

FRANCHISE AGREEMENT
BETWEEN
THE CITY OF MILPITAS
AND
ALLIED WASTE SERVICES OF NORTH AMERICA, LLC
DBA
REPUBLIC SERVICES OF SANTA CLARA COUNTY
FOR
COLLECTION OF SOLID WASTE
AND
COLLECTION AND PROCESSING OF
RECYCLABLE MATERIALS AND ORGANIC MATERIALS

OCTOBER 17, 2016 CITY COUNCIL MEETING FINAL DRAFT

{This page intentionally left blank}

TABLE OF CONTENTS

ARTICLE 1. GRANT AND ACCEPTANCE OF FRANCHISE.....	2
1.1 Grant and Acceptance of Franchise.....	2
1.2 Limitations to the Franchise.....	2
1.3 Obligations of Parties.....	4
ARTICLE 2. TERM OF AGREEMENT.....	4
2.1 Term and Option to Extend.....	4
2.2 Conditions to Effectiveness of Agreement.....	4
ARTICLE 3. SCOPE OF AGREEMENT.....	5
3.1 Summary Scope of Services.....	5
3.2 Use of Approved Facilities.....	6
3.3 Capacity Assurance.....	8
3.4 No Limitation on City Diversion Programs.....	8
3.5 Subcontracting.....	8
3.6 Responsibility for Materials.....	9
3.7 Cooperation with City or County.....	9
3.8 Carbon Offset Credits.....	9
3.9 City-Directed Changes to Scope.....	9
ARTICLE 4. SCOPE OF SERVICES.....	10
4.1 Single-Family Residential Services.....	10
4.2 Multi-Family Residential Services.....	14
4.3 Commercial Services.....	17
4.4 Construction and Demolition Debris (C&D).....	19
4.5 Services for City Facilities.....	20
4.6 Special Events.....	21
4.7 Transportation of Collected Materials.....	22
4.8 Delivery and Processing of Collected Materials.....	22
4.9 Public Outreach Efforts.....	30
4.10 Multi-Family/Commercial Technical Assistance.....	31
4.11 Billing.....	32
4.12 Customer Service Program.....	34
4.13 City Web-Based Access to Information.....	35
4.14 Diversion Requirements; AB 939, AB 341, AB 1826.....	36
4.15 Street Sweeping.....	38
4.16 Performance Reviews and Financial Audits.....	43
ARTICLE 5. STANDARD OF PERFORMANCE.....	44
5.1 General.....	44
5.2 Operating Hours and Schedules.....	44

5.3	Collection Standards.....	45
5.4	Vehicle Requirements	46
5.5	Container Requirements	47
5.6	Personnel.....	49
5.7	Hazardous Waste Inspection and Handling.....	50
5.8	City Contract Manager.....	51
5.9	Cooperation with City, County.....	51
ARTICLE 6. RECORD KEEPING AND REPORTING.....		52
6.1	Record Keeping and Audit of Records	52
6.2	Report Submittal Requirements.....	53
6.3	Performance Monitoring Meetings.....	53
ARTICLE 7. FRANCHISE FEES AND OTHER FEES		54
7.1	Franchise Fee; Other Fees.....	54
7.2	Adjustment to Fees	54
7.3	Payment Schedule and Late Fees	54
7.4	Procurement Reimbursement Payment	54
ARTICLE 8. CONTRACTOR'S COMPENSATION AND RATE SETTING		55
8.1	General	55
8.2	Rates and Annual Adjustments.....	55
8.3	Extraordinary Rate Adjustments	57
ARTICLE 9. INDEMNITY, INSURANCE, PERFORMANCE BOND, AND RIGHT TO PERFORM SERVICE.....		57
9.1	Indemnification.....	57
9.2	Insurance.....	59
9.3	Performance Bond	61
9.4	Guaranty	62
9.5	Emergency Conditions	62
9.6	Disaster Operations	64
ARTICLE 10. DEFAULT AND REMEDIES		65
10.1	Events of Default	65
10.2	Right to Terminate Upon Event of Default	66
10.3	City's Remedies in the Event of Default	67
10.4	Possession of Records Upon Termination.....	68
10.5	City's Remedies Cumulative; Specific Performance	68
10.6	Performance Standards and Liquidated Damages.....	68
10.7	Excuse from Performance	70
10.8	Right to Demand Assurances of Performance	70

ARTICLE 11. REPRESENTATIONS AND WARRANTIES OF THE PARTIES..... 71

11.1 Contractor’s Corporate Status..... 71
11.2 Contractor’s Corporate Authorization..... 71
11.3 Agreement Will Not Cause Breach..... 71
11.4 No Litigation 71
11.5 No Adverse Judicial Decisions..... 72
11.6 No Legal Prohibition..... 72
11.7 Contractor’s Ability to Perform 72
11.8 Contractor’s Rights and Obligations Regarding City’s Disposal Contractor
72

ARTICLE 12. OTHER AGREEMENTS OF THE PARTIES..... 72

12.1 Relationship of Parties..... 72
12.2 Compliance with Law..... 73
12.3 Governing Law..... 73
12.4 Jurisdiction..... 73
12.5 Binding on Successors..... 73
12.6 Assignment..... 73
12.7 No Third Party Beneficiaries..... 75
12.8 Waiver 75
12.9 Notice Procedures..... 75
12.10 Representatives of the Parties..... 76

ARTICLE 13. MISCELLANEOUS AGREEMENTS 76

13.1 Entire Agreement 76
13.2 Section Headings 76
13.3 References to Laws 76
13.4 Amendments..... 76
13.5 Severability..... 76
13.6 Counterparts 77
13.7 Exhibits..... 77

LIST OF EXHIBITS

- A. Definitions
- B. Public Outreach Requirements
- C. Reporting Requirements
- D. Rate Adjustment Methodology
 - D-1. Multiple Index-Based Rate Adjustment Methodology
 - D-2. Cost-Based Rate Adjustment Methodology
- E. Performance Standards and Liquidated Damages
- F. List of City Facilities and City Containers
- G. Guaranty Agreement
- H. Cart Specifications
- I. Contractor's Proposal
 - I-1. Contractor's Proposal
 - I-2. Contractor's Responses During Clarification
- J. Performance Bond
- K. Labor Agreement(s)
- L. Maximum Rates Approved by City for Rate Period One
- M. Approved Subcontractors
- N. Operating Assumptions and Cost Basis for Rate Period One Rates
- O. Street Sweeping
 - O-1. Monthly Record Keeping Form
 - O-2. Abandoned Car Program Form
 - O-3. Tree Control Maintenance Activity
 - O-4. Daily Report of Motor Street Sweeper

36 **WHEREAS;** the City further declares its intent to approve and maintain reasonable Maximum Rates for
37 the Collection, Recycling, Processing, Composting, and/or Disposal of Solid Waste, Recyclable Materials,
38 Organic Materials, and C&D; and,

39 **WHEREAS;** the City has determined that Contractor, by demonstrated experience, reputation and
40 capacity is qualified to provide for both the Collection of Solid Waste, Recyclables Materials, and Organic
41 Materials within the corporate limits of the City and the Transportation of such material to appropriate
42 places of Processing, Recycling, Composting, and/or Disposal; and, therefore, desires that Contractor be
43 engaged to perform such services on the basis set forth in this Agreement.

44 **WHEREAS;** the City and Contractor have attempted to address conditions affecting their performance of
45 services under this Agreement but recognize that reasonably unanticipated conditions may occur during
46 the Term of this Agreement that will require the Parties to meet and confer to reasonably respond to
47 such changed conditions;

48 **NOW, THEREFORE,** in consideration of the mutual promises, covenants, and conditions contained in this
49 Agreement and for other good and valuable consideration, the Parties agree as follows:

50 **ARTICLE 1. GRANT AND ACCEPTANCE OF FRANCHISE**

51 **1.1 Grant and Acceptance of Franchise**

52 By the signing of this Agreement, City grants to Contractor and Contractor accepts an exclusive franchise
53 within the corporate limits of the City. The franchise granted to Contractor shall be for the scope of
54 services described in Section 3.1 and Article 4 of this Agreement, subject to the limitations described in
55 Section 1.2 and except where otherwise precluded by Federal, State, and local laws and regulations.

56 This Agreement and scope of this franchise shall be interpreted to be consistent with Applicable Law,
57 now and during the Term of the Agreement. If future judicial interpretations of current law or new laws,
58 regulations, or judicial interpretations limit the ability of the City to lawfully contract for the scope of
59 services in the manner and consistent with all provisions as specifically set forth herein, Contractor
60 agrees that the scope of the Agreement will be limited to those services and materials which may be
61 lawfully included herein and that the City shall not be responsible for any lost profits or losses claimed
62 by Contractor to arise out of limitations to the scope or provisions of the Agreement set forth herein. In
63 such an event, it shall be the responsibility of Contractor to minimize the financial impact of such future
64 judicial interpretations or new laws and the Contractor may meet and confer with City and may petition
65 for a Rate adjustment pursuant to Section 8.3.

66 **1.2 Limitations to the Franchise**

67 The award of this Agreement shall not preclude the categories of Solid Waste, Recyclable Materials,
68 Organic Materials, and C&D listed below from being delivered to and Collected and Transported by
69 others provided that nothing in this Agreement is intended to or shall be construed to excuse any
70 Person from obtaining any authorization from City which is otherwise required by law.

71 A. **Recyclable and Organic Materials.** Other Persons shall maintain the right to: (1) accept, donated
72 from the service recipient; or, (2) to pay the service recipient for, Source Separated Recyclable

73 Materials and Source Separated Organic Materials so long as there is no net payment (including
74 the cost of transportation, on-site services and other charges) made by the service recipient to
75 such other Person;

76 B. **Specialty Recyclables.** Other Persons shall maintain the right to collect Specialty Recyclable
77 Materials;

78 C. **Self-Hauled Materials.** A Commercial business Owner, Occupant or Resident may Dispose of
79 Solid Waste, Recyclable Materials, Organic Materials, and C&D generated in or on their own
80 Premises with their own vehicle;

81 D. **Donated Materials.** Any items which are Source Separated at any Premises by the Generator
82 and donated to youth, civic, or charitable organizations;

83 E. **Beverage Containers.** Containers delivered for Recycling under the California Beverage
84 Container Recycling and Litter Reduction Act, Section 14500, et seq. California Public Resources
85 Code;

86 F. **Materials Removed by Owner's or Occupant's Contractor as Incidental Part of Services.** Solid
87 Waste, Recyclable Materials, Organic Materials, and/or C&D removed from a Premises by a
88 contractor in vehicles owned by contractor (e.g., gardener, landscaper, tree-trimming service,
89 demolition contractor, construction contractor, Residential clean-out service) as an incidental
90 part of the service being performed and such contractor is providing a service which is not
91 included in the scope of this Agreement;

92 G. **Animal, Grease Waste, and Used Cooking Oil.** Animal waste and remains from slaughterhouse
93 or butcher shops, grease, or used cooking oil;

94 H. **Sewage Treatment By-Product.** By-products of sewage treatment, including sludge, sludge ash,
95 grit, and screenings;

96 I. **Excluded Waste.** Excluded Waste regardless of its source; and,

97 J. **Materials Generated by State, County, and Federal Facilities.** Materials generated by State
98 (including its political subdivisions, excepting City and County), County, and Federal facilities
99 located in the City provided that the Generator has arranged services with other Persons or has
100 arranged services with the Contractor through a separate agreement.

101 Contractor acknowledges and agrees that the City may permit other Persons besides the Contractor to
102 Collect any and all types of materials excluded from the scope of this Franchise, as set forth above,
103 without seeking or obtaining approval of Contractor. If Contractor can produce evidence that other
104 Persons are servicing Collection Containers or are Collecting and Transporting Solid Waste, Recyclable
105 Materials, Organic Materials, and/or C&D (collectively "Franchised Materials") in a manner that is not
106 consistent with this Agreement or the City's Municipal Code, it shall report the location, the name and
107 phone number of the Person or company to the City's Contract Manager along with Contractor's
108 evidence. In such case, City may notify the Customer, Generator and Person providing service of
109 Contractor's rights under this Agreement.

110 This Agreement and scope of this franchise shall be interpreted to be consistent with Applicable Law,
111 now and during the Term of the Agreement. If future judicial interpretations of current law or new laws,
112 regulations, or judicial interpretations limit the ability of the City to lawfully contract for the scope of
113 services in the manner and consistent with all provisions as specifically set forth herein, Contractor
114 agrees that the scope of the Agreement will be limited to those services and materials which may be

115 lawfully included herein and that the City shall not be responsible for any lost profits or losses claimed
116 by Contractor to arise out of limitations to the scope or provisions of the Agreement set forth herein. In
117 such an event, it shall be the responsibility of Contractor to minimize the financial impact of such future
118 judicial interpretations or new laws and the Contractor may meet and confer with City and may petition
119 for a Rate adjustment pursuant to Section 8.3.

120 **1.3 Obligations of Parties**

121 In addition to the specific performance required under the Agreement:

- 122 A. Contractor shall use its reasonable commercial efforts to enforce its rights under this Agreement
123 by the Contractor's identification and documentation of violations of the Agreement by third
124 parties.
- 125 B. Contractor and City shall provide timely notice to the other Party of a failure or perceived failure
126 to perform any obligations under this Agreement, and each shall have access to information
127 demonstrating the Party's failure or perceived failure to perform.
- 128 C. Contractor and City shall provide timely access to the City Contract Manager and the
129 Contractor's designated representative as applicable and complete and timely responses to
130 requests of the other Party.
- 131 D. Contractor and City shall provide timely notice of matters which may affect either Party's ability
132 to perform under the Agreement.

133 **ARTICLE 2. TERM OF AGREEMENT**

134 **2.1 Term and Option to Extend**

135 The Term of this Agreement shall commence September 6, 2017 (Commencement Date) and continue in
136 full force for a period of ten (10) years, through and including September 4, 2027, unless the Agreement
137 is extended in accordance with this Section or terminated pursuant to Section 10.2.

138 The Term of this Agreement shall only be extended with the prior consent of both Parties. Should the
139 Parties choose to extend this Agreement, both Parties shall meet and confer no later than one (1) year
140 prior to the expiration of this Agreement to determine and specify the duration and terms of such
141 extension. Between the Effective Date and Commencement Date, Contractor shall perform all activities
142 necessary to prepare itself to start providing services required by this Agreement on the
143 Commencement Date.

144 Notwithstanding the above, City may at its sole discretion and with a six (6) month notice, require
145 Contractor to enter into a one (1) year extension of the Agreement without changes to its material
146 provisions.

147 **2.2 Conditions to Effectiveness of Agreement**

148 The obligation of City to permit this Agreement to become effective and to perform its undertakings
149 provided for in this Agreement is subject to the satisfaction of all the conditions below, each of which

150 may be waived, in written form, in whole or in part by City.

151 A. **Accuracy of Representations.** The Contractor's representations and warranties made in
152 Contractor's Proposal and Article 11 of this Agreement are true and correct on and as of the
153 Effective Date.

154 B. **Furnishings of Insurance and Performance Bond.** Contractor has furnished evidence of the
155 insurance and performance bond required by Article 9 that is satisfactory to the City.

156 C. **Absence of Litigation.** To the best of Contractor's knowledge, after reasonable investigation,
157 there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or
158 governmental authority, commission, board, agency or instrumentality decided, pending or
159 threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single
160 case or in the aggregate, would:

- 161 1. Materially adversely affect the performance by Contractor of its obligations hereunder;
- 162 2. Adversely affect the validity or enforceability of this Agreement; or,
- 163 3. Have a material adverse effect on the financial condition of Contractor, or any surety or
164 entity guaranteeing Contractor's performance under this Agreement.

165 D. **Permits Furnished.** Contractor has provided City with copies of all permits necessary for
166 operation of all Approved Facilities owned or operated by Contractor or Subcontractor for use
167 under the terms of this Agreement.

168 E. **Referendum.** Contractor understands and agrees that certain decisions of the City are subject to
169 review and repeal by its citizens through a referendum or similar petition. Accordingly, this
170 Agreement shall not become effective until the deadline to challenge the resolutions, motions
171 or approvals awarding this Agreement through a referendum or similar petition have expired. In
172 the event that the City receives a valid referendum or similar petition, it shall notify Contractor
173 and the City may: (1) rescind the action awarding the Agreement; (2) submit the action to the
174 voters; or, (3) take any other action permitted by law in its sole discretion. If the City opts to
175 submit the action to the voters, Contractor shall be liable for all election costs associated with
176 submitting the action to the voters.

177 If the City determines that the referendum petition is invalid or otherwise unlawful, it shall
178 inform Contractor. Unless Contractor elects to terminate the Agreement within five (5) days of
179 such notice, Contractor shall pay all of City's attorneys' fees and costs in any litigation to attack
180 or defend the petition or the City's action related to the petition. Contractor shall also
181 indemnify, defend and hold City harmless from any third party challenge to the same.

