

COLLECTION SERVICE AGREEMENT

Executed Between the
City of Wheatland

and

Recology Yuba-Sutter

This 11th day of September, 2018

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TABLE OF CONTENTS

Article 1: Definitions.....	3
Article 2: Representations and Warranties	15
2.1 CONTRACTOR's Corporate Status	15
2.2 CONTRACTOR's Corporate Authorization.....	15
2.3 Agreement Will Not Cause Breach.....	15
2.4 No Litigation	15
2.5 No Adverse Judicial Decisions	15
2.6 No Legal Prohibition	16
2.7 CONTRACTOR's Ability to Perform	16
2.8 CONTRACTOR's Investigation	16
2.9 Statements and Information in CONTRACTOR's Proposal.....	16
Article 3: Term of Agreement	17
3.1 Initial Term.....	17
3.2 Extension of Initial Term	17
3.3 Extension of Second Term	17
3.4 Extension of Third Term	17
3.5 Other Provisions.....	18
3.6 Conditions to Effectiveness of Agreement.....	18
Article 4: Grant and Acceptance of Exclusive Agreement.....	20
4.1 Grant and Acceptance of Exclusive Agreement	20
4.2 Limitations to the Scope of Exclusive Agreement.....	20
4.3 Excluded Services	21
4.4 Exclusivity.....	21
4.5 Applicable Law	21
4.6 Obligations of Parties	21
Article 5: Scope of Collection Services	23
5.1 Summary Scope of Services	23
5.2 Use of Approved Facilities.....	24
5.3 Subcontracting	24
5.4 Responsibility for Materials.....	24
5.5 CITY-Directed Changes to Scope	24
5.6 Single-Family Dwelling Collection Services.....	25
5.7 Multi-Family Dwelling Collection Services	27
5.8 Commercial Collection Services	30
5.9 CITY Collection Services.....	32
5.10 Drop Box Collection Services	34
5.11 Other Services.....	35
Article 6: Processing, Disposal, and Diversion Requirements.....	38
6.1 Rights of Ownership	38

6.2	Transportation of Discarded Materials.....	38
6.3	Transfer of Discarded Materials	38
6.4	Disposal.....	39
6.5	Recyclable Materials Processing Services	39
6.6	Organic Materials Processing Services	41
6.7	Minimum Diversion Requirements.....	41
6.8	Failure to Meet Minimum Diversion Requirements.....	42
Article 7: Requirements For Operations, Equipment, and Personnel.....		43
7.1	General.....	43
7.2	CONTRACTOR's Office	43
7.3	Service Standards	43
7.4	Collection Routes, Operating Hours, and Schedules	43
7.5	Collection Standards	44
7.6	Ownership of Materials.....	44
7.7	Exempt Waste	45
7.8	Regulations and Record Keeping.....	45
7.9	Vehicle Requirements	45
7.10	Container Requirements.....	47
7.11	Labor and Equipment	50
7.12	Holiday Service	50
7.13	Disposal and Processing	50
7.14	Solid Waste - Improper Procedure	51
7.15	Recycling - Improper Procedure.....	52
7.16	Organic Materials - Improper Procedure	52
7.17	Commingling of Materials	53
7.18	Personnel	53
7.19	Hazardous Waste Inspection and Handling.....	54
Article 8: Billing, Customer Service, Record Keeping, and Reporting		55
8.1	Billing and Collection	55
8.2	Delinquent Service Accounts.....	55
8.3	Low-Income Senior Citizen Maximum Service Rates.....	55
8.4	Non-Disclosure.....	56
8.5	No Marketing	56
8.6	Customer Service Staffing and Hours	56
8.7	CONTRACTOR's Customer Service	56
8.8	Record Keeping.....	58
8.9	Reporting Requirements.....	58
8.10	AB 341 and AB 1826 Compliance	60
8.11	Right to Audit.....	60
8.12	Billing and Service Level Audit	60
8.13	Performance and Compliance Reviews	60
Article 9: Franchise Fees and Other Fees		62
9.1	RWMA Surcharge Fee	62

9.2	Franchise Fee	62
9.3	CITY Community Partnership Fee.....	63
9.4	Other Fees	64
Article 10: Contractor Compensation and Maximum Service Rates		65
10.1	CONTRACTOR Compensation	65
10.2	CITY Approved/CONTRACTOR Set Maximum Service Rates.....	65
10.3	Initial Service Rates.....	65
10.4	Annual Rate Adjustments	65
10.5	Extraordinary Rate Adjustments.....	65
10.6	Submittal of Request	66
10.7	CITY Review	68
10.8	Host Fees Imposed by RWMA Member Agencies	68
10.9	Rate Adjustment for Direction to New Facilities.....	68
Article 11: Indemnification, Insurance, and Performance Bond.....		69
11.1	Indemnification of the CITY	69
11.2	Evaluation of Liability.....	70
11.3	Hazardous Substances Indemnification	70
11.4	Separate Counsel.....	71
11.5	Consideration	71
11.6	Obligation	72
11.7	Subcontractors	72
11.8	Exception.....	72
11.9	Damage by CONTRACTOR.....	72
11.10	Survival.....	72
11.11	Insurance.....	72
11.12	Performance Bond	76
Article 12: Default and Remedies		77
12.1	Events of Default.....	77
12.2	Right to Terminate Upon Event of Default.....	78
12.3	CITY's Remedies in the Event of Default	79
12.4	Possession of Records and Equipment Upon Termination	79
12.5	CITY's Remedies Cumulative; Specific Performance.....	80
12.6	Performance Standards and Liquidated Damages.....	80
12.7	Excuse from Performance	84
12.8	Right to Demand Assurances of Performance	85
12.9	Dispute Resolution	86
Article 13: Other Agreements of The Parties		87
13.1	Legal Representation	87
13.2	Financial Interest.....	87
13.3	CONTRACTOR Not Officer, Employee or Agent.....	87
13.4	CONTRACTOR's Use of Subcontractor	88
13.5	Compliance with Law	88

13.6	Governing Law	88
13.7	Litigation	88
13.8	Jurisdiction	88
13.9	Binding on Successors	89
13.10	Assignment.....	89
13.11	No Third-Party Beneficiaries.....	90
13.12	Waiver	91
13.13	Transition to Next Contractor.....	91
13.14	CONTRACTOR's Records	91
13.15	Notice Procedures.....	92
13.16	Certain Defenses.....	92
Article 14: Miscellaneous Agreements		93
14.1	Entirety of Agreement.....	93
14.2	Severability.....	93
14.3	Right to Require Performance	93
14.4	Non-Discrimination	93
14.5	All Prior Agreements Superseded	93
14.6	Headings	93
14.7	Exhibits.....	93
14.8	References to Laws.....	94
14.9	Start Date	94
14.10	CITY's Option to Incorporate Additional or Modified Provisions	94
14.11	Amendments	94
14.12	Counterparts.....	95

EXHIBITS

- A. Maximum Service Rates
- B. Maximum Service Rate Adjustments
- C. Public Education Plan
- D. CITY Services
- E. Approved Subcontractors

This Agreement made and entered into this 11th day of September, 2018, by and between the CITY of Wheatland, State of California, hereinafter referred to as "CITY" and Recology Yuba-Sutter, a California corporation, hereinafter referred to as "CONTRACTOR."

RECITALS

WHEREAS; the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("Act") and subsequent additions and amendments (codified at California Public Resources Code Section 40000 et seq.), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste Collection within their jurisdiction; and,

WHEREAS; the State of California has found and declared that the amount of Solid Waste generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from landfilling and the need to conserve natural resources, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has, through enactment of the Act and subsequent related legislation including, but not limited to AB 341, AB 1594, AB 1826, and SB 1383, directed the responsible State agency and all local agencies to promote Diversion and to maximize the use of feasible Solid Waste reduction, reuse, Recycling, and Composting options in order to reduce the amount of Solid Waste that must be Disposed; and,

WHEREAS; CONTRACTOR is a private enterprise involved in the solid waste industry, experienced in, and capable of providing the CITY with Solid Waste handling services including but not necessarily limited to Source Reduction, Recycling and Composting activities in conjunction with the Collection, transfer, Processing and Disposal of Solid Waste; and,

WHEREAS; pursuant to California Public Resources Code Section 40059(a) as may be amended from time to time, the CITY has determined that the public health, safety, and well-being require an exclusive agreement to provide Collection Services and other services related to meeting the State's Diversion goals and other requirements of AB 939, without competitive bidding except for Collection of materials excluded in the CITY Municipal Code; and,

WHEREAS; the CITY further declares its intent to approve and maintain the Maximum Service Rates for the Collection, transportation, Processing, Recycling, Composting, and/or Disposal of Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, Construction and Demolition Debris and Sludge; and,

WHEREAS, the CITY and CONTRACTOR declare they have engaged in bona fide negotiations and have reached an agreement regarding the Franchise Fee CONTRACTOR shall pay CITY for the exclusive Franchise granted by CITY to CONTRACTOR; and,

WHEREAS; the CITY desires, having determined that CONTRACTOR, by demonstrated experience, reputation and capacity is qualified to provide for both the Collection of Recyclable Materials, Organic Materials, and Solid Waste within the corporate limits of the CITY and the transportation of such material to appropriate places of Processing, Recycling, Composting, and/or Disposal, that CONTRACTOR be engaged to perform such services on the basis set forth in this Agreement; and,

WHEREAS; the Parties hereto desire to enter into a wholly exclusive agreement for the provision of Collection Services except for those limitations specified in this Agreement; and,

WHEREAS; the CITY and CONTRACTOR have attempted to address conditions affecting their performance of services under this Agreement but recognize that reasonably unanticipated conditions may occur during the Term of this Agreement that will require the Parties to meet and confer to reasonably respond to such changed conditions; and,

WHEREAS, the CITY believes this agreement represents a high degree of service and value to the residents, businesses, and the CITY, and will help the CITY achieve the waste, recycling and organics diversion mandates, goals and objectives of the State in support of AB939, AB 341, AB 1594, AB 1826 and SB 1383; and,

WHEREAS; this Agreement has been developed by and is satisfactory to the CITY and the CONTRACTOR.

Now, therefore, in consideration of the mutual covenants, conditions and consideration contained herein, the CITY and CONTRACTOR hereby agree as hereinafter set forth:

ARTICLE 1: DEFINITIONS

For the purpose of this Collection Service Agreement, hereinafter referred to as "Agreement," the following words and phrases shall have the following meanings respectively ascribed to them by this Article and shall be capitalized throughout this Agreement: If a word or phrase is not defined in this Agreement, the definition of such word or phrase as contained in the CITY Municipal Code shall control. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender.

1.1 "AB 341" means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 [Chesbro, AB 341]), also commonly referred to as "AB 341", as amended, supplemented, superseded, and replaced from time to time.

1.2 "AB 1594" means the 2014 act to amend Sections 40507 and 41781.3 of the Public Resources Code, relating to solid waste (Chapter 719, Statutes of 2014 [Williams, AB 1594], also commonly referred to as "AB 1594", as amended, supplemented, superseded, and replaced from time to time.

1.3 "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 "Act" means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), also commonly referred to as "AB 939," as amended, supplemented, superseded, and replaced from time to time.

1.5 "Affiliate" means a Person which is related to CONTRACTOR by virtue of direct or indirect controlling interest or common management. An Affiliate includes a Person in which CONTRACTOR owns a direct or indirect controlling interest, a Person which has a direct or indirect controlling interest in CONTRACTOR and/or a Person which is also controlled or managed by any Person or individual which has a direct or indirect controlling interest in CONTRACTOR.

1.6 "Agreement" means this Agreement between the CITY and CONTRACTOR, including all exhibits, and any future amendments hereto.

1.7 "Agreement Year" means each twelve (12) month period from October 1 to September 30, beginning October 1, 2018.

1.8 "Alternative Daily Cover" or "ADC" means materials, including, but not limited to, Green Waste, Sludge and wood waste from C&D placed on the surface of the active face of the refuse fill area at the end of each operating Day to control vectors, fires, odor, blowing litter and scavenging, as defined in Section 20164 of Title 14 of the California Code of Regulations. ADC includes all approved waste-derived and non-waste-derived material types as defined in Section 20690b.

1.9 "Annual Average" means the sum of the published index values of a specific index for a given 12-month period divided by twelve (12) (in the case of indices published monthly), six (6) (in the case of indices published bi-monthly), or four (4) (in the case of indices published quarterly).

1.10 "Applicable Law" means all federal, State, County, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, transportation, Processing or Disposal of Discarded Materials that are currently in force and as may be enacted, issued or amended during the Term of this Agreement.

1.11 "Approved Disposal Facility" means the Ostrom Road Landfill located at 5900 Ostrom Road, Wheatland, CA, or such place or places specifically designated by the CONTRACTOR and approved by the Participating Member Agencies, or specifically designated by the Participating Member Agencies, for the Disposal or Processing, as appropriate, of Solid Waste and other materials Collected under the terms of this Agreement.

1.12 "Approved Facility(ies)" means any one of or any combination of the: Approved Disposal Facility; Approved Organic Materials Processing Facility; Approved Materials Recovery Facility; and/or Approved Transfer Station.

1.13 "Approved Organic Materials Processing Facility" means the Feather River Organics facility located at 3001 North Levee Road, Marysville, CA, or 5900 Ostrom Road, Wheatland, CA, or any other facility selected by the CONTRACTOR and approved by the Participating Member Agencies, or specifically designated by the Participating Member Agencies, which is designed, operated and legally permitted for the purpose of receiving and Processing Organic Materials.

1.14 "Approved Materials Recovery Facility or Approved MRF" means the Recology Yuba-Sutter Materials Recovery Facility (MRF) located at 3001 North Levee Road, Marysville, CA, or any other facility selected by the CONTRACTOR and approved by the Participating Member Agencies, or specifically designated by the Participating Member Agencies, designed, operated, and legally permitted for the purpose of receiving, sorting, Processing, storing, or preparing Recyclable Materials and cardboard, scrap metal, wood, asphalt, concrete, and other inert materials for sale.

1.15 "Approved Transfer Station" means the Recology Yuba-Sutter Transfer Station located at 3001 North Levee Road, Marysville, CA, or any other facility selected by the CONTRACTOR and approved by the Participating Member Agencies, or specifically designated by the Participating Member Agencies, designed, operated, and legally permitted for the purpose of receiving and transferring Solid Waste and/or Construction and Demolition Debris.

1.16 "Bin" means a metal or plastic container, with a capacity of one (1) cubic yard up to, and including, eight (8) cubic yards, designed or intended to be mechanically dumped into a loader packer type truck that is approved for such purpose by the CITY. Bins may also include Compactors that are owned by the Multi-Family Dwelling (MFD) or Commercial Service Customer wherein the MFD or Commercial Collection Service occurs.

1.17 "Bulky Item(s)" means discarded appliances, furniture, tires, carpets, mattresses, and similar large items that require special Collection due to their size or nature, but can be Collected without the assistance of special loading equipment (such as forklifts or cranes) and without violating vehicle load limits. Bulky Items must be generated by the Customer and at the service address wherein the Bulky Items are Collected. The maximum weight and dimensions of Bulky Items shall be as directed by CONTRACTOR but shall not be less than two (2) cubic yards per Collection. In the event a question ever arises as to whether a specific item or category of items meets the definition of Bulky Items, the CITY shall be

responsible to determine whether said definition shall apply. Bulky Items do not include items herein defined as Exempt Waste or Construction and Demolition Debris.

1.18 “Bulky Item Collection Service” means the periodic on-call Collection of Bulky Items by the CONTRACTOR in the Service Area and the delivery of those Bulky Items to the Approved Facility.

1.19 “Business Days” mean Days during which the CITY’s offices are open to do business with the public.

1.20 “CalRecycle” means the California Department of Resources Recycling and Recovery or its successor.

1.21 “Cart” means a heavy plastic receptacle with a rated capacity of at least thirty-two (32) gallons and not more than ninety-six (96) gallons, having a hinged, tight-fitting lid and wheels, that is approved by the Contract Administrator for use by Service Recipients for Collection Services under this Agreement.

1.22 “Change in Law” means any of the following events or conditions:

- a. The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation of any Applicable Law on or after the Effective Date; or,
- b. The order or judgment of any governmental body, on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the CITY or of the CONTRACTOR, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

Change in Law does not include provisions related to the Recology Yuba-Sutter Landfill in Marysville or any of the Approved Facilities.

1.23 “CITY” means the City of Wheatland, California.

1.24 “CITY Clean-up Service” means the Collection of Solid Waste, Recyclable Materials, U-Waste, Organic Materials, and Bulky Items by the CONTRACTOR resulting from written or verbal requests from the CITY for temporary clean-up programs at a centralized Collection site. Such service shall include the provision of Bins or Drop Boxes by the CONTRACTOR and the transport and delivery of the Collected materials to the appropriate Approved Facility(ies).

1.25 “CITY Container Service” means the Collection of Solid Waste and Recyclable Materials from public litter containers distributed and maintained by the CITY or the Yuba-Sutter Transit Authority and the transport and delivery of the Collected materials to the appropriate Approved Facility(ies).

1.26 “CITY Self-Haul Service” means the transport of Solid Waste, Recyclable Materials, Organic Materials, Bulky Items and C&D self-hauled by CITY employees in CITY vehicles to the Approved Transfer Station, Approved Materials Recovery Facility, Approved Organic Materials Processing Facility, or Approved Disposal Facility.

1.27 "CITY Service Unit" means those CITY properties or CITY locations which the Contract Administrator requests that CONTRACTOR provide services as provided in this Agreement.

1.28 "CITY Waste" means Solid Waste, Recyclable Materials, Organic Materials, and Bulky Items generated at a CITY Service Unit. CITY Waste must be generated by and at the CITY Service Unit wherein the CITY Waste is Collected and does not include items defined herein as Exempt Waste.

1.29 "Collect" or Collection (or any variation thereof)" means the CONTRACTOR taking physical possession of, and removing Discarded Materials, whether by manual, semi-automated or automated means, and transporting such materials to the appropriate Approved Facility, pursuant to this Agreement.

1.30 "Collection Services" means those services provided to CITY Service Units, Commercial Service Units, MFD Service units, and SFD Service units as set forth in Article 5 of this Agreement.

1.31 "Commercial Service Work Day" means any Day Monday through Sunday.

1.32 "Commencement Date" means the date specified in Section 3.1 when the CONTRACTOR is to begin providing Collection and related services required by this Agreement.

1.33 "Commercial or Commercial Service Unit" means all retail, professional, office, wholesale and industrial facilities, organizations, agencies other than CITY agencies, and other commercial enterprises offering goods or services to the public excluding businesses conducted at any Residential Property.

1.34 "Commercial Waste" means Solid Waste, Recyclable Materials, Organic Materials, and Bulky Items generated at a Commercial Service Unit. Commercial Waste must be generated by and at the Commercial Service Unit wherein the Commercial Waste is Collected and does not include items defined herein as Exempt Waste.

1.35 "Compactor" means a mechanical apparatus that compresses materials together within the Container that holds the compressed materials or the Container that holds the compressed materials if it is detached from the mechanical compaction apparatus. Compactors include two (2) to eight (8) cubic yard Bin Compactors serviced by front-end loader Collection vehicles and ten (10) to fifty (50) cubic yard Drop Box Compactors serviced by roll-off Collection vehicles.

1.36 "Compost" means the resulting material from Composting.

1.37 "Composting" means the controlled or uncontrolled biological decomposition of organic constituents such that the resulting material meets the maximum acceptable metal concentration limits specified in Section 17868.2 and pathogen reduction requirements specified in Section 17868.3 of Title 14, California Code of Regulations Chapter 3.1.

1.38 "Construction and Demolition Debris (C&D)" means materials resulting from construction, renovation, remodeling, repair, or demolition operations relating to or resulting from a building, structure, pavement or other improvement, including concrete, brick, bituminous concrete, rubble, wood and masonry, composition roofing and roofing paper, steel, and other metals such as copper. "Construction and Demolition Debris" or "C&D" also includes rocks, soils, tree remains, and other Green Waste which results from land clearing or land development operations in preparation for construction. "Construction and Demolition Debris" or "C&D" do not include Exempt Waste.

- 1.39 **“Container”** means Bins, Carts, Compactors, and Drop Boxes.
- 1.40 **“Contamination (or any variation thereof)”** means the inclusion in a Container of Exempt Waste of any amount; or materials other than Organic Materials in an Organic Materials Container, or materials other than Recyclable Materials in a Recyclable Materials Container, which render more than ten percent (10%) of the contents of the Container materially unsuitable for the intended type of Diversion.
- 1.41 **“CONTRACTOR”** means Recology Yuba-Sutter, a California corporation.
- 1.42 **“Contract Administrator”** means that Person, or their designee, designated by the CITY to administer and monitor the provisions of this Agreement.
- 1.43 **“CONTRACTOR’s Proposal”** means those portions of the proposal submitted to the CITY by CONTRACTOR on February 16, 2018 for provision of Collection Services and certain supplemental written materials, which are included as Exhibit C to this Agreement and are incorporated by reference.
- 1.44 **“Covered Electronic Waste (CEW)”** means discarded electronic devices that the California Department of Toxic Substances Control (DTSC) has determined to be a covered electronic device, as specified by Section 42463(f) of the California Public Resources Code. CEWs include cathode ray tube (CRT) devices (including televisions and computer monitors); LCD desktop monitors; laptop computers with LCD displays; LCD televisions; plasma televisions; portable DVD players with LCD screens; and other electronic devices as may be added by the DTSC from time to time.
- 1.45 **“Customer”** means the Person whom the CONTRACTOR submits its billing invoice to and collects payment from for Collection Services provided to a Premises. The Customer is not necessarily the owner of the Premises and may be the Person who occupies the Premises, the owner of the Premises or the company that manages the Premises.
- 1.46 **“Day”** means calendar day unless otherwise specified in this Agreement.
- 1.47 **“Drop Box”** means Containers with a typical capacity of eight (8) to forty (40) cubic yards that are serviced by a roll-off Collection vehicle.
- 1.48 **“Discarded Materials”** means Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, and C&D placed by a Generator in a Container and/or at a location for the purposes of Collection by CONTRACTOR, excluding Exempt Waste.
- 1.49 **“Disposal or Dispose (or any variation thereof)”** means the ultimate disposition of Solid Waste or Residue.
- 1.50 **“Diversion (or any variation thereof)”** means activities which reduce or eliminate the amount of Solid Waste to be Disposed including, but not limited to, reuse, Recycling, and Composting.
- 1.51 **“Dwelling Unit”** means any individual living unit in a Single-Family Dwelling or Multi-Family Dwelling structure or building intended for, or capable of being utilized for, Residential living other than a hotel or motel.

1.52 “Effective Date” means the date on which this Agreement becomes effective pursuant to Section 3.6.

1.53 “E-Waste” means discarded electronic equipment including, but not limited to, televisions, computer monitors, central processing units (CPUs), laptop computers, computer peripherals (including external hard drives, keyboards, scanners, and mice), printers, copiers, facsimile machines, radios, stereos, stereo speakers, VCRs, DVDs, camcorders, microwaves, telephones, cellular telephones, and other electronic devices. Some E-Waste or components thereof may be Hazardous Waste or include Hazardous Substances and thus require special handling, Processing, or Disposal.

1.54 “Exempt Waste” means Hazardous Substances, Hazardous Waste, Infectious Waste, Sludge, volatile, corrosive, biomedical, infectious, and toxic substances or material, waste that CONTRACTOR reasonably believes would, as a result of or upon 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, 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 CITY to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of Solid Waste in compliance with Sections 41500 and 41802 of the California Public Resources Code.

1.55 “Fixed Body Vehicle” means any wheeled vehicle that does not rely on a Drop Box Container or other detachable container to Collect, contain, and transport material. Dump trucks shall be considered Fixed Body Vehicles.

1.56 “Food Waste” means Solid Waste that will decompose and/or putrefy including: (i) all kitchen and table food scraps; (ii) animal, fruit, grain, dairy, fish, or vegetable waste that is generated during or results from the storage, preparation, cooking, or handling of food stuffs; (iii) non-recyclable paper or discarded paper that is contaminated with food scraps and is ink-free; and, (iv) houseplant trimmings and other compostable organic waste common to the occupancy of Residential Dwelling Units. Food Waste must have been Source Separated, and generated by and at the Service Unit where it is Collected. Food Waste does not include Exempt Waste. Food Waste is a subset of Organic Materials.

1.57 “Franchise” means the special rights and privileges granted by the CITY to CONTRACTOR under this Agreement to operate as an exclusive enterprise for Collection Services in the Service Area and to use the public rights of way for such purpose.

1.58 “Franchise Fee” means the fee established through an arm’s length negotiation by and between the CITY and CONTRACTOR, which, among other things, is intended to offset the CITY’s expenses in administering this Agreement, to fund other waste management activities, for CONTRACTOR’S use of public property and rights-of-way granted by this Agreement, and to compensate the CITY for damages to its infrastructure resulting from CONTRACTOR’S exercise of its rights under the exclusive Franchise. “Franchise Fee” does not include any fee within the meaning of Public Resources Code Section 41901 or within the scope of Government Code Section 66016.

1.59 “Garbage” means all putrescible waste which generally includes, but is not limited to, kitchen and table Food Waste, animal, vegetative, food, or any other waste that is attendant with, or results from the

storage, preparation, cooking, or handling of food materials generated at a Service Unit. Garbage must be generated by and at the Service Unit wherein the Garbage is Collected. Garbage does not include those items defined herein as Exempt Waste.

1.60 “Generator” means any Person whose act or process produces Discarded Materials as defined in the Public Resources Code, or whose act first causes any of these items to become subject to regulation.

1.61 “Green Waste” means any vegetative matter resulting from normal yard and landscaping maintenance that is not more than three (3) feet in its longest dimension or six (6) inches in diameter which has been Source Separated by the Customer and set out for Organic Materials Collection and which except for such Source Separation and set out would have been Processed or Disposed of as Solid Waste. Green Waste includes plant debris, such as palm, yucca and cactus, ivy, grass clippings, leaves, pruning, weeds, branches, brush, holiday trees (without stands, flocking or ornamentation), and other forms of vegetative waste and must be generated by and at the Service Unit wherein the Green Waste is Collected. Green Waste does not include items herein defined as Exempt Waste. Green Waste is a subset of Organic Materials.

1.62 “Gross Billings” means total amount invoiced to Customers by the CONTRACTOR for the provision of services pursuant to this Agreement, without any deductions. Gross Billings do not include revenues from the sale of Recyclable Materials or from related CRV payments.

1.63 “Hazardous Substance” means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances" or hazardous material, Hazardous Waste, toxic waste, pollutant, or toxic substances or similarly identified as hazardous to human health or the environment, in or pursuant to: (i) the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Law, 49 USC §5101, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and, (vii) California Water Code §13050; (b) any amendments, rules, or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and, (c) any other hazardous or toxic substance, material, chemical, waste, or pollutant identified as hazardous or toxic or regulated under any other Applicable Law currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's (PCBs), petroleum, natural gas, and synthetic fuel products and by-products.

1.64 “Hazardous Waste” means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State 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 U.S. Environmental Protection Agency (EPA), pursuant to the federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

1.65 “Holidays” shall mean the observed holiday for Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and New Year's Day.

1.66 “Home-Generated Sharps” means hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications derived from a Residential Property.

1.67 “Household Batteries” mean disposable or rechargeable dry cells such as those referred to as A, AA, AAA, B, C, D, 9-volt, button type or those from laptop computers or cell phones, and commonly used as power sources for consumer electronics devices, including but not limited to zinc oxide, nickel metal hydride, alkaline, mercury, silver oxide, lithium, lithium ion, and carbon zinc, but excluding automotive lead acid batteries.

1.68 “Household Hazardous Waste (HHW)” means Hazardous Waste generated at an SFD or MFD Residential Premises within the CITY. HHW includes, but is not limited to: paint, stain, varnish, thinner, adhesives, automobile products such as old fuel, batteries, Household Batteries, fluorescent bulbs and tubes, cleaners and sprays, and pesticides, fertilizers, and other garden products.

1.69 “Infectious Waste” means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, and other similar establishments that are identified in Health and Safety Code Section 25117.5 as may be amended from time to time.

1.70 “Liquidated Damages” means the amounts due by CONTRACTOR for failure to meet specific quantifiable standards of performance as described in Section 12.6.

1.71 “Maximum Service Rates” means those rates and fees that are approved by the CITY for the provision of Collection Services and are contained in Exhibit A. Maximum Service Rates may be adjusted during the Term of this Agreement in the manner set forth herein.

1.72 “Member Agency(ies)” means the CITY and any other City or County in the Regional Waste Management Authority (RWMA), a joint powers authority.

1.73 “MFD Waste” means Solid Waste, Organic Materials, Recyclable Materials, and Bulky Items generated at an MFD Service Unit. MFD Waste must be generated by and at the MFD Service Unit wherein the MFD Waste is Collected and does not include items defined herein as Exempt Waste.

1.74 “Multi-Family, Multi-Family Dwelling (MFD), or Multi-Family Service Unit” means any Residential Premises, other than a Single-Family Premises, with five (5) or more Dwelling Units used for Residential purposes (regardless of whether residence therein is temporary or permanent) that receive centralized Collection Service for all units on the Premises which are billed to one (1) Customer at one (1) address. Customers residing in townhomes, mobile homes, condominiums, or other structures with five (5) or more Dwelling Units who elect to receive individual service and are billed separately shall not be considered Multi-Family unless and until that Customer elects to receive combined service and/or billing.

1.75 “Non-Collection Notice” means a form, as approved in advance by CITY, used to notify Service Recipient(s) of the reason for the non-Collection of materials set out by the Service Recipient for Collection by CONTRACTOR pursuant to this Agreement.

1.76 “Organic Materials” means Green Waste and, to the extent any of the following materials are accepted into the appropriate CITY Collection program by amendment of this Agreement, or are required

to be added to the appropriate CITY Collection program as a result of a Change in Law, Food Waste, food-soiled paper products and/or those materials designated from time to time in CITY or State legislation for Collection and Recycling under this Agreement. Notwithstanding the preceding sentence, if CITY requests that CONTRACTOR provide for the inclusion of Food Waste as part of mandatory SFD Organic Materials Collection Services, with Collection in the same Container as Green Waste, then upon implementation of that request, "Organic Materials" shall automatically and without amendment of this Agreement be deemed to refer to commingled Green Waste and Food Waste with respect to SFDs. No Discarded Material shall be considered to be Organic Materials, however, unless it is separated from Solid Waste and Recyclable Material.

1.77 "Party or "Parties" means the CITY and CONTRACTOR, individually or together.

1.78 "Participating Member Agency(ies)" means all Member Agencies with the exception of Yuba City. References herein to any approval, direction, action, etc. by the Participating Member Agencies means that such approval, direction, action, etc. was agreed to by all Participating Member Agencies that entered into substantially similar agreements to this one (i.e., Yuba and Sutter Counties, and the Cities of Marysville, Live Oak, and Wheatland).

1.79 "Person(s)" means any individual, firm, association, organization, partnership, corporation, trust, joint venture, or public entity.

1.80 "Premises" means any land or building in the Service Area where Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, or C&D are generated or accumulated.

1.81 "Processing" means to sort, separate, prepare, treat, bale or otherwise package, Compost, cure, or to take other steps necessary to re-use materials at the Approved Facilities, or to remanufacture, reconstitute, and or create new products from Discarded Materials. Processing includes reuse, Recycling and Composting.

1.82 "Recyclable Materials" means those materials which are capable of being Recycled and which have been Source Separated by the Customer and which except for such Source Separation would otherwise be Processed or Disposed of as Solid Waste. No Discarded Materials shall be considered Recyclable Materials unless such material is separated from Solid Waste, Organic Materials, or C&D. Recyclable Materials shall include, but not be limited to: newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons, telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes); chipboard; corrugated cardboard; glass containers, all colors; aluminum (including beverage containers, foil, food containers, small pieces of scrap metal); scrap metal weighing less than ten (10) pounds (without cords or chains and fitting into the Container); steel, tin or bi-metal cans; plastic containers, (numbers 1 to 7) and in addition those materials added or removed by the CONTRACTOR from time to time, subject to CITY approval, which shall not to be unreasonably withheld. Recyclable Materials exclude Exempt Waste.

1.83 "Recycle or Recycling" means the process of sorting, cleansing, treating and reconstituting materials that would otherwise be Disposed of in a landfill, and returning them to the economic

mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.

1.84 "Regional Waste Management Authority (RWMA)" means a joint powers authority formed for the purpose of providing reliable, economical, integrated, and environmentally sound waste management services to all of the residents of the region including the unincorporated areas of Sutter and Yuba Counties and the areas embraced within the corporate limits of Live Oak, Marysville, Wheatland, and Yuba City as may be amended, or the successor agency in the event the current agency is replaced.

1.85 "Residential or Residential Property" means on, of or pertaining to a Single-Family Premises or Multi-Family Premises, irrespective of whether such Premises are rental units or owner-occupied, or whether Commercial activities are conducted thereon or therefrom, provided that such Commercial activities are permitted under applicable zoning regulations and do not consist of the primary use of the property.

1.86 "Residential Service Work Day" means any Day Monday through Friday.

1.87 "RWMA Contract Administrator" means the Person designated by the RWMA to administer and monitor certain provisions of this Agreement.

1.88 "RWMA Service Area" means the combined legal corporate limits of all Participating Member Agencies of the RWMA.

1.89 "Residue" means those materials which, after Processing, are Disposed rather than Recycled or Composted due to either the lack of markets for materials or the inability of the Approved Facility to capture and recover the materials.

1.90 "Reusable Materials" means items that are capable of being used again after minimal Processing. Reusable Materials may be Collected Source Separated or recovered through an Approved Facility.

1.91 "SB 1383" means the Short-Lived Climate Pollutants Act of 2016 (an act to add Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and to add Chapter 13.1 [commencing with Section 42652] to Part 3 of Division 30 of the Public Resources Code, relating to methane emissions), also commonly referred to as "SB 1383," as amended, supplemented, superseded, and replaced from time to time.

