a subsequent breach or failure of the same term or condition or a waiver of any other term or condition contained in the Agreement. The subsequent acceptance by City of any fee, or any other monies which become due from Contractor to City shall not be deemed to be a waiver by City of any breach or violation of any term, covenant or condition of this Agreement.

14.4 References to Laws and Other Agreements

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all agreements heretofore entered into by the parties and the City.

14.5 Interpretation

This Agreement, including the exhibits attached hereto, shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

14.6 Amendments

This Agreement may not be modified or amended in any respect except by a writing duly executed by the parties. Purported oral amendments shall be void and of no force or effect.

14.7 Severability

If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding, such term or provision of this Agreement or the application of this Agreement to other situations shall remain in full force and effect.

Notwithstanding the foregoing, if any material term or provision of this Agreement or the application of such material term or condition to a particular situation is held to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the parties hereto agree to work in good faith and fully cooperate with each other to amend this Agreement.

14.8 Exhibits

Each of the Exhibits identified in this Agreement is attached hereto and incorporated herein and made a part hereof by this reference.

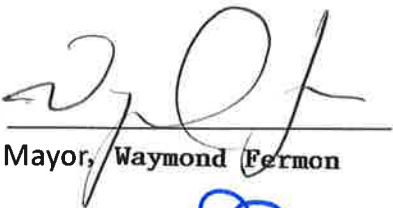
14.9 Non-Waiver Provision

Failure of either party to exercise any of the rights or remedies set forth in this Agreement within the time periods provided shall not constitute a waiver of any rights or remedies of that party with regard to that failure to perform or subsequent failures to perform whether determined to be a breach, excused performance or unexcused defaults by the other party. The subsequent acceptance by either party of any moneys that become due under this Agreement shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.


IN WITNESS WHEREOF, the City and Contractor have executed this agreement as of the day and year first above written.

City of Indio ("City")
("City")

Burrtec Waste & Recycling Services, LLC
("Contractor")

By: 
Mayor, Waymond Fermon

By: 
Title: Cole Burr, President

ATTEST: 
CITY CLERK, Cynthia Hernandez

APPROVED AS TO FORM:

City Attorney, **Roxanne Diaz**

EXHIBIT 1

CITY OF INDIANO
Rate Exhibit 1

RESIDENTIAL

Proposed Rates

	<u>Service</u>	<u>Disposal Total</u>	<u>AB939</u>	<u>Total</u>
<u>Direct Bill</u>				
Curb Service (1)	\$ 15.33	\$ 10.57	\$ 0.23	\$26.13
Yard Service	\$ 16.80	\$ -	\$ -	\$16.80
Additional Cart	\$ 2.05	\$ 9.12	\$ -	\$11.17

	<u>Service</u>	<u>Disposal Total</u>	<u>AB939</u>	<u>Total</u>
<u>Tax Roll</u>				
Curb Service (1)	\$ 10.30	\$ 10.57	\$ -	\$20.87
Yard Service	\$ 16.80	\$ -	\$ -	\$16.80
Additional Cart	\$ 2.05	\$ 9.12	\$ -	\$11.17

	<u>Service</u>	<u>Disposal Total</u>	<u>AB939</u>	<u>Total</u>
<u>Other Residential Fees:</u>				
New Start	\$ 16.04	\$ -	\$ -	\$16.04
Re-Start	\$ 16.04	\$ -	\$ -	\$16.04
Special Pick Up	\$ 79.60	\$ -	\$ -	\$79.60

COMMERCIAL TRASH

Proposed Rates

Service	Bin Size	Frequency					
		1	2	3	4	5	6
	2	\$ 49.32	\$ 87.37	\$ 125.03	\$ 162.15	\$ 198.46	\$ 239.16
	3	\$ 69.42	\$ 131.30	\$ 187.79	\$ 243.26	\$ 297.70	\$ 358.96
	4	\$ 98.81	\$ 174.90	\$ 250.96	\$ 324.33	\$ 397.04	\$ 478.30
	6	\$ 148.14	\$ 260.45	\$ 375.51	\$ 485.53	\$ 595.90	\$ 726.30

Disposal

2	\$ 38.11	\$ 74.97	\$ 112.24	\$ 149.57	\$ 186.17	\$ 223.83
3	\$ 57.16	\$ 112.84	\$ 168.52	\$ 224.06	\$ 279.58	\$ 335.51
4	\$ 76.17	\$ 150.59	\$ 224.83	\$ 298.55	\$ 372.93	\$ 447.40
6	\$ 114.29	\$ 225.67	\$ 337.06	\$ 446.60	\$ 559.18	\$ 671.13

AB939

2	\$ 2.00	\$ 4.00	\$ 6.00	\$ 8.00	\$ 9.99	\$ 11.99
3	\$ 2.99	\$ 6.00	\$ 8.98	\$ 12.00	\$ 14.99	\$ 18.06
4	\$ 4.00	\$ 8.00	\$ 11.99	\$ 15.99	\$ 19.98	\$ 23.98
6	\$ 5.98	\$ 11.99	\$ 18.00	\$ 23.97	\$ 29.54	\$ 35.97