182 **ARTICLE 3. SCOPE OF AGREEMENT**

183 **3.1 Summary Scope of Services**

184 The Contractor or its Subcontractor(s) shall be responsible for the following:

- 185 A. Collecting Solid Waste, Recyclable Materials, Organic Materials, and C&D generated by and
186 placed for Collection by Customers that are subscribers of Contractor's services pursuant to
187 requirements of Article 4;

- 188 B. Transporting Collected Solid Waste, C&D Waste, Organic Materials, and materials collected
189 through the on-call Bulky Item clean-up program (other than Reusable Materials collected at no
190 cost by a third party) to the Approved Facility pursuant to requirements of Article 4;
- 191 C. Transporting to and Processing Recyclable Materials, Organic Materials, and Source Separated
192 Recyclable C&D at the appropriate Approved Facilities;
- 193 D. Performing all other services required by this Agreement including, but not limited to, Customer
194 billing, public education, Customer service, record keeping, and reporting pursuant to Articles 4
195 and 6 and Exhibits B (Public Education & Outreach) and C (Reporting);
- 196 E. Furnishing all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and
197 all other items and services necessary to perform its obligations under this Agreement;
- 198 F. Paying all expenses related to provision of services required by this Agreement including, but
199 not limited to, taxes, regulatory fees, City fees, and utilities;
- 200 G. Performing or providing all services necessary to fulfill its obligations in full accordance with this
201 Agreement at all times using best industry practice for comparable operations; and,
- 202 H. Complying with all Applicable Laws.

203 The enumeration and specification of particular aspects of service, labor, or equipment requirements
204 shall not relieve Contractor of the duty to perform all other tasks and activities necessary to fulfill its
205 obligations under this Agreement, regardless of whether such requirements are enumerated elsewhere
206 in the Agreement, unless excused in accordance with Section 10.7.

207 **3.2 Use of Approved Facilities**

208 **A. Approved Facilities**

209 The Contractor, without constraint and as a free-market business decision in accepting this Agreement,
210 agrees to use the Approved Facilities for the purposes of Processing and/or Disposing by Disposal
211 Contractor of all Solid Waste, Recyclable Materials, Organic Materials, C&D, and other materials
212 Collected in the City. Such decision by Contractor in no way constitutes a restraint of trade
213 notwithstanding any Change in Law regarding flow control limitations or any definition thereof.

214 Contractor shall maintain accurate records of the quantities of Solid Waste, Recyclable Materials,
215 Organic Materials, and C&D Transported to the Disposal, Processing, or Composting Facilities and will
216 cooperate with City and any regulatory authority in any audits or investigations of such quantities.

217 Contractor shall pay all tipping fees and other costs associated with Transporting to and Processing
218 and/or Disposing Solid Waste, Recyclable Materials, Organic Materials, C&D, and other materials
219 Collected in the City at the Approved Facilities.

220 Contractor shall observe and comply with all regulations in effect at the Approved Facilities, and shall
221 cooperate with and take direction from the operators thereof with respect to delivery of Solid Waste,
222 Recyclable Materials, Organic Materials, C&D, and other materials Collected in the City. Contractor shall
223 actively work with the Approved Facilities operators throughout the Term of this Agreement to minimize
224 contamination of the Recyclable Materials, Organic Materials, and C&D Collected under this Agreement
225 and delivered to the Approved Facilities.

226 To the extent an Approved Facility(ies) or other Facility-related services are provided by an Affiliate or
227 Subcontractor, Contractor shall ensure compliance of that party with the provisions of Section 4.8.
228 However, this requirement is in no way intended to limit Subcontractor compliance with all applicable
229 provisions of this Agreement.

230 B. Alternative Facilities

231 1. **Purpose.** Contractor shall identify, and enter into arrangements with Alternative Transfer
232 and Processing Facilities, whether an Affiliate or owned by a third-party prior to the
233 Effective Date, and subject to review by the City upon City request in order to ensure
234 uninterrupted service should Contractor for any reason be unable to provide services at one
235 or more of the Approved Facilities it controls.

236 2. **Alternative Facility Arrangements.** Alternative Transfer and Processing Facility
237 arrangements must ensure that Contractor can Deliver Discarded Materials or street
238 sweepings to an Alternative Facility within two (2) Business Days of Contractor or City notice
239 of need to use such Alternative Facility. Contractor shall ensure that Alternative Facilities are
240 able to accept Discarded Materials or street sweepings on a continuous basis for no less
241 than thirty (30) Days. Should Contractor use of the Alternative Facility exceed thirty (30)
242 Days, City may require Contractor provide additional reasonable assurances of the
243 Alternative Facility's ability to accept Discarded Materials or street sweepings on an ongoing
244 basis under the terms of this Agreement. Contractor may request, and City may at its
245 discretion grant a change in an Alternative Facility owned and operated by Contractor or an
246 Affiliate, or owned and/or operated by a third party with the third party's prior written
247 consent.

248 3. **Contractor Responsibility for Additional Cost.** If Contractor is unable to, or chooses not to
249 provide for Delivery of Discarded Materials or street sweepings to an Approved Facility for
250 reasons other than those specified in Section 10.7, Contractor shall provide immediate
251 notice to City of its need to use an Alternative Facility, and shall be solely responsible for
252 incremental differences in cost due to per-ton fees charged at the Alternative Facility and
253 any additional transportation costs incurred in Transport and Delivery of Discarded
254 Materials or street sweepings to the Approved Facility as provided in Article 8.

255 4. **City Responsibility for Additional Cost.** If Contractor is unable to provide for Delivery of
256 Discarded Materials or street sweepings, or Transport of Discarded Materials or street
257 sweepings to an Approved Facility for a reason specified in Section 10.7, Contractor shall
258 provide immediate notice to City of its need to use an Alternative Facility. City shall be
259 responsible for incremental differences in cost due to per-ton fees charged at the
260 Alternative Facility and any additional transportation costs incurred in Delivering or
261 Transport of Solid Waste to the Approved Facility as provided in Article 8.

262 5. **City Right to Terminate.** If, for any reason, the Contractor is unable to use an Approved
263 Facility for an extended period of time, the City may, at its sole discretion, terminate this
264 Agreement as provided in accordance with Section 10.2.

265 C. Delivery to Non-Approved Facilities Prohibited

266 Should Contractor Transport Discarded Materials or street sweepings to a facility other than an

267 Approved Facility or an Alternative Facility as provided in Section 3.2.B without prior City approval,
268 Contractor shall be subject to the penalty identified in Exhibit E for “Delivery to a Non-Approved
269 Facility”.

270 **3.3 Capacity Assurance**

271 Contractor warrants that as of the Commencement Date it has sufficient Transfer capacity at the
272 Approved Transfer Facility to receive, Transfer and transport all materials intended for Processing
273 throughout the Term, and that it shall maintain that Transfer capacity through the Term.

274 Contractor warrants that as of the Commencement Date it has sufficient capacity at the Approved
275 Processing Facilities to Process all materials throughout the Term, and that it shall maintain that capacity
276 through the Term.

277 If at any time during the Term or an extension Contractor fails to provide the capacity needed to fulfill
278 its obligations under this Agreement, the City may assess Liquidated Damages for each Ton of material
279 that the Contractor is unable to Transfer or Process in accordance with the provisions of Exhibit B.

280 **3.4 No Limitation on City Diversion Programs**

281 The City maintains programs to reduce the amount of waste intended for Disposal. It is the City’s intent
282 to continue to improve, develop, and enhance existing programs as well as to implement new programs
283 and services throughout the Term as it deems necessary to meet or exceed mandated Diversion
284 program requirements and goals established by AB 939 and subsequent federal, State, County or local
285 legislation including, but not limited to the State 75 percent recycling goal established in AB 341 and the
286 programmatic requirements of AB 1826. Contractor acknowledges that the characterization and
287 quantity of materials Delivered to the Approved Facilities will change over the Term and may over time
288 be significantly different than that as of the Commencement Date of the Agreement.

289 Nothing in this Agreement shall prevent, penalize, or impede, in any manner, the City from continuing
290 programs, altering programs, or developing new programs that have the effect of reducing or increasing
291 the amount of Solid Waste Collected and Delivered to the Approved Facilities or to the Disposal
292 Contractor including Processing of Collected Solid Waste in lieu of Delivery for Disposal.

293 **3.5 Subcontracting**

294 Contractor shall not engage any Subcontractors for Collection, Transportation, or Processing of Solid
295 Waste, Recyclable Materials, Organic Materials, C&D services, or street sweeping without the prior
296 written consent of City Contract Manager. As of the Effective Date of this Agreement, City has approved
297 Contractor’s use of those subcontractors identified in Contractor’s Proposal, included herein as Exhibit I.
298 If the Contractor plans to engage other Affiliate or related party entities in the provision of services,
299 Contractor shall obtain written approval from City Contract Manager thirty (30) days prior to its plans to
300 use party. Contractor shall submit written request to the City seeking approval of other Affiliate or
301 related party entities. Such request shall include a description of its plans, name and qualifications of
302 party, and an explanation of any potential impacts related to the quality, timeliness, or cost of providing
303 services under this Agreement.

304 **3.6 Responsibility for Materials**

305 Once Solid Waste, Recyclable Materials, Organic Materials, and C&D are placed in the Contractor's
306 Containers and at the Collection location, the responsibility for their proper handling shall transfer
307 directly from the Generator to Contractor, with the exception of Excluded Waste if the Contractor can
308 identify the Generator pursuant to Section 5.7.B. Once Solid Waste, Recyclable Materials, Organic
309 Materials, C&D and street sweepings are deposited by Contractor at the appropriate Approved Facility,
310 such materials shall become the responsibility of the Owner or operator of the Approved Facility
311 including the Disposal Contractor in the case of Disposal, with the exception of Excluded Waste pursuant
312 to Section 5.7.C.

313 Responsibility for Excluded Waste that has been inadvertently Collected by the Contractor shall remain
314 with the Contractor if it cannot identify the Generator, and Contractor shall assume all responsibility for
315 its proper Disposal.

316 **3.7 Cooperation with City or County**

317 The Contractor shall with no added compensation cooperate with the City, its agent, and/or Santa Clara
318 County and/or its agent, or any State regulatory authority and/or its agent if the City or County or State
319 regulatory authority seek to collect data, perform field work, and/or evaluate and monitor Diversion
320 program results through characterization of Solid Waste, including providing reasonably requested data,
321 allowing visits to Approved Facilities, and allowing use of Contractor-designated areas of Approved
322 Facilities as needed to perform Solid Waste characterizations.

323 Contractor shall also cooperate with City and/or County or State regulatory authority by providing
324 requested data and review and otherwise assisting with any Disposal Reporting System Investigations or
325 Origin Report Studies by providing documentation deemed reasonably necessary by the City Contract
326 Manager, the County or State regulatory authority.

327 **3.8 Carbon Offset Credits**

328 The City reserves the right to revenues or other benefits from carbon offset credits obtained by
329 Contractor related to services performed under this Agreement.

330 **3.9 City-Directed Changes to Scope**

331 City may meet and confer with Contractor to establish the scope of any additional services or
332 modification to existing services (which may include use of Approved Facilities) to be provided under
333 this Agreement. In such case, Contractor shall present, within thirty (30) calendar days of City's request,
334 or upon a mutually agreed upon date, a written proposal to provide such modified or additional
335 services.

336 City shall review the Contractor's proposal for the change in scope of services. City and Contractor may
337 meet and confer to negotiate Contractor's proposed revisions and costs and shall amend this
338 Agreement, as appropriate, to reflect the mutually agreed-upon changes in scope.

339

ARTICLE 4. SCOPE OF SERVICES

340 Contractor shall perform the services described in this Article 4, and shall bill all Customers as provided
341 at the Rates approved under this Agreement as provided in Section 8.1 and as specified in Exhibit L.
342 Failure to specifically require an act necessary to perform the service does not relieve Contractor of its
343 obligation to perform such act.

344 Contractor acknowledges that City is committed to Diverting materials from Disposal through the
345 implementation of source reduction, reuse, Recycling, Composting, and other programs, and that City
346 may implement new programs in accordance with Section 3.9 that may impact the overall quantity or
347 composition of materials to be Collected by Contractor, subject to Contractor's right to petition for a
348 change in City-approved Maximum Rates pursuant to Section 8.3.

349 4.1 Single-Family Residential Services

350 A. Solid Waste Collection

351 Contractor shall Collect Solid Waste in Contractor-provided Carts one (1) time per week from Single-
352 Family Customers and Transport all Solid Waste to the Approved Disposal Facility.

- 353 **Containers:** Customer-Provided Containers, Contractor-Provided Carts
- 354 **Container Sizes:** 32-, 64-, and 96-gallons (as requested by Customer) with Cart purchase option
- 355 **Service Frequency:** One (1) time per week
- 356 **Service Location:** Curbside standard; side- or back-yard upon Customer request at additional
357 charge with the exception that side- or back-yard service shall be provided at no
358 additional charge to disabled Customers in accordance with Section 4.1.I
- 359 **Acceptable Materials:** Solid Waste
- 360 **Prohibited Materials:** Recyclable Materials, Organic Materials, Excluded Waste
- 361 **Additional Service:** Unlimited Set-Out Options. Contractor shall collect overages of Solid Waste not
362 placed in, or that will not fit in, the Contractor provided Container, which is set
363 out by the customer on their prescribed Collection day. Said Solid Waste not
364 placed in the Contractor provided Container shall be bagged in a customer
365 provided 32-gallon bag and/or multiple 32-gallon bags and be set out for
366 Collection on or near the Contractor provided Solid Waste Carts. Contractor
367 shall Collect additional bagged Solid Waste on the Customer's prescribed
368 Collection day at the Rate approved by the City under this Agreement.
- 369 **Other Requirements:** None

370 B. Recyclable Materials Collection

371 Contractor shall Collect Recyclable Materials in Contractor-provided Carts one (1) time per week from
372 Single-Family Customers and Transport all Recyclable Materials to the Approved Recyclable Materials
373 Processing Facility for Processing.

- 374 **Containers:** Carts
- 375 **Container Sizes:** 64-, or 96-gallon Carts available upon Customer request.
- 376 **Service Frequency:** One (1) time per week

377 **Service Location:** Curbside standard; side- or back-yard upon Customer request at additional
378 charge with the exception that side- or back-yard service provided at no charge
379 to disabled Customers in accordance with Section 4.1.1.)
380 **Acceptable Materials:** Recyclable Materials
381 **Prohibited Materials:** Solid Waste, Organic Materials, C&D, Excluded Waste
382 **Additional Service:** 32-gallon available for senior or high-density households
383 **Other Requirements:** Contractor shall accept household batteries in the Recyclable Materials
384 program. Customers shall be required to securely enclose household batteries in
385 a clear plastic bag which shall be placed on top of the Recyclable Materials
386 Container for Collection. Contractor shall ensure that all household batteries are
387 Collected separate from Recyclable Materials. All Collected household batteries
388 shall be processed and disposed of in compliance with Applicable Law.

389 C. Organic Materials Collection

390 Contractor shall Collect Organic Materials in Contractor-provided Carts one (1) time per week from
391 Single-Family Customers and Transport all Organic Materials to the Approved Organic Materials
392 Processing Facility for Processing.

393

394 **Containers:** Carts
395 **Container Sizes:** 32-gallon (townhome or small lot customers) or 96-gallon (standard)
396 **Service Frequency:** One (1) time per week
397 **Service Location:** Curbside standard; side- or back-yard upon Customer request at additional
398 charge with the exception that side- or back-yard service provided at no charge
399 to disabled Customers in accordance with Section 4.1.1.)
400 **Acceptable Materials:** Yard Trimmings and Food Scraps
401 **Prohibited Materials:** Solid Waste, Recyclable Materials, C&D, Excluded Waste
402 **Additional Service:** Contractor shall establish an “overages” program that allows Single-Family
403 Customers to place additional Yard Trimmings Curbside on their regularly-
404 scheduled Collection day.
405 **Other Requirements:** Contractor shall offer to each Single-Family Customer Curbside Collection of
406 holiday trees for the two weeks beginning on the Monday following Christmas.
407 In the event Christmas is a Monday, holiday tree Collection shall commence on
408 the second Tuesday following Christmas and continue for ten (10) Business
409 Days. Holiday trees shall be Collected on the Customer’s regular Collection day
410 during the designated week(s). Customer notification requirements are
411 specified in the public education plan, Exhibit B.

412 D. Used Motor Oil and Filter Collection

413 Contractor shall Collect Used Motor Oil and Filters in a Contractor-provided Used Motor Oil Recovery Kit
414 from Single-Family Customers and properly Dispose of or Recycle the Used Motor Oil and Filter.

415 **Containers:** Used Motor Oil Recovery Kit
416 **Container Sizes:** Various (as provided by Contractor)

417 **Service Frequency:** Up to one (1) time per week (as requested by Customer)
418 **Service Location:** Curbside (adjacent to Recyclable Materials Cart)
419 **Acceptable Materials:** Used Motor Oil and Filter
420 **Prohibited Materials:** Solid Waste, Recyclable Materials, Organic Materials, C&D, Excluded Waste
421 **Additional Service:** Not applicable
422 **Other Requirements:** Contractor shall provide a Used Motor Oil Recovery Kit to a Customer on the
423 next scheduled service day after such request is made by Customer at no
424 additional cost to Customer. Upon Collection of Used Motor Oil and Filter from
425 a Customer, Contractor shall leave a Used Oil Recovery Kit adjacent to the
426 Recyclables Cart. Contractor shall not be required to Collect more than one (1)
427 Used Motor Oil Recovery Kit per individual dwelling unit per week from Single-
428 Family Customers who request it.

429 **E. Used Cooking Oil Collection**

430 Contractor shall Collect Used Cooking Oil in a Contractor-provided Used Cooking Oil Recovery Kit from
431 Single-Family Customers and properly Dispose of or Recycle the Used Cooking Oil.