1.92 "Service Area" means that area within the corporate limits of the CITY of Wheatland, California.

1.93 "Service Level" refers to the volume of a Customer's Container and the frequency of Collection Service.

1.94 "Service Rates" means the amount, expressed as a dollar unit, that CONTRACTOR charges a Customer for providing Collection Services under this Agreement. The CONTRACTOR may, in its sole discretion, charge any amount up to and including the Maximum Service Rate approved by the CITY.

1.95 "Service Recipient" means an individual, agency, organization, or company receiving Collection Services pursuant to this Agreement.

1.96 “Service Unit” means all SFD Service Units, MFD Service Units, CITY Service Units, or Commercial Service Units.

1.97 “SFD Waste” means Solid Waste, Recyclable Materials, Organic Material, and Bulky Items generated at an SFD Service Unit. SFD Waste must be generated by and at the SFD Service Unit wherein the SFD Waste is Collected and does not include items defined herein as Exempt Waste.

1.98 “Single-Family, Single-Family Dwelling (SFD), or Single-Family Service Unit” means, notwithstanding any contrary definition in the CITY Municipal Code, any detached or attached house or residence of any number of Dwelling Units where each Dwelling Unit is designed or used for occupancy by one (1) family, provided that Collection Service can feasibly be provided to each Dwelling Unit as an independent unit, and the owner or occupant of such independent Dwelling Unit is billed directly for the Collection Service.

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

1.100 “Solid Waste” means all putrescible and non-putrescible solid, semisolid, and liquid wastes including Garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, discarded home and industrial appliances, Sludge which is not Hazardous Waste, and other discarded solid and semi-solid wastes as defined in California Public Resources Code Section 40191, as that section may be amended from time to time, but does not include materials that have been Source Separated, abandoned vehicles and parts thereof, or Exempt Waste. Solid Waste may include Recyclable Materials, Compostable Materials and Construction and Demolition Debris if such materials are not Source Separated from Solid Waste at the site of generation or Collected for Recycling, Composting, Processing, and marketing.

1.101 “Source Reduction” means any action which causes a net reduction in the generation of Solid Waste. It includes, but is not limited to, reducing the use of non-Recyclable Materials, replacing single use materials and products with Reusable Materials and products, reducing packaging, reducing the amount of Organic Materials generated, and increasing the efficiency of the use of paper, cardboard, glass, metal, plastic, and other materials.

1.102 “Source Separated or Source Separation” means the segregation from Solid Waste, by the Generator, of materials designated for separate Collection for some form of Recycling, Composting, recovery, or reuse.

1.103 “Special Event Collection Service” means the Collection of Solid Waste and Recyclable Materials as appropriate at CITY-sponsored special events.

1.104 “State” means the State of California.

1.105 “Subcontractor” means a Person who has entered into a contract, express or implied, with the CONTRACTOR for the performance of an act that is necessary for the CONTRACTOR’s fulfillment of its obligations for providing service under this Agreement. Vendors providing materials, supplies, or professional services to CONTRACTOR shall not be considered Subcontractors.

1.106 "Term" means the period of this Agreement, including extension periods if granted, as provided for in Article 3.

1.107 "Universal Waste or U-Waste" means all wastes defined by Title 22, Subsections 66273.1 through 66273.9 of the California Code of Regulations or successor regulations. These include, but are not limited to, Household Batteries, fluorescent light bulbs, mercury switches, and E-Waste.

1.108 "White Goods" means discarded refrigerators, ranges, water heaters, freezers, and other similar household appliances.

ARTICLE 2: REPRESENTATIONS AND WARRANTIES

The Parties, by acceptance of this Agreement, represent and warrant the conditions presented in this Article.

2.1 CONTRACTOR's Corporate Status

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

2.2 CONTRACTOR's Corporate Authorization

CONTRACTOR has the authority to enter into this Agreement and perform its obligations under this Agreement. The Board of Directors of CONTRACTOR (or the shareholders, if necessary) has taken all actions required by law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement. The Person signing this Agreement on behalf of CONTRACTOR represents and warrants that they have authority to do so. This Agreement constitutes the legal, valid, and binding obligation of the CONTRACTOR.

2.3 Agreement Will Not Cause Breach

To the best of each Party's knowledge after reasonable investigation, the execution or delivery of this Agreement or the performance by either Party of their obligations hereunder does not conflict with, violate, or result in a breach: (i) of any Applicable Law; or, (ii) any term or condition of any judgment, order, or decree of any court, administrative agency, or other governmental authority, or any agreement or instrument to which CONTRACTOR or any city is a party or by which CONTRACTOR or any of its properties or assets are bound, or constitutes a default hereunder.

2.4 No Litigation

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

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

2.5 No Adverse Judicial Decisions

To the best of each Party's knowledge after reasonable investigation, there is no judicial decision that would prohibit this Agreement or subject this Agreement to Legal Challenge (as defined in Section 3.6.F).

2.6 No Legal Prohibition

To the best of each Party's knowledge, after reasonable investigation, there is no Applicable Law in effect on the date that each Party signed this Agreement that would prohibit the performance of either of their obligations under this Agreement and the transactions contemplated hereby.

2.7 CONTRACTOR's Ability to Perform

CONTRACTOR possesses the business, professional, and technical expertise to perform all services, obligations, and duties as described in and required by this Agreement including all Exhibits thereto. CONTRACTOR possesses the ability to secure equipment, facility, and employee resources required to perform its obligations under this Agreement. By virtue of its long term service to the CITY, CONTRACTOR has intimate knowledge of the Service Area and Customers to accurately estimate the cost of services and revenues from billings as described in this Agreement. By virtue of its corporate relationships, CONTRACTOR has an intimate knowledge of existing legislation and regulatory requirements and the resources required to perform those services in the Service Area.

2.8 CONTRACTOR's Investigation

CONTRACTOR has made an independent investigation and analysis, the results of which are satisfactory to CONTRACTOR, of the conditions and circumstances surrounding the Agreement, its content and preparation, and the work to be performed by CONTRACTOR under the Agreement. The Agreement accurately and fairly represents the intentions of CONTRACTOR and CONTRACTOR enters into this Agreement on the basis of that independent investigation and analysis.

2.9 Statements and Information in CONTRACTOR's Proposal

The CONTRACTOR's Proposal and supplementary information submitted by CONTRACTOR for the work to be performed by CONTRACTOR under the Agreement do not contain any untrue statement of a material fact, nor does it omit any material facts relevant to the ability of CONTRACTOR to perform the work under the Agreement.

ARTICLE 3: TERM OF AGREEMENT

3.1 Initial Term

The Term of this Agreement shall be for a ten (10) year period beginning October 1, 2018 and terminating on September 30, 2028.

3.2 Extension of Initial Term

On or before July 1, 2026, the Participating Member Agencies may approve an offer to the CONTRACTOR in writing for a five (5) year extension of this Agreement for the period October 1, 2028 through September 30, 2033. Provision of such offer shall be at the sole discretion of the Participating Member Agencies. CONTRACTOR shall provide written notice to the Participating Member Agencies as to whether CONTRACTOR accepts or rejects the extension offer within twenty (20) Residential Service Work Days of the date of the offer. If CONTRACTOR fails to provide such notice to the Participating Member Agencies within said twenty (20) Residential Service Work Days, the extension offer shall be deemed withdrawn and CITY shall have no obligation to extend the Term of this Agreement beyond September 30, 2028. If the Term of this Agreement is extended, the CONTRACTOR Compensation and Maximum Service Rate provisions of Article 10 shall not be subject to negotiation. However, Maximum Service Rates shall be adjusted annually throughout the extended Term as provided in Article 10.

3.3 Extension of Second Term

On or before July 1, 2031, the Participating Member Agencies may approve an offer to the CONTRACTOR in writing for a five (5) year extension of this Agreement for the period October 1, 2033 through September 30, 2038. Provision of such offer shall be at the sole discretion of the Participating Member Agencies. CONTRACTOR shall provide written notice to the Participating Member Agencies as to whether CONTRACTOR accepts or rejects the extension offer within twenty (20) Residential Service Work Days of the date of the offer. If CONTRACTOR fails to provide such notice to the Participating Member Agencies within said twenty (20) Residential Service Work Days, the extension offer shall be deemed withdrawn and CITY shall have no obligation to extend the Term of this Agreement beyond September 30, 2033. If the Term of this Agreement is extended, the CONTRACTOR Compensation and Maximum Service Rate provisions of Article 10 shall not be subject to negotiation. However, Maximum Service Rates shall be adjusted annually throughout the extended Term as provided in Article 10.

3.4 Extension of Third Term

On or before July 1, 2036, the Participating Member Agencies may approve an offer to the CONTRACTOR in writing for a five (5) year extension of this Agreement for the period October 1, 2038 through September 30, 2043. Provision of such offer shall be at the sole discretion of the Participating Member Agencies. CONTRACTOR shall provide written notice to the Participating Member Agencies as to whether CONTRACTOR accepts or rejects the extension offer within twenty (20) Residential Service Work Days of the date of the offer. If CONTRACTOR fails to provide such notice to the Participating Member Agencies within said twenty (20) Residential Service Work Days, the extension offer shall be deemed withdrawn and CITY shall have no obligation to extend the Term of this Agreement beyond September 30, 2038. If the Term of this Agreement is extended, the CONTRACTOR Compensation and Maximum Service Rate provisions of Article 10 shall not be subject to negotiation. However, Maximum Service Rates shall be adjusted annually throughout the extended Term as provided in Article 10.

3.5 Other Provisions

The CITY may, at the end of the initial Term or optional extended Terms, as appropriate and at the sole discretion of the CITY Council, either renegotiate the terms and conditions of the Agreement with the current CONTRACTOR or request proposals from qualified contractors to provide Collection Services.

3.6 Conditions to Effectiveness of Agreement

The effectiveness of this Agreement and the obligation of each Party to perform its undertakings provided for in this Agreement, is subject to the satisfaction or waiver of all the conditions below, each of which may be waived, in written form, in whole or in part by CITY (as to items A-F) or by CONTRACTOR (as to item G).

- A. Accuracy of Representations.** The CONTRACTOR's representations and warranties made in CONTRACTOR's Proposal and Article 2 of this Agreement are true and correct on and as of the Effective Date.
- B. Furnishings of Insurance and Performance Bond.** CONTRACTOR has on or prior to the Effective Date furnished evidence of the insurance and to the extent required, the performance bond required by Article 11 that is satisfactory to the CITY.
- C. Absence of Litigation.** To the best of CONTRACTOR's knowledge, after reasonable investigation, as of the Effective Date there is no action, suit, proceeding, or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency, or instrumentality decided, pending or threatened against CONTRACTOR wherein an unfavorable decision, ruling, or finding, in any single case or in the aggregate, would:
 - 1. Materially adversely affect the performance by CONTRACTOR of its obligations hereunder;
 - 2. Adversely affect the validity or enforceability of this Agreement;
 - 3. Have a material adverse effect on the reputation of the CONTRACTOR, its parent or Affiliates; or
 - 4. Have a material adverse effect on the financial condition of CONTRACTOR, or any surety or entity guaranteeing CONTRACTOR's performance under this Agreement.
- D. Permits Furnished.** CONTRACTOR has on or prior to the Effective Date provided CITY with copies of all permits necessary for operation of all Approved Facilities owned or operated by CONTRACTOR or any Subcontractor for use under the terms of this Agreement.
- E. Post-Collection Processing and Disposal Services.** As of the Effective Date, CONTRACTOR either has a contract in place with each Approved Facility proposed to be used for post-Collection Processing and Disposal of materials Collected under this Agreement for the Term of this Agreement, or owns or operates such Approved Facility.
- F. Legal Challenge.** CONTRACTOR understands and acknowledges that the award of this Agreement and related decisions may be subject to review and repeal by the CITY's citizens through a referendum or similar petition, and to various types of legal and environmental challenges (such

referenda, similar petition and legal and environmental challenges being referred to collectively as "Legal Challenges"). In the event of a Legal Challenge, the Parties will cooperate with each other in responding to such action and if it is determined that the Agreement is invalid, neither Party shall owe any obligation to the other, except as may be determined by a court of competent jurisdiction.

- G. Related to Propositions 218 and 26.** Should there be a change in Applicable Law or a new judicial interpretation of Applicable Law, including, but not limited to, Article XIII C and D of the California Constitution (Commonly Proposition 218 and Proposition 26), which impacts the CITY's/ability to set or change Maximum Service Rates for the Collection Services established in accordance with this Agreement, CONTRACTOR agrees to meet and confer with the CITY to discuss the impact of such Change in Law or new judicial interpretation on either Party's ability to perform under this Agreement.

The CITY shall not be in default of this Agreement if it is determined by a court of competent jurisdiction that CITY lacks the authority to set Maximum Service Rates or increase Maximum Service Rates for charges related to providing Collection Services under this Agreement. Should a court of competent jurisdiction determine that the CONTRACTOR cannot charge and/or increase its Maximum Service Rates to cover any amounts incorporated into Maximum Service Rates under this Agreement, CONTRACTOR shall reduce (and/or not increase) the Maximum Service Rates it charges Customers correspondingly, and shall be relieved from the obligation to pay such amounts, providing said amounts disallowed by the court are not related to the cost of providing service hereunder and had been incorporated in the Maximum Service Rates charged by CONTRACTOR to its Customers. If the amounts disallowed by the court are related to the cost of providing service hereunder, then CONTRACTOR's obligations hereunder shall be reduced (in a manner mutually agreed by CITY and CONTRACTOR) so that they are commensurate with the rates that CONTRACTOR can legally charge.

Nothing herein is intended to imply that Proposition 218 or Proposition 26 apply to the Maximum Service Rates established for services provided under this Agreement; rather this Section is provided merely to allocate risk of an adverse judicial interpretation between the Parties.

- H. Execution by Participating Member Agencies.** All of the Participating Member Agencies have entered into Collection Service Agreements substantially similar to this Agreement, containing the same base services (with the exception of services within the non-program areas of Sutter and Yuba Counties) and the same base rates net of Franchise and other fees and surcharges (with the exception of base rates for services in the non-program areas of Sutter and Yuba Counties).

ARTICLE 4: GRANT AND ACCEPTANCE OF EXCLUSIVE AGREEMENT

4.1 Grant and Acceptance of Exclusive Agreement

Except as provided in Section 4.2 of this Agreement, the CONTRACTOR is hereby granted and the CONTRACTOR hereby accepts the exclusive Franchise, right and privilege within the Service Area to Collect and transport for Disposal and/or Processing all Solid Waste, Recyclable Materials, Green Waste, Food Waste, Organic Materials, Construction and Demolition Debris, E-Waste, U-Waste, White Goods, and Bulky Items, including along, across, or over the CITY's public ways within the Service Area. No other services shall be exclusive to the CONTRACTOR.

4.2 Limitations to the Scope of Exclusive Agreement

The following services and materials shall be excluded from the scope of this Agreement:

- A. **Recyclable Materials, Organic Materials or Bulky Items.** Recyclable Materials, Organic Materials, or Bulky Items that are Source Separated from Solid Waste by a Service Recipient for which the waste Generator sells or is otherwise compensated by a collector in a manner resulting in a net payment to the waste Generator.
- B. **Self-Hauled Materials.** Solid Waste, Recyclable Materials, Bulky Items, Organic Materials, or C&D which is removed from any SFD Service Unit, MFD Service Unit, Commercial Service Unit, or CITY Service Unit, and which is transported personally by the owner or occupant of such Premises (or by his or her full-time employees) to a Recycling, Processing, or Disposal facility;
- C. **Donated Source Separated Materials.** Recyclable Materials, Organic Materials, or Bulky Items which are Source Separated at any Premises by the waste Generator and donated to youth, civic, or charitable organizations;
- D. **Beverage Containers.** Containers delivered for Recycling under the California Beverage Container Recycling and Litter Reduction Act, Section 14500, et seq. California Public Resources Code;
- E. **Materials Removed by Customer's Contractor as Incidental Part of Services.** Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, and/or C&D removed from a Premise by a company (e.g., gardener, landscaper, tree trimming service, construction contractor, Residential clean-out service) as an incidental part of the service being performed by the company where the company uses its own Fixed Body Vehicle and employees, and no Drop Box Containers are used for the Collection and transportation of such materials;
- F. **Source Separated White Goods, Bulky Items, Etc.** Removal and transportation of White Goods, Bulky Items or other material as part of the services of providing a replacement item when such removal and transportation is provided by the vendor who sold the replacement item;
- G. **Animal, Grease Waste, and Used Cooking Oil.** Animal waste and remains from slaughterhouse or butcher shops, grease, or used cooking oil;
- H. **Sewage Treatment By-Product.** By-products of sewage treatment, including Sludge, Sludge ash, grit, and screenings;

- I. **Hazardous Waste.** Hazardous Waste regardless of its source;
- J. **CONTRACTOR Requested Waste.** SFD Waste, MFD Waste, Commercial Waste, CITY Waste, or C&D that are removed from a Premise by a company through the performance of a service that the CONTRACTOR has requested and received written permission from the Contract Administrator not to provide;
- K. **Materials Generated by State Facilities.** Materials generated by State facilities located in the CITY, provided that the Generator has arranged services with other Persons or has arranged services with the CONTRACTOR through a separate agreement; and,
- L. **In-Place Composting.** Organic Materials Composted or otherwise legally managed at the site where it is generated (e.g., backyard Composting, on-site anaerobic digestion).

4.3 Excluded Services

CONTRACTOR acknowledges and agrees that the CITY may permit other Persons besides the CONTRACTOR to Collect any and all types of materials excluded from the scope of this Agreement, as set forth in Article 4, without seeking or obtaining approval of CONTRACTOR.

4.4 Exclusivity

In the event CONTRACTOR can produce pictorial evidence or other documentation that other Persons are servicing Collection Containers or are Collecting Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, or C&D in a manner that is not consistent with the CITY's Municipal Code or this Agreement, CITY shall cooperate with CONTRACTOR in the efforts of CONTRACTOR to enforce its rights under the CITY Municipal Code or this Agreement.

4.5 Applicable Law

This Agreement and scope of this Agreement shall be interpreted to be consistent with Applicable Law, now and during the Term of the Agreement. If future judicial interpretations of current law or new laws, regulations, or judicial interpretations limit the ability of the CITY to lawfully contract for the scope of services consistent with the manner and consistent with all provisions as specifically set forth herein, CONTRACTOR agrees that the scope of the Agreement will be limited to those services and materials which may be lawfully included herein and that the CITY shall not be responsible for any lost profits or losses claimed by CONTRACTOR to arise out of limitations to the scope or provisions of the Agreement set forth herein. In such an event, it shall be the responsibility of CONTRACTOR to minimize the financial impact of such future judicial interpretations or new laws and the CONTRACTOR may meet and confer with CITY and may petition for a rate adjustment pursuant to Article 10.

4.6 Obligations of Parties

In addition to the specific performance required under the Agreement, CITY and CONTRACTOR shall:

- A. Provide timely notice to one another of an anticipated failure to perform any obligations under this Agreement and access to information demonstrating the Party's failure to perform.
- B. Provide timely access to the Contract Administrator and the CONTRACTOR's designated representative and complete and timely responses to requests of the other Party.

- C. Provide timely notice of matters that may affect either Party's ability to perform under the Agreement.

ARTICLE 5: SCOPE OF COLLECTION SERVICES

5.1 Summary Scope of Services

The CONTRACTOR or its Subcontractor(s) shall be responsible for the following services and shall be compensated for the provision of such services in accordance with Article 10 of this Agreement.

- A. Collecting Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, and C&D generated by and placed for Collection by Customers of CONTRACTOR's services pursuant to the requirements of Article 5;
- B. Transporting Collected materials to the appropriate Approved Facilities pursuant to the requirements of Article 6;
- C. Processing Collected Recyclable Materials, Organic Materials, Bulky Items, and C&D at the appropriate Approved Facilities;
- D. Performing all other services required by this Agreement including, but not limited to, Customer billing, public education, Customer service, record keeping, and reporting pursuant to Article 8;
- E. Furnishing all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and all other items and services necessary to perform its obligations under this Agreement;
- F. Paying all expenses related to provision of services required by this Agreement including, but not limited to, taxes, host fees, business and any other license fees, regulatory fees (including CITY fees and RWMA surcharges as applicable), and utilities; paying all expenses related to the operation, permitting, licensing, and regulatory fees for all Approved Facilities owned/operated by CONTRACTOR or CONTRACTOR's Affiliate; paying for all expenses related to Changes in Law at Approved Facilities owned/operated by CONTRACTOR or CONTRACTOR's Affiliate; and, paying all expenses related to any construction, any land or facility improvements, any repair and/or replacement of equipment, and all other expected or unforeseen costs associated with all Approved Facilities owned/operated by CONTRACTOR or CONTRACTOR's Affiliate;
- G. Performing or providing all services necessary to fulfill its obligations in full accordance with this Agreement at all times using best industry practice for comparable operations; and,
- H. Complying with all Applicable Laws.

CONTRACTOR shall perform the work and provide the services pursuant to this Agreement in a thorough and professional manner so that the residents and businesses within the Service Area are provided reliable, courteous, and high-quality service at all times. The enumeration and specification of particular aspects of service, labor, or equipment requirements shall not relieve CONTRACTOR of the duty to perform all other tasks and activities necessary to fulfill its obligations under this Agreement, regardless of whether such requirements are enumerated elsewhere in the Agreement, unless excused in accordance with Section 12.7.

5.2 Use of Approved Facilities

The CONTRACTOR, without constraint and as a free-market business decision in accepting this Agreement, agrees to use the Approved Facilities for the purposes of Processing, transferring and/or Disposing of all Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, C&D, and other materials Collected in the CITY. Such decision by CONTRACTOR in no way constitutes a restraint of trade. If the CONTRACTOR or Affiliate owns and/or operates Approved Facility(ies), all expenses associated with permitting, licensing, regulatory compliance, closure and post-closure, etc., and all other costs associated with the operation and ownership of the Approved Facility(ies) is the sole responsibility of the CONTRACTOR, except as provided in Section 10.5. CONTRACTOR agrees and acknowledges that all closure and post closure costs associated with the Recology Yuba Sutter landfill at Marysville are the sole responsibility of CONTRACTOR or its Affiliate.

5.3 Subcontracting

Except as set forth on Exhibit E, CONTRACTOR shall not engage any Subcontractors or Affiliated entities in the provision of services for Collection, transportation, or Processing of Solid Waste, Recyclable Materials, Organic Materials, U-Waste, Bulky Items, or C&D services without the prior written consent of the Contract Administrator. If the CONTRACTOR plans to engage other Affiliated entities in the provision of services, CONTRACTOR shall provide the Contract Administrator with thirty (30) Days' written notification of its plans and provide an explanation of any potential impacts related to the quality, timeliness, or cost of providing services under this Agreement.

5.4 Responsibility for Materials

Once Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, and C&D are placed in the CONTRACTOR's Containers, unless CONTRACTOR does not require the material to be placed in a Container, and at the Collection location, the responsibility for their proper handling shall transfer directly from the Generator to CONTRACTOR, with the exception of Exempt Waste if the CONTRACTOR can identify the Generator. Once Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, and C&D are deposited by CONTRACTOR at the appropriate Approved Facility, such materials shall become the responsibility of the owner or operator of the Approved Facility with the exception of Exempt Waste. Responsibility for Exempt Waste that has been inadvertently Collected by the CONTRACTOR shall remain with the CONTRACTOR if it cannot identify the Generator, and CONTRACTOR shall assume all responsibility for its proper Disposal.

5.5 CITY-Directed Changes to Scope

The CITY may meet and confer with CONTRACTOR to establish the scope of any additional services or modification to existing services (which may include a change in Approved Facilities) to be provided under this Agreement. In such case, CONTRACTOR shall present, within thirty (30) Days of the CITY's request, a written proposal to provide such modified or additional services. The CITY shall review the CONTRACTOR's Proposal for the change in scope of services, and other such financial records that CITY may deem necessary to make an informed decision. The CITY and CONTRACTOR may meet and confer to negotiate CONTRACTOR's proposed revisions and costs and shall amend this Agreement, as appropriate, to reflect the mutually agreed-upon changes in scope and rates.

If the Parties fail to reach agreement on a change proposed by the CITY after sixty (60) Days from the receipt of the proposal, the proposal is deemed rejected and the CITY may either implement the change

itself, or may (i) enter into an exclusive contract with a third party for the provision of the new service or new program according to the same specifications presented to CONTRACTOR (including, but not limited to, the same Franchise Fees or other fees or charges imposed by CITY), or (ii) grant one or more non-exclusive licenses to third parties to provide the new service or new program (in which event CONTRACTOR shall be entitled to such a license on terms and conditions no less favorable than any license granted to a third party). CITY shall not enter into discussions with or consider proposals from third parties regarding the proposed new service or new program until CITY has complied with the foregoing obligations. Nothing in this Section 5.5 shall be deemed to limit CONTRACTOR's exclusivity under Section 4.1, and accordingly the services that CITY may perform or contract for under this Section 5.5 shall exclude the services that are exclusive to CONTRACTOR under Section 4.1.

5.6 Single-Family Dwelling Collection Services

These services shall be governed by the following terms and conditions:

- A. SFD Conditions of Service.** CONTRACTOR shall Collect Solid Waste, Recyclable Materials, and Organic Materials from all SFD Service Units in the Service Area whose Solid Waste, Recyclable Materials, and Organic Materials are properly containerized in Carts, except as set forth in Sections 5.6.B through 5.6.F where the Solid Waste, Recyclable Material, and Organic Materials Carts have been placed within three (3) feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by the CONTRACTOR and Service Recipient that will provide safe and efficient accessibility to the CONTRACTOR's Collection crew and vehicle. CONTRACTOR shall follow the procedures set forth in Sections 7.14, 7.15, and 7.16 for those Solid Waste, Recyclable Materials, and Organic Materials Carts that are Contaminated. If during the Term of this Agreement, the CITY requests that CONTRACTOR provide for the inclusion of Food Waste and/or other Organic Materials as part of mandatory SFD Organic Materials Collection Services, such request shall be implemented under the provisions of Section 5.5 of this Agreement, except that CONTRACTOR acknowledges and agrees that there shall be no consideration of any additional Collection, Public Education and Outreach, or Processing costs related to the Collection of Food Waste.
1. **On-Premises Service.** Notwithstanding any term or definition set forth in this Agreement, CONTRACTOR shall provide on-Premises Collection of Solid Waste, Recyclable Materials, and Organic Materials to an SFD Service Unit if all adult Service Recipients residing therein have disabilities that prevent them from setting their Solid Waste, Recyclable Material, or Organic Materials Cart at the curb for Collection and if a request for on-Premises service has been made to and approved by the CONTRACTOR in the manner set forth in its written policy, which policy shall be provided to all residents requesting such on-Premises service. CONTRACTOR shall provide on-Premises service on the same Residential Service Work Day that curbside Collection would otherwise be provided to the SFD Service Unit. No additional monies shall be due to the CONTRACTOR for the provision of on-Premises service.
 2. **Frequency and Scheduling of Service.** Except as set forth in Sections 5.6.E and 5.6.F, SFD Collection Services shall be provided one (1) time per week on a scheduled route basis. SFD Collection Services shall be scheduled so that Solid Waste, Recyclable Materials, and Organic Materials are Collected from an SFD Service Unit on the same Residential Service Work Day.

3. **Non-Collection.** Except as set forth in Sections 5.6.B through 5.6.F, CONTRACTOR shall not be required to Collect any Solid Waste, Recyclable Material, or Organic Materials that are not placed in a Cart where such Cart is placed out for Collection in the manner required herein. In the event of non-Collection, CONTRACTOR shall affix to the Cart a Non-Collection Notice explaining why Collection was not made. CONTRACTOR shall maintain a copy of such notices for a period of three (3) years.

- B. **SFD Solid Waste Service Overages.** CONTRACTOR shall Collect Solid Waste from SFD Service Units who have contacted the CONTRACTOR's office in advance of the Collection Day and arranged for Collection of additional thirty-two (32) gallon bags of Solid Waste. CONTRACTOR shall be entitled to charge for such service a rate not exceeding Maximum Service Rate for such service set forth in Exhibit A.

- C. **SFD Recycling Service Overages.** CONTRACTOR shall Collect Recyclable Materials that will not fit inside the Recycling Cart but have been flattened and bagged or bundled and placed beside the Recyclable Materials Cart. CONTRACTOR shall also Collect corrugated cardboard that will not fit inside the Recycling Cart and has been reduced to a size not exceeding three feet by three feet (3' x 3') and placed beside the Cart for Collection.

- D. **SFD Organic Materials Collection Service Overages.** CONTRACTOR shall Collect Organic Materials that will not fit inside the Organic Materials Cart but have been bagged or bundled and placed beside the Organic Materials Cart.

- E. **Curbside Holiday Tree Collection.** CONTRACTOR shall Collect holiday trees (without stands, flocking, or ornamentation and no greater than six (6) feet in length) that are set at the curb beside the Organic Materials Cart from all SFD Service Units as part of the Organic Materials Collection Service. CONTRACTOR shall provide this service beginning on the first Residential Service Work Day after December 25 and until January 15.
 1. **Contaminated Holiday Trees.** Holiday trees that are flocked or contain tinsel or other decorations may be delivered to the Approved Disposal Facility at the discretion of the CONTRACTOR.

- F. **Bulky Item Collection Service.** This service will be governed by the following terms and conditions:
 1. **Conditions of Service.** The CONTRACTOR shall provide Bulky Item Collection Service to all SFD Service Units in the Service Area whose Bulky Items have been placed within three (3) feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by the CONTRACTOR and Service Recipient, that will provide safe and efficient accessibility to the CONTRACTOR's Collection crew and vehicle. Except as set forth below in Section 5.6.F.2, CONTRACTOR shall be entitled to charge for Collecting Bulky Items at a rate not exceeding the "Bulky Item Collection" Maximum Service Rate set forth in Exhibit A, as adjusted under the terms of this Agreement. Bulky Items Collected by CONTRACTOR may not be landfilled or Disposed of until the following hierarchy has been followed by the CONTRACTOR.
 - Reuse as is (if energy efficient)

- Disassemble for reuse or Recycling
 - Recycle (through participation of charitable organizations)
 - Disposal
2. **Free Bulky Item Collection Service.** Beginning January 1, 2019 and annually thereafter during the Term of this Agreement, CONTRACTOR shall allow each SFD Customer four (4) free Bulky Item Collection Services.
 3. **Frequency of Service.** Bulky Item Collection Service shall be provided on the Customer's first SFD Collection Service date following the receipt of the request, with a minimum of forty-eight (48) hours' notice, or as agreed upon between Customer and CONTRACTOR.
 4. **Free Dump Program.** Beginning January 1, 2019 and annually thereafter during the Term of this Agreement, CONTRACTOR shall allow each SFD Customer to deliver one (1) load in a non-Commercial (no more than one (1) ton) vehicle or trailer of Solid Waste, Recyclable Materials, Organic Material, Bulky Items, or C&D to the Approved Transfer Station in lieu of receiving a free Bulky Item Collection Service.
 5. **Tires and Freon.** The number of tires delivered to the Approved Transfer Station or Collected as part of each Bulky Item Collection shall be limited to four (4) passenger car and light truck tires. CONTRACTOR may charge for additional tires as set forth in Exhibit A. In addition, a charge as set forth in Exhibit A may be applied to each Freon-containing appliance.
- G. **Compost Give-Away.** On or about April 1, 2019 and semi-annually thereafter during the Term of this Agreement, CONTRACTOR shall make available to each SFD Customer, a "free Compost" program that provides up to fifty (50) gallons of Compost material for Customer pick-up at the Approved Transfer Station or in a manner agreed upon by the CITY and CONTRACTOR.

5.7 Multi-Family Dwelling Collection Services

These services shall be governed by the following terms and conditions:

- A. **MFD Solid Waste Conditions of Service.** The CONTRACTOR shall Collect Solid Waste from all MFD Service Units in the Service Area whose Solid Waste is properly containerized in Bins or Carts where the Bins or Carts are accessible as set forth herein. CONTRACTOR shall follow the procedures set forth in Section 7.14 for those Solid Waste Containers that are Contaminated.
 1. **Size and Frequency of Service.** This service shall be provided as deemed necessary and as determined between the CONTRACTOR and the Customer, but such service shall be received no less than one (1) time per week. Service may be provided by Bin or Cart at the option of the Customer. The size of the Container and the frequency (above the minimum) of Collection shall be determined between the Customer and the CONTRACTOR. However, size and frequency shall be sufficient to provide that no MFD Solid Waste need be placed outside the Bin or Cart. The CONTRACTOR shall provide Containers at no additional charge as part of the service; however, Customers may provide their own Compactor provided that

the Customer is completely responsible for its proper maintenance and that such Compactor shall be of a type that can be serviced by the CONTRACTOR's equipment.