SB1383 Adjustment

2	\$ 2.40	\$ 4.46	\$ 6.52	\$ 8.57	\$ 10.57	\$ 12.73
3	\$ 3.47	\$ 6.70	\$ 9.79	\$ 12.84	\$ 15.87	\$ 19.09
4	\$ 4.79	\$ 8.93	\$ 13.07	\$ 17.12	\$ 21.17	\$ 25.45
6	\$ 7.19	\$ 13.34	\$ 19.57	\$ 25.62	\$ 31.74	\$ 38.41
Total	\$ 91.83	\$ 170.80	\$ 249.79	\$ 328.29	\$ 405.19	\$ 487.71
	\$ 133.04	\$ 256.84	\$ 375.08	\$ 492.16	\$ 608.14	\$ 731.62
	\$ 183.77	\$ 342.42	\$ 500.85	\$ 655.99	\$ 811.12	\$ 975.13
	\$ 275.60	\$ 511.45	\$ 750.14	\$ 981.72	\$ 1,216.36	\$ 1,471.81

Other Commercial Fees:

SB1383

	Service	Disposal	Adjustment	Total
Delivery Charge	\$ 27.06	\$ -	\$ 0.72	\$ 27.78
New Start	\$ 16.04	\$ -	\$ 0.43	\$ 16.47
Re Start	\$ 16.04	\$ -	\$ 0.43	\$ 16.47
Pull out 20ft	\$ 44.25	\$ -	\$ 1.18	\$ 45.43
Locking Container	\$ 73.05	\$ -	\$ 1.95	\$ 75.00
Replace Locking Bar	\$ 48.70	\$ -	\$ 1.30	\$ 50.00
Saturday Service/Month	\$ 44.25	\$ -	\$ 1.18	\$ 45.43
3 Yard Construction Bin/Pull	\$ 85.28	\$ 92.67	\$ 4.76	\$ 182.71
4 Yard Construction Bin/Pull	\$ 85.28	\$ 112.42	\$ 5.29	\$ 202.99
2yd Extra Empty	\$ 34.59	\$ 8.82	\$ 1.16	\$ 44.57
3yd Extra Empty	\$ 51.84	\$ 13.18	\$ 1.74	\$ 66.76
4yd Extra Empty	\$ 69.09	\$ 17.58	\$ 2.31	\$ 88.98
6yd Extra Empty	\$ 103.74	\$ 26.40	\$ 3.48	\$ 133.62
2yd Extra Empty Compactor (3x)	\$ 103.77	\$ 26.42	\$ 3.48	\$ 133.67
3yd Extra Empty Compactor (3x)	\$ 155.51	\$ 39.57	\$ 5.21	\$ 200.29
4yd Extra Empty Compactor (3x)	\$ 207.26	\$ 52.72	\$ 6.94	\$ 266.92
6yd Extra Empty Compactor (3x)	\$ 311.23	\$ 79.18	\$ 10.43	\$ 400.84
96g Trash Low Volume	\$ -	\$ -	\$ -	\$ 26.34
96g Recycle Low Volume	\$ -	\$ -	\$ -	\$ 13.17

CITY OF INDIO
Rate Exhibit 1

COMMERCIAL

Proposed Compactor Rates

Service	Bin Size	Frequency					
		1	2	3	4	5	6
<u>Disposal</u>	2	\$ 147.96	\$ 262.11	\$ 375.09	\$ 486.45	\$ 595.38	\$ 717.48
	3	\$ 208.26	\$ 393.90	\$ 563.37	\$ 729.78	\$ 893.10	\$ 1,076.88
	4	\$ 296.43	\$ 524.70	\$ 752.88	\$ 972.99	\$ 1,191.12	\$ 1,434.90
	6	\$ 444.42	\$ 781.35	\$ 1,126.53	\$ 1,456.59	\$ 1,787.70	\$ 2,178.90
	2	\$ 114.33	\$ 224.91	\$ 336.72	\$ 448.71	\$ 558.51	\$ 671.49
	3	\$ 171.48	\$ 338.52	\$ 505.56	\$ 672.18	\$ 838.74	\$ 1,006.53
<u>AB939</u>	4	\$ 228.51	\$ 451.77	\$ 674.49	\$ 895.65	\$ 1,118.79	\$ 1,342.20
	6	\$ 342.87	\$ 677.01	\$ 1,011.18	\$ 1,339.80	\$ 1,677.54	\$ 2,013.39
	2	\$ 6.00	\$ 12.00	\$ 18.00	\$ 24.00	\$ 29.97	\$ 35.97
	3	\$ 8.97	\$ 18.00	\$ 26.94	\$ 36.00	\$ 44.97	\$ 54.18
	4	\$ 12.00	\$ 24.00	\$ 35.97	\$ 47.97	\$ 59.94	\$ 71.94
	6	\$ 17.94	\$ 35.97	\$ 54.00	\$ 71.91	\$ 88.62	\$ 107.91
<u>SB1383 Adjustment</u>							
<u>Total</u>	2	\$ 7.20	\$ 13.38	\$ 19.56	\$ 25.71	\$ 31.71	\$ 38.19
	3	\$ 10.41	\$ 20.10	\$ 29.37	\$ 38.52	\$ 47.61	\$ 57.27
	4	\$ 14.37	\$ 26.79	\$ 39.21	\$ 51.36	\$ 63.51	\$ 76.35
	6	\$ 21.57	\$ 40.02	\$ 58.71	\$ 76.86	\$ 95.22	\$ 115.23
	2	\$ 275.49	\$ 512.40	\$ 749.37	\$ 984.87	\$ 1,215.57	\$ 1,463.13
	3	\$ 399.12	\$ 770.52	\$ 1,125.24	\$ 1,476.48	\$ 1,824.42	\$ 2,194.86
4	\$ 551.31	\$ 1,027.26	\$ 1,502.55	\$ 1,967.97	\$ 2,433.36	\$ 2,925.39	
6	\$ 826.80	\$ 1,534.35	\$ 2,250.42	\$ 2,945.16	\$ 3,649.08	\$ 4,415.43	