432 **Containers:** Used Cooking Oil Recovery Kit
433 **Container Sizes:** Various (as provided by Contractor)
434 **Service Frequency:** Up to one (1) time per week (as requested by Customer)
435 **Service Location:** Curbside (adjacent to Recyclable Materials Cart)
436 **Acceptable Materials:** Used Cooking Oil
437 **Prohibited Materials:** Solid Waste, Recyclable Materials, Organic Materials, C&D, Excluded Waste
438 **Additional Service:** Not applicable
439 **Other Requirements:** Contractor shall provide a Used Cooking Oil Recovery Kit to a Customer on the
440 next scheduled service day after such request is made by Customer at no
441 additional cost to Customer. Upon Collection of Used Cooking Oil from a
442 Customer, Contractor shall leave a Used Oil Recovery Kit adjacent to the
443 Recyclables Cart. Contractor shall not be required to Collect more than one (1)
444 Used Cooking Oil Recovery Kit per individual dwelling unit per week from Single-
445 Family Customers who request it.

446 **F. On-Call Curbside Bulky Item/Reusable Materials Collection**

447 Contractor shall Collect Bulky Items and other materials listed below from Single-Family Customers and
448 Transport all Collected materials to the Approved Facility with the exception of Reusable Materials
449 collected at no cost by a third party).

450 **Containers:** Not applicable
451 **Service Level:** Up to three (3) cubic yards of Solid Waste, Recyclable Materials, Organic
452 Materials, Reusable Materials, C&D, and E-Waste OR up to one (1) Appliance or
453 Bulky Item
454 **Service Frequency:** Up to four (4) times per year (as requested by Customer)
455 **Service Location:** Curbside
456 **Acceptable Materials:** Solid Waste, Recyclable Materials, Organic Materials (including small tree
457 stumps not to exceed 16 inches in diameter and length), Reusable Materials,

- 458 Appliances, Bulky Items, E-Waste, C&D (excluding concrete), and U-Waste
459 **Prohibited Materials:** Excluded Waste or any single item that exceeds seventy-five (75) pounds.
460 **Additional Service:**
- 461 • Contractor shall Collect additional items that exceed the required Service
462 Level and may charge an “Additional Bulky Item” Rate not to exceed the
463 Maximum Rate approved by the City (as requested by Customer).
 - 464 • Contractor shall provide additional Collection events for a Customer beyond
465 four (4) per year and may charge an “Additional Bulky Item Collection” Rate
466 not to exceed the Maximum Rate approved by the City.
- 466 **Other Requirements:**
- 467 • The Contractor shall provide the service to the Customer on the Customer’s
468 regularly scheduled Solid Waste Collection day within seven (7) Business
469 Days of the Customer’s requested service date, and such date shall be
470 mutually agreed upon by the Customer and Contractor.
 - 471 • Contractor’s shall notify Customers that materials shall not be placed
472 Curbside more than twenty-four (24) hours in advance of the scheduled
473 bulky Collection day.
 - 474 • Contractor shall tag any items not Collected and such tag shall indicate the
475 reason the item(s) were not Collected and how to arrange for proper
476 Disposal. Within twenty-four (24) hours of tagging item(s), the Contractor
477 shall post on Contractor’s website for access by the City the Premises where
materials were not picked up, describing the type of material(s) and reason.

478 **G. Seasonal Programs**

479 Contractor shall develop and educate Customers about the availability of and participation requirements
480 for programs dealing with seasonal or periodic waste management demands that exceed regularly
481 scheduled Collection including, without limitation: inclusion of Halloween pumpkins in the Organic
482 Materials Carts, holiday tree Collection instructions, and handling of materials from spring cleaning, and
483 fall leaves through on-call Curbside bulky clean-up collections and/or the overages program.

484 **H. Bin-for a Day**

485 Contractor shall offer small Bins for Single Family use as an alternative to an On-Call pickup. Contractor
486 shall, as requested provide the Bin within five (5) days of a Customer request and shall drop-off and
487 Collect Bins Mondays through Saturdays. Accepted materials are the same as provided in Section 4.1.F.
488 Contractor shall provide a one, two, or three cubic yard Bin upon request. Contractor shall place the Bin
489 in a location designated by the property owner, but in no circumstance will place Bins in a location that
490 impedes the public right-of-way (i.e., on sidewalks, in City streets, etc.). Contractor shall collect
491 materials and remove Bin within five (5) days of a Customer request. Contractor may charge Customer a
492 Container delivery and removal fee, as approved under this Agreement, for Bins, but may not charge a
493 Disposal fee for the materials collected under this program.

494 **I. Alternative Service Locations for Seniors and Disabled Customers**

495 Contractor shall allow for Seniors and Persons that have a disability as defined by the Americans with
496 Disabilities Act (which means Public Law 101-336, 104 Stat. 327, 42 U.S.C. 12101-12213 and 27 U.S.C.
497 225 and 611, and all Federal rules and regulations relating thereto) that are Occupants of Single-Family
498 Premises to receive Collection services at a location other than Curbside at no extra charge to the

499 Customer. Contractor shall review all applications made by Senior Customers (which shall include a
500 driver’s license or birth certificate) and by disabled Customers (which shall include statements from
501 physicians) to determine conformance with this exemption provision and shall grant exemptions, if
502 applicable. Contractor shall make reasonable accommodations with regard to provision of and servicing
503 of Containers (e.g., Container size and type, placement of Containers for Collection, etc.) at no additional
504 cost to the Customer.

505 **J. Senior Rates**

506 Contractor shall bill Customers who qualify as Seniors at the Rate specified in Exhibit L, approved by City
507 as a percentage of the Rate Contractor charges other Single-Family Customers for comparable level of
508 service. Contractor shall verify Customer’s eligibility for the Senior discount using driver’s license or
509 birth certificate and proof of residency.

510 **K. Billing Coordination**

511 Contractor shall work with appropriate City representatives to coordinate with water and sewer utility
512 billing in the application of billing and service standards consistent with the City’s Municipal Code. For
513 example, and not by way of limitation, Municipal Code Section V-200-3.20 requires that service be
514 provided to a property unless terminated due to non-occupancy. In order to comply with these
515 requirements, Contractor shall coordinate with City staff to ensure that services provided under this
516 Agreement are not terminated unless the City has approved the change in occupancy status and that
517 the schedule for terminating all services, including water and sewer, is coordinated.

518 **4.2 Multi-Family Residential Services**

519 The City’s General Plan (or as modified per Milpitas City Council approval) defines a range of housing
520 densities as follows: (1) “Medium Density” housing may include single-family attached and semi-
521 attached houses and duplexes; (2) “High Density” housing may include attached row houses to triplexes
522 and four-plexes, stacked townhomes, and walk-up garden apartments; (3) “Very High Density” housing
523 may include attached row houses and townhouses to lofts and stacked flats with structured parking,
524 and; (4) “Mixed Use” allows for commercial offices, retail and services, High Density residential and
525 public and quasi-public uses. Mixed use buildings can contain a combination of residential and
526 commercial uses. Specific permit conditions related to type of service may be placed on new
527 developments as a function of density, and Contractor shall adhere to all such permit conditions.

528 The following changes in Multi-Family Customer service require City approval prior to implementation,
529 and Contractor shall promptly inform City if a Multi-Family Customer requests either:

- 530 1. Conversion from use of Debris Boxes to Bins.
531 2. Reduction in total volume of service in excess of twenty five (25) percent or five (5) cubic
532 yards per week.

533 **A. Solid Waste Collection**

534 Contractor shall Collect Solid Waste in Contractor-provided Containers not less than one (1) time per
535 week from Multi-Family Customers and Transport all Solid Waste to the Approved Disposal Facility.

536 **Containers:** Carts and Bins; Compactors at City-approved “high density” locations
537 **Container Sizes:** 32, 64-, and 96-gallon Carts;
538 1-, 1.5-, 2-, 3-, 4-, 6-, and 8-cubic yard Bins
539 10-, 20-, 30-, and 40-cubic yard Drop Boxes and Compactors
540 (as requested by Customer)
541 **Service Frequency:** Up to six (6) times per week but not less than one (1) time per week, as
542 requested by Customer
543 **Service Location:** Curbside or other Customer-selected service location at the Multi-Family
544 Premises
545 **Acceptable Materials:** Solid Waste
546 **Prohibited Materials:** Recyclable Materials, Organic Materials, Excluded Waste
547 **Additional Service:** Upon Customer request and to accommodate periodic additional service needs,
548 Contractor shall provide Collection service at a greater frequency than the
549 Customer’s regularly scheduled service, up to the maximum Service Level and
550 Contractor may charge an appropriate Rate for the higher Service Level at a
551 Rate not to exceed the Maximum Rate approved by the City.
552 **Other Requirements:** Contractor shall open and close gates, push and/or pull Containers, lock and
553 unlock Containers, or perform other services as reasonably necessary to access
554 and empty Containers.

555 **B. Recyclable Materials Collection**

556 Contractor shall Collect Recyclable Materials in Contractor-provided Containers not less than one (1)
557 time per week from Multi-Family Customers and Transport all Recyclable Materials to the Approved
558 Recyclable Materials Processing Facility for Processing. Customers are charged at the Multi-Family
559 Recyclable Materials Rates approved under this Agreement and as specified in Exhibit L.

560 **Containers:** Carts, Bins
561 **Container Sizes:** 32, 64-, and 96-gallon Carts;
562 1-, 1.5-, 2-, 3-, 4-,6-, and 8-cubic yard Bins
563 10-, 20-, 30-, and 40-cubic yard Drop Boxes and Compactors
564 (as requested by Customer)
565 **Service Frequency:** Up to six (6) times per week but not less than one (1) time per week (as
566 requested by Customer)
567 **Service Location:** Curbside or other Customer-selected service location at the Multi-Family
568 Premises
569 **Acceptable Materials:** Recyclable Materials
570 **Prohibited Materials:** Solid Waste, Organic Materials, C&D, Excluded Waste
571 **Additional Service:** Upon Customer request and to accommodate periodic additional service needs,
572 Contractor shall provide Collection service at a greater frequency than the
573 Customer’s regularly scheduled service, up to the maximum service frequency
574 and Contractor may charge an appropriate Rate for the higher Service Level not
575 to exceed the Maximum Rate approved by the City.
576 **Other Requirements:** Contractor shall open and close gates, push and/or pull Containers, lock and
577 unlock Containers, or perform other services as reasonably necessary to access
578 and empty Containers.

579 **C. Organic Materials Collection**

580 Contractor shall Collect Organic Materials in Contractor-provided Containers one (1) time per week from
581 Multi-Family Customers and Transport all Organic Materials to the Approved Organic Materials
582 Processing Facility for Processing. As a minimum standard and not by way of limitation, Contractor
583 service shall meet all requirements of AB 1826 for provision of service to Customers on the dates
584 specified based on level of Organic Materials generation or Solid Waste service, as well as include all
585 other Customers that may elect to participate. Customers are charged at the Multi-Family Organic
586 Materials Rates approved under this Agreement and as specified in Exhibit L.

- 587 **Containers:** Carts
588 **Container Sizes:** 32, 64-, and 96-gallon Carts;
589 1-, 2-, and 3-cubic yard Bins
590 10-, 20-, 30-, and 40-cubic yard Drop Boxes and Compactors
591 (as requested by Customer)
592 **Service Frequency:** Up to six (6) days per week but not less than one (1) day per week, as requested
593 by Customer
594 **Service Location:** Curbside or other Customer-selected service location at the Multi-Family
595 Premises
596 **Acceptable Materials:** Yard Trimmings and Food Scraps
597 **Prohibited Materials:** Solid Waste, Recyclable Materials, C&D, Excluded Waste
598 **Additional Service:** Contractor shall provide additional Organic Materials Carts to Multi-Family
599 Customers upon request and may charge an “Additional Organics Cart” not to
600 exceed the Maximum Rate approved by the City.
601 **Other Requirements:** • Contractor shall open and close gates, push and/or pull Containers, lock and
602 unlock Containers, or perform other services as reasonably necessary to
603 access and empty Containers.
604 • Contractor shall offer to each Multi-Family Customer Collection of holiday
605 trees for the two weeks beginning on the Monday following Christmas. In
606 the event Christmas is a Monday, holiday tree Collection shall commence on
607 the second Tuesday following Christmas and continue for ten (10) Business
608 Days. Christmas trees shall be Collected on the Customer’s regular
609 Collection day during the designated week(s). Customer notification
610 requirements are specified in the public education plan, Exhibit B.

611 **D. On-Call Bulky Item/Reusable Materials Collection**

612 Contractor shall Collect Bulky Items and other materials listed below from Multi-Family Customers and
613 Transport all Collected materials to an Approved Facility with the exception of Reusable Materials
614 collected at no cost by a third party).

- 615 **Containers:** Not applicable
616 **Service Level:** Up to three (3) cubic yards of Solid Waste, Recyclable Materials, Organic
617 Materials, Reusable Materials, C&D, and E-Waste OR up to one (1) Appliance or
618 Bulky Item
619 **Service Frequency:** Up to four (4) times per year (as requested by Customer) for Single-Family style
620 properties; on-call bulky item cleanups available at the Rate approved under
621 this Agreement for Multi-Family style properties

- 622 **Service Location:** Curbside or other Customer-selected service location at the Multi-Family
623 Premises which is immediately accessible by Contractor’s vehicle
- 624 **Acceptable Materials:** Solid Waste, Recyclable Materials, Organic Materials, Reusable Materials, C&D
625 (excluding concrete), Appliances, Bulky Items, E-Waste, and U-Waste
- 626 **Prohibited Materials:** Excluded Waste or any single item that exceeds seventy-five (75) pounds.
- 627 **Additional Service:**
- 628 • Upon Customer request, Contractor shall Collect additional items which
629 exceed the required Service Level and may charge an “Additional Bulky
630 Item” Rate not to exceed the Maximum Rate approved by the City.
 - 631 • Contractor shall provide additional Collection events for a Single Family style
632 Customer beyond four (4) per year and may charge an “Additional Bulky
633 Item Collection” Rate not to exceed the Maximum Rate approved by the
634 City.
- 634 **Other Requirements:**
- 635 • The Contractor shall provide the service to the Customer on the Customer’s
636 regularly scheduled Solid Waste Collection day within seven (7) Business
637 Days of the Customer’s requested service date, and such date shall be
638 mutually agreed upon by the Customer and Contractor.
 - 639 • Contractor’s shall notify Customers that materials shall not be placed
640 adjacent to Containers more than twenty-four (24) hours in advance of the
641 scheduled bulky Collection day.
 - 642 • Contractor shall tag any items not Collected and such tag shall indicate the
643 reason the item(s) were not Collected and describe how to arrange for
644 proper Disposal. Within twenty-four (24) hours of tagging item(s), the
645 Contractor shall post on Contractor’s website for access by the City the
646 Premises where materials were not picked up, describing the type of
material(s) and reason.

647 **E. Seasonal Programs**

648 Contractor shall develop and educate Customers about the availability of and participation requirements
649 for programs dealing with seasonal or periodic waste management demands that exceed regularly
650 scheduled Collection including, without limitation: holiday tree Collection instructions.

651 **4.3 Commercial Services**

652 **A. Solid Waste Collection**

653 Contractor shall Collect Solid Waste in Contractor-provided Containers not less than one (1) time per
654 week from Commercial Customers and Transport all Solid Waste to the Approved Disposal Facility.

- 655 **Containers:** Carts, Bins, Drop Boxes, Compactors
- 656 **Container Sizes:** 32, 64-, and 96-gallon Carts;
657 1-, 1.5-, 2-, 3-, 4-, 6-, and 8-cubic yard Bins
658 10-, 20-, 30-, and 40-cubic yard Drop Boxes and Compactors
659 (as requested by Customer)

660 **Service Frequency:** Up to six (6) times per week but not less than one (1) time per week, as
661 requested by Customer

662 **Service Location:** Curbside; or other Customer-selected service location at the Commercial

663 Premises
664 **Acceptable Materials:** Solid Waste
665 **Prohibited Materials:** Recyclable Materials, Organic Materials, Excluded Waste
666 **Additional Service:** Upon Customer request and to accommodate periodic additional service needs,
667 Contractor shall provide Collection service at a greater frequency than the
668 Customer's regularly scheduled service, up to the maximum Service Level and
669 Contractor may charge an appropriate Rate for the higher Service Level at a
670 Rate not to exceed the Maximum Rate approved by the City.
671 **Other Requirements:** Contractor shall open and close gates, push and/or pull Containers, lock and
672 unlock Containers, or perform other services as reasonably necessary to access
673 and empty Containers.

674 **B. Recyclable Materials Collection**

675 Contractor shall Collect Recyclable Materials in Contractor-provided Containers not less than one (1)
676 time per week from Commercial Customers and Transport all Recyclable Materials to the Approved
677 Recyclable Materials Processing Facility for Processing. Customers are charged at the Commercial
678 Recyclable Materials Rates approved under this Agreement and as specified in Exhibit L.