2. **Non-Collection.** CONTRACTOR shall not be required to Collect any MFD Solid Waste that is not placed in a Bin or Cart and set out for Collection. In the event of non-Collection, CONTRACTOR shall contact the Customer to discuss the reason for the non-Collection and shall affix to the Container a Non-Collection Notice explaining why Collection was not made. CONTRACTOR shall maintain a copy of such notices for a period of three (3) years.
 3. **Solid Waste Overflow.** In the case of overflows of MFD Solid Waste, CONTRACTOR may, at its option, Collect the overflow material and not charge Customer; Collect the overflow material and charge the Customer up to the "Overflow" Maximum Service Rate set forth in Exhibit A; or not Collect the overflow material. In the event CONTRACTOR elects not to Collect the overflow material, CONTRACTOR shall contact the Customer to inform them of the situation and request that arrangements be made for the Customer's personnel to put the material in the Container. In the event of multiple occurrences of overflow, in which such overflow is creating an undue health and safety concern, CONTRACTOR shall meet with the Customer to arrange for an appropriate change in Solid Waste Bin or Cart size, Collection frequency, or both. In the event CONTRACTOR cannot reach an agreement with the Customer regarding the change in service, CONTRACTOR shall provide the additional services CONTRACTOR deems necessary to avoid future overflow or any undue health and safety concern and shall bill the Customer accordingly.
- B. MFD Recycling Offer of Service.** During the Term of this Agreement and subject to the limitations set forth in Article 4, CONTRACTOR shall offer to Collect Recyclable Materials from all MFD Service Units in the Service Area on a subscription basis at a rate not exceeding the Maximum Service Rate for such service set forth in Exhibit A. CONTRACTOR shall provide Recycling services to all MFD Service Units requesting such service where such Recyclable Materials are properly Containerized and uncontaminated by materials not included in the Recycling program, in Bins or Carts, where the Bins or Carts are accessible as set forth herein. However, CONTRACTOR shall be required to Collect corrugated cardboard that has been reduced to a size not exceeding three feet by three feet (3' x 3') and placed beside the Bin for Collection. At such time during the Term of this Agreement as the CITY amends the CITY Municipal Code to require mandatory MFD Recycling Collection Services, such change in services shall be implemented under the provisions of Section 5.5 of this Agreement. CONTRACTOR shall follow the procedures set forth in Section 7.15 for those Recyclable Materials Containers that are Contaminated.
1. **Non-Collection.** Except as set forth above, CONTRACTOR shall not be required to Collect any corrugated cardboard or Recyclable Materials that are not placed in a Bin or Cart where such Container is placed out for Collection in the manner required herein. In the event of non-Collection, CONTRACTOR shall affix to the Container a Non-Collection Notice explaining why Collection was not made. CONTRACTOR shall maintain a copy of such notices for a period of three (3) years.
- C. MFD Organic Materials Offer of Service.** During the Term of this Agreement and subject to the limitations set forth in Article 4, CONTRACTOR shall offer to Collect Organic Materials from all MFD Service Units in the Service Area on a subscription basis at a rate not exceeding the Maximum

Service Rate for such service set forth in Exhibit A. CONTRACTOR shall provide Organic Materials Collection Service to all MFD Service Units requesting such service where such Organic Materials are properly containerized, and uncontaminated by materials not included in the Organic Materials program, in Bins or Carts, where the Bins or Carts are accessible as set forth herein. The forgoing notwithstanding, if during the Term of this Agreement, the CITY amends the CITY Municipal Code to require mandatory MFD Organic Materials Collection Services, such change in services shall be implemented under the provisions of Section 5.5 of this Agreement. In addition, if during the Term of this Agreement, the CITY, as a result of a Change in Law is required to amend this Agreement to require the inclusion of Food Waste and other Organic Materials as part of mandatory MFD Organic Materials Collection Services, such change in services shall be implemented under the provisions of Section 5.5 of this Agreement. CONTRACTOR shall follow the procedures set forth in Section 7.16 for those Organic Materials Containers that are Contaminated.

1. **Non-Collection.** CONTRACTOR shall not be required to Collect any MFD Organic Materials that are not placed in a Bin or Cart where such Container is placed out for Collection in the manner required herein. In the event of non-Collection, CONTRACTOR shall contact the Customer to discuss the reason for the non-Collection and shall affix to the Bin or Cart a Non-Collection Notice explaining why Collection was not made. CONTRACTOR shall maintain a copy of such notices for a period of three (3) years.
- D. MFD Bulky Item Service.** During the Term of this Agreement, CONTRACTOR shall offer to provide Bulky Item Collection Service to MFD Service Units in the Service Area on a subscription basis at a rate not exceeding the Maximum Service Rates for such service set forth in Exhibit A. CONTRACTOR will be required to separate and Recycle all commodities that can be feasibly recovered. Bulky Items Collected by CONTRACTOR may not be landfilled or Disposed of until the following hierarchy has been followed by the CONTRACTOR.
- Reuse as is (if energy efficient)
 - Disassemble for reuse or Recycling
 - Recycle (through participation of charitable organizations)
 - Disposal
- E. MFD Annual Holiday Tree Collection.** Annually, commencing the first Collection Day after December 25 and ending January 15, the CONTRACTOR shall Collect holiday trees (without stands, flocking, or ornamentation and no greater than six (6) feet in length) from MFD Customers at no additional charge. CONTRACTOR shall perform Collection of holiday trees on Customers' normal Collection Day at a location agreed to between CONTRACTOR and Customer.
- F. Accessibility.** CONTRACTOR shall Collect all Bins or Carts that are readily accessible to the CONTRACTOR's crew and vehicles and not blocked. However, CONTRACTOR shall provide "push services" and "master lock services" as described herein as necessary during the provision of MFD Collection Services. "Push services" shall include, but not be limited to, dismounting from the Collection vehicle, moving the Bins or Carts from their storage location for Collection and returning the Bins or Carts to their storage location. "Push services" may include unlocking and relocking the Bin or enclosure. "Master lock services" shall include the provision of a master lock

and key by CONTRACTOR to the Customer for the convenience of CONTRACTOR. CONTRACTOR shall be entitled to charge for "push services" or "master lock services" at a rate not exceeding the Maximum Service Rates for such services set forth in Exhibit A.

5.8 Commercial Collection Services

These services will be governed by the following terms and conditions:

- A. Commercial Solid Waste Conditions of Service.** The CONTRACTOR shall Collect Solid Waste from all Commercial Service Units in the Service Area whose Solid Waste is properly containerized in Bins, Carts, Compactors, or Drop Box Containers, where the Containers are accessible as set forth herein. CONTRACTOR shall follow the procedures set forth in Section 7.14 for those Solid Waste Containers that are Contaminated.
- 1. Size and Frequency of Service.** This service shall be provided as deemed necessary and as determined between the CONTRACTOR and the Customer, but such service shall be received no less than one (1) time per week. Service may be provided by Bin, Cart, Compactor, or Drop Box Containers at the option of the Customer. The size of the Container and the frequency (above the minimum) of Collection shall be determined between the Customer and the CONTRACTOR. However, size and frequency shall be sufficient to provide that no Commercial Solid Waste need be placed outside the Bin, Cart, Compactor, or Drop Box Containers. The CONTRACTOR shall provide Containers at no additional charge as part of the service; however, Customers may provide their own Compactor provided that the Customer is completely responsible for its proper maintenance and that such Compactor shall be of a type that can be serviced by the CONTRACTOR's equipment.
 - 2. Non-Collection.** CONTRACTOR shall not be required to Collect any Commercial Solid Waste that is not placed in a Container and set out for Collection. In the event of non-Collection, CONTRACTOR shall contact the Customer to discuss the reason for the non-Collection and shall affix to the Container a Non-Collection Notice explaining why Collection was not made. CONTRACTOR shall maintain a copy of such notices for a period of three (3) years.
 - 3. Commercial Solid Waste Overflow.** In the case of overflows of Commercial Solid Waste, CONTRACTOR may, at its option, Collect the overflow material and not charge Customer; Collect the overflow material and charge the Customer up to the "Overflow" Maximum Service Rate set forth in Exhibit A; or not Collect the overflow material. In the event CONTRACTOR elects not to Collect the overflow material, CONTRACTOR shall contact the Customer to inform them of the situation and request that arrangements be made for the Customer's personnel to put the material in the Container. In the event of multiple occurrences of overflow, in which such overflow is creating an undue health and safety concern, CONTRACTOR shall meet with the Customer to arrange for an appropriate change in Solid Waste Bin, Cart, Compactor, or Drop Box Container size, Collection frequency or both. In the event CONTRACTOR cannot reach an agreement with the Customer regarding the change in service, CONTRACTOR shall provide the additional services CONTRACTOR deems necessary to avoid future overflow or any undue health and safety concern and shall bill the Customer accordingly.

B. Commercial Recycling Offer of Service. During the Term of this Agreement and subject to the limitations set forth in Article 4, CONTRACTOR shall offer to Collect Recyclable Materials from all Commercial Service Units in the Service Area on a subscription basis at a rate not exceeding the Maximum Service Rate for such service set forth in Exhibit A. CONTRACTOR shall provide this service to all Commercial Service Units requesting such service where such Recyclable Materials are properly containerized, and uncontaminated by materials not included in the Recycling program, in Bins, Carts, Compactors, or Drop Box Containers, where the Containers are accessible as set forth herein. However, CONTRACTOR shall be required to Collect corrugated cardboard that has been reduced to a size not exceeding three feet by three feet (3' x 3') and placed beside the Container for Collection. At such time during the Term of this Agreement as the CITY amends the CITY Municipal Code to require mandatory Commercial Recycling Collection Services, such change in services shall be implemented under the provisions of Section 5.5 of this Agreement. CONTRACTOR shall follow the procedures set forth in Section 7.15 for those Recyclable Materials Containers that are Contaminated.

- 1. Non-Collection.** Except as set forth above, CONTRACTOR shall not be required to Collect any corrugated cardboard or Recyclable Materials that are not placed in a Bin, Cart, Compactor, or Drop Box Container where such Container is placed out for Collection in the manner required herein. In the event of non-Collection, CONTRACTOR shall affix to the Container a Non-Collection Notice explaining why Collection was not made. CONTRACTOR shall maintain a copy of such notices for a period of three (3) years.

C. Commercial Organic Materials Offer of Service. During the Term of this Agreement CONTRACTOR shall offer to Collect Organic Materials from Commercial Service Units in the Service Area on a subscription basis at a rate not exceeding the Maximum Service Rate for such service set forth in Exhibit A. CONTRACTOR shall, subject to the limitations set forth in Article 4, provide this service to all Commercial Service Units in the Service Area requesting such service where such Organic Materials are properly containerized in Bins, Carts, Compactors, or Drop Box Containers, where the Containers are accessible as set forth herein. The forgoing notwithstanding, if during the Term of this Agreement, the CITY amends the CITY Municipal Code to require mandatory Commercial Organic Materials Collection Services, such change in services shall be implemented under the provisions of Section 5.5 of this Agreement. In addition if during the Term of this Agreement, the CITY, as a result of a Change in Law is required to amend this Agreement to require the inclusion of Food Waste as part of mandatory Commercial Organic Materials Collection Services, such change in services shall be implemented under the provisions of Section 5.5 of this Agreement. CONTRACTOR shall follow the procedures set forth in Section 7.16 for those Organic Materials Containers that are Contaminated.

- 1. Non-Collection.** CONTRACTOR shall not be required to Collect any Organic Materials that are not placed in a Bin, Cart, Compactor, or Drop Box Container where such Container is placed out for Collection in the manner required herein. In the event of non-Collection, CONTRACTOR shall affix to the Container a Non-Collection Notice explaining why Collection was not made. CONTRACTOR shall maintain a copy of such notices for a period of three (3) years.

D. Commercial Bulky Item Service. During the Term of this Agreement, CONTRACTOR shall offer to provide Bulky Item Collection Service to Commercial Service Units in the Service Area on a

subscription basis at a rate not exceeding the Maximum Service Rate for such service set forth in Exhibit A. CONTRACTOR will be required to separate and Recycle all commodities that can be feasibly recovered. Bulky Items Collected by CONTRACTOR may not be landfilled or Disposed of until the following hierarchy has been followed by the CONTRACTOR.

- Reuse as is (if energy efficient)
- Disassemble for reuse or Recycling
- Recycle (through participation of charitable organizations)
- Disposal

E. Accessibility. CONTRACTOR shall Collect all Bins, Carts, Compactors, or Drop Boxes, that are readily accessible to the CONTRACTOR's crew and vehicles and not blocked. However, CONTRACTOR shall provide "push services" and "master lock services" as described herein as necessary during the provision of Commercial Collection Services. "Push services" shall include, but not be limited to, dismounting from the Collection vehicle, moving the Bins or Carts from their storage location for Collection, and returning the Bins or Carts to their storage location. "Push services" may include unlocking and relocking the Bin or enclosure. "Master lock services" shall include the provision of a master lock and key by CONTRACTOR to the Customer for the convenience of CONTRACTOR. CONTRACTOR shall be entitled to charge the Customer for "push services" or "master lock services" at a rate not exceeding the Maximum Service Rates for such services set forth in Exhibit A.

5.9 CITY Collection Services

The following services shall be provided to the CITY at no charge (except as provided in Section 5.9.D and 5.9.J), and will be governed by the following terms and conditions:

- A. Locations of Service.** CONTRACTOR shall Collect Solid Waste, Recyclable Materials, and Organic Materials from all CITY Service Units as set forth on Exhibit D and as may be adjusted as set forth in Section 5.9.J. below.
- B. Frequency of Service.** Each service shall be provided at the frequency as set forth on Exhibit D and as may be adjusted as set forth in Section 5.9.J. below but no less than at least once every week on a scheduled route basis.
- C. Accessibility.** CONTRACTOR shall Collect material from all Bins, Carts, Compactors, public litter containers, and Drop Boxes, as set forth on Exhibit D and as may be adjusted as set forth in Section 5.9.J. below, that are readily accessible to the CONTRACTOR's crew and vehicles and not blocked. However, CONTRACTOR shall provide "push services" and "master lock services" as described herein, as necessary, during the provision of CITY Collection Services. "Push services" shall include, but not be limited to, dismounting from the Collection vehicle, moving the Bins or Carts from their storage location for Collection and returning the Bins or Carts to their storage location. "Push services" may include unlocking and relocking the Bin or enclosure. "Master lock services" shall include the provision of a master lock and key by CONTRACTOR to the CITY for the convenience of CONTRACTOR. CONTRACTOR shall not be entitled to charge the CITY for the provision of "push services" or "master lock services" to CITY Service Units.

- D. Bulky Item Service.** During the Term of this Agreement CONTRACTOR may offer to provide Bulky Item Collection Service to CITY Service Units in the Service Area on a subscription basis at a rate not exceeding the Maximum Service Rates for such service set forth in Exhibit A.
- E. CITY Container Service.** CONTRACTOR shall provide CITY Container Service to all public litter containers as set forth on Exhibit D and as may be adjusted as set forth in Section 5.9.J. below where the public litter containers are accessible as set forth in Section 5.9.C. Such service shall be provided at least every week or more often as needed.
- F. CITY Self-Haul Service.** CITY employees in CITY vehicles may haul Solid Waste, Recyclable Materials, Organic Material, Bulky Items, C&D, and other non-Exempt Waste generated at CITY Facilities, regardless of size, to an Approved Facility at no charge.
- G. Special Event Collection Service.** At CITY's request, CONTRACTOR shall provide Solid Waste and Recycling services at CITY-sponsored events that are open to the public and that do not require paid admission or the purchase of a ticket. Such services shall be provided in such a manner that all Solid Waste and Recycling needs of the event are adequately and properly provided for by CONTRACTOR at no cost of any kind to the CITY. In addition, at CITY's request, CONTRACTOR shall provide the Recyclable Material Collection portion of the Special Event Collection Services to other non-CITY sponsored events at no charge to the Customer as long as this program is funded by CalRecycle Beverage Container Recycling City/County Payment Program funds. In the event that these funds are not available, CONTRACTOR may continue to offer the Recyclable Material Collection portion of the Special Event Collection Services at no charge to the Customer or the CITY or may terminate the program.
- H. Illegal Dumping Notification and Collection.** CONTRACTOR shall direct its Collection vehicle drivers to note: (i) the addresses of any Premises at which the driver observes that Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, and/or C&D material is accumulating; and, (ii) the address, or other location description, at which Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, and/or C&D material has been dumped in an apparently unauthorized manner. CONTRACTOR shall deliver the address or description to CITY within three (3) Business Days of such observation. CONTRACTOR shall also provide abandoned waste Collection Services to the CITY at up to five (5) locations per month in each case of up to three (3) cubic yards of such illegally dumped materials per location provided; however, CONTRACTOR shall not be required to Collect materials not safely accessible by Collection vehicles and/or personnel.
- I. Community Clean-up Events.** CONTRACTOR shall, in response to the written request of the Contract Administrator, deliver and Collect Drop Box Containers for use in up to two (2) CITY community clean-up events per Agreement Year. Each community clean-up event shall consist of a single Collection day beginning at 6:00 a.m. and ending at 6:00 p.m. The Contract Administrator shall notify CONTRACTOR in writing not less than five (5) Days prior to the date of the event. The notice to CONTRACTOR shall specify the date of delivery and Collection of the Drop Box Containers, the location for delivery, and the number of and sizes of the Drop Box Containers to be delivered. As part of this service, CONTRACTOR shall provide on-site supervision at all times the Drop Box Containers are available for community clean-up services. At such time as a Drop Box Container is full, but not later than the end of the community clean-up event day, CONTRACTOR shall transport and deliver the Collected materials to the appropriate Approved

Facility for the disposition or processing of the materials.

With the prior written consent of the Contract Administrator, CONTRACTOR may provide for the Collection of materials at a community clean-up event in a vehicle or container other than a Drop Box Container. However, in the event the CONTRACTOR elects to utilize this alternative Collection process, CONTRACTOR is responsible for obtaining documentation of the weight of the materials Collected, Diverted, and Disposed in a manner that is acceptable to the CITY.

- J. **Initial Service Levels and Adjustments.** The initial services and service levels to be provided under subsections A, B, C, and E above are as set forth in Exhibit D. Notwithstanding any other provision of this Section 5.9 or this Agreement, if as a result of CITY requests for additional or modified services or service levels for those services described in subsection A, B, C, and E above, the aggregate cost of providing free service to CITY in a given Agreement Year exceeds by more than five percent (5%) the aggregate cost of providing the services specified on Exhibit D or in the event Exhibit D has not been updated, the cost of the actual free services provided to the CITY for the prior Agreement Year, then CONTRACTOR shall be entitled to charge the CITY for the excess service at the then-applicable solid waste Maximum Service Rates set forth in Exhibit A. In order to determine the change in the aggregate costs between Agreement Years in a simple and efficient manner and to avoid potential misunderstandings, the cost of the services for both Agreement Years shall be calculated using the most current Solid Waste Maximum Service Rates as if all services were related to Solid Waste.

5.10 Drop Box Collection Services

The Drop Box Collection Services to be performed by CONTRACTOR shall include the following:

- A. **Collection of Drop Boxes from Service Units within the Service Area.** CONTRACTOR shall respond no later than the second Commercial Service Work Day after receipt of the request for service, and shall provide the appropriate Container for such Collection according to the circumstances; however, no service shall be provided on Sunday. CONTRACTOR shall perform the following services:
1. Provision, maintenance, and replacement of all Containers and receptacles required for the provision of all Drop Box Services; and
 2. Transport of Drop Box to the appropriate Approved Facility under this Agreement for separation and Processing.
- B. **Rates.** The Maximum Service Rates for Drop Box service shall be as specified in Exhibit A.
- C. **Records.** CONTRACTOR will conduct proper record keeping to be sure that the Drop Box materials are Recycled to the extent possible and the amount Disposed and amount Diverted are properly recorded and reported.
- D. **CalGreen Documentation.** To the extent requested in a timely manner, CONTRACTOR shall provide Customers with the documentation necessary to demonstrate compliance with the CalGreen C&D Debris Diversion requirements for those materials delivered to an Approved Facility owned or operated by CONTRACTOR or CONTRACTOR's Affiliate.

5.11 Other Services

- A. Recycling Coordinator.** CONTRACTOR shall provide a full time management level employee to serve as Recycling Coordinator for a minimum of forty (40) hours per week whose time is totally dedicated to the RWMA Service Area during the Term of the Agreement and whose function during normal business hours of each Residential Service Work Day shall be to provide services related to the Collection Service Agreement, including but not limited to, public education and outreach.
- B. New Customer Packets.** An information packet shall be provided to each new Customer throughout the Agreement Term. CONTRACTOR may attach these packets to the Carts and Bins upon initial Cart and Bin distribution. This packet shall: describe available services, including available Recycling and Diversion programs; provide instructions for proper use of the Carts and Bins provided (such as how to place Carts or other permitted items for Collection, the types of materials to be placed in each Cart); detail Holiday Collection schedules; and provide billing and Customer service telephone numbers. This packet shall contain updated information on how to use Containers, when, where and how to place Solid Waste, Recyclable Materials, and Organic Materials for Collection, and who to contact with service or billing questions and for Bulky Item Collection. The packet shall also clearly indicate what materials, such as Home-Generated Sharps and other Household Hazardous Wastes (HHW), should not be Disposed of in these Containers. This brochure shall include instructions on how Customers should Dispose of HHW, such as information on the HHW drop-off facilities and other available programs.
- C. Public Education and Outreach.** Public education and outreach activities related to this Agreement will be managed by the CONTRACTOR as further described in the Public Education Plan, provided in Exhibit C.
- 1. CONTRACTOR Strategy.** CONTRACTOR's public education and outreach strategy shall focus on improving Customer understanding of the benefits of and opportunities for Source Reduction, reuse, Recycling, and Composting. In general, CONTRACTOR-provided public education and outreach should: (i) inform Customers about the services that are provided under this Agreement with specific focus on describing the methods and benefits of Source Reduction, reuse, Recycling, and Composting; (ii) inform Customers about AB 341, AB 1826, and SB 1383 requirements; (iii) 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 Recyclable and Organic Materials; and, (iv) clearly define Exempt Waste and educate Customers about the hazards of such materials and their opportunities for proper handling.
 - 2. Coordination with Contract Administrator.** CONTRACTOR shall cooperate and coordinate with the Contract Administrator to minimize duplicative, inconsistent, or inappropriately timed education campaigns. CONTRACTOR shall allow the Contract Administrator a reasonable opportunity to review, request modifications to, and approve all public education materials including, but not limited to: print (including materials provided in accordance with Section 5.11.B), radio, television, or internet media before publication, distribution, and/or release. CITY shall have the right to request that CONTRACTOR include CITY or RWMA identification and contact information on public education materials and approval of such requests shall not be unreasonably withheld.

3. **Multiple Languages.** CONTRACTOR shall provide, as requested by the CITY, translated written communication (packets, billing inserts, website content, etc.) in Spanish and one (1) other language selected by CITY.
- D. Public Dumping Services.** CONTRACTOR shall provide a site at the Approved Transfer Station for the public to deliver Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, and C&D for a charge not to exceed the posted tipping fees for each material. CONTRACTOR shall make all reasonable efforts to Recycle materials accepted at the Approved Facility.
- E. Public Drop-Off Services.** CONTRACTOR shall provide sites at the Approved Transfer Station where CITY residents may drop-off used oil and used oil filters, CEW, other U-Waste, fluorescent light tubes and bulbs, and Home Generated Sharps at no charge to the resident or the CITY.
- F. Residential Sharps Drop-Off Program.** CONTRACTOR shall provide a Residential sharps drop-off program for the Collection of Home-Generated Sharps. CONTRACTOR shall be responsible to ensure the Home-Generated Sharps drop-off program complies with all Applicable Laws and regulations. The Residential sharps drop-off program at a minimum will allow for SFD and MFD Customers to purchase specialized sharps containers and return filled sharps containers for proper Disposal to participating pharmacies or the Recology Customer service office in Marysville. Details of the program including a list of participating pharmacies shall be provided through the CONTRACTOR's website.
- G. California Electronic Waste Recycling Act of 2003 Recovery Payments.** The California Electronic Waste Recycling Act of 2003 (California Health and Safety Code commencing with Section 25214.9, California Public Resources Code Section 41516 and California Public Resources Code commencing with Section 42460) provides for per pound recovery payments to authorized collectors for CEW. CONTRACTOR shall maintain its status as an "authorized collector". CONTRACTOR, in its capacity as an authorized collector in the Covered Electronic Waste Recovery and Recycling Payment System, will be designated by the CITY to handle CEW transferred directly to CONTRACTOR by California sources. Such designation is necessary so as to reduce the record keeping requirements established by the regulations promulgated under the California Electronic Waste Recycling Act of 2003.
1. CEW recovery activities provided by CONTRACTOR shall include, but are not limited to, CEW received from the public at the Approved Transfer Station, including CEW picked-up at the request of Service Recipients (e.g., Bulky Item Collection Service); Collected through CITY clean-up services; recovered from load checking; and, received from the clean-up of illegal dumping activities by the CITY Public Works Department.
 2. CONTRACTOR shall develop and maintain records required pursuant to the California Electronic Waste Recycling Act of 2003, as it may be amended, to support claims to CalRecycle for Recovery Payments for all CEW received and recovered as described above. CONTRACTOR shall provide a site at the Transfer Station where CITY residents and businesses may drop-off CEW from California sources at no extra charge to the resident or business.

- H. Special Services.** In addition to the services described in this Agreement, CONTRACTOR shall provide to Customers in the CITY such special services as may be agreed upon between CITY and CONTRACTOR from time to time. The additional charge to the Customer for provision of such special services shall be determined between CONTRACTOR and the CITY prior to provision of the service, subject to the Maximum Service Rate for such service agreed to by CITY and CONTRACTOR. If CONTRACTOR is unwilling to provide such service, or CITY and CONTRACTOR are unable to agree on a price for such service, Customer can seek such service from another contractor, provided that such other contractor's provision of the service does not violate CONTRACTOR's exclusivity under Article 4.
- I. Other Services.** CONTRACTOR shall provide additional services and programs, such as pilot programs, special studies, etc., as requested by CITY at a price to be mutually agreed upon between the CONTRACTOR and the Contract Administrator. In the event the CONTRACTOR and the Contract Administrator cannot reach a mutually agreed upon price for the requested service or program, CITY shall have the right to procure the service of other vendors or contractors to provide the requested service.
- J. Graffiti Abatement.** CONTRACTOR's Collection drivers shall notify CONTRACTOR of graffiti on Collection route Containers. CONTRACTOR shall be responsible for graffiti removal from Containers within forty eight (48) hours of notification from drivers, Customers, or the Contract Administrator, at no additional charge to the Customer or to CITY.
- K. Emergency Action Plan.** Prior to June 1, 2019, CONTRACTOR shall work with the Contract Administrator to prepare an Emergency Action Plan for Disaster Preparedness (Emergency Action Plan) in a form and format that is satisfactory to the Contract Administrator. The Emergency Action Plan shall provide a framework for CONTRACTOR to continue Collection Services within the Service Area after a catastrophic event, and to facilitate collaborative efforts with the CITY that mitigate the threat to the health, safety and welfare of CITY residents. CONTRACTOR shall work with the Contract Administrator to update the Emergency Action Plan no fewer than two (2) times during the Term of this Agreement to ensure that the Emergency Action Plan is at all times current and actionable.
- L. Emergency Service Compensation.** CONTRACTOR shall provide emergency services in accordance with the Emergency Action Plan in the event of major accidents, disruptions, or natural calamities. Emergency services that exceed the scope of work under this Agreement, and that are not compensated by charges to Customers (in accordance with the Maximum Service Rates provided in Exhibit A, or as special services pursuant to Section 5.11.H of this Agreement, will be billed by CONTRACTOR to CITY/ in accordance with the Maximum Service Rates in Exhibit A, and may either be paid by CITY or treated as a CITY-directed change as set forth in Section 5.5 of this Agreement.

ARTICLE 6: PROCESSING, DISPOSAL, AND DIVERSION REQUIREMENTS

6.1 Rights of Ownership

CITY and CONTRACTOR understand and agree that it is CONTRACTOR, and not CITY, who will arrange to Collect Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, and C&D, that CITY has not, and, by this Agreement does not, instruct CONTRACTOR on its Collection methods, nor supervise the Collection process; nor do the Parties intend to place title to Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, and C&D Collected by CONTRACTOR in CITY. At no time does CITY obtain any right of ownership or possession of Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, and C&D placed for Collection, and nothing in this Agreement shall be construed as giving rise to any inference that CITY has any such rights. CITY and CONTRACTOR agree that, for the purposes of the Uniform Commercial Code and all other laws imposing liability for defective products, it is CONTRACTOR, and not CITY which is to be considered the merchant of goods Recycled pursuant to this Agreement. Subject to the provisions of this Agreement, and unless CITY exercises its rights to direct the location for Disposal and Processing of Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, and C&D, CONTRACTOR shall have the right to retain, Recycle, Process, Dispose of, and otherwise use Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, and C&D Collected pursuant to the terms hereof in any lawful fashion or for any lawful purpose; and, further, shall have the right to retain any benefit resulting from its right to retain, Recycle, Process, Dispose of, or reuse the Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, and C&D which it Collects.

6.2 Transportation of Discarded Materials

CONTRACTOR shall transport all Discarded Materials Collected to the appropriate Approved Facility. If the Approved Recycling Facility is owned by CONTRACTOR or an Affiliate of CONTRACTOR, CONTRACTOR agrees to make all reasonable efforts at the Approved Recycling Facility to separate Recyclable Materials from Contamination for Diversion. CONTRACTOR shall maintain accurate records of the quantities of Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, and C&D transported to the Approved Facilities and will cooperate with CITY in any audits or investigations of such quantities. CONTRACTOR shall cooperate with the operator of any Approved Facility with regard to operations therein, including, for 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 its Hazardous Waste exclusion program, and so forth.

6.3 Transfer of Discarded Materials

The CONTRACTOR shall deliver Discarded Material, Collected but not sent to an Approved Disposal Facility, Approved MRF, or an Approved Organic Materials Processing Facility, to the Approved Transfer Station. All expenses related to the transfer of Solid Waste will be the sole responsibility of the CONTRACTOR. If the CONTRACTOR or CONTRACTOR's Affiliate owns and/or operates the Approved Transfer Station, all expenses associated with permitting, regulatory compliance, etc., and all other costs associated with the operation and ownership of the Approved Transfer Station is the sole responsibility of the CONTRACTOR.

- A. Status of Transfer Station.** The Approved Transfer Station shall have been issued all permits from federal, State, regional, county, and city agencies necessary for it to operate as a large volume

transfer/Processing facility and be in full regulatory compliance with all such permits during the Term of this Agreement.

6.4 Disposal

The CONTRACTOR shall Dispose of Solid Waste Collected (but not sent to an Approved Transfer Station, Approved MRF, or Approved Organic Materials Processing Facility) and Residue at the Approved Disposal Facility. All expenses related to the Disposal of Solid Waste will be the sole responsibility of the CONTRACTOR. If the CONTRACTOR or CONTRACTOR's Affiliate owns and/or operates the Approved Disposal Facility, all expenses associated with permitting, regulatory compliance, closure and post-closure, etc., and all other costs associated with the operation and ownership of the Approved Disposal Facility is the sole responsibility of the CONTRACTOR, except as provided in Section 10.5.

- A. Status of Disposal Facility.** The Approved Disposal Facility shall have been issued all permits from federal, State, regional, county, and city agencies necessary for it to operate as a Class III Sanitary Landfill and be in full regulatory compliance with all such permits during the Term of this Agreement.

6.5 Recyclable Materials Processing Services

CONTRACTOR shall deliver all Collected Recyclable Material to a fully permitted Approved Materials Recovery Facility or Transfer Station. All expenses related to Recyclable Material Processing and marketing will be the sole responsibility of CONTRACTOR. If the CONTRACTOR or CONTRACTOR's Affiliate owns and/or operates the Approved Materials Recovery Facility, all expenses associated with permitting, regulatory compliance, closure and post-closure, etc., and all other costs associated with the operation and ownership of the Approved Materials Recovery Facility is the sole responsibility of the CONTRACTOR, except as provided in Section 10.5.

CONTRACTOR shall ensure that all Recyclable Material Collected pursuant to this Agreement is Diverted in accordance with AB 939 and any subsequent or other applicable legislation and regulations. CONTRACTOR shall ensure that the Recyclable Material Collected pursuant to this Agreement is not Disposed of in a landfill, except as a Residue resulting from Processing. CONTRACTOR must provide end uses for Recyclable Materials that maximize Diversion credits for CITY according to regulations established by CalRecycle. CITY and CONTRACTOR agree that CONTRACTOR compliance with these requirements may be affected by the circumstances set forth in, and shall be subject to, Section 6.5.B.2 of this Agreement.

- A. Status of Materials Recovery Facility(ies).** The Approved Materials Recovery Facility(ies) shall have been issued all permits from federal, State, regional, county, and city agencies necessary for it to accept the CITY's Recyclable Materials, and be in full regulatory compliance with all such permits during the Term of this Agreement.

B. Marketing.

1. **General.** The CONTRACTOR shall be responsible for marketing Recyclable Materials Collected in the CITY. CONTRACTOR's marketing strategy shall promote the highest and best use of materials presented in the waste management hierarchy established by AB 939. Where practical, the marketing strategy should include use of local, regional, and domestic markets for Recyclable Materials.
2. **Changes in Market Conditions**

- a. **Changing Conditions.** The CITY and CONTRACTOR acknowledge that the ability to market various types of Recyclable Materials Collected in the CITY may change over the Term of the Agreement. It is possible that markets currently available for some Recyclable Materials will not be available in the future. Conversely, for materials in which markets currently do not exist, markets may emerge in the future.
- b. **Limited Term Market Fluctuations.** The CITY and CONTRACTOR acknowledge that markets for various types of Recyclable Materials fluctuate and may render a material defined as Recyclable Material temporarily unmarketable. The CITY and CONTRACTOR agree that markets for materials Collected under this Agreement may temporarily emerge or be disrupted and these fluctuations of limited duration may not warrant a change to the definition of Recyclable Materials under this Agreement or notification to Customers. CONTRACTOR shall make reasonable commercial efforts to Divert Recyclable Materials Collected and Processed during limited term market fluctuations while CITY and CONTRACTOR are assessing the need to submit a written request for an item or type of material to be removed from or added to the definition of Recyclable Materials. In the event CONTRACTOR is unable to Divert specific Recyclable Materials due to limited term market fluctuations, such materials may be Disposed for a specific time period if agreed upon between CITY and CONTRACTOR.
- c. **Non-Existent Market(s).** If CONTRACTOR determines that it can no longer secure market(s) for one (1) or more materials included in the definition of Recyclable Materials, CONTRACTOR may submit a written request to the CITY to have the material removed from the definition of Recyclable Materials. In such case, CONTRACTOR's request shall demonstrate its attempt(s) at identifying and securing market(s) for the materials; information on the market conditions from relevant industry sources supporting the lack of market(s); an estimated timeframe for the market conditions; an estimate of the impact on the tons of Recyclable Materials Diverted annually; and a plan for notifying Customers of the elimination of the material type from the list of acceptable Recyclable Materials for Collection. The Contract Administrator will review CONTRACTOR's request and provide a response within sixty (60) Days of receipt of the request. If the CITY is willing to consider temporary or permanent removal of a material type from the definition of Recyclable Materials, the CITY and CONTRACTOR shall meet and confer to negotiate the proposed revisions and shall amend this Agreement, if appropriate, to reflect mutually agreed-upon changes. If the CITY agrees that the material shall no longer be listed in the Recyclable Materials definition, CONTRACTOR shall not be obligated to Collect the material as a Recyclable Material, may Dispose of such material and shall incur any and all costs associated with the Disposal of these materials and with educating Customers of the change and costs associated with Collection, transfer, Transportation, Processing and Disposal of such materials to the extent Customers continue to include the material in their Recyclable Materials Containers. Notwithstanding the above CONTRACTOR may continue to use the Recyclable Materials Cart to Collect material that has been removed from the Recyclable Materials definition at their discretion.
- d. **Emerging Market(s).** If CONTRACTOR or the CITY identify that a new market is available for a material that is not included in the definition of Recyclable Materials, either Party may request that the list of Recyclable Materials be amended to include the material. Such a change would expand CONTRACTOR's obligations to Collect, transfer, transport,

Process and market such material. In such case, the CITY and CONTRACTOR shall meet and confer to negotiate the proposed revisions and shall amend this Agreement, as appropriate, to reflect mutually agreed-upon changes in scope.