CITY OF INDIO
Rate Exhibit 1

COMMERCIAL - TEMPORARY BINS

	Proposed Rates	
	Standard	Extra Empty
<u>Service</u>		
Bin Size		
3	\$92.57	\$92.57
4	\$101.69	\$101.69
<u>Disposal</u>		
Bin Size		
3	\$92.14	\$92.15
4	\$97.75	\$97.75
<u>Total</u>		
Bin Size		
3	\$184.72	\$184.72
4	\$199.44	\$199.44

7 day rental and 1 dump included

Other Commercial Temporary Bin Charges:

Extra Trip Charge	\$45.94
Per Diem Over 7 Days	\$25.43

CITY OF INDIANO
Rate Exhibit 1

COMMERCIAL RECYCLE

Service	Proposed Rates					
	Frequency					
Bin Size	1	2	3	4	5	6
2	\$ 27.83	\$ 55.67	\$ 83.50	\$ 111.35	\$ 139.19	\$ 167.02
3	\$ 41.76	\$ 83.50	\$ 125.28	\$ 167.01	\$ 208.78	\$ 250.45
4	\$ 55.67	\$ 111.35	\$ 167.02	\$ 222.69	\$ 278.39	\$ 334.06
6	\$ 83.52	\$ 167.02	\$ 250.51	\$ 334.07	\$ 418.07	\$ 501.07
6yd Comp	\$ 125.52	\$ 251.06	\$ 376.56	\$ 502.09	\$ 627.61	\$ 753.13

AB939

2	\$ 2.00	\$ 4.00	\$ 6.00	\$ 8.00	\$ 9.99	\$ 11.99
3	\$ 2.99	\$ 6.00	\$ 8.98	\$ 12.00	\$ 14.99	\$ 18.06
4	\$ 4.00	\$ 8.00	\$ 11.99	\$ 15.99	\$ 19.98	\$ 23.98
6	\$ 5.98	\$ 11.99	\$ 18.00	\$ 23.97	\$ 29.54	\$ 35.97
6yd Comp	\$ 8.98	\$ 17.96	\$ 26.94	\$ 35.92	\$ 44.90	\$ 53.88

SB1383 Adjustment

2	\$ 7.13	\$ 14.26	\$ 21.38	\$ 28.51	\$ 35.64	\$ 42.77
3	\$ 10.69	\$ 21.38	\$ 32.07	\$ 42.77	\$ 53.46	\$ 64.15
4	\$ 14.26	\$ 28.51	\$ 42.77	\$ 57.02	\$ 71.28	\$ 85.53
6	\$ 21.38	\$ 42.77	\$ 64.15	\$ 85.53	\$ 106.93	\$ 128.30

Total

2	\$ 36.96	\$ 73.93	\$ 110.88	\$ 147.86	\$ 184.82	\$ 221.78
3	\$ 55.44	\$ 110.88	\$ 166.33	\$ 221.78	\$ 277.23	\$ 332.66
4	\$ 73.93	\$ 147.86	\$ 221.78	\$ 295.70	\$ 369.65	\$ 443.57
6	\$ 110.88	\$ 221.78	\$ 332.66	\$ 443.57	\$ 554.54	\$ 665.34
6yd Comp	\$ 134.50	\$ 269.02	\$ 403.50	\$ 538.01	\$ 672.51	\$ 807.01

Other Commercial Recycle Fees:

	Proposed Unit Rate
Delivery Charge	\$ 25.04
New Start	\$ 14.85
Re Start	\$ 14.85
Pull out 20ft	\$ 40.94
Locking Container	\$ 67.58
Replace Locking Bar	\$ 45.06
Saturday Service/Month	\$ 40.94
2yd Extra Empty	\$ 28.92
3yd Extra Empty	\$ 41.04
4yd Extra Empty	\$ 51.88
6yd Extra Empty	\$ 77.81
6yd compactor - extra empty/contamination	\$ 139.66

CITY OF INDI
Rate Exhibit 1

Roll Off Trash

7/1/2022
Proposed

	Pull Rate	Monthly Flat Rate
20 Yard	\$ 191.43	\$ 765.71
30 Yard	\$ 191.43	\$ 765.71
40 Yard	\$ 221.22	\$ 884.81