679 **Containers:** Carts, Bins, Drop Boxes, Compactors
680 **Container Sizes:** 32, 64-, and 96-gallon Carts;
681 1-, 1.5-, 2-, 3-, 4-,6-, and 8-cubic yard Bins
682 10-, 20-, 30-, and 40-cubic yard Drop Boxes and Compactors
683 (drop boxes and compactors must be serviced at least once every other week or
684 Contractor may apply the City-approved rental fee)
685 **Service Frequency:** Up to six (6) times per week but not less than one time per thirty (30) day
686 period, as requested by Customer; not less than one time per sixth (60) day
687 period for Compactors
688 **Service Location:** Curbside or other Customer-selected service location at the Commercial
689 Premises; provide deskside containers
690 **Acceptable Materials:** Recyclable Materials
691 **Prohibited Materials:** Solid Waste, Organic Materials, C&D, Excluded Waste
692 **Additional Service:** Upon Customer request and to accommodate periodic additional service needs,
693 Contractor shall provide Collection service at a greater frequency than the
694 Customer's regularly scheduled service, up to the maximum Service Level and
695 Contractor may charge the appropriate Rate for the higher Service Level at a
696 Rate not to exceed the Maximum Rate approved by the City.
697 **Other Requirements:** Contractor shall open and close gates, push and/or pull Containers, lock and
698 unlock Containers, or perform other services as reasonably necessary to access
699 and empty Containers.
700

701 **D. Organic Materials Collection**

702 Contractor shall Collect Organic Materials in Contractor-provided Containers not less than one (1) time
703 per week from Commercial Customers and Transport all Organic Materials to the Approved Organic
704 Materials Processing Facility for Processing. As a minimum standard and not by way of limitation,

705 Contractor's service shall meet all requirements of AB 1826 for provision of service to Customers on the
706 dates specified based on level of Organics Materials or Solid Waste service, as applicable, as well as
707 include all other Customers that may elect to participate. Customers are charged at the Commercial
708 Organic Materials Rates approved under this Agreement and as specified in Exhibit L.

- 709 **Containers:** Carts and Bins
710 **Container Sizes:** 32-, 64-, and 96-gallon Carts;
711 1-, 2-, and 3-cubic yard Bins
712 10-, 20-, 30-, and 40-cubic yard Drop Boxes or Compactors
713 (as requested by Customer)
714 **Service Frequency:** Up to six (6) times per week but not less than one (1) time per week, as
715 requested by Customer
716 **Service Location:** Curbside or other Customer-selected service location at the Commercial
717 Premises
718 **Acceptable Materials:** Food Scraps, Yard Trimmings
719 **Prohibited Materials:** Solid Waste, Recyclable Materials, C&D, Excluded Waste
720 **Additional Service:** Upon Customer request and to accommodate periodic additional service needs,
721 Contractor shall provide Collection service at a greater frequency than the
722 Customer's regularly scheduled service, up to the maximum Service Level and
723 Contractor may charge the appropriate Rate for the higher Service Level at a
724 Rate not to exceed the Maximum Rate approved by the City.
725 **Other Requirements:** Contractor shall open and close gates, push and/or pull Containers, lock and
726 unlock Containers, or perform other services as reasonably necessary to access
727 and empty Containers.

728 **4.4 Construction and Demolition Debris (C&D)**

729 Contractor shall offer Source Separated Recyclable C&D Collection services and C&D Waste Collection
730 services. C&D Collection service shall be a temporary service, provided only at sites where construction,
731 alteration, remodeling, repair, or demolition operations are being performed. C&D Collection services
732 shall be provided to any Customer upon request. Contractor shall work with the Customer to provide
733 Collection services that result in a minimum of fifty percent (50%) of the C&D Collected and Processed
734 as Source Separated Recyclable C&D, as required by the City's Green Building Ordinance. Contractor
735 billings to C&D Customers shall include two components: a "per-pull" charge to Transport the Drop Box
736 to an Approved Facility, and a charge for the cost of Disposal or Processing calculated on a per-Ton basis
737 for actual Tons delivered to the Approved Facility. Such billing shall be at rates not to exceed City-
738 approved Maximum Rates.

739 Contractor shall Transport all C&D Collected under this Agreement to the Approved C&D Processing
740 Facility. Contractor shall pay all tipping fees and other costs associated with Transporting and Processing
741 C&D.

742 Contractor shall observe and comply with all regulations in effect at the Approved C&D Processing
743 Facility and cooperate with and take direction from the operator thereof with respect to delivery of
744 C&D.

745 **A. C&D Collection**

746 Contractor shall Collect Source-Separated Recyclable C&D as homogeneous material types (e.g., all
747 metals, all inert materials, all wood waste, etc.) or as mixed Recyclable C&D in Contractor-provided
748 Containers at the frequency requested by C&D Customers. Contractor shall Transport all Source-
749 Separated Recyclable C&D to the Approved C&D Processing Facility for Processing or, at Contractor’s
750 discretion, to any Person who will make a net payment to Contractor for the delivery of Source-
751 Separated Recyclable C&D.

- 752 **Containers:** Drop Boxes
- 753 **Container Sizes:** 10-, 20-, 30-, and 40-cubic yard Drop Boxes
754 (as requested by Customer)
- 755 **Service Frequency:** Up to six (6) times per week but not less than one (1) time per month, as
756 requested by Customer
- 757 **Service Location:** Curbside or other Customer-selected service location at the construction site
- 758 **Acceptable Materials:** Source-Separated Recyclable C&D, Source-Separated Recyclable Materials
- 759 **Prohibited Materials:** Solid Waste, Organic Materials, Excluded Waste
- 760 **Additional Service:** Not applicable
- 761 **Other Requirements:** Contractor shall document and report to the City Contract Manager each
762 instance where Contractor delivers Source Separated Recyclable C&D to a
763 Person other than the Approved C&D Processing Facility. Such report shall
764 include the Person to whom the materials were delivered, the specific type of
765 materials delivered (e.g., metals, wood, etc.), the number of Tons, and the
766 amount received in payment for the delivery.

767 **4.5 Services for City Facilities**

768 **A. Collection Services to City Facilities**

769 Contractor shall Collect Solid Waste, Recyclable Materials, Organic Materials, C&D, Bulky Items, and
770 Reusable Materials from City facilities in the same manner as those services are provided to Commercial
771 Customers. Contractor shall provide service to all City facilities identified in Exhibit F as well as any
772 future City facilities. Contractor shall provide these services at no cost to the City. Contractor shall
773 provide Recycling technical assistance to City facilities to assist with implementation and/or expansion
774 of Recyclable Materials and Organic Materials Collection services.

775 Contractor shall coordinate with Disposal Contractor as provided in Section 8.2 of this Agreement
776 regarding the requirements of Section 8.2 of the Disposal Contractor’s agreement with the City to
777 provide Disposal at no charge for up to five hundred (500) cubic yards per year of Solid Waste Collected
778 from City facilities and/or from special events as provided in Section 4.6 of this Agreement. Contractor
779 shall further coordinate with Disposal Contractor to ensure that this provision applies to Solid Waste
780 Delivered to Disposal Facility by Contractor and by City crews.

781 **B. Building Plan Review**

782 Contractor shall, as requested provide staff with the expertise to review and comment on building plans
783 for new Residential and Commercial development projects during the City’s permit review process to

784 verify the reasonableness of the space allocation and enclosure design for Solid Waste, Recyclable
785 Materials, and Organic Materials Containers and the accessibility of such areas. For these plan reviews,
786 the Contractor may be requested to visit the site and submit written recommendations for
787 improvements to the design. Plan reviews shall be completed within two (2) weeks of the City’s request
788 for such review.

789 **4.6 Special Events**

790 Contractor shall provide Solid Waste, Recyclable Materials, and Organic Materials services at up to six
791 (6) special events per year as directed by City, and at no cost to the event or City. Contractor shall
792 coordinate with Disposal Contractor as provided in Section 8.2 of this Agreement regarding the
793 requirements of Section 8.2 of the Disposal Contractor’s agreement with the City to provide Disposal at
794 no charge for up to five hundred (500) cubic yards per year of Solid Waste Collected from special events
795 and/or City facilities as provided in Section 4.5A of this Agreement. Contractor shall further coordinate
796 with Disposal Contractor to ensure that this provision applies to Solid Waste Delivered to Disposal
797 Facility by Contractor and by City crews.

798 Special event services include:

799 **A. Containers**

800 Contractor shall provide Containers for event collection stations to be placed throughout the event
801 venue, and Containers for the aggregation of material removed from event collection stations during the
802 course of the event. Contractor shall provide containers in sufficient number of appropriate type(s) for
803 the needs of the event as determined by Contractor in cooperation with the event organizer. Containers
804 must be delivered “unassembled” on a pallet, and City will break the containers down after the event
805 and return them to the pallet. Contractor will collect the “unassembled” containers within 24 hours of
806 conclusion of the event. City shall designate a non-profit organization as having primary responsibility
807 for the collection of Recyclables placed into the containers during a CITY-sponsored event. Contractor
808 shall service Containers, as agreed-upon with the event organizer, and deliver Collected materials to the
809 appropriate Approved Facility for Processing and Disposal.

810 **B. Public Outreach Booth**

811 Upon request of either the City Contract Manager or the event organizer, Contractor shall staff a booth
812 or exhibit at the event for the purpose of informing the public about the services and programs provided
813 by Contractor under this Agreement and the benefits of source reduction, reuse, Recycling, and
814 Composting.

815 **C. Reporting**

816 Within fourteen (14) calendar days of the end of the event, Contractor shall submit a report to the City
817 Contract Manager and event organizer. The report should include, at a minimum: the number of event
818 collection stations deployed at the event, the number of collection station monitors, the Tonnage of
819 each material type (i.e., Solid Waste, Recyclable Materials, and Organic Materials) Collected, and a
820 description of the public outreach provided at the event.

821 Contractor may, at its sole discretion and expense, coordinate with local youth, community, or
822 charitable organizations to provide some or all of the required services. Regardless of Contractor’s use
823 of such an organization, Contractor shall be responsible for ensuring that service is provided at the event
824 in a professional and timely manner.

825 For special events that are not designated by the City as one of the six (6) required events, Contractor
826 shall provide the above-described special event services at the request of the event organizer and may
827 negotiate the charges for such services with the event organizer based on the specific needs of the
828 event.

829 **4.7 Transportation of Collected Materials**

830 Contractor shall Transport all Solid Waste, Recyclable Materials, Organic Materials, C&D, or of other
831 materials Collected in the City to the Approved Facilities for the purposes of Processing, or of Disposal by
832 the Disposal Contractor of such materials, as applicable. Contractor shall maintain accurate records of
833 the quantities of Solid Waste, Recyclable Materials, Organic Materials, C&D, and other materials
834 Transported to the Approved Facilities and will cooperate with City in any audits or investigations of
835 such quantities.

836 Contractor plans to Transport Recyclable Materials, Organic Materials, and Source Separated Recyclable
837 C&D to the Newby Island Resource Recovery Park in Milpitas, California. If the Contractor is unable to
838 use said facility then the Contractor shall be responsible for making other Transportation and Processing
839 arrangements. In such event, Contractor shall not be compensated for any additional costs.

840 A site in the City used for material handling activities of any kind will be subject to the City’s strict
841 development permit review process.

842 **4.8 Delivery and Processing of Collected Materials**

843 **A. Delivery of Materials to Approved Facilities**

844 **1. Delivery.** The Contractor is responsible for Transporting Collected Solid Waste, Recyclable
845 Materials, Organic Materials, and Recyclable C&D to the Approved Facility(ies) by direct haul. If
846 the Contractor plans to change its Transport method, Contractor shall obtain written approval
847 from the City prior to making the change; pay all costs; and shall not be reimbursed for any
848 additional costs. The City shall approve the Transport method, and the duration the Transport
849 method is expected to remain in use.

850 **2. Compliance with Facility Rules.** Contractor (or its Subcontractor(s)) shall observe and comply
851 with all regulations in effect at the Approved Facilities and cooperate with the operators thereof
852 with respect to delivery of Solid Waste, Recyclable Materials, Organic Materials, and C&D
853 including directions to unload Collection vehicles in designated areas, accommodating
854 operations and maintenance activities, and complying with Hazardous Waste exclusion
855 programs.

856 **3 Vehicle Tare Weights.** Contractor is solely responsible for ensuring accurate weighing of all
857 Collection vehicles entering Approved Facilities, and of Transfer Vehicles leaving an Approved
858 Transfer Facility owned or operated by Contractor or Subcontractor under this Agreement.

859 Within thirty (30) Days prior to the Commencement Date, Contractor shall ensure that all
860 Collection vehicles used to Deliver Discarded Materials to Approved Facilities owned or
861 operated by Contractor or Subcontractor under this Agreement are weighed to determine
862 unloaded (“tare”) weights. Contractor and Franchise Collector shall electronically record the tare
863 weight and provide a distinct vehicle identification number for each vehicle. Contractor shall
864 provide City with a report listing the vehicle tare weight information upon request. Contractor
865 shall ensure that additional or replacement Collection vehicles are promptly weighed prior to
866 Contractor placing them into service. Contractor shall check tare weights at least annually, or
867 within fourteen (14) Days of a City request, and shall retare vehicles immediately after any
868 major maintenance service.

869 **4. Vehicle Tare Weights for Disposal Contractor’s Approved Facility(ies).** Within thirty (30) Days
870 prior to the Commencement Date, Contractor shall coordinate with the Disposal Contractor to
871 ensure that all Collection vehicles used by Contractor to Deliver Solid Waste to Approved
872 Facilities are weighed to determine unloaded (“tare”) weights. Contractor and Franchise
873 Collector shall electronically record the tare weight, identify vehicle as Franchise Collector
874 owned, and provide a distinct vehicle identification number for each vehicle. Contractor shall
875 provide City with a report listing the vehicle tare weight information upon request. Contractor
876 shall promptly coordinate with Franchise Collector to weigh additional or replacement
877 Collection vehicles prior to Franchise Collector placing them into service. Contractor shall check
878 tare weights at least annually, or within fourteen (14) Days of a City request, and shall retare
879 vehicles immediately after any major maintenance service.

880 **5. Facility Scales at Contractor’s Approved Facility(ies).** For all Approved Facilities owned or
881 operated by Contractor or Subcontractor under this Agreement, Contractor shall maintain State
882 certified motor vehicle scales in accordance with Applicable Law. All scales shall be linked to a
883 centralized computer recording system at each Approved Facility to record weights for all
884 incoming and outgoing materials. Contractor shall provide back-up generator(s) capable of
885 supplying power to the scales in the event of a power outage. Contractor shall promptly arrange
886 for use of substitute portable scales should its usual scales not be available for whatever reason.
887 Pending substitution of portable scales, Contractor shall as necessary estimate by material types
888 the tonnages of Discarded Materials Transported to and from the Approved Facilities, on the
889 basis of Delivery vehicle and Transfer trailer volumes, tare weights, and/or other available
890 facility weight records. These estimates shall take the place of actual weights while scales are
891 inoperable, and shall be identified as estimates in electronic records and reporting. Contractor
892 shall upon City request, weigh and provide tare weights for City vehicles should City directly
893 Deliver Discarded Materials to an Approved Facility owned or operated by Contractor or
894 Subcontractor under this Agreement. Contractor shall test and calibrate all scales in accordance
895 with Applicable Law, but at least every twelve (12) months or upon City request.

896 **7. Records and Reporting.** Contractor shall maintain computerized scale records and reports that
897 provide information including date of receipt, inbound time, inbound and outbound weights of
898 vehicles, vehicle identification number, as further provided in Exhibit C. Contractor shall also
899 maintain computerized scale records and reports providing historical vehicle tare weights for
900 each vehicle and the date and location for each tare weight recorded. If vehicle receiving and
901 unloading operations are recorded on video cameras at the Approved Facilities, Contractor shall
902 make those videos available for City review during the Facility’s operating hours, upon request
903 of the City, and shall provide the name of the driver of any particular load if available.

904 **B. General Processing Requirements**

905 **1. Overview.** Contractor agrees to Transport and deliver all Recyclable Materials, Organic
906 Materials, and Source Separated Recyclable C&D it Collects in the City to the Approved
907 Recyclables Processing Facility, Approved Composting Facility, and Approved C&D Processing
908 Facility, respectively. Residue from the Processing and Composting activities shall be Disposed
909 of by Contractor or the Processing or Composting Facility Subcontractor at a Disposal Facility
910 selected by Contractor or its Subcontractor. A site in the City used for material handling
911 activities of any kind will be subject to the City’s strict development permit review process.

912 **2. Processing Capacity, Residue, and Facility Permits.** Contractor shall secure sufficient capacity
913 to Process all Recyclable Materials, Organic Materials, and Source Separated Recyclable C&D
914 Collected under this Agreement and shall cause the Approved Facilities to Process and/or
915 Compost, and market the Recyclable Materials, Organic Materials, and C&D. Contractor shall
916 provide the City, upon request, with:

- 917 I. Documentation demonstrating the availability of such capacity; and,
918 II. Name, address and owner/operator of any transfer station used to deliver materials to such
919 site.

920 Contractor shall guarantee a residue level of ten percent (10%) or less for Recyclable Materials,
921 ten percent (10%) or less for Organic Materials, and less than ten percent (10%) for Source
922 Separated Recyclable C&D. For the purpose of this residue guarantee, the residue level shall be
923 equal the monthly Tonnage of Processing residue requiring Disposal divided by the total
924 monthly Tonnage of Materials Collected.

925 Contractor shall keep all existing permits and approvals necessary for use of the Approved
926 Facility(ies) in full regulatory compliance or confirm that the owner or operator of such facility
927 does so. Contractor shall, upon request, provide copies of permits and/or notices of violation of
928 permits to the City.

929 **3. Contractor-Initiated Change in Facility.** Contractor may change its selection of one or more of
930 the Approved Facility(ies) following City’s written approval, but Contractor shall not be
931 compensated for any increased Transportation and Processing costs. Contractor will bear any
932 increased Transportation and Processing costs associated with a Contractor-initiated change in
933 the Approved Facility(ies). In such case, Contractor shall guarantee the same net Processing
934 Cost specified in Exhibit N or shall increase the net Processing Costs (if the amount is a net
935 revenue) associated with the use of Processing and/or Composting facility(ies) different from
936 the Approved Facilities. If Contractor elects to use a Processing and/or Composting facility(ies)
937 that is different than Approved Facility(ies), it shall request written approval from the City sixty
938 (60) calendar days prior to use of the site and obtain the City’s written approval no later than
939 ten (10) calendar days prior to use of the site.