6.6 Organic Materials Processing Services

CONTRACTOR shall deliver all Collected Organic Materials to a fully permitted Approved Organic Materials Processing Facility or a fully permitted Approved Transfer Station. All expenses related to Organic Materials Processing and marketing will be the sole responsibility of CONTRACTOR. If the CONTRACTOR or CONTRACTOR's Affiliate owns and/or operates the Approved Organic Materials Facility, all expenses associated with permitting, regulatory compliance, closure and post-closure, etc. and all other costs associated with the operation and ownership of the Approved Organic Materials Facility is the sole responsibility of the CONTRACTOR, except as provided in Section 10.5.

CONTRACTOR shall ensure that all Organic Materials Collected pursuant to this Agreement are Diverted from the landfill in accordance with AB 939 and any subsequent or other applicable legislation and regulations. CONTRACTOR shall ensure that the Organic Materials Collected pursuant to this Agreement are not Disposed of in a landfill, except as a Residue resulting from Processing. CONTRACTOR must provide end uses for Organic Materials that maximizes Diversion credits for CITY according to regulations established by CalRecycle. Green Waste may be used as Alternative Daily Cover to the extent that the CITY will get full Diversion credit for its use. However, as of January 1, 2020, the use of Green Waste as ADC does not constitute Diversion through Recycling and shall be considered Disposal pursuant to PRC Section 41781.3(2) (A). CONTRACTOR is responsible for monitoring how the Organic Materials will be Diverted at Approved Facilities.

- A. **Status of Organic Materials Processing Facility(ies).** The Approved Organic Materials Processing Facility(ies) shall have been issued all permits from federal, State, regional, county, and city agencies necessary for it to accept the CITY's Organic Materials, and be in full regulatory compliance with all such permits during the Term of this Agreement.

6.7 Minimum Diversion Requirements

The CITY requires the CONTRACTOR to use its best efforts and regulations established by CalRecycle to achieve a minimum annual Diversion rate of thirty percent (30%), or such other amount as may be set by request of the CITY in accordance with the provisions of Section 5.5 of this Agreement, during each Agreement Year beginning October 1, 2018. The annual Diversion rate will be calculated as "the tons of materials Collected by CONTRACTOR from the provision of Collection Services in the RWMA Service Area under the terms of this Agreement, that are shipped to the Approved Materials Recovery Facility, the Approved Organic Materials Processing Facility, or other recycler or re-user, net of any Residue amounts, divided by the total tons of materials Collected by CONTRACTOR from the provision of Collection Services in the RWMA Service Area under the terms of this Agreement in each Agreement Year." As of January 1, 2020, the use of green material as ADC does not constitute Diversion through Recycling and shall be considered Disposal pursuant to PRC Section 41781.3(2) (A).

In the event CONTRACTOR is authorized by CITY to Dispose of any Recyclable Materials (or to remove any Recyclable Material from the definition of Recyclable Materials) under the terms of Sections 6.5.B.2. of this Agreement, the estimated tons of Recyclable Material Disposed or not Collected by virtue of being removed from the definition of Recyclable Material) shall be counted as if they were Diverted in the

formula used to calculate the Diversion rate for that Agreement Year. CONTRACTOR shall prepare and provide to CITY this estimate based on the tons of the specific Recyclable Material Collected by CONTRACTOR from the provision of Collection Services in the RWMA Service Area under the terms of this Agreement that was shipped to the Approved Materials Recovery Facility, the Approved Organic Materials Processing Facility, or other recycler or re-user, net of any Residue in the twelve (12) months preceding the month in which the CITY authorized the removal of the material from the definition of Recyclable Materials. CITY shall review the estimate, the information used to prepare it, and such other information, including material allocation calculations and methodologies, if necessary, as CITY may require to complete its review. The final estimate shall be agreed upon between CITY and CONTRACTOR based on the review.

6.8 Failure to Meet Minimum Diversion Requirements

CONTRACTOR's failure to meet the minimum Diversion requirements set forth above in Section 6.7 may result in the imposition of Liquidated Damages pursuant to Section 12.6. In determining whether or not to assess Liquidated Damages, the RWMA in consultation with the CITY will consider the good faith efforts put forth by the CONTRACTOR to meet the minimum Diversion requirements, and the state of the market for Recyclable Material. This consideration will include documentation provided by the CONTRACTOR regarding its activities. The final decision whether or not to assess Liquidated Damages will remain with the RWMA.

ARTICLE 7: REQUIREMENTS FOR OPERATIONS, EQUIPMENT, AND PERSONNEL

7.1 General

CONTRACTOR shall at all times comply with Applicable Laws and provide services in a manner that is safe to the public and the CONTRACTOR's employees. Except to the extent that a higher performance standard is specified in this Agreement, CONTRACTOR shall perform services in accordance with Solid Waste, Recyclable Materials, Organic Materials, Bulky Item, and C&D management practices common to Northern California.

7.2 CONTRACTOR's Office

The CONTRACTOR shall maintain a publicly accessible office located within the RWMA Service Area that provides telephone access to residents and businesses of the CITY and shall be open during normal business hours, which are currently 8:30 a.m. to 4:30 p.m., Monday through Friday, except for Holidays. Office hours may be adjusted at the discretion of CONTRACTOR only after appropriate notification is provided to all Customers and provided that offices are open for business at least eight (8) hours per Day Monday through Friday, except for Holidays.

7.3 Service Standards

CONTRACTOR shall perform all Collection Services under this Agreement in a thorough and professional manner. Except for incidents of excuse from performance set forth in Section 12.7 herein, Collection Services described in this Agreement shall be performed regardless of difficulty of Collection.

7.4 Collection Routes, Operating Hours, and Schedules

- A. **Collection Routes.** During the Term of this Agreement, CONTRACTOR shall prepare and maintain maps precisely defining Collection routes, together with the Days and the times at which Collection shall regularly commence. Copies of such maps shall be provided to the CITY upon request by the Contract Administrator in a format acceptable to the CITY.
- B. **Subsequent Collection Route Changes.** In the event of a route change that will change the Collection Day for an SFD Service Unit, CONTRACTOR shall notify those Service Recipients in writing of the route change not less than thirty (30) Days before the proposed date of implementation. CONTRACTOR shall also provide the Contract Administrator with a copy of the service change notification.
- C. **Hours of Collection.** Unless otherwise authorized by the Contract Administrator, CONTRACTOR's Days and hours for Collection operations shall be as follows:
 1. **SFD Collection.** SFD Collection services shall only occur between the hours of 5:00 a.m. and 5:00 p.m., Monday through Friday, with no regularly scheduled service on Saturday or Sunday. The hours, Days, or both of Collection may be temporarily extended due to extraordinary circumstances or conditions.
 2. **MFD, Commercial and CITY Collection.** MFD, Commercial and CITY Collection Services shall only occur between the hours of 4:00 a.m. and 5:00 p.m., Monday through Sunday, except

on Holidays when Collection hours shall be 3:00 a.m. to 5:00 p.m. The hours of Collection may be temporarily extended by the Contract Administrator due to extraordinary circumstances or conditions.

7.5 Collection Standards

- A. Manner of Collection.** The CONTRACTOR shall provide Collection Services with as little disturbance as possible and shall leave any Cart or Bin in an upright position at the same point it was Collected without obstructing alleys, roadways, driveways, sidewalks, or mail boxes.
- B. Litter Abatement and Spill Prevention.** The CONTRACTOR shall not litter Premises in the process of providing Collection Services or while its vehicles are on the road. The CONTRACTOR shall transport all materials Collected under the terms of this Agreement in such a manner as to prevent the spilling or blowing of such materials from the CONTRACTOR's vehicle. The CONTRACTOR shall exercise all reasonable care and diligence in providing Collection Services so as to prevent spilling or dropping of any material and shall immediately, at the time of occurrence, clean up such spilled or dropped materials.
1. The CONTRACTOR shall not be responsible for cleaning up unsanitary conditions caused by the carelessness of the Service Recipient; however, the CONTRACTOR shall clean up any materials that are spilled or scattered by the CONTRACTOR or its employees.
 2. Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from the CONTRACTOR's operations or equipment repair shall be covered immediately with an absorptive material and removed from the street surface. When necessary, CONTRACTOR shall apply a suitable cleaning agent to the street surface to provide adequate cleaning. To facilitate such clean-up, CONTRACTOR's vehicles shall at all times carry sufficient quantities of petroleum absorbent materials along with a broom and shovel. CONTRACTOR shall not be responsible for removing any stain that may remain after application of such absorbents and cleaning agents.
 3. 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, hot load (combustion of material in the truck), or accidental damage to a vehicle.
 4. The above paragraphs notwithstanding, CONTRACTOR shall clean up any spillage or litter caused by CONTRACTOR within two (2) hours upon notice from the CITY.
 5. In the event where damage to CITY Streets (other than stains) is the result of a hydraulic oil spill caused by CONTRACTOR, CONTRACTOR shall be responsible for all repairs to return the street to the same condition prior to the spill. CONTRACTOR shall also be responsible for all clean-up activities related to the spill. Repairs and clean-up shall be performed in a manner satisfactory to the Contract Administrator and at no cost to the CITY.

7.6 Ownership of Materials

- A.** Title to Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, and C&D shall pass to CONTRACTOR at such time as said materials are properly containerized, bagged, or bundled and

placed at the curb or other point of Collection in the manner as set forth herein or as agreed to by the CONTRACTOR and the Customer. If such materials are placed out for Collection without being properly containerized, bagged, or bundled, title shall pass to CONTRACTOR at the time the material is placed in CONTRACTOR's Collection vehicle. If such materials Collected by Contractor are delivered to an Approved Transfer Station, Approved Materials Recovery Facility, or Approved Organic Materials Processing Facility other than one operated by the CONTRACTOR, then title will again transfer from CONTRACTOR to the operator of the non-CONTRACTOR Approved Transfer Station, Approved Materials Recovery Facility, or Approved Organic Materials Processing Facility upon such delivery.

- B. Title to any such material self-hauled to an Approved Facility operated by CONTRACTOR shall pass to CONTRACTOR at the time the material is accepted at the Approved Facility.
- C. Title to such material Collected as part of a CITY Clean-up Service or Special Event Collection Service shall pass to CONTRACTOR at the time the material is placed in the Drop Box Container, other Collection Container provided by CONTRACTOR or CONTRACTOR's Collection vehicle if no Containers are provided by CONTRACTOR.

7.7 Exempt Waste

- A. Under no circumstances shall CONTRACTOR's employees knowingly Collect Exempt Waste or remove unsafe or poorly containerized Exempt Waste from a Collection Container. If CONTRACTOR determines that material placed in any Container for Collection is Exempt Waste, or other material that may not legally be accepted at an Approved Facility, or presents a hazard to CONTRACTOR's employees, the CONTRACTOR shall have the right to refuse to accept such material. The Generator shall be contacted by the CONTRACTOR and requested to arrange for proper Disposal service. If the Generator cannot be reached immediately, the CONTRACTOR shall, before leaving the Premises, leave a Non-Collection Notice which indicates the reason for refusing to Collect the material and how the Exempt Waste can be properly Disposed or Recycled.
- B. If Exempt Waste is found in a Collection Container that poses an imminent danger to people or property, the CONTRACTOR shall immediately notify the appropriate fire department and/or other emergency services departments as appropriate, as well as the CITY.
- C. If Exempt Waste is identified at the time of delivery to an Approved Facility and the Generator cannot be identified, CONTRACTOR shall be solely responsible for handling and arranging transport and disposition of the Exempt Waste.

7.8 Regulations and Record Keeping

CONTRACTOR shall comply with emergency notification procedures required by Applicable Laws and regulatory requirements. All records required by laws and regulations shall be maintained at the CONTRACTOR's facility.

7.9 Vehicle Requirements

- A. **General Provisions.** CONTRACTOR shall provide a fleet of properly maintained Collection vehicles sufficient in number and capacity to efficiently perform the work required by the Agreement in strict accordance with its terms. All such vehicles shall have watertight bodies designed to prevent

leakage, spillage, or overflow. Hoppers shall be enclosed on top and on all sides to prevent material from leaking, blowing or falling from the vehicles. Each Collection vehicle shall be equipped with a shovel and broom for clean-up of spillage. Collection vehicles shall never be loaded to exceed the manufacturer's recommended weight limit or otherwise operated unsafely or in violation of any Applicable Law.

- B. Clean Air Vehicles.** To the extent required now or in the future by Applicable Law, CONTRACTOR shall provide its Collection vehicles to be in full compliance with local, State, and federal clean air requirements, including, but not limited to, the California Air Resources Control Board regulations, such as those regulations requiring the implementation of "Diesel Particulate Matter Control Measure for On-Road Heavy-Duty Residential and Commercial Solid Waste Collection Vehicle Diesel Engines" as currently codified in CCR Title 13, Section 2020 et seq; the federal EPA's Highway Diesel Fuel Sulfur regulations; and, any other applicable air pollution control laws. CONTRACTOR has inspected all applicable streets within the Service Area and acknowledges and certifies that all vehicles can safely and effectively operate within the Service Area.
- C. Safety Markings.** All Collection equipment used by CONTRACTOR shall have appropriate safety markings including, but not limited to, highway lighting, flashing and warning lights, clearance lights, and warning flags. All such safety markings shall be in accordance with the requirements of the California Vehicle Code, as may be amended from time to time.
- D. Vehicle Signage and Painting.** Collection vehicles shall be painted and numbered uniquely without repetition and shall have the CONTRACTOR's name, CONTRACTOR's Customer service telephone number, and the number of the vehicle painted in letters of contrasting color, at least six (6) inches high, on each side and the rear of each vehicle. No advertising shall be permitted other than the name of the CONTRACTOR except promotional advertisement of the Recyclable Materials and Organic Materials programs or such other signage as may be approved by the Contract Administrator in writing. CONTRACTOR shall repaint all vehicles (including vehicle striping if appropriate) during the Term of this Agreement as necessary to maintain a positive public image.
- E. Vehicle Maintenance.** CONTRACTOR shall maintain Collection equipment in a clean condition and in good repair at all times. All parts and systems of the Collection equipment shall operate properly and be properly maintained. CONTRACTOR shall wash all Collection vehicles at least once per week. CONTRACTOR shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly shall be taken out of service until they are repaired and operate properly. CONTRACTOR shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown, or any other cause so as to maintain all equipment in a safe and operable condition. The Contract Administrator may inspect vehicles at any reasonable time, and within three (3) Days of such a request, to determine compliance with this Agreement and sanitation requirements.
- F. Vehicle Noise Level.** All Collection operations shall be conducted as quietly as possible and shall conform to applicable federal, State, County, and City noise level regulations. All decibel readings shall be based on a distance of ten (10) feet from any part of the vehicle. The CITY may request CONTRACTOR to check any piece of equipment for conformance with the noise limits when reasonable to do so.

- G. Vehicle and Equipment Inventory.** On or before the Effective Date of this Agreement, CONTRACTOR shall provide to the Contract Administrator an inventory of Collection vehicles and major equipment used by CONTRACTOR for Collection or transportation in performance of services under this Agreement. The inventory shall indicate each Collection vehicle by identification number, DMV license number, the age of the chassis and body, type of fuel used, the type and capacity of each vehicle, the number of vehicles, the date of acquisition, the decibel rating, and the maintenance and rebuilt status. CONTRACTOR shall submit to the Contract Administrator an updated inventory annually, or more often at the request of the CITY. Each vehicle inventory shall be accompanied by a certification signed by CONTRACTOR that all Collection vehicles meet the requirements of this Article.
- H. Vehicle Registration, Licensing and Inspection.** CONTRACTOR shall maintain documentation to verify that each of the CONTRACTOR's Collection vehicles are in compliance with all registration, licensing, and inspection requirements of the California Highway Patrol, the California Department of Motor Vehicles, and any other Applicable Laws or regulations. Upon written request by the Contract Administrator, copies of such documentation shall be provided to the CITY within ten (10) Residential Service Work Days of the request.
- I. Reserve Equipment.** The CONTRACTOR shall have available to it, at all times, a reasonable number of reserve Collection equipment which can, to the extent needed to complete the Collection route, be dispatched within one (1) hour of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by the CONTRACTOR to perform the contractual duties.
- J. Covering of Loads.** All loads not in covered body trucks shall be tarped or restrained to prevent spilling.
- K. Weight Restrictions.** CONTRACTOR shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions on vehicles. CONTRACTOR acknowledges that CITY may document compliance with this provision of the Agreement through review of scale tickets and records of the Approved Transfer Station, Approved MRF, Approved Organic Materials Processing Facility and Approved Disposal Facility.

7.10 Container Requirements

- A. SFD Carts.** CONTRACTOR will provide each SFD with wheeled Carts for automated Collection of Solid Waste, Recyclable Materials, and Organic Materials. Cart sizes shall be as requested by the Customer.
- B. Purchase and Distribution of Carts and Bins.** The CONTRACTOR shall be responsible for the purchase and distribution of fully assembled and functional Carts and Bins to Service Units in the Service Area. The distribution shall be completed within three (3) Residential Service Work Days of receipt of notification from the CITY or the Service Unit.
- C. Replacement of Carts and Bins.**
1. CONTRACTOR's employees shall take care to prevent damage to Carts or Bins by unnecessary rough treatment. However, any Cart or Bin damaged by the CONTRACTOR

shall be replaced by the CONTRACTOR, at the CONTRACTOR's expense, within three (3) Residential Service Work Days after notification by the CITY or the Service Recipient, at no cost or inconvenience to the Service Recipient or to the CITY.

2. Upon notification to the CONTRACTOR by the CITY or a Service Recipient that the Service Recipient's Cart(s) or Bin(s) are faulty or have worn out, or have been stolen or damaged beyond repair through no fault of the Service Recipient, the CONTRACTOR shall deliver a replacement Cart(s) or Bin(s) to such Service Recipient within three (3) Residential Service Work Days. There shall be no charge to the Service Recipient for the delivery or replacement of the Cart(s) or Bin(s).
 3. In those instances where the CONTRACTOR can demonstrate that a Cart(s) or Bin(s) was damaged or stolen as the result or product of negligence on the part of the Service Recipient, CONTRACTOR shall be entitled to bill the Service Recipient the cost of the Cart(s) or Bin(s) plus the delivery charge in an amount not exceeding the applicable Maximum Service Rates set forth in Exhibit A to this Agreement.
 4. The CONTRACTOR shall maintain records documenting all Cart and Bin replacements occurring on a monthly basis. Such information shall be provided to the Contract Administrator upon written request.
- D. Repair of Carts and Bins.** CONTRACTOR shall be responsible for repair of Carts and Bins in the Service Area including, but not be limited to, hinged lids, wheels, and axles. Within three (3) Residential Service Work Days of notification by the CITY or a Service Recipient of the need for such repairs, the CONTRACTOR shall repair the Cart or Bin, or if necessary, remove the Cart or Bin for repairs and deliver a replacement Cart or Bin to the Service Recipient.
- E. Cart, Bin, or Drop Box Exchange.** Upon notification to the CONTRACTOR by the CITY or a Service Recipient that a change in the size or number of Carts, Bins, or Drop Boxes is required, the CONTRACTOR shall deliver such Carts, Bins, or Drop Boxes to such Service Recipient no later than the Service Recipient's next regularly scheduled Collection Day. Each SFD Service Unit shall be entitled to receive one (1) free Solid Waste Cart exchange; one (1) free Recycling Cart exchange; and one (1) free Organic Materials Cart exchange per Agreement Year during the Term of this Agreement. Each MFD, Commercial or CITY Service Unit shall be entitled to receive one (1) free Solid Waste Cart, Bin, or Drop Box exchange, and to the extent such Carts or Bins are provided by the CONTRACTOR under the terms of this Agreement, one (1) free Recycling Cart, Bin, or Drop Box exchange and one (1) free Organic Materials Cart, Bin, or Drop Box exchange per Agreement Year during the Term of this Agreement. Accordingly, CONTRACTOR shall be entitled to charge for Container exchanges in excess of the limit set forth above per Agreement Year, at a rate not exceeding the appropriate "Cart, Bin, or Drop Box Exchange" Maximum Service Rate as set forth in Exhibit A, as adjusted under the terms of this Agreement.
- F. Additional Solid Waste Capacity.** Upon notification to the CONTRACTOR by the CITY or a Service Recipient that additional Solid Waste capacity is requested, the CONTRACTOR shall comply by delivering a larger Cart, an additional Cart, a larger Bin, or an additional Bin, to such Service Recipient within ten (10) Residential Service Work Days. CONTRACTOR shall be entitled to charge for the cost of the additional Solid Waste capacity in an amount not exceeding the applicable

Maximum Service Rate for the larger capacity or Additional Cart or Bin as set forth in Exhibit A, as adjusted under the terms of this Agreement.

G. Additional Recycling Capacity. CONTRACTOR shall provide one (1) additional Recycling Cart to SFD Service Units requesting an additional Cart within ten (10) Residential Service Work Days of the request at no additional cost provided that the additional capacity is used by the SFD Service Unit for the purposes of setting out additional Recyclable Materials that are generated by and at the SFD Service Unit for regular weekly Recyclable Material Collection Service. CONTRACTOR shall be entitled to charge for any additional Recycling Carts beyond the first additional Cart for a fee not to exceed that set forth in the Maximum Service Rates.

1. Pickup of Under-utilized Additional Recyclable Carts. If CONTRACTOR's vehicle driver reports, and CONTRACTOR's Customer service representative enters into the Customer's account records, that the Customer does not set out an additional Recyclable Materials Cart more than once a month for two (2) consecutive months, then CONTRACTOR may leave a notice stating that CONTRACTOR will pick up the Customer's unused or under-utilized additional Recyclable Cart unless the Customer sets out that additional Cart at least every other week.

H. Additional Organic Materials Capacity. CONTRACTOR shall provide one (1) additional Organic Materials Cart to SFD Service Units requesting an additional Cart within ten (10) Residential Service Work Days of the request at no additional cost provided that the additional capacity is used by the SFD Service Unit for the purposes of setting out additional Organic Materials that are generated by and at the SFD Service Unit for regular weekly Organic Materials Collection Service. CONTRACTOR shall be entitled to charge extra for any additional Organic Materials Carts beyond the first additional Cart for a fee not to exceed that set forth in the Maximum Service Rates.

1. Pickup of Under-utilized Additional Organic Materials Carts. If CONTRACTOR's vehicle driver reports, and CONTRACTOR's Customer service representative enters into Customer's account records, that Customer does not set out an additional Organic Materials Cart more than once a month for two (2) consecutive months, then CONTRACTOR may leave a notice stating that CONTRACTOR will pick up the Customer's unused or under-utilized additional Organic Materials Cart unless Customer sets out that additional Organic Materials Cart at least every other week.

I. New Service Units.

- 1. Purchase and Distribution of Containers.** The CONTRACTOR shall be responsible for the purchase and distribution of fully assembled and functional Containers to new Service Units that are added to CONTRACTOR's Service Area during the Term of this Agreement. The distribution shall be completed within three (3) Residential Service Work Days of receipt of notification from the CITY or the Service Unit.
- 2. Collection Services.** CONTRACTOR shall provide Collection Services described in this Agreement to new Service Units on the next regularly scheduled Collection Day following delivery of the Carts or Bins.

- J. Annual Inspection and Cleaning.** Once each Agreement Year, at no charge to the CITY, MFD or Commercial Service Unit, CONTRACTOR shall provide, upon request or as deemed necessary, the cleaning of Bins, Drop Boxes and Compactors. In the event a Customer requests CONTRACTOR to provide Bin, Drop Box, or Compactor cleaning more than one (1) time per Agreement Year, CONTRACTOR shall have the right to charge the Customer an amount not exceeding the Maximum Service Rate for Bin, Drop Box or Compactor cleaning set forth in Exhibit A.
- K. Bin and Drop Box Signage, Painting, and Cleaning.** All metal Bins and Drop Boxes of any service type furnished by the CONTRACTOR shall be either painted or galvanized. All Bins and Drop Boxes shall display the CONTRACTOR's name, CONTRACTOR's Customer service telephone number, and a unique identification number and shall be kept in a clean and sanitary condition. No advertising shall be permitted other than the name of the CONTRACTOR except promotional advertisement of the Recyclable Materials and Organic Materials programs or such other signage as may be approved by the Contract Administrator in writing.

7.11 Labor and Equipment

CONTRACTOR shall provide and maintain all labor, equipment, tools, facilities, and personnel supervision required for the performance of CONTRACTOR's obligations under this Agreement. CONTRACTOR shall at all times have sufficient backup equipment and labor to fulfill CONTRACTOR's obligations under this Agreement. No compensation for CONTRACTOR's services or for CONTRACTOR's supply of labor, equipment, tools, facilities, or supervision shall be provided or paid to CONTRACTOR by CITY or by any Service Recipient except in accordance with this Agreement.

7.12 Holiday Service

CONTRACTOR shall provide normal Collection Services without regard to any CITY holidays.

7.13 Disposal and Processing

- A. Solid Waste.** Except as set forth below, all Solid Waste Collected as a result of performing Collection Services shall be transported to the Approved Transfer Station or the Approved Disposal Facility and eventually Disposed at the Approved Disposal Facility. In the event the Approved Disposal Facility is closed on a Commercial Service Work Day, the CONTRACTOR shall transport and Dispose of the Solid Waste at an alternative Approved Disposal Facility. Notwithstanding any other provision of this Agreement, if an alternative Approved Disposal Facility is used, and it is not owned/operated by the CONTRACTOR or its Affiliate, then CONTRACTOR's obligations hereunder will not include the landfilling of the Solid Waste (which will be the responsibility of the alternative Approved Disposal Facility operator).
- B. Recyclable Materials.** All Recyclable Materials Collected as a result of performing Collection Services shall be delivered to the Approved MRF. In the event the Approved MRF is closed on a Commercial Service Work Day, the CONTRACTOR shall transport and deliver the Recyclable Material to an alternative Approved MRF. CONTRACTOR shall ensure that all Recyclable Materials Collected pursuant to this Agreement that are expressly listed in Section 1.81 (including those materials added by CONTRACTOR to such list from time to time), except Residue resulting from Processing, are Diverted from the Approved Disposal Facility in accordance with current and subsequent legislation and regulations. Notwithstanding any other provision of this Agreement, if an alternative Approved MRF is used that is not owned/operated by the CONTRACTOR or its

Affiliate, then CONTRACTOR's obligations hereunder will not include Processing and marketing of Recyclable Materials (which will be the responsibility of the alternative Approved MRF operator).

- C. Organic Materials.** All Organic Materials Collected as a result of performing Collection Services shall be delivered to the Approved Organic Materials Processing Facility. In the event the Approved Organic Materials Processing Facility is closed on a Commercial Service Work Day, the CONTRACTOR shall transport and deliver the Organic Materials to an alternative Approved Organic Materials Processing Facility. CONTRACTOR shall ensure that all Organic Materials Collected pursuant to this Agreement, except Residue resulting from Processing, is Diverted from the Disposal Facility in accordance with current and subsequent legislation and regulations. Notwithstanding any other provision of this Agreement, if an alternative Approved Organic Materials Processing Facility is used that is not owned/operated by the CONTRACTOR or its Affiliate, then CONTRACTOR's obligations hereunder will not include Processing and marketing of Organic Materials (which will be the responsibility of the alternative Approved Organic Materials Processing Facility operator).
- D. Bulky Items.** All Bulky Items Collected as a result of performing Collection Services shall be delivered to the Approved Facilities.
1. CONTRACTOR shall cause to be Processed and/or Disposed all Bulky Items Collected from Service Units pursuant to this Agreement in accordance with the following hierarchy:
 - Reuse as is (where energy efficiency is not compromised);
 - Disassemble for reuse or Recycling;
 - Recycle; or
 - Disposal.
 2. In the event CONTRACTOR Collects Bulky Items that contain Freon, CONTRACTOR shall handle such Bulky Items in a manner such that the Bulky Items are not subject to regulation as Hazardous Waste under applicable State and federal laws or regulations.

7.14 Solid Waste - Improper Procedure

Except as set forth below, the CONTRACTOR shall not be required to Collect Solid Waste if the Service Recipient does not segregate the Solid Waste from Exempt Waste. If Solid Waste is Contaminated though commingling with Exempt Waste, the CONTRACTOR shall, if practical, separate the Solid Waste from the contaminants. The Solid Waste shall then be Collected and the contaminants shall be left in the Solid Waste Cart or Bin along with a Non-Collection Notice explaining why the contaminant(s) is not considered Solid Waste. However, in the event the Solid Waste and contaminants are commingled to the extent that they cannot easily or safely be separated by the CONTRACTOR or the nature of the contaminants renders the entire Solid Waste Cart or Bin Contaminated, the CONTRACTOR may: 1) Collect the Solid Waste and leave a Non-Collection Notice that contains instructions on the proper procedures for setting out Solid Waste or; 2) leave the Solid Waste Cart or Bin un-emptied along with a Non-Collection Notice that contains instructions on the proper procedures for setting out Solid Waste. On the third (3rd) time that CONTRACTOR finds that a Service Unit has set out Contaminated Solid Waste, CONTRACTOR may leave the Solid Waste Cart or Bin un-emptied along with a Non-Collection Notice that contains instructions on the proper procedures for setting out Solid Waste and reduce the service at that Service Unit to the minimum level available by exchanging the Solid Waste Container without the authorization of the Customer.

7.15 Recycling - Improper Procedure

Except as set forth below, the CONTRACTOR shall not be required to Collect Recyclable Materials if the Residential or Commercial Service Recipient does not segregate the Recyclable Materials from Solid Waste, Organic Materials, Bulky Items, Exempt Waste, or C&D. The first (1st) time in any Agreement Year Recyclable Materials are Contaminated through commingling with Solid Waste, Organic Materials, Bulky Items, Exempt Waste or C&D, the CONTRACTOR shall contact the Customer to discuss the Contamination and shall Collect the Container and cause the material contained therein to be Disposed or Processed in the most appropriate manner. On the second (2nd) time in that same Agreement Year that CONTRACTOR finds that a Service Unit has set out Contaminated Recyclable Materials, CONTRACTOR shall contact the Customer to discuss the Contamination and the consequences thereof and shall Collect the Container and cause the material contained therein to be Disposed or Processed in the most appropriate manner. On the third (3rd) or any subsequent time in that same Agreement Year that CONTRACTOR finds that a Service Unit has set out Contaminated Recyclable Materials, Contractor may, to the extent not prohibited by law, without the authorization of the Customer, remove the Recycling Cart(s) or Bin(s) and stop Collecting Recyclable Materials from that Service Unit. Alternatively, on the 3rd and any subsequent time in one (1) Agreement Year CONTRACTOR finds that a Service Unit has set out Contaminated Recyclable Materials, CONTRACTOR may begin to charge the Customer a "Contamination charge" as set forth in Exhibit A each time the Recyclable Materials are Contaminated.

- A. **Recycling - Changes to Work.** Should changes in law arise that necessitate any additions or deletions to the work described herein, including the type of items included as Recyclable Materials, the Parties shall negotiate any necessary cost changes and adjustment in Maximum Service Rates pursuant to Section 5.5 and shall enter into an Agreement amendment covering such modifications to the work to be performed and the adjustment to Maximum Service Rates before undertaking any changes or revisions to such work.

7.16 Organic Materials - Improper Procedure

Except as set forth below, the CONTRACTOR shall not be required to Collect Organic Materials if the Residential or Commercial Service Recipient does not segregate the Organic Materials from Solid Waste, Recyclable Materials, Bulky Items, Exempt Waste, or C&D. The first (1st) time in any Agreement Year Organic Materials are Contaminated through commingling with Solid Waste, Recyclable Materials, Bulky Items, Exempt Waste, or C&D, the CONTRACTOR shall contact the Customer to discuss the Contamination and shall Collect the Container and cause the material contained therein to be Disposed or Processed in the most appropriate manner. On the second (2nd) time in that same Agreement Year that CONTRACTOR finds that a Service Unit has set out Contaminated Organic Materials, CONTRACTOR shall contact the Customer to discuss the Contamination and the consequences thereof and shall Collect the Container and cause the material contained therein to be Disposed or Processed in the most appropriate manner. On the third (3rd) or any subsequent time in that same Agreement Year that CONTRACTOR finds that a Service Unit has set out Contaminated Organic Materials, Contractor may, to the extent not prohibited by law, without the authorization of the Customer, remove the Organic Materials Cart(s) or Bin(s) and stop Collecting Organic Materials from that Service Unit. Alternatively, on the 3rd and any subsequent time in one (1) Agreement Year CONTRACTOR finds that a Service Unit has set out Contaminated Organic Materials, CONTRACTOR may begin to charge the Customer a "Contamination charge" as set forth in Exhibit A each time the Organic Materials are Contaminated.