PLUS DUMP FEES AT ACTUAL COST + 10%
& AB939 SURCHARGE \$ 4.60 PER TON and 11.5% Franchise Fee

Compactor rates are three times (3X) the above rates

	Pull Rate
20/30 Yard Compac	\$ 574.31
40 Yard Compactor	\$ 663.66

Other Roll-off Fees:

Delivery Charge	\$ 27.78
Relocate	\$ 66.31
Extra Trip	\$ 66.31
New Start	\$ 16.47
Re-Start	\$ 16.47

CITY OF INDIO
Rate Exhibit 1

ROLL OFF RECYCLING

7/1/2022
Proposed

	PULL RATE
20 YARD	\$ 196.40
30 YARD	\$ 196.40
40 YARD	\$ 226.97

PLUS DUMP FEES AT ACTUAL AND FRANCHISE FEES

OTHER ROLL-OFF RECYCLING FEES:

DELIVERY CHARGE	\$ 28.50
RELOCATE	\$ 68.03
EXTRA TRIP	\$ 68.03
NEW START	\$ 16.90
RE-START	\$ 16.90

CITY OF INDIIO
Rate Exhibit 1

Roll Off Temporary

Proposed Rates

<u>Disposal Tip Fee</u>	
Disposal Tip Fee/ton	\$ 68.88
Admin 10%	\$ 6.89
AB939	\$ 4.80
Franchise Fee 11.5%	\$ 8.95
Total Disposal Per Ton	<u>\$ 89.32</u>

<u>Container Size</u>	<u>Service</u>	<u>Disposal</u>	<u>Total</u>
		(4 tons)	
20 YARD with 4 tons	\$444.39	\$357.29	\$801.68
30 YARD with 4 tons	\$444.39	\$357.29	\$801.68
40 YARD with 4 tons	\$564.45	\$357.29	\$921.74

RATE INCLUDES 7 DAY RENTAL AND ONE DUMP OFF UP TO 4 TONS OVER 4 TONS, DUMP FEES AT ACTUAL + 10%, plus AB939 SURCHARGE \$4.80 PER TON, and Franchise Fee

OTHER TEMPORARY ROLL-OFF FEES:

<u>PER DIEM OVER 7 DAY</u>	<u>Service</u>	<u>Disposal</u>	<u>Total</u>
RELOCATE	\$38.12		\$38.12
EXTRA TRIP	\$66.20		\$66.20
PUMP (CONCRETE WA	\$126.62		\$126.62

COMMERCIAL FOOD WASTE

Proposed Rates

1-64 Gallon Cart		Proposed Rates				Total
# Pick-Ups Per Week	Recycling Collection Component	Material Processing	Franchise Fee	AB-939 Fee	Monthly Rate	
1	\$32.63	\$36.83	\$9.03	\$2.00	\$80.49	
2	\$65.26	\$73.61	\$18.05	\$4.00	\$160.92	
3	\$97.88	\$110.44	\$27.07	\$6.00	\$241.39	
4	\$130.50	\$147.22	\$36.09	\$8.00	\$321.81	
5	\$163.14	\$184.05	\$45.11	\$10.00	\$402.29	
2-64 Gallon Cart						
1	\$52.21	\$73.61	\$16.35	\$4.00	\$146.17	
2	\$104.40	\$147.22	\$32.70	\$8.00	\$292.32	
3	\$156.62	\$220.83	\$49.05	\$12.00	\$438.50	
4	\$208.81	\$294.44	\$65.39	\$16.00	\$584.64	
5	\$261.02	\$368.05	\$81.74	\$20.00	\$730.81	
3-64 Gallon Cart						
1	\$68.51	\$110.44	\$23.25	\$6.00	\$208.20	
2	\$146.82	\$220.83	\$47.77	\$12.00	\$427.42	
3	\$205.55	\$331.27	\$69.76	\$18.00	\$624.57	
4	\$274.06	\$441.66	\$93.00	\$24.00	\$832.72	
5	\$342.59	\$552.10	\$115.26	\$30.00	\$1,040.94	
4-64 Gallon Cart						
1	\$78.30	\$147.22	\$29.31	\$6.00	\$262.83	
2	\$156.61	\$294.44	\$58.61	\$16.00	\$525.66	
3	\$234.91	\$441.66	\$87.92	\$24.00	\$788.49	
4	\$313.23	\$588.88	\$117.22	\$32.00	\$1,051.33	
5	\$391.53	\$736.10	\$146.53	\$40.00	\$1,314.16	
Additional Cart after 4 Carts Per Week						
1	\$18.10	\$36.83	\$7.14	\$1.85	\$63.91	
2	\$36.15	\$73.61	\$14.26	\$3.70	\$127.72	
3	\$54.32	\$110.44	\$21.41	\$5.55	\$191.71	
4	\$72.41	\$147.22	\$28.54	\$7.40	\$255.57	
5	\$90.52	\$184.05	\$35.68	\$9.25	\$319.49	
Extra Pickup						
1	\$11.25	\$8.50	\$2.57	\$0.92	\$23.24	
2	\$20.24	\$17.00	\$4.84	\$1.84	\$43.92	
3	\$28.31	\$25.50	\$6.80	\$2.76	\$60.17	
4	\$33.74	\$34.00	\$8.80	\$3.68	\$80.22	
5	\$42.18	\$42.50	\$11.00	\$4.60	\$100.28	