940 **4. Inability to Use Approved Facility.** If Contractor is unable to use an Approved Facility due to an
941 emergency or sudden unforeseen closure of the Approved Facility, Contractor may use an
942 alternative Processing or Composting facility provided that the Contractor provides verbal and
943 written notice to the City and receives written approval from the City at least twenty-four (24)
944 hours prior to the use of an alternative Processing or Composting facility. The Contractor’s
945 written notice shall include a description of the reasons the Approved Facility is not feasible and
946 the period of time Contractor proposes to use the alternative facility. Contractor shall not be

947 compensated for any increased Transportation and Processing costs and shall guarantee the net
948 Processing Cost specified in Exhibit N or shall increase the net Processing Costs (if net revenues)
949 associated with the use of Processing or Composting facility(ies) different from the Approved
950 Facility.

951 **5. Marketing.** The Contractor shall be responsible for marketing materials it Collects in the City
952 including: (i) Recyclable Materials, (ii) Organic Materials, and (iii) Source Separated Recyclable
953 C&D. Contractor shall be compensated by the end users/market place for such materials at no
954 less than fair market value. With regard to Organic Materials, Contractor shall market the
955 resulting Compost Product to agricultural growers or other interested parties. Organic Materials
956 shall be used for Compost or mulch.

957 Upon request, Contractor shall provide proof to the City that all Recyclable Materials, Organic
958 Materials, and Source Separated Recyclable C&D (less residue) Collected by Contractor are
959 marketed for Recycling or reuse in such a manner that materials shall be considered as Diverted
960 in accordance with the State regulations established by the AB 939 and AB 341. All residual
961 material from the Processing and Composting activities that is not marketed for use shall be
962 accounted for as Disposal Tonnage at a permitted Disposal Facility. No Recyclable Materials,
963 Organic Materials, or C&D shall be transported to a domestic or foreign location if Solid Waste
964 Disposal of such material is its intended use.

965 Upon request, Contractor shall provide a summary of its marketing plan and end markets for
966 Recyclable Materials, Organic Materials, and Source Separate Recyclable C&D and submit it to
967 the City for review and approval. Contractor shall provide City with a list of broker/buyers it has
968 used during the preceding twelve (12) months, if requested by City. If Contractor becomes
969 aware that a broker or buyer has illegally handled or Disposed of material generated by the City
970 or elsewhere, Contractor shall immediately inform the City and terminate its contract or
971 working relationship with such party.

972 **6. No Disposal.** No Collected materials other than Solid Waste shall be deposited for Disposal. No
973 materials Collected other than Solid Waste shall be used as Alternative Daily Cover or
974 Alternative Intermediate Cover, or used for Beneficial Reuse purposes except C&D Processing
975 residue which may be used for Beneficial Reuse purposes without prior written authorization by
976 the City and which permission may be terminated at any time upon notice by City.

977 If for reasons beyond its reasonable control, Contractor (or its Subcontractor(s)) believes that it
978 cannot Divert the Recyclable Materials, Organic Materials, or Source Separate Recyclable C&D
979 from Disposal, then it shall prepare a written request for approval to Dispose of such material.
980 Such request shall contain the basis for Contractor's belief (including, but not limited to,
981 supporting documentation), describe the Contractor's efforts to arrange for the Diversion from
982 Disposal of such material, the period required for such Disposal, the incremental net cost
983 increases or net cost savings (giving account to the value from the sale of the Recyclable
984 Material, Organic Materials, or Recyclable C&D) resulting from such Disposal, and any additional
985 information supporting the Contractor's request. In addition, the request shall describe the
986 Contractor's proposed interim plans for implementation while the City is evaluating its request.
987 If the City objects to the interim plans, the City shall provide written notice to the Contractor
988 and request an alternative arrangement. The City shall consider the Contractor's request and
989 inform Contractor in writing of its decision within sixty (60) calendar days. If the City approves
990 such request, any difference in the net cost of such Disposal compared to Diversion shall be
991 adjusted in accordance with Section 8.3. Depending on the nature of the Contractor's request,

992 the City may extend the sixty (60) day calendar period, at its own discretion, to provide more
993 time for evaluation of the request and negotiation of an acceptable arrangement with the
994 Contractor.

995 **7. Allocation Method.** Contractor shall develop a method of allocating Recyclable Materials,
996 Organic Materials, and Source Separated Recyclable C&D Diverted by materials type and
997 Processing residue to Contractor and the City. The allocation method shall be the same as that
998 used to report Solid Waste Disposal to the State, and shall be certified by an authorized
999 personnel or officer of that Approved Facility owner or operator. Contractor shall Collect
1000 materials generated in the City in Collection Vehicles separately from other materials generated
1001 outside the City and shall weigh each vehicle so that the Tonnage of materials Collected in the
1002 City can be documented on a per-load basis with supporting documentation (such as a certified
1003 weight ticket or tag).

1004 Periodically, the Contractor shall review its marketing records to calculate the volume of
1005 Recyclable Materials received at the Approved Recyclable Materials Processing Facility and
1006 marketed to determine the percentage of various Recyclable Materials (e.g., glass, newspaper,
1007 cardboard, PET, HDPE, aluminum, etc.) and the City’s residue level. The percentages determined
1008 from the review of marketing records shall be used to allocate the total Tonnage of Recyclable
1009 Materials Collected in the City into various categories of Recyclable Materials and residue. This
1010 same review of marketing records and allocation of Tonnage by material type shall be
1011 performed for Organic Materials and Source Separated Recyclable C&D.

1012 **C. Recyclables Processing**

1013 Below is information about the Approved Recyclables Processing Facility selected by the Contractor:

1014 Facility Name: Newby Island Resource Recovery Park

1015 Owner: Browning Ferris Industries of California, Inc.

1016 Operator: Browning Ferris Industries of California, Inc.

1017 Address: 1601 Dixon Landing Road, Milpitas, CA

1018 Contact Person and telephone number: Evan Boyd (408) 586-2281

1019 Allocation Method: Inbound ton pro-rata share or other City/Contractor approved method

1020 **D. Organic Materials Processing**

1021 **1. Approved Organic Materials Processing Facility.** Below is information about the Approved
1022 Organic Materials Processing Facility selected by the Contractor for Processing of Food Scraps
1023 and Yard Trimmings:

1024 Facility Name: Newby Island Resource Recovery Park

1025 Owner: Browning-Ferris Industries of California, Inc.

1026 Operator: Browning-Ferris Industries of California, Inc.
1027 Address: 1601 Dixon Landing Road, Milpitas, CA
1028 Contact Person and telephone number: Evan Boyd (408) 586-2281
1029 Allocation Method: Inbound ton pro-rata share or other City/Contractor approved method

1030 **2. Contingent Use of the Approved Organics Processing Facility.** Contractor use of the Approved
1031 Organics Processing Facility for Processing of Organic Materials Collected under this Agreement
1032 is contingent on the following:

- 1033 I. The Composting process at the Approved Organics Processing Facility shall be fully
1034 converted from open windrows to the “aerated static pile” (ASP) processing method,
1035 and demonstrated to be fully operational by December 31, 2017. The ASP system relies
1036 on forced air rather than frequent physical turning of Composting material. Following
1037 initial removal of contaminants and shredding/grinding, Organics Materials placed in the
1038 ASP piles and a layer of finished compost or ground wood chips will be placed over the
1039 material during Composting to reduce emissions and filter any potential odors coming
1040 from the piles.
- 1041 II. Once the revised process is operational, Contractor shall notify the City Contract
1042 Manager of completion and City Contract Manager may require a tour of the facility,
1043 which may include, but is not necessarily limited to: other City staff, members of the
1044 City Council, interested members of the public, and the Local Enforcement Agency staff
1045 responsible for the facility.
- 1046 III. With completion of the shift to use of the ASP system, the Composting area shall be
1047 reduced by at least one-third (1/3rd), and may be reduced by more, relative to the area
1048 required for the current open windrow Composting system.
- 1049 IV. In the event that the ASP process is not fully operational by December 31, 2017,
1050 Contractor shall, no later than January 1, 2018, commence to Transfer all Collected
1051 Organic Material under this Agreement for Processing at an Alternative Facility, at no
1052 added cost to City, until such time as the ASP process is demonstrated to be fully
1053 operational. Contractor shall by December 15, 2017 provide City notice of the status of
1054 the ASP system, and the name and location of a Contractor-designated Alternative
1055 Facility, if one will be needed.
- 1056 V. Upon completion of the conversion to the ASP system, Contractor shall reduce the total
1057 amount of Organic Material accepted for Processing at Newby Island to 100,000 tons
1058 annually by December 31, 2017, not including material which is solely Processed at the
1059 materials recovery facility to separate Organic Materials from other streams and deliver
1060 that Organic Material to another facility for Processing. Contractor shall maintain a
1061 maximum accepted tonnage of 100,000 tons annually through the Term.
- 1062 VI. Failure to comply with any one of the requirements of this Section 4.8.D.2 will result in
1063 Liquidated Damages of \$1,000/day for each day of the violation. If such failure persists
1064 for more than 90 days past the target date, or at any point after December 31, 2017,
1065 City may, at its sole discretion, initiate termination of the Agreement for cause, as
1066 provided in Section 10.1.F. Upon initiation of termination for this purpose, Contractor
1067 shall pay the City the lesser of: 1) the City’s actual costs incurred for conducting another

1068 procurement process; or, 2) four hundred twenty five thousand dollars (\$425,000). In
1069 the event that the City terminates the Agreement on the basis of this Section, the City
1070 shall specify the effective termination date, which may be no less than 90 days from the
1071 date of notice.

1072 **3. Organic Materials Processing Standards.** The following Processing standards shall be met by
1073 the Approved Composting Facility:

1074 I. Pre-processing activities shall include, at a minimum, the inspection for and removal of
1075 Hazardous Waste and removal of the majority of plastic bags which Commercial
1076 Customers used to store Organic Materials.

1077 II. Composting shall be accomplished by the use of recognized Composting methods, which
1078 have been demonstrated to be able to consistently produce stable, mature Compost
1079 Product that is suitable for general purpose use, similar to the U.S. Composting Council's
1080 Class 1 rating.

1081 III. Post-composting processing activities shall include screening to remove plastics and
1082 other contaminants from the Compost Product.

1083 IV. The Organic Materials Processing and Composting activities shall maintain an average
1084 monthly residue level less than ten percent (10%) where the residue level shall be equal
1085 to the monthly Tonnage of Processing or Composting residue requiring Disposal divided
1086 by the total monthly Tonnage of Organic Materials Collected.

1087 V. All Organic Materials shall be Processed and marketed for use as Compost, mulch, or
1088 soil amendment and none shall be Disposed, used as Alternative Daily Cover or
1089 Alternative Intermediate Cover, or used for Beneficial Reuse purposes. In order to make
1090 productive use of Compost "overs", Contractor may use no more than ten percent (10%)
1091 by weight of the total inbound tonnage of Organic Materials received at the Approved
1092 Compost Facility as Alternative Daily Cover.

1093 **3. Product Use by City.** Contractor shall offer Compost Products to the City at a price that is
1094 limited to the cost incurred by the Contractor to purchase and Transport of such material to the
1095 City. If the City elects to purchase and back-haul finished Compost Products, the Contractor will
1096 collaborate with the City to organize and schedule up to two (2) neighborhood compost "give-
1097 aways" (such as spring garden festivals) during the year ,up to a maximum of one-thousand
1098 (1,000) cubic yards of Compost Products per year.

1099 **E. C&D Processing**

1100 **1. Approved Facility.** Below is information about the Approved C&D Processing Facility selected by
1101 the Contractor for Processing of Source Separated Recyclable C&D:

1102 Facility Name: Newby Island Resource Recovery Park

1103 Owner: Browning Ferris Industries of California, Inc.

1104 Operator: Browning Ferris Industries of California, Inc.

1105 Address: 1601 Dixon Landing Road, Milpitas, CA

1106 Contact Person and telephone number: Evan Boyd (408) 586-2281

1107 Allocation Method: Inbound ton pro-rata share or other City/Contractor approved method

1108 **F. Insurance, Indemnifications and Performance Standards**

1109 If Contractor uses an Affiliate Subcontractor to provide transfer, Processing, and/or Composting
1110 services, or enters into any contract, agreement or understanding with a party for services related to
1111 Recyclable Materials Processing and marketing, Organic Materials Processing, Composting, C&D
1112 Processing and marketing, and marketing, or Transfer Station services, Contractor shall provide that
1113 terms and conditions (such as insurance requirements, indemnifications, and Processing, Composting,
1114 marketing performance, and residue guarantees) of any contract, agreement, or other understanding
1115 Contractor has with such party can be enforced by the City as an additional insured or third party
1116 beneficiary thereof in the same manner provided in Article 9 and in a manner reasonably satisfactory to
1117 City.

1118 If Contractor, an Affiliate, or Subcontractor owns or operates the Approved Recyclable Materials
1119 Processing Facility, Approved Composting Facility, or Approved C&D Processing Facility, Contractor shall
1120 include City as an additional insured on liability policies and defend and indemnify City in a manner
1121 satisfactory to City, and provide that any materials recovery and marketing performance standards or
1122 guarantees made to any other facility customers are made to City as well, including obligations such as
1123 recovered product and Compost Product quality guarantees and limits on the residue level.

1124 Contractor shall demonstrate compliance with the requirements of this paragraph on or before the
1125 Commencement Date of this Agreement.

1126 **G. Compliance with Applicable Law**

1127 Contractor (or its Affiliate or Subcontractor(s)) warrants throughout the Term that the Approved
1128 Facilities (excluding the Approved Transfer Facility) selected by Contractor are respectively authorized
1129 and permitted to accept Recyclable Materials, Organic Materials, and C&D in accordance with Applicable
1130 Law and is in full compliance with Applicable Law. Contractor shall: (1) verify compliance for the
1131 Approved Facilities (that neither it nor its Affiliates own) by contacting the local enforcement agency and
1132 other regulatory agencies having jurisdiction over the Approved Facilities at least quarterly; and (2) upon
1133 City direction, shall promptly provide City with copies of the Approved Facilities' permits or notice of
1134 violations to City.

1135 **H. Transportation and Processing Costs**

1136 All costs associated with Transporting Discarded Materials and street sweepings to, and Processing of
1137 Discarded Materials and street sweepings at the Approved Facilities shall be paid by Contractor.

1138 **I. Weighing and Record Requirements**

1139 Contractor shall ensure that all Solid Waste, Recyclable Materials, Organic Materials, and C&D are
1140 weighed upon delivery to the Approved Facilities, and all weight and related delivery information
1141 (including date, time, material type, route and truck number) ("Delivery Data") is recorded. Contractor

1142 shall provide City the name of any driver of any identified delivery promptly upon request by City. If
1143 vehicle receiving and unloading operations are recorded on video cameras at any Approved Facility,
1144 Contractor shall make, or shall use its best efforts to arrange with the facility operator if other than
1145 Contractor to make, those videos available for City review during the facility’s operating hours, upon
1146 request of the City.

1147 **J. City Option to Direct Solid Waste for Processing**

1148 Contractor shall within sixty (60) days of a written request, provide for Processing of City-designated
1149 Solid Waste at the Approved Solid Waste Processing Facility. Solid Waste Processing shall meet the
1150 provisions of this Section 4.8. City shall provide Disposal Contractor with notice of such request as
1151 provided in the City’s Disposal agreement. Contractor shall coordinate with Disposal Contractor as
1152 necessary regarding City-designation of Solid Waste for Processing. City may designate for Processing
1153 some or all of Solid Waste Collected from Carts, Bins, Debris Boxes and/or Compactors, however Solid
1154 Waste Collected from a given route shall be designated either for Disposal or for Processing, but not
1155 both.

1156 Contractor has reserved up to 7,200 tons of processing capacity for the City at a rate of one hundred
1157 fifteen dollars per ton (\$115/ton). Prior to implementation of such service, City and Contractor shall
1158 consider an adjustment to Contractor’s compensation to reflect the reduction in on-route time required
1159 of Contractor, the tipping fee for Solid Waste Processing, the reduced tipping fees for Disposal, and the
1160 cost to deliver Processing Residue from the Approved Solid Waste Processing Facility to the Designated
1161 Disposal Facility.

1162 Contractor may not commence or cease Processing of Solid Waste without prior City direction or
1163 approval. City may within sixty (60) days written notice require cessation of some or all of approved
1164 Solid Waste Processing, with a commensurate adjustment to the then-current Maximum Rates to reflect
1165 net costs for Transport and Disposal of Solid Waste, as applicable. City reserves the right to require
1166 modified reporting requirements if necessary to understand the impact of such Processing on Disposal
1167 and Diversion.

1168 **4.9 Public Outreach Efforts**

1169 The public outreach activities included in the scope of services provided by Contractor under this
1170 Agreement are described in Exhibit B. Outreach activities collectively include leading development and
1171 production of a range of types of print material, maintaining a website presence, and public meetings
1172 and tours. Contractor’s outreach strategy shall focus on improving Customer understanding of the
1173 benefits of and opportunities for source reduction, reuse, Recycling, and Composting. In general,
1174 Contractor-provided outreach should: (i) inform Customers about the services that are provided under
1175 this Agreement with specific focus on describing the methods and benefits of source reduction, reuse,
1176 Recycling, and Composting; (ii) instruct Customers on the proper method for placing materials in
1177 Containers for Collection and setting Containers out for Collection with specific focus on minimizing
1178 contamination of Recyclable and Organic Materials; and, (iii) clearly define Excluded Waste and inform
1179 Customers of the hazards of such materials and the opportunities for its proper handling.