7.17 Commingling of Materials

- A. **Solid Waste, Recyclable Materials, and Organic Materials.** CONTRACTOR shall not commingle Solid Waste Collected pursuant to this Agreement with any Recyclable Materials or Organic Materials separated for Collection pursuant to this Agreement prior to delivery to the appropriate Approved Facility without the express prior written authorization of the Contract Administrator.
- B. **Solid Waste Material Collected in the Service Area.** CONTRACTOR shall not commingle any Solid Waste Collected pursuant to this Agreement with any other material Collected by CONTRACTOR outside the RWMA Service Area prior to delivery to the appropriate Approved Facility unless CONTRACTOR has provided documentation that is satisfactory to the Contract Administrator explaining how the commingled material will be allocated.
- C. **Recyclable Materials Collected in the Service Area.** CONTRACTOR shall not commingle Recyclable Materials Collected pursuant to this Agreement with any other material Collected by CONTRACTOR outside the RWMA Service Area prior to delivery to the appropriate Approved Facility unless CONTRACTOR has provided documentation that is satisfactory to the Contract Administrator explaining how the commingled material will be allocated.
- D. **Organic Materials Collected in the Service Area.** CONTRACTOR shall not commingle Organic Materials Collected pursuant to this Agreement with any other material Collected by CONTRACTOR outside the RWMA Service Area prior to delivery to the appropriate Approved Facility unless CONTRACTOR has provided documentation that is satisfactory to the Contract Administrator explaining how the commingled material will be allocated.
- E. **Material Separation.** Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, and C&D shall not be mixed together in CONTRACTOR's Collection equipment unless such material has been deemed Contaminated, in which case it shall be Collected as Solid Waste. Each category of material Collected shall be kept separated according to type or classification, except for such material that has been deemed Contaminated, in which case it shall be classified as Solid Waste.

7.18 Personnel

- A. **General Personnel Requirements.** The CONTRACTOR shall employ and assign qualified personnel to perform all services set forth herein. The CONTRACTOR shall be responsible for ensuring that its employees comply with all Applicable Laws and regulations and meet all federal, State, and local requirements related to their employment and position.
 - 1. CONTRACTOR shall furnish such qualified drivers, mechanical, supervisory, Customer service, clerical, and other personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner.
 - 2. CONTRACTOR shall use its best efforts to ensure that all employees who interact with Customers present a neat appearance and conduct themselves in a courteous manner. CONTRACTOR shall not permit its employees to demand, or solicit, directly or indirectly, any additional compensation, or gratuity from members of the public.

3. CONTRACTOR shall designate at least one (1) qualified employee as the CITY's primary point of contact with CONTRACTOR who is principally responsible for Collection Services and resolution of service requests and complaints.
- B. Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. CONTRACTOR shall use the Class II California Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.
- C. Safety Training.** CONTRACTOR shall provide suitable operational and safety training for all of its employees who operate Collection vehicles or equipment. CONTRACTOR shall train its employees involved in Collection to identify, and not to Collect, Exempt Waste. Upon the Contract Administrator's request, CONTRACTOR shall provide a copy of its safety policy and safety training program, the name of its safety officer, and the frequency of its trainings.

7.19 Hazardous Waste Inspection and Handling

- A. Inspection Program and Training.** CONTRACTOR shall develop a load inspection program that includes the following components: (i) personnel and training; (ii) load checking activities; (iii) management of wastes; and, (iv) record keeping and emergency procedures.
1. CONTRACTOR's load checking personnel, including its Collection vehicle drivers, shall be trained in: (i) the effects of Hazardous Substances on human health and the environment; (ii) identification of prohibited materials; and, (iii) emergency notification and response procedures. Collection vehicle drivers shall inspect Containers before Collection when practical.
- B. Response to Exempt Waste Identified at an Approved Facility.** Materials Collected by CONTRACTOR will be delivered to the Approved Facilities for purposes of transfer, Processing or Disposal. In the event that load checkers and/or equipment operators at such Approved Facility identify Exempt Waste in the loads delivered by CONTRACTOR, such personnel shall remove these materials for storage in approved, on-site, Exempt Waste storage container(s). CONTRACTOR shall arrange for removal of the Exempt Waste at its cost by permitted haulers in accordance with Applicable Laws and regulatory requirements. The CONTRACTOR may, at its sole expense, attempt to identify and recover the cost of Disposal from the Generator. If the Generator can be successfully identified, the cost of this effort, as well as the cost of Disposal shall be chargeable to the Generator.

ARTICLE 8: BILLING, CUSTOMER SERVICE, RECORD KEEPING, AND REPORTING

8.1 Billing and Collection

The CONTRACTOR shall be solely responsible for the billing and collection of payments for all Collection Services, including billing of CITY for any services provided in excess of those CITY Collection Services specified in Section 5.9. The CONTRACTOR shall charge Service Recipients an amount that shall not exceed the Maximum Service Rates set forth in Exhibit A to this Agreement as adjusted under the terms of this Agreement. Billing shall be performed on the basis of services rendered. The CITY or the Contract Administrator shall have the right to review and approve the format of all Customer bills. CONTRACTOR shall be entitled to set rates for all services provided pursuant to this Agreement, provided that such rates do not exceed the Maximum Service Rates set forth in Exhibit A, as adjusted under the terms of this Agreement. Unless otherwise expressly provided, all references to Exhibit A in this Agreement shall be deemed to refer to such exhibit as adjusted from time to time in accordance with the provisions of this Agreement.

- A. **Partial Month Service.** If, during a month, a Service Unit is added to or deleted from CONTRACTOR's Service Area, the CONTRACTOR's billing shall be pro-rated by dividing the monthly rate for the service provided to the Service Unit by four (4), and multiplying the result by the number of actual weeks in the month that service was provided to the Service Unit.
- B. **Billing Inserts.** CITY may provide educational and other material to CONTRACTOR for inclusion in the invoices provided by CONTRACTOR to SFD, MFD, and Commercial Customers for Collection Services. CONTRACTOR may charge the CITY for the insertion and any extra postage charges for educational or other materials provided for distribution in the invoices.

8.2 Delinquent Service Accounts

The CONTRACTOR may take such action as is legally available to collect or cause collection of such past due amounts, including discontinuing any or all service and/or removing Carts, Bins, or other Containers from service addresses located in areas where no lien process is available to CONTRACTOR to collect delinquent accounts ("Non-Lien Areas"). No less than seven (7) Days prior to discontinuing service to a Customer, CONTRACTOR shall notify the Contract Administrator of the address, Service Level, service frequency, and delinquent billing amount. CONTRACTOR may withhold service from a delinquent account associated with a service address that is in a Non-Lien Area until past delinquencies are paid in full. Upon restoring service to a previously delinquent account, CONTRACTOR may require a deposit from the Customer not to exceed one (1) month's billings at the Customer's Service Level, or such other amount as is agreed by the Contract Administrator

8.3 Low-Income Senior Citizen Maximum Service Rates

CONTRACTOR shall provide SFD Collection Services to qualified low-income senior citizens at rates not exceeding the Maximum Service Rates for such services specified in Exhibit A upon request. The qualification requirements for the low-income senior citizen rates include all of the following: (i) head of household; (ii) minimum of sixty-two (62) years of age; and, (iii) an adjusted gross income for the household at or below one hundred fifty percent (150%) of the current federal Poverty Guidelines for the 48 Contiguous States and the District of Columbia for the applicable size of family unit.

- A. To demonstrate conformity with the qualification requirements, CONTRACTOR shall require applicants to complete an application form provided by CONTRACTOR and provide copies of photo identification showing proof of age and the first and second pages of Form 1040, U.S. Individual Income Tax Return for the previous calendar year, or other suitable documentation to verify household income.
- B. Eligibility shall be granted for a specified period not to exceed two (2) years after which CONTRACTOR shall require applicant to re-certify as to their continued eligibility. CONTRACTOR shall require approved applicants to provide notification if and when their eligibility qualification status changes.

8.4 Non-Disclosure

CONTRACTOR will not disclose to any Person other than the CITY or RWMA any information identifying an individual Customer, the composition or contents of a Customer's Discarded Materials, or a Customer's trade secrets unless upon the authority of a law or order validly issued by a court or administrative tribunal of competent jurisdiction, or pursuant to written authorization of the Customer.

8.5 No Marketing

CONTRACTOR will not market or distribute mailing lists with the name or address of Customers. CONTRACTOR's obligations under this subsection are in addition to any other privacy rights accorded Customers under Applicable Law.

8.6 Customer Service Staffing and Hours

The CONTRACTOR shall maintain a publicly accessible office located within the RWMA Service Area as set forth in Section 7.2 that is staffed by trained and experienced Customer service representatives (CSRs). Such office shall be equipped with a telephone system and staff so that all Collection Service related calls received during normal business hours are answered by an employee within five (5) rings and shall have responsible Persons in charge during Collection hours. The telephone system shall meet the requirements of Sections 8.7.D through 8.7.F. The CONTRACTOR shall provide either a telephone answering service or a mechanical device to receive Service Recipient inquiries during those times when the office is closed. Calls received after normal business hours shall be addressed the next morning the office is open.

8.7 CONTRACTOR's Customer Service

CONTRACTOR shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all Customer service requests and complaints. CONTRACTOR shall record in its computer system or a separate log, approved as to form by the Contract Administrator, all complaints noting the name and address of complainant, date and time of complaint, nature of complaint, and nature and date of resolution. The CONTRACTOR shall retain this complaint log for the Term. Upon request by the Contract Administrator, CONTRACTOR shall compile and submit a summary statistical table of the complaint log. A representative of the CONTRACTOR shall be available to receive the complaints during normal business hours. All service complaints will be handled by the CONTRACTOR in a prompt, courteous, and efficient manner.

- A. **Response Requirement.** For those complaints related to missed Collections that are received by 12:00 p.m. on a Residential Service Work Day, the CONTRACTOR will return to the Customer

address and Collect the missed materials before leaving the Service Area for the Day. For those complaints related to missed Collections that are received after 12:00 p.m. on a Residential Service Work Day, the CONTRACTOR shall have until the end of the following Residential Service Work Day to resolve the complaint. For those complaints related to repair or replacement of Carts or Bins, the CONTRACTOR shall resolve the complaint according to the requirements described in Section 7.10.C.

- B. Missed Collections.** CONTRACTOR agrees that it is in the best interest of the CITY that all Solid Waste, Recyclable Materials, and Organic Materials be Collected on the scheduled Collection Day. Accordingly, missed Collections will normally be Collected as set forth above regardless of the reason that the Collection was missed. However, in the event a Customer requests missed Collection Service more than two (2) times during the Term of this Agreement CONTRACTOR shall contact the Customer to determine an appropriate resolution to that situation.
- C. Emergency Contact.** The CONTRACTOR shall provide the Contract Administrator with an emergency phone number where the CONTRACTOR can be reached outside of the required office hours.
- D. Multilingual/TDD Service.** CONTRACTOR shall at all times maintain the capability of responding to telephone calls in English, Spanish and one (1) other language as may be directed by CITY. CONTRACTOR shall also at all times maintain the capability of responding to telephone calls through Telecommunications Device for the Deaf (TDD) Services.
- E. Service Recipient Calls.** During office hours, CONTRACTOR shall maintain a telephone answering system capable of accepting at least seven (7) incoming calls at one (1) time. CONTRACTOR shall document calls regarding inquiries, service requests and complaints through the use of the CONTRACTOR's ticket report system.
- F. Response to Calls.** All incoming calls shall be answered by a Customer Service Representative within five (5) rings. Customers shall not be placed "on-hold" in excess of one and one half (1.5) minutes.
- G. Website.** CONTRACTOR shall develop and maintain a website dedicated to services provided in the CITY that is accessible by the public. The website shall include a description of all services available to Customers; answers to frequently asked questions; rates for all Collection Services available; Recyclable Materials and Organic Materials specifications; proper Household Hazardous Waste Disposal procedures; and, other related topics. CITY shall arrange for the CITY's website to include an e-mail link to CONTRACTOR and a link to CONTRACTOR's website. The CONTRACTOR's website shall provide the public the ability to e-mail complaints to CONTRACTOR and request services or service changes.
- H. Hazardous Waste Referrals.** CONTRACTOR shall provide information regarding the Collection of Hazardous Waste to those Service Recipients requesting such information. The information shall, at a minimum, include the name and phone number of those companies or agencies in the RWMA Service Area that are legally permitted to collect and transport Hazardous Waste.
- I. Automated Billing Payment.** In an effort to reduce paper waste, CONTRACTOR shall make available to all Customers an automated billing and payment system at no additional charge. This

system should be website based and allow Customers to view and pay bills through CONTRACTOR's website. Through the CONTRACTOR's website, Customers may request to cease paper billing and receive all bills through e-mail and/or CONTRACTOR's website. CONTRACTOR will ensure that the electronic billing and payment website conforms to industry-standard practices for electronic commerce security. CONTRACTOR must ensure that these Customers are compiled in a list to ensure that billing inserts are mailed directly. CONTRACTOR shall promote the website-based billing and payment system on all paper bills sent to Customers.

8.8 Record Keeping

- A. Accounting Records.** CONTRACTOR shall maintain full, complete and separate financial, statistical and accounting records pertaining to cash, billing, and provisions of all Collection Services provided under this Agreement, prepared on an accrual basis in accordance with generally accepted accounting principles. Such records shall be subject to audit, copy, and inspection. Gross Billings derived from provision of the Collection Services, revenues from the sale of Recyclable Materials, CRV revenue or revenue from the sale of Composted material, whether such services are performed by the CONTRACTOR or by an approved Subcontractor(s) as set forth in Exhibit E, shall be recorded as revenues in the accounts of the CONTRACTOR. These records shall be maintained separately from CONTRACTOR's records for services provided outside the Service Area. CONTRACTOR shall maintain and preserve all cash, billing and Disposal records for a period of not less than eight (8) years following the close of each of the CONTRACTOR's fiscal years.
- B. Agreement Materials Records.** CONTRACTOR shall maintain records of the quantities of: (i) SFD, MFD, Commercial, and CITY Solid Waste and C&D Collected and Disposed under the terms of this Agreement; (ii) Recyclable Materials, by type, Collected, purchased, Processed, sold, donated or given for no compensation, and Residue Disposed; (iii) Organic Materials by type Collected, Processed, sold, donated, or given for no compensation and Residue Disposed; (iv) Bulky Items, Collected, Processed, sold, donated, or given for no compensation, and Residue Disposed; and, (v) C&D Collected, Processed, sold, donated, or given for no compensation, and Residue Disposed.

8.9 Reporting Requirements

Quarterly reports shall be submitted to the Contract Administrator no later than forty-five (45) Days after the end of the reporting quarter and annual reports shall be submitted to the Contract Administrator no later than November 15 after the end of each preceding Agreement Year. Quarterly and annual reports shall be submitted in hard copy or provided electronically via e-mail if acceptable to the CITY.

- A. Quarterly Reports.** Quarterly reports to the CITY shall be on a calendar quarter basis and shall include:
- 1. Solid Waste Data.** Quarterly reporting of Solid Waste Disposal data and certain types of Diversion data is governed by State law, and while the CITY currently is a member of a regional agency as defined by State law that allows for the reporting of this data on a regional basis, CONTRACTOR shall continue to report these data specific to the CITY.
 - 2. Recycling and Organic Materials Data and Alternative Daily Cover Diversion from the Approved Transfer Station, Approved MRF, Approved Organic Materials Processing Facility and Approved Disposal Facility.** The CITY is a member of the RWMA regional

agency, and as long as the CITY remains a member of this regional agency, data regarding Recyclable Materials, Organic Materials, and ADC Diversion from the Approved Transfer Station, Approved MRF, Approved Organic Materials Processing Facility, and Approved Disposal Facility will be reported in aggregate for all of the Participating Member Agencies. Furthermore, these aggregate data may include tonnage from Beale Air Force Base in Yuba County because these materials may be commingled at the Approved Facilities and are also pertinent to the computation of the State-mandated Diversion requirement per the Act. Therefore, CONTRACTOR shall report on a region-wide basis for all Participating Member Agencies, the amount of Diversion calculated as follows:

- The amount of Recyclable Materials by specific material type, shipped by CONTRACTOR to Recycling markets during the quarter, minus Residue Disposed, and minus the amount of materials received at any co-located buy-back centers or through other programs during the quarter, by specific material type. The materials from each of these activities shall be separately identified.
 - The amount of Organic Materials Diverted to the Organic Materials Processing Facility(ies) minus Residue Disposed.
 - The amount of Organic Materials Diverted to other end uses minus Residue Disposed.
- 3. Disposal and Diversion Data Solely Attributable to CITY.** In addition to reporting on a region-wide basis for all Participating Member Agencies, CONTRACTOR shall also report to the CITY on a calendar quarter basis, the Disposal data and the types and amounts of Diversion as provided in Section 6.7 of this Agreement that are attributable to the CITY based on the allocation methodology agreed to and approved by the CITY.
- 4. Public Education and Information Activities.** CONTRACTOR shall report on all public education and information activities undertaken during the period, including distribution of printed materials, ads, other notices, Non-Collection Notices, community information and events, school visits, tours, and other activities related to the provision of Collection Services. CONTRACTOR shall provide all programs and services set forth in this Agreement related to AB 341 and AB 1826 compliance, commencing immediately upon the Commencement Date, including required outreach and education, including development, printing, and distribution of CITY-approved materials; documentation and reporting of outreach and education; offer of Recyclable Materials and Organic Materials/Food Waste Collection Services as required per AB 341 and AB 1826; and, documentation of Customers required to be offered services per AB 341 and AB 1826 and list of Customers in compliance (including Customer name, subscription of; weekly yards of Solid Waste service; weekly yards of Recyclable Materials; and/or Organic Materials/Food Waste Collection Service); all as more fully described elsewhere in this Agreement.
- 5. Customer Base Data.** CONTRACTOR shall provide Customer base data consisting of the SFD, MFD, and Commercial Service Units and C&D Collection Services billed and CITY Collection Services provided, including service type, Container size, number of Containers, and frequency of Collection.
- B. Annual Account Data Report.** The annual account data report to the CITY shall include the number of SFD, MFD, Commercial, and CITY Service Units, Bulky Item Collection Service accounts and C&D

Collection Service accounts serviced with the number of Solid Waste, Recyclable Materials, and Organic Materials Carts, Bins, Compactors, and Drop Box Containers serviced for each category.

- C. **Additional Reporting.** CITY reserves the right to require CONTRACTOR to provide additional reports or documents as the Contract Administrator reasonably determines to be required for the administration of this Agreement or compliance with Applicable Law.

8.10 AB 341 and AB 1826 Compliance

CONTRACTOR shall identify those MFD and Commercial Customers who appear based on subscribed-for container volume to be required to comply with AB 341, AB 1826, or other Applicable Laws, but who have not subscribed for Recyclable Materials or Organic Materials Collection service. An updated list of such Customers shall be included in CONTRACTOR's quarterly reports to CITY. CONTRACTOR shall prioritize such Customers for outreach to inform them of their compliance obligation and encourage them to subscribe for service. CONTRACTOR shall provide CITY with such information as CITY may reasonably request regarding CONTRACTOR's operations in order for CITY to prepare any reports required under such statutes.

8.11 Right to Audit

The CITY reserves the right to conduct audits of CONTRACTOR's payments, operations and financial records. The CONTRACTOR shall cooperate with the CITY in connection therewith, including permitting CITY employees or agents, designated by the Contract Administrator, to ride in the Collection vehicles subject to the provision of an appropriate waiver, to inspect records consistent with the terms of this Agreement and to review and inspect all other information and facilities necessary to conduct the audits. The CONTRACTOR shall have no responsibility or liability for the salary, wages, benefits or worker compensation claims of any Person designated by the Contract Administrator to conduct such audits. The scope of the audit, and auditing party, will be determined by CITY and the scope may include, but is not limited to: Customer Service Levels and billing; tonnage; and, verification of Diversion rate.

If inaccuracies in CONTRACTOR's payments to CITY are found, CITY may expand the scope of the audit and recover from the CONTRACTOR any additional audit costs resulting from the expanded scope.

8.12 Billing and Service Level Audit

In addition to any other auditing activities required by this Agreement, CONTRACTOR shall perform a comprehensive audit of all Collection routes in the Service Area as of October 1, 2022 and every twenty-four (24) months thereafter, and submit to the CITY a written report on the results of that audit, no later than the March 31 of the subsequent year. The purpose of such audit shall be to ensure that each Customer is receiving the service for which the Customer is being billed. If the CITY requests, CONTRACTOR shall cooperate fully with the CITY to allow the CITY to verify the accuracy of CONTRACTOR's billing and Service Level audit report.

8.13 Performance and Compliance Reviews

- A. The CITY may in participation with other Participating Member Agencies conduct, and CONTRACTOR shall cooperate with, up to three (3) performance and compliance reviews during the initial Term of this Agreement, and, if the Term is extended, one (1) per extension, to verify CONTRACTOR has fulfilled its performance and operational obligations under this Agreement.

Each such review shall cover CONTRACTOR's services to all Participating Member Agencies under this Agreement and like agreements between CONTRACTOR and the other Participating Member Agencies. The purpose of such reviews shall be, without limitation, to review complaints, billings, and fee payments, and to determine if CONTRACTOR has met the performance standards described in such agreements. The Participating Member Agencies may choose to enlist professional service providers to perform such reviews and CONTRACTOR shall be required to pay the actual costs for such services up to fifty thousand dollars (\$50,000) per review. In order to maintain the professional service provider's independence, CONTRACTOR may not influence or control the selection of such professional service providers. CONTRACTOR shall take direction from the CITY and its agents during the review process. If any noncompliance with the Agreement is found, the CITY may direct the CONTRACTOR to correct the inadequacies. The dollar amount stated in this Section 8.13 shall be adjusted annually by the same percentage used to adjust the base element of the Maximum Service Rates as described in Exhibit B.

- B.** At the CITY's sole option, with at least thirty (30) Days' written notification to the CONTRACTOR, it may set a public meeting at which the CONTRACTOR shall be present and shall participate, to review the CONTRACTOR's performance and quality of service and provide for evaluation of technological and regulatory changes.

ARTICLE 9: FRANCHISE FEES AND OTHER FEES

9.1 RWMA Surcharge Fee

During the Term of this Agreement, CONTRACTOR shall pay RWMA a RWMA surcharge fee to fund the programs and activities of the RWMA as authorized in the Joint Powers Agreement as it may be amended from time to time. These programs and activities currently include the funding, operation and/or maintenance of the Household Hazardous Waste facility in Yuba City; the Yuba-Sutter Local Enforcement Agency; rate reviews; special projects; and, RWMA administration. CITY shall provide CONTRACTOR with any change to the RWMA surcharge fee no later than thirty (30) Days prior to the date that the annual rate adjustment application is due. In the event that the CITY adjusts the RWMA surcharge fee, CONTRACTOR may adjust the Maximum Service Rates, subject to approval by CITY of CONTRACTOR's calculation of the adjustment amount, to incorporate any such changes in the surcharge fee prior to the time that the new surcharge fee becomes effective.

- A. **Payment of RWMA Surcharge Fee.** CONTRACTOR shall make payment to the RWMA of the RWMA surcharge fee. Payment to the RWMA shall be due on the twentieth (20th) Day of each month with respect to surcharge fees billed by CONTRACTOR in the preceding month. Each payment shall be accompanied by an accounting that sets forth the amount of RWMA surcharge fees attributable to each Service Area for the preceding month. No acceptance by the RWMA of any payment shall be construed as an accord that the amount is the correct amount, nor shall such acceptance of payment be construed as a release of any claim the RWMA may have against CONTRACTOR for any additional sums payable under the provisions of this Agreement.
- B. **RWMA Surcharge Fee Audit.** All amounts paid shall be subject to independent audit and recompilation by the RWMA. If, after an audit, such recompilation indicates an underpayment, CONTRACTOR shall pay to the RWMA the amount of the underpayment plus interest at the Wall Street Journal Prime Rate. If the underpayment is in excess of five percent (5%) of the total fees due for the period of the audit, the CONTRACTOR shall reimburse the RWMA for all reasonable costs and expenses incurred in connection with the audit and recompilation within ten (10) Residential Service Work Days of receipt of written notice from the RWMA that such is the case. If, after an audit, such recompilation indicates an overpayment, the RWMA shall notify the CONTRACTOR in writing of the amount of the overpayment. CONTRACTOR may offset the amounts next due following receipt of such notice by the amount specified therein.

9.2 Franchise Fee

- A. **Franchise Fee Amount.** in consideration of the exclusive Franchise granted to CONTRACTOR by this Agreement, CONTRACTOR shall pay CITY a Franchise Fee during the Term of this Agreement. The Franchise Fee shall be ten percent (10%), unless otherwise adjusted by the CITY, of CONTRACTOR's monthly Gross Billings net of RWMA surcharge fees.
- B. **Timing and Method of Payment.** CONTRACTOR shall make payment to the CITY of the fees set forth in subsection A of Section 9.2. Payment to the CITY shall be due quarterly on the twentieth (20th) Day of the month following each three (3) month period (quarter) during which revenues are billed. Each such payment shall be accompanied by an accounting that sets forth CONTRACTOR's Gross Billings during the preceding quarter. In the event CONTRACTOR begins

invoicing Customers for Residential Collection Services on a monthly basis, fee payments shall be due on the twentieth (20th) Day of the month following the month the revenues are billed.

- C. Franchise Fee Adjustment.** In the event that the CITY adjusts the Franchise Fee percentage, CITY shall provide CONTRACTOR with such change to the Franchise Fee percentage fee no later than thirty (30) Days prior to the date that the annual rate adjustment application is due. CONTRACTOR may adjust the Maximum Service Rates, subject to approval by CITY of CONTRACTOR's calculation of the adjustment amount, to incorporate any such changes in the Franchise Fee percentage prior to the time that the new Franchise Fee percentage becomes effective. To give effect to the intent of this Section, the Parties agree that the Franchise Fee paid by CONTRACTOR shall be calculated by dividing the base service rate element of each Maximum Service Rate by one (1) minus the Franchise Fee percentage (for example $1.00 - .10 = 0.90$); subtracting the base service rate element; and rounding the resulting figure to two (2) decimal places. If the base service rate element of a Maximum Service Rate changes for any reason, the Franchise Fee element will be recalculated.
- D. CONTRACTOR's Liability.** CONTRACTOR acknowledges the following: (1) the Franchise Fee is an obligation of the CONTRACTOR and not CONTRACTOR's customers; (2) CONTRACTOR pays CITY the Franchise Fee as consideration for CITY's granting of the exclusive Franchise; (3) the Franchise Fee is one of CONTRACTOR's many costs of doing business, such as fuel, labor, capital investment, etc.; and (4) if CONTRACTOR fails to fully and timely pay the Franchise Fee, CONTRACTOR forfeits (subject to the notice and cure provisions in Article 12) the exclusive Franchise granted to CONTRACTOR by CITY.
- E. CONTRACTOR Fee Audit.** CONTRACTOR shall conduct regular Gross Billing audits not less than annually, of all Drop Box, Commercial, SFD and MFD Customers in order to ensure the accuracy of the CONTRACTOR's payments to the CITY. CONTRACTOR shall provide a copy of said Gross Billing audit upon request to the CITY. The CITY maintains the right to engage a third party for an independent audit of the results of the Gross Billing audit.
- F. CITY Fee Audit.** No acceptance by CITY of any payment shall be construed as an accord that the amount is the correct amount, nor shall such acceptance of payment be construed as a release of any claim CITY may have against CONTRACTOR for any additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to independent audit and recompilation by CITY. If, after an audit, such recompilation indicates an underpayment, CONTRACTOR shall pay to CITY the amount of the underpayment plus interest at the Wall Street Journal Prime Rate. If the underpayment is in excess of five percent (5%) of the total fees due for the period of the audit, the CONTRACTOR shall reimburse CITY for all reasonable costs and expenses incurred in connection with the audit and recompilation within ten (10) Residential Service Work Days of receipt of written notice from CITY that such is the case. If, after an audit, such recompilation indicates an overpayment, CITY shall notify the CONTRACTOR in writing of the amount of the overpayment. CONTRACTOR may offset the amounts next due following receipt of such notice by the amount specified herein.

9.3 CITY Community Partnership Fee

The Parties acknowledge that certain services and costs are provided and incurred by CITY in connection with both the management of this Agreement and the comprehensive program of activities designed to

effectuate the purpose of this Agreement and benefit the community. To reimburse CITY for the various direct and indirect costs related to the administration of the Collection Service Agreement, and assist with the program activities implemented by the CITY, the CONTRACTOR shall pay CITY a community partnership ("CP") fee. The initial CP fee for the Agreement Year beginning October 1, 2018 and ending September 30, 2019 shall be \$7,220. The CP fee for the next Agreement Year and each subsequent Agreement Year shall be adjusted annually by the same percentage as the annual CPI adjustment to the Base Service Rate Element pursuant to Section 1.b. of Exhibit B to this Agreement, taking into account the carry-forward mechanism. CP fees shall be paid on or before the twentieth (20th) day of October beginning with October 2018 and annually thereafter.

9.4 Other Fees

Subject to the provisions of Article 10, Section 10.5(c) and Exhibit B of this Agreement, the CITY shall reserve the right to implement "Other Fees," as it deems necessary to offset any additional CITY costs associated with this Agreement

ARTICLE 10: CONTRACTOR COMPENSATION AND MAXIMUM SERVICE RATES

10.1 CONTRACTOR Compensation

The Maximum Service Rates set forth in Exhibit A, as more fully defined as CONTRACTOR compensation in this Article, shall be the maximum amount that CONTRACTOR may charge Customers, as full compensation for performance of all the services and obligations required by this Agreement in the manner and at the times prescribed. CONTRACTOR shall impose no other charges for services and obligations provided under this Agreement to Customers unless approved in advance in writing by CITY.

10.2 CITY Approved/CONTRACTOR Set Maximum Service Rates

The CITY approves the Maximum Service Rates, set forth in Exhibit A, for the Collection, transportation, Processing, Recycling, Composting, and/or Disposal of Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, Construction and Demolition Debris and Sludge. CONTRACTOR shall set the Service Rates it charges its Customers for Collection Services provided such rates do not exceed the CITY-approved Maximum Service Rates set forth in Exhibit A, subject to Articles 10.4 and 10.5.

10.3 Initial Service Rates

The Maximum Service Rates the CONTRACTOR may charge Customers through the Agreement Year ending September 30, 2019 shall not exceed the Maximum Service Rates set forth in Exhibit A.

10.4 Annual Rate Adjustments

- A. **Annual Adjustments.** Beginning with the Agreement Year starting October 1, 2019 and ending on September 30, 2020 and for all subsequent Agreement Years the base element of the Maximum Service Rates shown in Exhibit A shall be adjusted by the percentage change in the Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-Hayward, Series ID: CUURS49BSA0, published by the U.S. Department of Labor, Bureau of Labor Statistics ("CPI"), subject to the annual cap and the carry-forward mechanism described in Exhibit B. The annual rate adjustment process and the methodology for calculating the annual adjustment shall be as set forth in Exhibit B. The CONTRACTOR shall submit the rate application required by Exhibit B electronically in a format approved by the CITY to the Contract Administrator on or before June 1, 2019 and June 1 of each succeeding Agreement Year.

The annual rate adjustment process shall be as set forth in Exhibit B.

10.5 Extraordinary Rate Adjustments

It is understood that the CONTRACTOR accepts the risk for ordinary-course changes in the cost of providing services and the Service Levels requested by Customers and therefore the extraordinary adjustments to Maximum Service Rates shall be limited to:

- A. a Change in Law that increases or decreases CONTRACTOR's costs or revenues associated with providing Collection of Discarded Materials under the terms of this Agreement. Such costs, except for those fees set forth in Section B-D. below, shall not include costs of owning or operating any

Approved Facility, regardless of its location, or costs relating to the closed Recology Yuba-Sutter landfill in Marysville; or

- B. a change to the host fees set forth in Section 10.8; or
- C. the addition of a new fee, deletion of an old fee or increase or decrease in a then-existing fee, payable to a Participating Member Agency, or the RWMA by a Participating Member Agency; or
- D. the addition of a new fee, deletion of an old fee, or increase or decrease in a then-existing fee, payable to any governmental authority, that is either paid directly by CONTRACTOR, or that is paid by an Approved Facility or third party and passed through to CONTRACTOR, but excluding any fees relating to the closed Recology Yuba-Sutter landfill in Marysville.

If any event set forth in items A. through D. of this Section 10.5 occurs or is reasonably expected to occur, either Party may request an extraordinary adjustment to the Maximum Service Rates in excess of the annual adjustment described in Section 10.4 and Exhibit B in order to cover the change in CONTRACTOR's costs and/or revenues resulting from the event.

CONTRACTOR shall prepare a proposal for the extraordinary rate increase. Such submittal shall provide all information reasonably requested by Contract Administrator specific to the nature of the request being made. If CONTRACTOR initiates the request for the extraordinary rate adjustment, CONTRACTOR shall pay all reasonable third party costs incurred by CITY, including the costs of legal review, outside accountants, and/or consultants, in order to make a determination of the reasonableness of the requested extraordinary rate adjustment. If the adjustment is granted, such costs, exceeding twenty-five thousand dollars (\$25,000) in total for all Participating Member Agencies shall be recoverable on a pass-through basis as part of the increase (amortized as necessary over the remaining Agreement term at the time of the adjustment so that there is no windfall to CONTRACTOR). In such case the pass-through costs shall not be part of the base service rate element of the Maximum Service Rates but instead will be a separate fee element. As such they will be adjusted in accordance with Section 1.C. of Exhibit B to this Agreement. The proposal shall clearly document the reason for the proposed adjustment, include calculation of the proposed rate adjustments, and provide supporting documentation.