EXHIBIT 2

EXHIBIT 2
CITY ON INDIO

City Owned Facilities
Minimum Services to be Provided by Contractor

CITY OF INDIO	100 CIVIC CENTER DR
CITY OF INDIO	200 CIVIC CENTER DR
CITY OF INDIO	41790 JACKSON ST
CITY OF INDIO	42801 BURR ST
CITY OF INDIO	42900 GOLF CENTER PKWY
CITY OF INDIO	43143 JACKSON ST
CITY OF INDIO	45125 SMURR A ST
CITY OF INDIO	45175 FARGO ST
CITY OF INDIO	45222 TOWNE ST
CITY OF INDIO	45355 VAN BUREN ST
CITY OF INDIO	45700 ALADDIN ST
CITY OF INDIO	46621 MADISON ST
CITY OF INDIO	46800 JACKSON ST
CITY OF INDIO	46990 JACKSON ST
CITY OF INDIO	81025 AVE 40
CITY OF INDIO	81678 AVE 46
CITY OF INDIO	82560 KENNER AV
CITY OF INDIO	82616 MILES AV
CITY OF INDIO	82884 MILES AV
CITY OF INDIO	82921 INDIO BLVD
CITY OF INDIO	83040 AVE 42
CITY OF INDIO	83101 AVENUE 45
CITY OF INDIO	83126 DATE AV
CITY OF INDIO	83140 EMERALD AV
CITY OF INDIO	83510 AVENUE 44
CITY OF INDIO	83528 AVENUE 44
CITY OF INDIO	83787 HOPI AVE
CITY OF INDIO	82200 DR. CARREON BLVD
CITY OF INDIO	81967 CROWN WAY
CITY OF INDIO	82985 INDIO BLVD
CITY OF INDIO	81253 AVENUE 48
CITY OF INDIO	82540 MILES AVE
CITY OF INDIO	83700 AVENUE 43
CITY OF INDIO	80500 AVENUE 46
CITY OF INDIO	46480 JACKSON ST
CITY OF INDIO	83318 DATE AVE
CITY OF INDIO	43605 YUCCA ST
CITY OF INDIO	45871 CLINTON ST

TABLE OF CONTENTS

	<u>Page</u>
1 Definitions.....	4
1.1 AB 341	4
1.2 AB 939	4
1.3 AB 1826	4
1.4 Abandoned Items.....	4
1.5 Affiliate.....	5
1.6 Agreement	5
1.7 Back-haul.....	5
1.8 Backyard Service	5
1.9 Bin	6
1.10 Bin Collection Service.....	6
1.11 Blue Container	6
1.12 Bulky Items.....	6
1.13 C&D	6
1.14 C&D Processing Facility.....	6
1.15 CalRecycle	7
1.16 Cart.....	7
1.17 Cart Collection Service	7
1.18 City	7
1.19 City Manager.....	7
1.20 Collection	7
1.21 Commercial Customer	7
1.22 Commercial Edible Food Generators.....	8
1.23 Commercial Premises	8
1.24 Community Composting	8
1.25 Compactor.....	8
1.26 Complaint.....	8
1.27 Compostable Plastics	8
1.28 Composting or Compost	8
1.29 Construction and Demolition Debris	8
1.30 Container.....	9
1.31 Contamination Fee.....	9
1.32 Contractor	9
1.33 Contractor Compensation	9
1.34 CPI	9
1.35 Customer.....	9
1.36 Disaster	9
1.37 Disposal.....	9
1.38 Disposal Site	10
1.39 Diversion	10
1.40 Duplex	10

TABLE OF CONTENTS (cont.)

	Page
1.41 Dwelling Unit.....	10
1.42 Edible Food	10
1.43 Effective Date.....	10
1.44 Electronic Waste or E-Waste	10
1.45 Environmental Laws.....	11
1.46 Excluded Waste.....	11
1.47 Facility	12
1.48 Food Recovery	12
1.49 Food Recovery Organization.....	12
1.50 Food Recovery Service	12
1.51 Food Scraps.....	12
1.52 Food-Soiled Paper.....	13
1.53 Food Waste	13
1.54 Franchise	13
1.55 Franchise Fee	13
1.56 Garbage.....	13
1.57 Gray Container	13
1.58 Gray Container Waste.....	13
1.59 Green Container.....	14
1.60 Green Waste	14
1.61 Green Waste Processing Facility.....	14
1.62 Gross Receipts.....	14
1.63 Hauler Route	14
1.64 Hazardous Substance.....	14
1.65 Hazardous Waste	15
1.66 High Diversion Organic Waste Processing Facility.....	15
1.67 Holiday	16
1.68 Household Sharps Waste	16
1.69 Household Hazardous Waste.....	16
1.70 Institutional.....	16
1.71 Landfill.....	16
1.72 Large Event.....	16
1.73 Large Venue	16
1.74 Local Education Agency	17
1.75 Material Recovery Facility.....	17
1.76 Mulch	17
1.77 Multi-family Premises	17
1.78 Non-collection Notice	18
1.79 Non-Compostable Paper.....	18
1.80 Non-Organic Recyclables	18
1.81 Organic Materials.....	18
1.82 Organic Waste.....	18

TABLE OF CONTENTS (cont.)