1180 Contractor, and its Subcontractors, shall cooperate and coordinate with the City Contract Manager or
1181 their designee regarding outreach activities to minimize duplicative, inconsistent, or inappropriately
1182 timed outreach campaigns. Contractor is aware that Santa Clara County conducts ongoing education

1183 regarding a variety of solid waste and related programs.

1184 Contractor shall allow the City Contract Manager a minimum of five (5) Business Days to review, request
1185 modifications to, and approve the content for all outreach materials including, but not limited to: print,
1186 radio, television, or internet media before publication, distribution, and/or release. City may require
1187 inclusion of specific City information on print and electronic outreach materials.

1188 The City shall maintain a budget for graphic design, printing, advertising placements, mailing and door-
1189 to-door distributions of public outreach materials. Contractor staff shall lead development (writing,
1190 graphic design), including working with graphic designers, translators and other outreach support
1191 services as designated by the City. City staff shall review drafts and facilitate printing using the City's
1192 contractor.

1193 Contractor shall provide City prior right of review and approval for Contractor's proposed inclusion of
1194 the City name or City staff contact information on print materials or in electronic media.

1195 Contractor shall provide City notice by phone and email no less than one (1) Business Day prior to
1196 releasing any information to the media regarding the Agreement or the services provided under it.

1197 Contractor shall use appropriate social media methods tailored to Milpitas collection programs to
1198 perform outreach (i.e. Facebook, Instagram). Regular communication shall include diversion education,
1199 collateral, advertisement of special events such as compost giveaways, holiday closings, etc.

1200 As part of the Contractor's third quarterly report (required by Section 6.2 of this Agreement) for the
1201 Rate Period, Contractor shall work collaboratively with City to submit an Annual Plan outlining its public
1202 outreach efforts for the coming Rate Period. For each service audience, the plan shall list each public
1203 outreach piece (e.g., newsletters, bill inserts, flyers, newspaper advertisements, etc.) to be prepared,
1204 the purpose of the piece, the key subject(s) to be covered, and the anticipated date of issuance. In
1205 addition, the plan shall list all events the Contractor plans to attend and the public outreach it intends to
1206 provide at such event. The City shall review and approve the Annual Plan. It is recognized that changing
1207 conditions exist and that plan elements may need to be modified, such as add or delete public events
1208 and alter the manner and timing of outreach. In addition, Contractor is responsible for producing a
1209 Quarterly Schedule of outreach activities two weeks in advance of each quarter for City review,
1210 comment and approval.

1211 **4.10 Multi-Family/Commercial Technical Assistance**

1212 Contractor shall provide comprehensive recycling technical assistance to Multi-Family and Commercial
1213 Customers with the primary purpose of helping Customers increase Recycling and Organics Collection
1214 services and to assist them in complying with the requirements of AB 341 and AB 1826. The technical
1215 assistance services shall include at least one (1) annual meeting with each property manager/owner and
1216 on-site assessments of the Multi-Family and Commercial premises to improve Recycling and Organics
1217 Collection program participation. During the site visits, Contractor will be required to provide and/or
1218 restock posters, "how to" guides, personal recycling baskets/bags for Multi-Family tenants, and any
1219 other appropriate materials and provide new signage for the Recycling and Organics Containers if
1220 necessary. This program shall also involve preparation and presentation of reports to the City on the
1221 Contractor's efforts and results of the technical assistance efforts.

1222 Contractor shall meet with Multi-Family and Commercial premises as often as is necessary to conduct
1223 documented waste assessments, visual waste assessments and to provide general technical assistance
1224 to ensure these premises are diverting as much material as possible from the landfill. Contractor shall
1225 conduct documented waste assessments at Multi-Family and Commercial premises at the request of the
1226 property manager, owner, operator, at the City’s request, or as deemed necessary by the Contractor.
1227 Contractor shall coordinate and conduct informational meetings on services offered with Home Owners
1228 Associations (HOAs), tenants and other community groups at the request of the HOA, community group,
1229 at the City’s request, or as deemed necessary by the Contractor. Contractor shall produce and distribute
1230 brochures, handouts, fliers, newsletters and other outreach materials designed to inform property
1231 managers, owners, operators and tenants on the services offered. Contractor shall update said outreach
1232 materials if and when diversion programs and services are updated or changed.

1233 Contractor shall implement a Multi-Family Recycling Ambassador program where Contractor shall
1234 identify, recruit, educate and train on-site volunteers to promote diversion programs and services.
1235 Contractor shall at least two (2) times per year develop and produce a newsletter specifically targeted at
1236 Multi-Family tenants with information on recycling, organics, bulky item collection and promotion of a
1237 Multi-Family Recycling Ambassador program. Contractor shall develop and produce Recycling Welcome
1238 Kits for Multi-Family residents to be distributed by property managers.

1239 Contractor shall produce and distribute How-To Instruction Guides to Commercial premises. How-To
1240 Instruction Guides will be mailed or delivered in person to Commercial premises initiating service, upon
1241 request or as deemed necessary by the Contractor. Contractor shall produce and distribute via mail or in
1242 person at least one (1) time per year an Annual Services Brochure designed to inform and educate
1243 Commercial premises on diversion programs and collection services. Contractor shall at least four (4)
1244 times per year develop and produce a newsletter specifically targeted at Commercial premises with
1245 information on Recyclable Materials, Organic Materials and Food Scraps collection programs.

1246 All outreach materials for Multi-Family and Commercial premises will be developed and distributed in
1247 accordance with Section 4.9 of this Agreement.

1248 Contractor shall ensure containers at Multi-Family and Commercial premises are properly color-coded
1249 and labeled with labels containing images and text that describe the appropriate materials to be
1250 deposited. Contractor shall ensure that Multi-Family and Commercial premises have adequate
1251 Recyclable Materials, Yard Trimmings and/or Organic Materials collection service and capacity.

1252 **4.11 Billing**

1253 Beginning with the Effective Date, Contractor shall meet with City billing staff as requested to ensure an
1254 orderly and smooth transition from City to Contractor billing for Single-Family Residential services.

1255 Contractor shall bill all Customers at Rates not to exceed Rates approved by City, and Contractor shall be
1256 solely responsible for collecting billings. Rates shall be set by the City in accordance with Article 8. Billing
1257 shall be performed on the basis of services rendered and this Agreement shall create no obligation on
1258 the part of any Person on the sole basis of the ownership of property.

1259 Contractor’s website shall provide Customers with the ability to pay their bills through an electronic
1260 check or credit card and include the ability for Customer billings to be automatically charged on a
1261 recurring basis. Contractor shall prepare, mail, and collect bills from Customers who decline to use such

1262 internet-based billing system. Contractor shall make arrangements to allow Customers to pay bills by
1263 cash, check, electronic check, money order, and credit card. Contractor shall also provide a minimum of
1264 one (1) convenient drop-off location within the Service Area to be available on Business Days from 8:30
1265 AM to 5:00 PM for Customers to directly bring payments. Contractor shall also coordinate with City staff
1266 to collect Customer payments from a drop-off box to be located at the City Hall first floor information
1267 desk. Such service shall be provided for up to two years from the Commencement Date, as needed
1268 during the transition to Contractor billing.

1269 Specific provisions for Customer billing include:

- 1270 1. All Single-Family Customers must receive a single bill.
- 1271 2. Commercial Customers that share service are solely responsible for determining which
1272 participating Customer will be billed and which will pay.
- 1273 3. Mobile homes complexes may request per-unit billing of residents.
- 1274 4. For mixed use complexes with Residential and Commercial Customers, Contractor shall be solely
1275 responsible for determining which party will receive and pay bills.
- 1276 5. Verifying and maintaining records for residential properties that do not receive Yard Trimmings
1277 service and are not billed the Yard Trimmings service fee.

1278 If Customer requests a change in Service Level that results in a lower Rate, Contractor shall adjust
1279 Customer's billing amount within seven (7) days of the date Customer requested the change regardless
1280 of whether or not Contractor delivers the appropriate Containers or modifies the Service Level within
1281 that timeframe. However, If Customer requests change in Service Level that results in a higher Rate,
1282 Contractor shall adjust the Customer's billing amount within seven (7) days of the effective date of the
1283 actual change in Service Level. Should a Multi-Family Customer request a change in service as provided
1284 in Section 4.2, Contractor shall inform City for approval prior to making such change.

1285 Contractor shall maintain copies of all billings and receipts, each in chronological order, for the Term of
1286 this Agreement, for inspection and verification by the City Contract Manager at any reasonable time but
1287 in no case more than thirty (30) calendar days after receiving a request to do so.

1288 Contractor shall be responsible for collection of payment from Customers with past due accounts ("bad
1289 debt"). Contractor shall make reasonable efforts to obtain payment from delinquent accounts through
1290 issuance of late payment notices, telephone requests for payments, and assistance from collection
1291 agencies.

1292 If a residential Customer's payment becomes more than sixty (60) days past due, Contractor may
1293 request approval from the City to stop the Customer's service. If the City approves such request, the
1294 Contractor shall provide the Customer thirty (30) days written notice of its intent to stop the service. In
1295 no case shall service be stopped prior to ninety (90) days following the initial Billing date. After service
1296 has been stopped, Contractor may charge the Customer a fee to restart service at a Rate not to exceed
1297 the City-approved Maximum Rate, and may require the Customer to pay all amounts due (including late
1298 payment fees), and/or make a deposit in advance equal to two (2) months of service, as a condition to
1299 recommencing service. If a Customer's service is stopped, Contractor shall provide written notification
1300 to the City within twenty-four (24) hours and shall include in the notice to City the Customers' name and
1301 address, original date of billing, date of delinquency notice, and amount due. The City may involve their
1302 code enforcement officer in the assessment of public health and safety concerns at a Customer's

1303 premises. All notifications and correspondence issued by Contractor shall be directed to the Customer
1304 and the owner of the property if the owner is a different Person or entity than the Customer.

1305 Contractor shall verify Customer’s eligibility for the Senior Rate by reviewing subscribers’ driver’s license
1306 or birth certificate and proof of residency. Contractor shall also assist the City with administration of
1307 any other special Rate programs such as it may establish.

1308 **4.12 Customer Service Program**

1309 **A. Program Requirements**

1310 **1. Availability of Representatives.** A representative of the Contractor who is knowledgeable of
1311 the service area, services, and Rates shall be available from 9 a.m. to 5 p.m. Monday through
1312 Friday to communicate with the public in person and by telephone. Contractor shall maintain a
1313 local or toll-free telephone number which it shall publicize. Contractor shall also maintain an
1314 after-hours telephone number allowing twenty-four (24) hour per day access to Contractor’s
1315 management by City Contract Manager in the event of an emergency involving Contractor’s
1316 equipment or services including, but not necessarily limited to, fires, blocked access, or property
1317 damage.

1318 **2. Telephone.** Contractor shall maintain a telephone system in operation from 7 a.m. to 6 p.m.
1319 and shall have sufficient equipment in place and staff available to handle the volume of calls
1320 experienced on the busiest days and such telephone equipment shall be capable of recording
1321 the responsiveness to calls. Contractor shall provide a dedicated phone number for use by City
1322 Customers. Recording of Contractor’s responsiveness to calls shall include, at a minimum, all
1323 items included in the “Service Quality and Reliability” and “Customer Service” performance
1324 standards listed in Exhibit E. An answering machine or voicemail service shall record Customer
1325 calls and voice messages between 6:00 p.m. and 7:00 a.m.

1326 **3. Website.** Contractor shall develop and maintain a website (or webpage) that is specifically
1327 dedicated to the City to provide customers with detailed service information and Rates. The
1328 website or webpage shall be accessible by the public. In addition, Contractor’s website shall
1329 include all public outreach materials described in Exhibit B and provide the public the ability to
1330 e-mail Contractor questions, service requests, or complaints. Contractor shall update the
1331 website regularly so that information provided is current.

1332 **4. Training.** All Persons involved in providing Customer service and/or billing support to Customers
1333 shall be well educated on and knowledgeable of all aspects of the City’s Collection services,
1334 Rates, and other relevant information.

1335 **5. Translations.** Contractor shall utilize commercial language translation services where reasonably
1336 available; if commercial language translation services are not used, shall have representatives
1337 reasonably available (through employees or subcontractors) during normal business hours who
1338 are fluent in three languages other than English

1339 **B. Service Requests, Compliments, Complaints**

1340 Contractor shall maintain a minimum of three (3) dedicated Customer Service Representatives (CSR’s) at
1341 all times dedicated to services provided to City. Call center shall be within a fifty (50) mile radius of the

1342 City at all times during the term of this Agreement. Contractor shall be responsible for the prompt and
1343 courteous attention to, and prompt and reasonable resolution of, all Customer service requests and
1344 complaints. Contractor shall record in a separate log, approved as to form by City Contract Manager, all
1345 complaints, noting the name and address of complainant, date and time of complaint, nature of
1346 complaint, and nature and date of resolution. The Contractor shall retain this complaint log for the
1347 Term. Upon request by the City Contract Manager, Contractor shall compile and submit a summary
1348 statistical table of the complaint log.

1349 Contractor shall respond to all complaints received within twenty-four (24) hours, weekends and
1350 Holidays excluded. In particular, if a complaint involves a failure to Collect Solid Waste, Recyclable
1351 Materials or Organic Materials from a Premises in the City, Contractor shall Collect the material in
1352 question within twenty-four (24) hours of receipt of the Complaint, provided that Generator has
1353 properly placed materials for Collection.

1354 Contractor shall ensure its call center has sufficient technical and staffing capability to process the
1355 increased volume of calls that will occur prior to and subsequent to the Commencement Date, and
1356 during the start-up or expansion of services such as those required for compliance with AB 1826.

1357 For a minimum of sixty (60) days prior to and sixty (60) days subsequent to the Commencement Date,
1358 Contractor shall ensure availability of such additional CSR's as are needed to address the volume of calls
1359 promptly and efficiently. Such CSRs shall be fully trained to provide accurate information consistent with
1360 the services to be provided under the terms of the Agreement.

1361 Customer service performance standards and penalties are specified in Exhibit E.

1362 **C. Customer Satisfaction Assessment**

1363 Contractor shall conduct a statistically reliable quantitative and qualitative commercial customer
1364 satisfaction survey on a bi-annual basis during odd-numbered years. The results of the survey shall be
1365 reported to the City within 60 days after the surveys have been completed. The design of the survey
1366 shall be to the satisfaction of the City but may include an insert with the Solid Waste bill. Contractor's
1367 survey report is due no later than December 15 of odd-numbered years. The Contractor's annual report
1368 to the City as outlined in Section 6.2 of this Agreement, shall include a summary of the survey results, a
1369 description of service improvement goals for the next year as identified by the City based on the survey
1370 findings, identification of tasks required of Contractor during the next year to accomplish the service
1371 improvement goals, and a report of the Contractor's accomplishments for last year's service
1372 improvement goals.

1373 **4.13 City Web-Based Access to Information**

1374 Contractor shall establish a web-based system that enables the City to access Contractor's customer
1375 service and billing system to view Customer records including service information, Rate, call history, etc.,
1376 on a twenty-four (24) hour, real-time basis. Contractor shall also provide web-based access to street
1377 sweeping information including but not limited to completion of callbacks, damage to property,
1378 complaints and daily reports as provided in Sections 4.15.B.3, 4.15.D.11, 4.15.E.2, and 4.15.F.2,
1379 respectively.

1380 The City will receive read-only, real-time access to the Customer Information System (CIS) via a Virtual

1381 Private Network (VPN) system which will be coordinated between the Contractor personnel and City
1382 personnel. Basic customer account screens will be available for the purpose of execution of queries or
1383 reports or on-line viewing of current and historical data. City's access to the CIS using the VPN shall
1384 include the ability to:

- 1385 • View all financial information on customer bills and payments to CIS
- 1386 • Use the CIS to view customer address, contact information, service level, driver and customer
1387 service notes, and rates
- 1388 • Use the CIS to create customized queries and generate customized reports

1389 Contractor shall provide:

- 1390 • Technical support to the City necessary to access the CIS and perform the functions listed
1391 above at no additional cost to the City
- 1392 • Support for the addition and maintenance of City users of the CIS
- 1393 • New City user accounts within two (2) business days and reset passwords within one (1)
1394 work day of the City's request

1395 Any data not available on a real-time basis will be provided to City staff within 3 Business Days.

1396 **4.14 Diversion Requirements; AB 939, AB 341, AB 1826**

1397 **A. General**

1398 Contractor shall perform all education, outreach, monitoring, and shall prepare required reports for City
1399 review and comment for all Commercial and Multi-Family properties as required by AB 939, AB 341, and
1400 AB 1826. These activities shall, at a minimum include providing outreach to Multi-Family and
1401 Commercial Customers regarding the mandatory Diversion requirements of AB 341 and AB 1826;
1402 notifying non-compliant Multi-Family and Commercial Customers at least semi-annually; and providing
1403 the City information regarding Customer compliance with the mandates.