In the event CONTRACTOR initiates the request for extraordinary rate increase, it is understood that the CONTRACTOR shall have the burden of demonstrating to the reasonable satisfaction of the CITY that the request is justified (i.e. that an event set forth in items A. – D. above has or will increase CONTRACTOR's reasonable and necessary costs (or decrease revenues) of performing Collection Services under this Agreement).

The Contract Administrator shall have the right to request any other information that they, in their sole but reasonable judgment, determine is necessary to establish the reasonableness or accuracy of CONTRACTOR's request for an extraordinary rate increase. CONTRACTOR's failure to fully cooperate in a timely manner with any reasonable request for information by the Contract Administrator may result in either the denial of or a delay in the approval of the request for an extraordinary rate increase.

10.6 Submittal of Request

A request for an extraordinary rate adjustment shall be conducted as provided in this Section. CONTRACTOR is obligated to meet requirements of this Section whether process is CITY-initiated or

CONTRACTOR-initiated.

- A.** The Party initiating an extraordinary rate adjustment shall provide notice to the other Party, citing the applicable provisions of this Article and providing a complete written summary of the reason for the extraordinary rate adjustment, and its impact on CONTRACTOR's Collection obligations and revenues.
- B.** If a notice of extraordinary rate adjustment is issued by the CITY, within thirty (30) calendar days of receiving the CITY's notice, the CONTRACTOR shall prepare and submit a proposal in accordance with the proposal format specified in Section 10.6.D
- C.** If a notice of extraordinary adjustment is issued to CITY by the CONTRACTOR, the CONTRACTOR's notice shall include a proposal in accordance with the proposal format specified in Section 10.6.D, and shall be submitted by the April 1 preceding the October 1 on which CONTRACTOR wishes the adjustment to occur. In the event the proposal is not submitted in a timely manner as required in this Section, CITY is under no obligation to consider the proposal and may request that CONTRACTOR resubmit the proposal for consideration in the next Agreement Year.
- D.** Proposal Format. For any proposal submitted under this Section, CONTRACTOR shall to the extent applicable:
 - 1.** Describe the circumstance warranting an extraordinary rate adjustment. If CONTRACTOR is responding to a CITY request for an adjustment, the description shall be based on the information provided by CITY under Section 10.6 A. above.
 - 2.** Submit a work plan for implementing a change in CONTRACTOR's Collection obligations including to the extent appropriate, changes in operating methods and labor needs, and implementation schedule.
 - 3.** Identify the capital and/or operating cost of modifying the CONTRACTOR's Collection obligations to support any requested change in Maximum Service Rates. The CONTRACTOR shall include detailed documentation supporting its cost proposal, including cost substantiation.
 - 4.** For the purposes of analyzing cost impacts of changes in scope, the CONTRACTOR's profit from operations shall be calculated using profit percentage of twelve and three-tenths percent (12.3%) multiplied by the actual reasonable and necessary costs net of government fees.
 - 5.** Provide draft language changes to the provisions of this Agreement, as CONTRACTOR deems appropriate and necessary to effect any change in Maximum Service Rates or CONTRACTOR's Collection obligations.
- E.** The Party that initiated the extraordinary rate adjustment may withdraw its notice and its request for the Extraordinary Rate Adjustment at any time.
- F.** After CONTRACTOR's submission of the information provided above, on or before April 1, each Party shall use best efforts to complete its evaluation of the request and, if the request is granted, approval of any associated Agreement amendments and adjustments to the Maximum Service Rates, by October 1.

10.7 CITY Review

The Initiator of the request for an extraordinary rate adjustment shall bear the burden of justifying by substantial evidence its entitlement to any adjustment in Maximum Service Rates under Section 10.5. If CONTRACTOR submits a proposal for an extraordinary rate adjustment, CITY shall review the proposal provided by CONTRACTOR in accordance with Section 10.6 as well as any other information it deems necessary to determine, what, if any adjustment is justified. Once all of the requested information has been received and reviewed CITY shall determine if CONTRACTOR has demonstrated that the extraordinary rate adjustment is justified to the reasonable satisfaction of CITY . In the event CITY determine that an extraordinary rate adjustment is justified they shall not unreasonably withhold consent to such extraordinary rate adjustment.

10.8 Host Fees Imposed by RWMA Member Agencies

The City of Marysville, an RWMA Member Agency, imposes a business license fee (“host fee”) of \$4.40 per ton (as of the Effective Date of this Agreement) on CONTRACTOR for each ton of Solid Waste delivered to the Marysville Transfer Station. In addition, the County of Yuba, an RWMA Member Agency, imposes a host fee of \$4.40 per ton (as of the Effective Date of this Agreement) on the Ostrom Road Landfill operator for each ton of Solid Waste delivered to the Ostrom Road Landfill. The amount of the Yuba County host fee is included in the per-ton tip fee paid by CONTRACTOR for Disposal of Solid Waste at the Ostrom Road Landfill. The Marysville business license (host) fee is not payable with respect to material designated by CONTRACTOR and accepted by the Marysville Transfer Station operator as Recyclable Materials, Green Waste, ADC or inerts. The Yuba County host fee is not payable with respect to material designated by CONTRACTOR and accepted by the Ostrom Road Landfill operator as Recyclable Materials, Green Waste (Diverted from landfill), ADC, or inerts.

10.9 Rate Adjustment for Direction to New Facilities

If the Participating Member Agencies direct CONTRACTOR to use a different Approved Facility (the “new facility”) from the one then being used by CONTRACTOR (the “previous facility”), then Maximum Service Rates shall be adjusted upward or downward to reflect the net increase or decrease in costs to CONTRACTOR of using the new Approved Facility as compared to the previous Approved Facility. The net increase or decrease in costs shall be determined taking into account the difference in tip, Processing or other fees, transportation costs, and any other costs reasonably incurred by CONTRACTOR (e.g. sorting costs, if the new facility has different contamination thresholds than the previous facility). CONTRACTOR shall not be required to begin using any new facility until the Maximum Service Rate adjustment contemplated by this Section has taken effect. In addition, if after such adjustment the tip, Processing or other fees payable by CONTRACTOR to use a Third Party Facility increase or decrease, then Maximum Service Rates shall be adjusted to pass through such increase or decrease. In addition, if the Approved Facility is changed from one that is owned or operated by CONTRACTOR or its Affiliate to one that is not, the provisions of this Agreement relating to the activities to be conducted by or at the Approved Facility shall be modified in a fair and reasonable manner to reflect the fact that CONTRACTOR or its Affiliate no longer controls the facility.

ARTICLE 11: INDEMNIFICATION, INSURANCE, AND PERFORMANCE BOND

11.1 Indemnification of the CITY

- A. **General.** CONTRACTOR shall defend, with counsel reasonably acceptable to the CITY, indemnify and hold harmless, to the fullest extent allowed by law, CITY, its officers, officials, employees, volunteers, agents and assignees (collectively, "Indemnitees"), from and against any and all causes of action, claims, costs (including but not limited to reasonable attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or enforcing this indemnity which fees and costs shall be reasonable if incurred by CITY and reimbursed by CONTRACTOR), loss, damages (including but not limited to special and consequential damages), liability, penalties (including attorneys' fees for the adverse Party), forfeitures, demands, 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 out of or in any way connected with the performance of this Agreement by CITY, its agents, directors, or employees, or by CONTRACTOR, its agents, directors, or employees, whether such claims, liens, demands, damages, losses or expenses are based upon a contract or upon a claim for personal injury, death or property damage, or upon any other legal or equitable theory whatsoever to include without limitation, claims arising or resulting from or made by third parties alleging: (i) the negligence or willful misconduct of the CONTRACTOR, its agents, employees, and/or Subcontractors, in exercising the privileges granted to it by this Agreement; (ii) the failure of the CONTRACTOR, its agents, employees, and/or Subcontractors in the performance of this Agreement to comply in all respects with the provisions and requirements of this Agreement, Applicable Laws, ordinances and regulations, and/or applicable permits and licenses; (iii) the acts of CONTRACTOR, its agents, employees, and/or Subcontractors in performing services under this Agreement for which strict liability is imposed by law; and, (iv) claims that arise out of or result from the performance of this Agreement by the CITY, its agents, directors or employees or CONTRACTOR, its agents, directors, or employees, whether such claims, liens, demands, damages, or losses or expenses are based upon a contract or upon a claim for personal injury, death or property damage or upon any other legal or equitable theory, whatsoever. Notwithstanding this defense obligation, CONTRACTOR shall not be required to indemnify CITY from loss or liability to the extent such loss arises from the sole negligence or willful misconduct of the CITY, its agents, directors and employees, at such time that such sole negligence or willful misconduct has been finally determined by a court of competent jurisdiction. CONTRACTOR shall provide the CITY with a defense until such determination has been made (i.e., until a court of competent jurisdiction has determined that the loss or liability arises from the sole negligence or willful misconduct of CITY, CONTRACTOR shall provide a defense as to such loss or liability).
- B. **CalRecycle Indemnification.** In addition, CONTRACTOR's duty to defend and indemnify herein includes payment of all fines and/or penalties imposed by CalRecycle (subject to the restrictions set forth in Public Resources Code Section 40059.1) resulting from CITY's failure to meet the requirements of AB 939, AB 341, AB 1826, and/or SB 1383 with respect to the waste stream Collected under this Agreement, where 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 or RWMA from submitting reports required by

AB 939, AB 341, AB 1826, and/or SB 1383 in a timely manner. The provisions of this Section shall survive the termination or expiration of this Agreement.

- C. Exempt Waste.** CONTRACTOR acknowledges that it is responsible for compliance during the entire Term of this Agreement with all Applicable Laws. CONTRACTOR shall not store, transport, use, or Dispose of any Exempt Waste except in strict compliance with all Applicable Laws.
- 1.** In the event that CONTRACTOR negligently or willfully mishandles Exempt Waste in the course of carrying out its activities under this Agreement, CONTRACTOR shall at its sole expense promptly take all investigatory and/or remedial action reasonably required for the remediation of such environmental contamination. Prior to undertaking any investigatory or remedial action, however, CONTRACTOR shall first obtain the Contract Administrator's approval of any proposed investigatory or remedial action. Should CONTRACTOR fail at any time to promptly take such action, the CITY may undertake such action at CONTRACTOR's sole cost and expense, and CONTRACTOR shall reimburse the CITY for all such expenses within thirty (30) Days of being billed for those expenses, and any amount not paid within that thirty (30) Day period shall thereafter be deemed delinquent and subject to the delinquent fee payment provision of this Agreement. These obligations are in addition to any defense and indemnity obligations that CONTRACTOR may have under this Agreement. The provisions of this Article shall survive the termination or expiration of this Agreement.
- D. Environmental Indemnity.** CONTRACTOR shall defend, indemnify, and hold the CITY and the RWMA harmless against and from any and all claims, suits, losses, penalties, damages, and liability for damages of every name, kind and description, including attorneys' fees and costs incurred, attributable to the negligence or willful misconduct of CONTRACTOR in handling Exempt Waste.
- E.** This provision (i.e., Section 11.1.A through 11.1.D) will survive the expiration or earlier termination of this Agreement and shall not be construed as a waiver of rights by the CITY and the RWMA or Indemnity from third parties.

11.2 Evaluation of Liability

The CONTRACTOR's obligation to defend, hold harmless, and indemnify under Article 11 shall not be excused because of the CONTRACTOR's inability to evaluate an Indemnitee's liability or because the CONTRACTOR evaluates such liability and determines that the Indemnitee is not liable to the claimant. Within twenty (20) Days of receiving written notice from the CITY of a claim for which the CITY is entitled to indemnity, the CONTRACTOR shall confirm to the CITY in writing that CONTRACTOR will provide a defense to the claim and shall take appropriate actions to provide such defense.

11.3 Hazardous Substances Indemnification

The CONTRACTOR shall indemnify, defend with counsel acceptable to the CITY, 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 and natural resources damages) injuries, hazardous materials response, remediation and removal costs, losses, demands, liens, liabilities, causes of action, suits (including citizen's suits), legal or administrative proceedings, interest, fines, charges, penalties (including attorneys' fees for the adverse Party), and expenses (including but not limited to attorneys' 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 contractors arising or resulting from 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: (i) any Hazardous Substance or Hazardous Wastes at any facility owned or operated by CONTRACTOR or an Affiliate of CONTRACTOR where CONTRACTOR transports, stores, or causes to be Disposed Solid Waste pursuant to this Agreement; (ii) CONTRACTOR's discharge of a pollutant in violation of the State Porter-Cologne Water Quality Act or federal Clean Water Act; (iii) CONTRACTOR's violation of any State or federal air quality rule, law, or regulation; (iv) CONTRACTOR's violation of any other State or federal environmental law, including the Resource Conservation and Recovery Act or its State law corollary; or, (v) CONTRACTOR's discharge of any Hazardous Substance or Hazardous Waste that causes injury to Person(s) or property(ies), in each of clauses (ii) through (v), during the Term of this Agreement and subject to Article 11. The foregoing indemnity is intended to operate as an agreement to indemnify, defend, insure, protect and hold CITY harmless from liability, pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, and other applicable State and federal environmental laws.

11.4 Separate Counsel

CITY may elect to have and consult separate legal counsel from CONTRACTOR at any time during the pendency of any claim at its sole discretion. CITY shall be responsible for paying its separate counsel unless: (i) CITY reasonably determines and notifies CONTRACTOR that separate counsel is required to represent CITY during the resolution of any claim; or (ii) a court of competent jurisdiction rules that CONTRACTOR has refused to satisfy its obligations under this Article 11. Notwithstanding the preceding sentence or the first sentence of Section 11.1, with respect to a particular claim, if CONTRACTOR confirms to CITY in writing CONTRACTOR's obligation to indemnify and defend CITY, without reserving a right to later seek reimbursement from CITY with respect to such claim, CITY shall not object to the counsel representing it being the same counsel that represents CONTRACTOR in the defense of such claim and CITY Council shall consider, if permitted by law, a written conflict-of-interest waiver if such is required for joint representation, and CITY's consent to such conflict-of-interest waiver shall not be unreasonably withheld. If CONTRACTOR provides the aforementioned confirmation, but the CITY declines to consent to such joint representation due to a conflict of interest that CITY has reasonably refused to waive, CONTRACTOR shall either retain separate counsel for CITY at CONTRACTOR's sole expense, or propose different counsel to undertake the joint representation that is not subject to a similar conflict of interest, and such different counsel shall be considered by CITY in accordance with this section. If CONTRACTOR provides the aforementioned confirmation, but the CITY declines to consent to such joint representation for any reason other than a conflict of interest, that CITY has reasonably refused to waive, CITY may retain its own counsel at its own expense, CITY shall have no right of defense or reimbursement of defense costs with respect to such claim (but CITY shall still be entitled to indemnity), CITY shall reasonably cooperate with CONTRACTOR in the defense and settlement of such claim. If CONTRACTOR does not provide the aforementioned confirmation, then CONTRACTOR shall reimburse CITY for the reasonable attorneys' fees and costs of CITY's separate counsel with respect to such claim..

11.5 Consideration

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

11.6 Obligation

The execution of this Agreement by the CONTRACTOR shall obligate the CONTRACTOR to comply with the foregoing indemnification provisions; however, the collateral obligation of providing insurance must also be fully complied with as set forth in Section 11.11.

11.7 Subcontractors

The CONTRACTOR shall require all Subcontractors performing Collection Services under the terms of this Agreement to enter into an agreement containing the provisions set forth in this Article 11 in their entirety and Subcontractor shall fully indemnify the CITY in accordance with this Agreement. Such agreement, however, will not relieve CONTRACTOR of its obligations under this Article 11, unless CITY expressly agrees in writing to so relieve CONTRACTOR.

11.8 Exception

Notwithstanding any other provision of this Article 11, CONTRACTOR's obligation to indemnify, hold harmless and defend under this Article 11 does not extend to any loss, liability, penalty, damage, cause of action, suit, forfeiture, claim, demand, proceeding, injury, cost, lien, interest, fine, charge, or expense (i) as to which CONTRACTOR is precluded by law from indemnifying the Indemnitee, (ii) which arose or resulted from the sole negligence or willful misconduct of any Indemnitee; (iii) pertaining to any Indemnitee's actual or alleged violation of Article XIIC or XIID of the California Constitution; or, (iv) pertaining to the process by which CONTRACTOR was selected, the exclusive Franchise hereunder was granted, or this Agreement was entered into or approved by CITY, or CITY's authority to do any of the same.

11.9 Damage by CONTRACTOR

If CONTRACTOR's employees or Subcontractors cause any injury, damage or loss to CITY property including, but not limited to, CITY streets or curbs, other than normal wear and tear from routine operations and as set forth in Article 5, CONTRACTOR shall reimburse CITY for CITY's cost of repairing such injury, damage or loss. Such reimbursement is not in derogation of any right of CITY to be indemnified by CONTRACTOR for any such injury, damage, or loss. With the prior written approval of CITY, CONTRACTOR may repair the damage at CONTRACTOR's sole cost and expense.

11.10 Survival

CONTRACTOR's indemnity obligations shall survive the expiration or termination of this Agreement and continue until such obligations have been fully satisfied by the resolution of all claims for which indemnity obligations are owed to the CITY.

11.11 Insurance

- A. General.** CONTRACTOR shall, at its sole cost and expense, procure, maintain and keep in full force and effect during the life of this Agreement commercial general liability insurance in an amount not less than One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000) for each occurrence, including damage to rented Premises, personal and advertising ("ADV") injury, with a general aggregate and Products/Completed Operations Aggregates ("Comp/OP AGG") liability coverage of not less than Two Million Dollars (\$2,000,000). CONTRACTOR's self-insured retention for commercial general liability shall be no more than Seven Hundred and Fifty Thousand Dollars

(\$750,000). CONTRACTOR shall procure, maintain and keep in full force and effect during the life of this Agreement, automobile liability insurance for owned, leased, hired or borrowed automobiles in an amount not less than Two Million Dollars (\$2,000,000) combined single limit bodily injury and property damage for each accident. CONTRACTOR's self-insured retention for automobile liability shall be no more than Seven Hundred and Fifty Thousand Dollars (\$750,000). CONTRACTOR shall provide and maintain the required MCS-90 endorsement to the automobile liability policy for hazardous material/waste transporters. CONTRACTOR shall procure, maintain and keep in full force and effect during the life of this Agreement an umbrella and/or excess policies that covers general liability and automobile liability in an amount not less than Thirty Million Dollars (\$30,000,000). CONTRACTOR shall procure, maintain and keep in full force and effect during the life of this Agreement workers' compensation coverage in an amount not less than the State statutory limits and employers' liability insurance in an amount not less than One Million Dollars (\$1,000,000), both subject to no more than One Million Dollars (\$1,000,000) self-insured retention. CONTRACTOR shall procure, maintain and keep in full force and effect during the life of this Agreement Pollution and Remediation Legal Liability insurance in an amount not less than Fifteen Million (\$15,000,000), with a self-insured retention of no more than Two Hundred and Fifty Thousand Dollars (\$250,000). Said Pollution and Remediation Legal Liability insurance shall be on a claims-made form and shall be retroactive to the date CONTRACTOR first began providing services in CITY as the exclusive franchisee for Solid Waste Collection Services. Said Pollution and Remediation Legal Liability insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of this Agreement. If pollution liability insurance coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the Agreement Effective Date, the CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years after completion of this Agreement. CONTRACTOR shall procure, maintain and keep in full force and effect during the life of this Agreement any other insurance required by law. The limits of insurance herein shall not limit the liability of CONTRACTOR.

- B. Policy(ies).** The policy or policies shall be issued by an insurer licensed to do business in the State of California. Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating Guide/Property-casualty/United States should be A- (Secure Best's Rating) and VIII (Financial Size Category).
- C. Self-Insurance.** For the self-insured layers, upon request by CITY, CONTRACTOR shall provide a statement to CITY advising that CONTRACTOR has sufficient assets to fund its workers' compensation, general liability, automobile liability, and Pollution and Remediation Legal Liability cost obligations for the past three (3) years and that sufficient assets are available to fund no less than sixty-five percent (65%) confidence level actuarially estimated workers' compensation, general liability, automobile liability, and Pollution and Remediation Legal Liability loss costs for the next twelve (12) months. Said statement shall be accompanied by statistical information to illustrate the accuracy of the comments and shall be prepared by a Fellow of the Actuarial Society.
- D. Additional Requirements.** The type and amount of coverage, including the amount of the self-insured retentions, required hereunder may be amended in the future to limits reasonably required by the CITY (such amendment to be considered a CITY-directed change and handled pursuant to Section 5.5). CONTRACTOR shall provide the CITY an endorsement to its insurance policies specifically naming the CITY, its officers, officials, agents, independent contractors,

employees, and volunteers as additional insureds under the commercial general liability and automobile liability policies, providing coverage for claims that arise out of the work or operations performed by or on behalf of CONTRACTOR or that in any way concerns this Collection Service Agreement and including coverage for the additional insureds for both ongoing and completed operations so long as the liability of an additional insured arises out of the work of the named insured, or so long as an additional insured's liability arises out of the named insured's performance of this Agreement. CONTRACTOR shall not utilize an omnibus endorsement, but shall provide an endorsement that specifically names CITY, its officers, officials, agents, independent contractors, employees and volunteers as additional insureds under the policy. The additional insured endorsement shall not be an omnibus endorsement, but shall specifically and directly name each additional insured. Such additional insured endorsement will explicitly include coverage for the additional insureds for both ongoing and completed operations so long as the liability of an additional insured arises out of the work of the named insured, or so long as an additional insured's liability arises out of the named insured's performance of this Agreement. The additional insured endorsement shall not contain any provisions which limit or restrict coverage for the additional insureds beyond the extent set forth in this Agreement. The coverage provided to the CITY shall be equal and identical to the coverage of the CONTRACTOR under "Proof of Insurance." Upon commencement of the Agreement, the CITY shall receive, at a minimum, certificates of insurance and additional insured endorsements. Upon request of the CITY, CONTRACTOR shall allow CITY to review any required policy. However, in the event a claim is made or suit is brought against any of the CITY additional insureds, CONTRACTOR shall provide CITY a copy of all policies of insurance (including all endorsements) relevant to such claim/suit (if any) within ten (10) Business Days following receipt of a written request from CITY for the same.

Furthermore, the commercial general liability policy will contain a separation of insureds provision specifying that the policy will apply separately to CITY and each additional insured against whom claim is made or suit is brought. The required insurance Policy Endorsement shall be filed by CONTRACTOR with the CITY Clerk and the CITY Risk Manager prior to the commencement of CONTRACTOR's operations under this Agreement, which Endorsement shall reflect the coverage as set forth herein. Following the binding of any policy of insurance, CONTRACTOR shall deliver a new Policy Endorsement from the insurance company to the CITY Clerk. The general liability, Pollution and Remediation Legal Liability, excess liability, umbrella liability, and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- 1. Additional Insureds.** The CITY, its officers, officials, employees, agents, independent contractors, and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONTRACTOR; and with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts or equipment furnished in connection with such work or operations. General Liability coverage shall be provided in the form of an Additional Insured endorsement (CG 20 10 11 85 or reasonable equivalent) to CONTRACTOR's insurance policy.
- 2. Primary Insurance.** For any claims related to this Agreement CONTRACTOR's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, agents, independent contractors, employees, and volunteers. Any insurance or self-insurance

maintained by the CITY, its officers, officials, employees, or volunteers shall be excess of CONTRACTOR's insurance and shall not contribute with it.

3. **Notification of Cancellation.** CONTRACTOR is required to notify the CITY by certified mail, return receipt requested, of the cancellation of any insurance coverage or policy immediately upon receiving notice of cancellation.
 4. **Waiver of Any Rights of Subrogation or Recovery.** CONTRACTOR waives any right of subrogation or recovery against the CITY which might arise because of any workers' compensation payments CONTRACTOR makes for injury in connection with work performed by CONTRACTOR under this Agreement or based on any other theory of Subrogation. The workers' compensation coverage placed in excess of the CONTRACTOR Retained Limit shall be endorsed with a Waiver of Subrogation endorsement.
- E. **Subcontractors.** Any Subcontractor(s), independent contractor(s) or any type of agent(s) performing or hired to perform any term or condition of this Agreement on behalf of CONTRACTOR, or as may be allowed by this Agreement, hereinafter referred to as "SECONDARY PARTIES," shall comply with each term and condition of this Agreement, including each term and condition of Section 11.11 entitled "INSURANCE." Furthermore, CONTRACTOR shall be responsible for the SECONDARY PARTIES' acts, omissions and satisfactory performance of the terms and conditions of this Agreement. All Subcontractors, independent contractors and agents to CONTRACTOR are disclosed on Exhibit E, attached hereto.
- F. **Thirty-Day Notice.** Except for the pollution liability policy, which is written on a claims-made basis, each insurance policy required by this clause shall be occurrence-based or an alternate form as approved by the CITY and endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or limits except after thirty (30) Days' prior written notice by certified mail, return receipt requested, has been received by CITY.
- G. **Proof of Insurance.** Proof of insurance shall be delivered to the following address or any subsequent address as may be directed in writing by the CITY.
- City Clerk
City of Wheatland
111 C Street
Wheatland, CA 95692
- H. **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 CONTRACTOR if the CITY determines such modification or waiver is in the best interest of CITY considering all relevant factors, including exposure to CITY.
- I. **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.

- J. Failure to Obtain Insurance.** The failure of CONTRACTOR to obtain and maintain any required insurance shall not relieve CONTRACTOR of any liability under this Agreement (and CONTRACTOR may be answerable to the CITY for damages or any other remedy on account of such breach) nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of CONTRACTOR concerning indemnification.
- K. No Limitation of Liability.** The coverage types and limits required pursuant to this Agreement shall in no way limit the liability of CONTRACTOR.

11.12 Performance Bond

If requested by CITY in writing, CONTRACTOR shall furnish to the CITY, and keep current, a performance bond in a form with language that is acceptable to the CITY, for the faithful performance of this Agreement and all obligations arising hereunder in an amount equal to two (2) months' Gross Billings from the provision of Collection Services within the CITY. In the event CONTRACTOR takes any action, or allows any action to be taken, which falls under the provisions of Section 13.10 entitled "ASSIGNMENT," waiver of the performance bond as set forth in Section 11.12 herein, is automatically and immediately rescinded and CONTRACTOR shall have ten (10) Days to obtain the performance bond required herein and provide proof of such performance bond to the CITY.

- A. Requirements.** The performance bond shall be executed by a surety company that is: acceptable to the CITY; an admitted surety company licensed to do business in the State of California; has an "A:VII" 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.
- B. Letter of Credit.** As an alternative to the performance bond discussed in Section 11.12, with CITY's approval, CONTRACTOR may deposit with CITY an irrevocable letter of credit in an amount as set forth in Section 11.12. If allowed, the letter of credit must be issued by an FDIC insured banking institution chartered to do business in the State of California, in the CITY's name, and be callable at the discretion of the CITY.

ARTICLE 12: DEFAULT AND REMEDIES

12.1 Events of Default

All provisions of the Agreement are considered material. Each of the following shall constitute an event of default.

- A. **Fraud or Deceit.** CONTRACTOR practices, or attempts to practice, any fraud or deceit upon the RWMA or CITY.
- B. **Insolvency or Bankruptcy.** CONTRACTOR becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of CONTRACTOR in a bankruptcy proceeding.
- C. **Failure to Provide and Maintain Bonds/Letter of Credit and Coverage.** CONTRACTOR fails to provide or maintain the performance bond or letter of credit, if required by this Agreement, or if CONTRACTOR fails to provide or maintain in full force and affect the workers' compensation, liability, or indemnification coverage as required by this Agreement.
- D. **Violations of Regulation.** CONTRACTOR violates any orders or filings of any regulatory body having authority over CONTRACTOR relative to this Agreement, provided that CONTRACTOR may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach or default of this Agreement shall be deemed to have occurred unless and until the regulatory body or court determines CONTRACTOR violated such order or filing.
- E. **Violations of Applicable Law.** CONTRACTOR violates Applicable Law relative to this Agreement.
- F. **Failure to Perform Direct Services.** CONTRACTOR ceases to provide Collection, transportation, or Processing services as required under this Agreement for a period of two (2) consecutive Days or more, for any reason within the control of CONTRACTOR.
- G. **Failure to Pay or Report.** CONTRACTOR fails to make any payments to the CITY and/or RWMA as required under this Agreement including payment of CITY and/or RWMA fees, surcharges or Liquidated Damages or refuses to provide the CITY or RWMA with required information, reports, and/or records in a timely manner as provided for in the Agreement.
- H. **Acts or Omissions.** Any other act or omission by CONTRACTOR which violates the terms, conditions, or requirements of this Agreement, the Act, 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 CONTRACTOR cannot reasonably correct or remedy the breach within the time set forth in such notice, if 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.
- I. **False, Misleading, or Inaccurate Statements.** Any representation or disclosure made to the CITY and/or RWMA by 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; and, any CONTRACTOR-

provided report containing a material misstatement, misrepresentation, data manipulation, or an omission of fact or content explicitly defined by the Agreement, excepting non-numerical typographical and grammatical errors.

- J. Seizure or Attachment.** There is a seizure of, attachment of, or levy on, some or all of CONTRACTOR's operating equipment, including without limits its equipment, maintenance or office facilities, Approved Facility(ies), or any part thereof.
- K. Suspension or Termination of Service.** There is any termination or suspension of the transaction of business by CONTRACTOR related to this Agreement, including without limit, due to labor unrest including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action lasting more than two (2) Days.
- L. Criminal Activity.** CONTRACTOR, its officers, managers, or employees are found guilty of criminal activity related directly or indirectly to performance of this Agreement or any other agreement held with the CITY and/or RWMA.
- M. Assignment without Approval.** CONTRACTOR transfers or assigns this Agreement without the expressed written approval of the CITY unless the assignment is permitted without approval of the CITY pursuant to Section 13.10 of this Agreement.
- N. Failure to Provide Proposal or Implement Change in Service.** CONTRACTOR fails to provide a proposal for new services or changes to services or fails to implement a change in service as requested by the CITY as specified in Section 5.5.
- O. Failure to Perform Any Obligation.** CONTRACTOR fails to perform any obligation established under this Agreement.

CITY shall provide CONTRACTOR written notice of default within seven (7) Business Days of the CITY's first knowledge of the CONTRACTOR's default.

12.2 Right to Terminate Upon Event of Default

CITY may terminate this Agreement immediately upon written notice to CONTRACTOR in the event CONTRACTOR defaults under Section 12.1.C entitled, "Failure to Provide and Maintain Bonds/Letters of Credit and Coverage."

CONTRACTOR shall be given ten (10) Business Days from written notification by the CITY to cure any default which, in the CITY's sole opinion, creates a potential public health and safety threat.

CONTRACTOR shall be given ten (10) Business Days from written notification by the CITY to cure any default arising under subsections E, F, I, J, and K in Section 12.1 provided, however, that the CITY shall not be obligated to provide CONTRACTOR with a notice and cure opportunity if the CONTRACTOR has committed the same or similar breach/default within a twenty-four (24) month period.

CONTRACTOR shall be given thirty (30) Days from written notification by the CITY to cure any other default (which is not required to be cured within ten (10) Business Days); however, the CITY shall not be obligated

to provide CONTRACTOR with a notice and cure opportunity if the CONTRACTOR has committed the same or similar breach/default within a twenty-four (24) month period.

12.3 CITY's Remedies in the Event of Default

Upon CONTRACTOR's default, the CITY has the following remedies in the event of CONTRACTOR default:

- A. **Waiver of Default.** The CITY may waive any event of default or may waive CONTRACTOR's requirement to cure a default event if the CITY determines that such waiver would be in the best interest of the CITY. CITY's waiver of an event of default is not a waiver of future events of default that may have the same or similar conditions.
- B. **Suspension of CONTRACTOR's Obligation.** The CITY may suspend CONTRACTOR's performance of its obligations if CONTRACTOR fails to cure an event of default in the time frame specified in Section 12.2 until such time the CONTRACTOR can provide assurance of performance in accordance with the terms of this Agreement.
- C. **Liquidated Damages.** The CITY may assess Liquidated Damages for CONTRACTOR's failure to meet specific performance standards pursuant to Section 12.6.
- D. **Termination.** In the event that CONTRACTOR should default and subject to the right of the CONTRACTOR to cure, in the performance of any provisions of this Agreement, and the default is not cured for any default within ten (10) Days if the default creates a potential public health and safety threat or arises under Section 12.1. E, F, I, J, or K, or otherwise thirty (30) Days after receipt of written notice of default from the CITY, then the CITY may, at their option, terminate this Agreement and/or hold a meeting of its governing body to determine whether this Agreement should be terminated. In the event CITY decides to terminate this Agreement, the CITY shall serve twenty (20) Days' written notice of its intention to terminate upon CONTRACTOR. In the event the CITY exercises its right to terminate this Agreement, the CITY may, at its option, upon such termination, either directly undertake performance of the services or arrange with other Persons to perform the services with or without a written agreement. This right of termination is in addition to any other rights of the CITY upon a failure of CONTRACTOR to perform its obligations under this Agreement.

CONTRACTOR shall not be entitled to any further revenues from Collection operations authorized hereunder from and after the date of termination.

- E. **Other Available Remedies.** The CITY's election of one (1) or more of the remedies described herein shall not limit the CITY from exercising any and all other remedies at law and in equity including injunctive relief, etc.