	Page
1.83 Owner.....	18
1.84 PARIS Code.....	18
1.85 Permanent Roll-off Box Service	19
1.86 Person	19
1.87 Premises.....	19
1.88 Process, Processed, or Processing	19
1.89 Prohibited Container Contaminants.....	19
1.90 Putrescible Waste	20
1.91 Rate Year	20
1.92 Recyclables or Recyclable Materials.....	20
1.93 Recycle or Recycling.....	20
1.94 Refuse	20
1.95 Renewable Natural Gas (RNG).....	21
1.96 Residential.....	21
1.97 Residential Premises	21
1.98 Roll-off Box.....	21
1.99 Roll-off Collection Service	21
1.100 Roll-off Compactor.....	21
1.101 Route Review	21
1.102 Rubbish	21
1.103 SB 1383	22
1.104 SB 1383 Regulations.....	22
1.105 Scavenging	22
1.106 Self-Hauler (or Self-Haul)	22
1.107 Service Level.....	22
1.108 Single-family Residential Premises	22
1.109 Solid Waste	22
1.110 Solid Waste Facility	23
1.111 Solid Waste Collection Services	23
1.112 Source Separated Blue Container Organic Waste (SSBCOW).....	23
1.113 Source Separated Green Container Organic Waste (SSGCOW)	23
1.114 Special Services	23
1.115 Split Bin	23
1.116 State	23
1.117 Term	24
1.118 Tier One Commercial Edible Food Generators	24
1.119 Tier Two Commercial Edible Food Generators.....	24
1.120 Temporary Service	25
1.121 Transfer	25
1.122 Transportation or Transport	25
1.123 Transformation	25
1.124 Transformation Facility	25

TABLE OF CONTENTS (cont.)

	Page
1.125 Universal Waste	26
1.126 Waste Evaluation	26
1.127 Waste Generator	26
1.128 Work Day.....	26
1.129 Yard Trimmings	26
2 Representation and Warranties of Contractor.....	27
2.1 Corporate Status.....	27
2.2 Corporate Authorization.....	27
2.3 Agreement Will Not Cause Breach	27
2.4 No Litigation.....	28
3 Terms Of Agreement.....	29
3.1 Grant of Exclusive Rights.....	29
3.2 Limitations to Scope of Exclusive Agreement.....	29
3.3 Effective Date, Term, and Extension of this Agreement	31
3.4 Conditions to Effectiveness of Agreement	31
3.5 Relation of New Agreement to Prior Agreement	32
3.6 Enforcement of Exclusive Rights.....	33
4 General Agreements.....	34
4.1 Responsibility for Materials	34
4.2 Subcontracting.....	34
4.3 City-Directed Change in Scope.....	34
4.4 City's Right to Acquire Services.....	35
4.5 Annexations	35
4.6 Mandatory Recycling	35
4.7 Proposals for New or Expanded Diversion Program	35
4.8 Marketing and Sale of Recyclable Materials.....	36
5 Scope Of Service	37
5.1 General.....	37
5.1.1 Overall Performance Obligations.....	37
5.1.2 Name Under Which Contactor Does Business.....	37
5.1.3 Ownership of Solid Waste.....	37
5.2 Residential Cart Collection System	38
5.2.1 Three-Cart Collection Program	38
5.2.2 Cart Contamination Fee.....	39
5.2.3 Backyard/ Wheel-Out Service.....	39
5.2.4 Gated Developments	39
5.3 Commercial and Multi-family Collection- General.....	40
5.3.1 Bin Collection – Gray Container Waste (Refuse)	40

TABLE OF CONTENTS (cont.)