1404 The Contractor shall provide all necessary reporting data requested by the City relating to the City's
1405 compliance requirements pertaining to AB 939, AB 341, AB 1826, and SB 1383 as it affects the County's
1406 Integrated Waste Management Plan and the City's SRRE and requirements of CalRecycle Annual
1407 Reporting.

1408 The Contractor shall cooperate in activities requested by the City to measure diversion of Solid Waste
1409 from landfills including, but not limited to, providing a location for conducting waste sorting at the
1410 Contractor's facility, and re-routing trucks on a temporary basis to facilitate composition analysis. Such
1411 reports shall include, but not necessarily be limited to, throughput, recovery rates per material type,
1412 residue, costs, Recyclable Material commodity values, and final disposition of Recyclable Materials and
1413 Organic Materials. The Contractor shall also supply any other information reasonably requested by the
1414 City Contract Manager to meet State, Federal, or County regulatory requirements as those requirements
1415 may be amended from time to time.

1416 The Parties are aware that SB 1383 the Short-Lived Climate Pollutants Act of 2016 became law on
1417 September 15, 2016 (an act to add Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and
1418 Safety Code, and to add Chapter 13.1 [commencing with Section 42652] to Part 3 of Division 30 of the
1419 Public Resources Code, relating to methane emissions). The Parties agree that the passage of this law
1420 and the regulations required under it will not represent a Change in Law because this Agreement
1421 provides for the programs, education, outreach, and reporting required in the statute. In the event that
1422 the City requests Contractor be responsible for providing enforcement for this law under the
1423 Agreement, that shall be considered a City-directed Change in Scope and Contractor shall be entitled to
1424 appropriate compensation for such additional services.

1425 **B. Diversion Monitoring**

1426 **1. Target Diversion Rate.** Contractor shall provide, as part of its monthly report, documentation
1427 substantiating that it is Processing a minimum target percentage of the total materials Collected
1428 of the total materials Collected. For Rate Periods One through Four, the minimum target
1429 percentage shall be thirty four percent (34%). Starting in Rate Period Five the parties shall meet
1430 and confer to determine the target for the remaining term of the Agreement, the minimum
1431 target percentage shall be the greater of: 1) forty percent (40%); or, 2) the highest annual
1432 percentage achieved during Rate Periods One through Four.

1433 **2. Monthly Diversion Monitoring.** Contractor shall monitor performance against the minimum
1434 target percentage on a monthly basis. If the percentage is less than the minimum target
1435 percentage in any quarter of any Rate Period as specified in Section 4.14.B.1, Contractor shall
1436 notify City and meet and confer with the City Contract Manager within 15 days after Contractor
1437 submits its monthly report for the last month of the quarter. At the meeting, Contractor will
1438 present its current and projected Diversion rates, progress to date in achieving Diversion rate
1439 goals including specific detail by customer type and stream or City area or location as applicable,
1440 factors enhancing or inhibiting progress, and steps that can be taken to keep the Diversion rate
1441 at or above the minimum Diversion rate and to increase it beyond that level. Such steps may
1442 include, but not be limited to, increased public education beyond that included in this
1443 Agreement (to the extent Contractor demonstrates it is in full compliance with all outreach and
1444 education and technical assistance requirements of the Agreement), new or expanded
1445 programs, revision or enhanced enforcement of the City code, alternative processing
1446 arrangements, revisions to the rate structure, etc. In preparing such proposals, Contractor shall
1447 draw upon its experience achieving high diversion rates in other communities. Contractor shall
1448 work collaboratively with City staff to prepare and implement an action plan to maintain or
1449 increase the Diversion rate, including implementation plans and cost proposals, which shall also
1450 give due regard to opportunities for cost savings. Contractor shall continue to meet with City
1451 staff on a quarterly basis (or more or less frequently, as requested by City staff) to monitor the
1452 Diversion rate and implementation of any mutually agreed action plan.

1453 **3. Good Faith Efforts.** Notwithstanding any other provision of this Agreement, the following
1454 provisions shall apply: So long as Contractor (i) complies with the foregoing provisions of this
1455 Section 4.14.B, and (ii) demonstrates good faith efforts to meet all the requirements of this
1456 Agreement for implementation of any and all Diversion programs and public education and
1457 outreach requirements, Contractor will not be in breach of Section 4.14.B. Additionally, if the
1458 Diversion rate drops below the minimum Diversion rate in any quarter of a given year, but
1459 ultimately equals or exceeds the minimum Diversion rate in that Contract Year then Contractor
1460 will not be in breach of Section 4.14.B with respect to that particular quarter.

1461 **C. AB 341 and AB 1826**

1462 Contractor shall identify and monitor Multi-Family and Commercial premises to ensure those properties
1463 remain in compliance with AB341 and AB1826 at all times. Contractor shall make every effort to bring
1464 into compliance those Multi-Family and Commercial premises not in compliance with AB341 and
1465 AB1826. Contractor shall meet with Multi-Family and Commercial premises not in compliance with
1466 AB341 and AB1826, at least once per quarter, to provide technical assistance and guidance in achieving
1467 compliance, until one hundred percent (100%) compliance is achieved. Contractor shall produce and
1468 distribute brochures, handouts, fliers, newsletters and other outreach materials describing the
1469 requirements of AB341 and AB1826. Contractor shall update said outreach materials if and when the
1470 requirements of AB341 and AB1826 change. Contractor shall ensure containers at Multi-Family and
1471 Commercial premises are properly color-coded and labeled with labels containing images and text that
1472 describe the appropriate materials to be deposited. Contractor shall meet with property managers,
1473 owners, operators and other decision makers at Multi-Family and Commercial premises, as frequently as
1474 needed, to provide technical assistance, guidance and education on requirements and compliance with
1475 AB341 and AB1826. Contractor shall conduct documented waste assessments at Multi-Family and
1476 Commercial premises that meet the criteria for compliance under AB341 and AB1826. Contractor may
1477 conduct documented waste assessments at Multi-Family and Commercial premises that do not meet the
1478 criteria for compliance under AB341 or AB1826, at the request of the property manager, owner,
1479 operator, at the City’s request, or as deemed necessary by the Contractor. Contractor shall coordinate
1480 and conduct educational meetings on the requirements of AB341 and AB1826 with Home Owners
1481 Associations (HOAs), tenants and other community groups at the request of the HOA, community group,
1482 at the City’s request, or as deemed necessary by the Contractor. Contractor shall ensure that Multi-
1483 Family and Commercial premises subject to AB341 and AB1826 have adequate Recyclable Materials,
1484 Yard Trimmings and/or Organic Materials collection service and capacity.

1485 **4.15 Street Sweeping**

1486 Section 4.15 and Exhibit O of the Agreement specify City’s requirements for provision of street sweeping
1487 services by Contractor.

1488 **A. Definitions**

1489 The following definitions apply to this Section 4.15 and to Exhibit O, and are in addition to the
1490 definitions contained in Exhibit A.

- 1491 **1. Curb Mile** - Linear measurement of 5,280 feet of curbing or pavement edge to be used as
1492 standard unit of Scheduled Service.
- 1493 **2. Street Debris** - All loose, inert, dry waste material including refuse, dirt, sand, glass, metal
1494 fragments and typical street litter (i.e. cans, bottles, leaves), but excluding bulky or putrid
1495 wastes. Street debris does not include waste materials in the catch basins of storm sewers.
- 1496 **3. Sweeping Path** - Specified paved surface distance from curb line or pavement edge in which
1497 Scheduled Service is to be performed. This sweeping path is the only area to be swept in
1498 Scheduled Service.
- 1499 **4. Scheduled Service** - Regularly scheduled sweeping frequency for residential, commercial and
1500 industrial areas is defined in Section 4.15.B.1. Specific routes and sweeping frequencies are also

1501 shown in the map provided in Exhibit O-5.
1502 **5. Unscheduled Service** - That service which can be requested by the City to be performed outside
1503 the bounds of the scheduled service (i.e. sweeping after parades or major events).-

1504 **B. Scope of Work and Compensation**

1505 **1. Scheduled Service** - The Contractor will furnish Scheduled Service using modern sweeping
1506 equipment for those public streets designated by City at the time of the execution of
1507 the Agreement. After the execution of the Agreement, City may add other public streets,
1508 or portions of public streets.

1509 **2. Unscheduled Service** - The Contractor will also provide, if required by the City, Unscheduled
1510 Service before or after major events such as parades, fairs, etc., of any street or streets, or
1511 portions of streets. Contractor shall provide this service at no additional cost to the City twice
1512 per calendar year. Contractor shall sweep up to 11,000 Curb Miles per calendar year, including
1513 both scheduled service and unscheduled service. Unscheduled services which are within this
1514 annual allowance shall be provided at the direction of the City Contract Manager and at no
1515 additional charge to the City. This allowance shall be adjusted annually to reflect an increase or
1516 decrease in the actual number of Curb Miles swept during the previous year relative to the total
1517 Curb Mile allowance at \$38.74 per Curb Mile swept (including both Contractor’s direct cost and
1518 City fees), the calculation of which shall be presented by Contractor in their Annual Report. In
1519 the event that the City requests unscheduled sweeping services which exceed this allowance,
1520 Contractor shall be compensated at \$33.36 per Curb Mile swept (including only Contractor’s
1521 direct cost) and shall invoice City directly for such services.

1522 **3. Callbacks** – When in the opinion of the City Contract Manager following sweeping a section of
1523 street is inadequately swept, Contractor shall within 2 Business days re-sweep the section in
1524 question at no additional charge.

1525 **4. Compensation** – Contractor’s compensation for street sweeping services under this agreement
1526 is included in the Maximum Rates charged to Customers. In the event that City terminates this
1527 portion of the Agreement, under Section 4.15.H, Contractor’s proposed annual cost of street
1528 sweeping services three hundred thirty five thousand one hundred twenty five dollars
1529 (\$335,125), plus any percentage change applied to Customer Rates after the start of this
1530 Agreement, shall be excluded from Customer Rates.

1531 **C. Frequency of Service**

1532 **1. General** - Residential areas shall be swept twice a month. Commercial and industrial areas shall
1533 be swept four times a month.

1534 **2. Exception** - Residential Areas C, E, F, G, H, and J as shown on Exhibit O-5, shall be swept weekly
1535 during the months of November and December using vacuum type units.

1536 **D. Operations**

1537 **1. Days and Hours of Operation** – Sweeping for the purposes of the Agreement shall be Monday
1538 through Friday, only. Sweeping of residential and mixed use areas shall not start before 8:00

1539 a.m. or continue after 5:00 p.m. Industrial/commercial areas shall be swept between 12:00 a.m.
1540 and 8:00 a.m. Exceptions to sweeping hours or days shall be only upon the mutual written
1541 agreement of the City and Contractor. If Contractor reasonably determines that an exception is
1542 necessary in order to complete sweeping due to unusual circumstances in case of emergency,
1543 such exception shall require written approval of the City, within ten working days of said
1544 emergency. If Contractor experiences a breakdown, or other reason, which prevents the
1545 completion of daily scheduled street sweeping services, Contractor shall notify City immediately
1546 and provide a plan for completing the sweeping as soon as possible.

1547 **2. Adequate Equipment and Staffing** - The Contractor shall provide additional equipment and staff
1548 as necessary to complete the street sweeping on the frequency shown in Section 4.15.B.1 during
1549 weeks with less than normal working days. Street sweeping shall not occur on City holidays,
1550 which are New Year's Day, Monday observing Martin Luther King's Birthday, President Lincoln's
1551 Birthday, Monday observing President Washington's Birthday, Memorial Day, Independence
1552 Day, Labor Day, Veteran's Day, Thanksgiving Day and the day after, Christmas Eve, and
1553 Christmas Day. Street sweeping shall not occur on any other additional holidays approved by the
1554 Milpitas City Council. In the event a holiday falls on a Sunday, the following Monday shall be the
1555 holiday instead. In the event a holiday falls on a Saturday, the preceding Friday shall be a holiday
1556 instead.

1557 **3. Sweeping Routes** – Contractor shall develop sweeping routes for City review and comment by
1558 no later than May 1, 2017. Such schedule shall minimize changes to the existing schedule shown
1559 in Exhibit O5, and the final approved versions be inserted as the new Exhibit O-5. Contractor to
1560 provide a description of how they plan to meet the sweeping routine schedule. Contractor shall
1561 submit a map designating the routes to the City for approval. Contractor shall coordinate
1562 sweeping routes with Collection, and to the extent possible will avoid Collection and street
1563 sweeping of any area of the City on the same day. It is understood that if vehicles are parked on
1564 the streets when services are being performed by the Contractor, then Contractor's operations
1565 will be impeded and Contractor will be required to bypass said parked vehicles. In such event,
1566 Contractor compensation shall remain as provided in this Section 4.15.

1567 **4. Sweeping Equipment** – The Contractor shall provide list of vehicles for scheduled sweeping
1568 services adequate to accomplish the sweeping effectively (broom and vacuum units). All
1569 sweeping equipment shall have proper safety markings in accordance with State Vehicle Code
1570 and subject to approval of City Contract Manager. Commercial and industrial streets shall be
1571 broom swept. Residential streets shall be broom swept, except where heavy leaf concentrations
1572 make such methods less effective as described in Section 4.15.C.1 Heavy leaf concentrations
1573 shall be vacuum swept. The Contractor may use a vacuum truck with curb broom anywhere a
1574 broom truck is permitted. Equipment shall use a wheelbase small enough to go between parked
1575 cars to sweep a minimum length between cars of eight (8) feet. All vehicles and other
1576 equipment shall be kept in good repair, appearance, and in a sanitary condition at all times.
1577 Each vehicle shall be equipped with mobile radios and hour meters. A two-way mobile radio
1578 shall be made available to the street maintenance supervisor on each work day. Each vehicle
1579 shall have clearly visible on each side the identity and telephone number of the Contractor.
1580 Sweeping equipment to be used must provide a minimum sweeping path of 72 inches and be
1581 capable of removing street debris, which lies in this path. Contractor shall sweep at speeds
1582 which minimize the amount of streaking and is required to make additional passes if necessary
1583 to remove this debris. Each vehicle shall have a dust control system which shall be utilized at all
1584 times during sweeping operations. All vehicles shall have sound control devices and shall

1585 comply with Milpitas Municipal Code - Chapter 213, Noise Abatement. Contractor shall tare
1586 weigh all vehicles upon initiation of service for the City with weights provided to all Approved
1587 Facilities used for street sweeping debris Processing or Disposal. Contractor shall provide City
1588 with a report listing the vehicle tare weight information upon request. Contractor shall promptly
1589 weigh additional or replacement Transfer vehicles prior to placing them into service. Contractor
1590 shall check tare weights at least annually, or within fourteen (14) Days of a City request, and
1591 shall re-tare vehicles immediately after any major maintenance service.

1592 **5. Vehicle Speed** – Contractor shall at all times operate sweepers at no more than five (5) miles per
1593 hour, unless it can be demonstrated to satisfaction of City Contract Manager that the specified
1594 quality of service can be safely accomplished at a higher speed.

1595 **6. Hauling** – All street debris hauled by the Contractor shall be contained, tied or enclosed so that
1596 leaking, spilling or blowing are prevented.

1597 **7. Weather** – In the event of heavy rain or other severe weather conditions, the scheduled
1598 sweeping service may be suspended. The decision to sweep will be made by the City after
1599 consultation with the Contractor.

1600 **8. Water** – City will provide at no cost to the Contractor access to water from City hydrants, except
1601 during periods of declared water shortage. During such shortages, water supply site(s) shall be
1602 designated by the City. Contractor shall be required to use a construction meter, provided by
1603 the City, for this purpose.

1604 **9. Disposition of Material** – All collected street debris shall be delivered to the applicable
1605 Approved Facility for Processing or Disposal.

1606 **10. Direct Point of Contact** – Contractor shall designate a management-level representative,
1607 including of an Affiliate or Subcontractor as appropriate, directly responsible for street sweeping
1608 service to be available to the City on an on-call basis.

1609 **11. Damage to Property** - Any property, including, but not limited to, the existing structures,
1610 equipment, piping, pipe covering, grounds, sidewalks, curbs, gutters, driveways, fences, etc.,
1611 damaged by the Contractor or its Subcontractor during provision of Street Sweeping services as
1612 a result of Contractor’s (including its employees and agents) negligence shall be replaced or
1613 repaired by the Contractor in a manner satisfactory to the City and to the Contractor’s expense.

1614 **E. Outreach and Customer Service**

1615 **1. Outreach** - Contractor shall provide full page advertisements describing street sweeping
1616 schedules in the Milpitas Post monthly. On an annual basis no later than January 15 of each
1617 year, or next following business day, Contractor shall provide a street sweeping calendar by
1618 service section to each single family household receiving street sweeping services. On an annual
1619 basis to be received by affected customers no later than the last Monday of October, Contractor
1620 shall provide mailed notification of the weekly street sweeping schedule to households in
1621 service areas described in Section 4.15.C.2. Contractor shall provide door-hangers to customers
1622 affected by route changes.

1623 **2. Complaints** – All customer complaints shall be made directly to the Contractor and shall be
1624 given prompt and courteous attention. Contractor shall within three (3) Business Days of receipt
1625 of any complaint, notify City of schedule and plan for resolution of the complaint and for
1626 informing complainant of resolution, as applicable.

1627 **3. Office** – The Contractor shall maintain an office or such other facility through which he/she can
1628 be contacted and from which he/she can maintain radio contact with sweeping vehicles. It shall
1629 be equipped with sufficient telephones and shall have a responsible person in charge from 9:00
1630 a.m. to 5:00 p.m., Monday through Friday.