12.4 Possession of Records and Equipment Upon Termination

In the event of termination for an event of default, the CONTRACTOR shall furnish the Contract Administrator with immediate access to all of its business records, including without limitation, proprietary CONTRACTOR computer systems related to its Customers, Collection routes, and billing of accounts for Collection Services. In addition the CITY shall be allowed to continue to use equipment, Containers, and other property used in providing Collection Services on an interim basis until the CITY has

made other suitable arrangements for the provision of Collection Services, which may include award of the exclusive Franchise to another contractor. During the first six (6) months of use CITY shall not be obligated to CONTRACTOR for any fee for the use of CONTRACTOR'S Collection equipment including Containers and vehicles (which shall be deemed "equipment" for purposes of this section). Thereafter, CITY shall pay CONTRACTOR a monthly rental fee equal to the unamortized cost of the equipment divided by the remaining life used to calculate amortization as documented in such method as may be agreed to between CITY and CONTRACTOR. Such monthly equipment rental amount shall be recalculated monthly to take into account actual unamortized life of the equipment. In the event the equipment is fully amortized, the monthly rental shall be calculated by dividing the salvage value of the equipment, which shall be twenty (20) percent of the original value, by the estimated remaining useful life of the equipment which shall be five (5) years unless a different estimated useful life is mutually agreed to between CONTRACTOR and CITY.

12.5 CITY's Remedies Cumulative; Specific Performance

The CITY's rights to terminate the Agreement under Section 12.3, and to take possession of the CONTRACTOR's records under Section 12.4 are not exclusive, and the CITY's termination of the Agreement and/or the imposition of Liquidated Damages shall not constitute an election of remedies. Instead, these rights shall be in addition to any and all other legal and equitable rights and remedies, including but not limited to termination, which the CITY may have.

By virtue of the nature of this Agreement, the urgency of timely, continuous, and high-quality service; the lead 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 CONTRACTOR is inadequate and the CITY shall be entitled to injunctive relief (including but not limited to specific performance).

12.6 Performance Standards and Liquidated Damages

- A. General.** The Parties find that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by CITY as a result of a breach by CONTRACTOR of 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) that exclusive services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and, (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.
- B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties further acknowledge that consistent and reliable Collection Service is of utmost importance to CITY and that CITY has considered and relied on CONTRACTOR's representations as to its quality of service commitment in entering into this Agreement. The Parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and

reliable service and performance. The Parties further recognize that if CONTRACTOR fails to achieve the performance standards, or fails to submit required documents in a timely manner, CITY and CITY's residents and businesses will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages. Therefore, without prejudice to CITY's right to treat such non-performance as an event of default under Article 12, the Parties agree that the Liquidated Damages amounts established below represent reasonable estimates of the amount of such damages considering all of the circumstances existing on the Effective Date of this Agreement, including the relationship of the sums to the range of harm to CITY, Customers, and the community as a whole 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 this Agreement was made.

CITY Initial Here _____ CONTRACTOR Initial Here _____

C. CITY and RWMA Liquidated Damages. CITY and CONTRACTOR acknowledge that certain of the performance standards set forth in this Agreement affect the CITY individually while other performance standards affect the CITY as part of the RWMA. Those performance standards affecting the CITY are set forth below under the heading "CITY Liquidated Damages" while those performance standards affecting the CITY as part of the RWMA are set forth below under the heading "RWMA Liquidated Damages".

D. Procedure for Assessing Liquidated Damages.

1. CITY may determine the occurrence of events giving rise to Liquidated Damages through the observation of its own employees or representatives, investigation of Customer complaints, or self-reporting by CONTRACTOR. CITY and CONTRACTOR acknowledge that RWMA Liquidated Damages may only be assessed one (1) time for each occurrence within the Service Areas of the Participating Member Agencies (and not one (1) time for each Participating Member Agency).
2. Prior to assessing Liquidated Damages, and within thirty (30) Days of becoming aware of such violation, the Contract Administrator shall give CONTRACTOR notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. CONTRACTOR may review, and make copies at its own expense of all information in the possession of the Contract Administrator relating to incident(s)/non-performance. CONTRACTOR shall not be liable to pay Liquidated Damages with respect to any violation or incident of non-performance that occurs more than thirty (30) Days before notice is given to CONTRACTOR except in those instances where the Contract Administrator determines to its satisfaction that CONTRACTOR knowingly perpetrated the violation or incident of non-performance. CONTRACTOR may, within ten (10) Business Days after receiving notice, request a meeting with the Contract Administrator to present evidence regarding the accuracy of the facts related to the incident. If a meeting is requested, it shall be held by the Contract Administrator or his/her designee. CONTRACTOR may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-

performance. The Contract Administrator or designee will provide 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 Contract Administrator or designee may be appealed to the CITY. The decision of the CITY shall be final and CONTRACTOR shall have been deemed to have exhausted its administrative remedies and can thereafter challenge such ruling in court pursuant to California Code of Civil Procedure Section 1094.6. CONTRACTOR shall not be liable to pay Liquidated Damages with respect to any violation or incident of substandard performance as described in Section 12.7 entitled "Excuse from Performance" herein or occurring after termination of this Agreement or while CITY (or any third party authorized by CITY) is performing interim Collection Services except for items 3, 4, 5, 10, 12, or 17 in the tables below occurring after termination of this Agreement.

3. CONTRACTOR shall pay any Liquidated Damages assessed by the CITY and/or RWMA within ten (10) Business Days of the date the Liquidated Damages are assessed. If they are not paid within the ten (10) Business Day period, CITY may proceed against the performance bond or letter of credit, required by the Agreement, unless such performance bond or letter of credit have been waived as set forth in Section 11.12 herein, order the termination of the rights granted by this Agreement, or all of the above.

E. CONTRACTOR agrees to pay (as Liquidated Damages and not as a penalty) the following amounts:

CITY LIQUIDATED DAMAGES		
Item		Amount
1.	Failure or neglect to resolve a Customer complaint relating to missed Collection within the time set forth in Section 8.7, or failure to initially respond to any other type of Customer complaint within one (1) Business Day.	\$100.00 per incident per Service Recipient.
2.	Failure to clean up spillage or litter caused by CONTRACTOR within the time set forth in Section 7.5.	\$300.00 per incident per location.
3.	Failure to repair damage to Customer property caused by CONTRACTOR or its personnel.	\$500.00 per incident per location in addition to the reasonable cost of repair if not paid by CONTRACTOR prior to the assessment of this Liquidated Damage.
4.	Failure to repair, or reimburse CITY for, damage to CITY property, other than normal wear and tear from routine operations, caused by CONTRACTOR or its personnel, as provided in Section 11.9.	\$500.00 per incident in addition to the reasonable cost of repair if not paid by CONTRACTOR prior to the

CITY LIQUIDATED DAMAGES		
Item		Amount
		assessment of this Liquidated Damage.
5.	Failure to maintain or timely submit to CITY all quarterly and annual reports by the deadlines set forth in Section 8.9.	\$250.00 per incident per Day for each Day after the report(s) is due.
6.	Failure or neglect to complete at least ninety percent (90%) of a route within the CITY (i.e., Collect at least ninety percent (90%) of properly set out Carts or Bins on the route) on the regular scheduled Collection Service Day unless addressed in Section 12.7, Excuse for Performance, herein.	\$1,000.00 for each route not completed.
7.	Failure to notify Customers of changes in route Days as required by Section 7.4.	\$50.00 per Customer per Day to a maximum of \$1,000.00 per occurrence.
8.	Failure to repair or replace damaged Carts or Bins within the time required by Section 7.10.	\$100.00 per incident per Day to a maximum of \$500.00 per occurrence.
9.	Failure to deliver or exchange Carts or Bins within the time required by Section 7.10.	\$100.00 per incident per Day to a maximum of \$500.00 per occurrence.

RWMA LIQUIDATED DAMAGES		
Item		Amount
11.	Failure to maintain or timely submit to RWMA on behalf of CITY all documents and reports required under the provisions of this Agreement.	\$250.00 per incident per Day.
12.	Failure to display CONTRACTOR's name and Customer service phone number on Collection vehicles for a period exceeding thirty (30) Days.	\$100.00 per incident per Day.
13.	Failure to meet the minimum Diversion requirements set forth in Section 6.7 (as may be amended pursuant to Section 5.5). (Calculated per Agreement Year.)	Shortfall of 0.001 to 2 percentage points: \$5,000.00 per Agreement Year.

RWMA LIQUIDATED DAMAGES		
Item		Amount
		Shortfall of 2.001 to 4 percentage points: \$10,000.00 per Agreement Year. Shortfall of 4.001 or greater percentage points: \$15,000.00 per Agreement Year.
14.	Commingling Solid Waste with Recyclable Materials in Collection vehicles.	\$1,000.00 per incident.
15.	Disposal of Recyclable Materials or Organic Materials in the Approved Disposal Facility except as provided for in this Agreement.	\$1,000.00 per load.
16.	Failure to deliver any Collected materials to the Approved Disposal Facility, Approved Materials Recovery Facility, Approved Transfer Station, or Approved Organic Materials Processing Facility, as appropriate, except as otherwise expressly provided in this Agreement.	\$5,000.00 first failure. \$25,000.00 each subsequent failure.
17.	Ceasing a program or part of a program for longer than thirty (30) Days without written permission of the Contract Administrator, unless otherwise permitted under this Agreement.	\$1,000 per Day beginning with the 31 st Day.
18.	Failure to report non-RWMA materials separately in the MRF Diversion figures.	\$5,000 per incident.

12.7 Excuse from Performance

The Parties shall be excused from performing their respective obligations hereunder and from any obligation to pay Liquidated Damages to the extent and for the period of time they are prevented from so performing by reason of floods, earthquakes, other acts of nature, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the Party claiming excuse from performance hereunder. In the case of labor unrest or job action directed at a third party over whom CONTRACTOR has no control, the inability of CONTRACTOR to provide services in accordance with this Agreement due to the unwillingness or failure of the third party to: (i) provide reasonable assurance of the safety of CONTRACTOR's employees while providing such services; or, (ii) make reasonable accommodations with respect to Container placement and point of delivery, time of Collection, or other operating circumstances to minimize any confrontation with pickets or the number of Persons necessary to make Collections shall, to that limited extent, excuse performance. The foregoing excuse shall be conditioned on CONTRACTOR's cooperation in performing

Collection Services at different times and in different locations. Further, in the event of labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by the CONTRACTOR's employees or directed at the CONTRACTOR, or a subsidiary, the CONTRACTOR shall not be excused from performance. In such case, CONTRACTOR shall continue to provide a reasonably satisfactory level of performance during the pendency thereof, but the CONTRACTOR shall not be required to adhere strictly to the specific requirements of this Agreement regarding routes, Collection times or similar matters; provided, however, that in no event shall more than seven (7) Days elapse between pickups for Residential and Commercial Customers.

The Party claiming excuse from performance shall, within two (2) Business Days after such Party has notice of such cause, give the other Party notice of the facts constituting such cause and asserting its claim to excuse under this Article.

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

The partial or complete interruption or discontinuance of CONTRACTOR's services caused by one (1) or more of the events described in this Article shall not constitute a default by CONTRACTOR under this Agreement. Notwithstanding the foregoing, however, if CONTRACTOR is excused from performing its obligations hereunder for any of the causes listed in this Article 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) Business Days' notice to CONTRACTOR, in which case the provisions of Section 12.3 shall apply.

If an Approved Facility becomes unavailable for an extended period due to earthquake, fire, flood or other reason contemplated by this Section, the Participating Member Agencies may designate a new Approved Facility and the Parties shall negotiate in good faith to determine an equitable adjustment to CONTRACTOR's compensation.

12.8 Right to Demand Assurances of Performance

The Parties acknowledge that it is of the utmost importance to the CITY and the health and safety of all those members of the public residing or doing business within the CITY who will be adversely affected by interrupted waste management service, that there is no material interruption in services provided under this Agreement.

If CONTRACTOR: (i) is the subject of any labor unrest including lockout, work stoppage or slowdown, sick-out, picketing, or other concerted job action; (ii) appears in the reasonable judgment of CITY to be unable to regularly pay its bills as they become due; or, (iii) is the subject of a civil or criminal judgment or order entered by a federal, State, regional, or local agency for violation of an Applicable Law, and the CITY believes in good faith that CONTRACTOR's ability to perform under the Agreement has thereby been placed in substantial jeopardy, the CITY may, at its sole option and in addition to all other remedies it may have, demand from CONTRACTOR reasonable assurances of timely and proper performance of this Agreement. Such assurance shall be in such form and substance as the CITY believes in good faith is reasonably necessary in the circumstances to evidence continued ability to perform under the Agreement. If 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 for purposes of Section 12.1.

12.9 Dispute Resolution

In the event of dispute between the CITY and the CONTRACTOR regarding the interpretation of or the performance of services under this Agreement which results in a material impact to the CONTRACTOR's revenue and/or cost of operations as set forth herein, the provisions of this Section 12.9 shall apply. For the purposes of this section, "material impact" is an amount equal to or greater than two percent (2%) of CONTRACTOR's annual Gross Billings under this Agreement.

- A. Meet and Confer.** In the event of disputes regarding the performance of any obligation under this Agreement that results in a material impact to the CONTRACTOR's revenue and/or cost of operations, the CITY and CONTRACTOR agree that they promptly will meet and confer to attempt to resolve the matter between themselves.
- B. Mediation.** In the event that disputes that arise under this Agreement cannot be resolved satisfactorily between the Parties in accordance with Section 12.9.A, the CITY and CONTRACTOR agree that such disputes shall be submitted to mandatory, non-binding mediation by a mutually agreed upon independent third party. If the mediator is unable, within sixty (60) Days thereafter, to reach a determination as to the matter in dispute in a manner acceptable to the Parties hereto, then either Party may refer the matter to a court of competent jurisdiction.
- C. Period of Time.** Insofar as allowed by Applicable Law, the period of time otherwise applicable for filing claims against the CITY under Applicable Law shall be tolled during the period of time for which meet and confer or mediation procedures are pending, in accordance with Sections 12.9.A and 12.9.B.
- D. Litigation.** Litigation may be commenced only after all reasonable efforts to resolve the dispute(s) pursuant to Sections 12.9.A, 12.9.B, and 12.9.C have failed and any necessary claim(s) have been denied.

ARTICLE 13: OTHER AGREEMENTS OF THE PARTIES

13.1 Legal Representation

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

13.2 Financial Interest

CONTRACTOR warrants and represents that no elected official, officer, agent, or employee of the CITY has a financial interest, directly or indirectly, in this Agreement or the compensation to be paid under it and, further, that no CITY employee who acts in the CITY as a "purchasing agent" as defined in the appropriate Article of California Statutes, nor any elected or appointed officer of the CITY, nor any spouse or child of such purchasing agent, employee, or elected or appointed officer, is a partner, officer, director, or proprietor of the CONTRACTOR and, further, that no such CITY employee, purchasing agent, CITY elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in the CONTRACTOR. Material interest means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of the CONTRACTOR.

13.3 CONTRACTOR Not Officer, Employee or Agent

- A. CONTRACTOR Is Independent Contractor.** It is understood and agreed, and it is the intention of the Parties hereto, that CONTRACTOR is an independent contractor, and is not an officer, employee, or agent of CITY for any purpose whatsoever. CITY shall have no right to and shall not control the manner and method by which the Franchise services are performed by CITY herein, except as otherwise provided in this Agreement. CONTRACTOR shall be entirely and solely responsible for its acts and the acts of its agents, employees, and Subcontractors engaged in the performance of services hereunder. CONTRACTOR shall have no claim under this Agreement or otherwise against CITY for vacation pay, sick leave, retirement benefits, social security, workers' compensation, disability, or unemployment insurance benefits or other employee benefits of any kind. The Parties acknowledge that CITY shall not withhold from CONTRACTOR's compensation any funds for income tax, FICA, disability insurance, unemployment insurance, or similar withholding and CONTRACTOR is solely responsible for the timely payment of all such taxes and related payments to the State and federal government for itself and its employees, agents, and Subcontractors who might render services in connection with this Agreement. CONTRACTOR shall inform all entities or Persons who perform any services pursuant to this Agreement of the provisions of this Article.
- B. CONTRACTOR Responsibility To and For Its Officers, Agents Employees, Contractors and Subcontractors.** CONTRACTOR shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and Subcontractors, if any. Neither CONTRACTOR nor its officers, employees, agents, contractors, or Subcontractors shall obtain any right to retirement benefits, workers' compensation benefits, or any other compensation or benefits which accrue to CITY employees; and CONTRACTOR expressly waives any claim it may have or acquire to such compensation or benefits.

13.4 CONTRACTOR's Use of Subcontractor

The use of a Subcontractor to perform services under this Agreement shall not constitute delegation of CONTRACTOR's duties provided that CONTRACTOR has received prior written authorization from the Contract Administrator to subcontract such services and the Contract Administrator, at their sole discretion, has approved a Subcontractor who will perform such services. CONTRACTOR shall be responsible for directing the work of CONTRACTOR's Subcontractors and any compensation due or payable to CONTRACTOR's Subcontractor shall be the sole responsibility of CONTRACTOR. The Contract Administrator shall have the right to require the removal of any approved Subcontractor for reasonable cause. The Subcontractors listed in Exhibit E to this Agreement are hereby approved by the CITY.

13.5 Compliance with Law

CONTRACTOR shall at all times, at its sole cost, but without limiting CONTRACTOR's rights under Section 10.5, comply with all Applicable Laws, permits, and licenses of the United States, State, County, and City and 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. Nothing contained in this Agreement shall require any Party to perform any act or function contrary to law, or limit the laws with which the Party must comply.

- A. **Permits and Licenses.** CONTRACTOR shall obtain, at its own expense, all permits, licenses, and approvals required by law or ordinance, and shall maintain such permits, licenses, and approvals in full force and effect throughout the Term of this Agreement. CONTRACTOR shall provide proof of such permits, licenses, or approvals and shall demonstrate compliance with the terms and conditions of such permits, licenses, and approvals upon the request of the Contract Administrator.
- B. **Notice of Amendment to CITY Municipal Code.** CITY shall provide written notice to CONTRACTOR of any planned amendment of the CITY Municipal Code that would substantially affect CONTRACTOR's obligations or the performance of CONTRACTOR's services pursuant to this Agreement. Such notice shall be provided at least thirty (30) Days prior to the CITY Council approval of such an amendment.

13.6 Governing Law

The law of the State of California shall govern the rights, obligations, duties, and liabilities of CITY and CONTRACTOR under this Agreement and shall govern the interpretation of this Agreement.

13.7 Litigation

In the event of any litigation arising out of this Agreement, the prevailing Party in such action shall be entitled to recover its reasonable costs and expenses including, without limitation, reasonable attorneys' fees and costs paid or incurred in good faith. The "prevailing Party," for purposes of this Agreement, shall be deemed to be that Party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.

13.8 Jurisdiction

The Parties agree that any litigation between CITY and CONTRACTOR concerning or arising out of this Agreement shall be filed and maintained exclusively in the Superior Courts of the State of California,

County of Yuba (Yuba Superior Court) to the fullest extent permissible by law. Each Party consents to service of process in any manner authorized by California law.

13.9 Binding on Successors

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

13.10 Assignment

Neither Party shall assign its rights nor delegate 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 Article, "assignment" shall include, but not be limited to: (i) a sale, exchange, or other transfer of substantially all of CONTRACTOR's local, regional, and/or corporate assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange, or other transfer of thirty-one percent (31%) or more of the stock or other ownership interests of CONTRACTOR to a third party; (iii) a sale, exchange, or other transfer of fifty-one percent (51%) or more of the stock or other ownership interests of CONTRACTOR to an individual employee of CONTRACTOR; (iv) any reorganization, consolidation, merger, recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction to which CONTRACTOR or any of its shareholders is a party which results in a change of ownership or control of fifty-one percent (51%) or more of the stock or other ownership interests of CONTRACTOR; and, (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of a fifty-one percent (51%) change in the shares or other ownership interests of CONTRACTOR. For purposes of this Article, "assignment" shall not include a transfer of shares in CONTRACTOR by the owner of such shares to a revocable trust for the benefit of his family or to other multiple owners of shares in CONTRACTOR who are employees of CONTRACTOR at the time of the transfer. For purposes of this Article, the term "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant to the assignment.

CONTRACTOR acknowledges that this Agreement involves rendering a vital service to CITY's residents and businesses, and that the CITY has selected CONTRACTOR to perform the services specified herein based on: (i) CONTRACTOR's experience, skill, and reputation for conducting its Solid Waste, Recyclable Materials, Organic Materials, C&D and Bulky Item management operations in a safe, effective, and responsible fashion, at all times in keeping with applicable waste management laws, regulations, and good waste management practices; and, (ii) CONTRACTOR's financial resources on a local, regional, and/or corporate level 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 CONTRACTOR to perform the services to be rendered by CONTRACTOR under this Agreement.

If CONTRACTOR requests CITY consideration of and consent to an assignment, the CITY may deny or approve such request in their complete discretion. No request by CONTRACTOR for consent to an assignment need be considered by the CITY unless and until CONTRACTOR has met the following requirements. The CITY may, in its sole discretion, waive one (1) or more of these requirements.

- A. On the date the CONTRACTOR submits a written request for the CITY's written consent of an assignment, CONTRACTOR shall pay the CITY a transfer fee in the amount of one percent (1%) of the Gross Billings for the most-recently completed Agreement Year.
- B. CONTRACTOR shall pay the CITY its reasonable expenses for attorneys', consultants', accountants' fees, staff time, 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. Such payment shall be required regardless of the ultimate determination of the CITY with regard to the approval or denial of the assignment. Upon submittal of CONTRACTOR's request for assignment to CITY, CONTRACTOR shall submit an initial deposit towards these expenses of one hundred thousand dollars (\$100,000) for this purpose for all Participating Member Agencies combined, prorated in accordance with their respective Gross Billings for the most recently completed Agreement Year.
- C. CONTRACTOR shall furnish the CITY with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years.
- D. CONTRACTOR shall furnish the CITY with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, and C&D management experience on a scale equal to or exceeding the scale of operations conducted by CONTRACTOR under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any citations or other censure from any federal, State or local agency having jurisdiction over its waste management operations due to any significant failure to comply with State, federal or local waste management laws and that the assignee has provided the CITY with a complete list of any 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 operations and management practices in accordance with sound waste management practices in full compliance with all federal, State, and local laws regulating the Collection, transportation, Processing and Disposal of Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, and C&D, including Hazardous Waste; and, (v) that any other information required by the CITY demonstrates that the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.
- E. CONTRACTOR shall provide the CITY with any and all additional records or documentation which, in the CITY's sole determination, would facilitate the review of the proposed assignment.

If, in the CITY's sole determination, there is any doubt regarding the compliance of the CONTRACTOR with the Agreement, the CITY may require an audit of the CONTRACTOR's compliance and the costs of such audit shall be paid by CONTRACTOR in advance of the performance of said audit.

13.11 No Third-Party Beneficiaries

This Agreement is not intended to, and will not be construed to, create any right on the part of any third party to bring an action to enforce any of its terms.

13.12 Waiver

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

13.13 Transition to Next Contractor

In the event CONTRACTOR is not awarded an Agreement to continue to provide Collection Services following the expiration or early termination of this Agreement, CONTRACTOR shall cooperate fully with CITY and any subsequent contractors to ensure a smooth transition of services described in this Agreement. Unless otherwise agreed by CITY and CONTRACTOR, such cooperation shall consist of: (a) providing the following information to the subsequent contractor: routing information, route maps, vehicle fleet information (if the subsequent contractor buys CONTRACTOR's vehicle fleet), a list of Service Recipients' contact information and their respective Service Levels, and a complete inventory of all Carts and Bins (if the subsequent contractor buys CONTRACTOR's Carts and Bins); and, (b) providing adequate labor and equipment to complete performance of all Collection Services required under this Agreement. The CONTRACTOR shall not be eligible for the recovery of any costs associated with these transition activities. However, if CONTRACTOR is requested to provide additional transition services outside the scope of this Agreement, CONTRACTOR shall be compensated for such services at an amount to be agreed upon between CITY and CONTRACTOR prior to the provision of those services.

13.14 CONTRACTOR'S Records

- A. Maintenance of Financial Records.** CONTRACTOR shall maintain any and all letters, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to Service Recipients for a minimum period of five (5) years, or for any longer period required by law, from the date of final payment to CONTRACTOR pursuant to this Agreement.
- B. Maintenance of Performance Records.** CONTRACTOR shall maintain all documents and records that demonstrate performance under this Agreement for a minimum period of five (5) years, or for any longer period required by law, from the date of termination or completion of this Agreement.
- C. Availability of Records.** Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at any time during regular business hours upon written request by the Contract Administrator, the CITY Attorney, CITY Auditor, CITY Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at the CITY offices when it is practical to do so. Otherwise, unless an alternative site is mutually agreed upon, the records shall be available at CONTRACTOR's address indicated for receipt of notices in this Agreement.
- D. Provision of Requested or Demanded Records.** Where CITY has reason to believe that such records or documents may be lost or discarded due to the dissolution, disbandment or termination of CONTRACTOR's business, CITY may, by written request or demand of any of the

above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in CITY Hall. Within ten (10) Business Days after receiving CITY's written request or demand, CONTRACTOR shall provide CITY all requested records and documents. The CITY shall make those records and documents available to CONTRACTOR, CONTRACTOR's representatives, or CONTRACTOR's successor-in-interest at CITY Hall during regular operating hours.

13.15 Notice Procedures

Except as provided herein, whenever either Party desires to give notice to the other, it must be given by written notice addressed to the Party for whom it is intended, at the place last specified as the place for giving of notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective Persons and places for giving of notice:

As to the CITY:

City Manager
City of Wheatland
111 C Street
Wheatland, CA 95692

As to the CONTRACTOR:

Recology Yuba-Sutter
Attn: General Manager
3001 North Levee Road
Marysville, CA 95901

with a copy to:
Recology Inc.
Attn: Legal Department
50 California Street, 24th Floor
San Francisco, CA 94111

- A.** Notices shall be effective when received at the address as specified above. Changes in the respective address to which such notice is to be directed may be made by written notice only. Facsimile transmission is acceptable notice, effective when received, however, facsimile transmissions received (i.e., printed) after 4:30 p.m. or on weekends or Holidays, will be deemed received on the next Business Day. Receipt is deemed to have taken place within three (3) Residential Service Work Days of notice mailed by U.S. Postal Service return receipt requested. The original of items that are transmitted by facsimile equipment must also be mailed as required herein.
- B.** Notice by CITY to CONTRACTOR of a Collection or other Service Recipient problem or complaint may be given to CONTRACTOR orally by telephone at CONTRACTOR's local office with confirmation sent as required above by the end of the Residential Service Work Day.

13.16 Certain Defenses

CONTRACTOR acknowledges, subject to the terms and conditions of this Agreement, that it is solely responsible for providing Collection Services, as set forth in Article 5 of this Agreement, and rendering payment to the CITY, as set forth in Article 9 of this Agreement. CONTRACTOR irrevocably and unconditionally waives defenses to the validity of this Agreement based upon failure of consideration or contract of adhesion.

ARTICLE 14: MISCELLANEOUS AGREEMENTS

14.1 Entirety of Agreement

This Agreement and the Exhibits attached hereto constitute the entire Agreement and understanding between the Parties hereto, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the Parties hereto.

14.2 Severability

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

14.3 Right to Require Performance

The failure of the CITY at any time to require performance by the CONTRACTOR of any provision hereof shall in no way affect the right of the CITY thereafter to enforce same. Nor shall waiver by the CITY of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

14.4 Non-Discrimination

In the performance of all work and services under this Agreement, CONTRACTOR shall not discriminate against any Person on the basis of 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.

14.5 All Prior Agreements Superseded

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

14.6 Headings

The article headings and section headings in this Agreement are for convenience of reference only and are not to be considered in any interpretation of this Agreement.

14.7 Exhibits

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

14.8 References to Laws

All references in this Agreement to laws and regulations shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided herein.

14.9 Start Date

CONTRACTOR shall begin Collection Services, as covered herein, as of October 1, 2018.

14.10 CITY's Option to Incorporate Additional or Modified Provisions

- A. Incorporation of Additional or Modified Provisions.** CITY is a Member Agency of the RWMA which is a joint powers authority consisting of the cities of Marysville, Wheatland, Live Oak and Yuba City and the Counties of Yuba and Sutter. The Participating Member Agencies are in the process of entering into new Collection Service agreements with CONTRACTOR similar to this Agreement. CITY and CONTRACTOR (as well as other Participating Member Agencies) have used a model Collection Service agreement ("Model Agreement"). Use of the Model Agreement is not mandatory. During the Term and any extended Term of this Agreement, in the event that CONTRACTOR or an Affiliate enters into an agreement with another Participating Member Agency that contains additional or different terms from those set forth in this Agreement, the CITY shall have the option, upon written notice to CONTRACTOR, to incorporate such additional or different terms into this Agreement, effective upon the giving of such notice. Stated differently, should CONTRACTOR or an Affiliate enter into an agreement with another Participating Member Agency, and should such agreement contain additional or different terms from this Agreement, the CITY may give written notice to CONTRACTOR electing to incorporate such additional or different terms into this Agreement. Upon the giving of such notice this Agreement shall be deemed amended to incorporate such additional or different terms. This Section shall not apply if the agreement between CONTRACTOR and the other Participating Member Agency relates to provisions specific to that Participating Member Agency (for example, if CONTRACTOR and Yuba County amend the provisions of their Collection Service Agreement relating to the Ponderosa Landfill Transfer Station).

14.11 Amendments

This Agreement may not be modified or amended in any respect except in writing signed by the Parties.

Received
Review
Date

14.12 Counterparts

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

IN WITNESS WHEREOF, the CITY and the CONTRACTOR have executed this Agreement on the Day and year first written above.