		Page
5.3.2	Commercial Cart Service	40
5.3.3	Bin Collection – Source Separated Blue Container Waste.....	40
5.3.4	Bin Contamination Fee	41
5.3.5	Bin Overage Fee	41
5.3.6	Temporary Bin and Roll-off Services.....	42
5.4	Roll-off Collection Service	42
5.4.1	Regular Roll-off Collection Service.....	43
5.4.2	Construction and Demolition Debris Recycling	43
5.5	City Facilities and Events Collection Services	44
5.5.1	Collection Services at City Facilities	44
5.5.2	Collection Services for Community and Cleanup Events, Reporting and Diversion Plans for Special Events	44
5.5.3	Bulky Items Collection Services	45
5.5.4	Collection of Appliances Containing Freon.....	46
5.5.5	Christmas Tree Collection and Recycling.....	46
5.5.6	Electronic Waste and Universal Waste Collection and Drop-Off Facility (PARIS Code 9045-HH-EWA)	47
5.5.7	Emergency Services	48
5.5.8	Residential Sharps Collection Program.....	48
5.5.9	Semi-Annual Document Shredding Event.....	48
5.5.10	Manual Can Service.....	49
5.5.11	Annual Curbside Clean-up	49
5.5.12	Clean Up of Illegal and Abandoned	49
5.5.13	Medical Waste Mail Back Program	49
5.5.14	Special Services	50
6	Other Services	51
6.1	Transportation, Disposal and Processing Service	51
6.1.1	Transportation, Disposal of Solid Waste.....	51
6.1.2	Transportation and Processing of Recyclable Materials, Organics, and C&D Waste	52
6.2	Contamination Monitoring	55
6.2.1	Route Reviews.....	56
6.2.2	Waste Evaluations.....	56
6.2.3	Monthly Reporting Requirements	57
6.3	Education and Outreach	57
6.3.1	General.....	57
6.3.2	Program Objectives.....	57
6.3.3	Contractor Cooperation and Support for City Education Efforts	58
6.3.4	Minimum Content Requirements.....	58
6.3.5	Annual Education Plan	58
6.3.6	Education During Program Implementation.....	59

TABLE OF CONTENTS (cont.)

	Page
6.3.7	On-going Education Requirements..... 60
6.3.8	Materials Distribution Methods 61
6.3.9	Personnel 62
6.4	Technical Assistance Program 62
6.4.1	Site Visits and Waste Assessments 62
6.4.2	Record Keeping and Reporting Requirements 62
6.5	Procurement of Products with Recycled and Organic Contents 62
6.5.1	Provision of Mulch or Compost 62
6.5.2	Renewable Natural Gas 63
6.5.3	Recordkeeping Requirements 63
6.6	Billings 63
6.6.1	Billing of Residential Customers 63
6.6.2	New Residential Customers 64
6.6.3	Residential Bin and Roll-off Box Services and Bulky Items 64
6.6.4	Payment to Contractor for Residential Billings Collected by City..... 64
6.6.5	City Option to Transition from Tax Roll Billing to Direct Residential Billing 65
6.6.6	Commercial, Institutional and Multi-family Billing 65
6.6.7	Roll-off Box Customer Billing 65
6.6.8	Bill Format 66
6.6.9	Bad Debt..... 66
6.6.10	Billing of Container Contamination Fees 66
6.6.11	Review of Billings 66
6.6.12	Billing Record and Access by City..... 67
6.7	Customer Waiver Program Coordination 67
6.7.1	Contractor Waiver Request on Behalf of Customer 67
6.7.2	Waiver Reverification..... 68
6.7.3	Contractor Recordkeeping of Customer Granted Waivers..... 68
6.8	Inspections and Enforcement 68
6.8.1	Annual Compliance Reviews 68
6.8.2	Compliance Review Process..... 69
6.9	Service Complaints..... 69
6.9.1	General..... 69
6.9.2	Investigation of SB 1383 Regulatory Non-Compliance Complaints..... 70
6.9.3	Reporting..... 70
6.10	Report of Abandoned Items or Illegal Dumping..... 71
6.11	Solid Waste Composition Studies 71
6.12	Emergency Services 71
6.12.1	Preparedness 71
6.12.2	Assistance with Disaster Recovery..... 71
6.12.3	Additional Costs 71
6.12.4	City-wide Effort to Manage Disaster Debris 72

TABLE OF CONTENTS (cont.)

	Page
6.12.5 Record Keeping and Reimbursement	72
7 Standard of Performance.....	73
7.1 General.....	73
7.2 Operating Hours and Schedule	73
7.3 Holidays.....	73
7.4 Complaints for Missed Collections	74
7.5 Missed Pick-ups.....	74
7.6 Collection Standards	74
7.7 Collection Vehicle Requirements.....	74
7.7.1 General.....	74
7.7.2 Appearance	75
7.7.3 Maintenance	75
7.7.4 Emissions.....	75
7.7.5 Noise	75
7.7.6 Safety	75
7.7.7 Vehicles Used for Bulky Items.....	76
7.7.8 Inspection of Vehicles	76
7.7.9 Litter Abatement.....	76
7.8 Containers.....	77
7.8.1 Containers for Residential Premises.....	77
7.8.2 Containers for Commercial Institutional and Multi-family Customers and City Facilities	78
7.8.3 Cart Exchange	79
7.8.4 Cart Replacement	79
7.8.5 Ownership of Carts	79
7.8.6 Bins.....	79
7.8.7 Bin Replacement	80
7.8.8 Locking Bins.....	80
7.8.9 Roll-off Boxes	80
7.8.10 Roll-off Compactors	80
7.9 Personnel	80
7.9.1 Conduct	81
7.9.2 Fees and Gratuities	81
7.9.3 Drug and Alcohol Testing.....	81
7.9.4 Government Liaison.....	82
7.9.5 Non-discrimination	82
7.9.6 Lockouts	83
7.10 Hazardous Waste Inspection and Handling.....	83
7.11 Refusal to Collect	83
7.12 Load Weight	83
7.13 Care of Private Property	84

TABLE OF CONTENTS (cont.)

		Page
	7.14 Property Damage	84
	7.15 Route Maps and Changes	84
	7.16 Change in Collection Schedule.....	84
	7.17 Changes in Scheduled Days of Collection	85
	7.18 Route Audits.....	86
	7.19 Dedicated Routes.....	86
	7.20 Diversion Requirements	86
8	Record Keeping and Reporting	87
	8.1 Record Keeping	87
	8.1.1 Record Retention and Security	87
	8.1.2 Billing Records.....	88
	8.1.3 CERCLA Defense Records	88
	8.1.4 Compilation of Information for State Law Purposes	88
	8.2 Audit And Performance Reviews	88
	8.3 Payments and Refunds	89
	8.4 Reporting and Information Transfer.....	89
	8.4.1 Reports and Data – Purpose and Format	89
	8.4.2 Customer Data Transfer.....	90
	8.4.3 Reports – Schedule	90
	8.4.4 Reports - Monthly	90
	8.4.5 Annual Reports	91
	8.4.6 Reports are Subject to Public Records Act	92
	8.4.7 Reporting of Adverse Information.....	93
	8.4.8 Failure to Report	93
9	City Fees	94
	9.1 Franchise Fee	94
	9.1.1 Time and Method of Payment.....	94
	9.1.2 Collection of Fees for Residential Customers	94
	9.2 Collection of City AB 939 Fee.....	94
10	Compensation and Rate Adjustments	96
	10.1 General.....	96
	10.2 Initial Rates.....	96
	10.3 Schedule of Future Adjustments	96
	10.4 Method of Adjustments.....	97
	10.5 Rate Adjustments.....	97
	10.6 Potential Pass Through Adjustments.....	97
	10.7 Disposal Charge and Processing Fee Reconciliation	97
	10.8 Extraordinary Adjustments	99
	10.8.1 Extraordinary Rate Request – Prop 218 Costs.....	100

TABLE OF CONTENTS (cont.)

	Page
10.9	Proposition 218 Protest Contractual Remedy 100
11	Indemnity, Insurance, Performance Bond 101
11.1	Indemnification of City..... 101
11.2	Hazardous Substance Indemnification 101
11.3	Compliance Indemnification 102
11.4	Negligence or Willful Misconduct of City 103
11.5	Indemnification by Subcontractors 103
11.6	Separate Counsel 103
11.7	Proposition 218 Indemnification 103
11.8	Insurance..... 103
11.8.1	General Requirements 103
11.8.2	Coverage and Limits..... 104
11.8.3	Deductibles and Self-insured Retention 104
11.8.4	Other Insurance Provisions..... 105
11.8.5	Subcontractors Required to Carry Insurance 106
11.8.6	Rights of Subrogation..... 106
11.8.7	Modification of Insurance Requirements 106
11.8.8	Evidence of Coverage..... 106
11.9	Performance Bond or Letter of Credit 107
11.10	Performance Bond 107
11.11	Letter of Credit..... 107
11.12	Failure to Perform..... 107
12	Default and Remedies..... 109
12.1	Events of Default..... 109
12.2	Criminal Activity of Contractor 110
12.3	Right to Terminate Upon Default 111
12.4	Force Majeure..... 111
12.5	Labor Unrest 112
12.6	Procedures in Event of Excused Performance..... 113
12.7	Assurance of Performance..... 113
12.8	Liquidated Damages..... 113
12.8.1	General..... 113
12.8.2	Service Performance Standards..... 114
12.8.3	Amount 118
12.8.4	Timing of Payment 118
12.9	Review of Service and Performance 118
12.10	Performance Satisfaction Survey 119
13	Other Agreement of the Parties 120
13.1	Relationship of Parties 120

TABLE OF CONTENTS (cont.)

	Page
13.2	Permits and License 120
13.3	Ownership of Electronic and Written Materials..... 120
13.4	Compliance with Law 120
13.5	Governing Law 121
13.6	Conflict of Interest 121
13.7	Mediation and Arbitration 121
13.8	Jurisdiction 121
13.9	Assignment..... 122
13.10	Contracting or Subcontracting..... 124
13.11	Binding on Assigns 124
13.12	Transition to the Next Contractor..... 124
13.13	Parties in Interest..... 125
13.14	The Contractor's Investigation..... 125
13.15	Condemnation 125
13.16	Notice..... 125
13.17	Representatives of the Parties..... 126
13.18	City Free to Negotiate with Third Parties 127
13.19	Compliance with Municipal Code 127
13.20	Privacy..... 127
13.21	Compliance with Immigration Laws..... 127
13.22	Guarantee of Contractor's Performance 127
13.23	Attorney's Fees 128
14	Miscellaneous Agreements..... 129
14.1	Entire Agreement..... 129
14.2	Section Headings..... 129
14.3	Waiver 129
14.4	References to Laws and Other Agreements 129
14.5	Interpretation 129
14.6	Amendments..... 130
14.7	Severability..... 130
14.8	Exhibits..... 130
14.9	Non-Waiver Provision 130

Exhibit 1

Exhibit 2