CITY OF Wheatland

CONTRACTOR

(Insert Name)
Mayor

Date

Signature

Date

Michael J. Sangiacomo
President and Chief Executive Officer

The foregoing Agreement has been reviewed and approval is recommended:

Resolution No. 24-18 Approved by City Council

Approved as to Form:

Insert Name: Jennifer Buckman
City Attorney

9.11.18
Date

EXHIBIT A: MAXIMUM SERVICE RATES

City of Wheatland
Proposed Rates Effective 10/1/18

1.A. - Commercial Solid Waste Bins

Service Description	Base Service Rate	RWMA Surcharge	Total Rate for Services
<u>1 Yard</u>			
1 Time per Week	\$124.89	\$3.15	\$128.04
2 Times per Week	\$249.79	\$5.40	\$255.19
3 Times per Week	\$374.68	\$7.95	\$382.63
4 Times per Week	\$499.58	\$9.75	\$509.33
5 Times per Week	\$624.47	\$12.15	\$636.62
6 Times per Week	\$749.37	\$15.60	\$764.97
<u>1.5 Yard</u>			
1 Time per Week	\$167.11	\$4.35	\$171.46
2 Times per Week	\$334.22	\$7.35	\$341.57
3 Times per Week	\$501.33	\$10.20	\$511.53
4 Times per Week	\$668.44	\$13.20	\$681.64
5 Times per Week	\$835.55	\$16.20	\$851.75
6 Times per Week	\$1,002.65	\$20.70	\$1,023.35
<u>2 Yard</u>			
1 Time per Week	\$200.63	\$5.10	\$205.73
2 Times per Week	\$401.27	\$8.25	\$409.52
3 Times per Week	\$601.90	\$11.25	\$613.15
4 Times per Week	\$802.54	\$14.40	\$816.94
5 Times per Week	\$1,003.17	\$17.55	\$1,020.72
6 Times per Week	\$1,203.81	\$22.35	\$1,226.16
<u>3 Yard</u>			
1 Time per Week	\$242.84	\$6.15	\$248.99
2 Times per Week	\$485.68	\$10.35	\$496.03
3 Times per Week	\$728.51	\$15.00	\$743.51
4 Times per Week	\$971.35	\$18.60	\$989.95
5 Times per Week	\$1,214.19	\$22.80	\$1,236.99
6 Times per Week	\$1,457.03	\$29.25	\$1,486.28
<u>4 Yard</u>			
1 Time per Week	\$291.95	\$7.50	\$299.45
2 Times per Week	\$583.90	\$12.60	\$596.50
3 Times per Week	\$875.85	\$17.70	\$893.55
4 Times per Week	\$1,167.80	\$22.95	\$1,190.75
5 Times per Week	\$1,459.76	\$28.20	\$1,487.96
6 Times per Week	\$1,751.71	\$36.30	\$1,788.01

EXHIBIT A: MAXIMUM SERVICE RATES

1.A. - Commercial Solid Waste Bins

Service Description	Base Service Rate	RWMA Surcharge	Total Rate for Services
<u>5 Yard</u>			
1 Time per Week	\$302.42	\$7.80	\$310.22
2 Times per Week	\$604.84	\$13.80	\$618.64
3 Times per Week	\$907.26	\$19.80	\$927.06
4 Times per Week	\$1,209.68	\$25.95	\$1,235.63
5 Times per Week	\$1,512.10	\$32.25	\$1,544.35
6 Times per Week	\$1,814.52	\$41.70	\$1,856.22
<u>6 Yard</u>			
1 Time per Week	\$311.39	\$7.95	\$319.34
2 Times per Week	\$622.79	\$14.85	\$637.64
3 Times per Week	\$934.18	\$21.90	\$956.08
4 Times per Week	\$1,245.58	\$28.95	\$1,274.53
5 Times per Week	\$1,556.97	\$36.15	\$1,593.12
6 Times per Week	\$1,868.37	\$46.95	\$1,915.32
<u>7 Yard</u>			
1 Time per Week	\$348.36	\$8.85	\$357.21
2 Times per Week	\$696.73	\$16.50	\$713.23
3 Times per Week	\$1,045.09	\$24.30	\$1,069.39
4 Times per Week	\$1,393.45	\$32.25	\$1,425.70
5 Times per Week	\$1,741.82	\$40.05	\$1,781.87
6 Times per Week	\$2,090.18	\$52.05	\$2,142.23
<u>8 Yard</u>			
1 Time per Week	\$397.46	\$10.20	\$407.66
2 Times per Week	\$794.91	\$18.15	\$813.06
3 Times per Week	\$1,192.37	\$27.15	\$1,219.52
4 Times per Week	\$1,589.82	\$36.00	\$1,625.82
5 Times per Week	\$1,987.28	\$44.70	\$2,031.98
6 Times per Week	\$2,384.73	\$54.90	\$2,439.63

EXHIBIT A: MAXIMUM SERVICE RATES

1. B. Commercial Solid Waste Compactors

Service Description	Base Service Rate	RWMA Surcharge	Total Rate for Services
1.3 Yd Compactor			
1 time per week	\$289.46	\$4.35	\$293.81
2 times per week	\$578.92	\$7.35	\$586.27
3 times per week	\$868.37	\$10.20	\$878.57
4 times per week	\$1,157.81	\$13.20	\$1,171.01
5 times per week	\$1,447.25	\$16.20	\$1,463.45
6 times per week	\$1,736.74	\$20.70	\$1,757.44
2 Yd Compactor			
1 time per week	\$445.31	\$5.10	\$450.41
2 times per week	\$890.61	\$8.25	\$898.86
3 times per week	\$1,335.93	\$11.25	\$1,347.18
4 times per week	\$1,781.24	\$14.40	\$1,795.64
5 times per week	\$2,226.55	\$17.55	\$2,244.10
6 times per week	\$2,671.84	\$22.35	\$2,694.19
3 Yd Compactor			
1 time per week	\$667.98	\$6.15	\$674.13
2 times per week	\$1,335.94	\$10.35	\$1,346.29
3 times per week	\$2,003.91	\$15.00	\$2,018.91
4 times per week	\$2,671.85	\$18.60	\$2,690.45
5 times per week	\$3,339.83	\$22.80	\$3,362.63
6 times per week	\$4,007.80	\$29.25	\$4,037.05
4 Yd Compactor			
1 time per week	\$890.62	\$7.50	\$898.12
2 times per week	\$1,781.25	\$12.60	\$1,793.85
3 times per week	\$2,671.85	\$17.70	\$2,689.55
4 times per week	\$3,562.48	\$22.95	\$3,585.43
5 times per week	\$4,453.10	\$28.20	\$4,481.30
6 times per week	\$5,343.74	\$36.30	\$5,380.04
5 Yd Compactor			
1 time per week	\$1,113.26	\$7.80	\$1,121.06
2 times per week	\$2,226.57	\$13.80	\$2,240.37
3 times per week	\$3,339.83	\$19.80	\$3,359.63
4 times per week	\$4,453.10	\$25.95	\$4,479.05
5 times per week	\$5,566.40	\$32.25	\$5,598.65
6 times per week	\$6,679.68	\$41.70	\$6,721.38
6 Yd Compactor			
1 time per week	\$1,335.94	\$7.95	\$1,343.89
2 times per week	\$2,671.85	\$14.85	\$2,686.70
3 times per week	\$4,007.80	\$21.90	\$4,029.70
4 times per week	\$5,343.74	\$28.95	\$5,372.69
5 times per week	\$6,679.68	\$36.15	\$6,715.83
6 times per week	\$8,015.60	\$46.95	\$8,062.55

EXHIBIT A: MAXIMUM SERVICE RATES

1. C. Commercial Solid Waste Carts

Service Description	Base Service Rate	RWMA Surcharge	Total Rate for Services
Commercial 32 Gallon Cart			
1 time per week	\$28.10	\$0.75	\$28.85
2 times per week	\$56.20	\$1.50	\$57.70
3 times per week	\$84.30	\$2.25	\$86.55
4 times per week	\$112.40	\$3.00	\$115.40
5 times per week	\$140.50	\$3.75	\$144.25
6 times per week	\$168.60	\$4.50	\$173.10
Commercial 96 Gallon Cart			
1 time per week	\$56.37	\$1.50	\$57.87
2 times per week	\$112.74	\$3.00	\$115.74
3 times per week	\$169.11	\$4.50	\$173.61
4 times per week	\$225.48	\$6.00	\$231.48
5 times per week	\$281.85	\$7.50	\$289.35
6 times per week	\$338.22	\$9.00	\$347.22

EXHIBIT A: MAXIMUM SERVICE RATES

1. D. Commercial Recycling Bins

Service Description	Base Service Rate	RWMA Surcharge	Total Rate for Services
<u>1 Yard</u>			
1 Time per Week	\$62.45		\$62.45
2 Times per Week	\$124.89		\$124.89
3 Times per Week	\$187.34		\$187.34
4 Times per Week	\$249.79		\$249.79
5 Times per Week	\$312.24		\$312.24
6 Times per Week	\$374.68		\$374.68
<u>1.5 Yard</u>			
1 Time per Week	\$83.55		\$83.55
2 Times per Week	\$167.11		\$167.11
3 Times per Week	\$250.66		\$250.66
4 Times per Week	\$334.22		\$334.22
5 Times per Week	\$417.77		\$417.77
6 Times per Week	\$501.33		\$501.33
<u>2 Yard</u>			
1 Time per Week	\$100.32		\$100.32
2 Times per Week	\$200.63		\$200.63
3 Times per Week	\$300.95		\$300.95
4 Times per Week	\$401.27		\$401.27
5 Times per Week	\$501.59		\$501.59
6 Times per Week	\$601.90		\$601.90
<u>3 Yard</u>			
1 Time per Week	\$121.42		\$121.42
2 Times per Week	\$242.84		\$242.84
3 Times per Week	\$364.26		\$364.26
4 Times per Week	\$485.68		\$485.68
5 Times per Week	\$607.10		\$607.10
6 Times per Week	\$728.51		\$728.51
<u>4 Yard</u>			
1 Time per Week	\$145.98		\$145.98
2 Times per Week	\$291.95		\$291.95
3 Times per Week	\$437.93		\$437.93
4 Times per Week	\$583.90		\$583.90
5 Times per Week	\$729.88		\$729.88
6 Times per Week	\$875.85		\$875.85

EXHIBIT A: MAXIMUM SERVICE RATES

1. D. Commercial Recycling Bins

Service Description	Base Service Rate	RWMA Surcharge	Total Rate for Services
<u>5 Yard</u>			
1 Time per Week	\$151.21		\$151.21
2 Times per Week	\$302.42		\$302.42
3 Times per Week	\$453.63		\$453.63
4 Times per Week	\$604.84		\$604.84
5 Times per Week	\$756.05		\$756.05
6 Times per Week	\$907.26		\$907.26
<u>6 Yard</u>			
1 Time per Week	\$155.70		\$155.70
2 Times per Week	\$311.39		\$311.39
3 Times per Week	\$467.09		\$467.09
4 Times per Week	\$622.79		\$622.79
5 Times per Week	\$778.49		\$778.49
6 Times per Week	\$934.18		\$934.18
<u>7 Yard</u>			
1 Time per Week	\$174.18		\$174.18
2 Times per Week	\$348.36		\$348.36
3 Times per Week	\$522.55		\$522.55
4 Times per Week	\$696.73		\$696.73
5 Times per Week	\$870.91		\$870.91
6 Times per Week	\$1,045.09		\$1,045.09
<u>8 Yard</u>			
1 Time per Week	\$198.73		\$198.73
2 Times per Week	\$397.46		\$397.46
3 Times per Week	\$596.18		\$596.18
4 Times per Week	\$794.91		\$794.91
5 Times per Week	\$993.64		\$993.64
6 Times per Week	\$1,192.37		\$1,192.37

EXHIBIT A: MAXIMUM SERVICE RATES

1. E. Commercial Recycling Compactors

Service Description	Base Service Rate	RWMA Surcharge	Total Rate for Services
1.3 Yd Compactor			
1 time per week	\$144.73		\$144.73
2 times per week	\$289.46		\$289.46
3 times per week	\$434.18		\$434.18
4 times per week	\$578.90		\$578.90
5 times per week	\$723.63		\$723.63
6 times per week	\$868.37		\$868.37
2 Yd Compactor			
1 time per week	\$222.66		\$222.66
2 times per week	\$445.30		\$445.30
3 times per week	\$667.97		\$667.97
4 times per week	\$890.62		\$890.62
5 times per week	\$1,113.27		\$1,113.27
6 times per week	\$1,335.92		\$1,335.92
3 Yd Compactor			
1 time per week	\$333.99		\$333.99
2 times per week	\$667.97		\$667.97
3 times per week	\$1,001.95		\$1,001.95
4 times per week	\$1,335.93		\$1,335.93
5 times per week	\$1,669.92		\$1,669.92
6 times per week	\$2,003.90		\$2,003.90
4 Yd Compactor			
1 time per week	\$445.31		\$445.31
2 times per week	\$890.62		\$890.62
3 times per week	\$1,335.93		\$1,335.93
4 times per week	\$1,781.24		\$1,781.24
5 times per week	\$2,226.55		\$2,226.55
6 times per week	\$2,671.87		\$2,671.87
5 Yd Compactor			
1 time per week	\$556.63		\$556.63
2 times per week	\$1,113.29		\$1,113.29
3 times per week	\$1,669.92		\$1,669.92
4 times per week	\$2,226.55		\$2,226.55
5 times per week	\$2,783.20		\$2,783.20
6 times per week	\$3,339.84		\$3,339.84
6 Yd Compactor			
1 time per week	\$667.97		\$667.97
2 times per week	\$1,335.93		\$1,335.93
3 times per week	\$2,003.90		\$2,003.90
4 times per week	\$2,671.87		\$2,671.87
5 times per week	\$3,339.84		\$3,339.84
6 times per week	\$4,007.80		\$4,007.80

EXHIBIT A: MAXIMUM SERVICE RATES

1. F. Commercial Recycling Carts

Service Description	Base Service Rate	RWMA Surcharge	Total Rate for Services
Commercial 96 Gallon Cart*			
1 time per week	\$28.19		\$28.19
2 times per week	\$56.37		\$56.37
3 times per week	\$84.56		\$84.56
4 times per week	\$112.74		\$112.74
5 times per week	\$140.93		\$140.93
6 times per week	\$169.11		\$169.11

* Customer may substitute a 32 or 64 gallon Cart at the same rate.

EXHIBIT A: MAXIMUM SERVICE RATES

1. G. Commercial Green/Organics

Service Description	Base Service Rate	RWMA Surcharge	Total Rate for Services
<u>Commercial 96 Gallon Cart*</u>			
1 Time per Week	\$56.37		\$56.37
2 Times per Week	\$112.74		\$112.74
3 Times per Week	\$169.11		\$169.11
4 Times per Week	\$225.48		\$225.48
5 Times per Week	\$281.85		\$281.85
6 Times per Week	\$338.22		\$338.22
* Customer may substitute a 32 or 64 gallon Cart at the same rate.			
<u>1 Yard</u>			
1 Time per Week	\$124.89		\$124.89
2 Times per Week	\$249.79		\$249.79
3 Times per Week	\$374.68		\$374.68
4 Times per Week	\$499.58		\$499.58
5 Times per Week	\$624.47		\$624.47
6 Times per Week	\$749.37		\$749.37
<u>2 Yard</u>			
1 Time per Week	\$200.63		\$200.63
2 Times per Week	\$401.27		\$401.27
3 Times per Week	\$601.90		\$601.90
4 Times per Week	\$802.54		\$802.54
5 Times per Week	\$1,003.17		\$1,003.17
6 Times per Week	\$1,203.81		\$1,203.81
<u>3 Yard</u>			
1 Time per Week	\$242.84		\$242.84
2 Times per Week	\$485.68		\$485.68
3 Times per Week	\$728.51		\$728.51
4 Times per Week	\$971.35		\$971.35
5 Times per Week	\$1,214.19		\$1,214.19
6 Times per Week	\$1,457.03		\$1,457.03
<u>4 Yard</u>			
1 Time per Week	\$291.95		\$291.95
2 Times per Week	\$583.90		\$583.90
3 Times per Week	\$875.85		\$875.85
4 Times per Week	\$1,167.80		\$1,167.80
5 Times per Week	\$1,459.76		\$1,459.76
6 Times per Week	\$1,751.71		\$1,751.71

EXHIBIT A: MAXIMUM SERVICE RATES

2. Extra Service/Overload/Contamination

Solid Waste

Service Description	Base Service Rate	RWMA Surcharge	Total Rate for Services
32 Gallon Cart - Extra Service/Overload/Contamination	\$15.00		\$15.00
64 Gallon Cart - Extra Service/Overload/Contamination	\$15.00		\$15.00
96 Gallon Cart - Extra Service/Overload/Contamination	\$15.00		\$15.00
1 Yard Bin - Extra Service/Overload/Contamination	\$33.94		\$33.94
1.5 Yard Bin - Extra Service/Overload/Contamination	\$37.64		\$37.64
2 Yard Bin - Extra Service/Overload/Contamination	\$45.28		\$45.28
3 Yard Bin - Extra Service/Overload/Contamination	\$52.78		\$52.78
4 Yard Bin - Extra Service/Overload/Contamination	\$60.26		\$60.26
5 Yard Bin - Extra Service/Overload/Contamination	\$64.06		\$64.06
6 Yard Bin - Extra Service/Overload/Contamination	\$67.92		\$67.92
7 Yard Bin - Extra Service/Overload/Contamination	\$75.40		\$75.40
8 Yard Bin - Extra Service/Overload/Contamination	\$82.88		\$82.88
Extra Empty on site per Container plus Extra Service Charge per Container size	\$25.00	3.00	\$28.00

Recycling

Service Description	Base Service Rate	RWMA Surcharge	Total Rate for Services
32 Gallon Cart - Extra Service/Overload/Contamination	\$7.50		\$7.50
64 Gallon Cart - Extra Service/Overload/Contamination	\$7.50		\$7.50
96 Gallon Cart - Extra Service/Overload/Contamination	\$7.50		\$7.50
1 Yard Bin - Extra Service/Overload/Contamination	\$16.97		\$16.97
1.5 Yard Bin - Extra Service/Overload/Contamination	\$18.82		\$18.82
2 Yard Bin - Extra Service/Overload/Contamination	\$22.64		\$22.64
3 Yard Bin - Extra Service/Overload/Contamination	\$26.39		\$26.39
4 Yard Bin - Extra Service/Overload/Contamination	\$30.13		\$30.13
5 Yard Bin - Extra Service/Overload/Contamination	\$32.03		\$32.03
6 Yard Bin - Extra Service/Overload/Contamination	\$33.96		\$33.96
7 Yard Bin - Extra Service/Overload/Contamination	\$37.70		\$37.70
8 Yard Bin - Extra Service/Overload/Contamination	\$41.44		\$41.44
Extra Empty on site per Container plus Extra Service Charge per Container size	\$25.00		\$25.00

EXHIBIT A: MAXIMUM SERVICE RATES

Organics

Service Description	Base Service Rate	RWMA Surcharge	Total Rate for Services
32 Gallon Cart - Extra Service/Overload/Contamination	\$15.00		\$15.00
64 Gallon Cart - Extra Service/Overload/Contamination	\$15.00		\$15.00
96 Gallon Cart - Extra Service/Overload/Contamination	\$15.00		\$15.00
1 Yard Bin - Extra Service/Overload/Contamination	\$33.94		\$33.94
1.5 Yard Bin - Extra Service/Overload/Contamination	\$37.64		\$37.64
2 Yard Bin - Extra Service/Overload/Contamination	\$45.28		\$45.28
3 Yard Bin - Extra Service/Overload/Contamination	\$52.78		\$52.78
4 Yard Bin - Extra Service/Overload/Contamination	\$60.26		\$60.26
5 Yard Bin - Extra Service/Overload/Contamination	\$64.06		\$64.06
6 Yard Bin - Extra Service/Overload/Contamination	\$67.92		\$67.92
7 Yard Bin - Extra Service/Overload/Contamination	\$75.40		\$75.40
8 Yard Bin - Extra Service/Overload/Contamination	\$82.88		\$82.88
Extra Empty on site per Container plus Extra Service Charge per Container size	\$25.00		\$25.00

3. Residential Program Areas

Service Description	Base Service Rate	RWMA Surcharge	Total Rate for Services
Standard 32 - Gallon Refuse Cart	\$28.00	\$0.75	\$28.75
Low-Income Senior Citizen 32-Gallon Refuse Cart	\$20.50	\$0.75	\$21.25
64 - Gallon Refuse Cart*	\$28.50	\$0.75	\$29.25
96 - Gallon Refuse Cart*	\$29.00	\$0.75	\$29.75
Extra 32 - Gallon Refuse Cart	\$12.50		\$12.50
Extra 64 - Gallon Refuse Cart	\$14.00		\$14.00
Extra 96 - Gallon Refuse Cart	\$15.50		\$15.50
Extra Bag of Refuse (Per Pickup Rate)	\$4.43		\$4.43

EXHIBIT A: MAXIMUM SERVICE RATES

5. Rolloff

Service Description	Base Service Rate	RWMA Surcharge	Total Rate for Services
Rolloff Compactor per load plus disposal by material type	\$390.00		\$390.00
RWMA Surcharge per Yard		\$0.90	\$0.90
09Yd Dirt/Concrete Debris per load plus disposal	\$340.00	7.50	\$347.50
15 Yd Debris Box per load plus disposal by material type	\$340.00	6.30	\$346.30
20 Yd Debris Box per load plus disposal by material type	\$340.00	7.50	\$347.50
25 Yd Debris Box per load plus disposal by material type	\$340.00	8.10	\$348.10
30 Yd Debris Box per load plus disposal by material type	\$340.00	9.00	\$349.00
40 Yd Debris Box per load plus disposal by material type	\$340.00	10.80	\$350.80
Demurrage per day	\$25.00		\$25.00
Trip Charge per trip	\$90.00		\$90.00
Same Day Service Surcharge per load	\$90.00		\$90.00
Disposal C&D per ton	\$80.00		\$80.00
Disposal Wood per ton	\$30.00		\$30.00
Disposal Mixed Recycling per ton	\$75.00		\$75.00
Disposal Green Waste/Organics per ton	\$54.90		\$54.90
Disposal OCC per ton	\$50.00		\$50.00
Disposal Clean Concrete per ton	\$10.00		\$10.00
Disposal Landfill per ton	\$69.67		\$69.67

6. Temporary Bins per Service

Service Description	Base Service Rate	RWMA Surcharge	Total Rate for Services
4 Yd Food Container includes processing	\$185.00	-	\$185.00
6 Yd Container - All Material Types includes disposal/processing	\$185.00	3.00	\$188.00
7 Yd Container - All Material Types includes disposal/processing	\$185.00	3.00	\$188.00

EXHIBIT A: MAXIMUM SERVICE RATES

7. Miscellaneous Charges

Service Description	Base Service Rate	RWMA Surcharge	Total Rate for Services
Extra Bulky Item Collection per trip plus per item charge	\$60.00		\$60.00
Extra Per Bulky Item Charge per item	\$12.00		\$12.00
Excess Bulky Item Charge per item if total exceeds 2 CY	\$12.00		\$12.00
Cart Exchange in excess of 1 per Agreement Year	\$20.00		\$20.00
Bin Exchange in excess of 1 per Agreement Year	\$75.00		\$75.00
Container Push Charge per month per container x weekly frequency	\$4.75		\$4.75
Container Lock Charge per lock provided	\$27.50		\$27.50
Locked Enclosure Access per month per enclosure	\$4.75		\$4.75
Locked Container Access per month per container	\$4.75		\$4.75
Container Cleaning in excess on 1 per Agreement Year	\$120.00		\$120.00
Cart Replacement due to Customer negligence	\$75.00		\$75.00
Bin Replacement due to customer negligence up to the			
Go Back For Late Setout same day and route	\$15.00		\$15.00
Go Back For Late Setout different day or route	\$20.00		\$20.00
Freon Appliance per appliance	\$16.00		\$16.00
Ammonia Appliance per appliance	\$48.00		\$48.00
Car Tire per tire in excess of Agreement limitations	\$4.65		\$4.65
Truck Tire per tire in excess of Agreement limitations	\$13.10		\$13.10
Tractor Tire - Filled per tire	\$72.15		\$72.15
Tractor Tire - Solid per tire	\$150.00		\$150.00

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EXHIBIT B:

MAXIMUM SERVICE RATE ADJUSTMENTS

1. Annual Rate Adjustment Process

- a) **Elements of Maximum Service Rates.** Each Maximum Service Rate shall consist of some combination of the following elements: a base service rate element, a Franchise Fee element, an RWMA surcharge fee element and such other elements as may be added by the CITY during the Term of this Agreement to reflect new fees or charges imposed by CITY.
- b) **Adjustments to Base Service Rate Element.** Beginning on October 1, 2019, and annually thereafter, CONTRACTOR shall, subject to compliance with subsection d) below, receive an annual adjustment in the base service rate element of all Maximum Service Rates set forth in Exhibit A to this Agreement. The annual adjustment will be based on changes in the Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-Hayward, Series ID: CUURS49BSA0, published by the U.S. Department of Labor, Bureau of Labor Statistics ("CPI") published bi-monthly beginning in February of each year.
- i) Subject to the carry-forward mechanism described in subsection ii) below, the annual adjustment to the base service rate element shall be in a percentage amount equal to the percentage change in the annual average of the CPI between the 12-month period ending on April 30 of the calendar year in which the annual adjustment is to occur, and the preceding 12-month period. For purposes of this calculation, the annual average shall be the average of the six bimonthly indices (June, August, October, December, February and April). For example, the first annual CPI adjustment (to take effect on October 1, 2019) will be based on the percentage change between the annual average of CPI for the twelve (12) months ending April 30, 2018 and the annual average of CPI for the twelve (12) months ending April 30, 2019. In the preceding example the percentage change in the annual averages would be calculated as follows $[(2019 \text{ annual average}/2018 \text{ annual average})-1]$. In any year that the calculation of the percentage change in CPI results in a negative number, the negative number shall be used (that is, CPI adjustments may be positive or negative).
- ii) In any year that the percentage change in CPI calculated as provided in subsection i) above, plus any percentage change carried forward from the previous year pursuant to this subsection ii), is more than three percent (3%), the current year's CPI adjustment to the base service rate element shall be three percent (3%), and the percentage above three percent (3%) shall be carried forward to the following year and added to the CPI percentage that would otherwise apply in that year. The process shall be repeated for successive annual adjustments under this Agreement until all carry-forward amounts have been applied or the Agreement terminates. For example, if the CPI adjustments calculated under subsection i) were 6% for 2022, 3% for 2023, and 1% for 2024, then the CPI adjustments to the base service rate element would be 3% in 2022, 3% in 2023, and 3% in 2024 (assuming no carry-forward from 2021 to 2022). The carry-forward mechanism and three percent (3%) cap shall not apply to any adjustments to the base service rate element for reasons other than the CPI adjustment (such as a CITY-directed change in services, or pass-through of regulatory fees).
- c) **Adjustment to the Fee Elements of the Maximum Service Rates.** The other fee elements of the Maximum Service Rates shall be adjusted as follows:

EXHIBIT B: MAXIMUM SERVICE RATE ADJUSTMENTS

- i) **Franchise Fee Element.** The Franchise Fee element shall be calculated by dividing the base service rate element of each Maximum Service Rate by one (1) minus the Franchise Fee percentage (for example $1.00 - .10 = 0.90$); subtracting the base service rate element; and rounding the resulting figure to two (2) decimal places.
- ii) **RWMA Surcharge Fee Element.** The RWMA surcharge fee element is set initially by the CITY and may be modified annually by notice to the CONTRACTOR thirty (30) days prior to June.

- d) **Submission of Application.** On or before June 1, 2019 and each succeeding Agreement Year during the Term of this Agreement, CONTRACTOR shall submit an application to CITY for such adjustment. The application shall contain CONTRACTOR's calculation (in accordance with this Exhibit) of the annual adjustment and a revised Maximum Service Rate sheet reflecting the annual adjustment.
- e) **Failure to Submit.** If CONTRACTOR fails to submit the application by the June 1st deadline, it is agreed that CONTRACTOR shall be deemed to have waived the annual adjustment for that year and such waived annual adjustment shall not be added to a future rate application. CONTRACTOR's failure to provide the application shall not preclude CITY from applying the annual adjustment, if that application would result in a negative adjustment. Notwithstanding the foregoing, if CONTRACTOR's failure to submit the application is the result of extraordinary or unusual circumstances as demonstrated by CONTRACTOR to the satisfaction of the Contract Administrator, CITY, at its sole discretion, may consider the request for the annual adjustment. In the event the annual adjustment is waived as set forth herein, CITY retains the right to adjust any or all of the other fee elements of the Maximum Service Rates.
- f) **Rounding.** Annual adjustments to Maximum Service Rates shall be made only in units of one cent (\$0.01). Fractions of less than one cent (\$0.01) shall be rounded to two (2) decimal places by rounding the third decimal. The annual adjustment shall be rounded to four (4) decimal places for the adjustment calculations by rounding the fifth decimal. In each of the above cases, rounding shall be down if the decimal to be rounded, as set forth above, is five (5) or less and up if the decimal to be rounded, as set forth above, is six (6) or more.
- g) **Review by Contract Administrator.** The Contract Administrator shall review the calculations in CONTRACTOR's application and shall promptly notify CONTRACTOR of any errors, but in any event before July 1st. In the absence of such notice, the annual adjustment calculation and Maximum Service Rate adjustments set forth in CONTRACTOR's application shall be deemed approved and shall take effect on the next October 1st. If any errors have occurred and are noticed to CONTRACTOR by July 1, CONTRACTOR shall have the opportunity to submit a corrected application. In such event, the Contract Administrator shall promptly review the corrected application and notify CONTRACTOR either that the application is correct, or that there are additional errors that need correction, in which case the correction procedure shall be repeated. The annual adjustment calculation and adjustments to the Maximum Service Rates set forth in CONTRACTOR's application (as so corrected) shall then become effective on the next October 1st.

EXHIBIT C: PUBLIC EDUCATION PLAN



Public Education Materials

Recology has set the industry standard for attractive, clear, user-friendly customer education materials. Material will be tailored to meet the needs of single-family, multi-family, and commercial customers. Recology prioritizes using colorful graphics and images whenever possible, in order to provide visually-compelling material that communicates to customers across language barriers.

G. Public Education and Outreach

Recology believes compelling and informative outreach and education programs help motivate participation in diversion programs. Recology has a passion for recycling that dates back to the 1920s, and a long and proud history of educating the community on the benefits of waste reduction.

Public Education Program Overview

A well-defined public outreach and education program – with consistent messaging and easy-to-understand tools – is one of the best management practices to help increase participation in diversion programs while reducing contamination.

Recology's public education and outreach programs are designed to raise community awareness, educate customers on the environmental impact of waste, and successfully demonstrate the value of source reduction, reuse, recycling and composting to single-family, multi-family, and commercial customers.



EXHIBIT C: PUBLIC EDUCATION PLAN

Recycling Blitz

At the start of the new Agreement term, Recology will launch a Recycling Blitz to foster a sense of excitement around customers' upcoming diversion programs.

During the campaign, educational material and diversion tools will be provided for multi-family units, and for commercial and multi-family properties.

In addition to outreach and education materials, commercial and multi-family properties would receive a visit or would be contacted by a Recology Team member to help educate them on their new services and encourage greater diversion at their businesses and properties.

For single-family customers, Recology will attend homeowners' association (HOA) meetings.

Recology believes that effective outreach programs and campaigns, such as the Recycling Blitz, not only educate customers on the services available, but also foster positive customer relations and interest in recycling and diversion programs.

Below is an overview of the proposed outreach and education material Recology would begin providing prior to service initiation and through the transitional period. Recology would work with the RWMA to agree on the exact content of this educational material.

Recycling Blitz: Proposed Education and Outreach Material		
Single-Family Customers	Commercial Customers	Multi-Family Customers
<ul style="list-style-type: none"> ○ New Customer Packet 	<ul style="list-style-type: none"> ○ New Customer Packet ○ AB 341 and AB 1826 compliance insert ○ Sorting posters for MSW, Recyclables and Organics ○ "How to" Guide for Commercial Food Scrap Collection, which features tips and details acceptable materials 	<p>Tenants:</p> <ul style="list-style-type: none"> ○ Program brochure <p>Managers/owners:</p> <ul style="list-style-type: none"> ○ New Customer Packet ○ AB 341 and AB 1826 compliance insert ○ Sorting posters for MSW, Organics, and Recyclables ○ Tenant Move-In/Move-Out Guide, alerts new/departing tenants to diversion options during the move

Recology San Mateo County (RSMC) conducted a similar Recycling Blitz when it assumed operations for the 12 jurisdictions of the SBWMA.

The Recycling Blitz was an extreme success, and RSMC met with nearly 3,000 customers and initiated approximately 1,000 new recycling accounts prior to start up. Commercial customers received comprehensive Technical Assistance from Recology's Waste Zero Specialists.

EXHIBIT C: PUBLIC EDUCATION PLAN



Implementation Plan & Schedules

Transition into the New Agreement Term

As the incumbent service provider for the RWMA, Recology can ensure a smooth transition into the new Agreement term. Since Recology maintains an accurate customer database for residents and businesses, routes and collection days would not need to be adjusted, unless the RWMA elects programmatic changes.

In addition, because Recology is the incumbent contractor, **no blackout period for service level modifications would be necessary during the new Agreement implementation.**

Cart Size Selection Process

Selecting the proper cart size is an important component of Recology's implementation plan. By helping customers identify the proper container sizes for all three material streams, Recology can maximize diversion potential.

On October 1, 2018, Recology will begin offering multiple media formats to help customers select their proper container sizes, including:

- **Cart Selection postcard:** These postcards, which would be sent to every customer, graphically depict the container and cart sizes available to customers in all three waste streams. Customers check a box for their desired size and mail the postcard back to Recology.
- **Website:** As a supplement to the Cart Selection postcard, Recology will launch a webpage (pictured) where customers can select their preferred cart or container sizes. After selection, customers receive an acknowledgement email and the information is updated in Recology's system to facilitate cart distribution.

Household	Description	Monthly Container Size
<input type="checkbox"/>	65 Gallon Bin	4.5 cu yd
<input type="checkbox"/>	95 Gallon Bin	6.75 cu yd
<input type="checkbox"/>	125 Gallon Bin	9.0 cu yd

Business	Description	Monthly Container Size
<input type="checkbox"/>	125 Gallon Bin	9.0 cu yd
<input type="checkbox"/>	175 Gallon Bin	13.5 cu yd
<input type="checkbox"/>	225 Gallon Bin	18.0 cu yd

EXHIBIT C: PUBLIC EDUCATION PLAN

The default sizes for recycling will continue to be 64-gallons, while the default size for organics carts will be 96-gallons.

Cart and Container Distribution

Recology will have a dedicated supervisor overseeing the distribution of containers.

Cart Distribution Process

Recology will work with Toter, its vendor for carts, to conduct the cart distribution process in a timely manner.

Implementation Timeline

The following Transition Schedule overviews the major tasks and time periods required to complete those tasks, assuming an October 1, 2018 Agreement commencement date.

Draft Implementation Timeline	
Implementation Task	Timeline
Agreement Executed (estimated)	September, 2018
Equipment & Procurement	
Beginning distributing of carts.	January, 2019
Employee Onboarding and Training	
Conduct Driver refresher training, to ensure compliance with new Agreement	Sept. 23, 2018 – Sept. 27, 2018
Conduct Customer Service Specialist (CSS) refresher training, to ensure compliance with new Agreement and prepare staff for questions related to the cart selection postcards	Sept. 23, 2018 – Sept. 27, 2018
Customer Notification & Public Education	
Plan and design New Customer Packet and other educational material to support start-up	Sept. 3, 2018 – Sept. 21, 2018
Print New Customer Packet and other necessary education material for start-up	Sept. 23, 2018 – Sept. 27, 2018

EXHIBIT D: CITY SERVICES

Cust No	Name	Service Addr	Service	Freq	Units	Mo
288829	CITY OF WHEATLAND	4TH & A ST	C7YD	1	1	12
1411693	CITY OF WHEATLAND	700 MALONE ST	C2YD	1	1	12
1531045	CITY OF WHEATLAND	800 MALONE ST	C2YD	1	1	12
1630755	CITY OF WHEATLAND	101 C ST WHT	C5YD	1	1	12
1630755	CITY OF WHEATLAND	101 C ST WHT	MX96	1	2	12
1746312	CITY OF WHEATLAND	701 CARPENTER WAY	C5YD	1	1	12
1804517	CITY OF WHEATLAND	111 C ST WHT	C96	1	2	12
1804517	CITY OF WHEATLAND	111 C ST WHT	MX96	1	2	12
1804517	CITY OF WHEATLAND	111 C ST WHT	G96	1	2	12
2295178	CITY OF WHEATLAND	208 4TH ST WHT	C96	1	1	12
2295178	CITY OF WHEATLAND	208 4TH ST WHT	MX96	1	2	12

Debris Boxes

Acct #	Name	Service Addr	Service	Freq	Units	Mo
8896	CITY OF WHEATLAND	CARPENTER WAY	40DO		1	
8896	CITY OF WHEATLAND	MALONE ST	15DO		1	
8896	CITY OF WHEATLAND	MALONE ST	15DO		1	
8896	CITY OF WHEATLAND	MALONE ST	15DO		1	
8896	CITY OF WHEATLAND	MALONE ST	15DO		1	
95646	WHEATLAND CLEAN-UP	C ST @ THE PARK	25DO		1	
95646	WHEATLAND CLEAN-UP	C ST @ THE PARK	40DO		1	
95646	WHEATLAND CLEAN-UP	C ST @ THE PARK	25DO		1	
95646	WHEATLAND CLEAN-UP	C ST @ THE PARK	25DO		1	
95646	WHEATLAND CLEAN-UP	C ST @ THE PARK	40DO		1	
95646	WHEATLAND CLEAN-UP	C ST @ THE PARK	30DO		1	
95646	WHEATLAND CLEAN-UP	C ST @ THE PARK	25DO		1	

**EXHIBIT D:
CITY SERVICES**

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**EXHIBIT E:
APPROVED SUBCONTRACTORS**

Company Name	Service
None.	