1631 **F. Recordkeeping and Reporting**

1632 **1. Recordkeeping** - Collector shall maintain street sweeping records relating to: Curb Miles swept
1633 using a broom odometer, or mileage only when cleaning and excluding driver mileage to or from
1634 an area; volume and/or weight of material removed for each cleaning day, and; areas needing
1635 more frequent routine sweeping or added sweeping prior to the rainy season.

1636 **2. Daily Reports** – Contractor shall post a daily report of curb miles swept and cubic yards and
1637 tonnage of debris collected on the Contractor’s website for City access as provided in Section
1638 4.13. Daily reports shall use the format specified in Exhibit O-4.

1639 **3. Monthly Reports** - Contractor shall submit to City monthly reports on or before the twenty-fifth
1640 (25th) day following the end of each calendar month. Monthly reports shall use the format
1641 specified in Exhibit O-1. In addition, monthly reports must contain completed forms as shown in
1642 Exhibits O-2 and O-3 to track parked cars and low hanging trees that impede sweeping.

1643 **4. Report Formats and Requirements** – City reserves the right to modify or add to reporting
1644 formats, reporting frequency, and/or content with 30 days’ notice.

1645 **5. Performance Standards** – Failure to meet the requirements of Section 4.15 and Exhibit O may
1646 result in penalties as provided in Exhibit E.

1647 **G. Wage Scale**

1648 For the purposes of this Section 4.15.G, Resolution No. 5981 of the City of Milpitas requires that any
1649 Contractor performing routine and recurring labor or services in excess of \$1,000.00 on behalf of the
1650 City of Milpitas, pay not less than general prevailing wage of per diem wages as set forth in Contractor’s
1651 collective bargaining agreement with its employees to all employees engaged to perform said labor or
1652 services. (This requirement shall not apply to the sale of goods or to professional services, including, but
1653 not limited to, consultant services, construction inspection services, engineering services, architectural
1654 services, land surveying services, legal services, financial services, accounting or auditing services, data
1655 processing services, administrative services, instructional services, personnel services, and services
1656 provided by other public entities.) In addition, Contractor shall pay prevailing wages as otherwise
1657 required by State law.

1658 **H. Termination**

1659 Notwithstanding the provisions of Article 10, and with or without cause, City may issue Contractor a
1660 written notice to terminate the street sweeping service with 30 days’ notice.

1661 **4.16 Performance Reviews and Financial Audits**

1662 **A. Performance Reviews**

1663 Performance and service quality reviews may be conducted or caused to be conducted by the City at its
1664 discretion throughout the Term and any extensions. Such reviews may be conducted from time to time
1665 during the term of this Agreement by a qualified independent consultant selected by City. The reports
1666 required by this Agreement and the Contractor's ability or inability to achieve Diversion goals may be
1667 utilized as a basis of review. Such review or audit may include, but shall not be limited to analyses of
1668 both financial and qualitative performance of Contractor and Contractor's operations. If any
1669 noncompliance with the Agreement is found, the City may direct the Contractor to correct the
1670 inadequacies in accordance with the terms of this Agreement. If the Contractor fails to correct the
1671 noncompliance items, said failure will be considered a default under this Agreement. Contractor shall
1672 cooperate fully with City in conducting such evaluations and audits. The cost of such reviews or audits
1673 shall be borne by Contractor up to a total of \$200,000 during the term of the Agreement, and up to the
1674 equivalent of \$50,000 per year for each year of an extension.

1675 **B. Route Audits**

1676 City may conduct or require that Contractor conduct a route audit for any of, or each of Contractor's
1677 Collection routes by type of material Collected. The period in which the audit is conducted shall be set
1678 by City. City reserves the right to determine which routes will be audited in a particular week and, if City
1679 exercises this right, shall notify Contractor of the routes not less than seventy-two (72) hours in advance.
1680 The route audits may at City direction include any of the following information for each Collection route:

- 1681 A. The route number, the date of the audit, and the starting and ending times of Collection during
1682 the audit.
- 1683 B. A description of the route location, including the names of the streets covered.
- 1684 C. The number of Service Recipients by category on the route.
- 1685 D. The number of Service Recipients by category participating on the date of the audit and the
1686 number and type (e.g., Solid Waste, Recyclables, Yard Trimmings, Food Scraps, Used Motor Oil,
1687 Cooking Oil) of pickups in each Service Recipient category.
- 1688 E. For Collection routes, the number of Service Recipients by category which set out overages and
1689 the total number of overages Collected.
- 1690 F. For the Recyclables and Organics Collection routes, the number of Containers distributed by
1691 Service Recipient category.
- 1692 G. For routes with Used Motor Oil Collection, the number of Used Motor Oil Containers Collected
1693 and the number of Used Motor Oil Containers distributed by Service Recipient category.
- 1694 H. For routes with Cooking Oil Collection, the number of Cooking Oil Containers Collected and the
1695 number of Cooking Oil Containers distributed by Service Recipient category.
- 1696 I. The number of Collection vehicles used on the route by vehicle type (e.g., rear loader Solid
1697 Waste truck, compartmentalized Recyclables truck), the weight of each vehicle, the capacity of
1698 each vehicle by weight and volume, and the number of trips made by each vehicle to Approved
1699 Facilities).

- 1700 J. The tonnages or volumes by type of material Collected per vehicle trip.
- 1701 K. A description of any changes in the route occurring since the immediately preceding route audit,
- 1702 including changes in the location of the route, the number of Service Recipients, equipment
- 1703 used, and Collection methods employed.
- 1704 L. The name(s), telephone number(s) and signature(s) of the persons performing each route audit.
- 1705 The City reserves the right to request any additional data it, in its sole discretion, deems necessary to
- 1706 evaluate the effectiveness of Contractor’s operations. Costs of route audits, if any, shall be borne by
- 1707 Contractor.

ARTICLE 5. STANDARD OF PERFORMANCE

5.1 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, and C&D management practices common to Northern California.

5.2 Operating Hours and Schedules

A. Hours of Collection. Unless otherwise authorized by the City Contract Manager, Contractor’s days and hours for Collection operations shall be as follows:

- 1. **Residential Premises.** Collection from Residential Premises shall only occur between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday.
- 2. **Commercial Premises.** Collection from Commercial Premises that are two hundred (200) feet or less from Residential Premises shall only occur between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday. Collection from Commercial Premises more than two hundred (200) feet from Residential Premises shall only occur between the hours of 4:00 a.m. and 7:00 p.m., Monday through Saturday, except that such pickups may begin at 3 a.m. during April through September. Contractor is encouraged to schedule Collection from Commercial Customers in close proximity to any Residential Customers after 7:00 a.m. by focusing early morning Collection service in Commercial areas away from Residential neighborhoods. Upon complaints from Residential Customers about Collection noise, the Contractor shall re-route its Collection vehicles to the extent practical and shall meet and confer with the City to agree on a proposed solution.

B. Holiday Collection Schedule. Contractor, at its sole discretion, may choose not to provide Collection services on a Holiday. In such event, Contractor shall provide Collection services on the day following the Holiday thereby adjusting subsequent work that week; however, Customer service days shall be returned to the normal schedule within one (1) week of the Holiday. The Contractor shall provide Customers notice of Holiday-related changes in Collection schedules at least two (2) weeks prior to the change.

1737 **5.3 Collection Standards**

1738 **A. Servicing Containers.** Contractor shall pick up and return each Container to the location where
1739 the Occupant properly placed the Container for Collection. Contractor shall place the Containers
1740 upright with lids properly secured.

1741 Contractor, at the request of Customers, may provide special services including: (i) unlocking
1742 Containers; (ii) accessing Container enclosures with a key; or, (iii) pulling or pushing Containers
1743 to the Collection vehicle.

1744 **B. Litter Abatement.** Contractor shall use due care to prevent spills or leaks of material placed for
1745 Collection, Used Motor Oil, fuel, and fluids while providing services under this Agreement. If any
1746 materials are spilled or leaked during Collection and Transportation, the Contractor shall clean
1747 up all spills or leaks before leaving the site of the spill.

1748 Contractor shall not transfer loads from one vehicle to another on any public street, unless it is
1749 necessary to do so because of mechanical failure, hot load (combustion of material in the truck),
1750 or accidental damage to a vehicle.

1751 Contractor shall cover all open Drop Boxes at the pickup location before Transporting materials
1752 to the Approved Facility.

1753 **C. Clean-Up.** During the Collection or Transportation process, the Contractor shall clean-up litter in
1754 the immediate vicinity of any Container storage area (including the areas where Collection Bins
1755 and Drop Boxes are delivered for Collection) whether or not Contractor has caused the litter.
1756 The Contractor shall discuss instances of repeated spillage not caused by it directly with the
1757 Generator responsible and will report such instances to City. City will attempt to rectify such
1758 situations with the Generator if Contractor has already attempted to do so without success.

1759 **D. Noise.** All Collection operations shall be conducted as quietly as possible and shall conform to
1760 applicable Federal, State, County and City noise level regulations, including the requirement that
1761 the noise level during the stationary compaction process not exceed seventy-five (75) decibels
1762 at a distance of twenty-five (25) at a height of five (5) feet from the Collection vehicle. The City
1763 may conduct random checks of noise emission levels to ensure such compliance.

1764 **E. Damage to Property.** Any property, including, but not limited to, the existing structures,
1765 equipment, piping, pipe covering, grounds, sidewalks, curbs, gutters, driveways, fences, etc.,
1766 damaged by the Contractor or its Subcontractor during the course of his work as a result of
1767 Contractor's (including its employees and agents) negligence shall be replaced or repaired by
1768 the Contractor in a manner satisfactory to the City and to the Contractor's expense.

1769 **F. Route Changes.** On or before, May 1, 2017, Contractor shall provide City with route information
1770 and maps of the Single-Family Collection routes in sufficient detail that allows the City to plan its
1771 street sweeping routes. Route maps shall be provided in Adobe Acrobat PDF format or other
1772 format agreed upon by the City Contract Manager. Contractor shall meet and confer with the
1773 City Contractor Manager to amend the route schedule, and Contractor shall not modify
1774 scheduled Collection routes or scheduled Collection days for the first six (6) months following
1775 the Commencement Date. Beginning six (6) months following the Commencement Date,
1776 Contractor shall: 1) obtain prior written City approval for any routing changes that affect ten
1777 percent (10%) or more of Single-Family Customers on any one route; and, 2) notify City a
1778 minimum of thirty (30) Days in advance of any routing change that affects less than ten percent

1779 (10%) of Single-Family Customers on any one route. Contractor shall ensure that all customers
1780 are properly notified at least thirty (30) Days in advance of route day changes.

1781 **G. Dedicated Routes.** Except otherwise provided with prior City permission, Contractor shall
1782 Collect materials generated in the City in Collection Vehicles separately from other materials
1783 generated outside the City.

1784 **5.4 Vehicle Requirements**

1785 Contractor shall provide a fleet of Collection vehicles sufficient in number and capacity to efficiently
1786 perform the work required by the Agreement in strict accordance with its terms. Contractor shall have
1787 available sufficient back-up vehicles for each type of Collection vehicle used to respond to scheduled
1788 and unscheduled maintenance, service requests, complaints, and emergencies. All such vehicles shall
1789 have watertight bodies designed to prevent leakage, spillage, or overflow. All such vehicles shall meet
1790 On-Road Heavy Duty Vehicle emissions requirements for model year 2016, regardless of the actual
1791 model year of Contractor’s vehicles, and generally comply with all Federal, State, and local laws and
1792 regulations. In no event shall any Collection vehicle operated by Contractor for the performance of
1793 services under this Agreement be more than ten (10) years old, from the date it was first registered.

1794 Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and
1795 local ordinances. Contractor shall not load vehicles in excess of the manufacturer's recommendations or
1796 limitations imposed by State or local weight restrictions on vehicles. Collection vehicles shall present a
1797 clean appearance while providing service under this Agreement. Collection vehicles shall be thoroughly
1798 washed and steam cleaned on a regular basis so as to present a clean appearance. City may inspect
1799 vehicles at any time to determine compliance with sanitation requirements. Contractor shall make
1800 vehicles available to the Santa Clara County Health Department for inspection, at any frequency it
1801 requests.

1802 Vehicles shall be tare weighted as provided in Section 4.8.A.

1803 Contractor's name and local telephone number shall be displayed on all vehicles in at least four (4) inch
1804 characters. Vehicles shall be equipped with sign board holders or other hardware to allow public
1805 outreach signage of no less than thirty-six (36) by forty-eight (48) inches to be displayed on both sides of
1806 the vehicle.

1807 Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles
1808 that are not operating properly shall be taken out of service until they are repaired and operate
1809 properly. Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which
1810 repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment
1811 in a safe and operable condition. City Contract Manager may inspect vehicles at any reasonable time,
1812 and within three (3) calendar days of such a request, to determine compliance with sanitation
1813 requirements.

1814 Contractor shall furnish the City a written inventory of all vehicles, including Collection vehicles, used in
1815 providing service, and shall update the inventory annually. The inventory shall list all vehicles by
1816 manufacturer, identification number, date of acquisition, type, capacity and decibel rating.

1817 **5.5 Container Requirements**

1818 **A. General.** Contractor shall provide Customers with Collection Containers as requested by the
1819 Customer to meet its desired Service Level as provided in Sections 4.1, 4.2 and 4.3. All
1820 Contractor-provided Containers shall be new as of the Commencement Date and shall be
1821 designed and constructed to be watertight and prevent the leakage of liquids. Contractor shall
1822 purchase Containers with a useful life of ten (10) years or more and shall depreciate the
1823 Containers over a ten-year (10-year) period. New Container purchases shall comply with the
1824 requirements of Sections 5.5.B, C and F.

1825 Contractor shall make Compactors available to Customers for purchase or lease and shall allow
1826 Customers to purchase or lease Compactor’s through an outside vendor.

1827 **B. Carts.** Cart sizes and their availability shall conform to the requirements of Sections 4.1, 4.2, and
1828 4.3.

1829 **C. Bins, Drop Boxes and Compactors.** Contractor shall provide Bins, Drop Boxes and/or
1830 Compactors for storage and Collection of Solid Waste, Recyclables, Organic Materials, and C&D,
1831 and in conformance with the requirements of Sections 4.1, 4.2 and 4.3. Contractor shall install
1832 plastic lids on all Bin Containers owned and serviced by the Contractor. All Containers with the
1833 capacity of one cubic yard or more shall meet applicable federal regulations for Bin safety. All
1834 Bins, Drop Boxes and Compactors shall be painted the Contractor's standard color (subject to
1835 approval by the City Contract Manager). Contractor shall steam clean and repaint all Bins, Drop
1836 Boxes and Compactors as requested by Customer or as deemed necessary by Contractor to
1837 present a clean appearance. If Customer requests steam cleaning more frequently than one (1)
1838 time per year, Contractor may charge the Customer at Rates not to exceed City-approved
1839 Maximum Rates for such service.

1840 **D. Repair and Replacement of Containers; Inventory.** Contractor shall be responsible for repairing
1841 or replacing Containers when Contractor determines the Container is no longer suitable for
1842 service; or when the City or Customer requests replacement of Customer’s Container that does
1843 not properly function, leaks, is damaged, or is otherwise not fit for service. Contractor shall be
1844 responsible for acquiring the replacement Containers. Contractor shall maintain a sufficient
1845 inventory of Containers to accommodate new Customer requests for service, requests for
1846 change in Service Levels (size, type, or number of Containers) from current Customers, and
1847 requests for replacement due to damage. All such Containers shall be provided within one (1)
1848 week of request. Contractor’s failure may request in assessment of Liquidated Damages
1849 pursuant to Section 10.6.

1850 Contractor shall repair or replace all damaged or broken Containers within a one (1) week
1851 period. If the repair or replacement cannot be completed within a week, the Customer shall be
1852 notified by Contractor and a larger Container shall be made available until the proper Container
1853 can be replaced.

1854 **E. City Ownership of Containers at End of Term.** Upon expiration or early termination of
1855 Agreement, all Carts, Bins, Drop Boxes, and Compactors (for permanent Customers) purchased
1856 and put into service at Customers’ Premises during the Term of the Agreement shall become
1857 property of the City at no cost to the City if such Containers are fully depreciated. All Carts, Bins,
1858 Drop Boxes, and Compactors (for permanent Customers) purchased and put into service at
1859 Customers’ Premises during the Term of the Agreement that have not been fully depreciated

1860 shall be available to the City, at the City’s option, at a cost reflecting the net book value.

1861 At its sole discretion, the City may elect not to exercise its rights with regards to this Section
1862 and, in such case; the Containers shall remain the property of the Contractor upon the
1863 expiration date of this Agreement or date of its earlier termination of this Agreement. In such
1864 case, Contractor shall be responsible for outstanding depreciation, and for removing at its own
1865 cost all Containers in service from premises within five (5) Business Days of the expiration date
1866 or early termination date of this Agreement in full cooperation and coordination with the City’s
1867 then-current franchised collector.

1868 **F. New Container Standards.** Contractor shall provide Containers for storage and Collection of
1869 Solid Waste, Recyclable Materials, Organic Materials, and C&D which shall be designed and
1870 constructed to be watertight and prevent the leakage of liquids.

1871 When purchasing plastic Collection Containers, Contractor shall purchase Containers that
1872 contain a minimum of 30% post-consumer recycled plastic content. All such Containers shall be
1873 100% recyclable.

1874 All new Carts shall be manufactured by injection or rotational molding methods and shall meet
1875 the Cart design, color, and performance requirements provided in Attachment H. Contractor
1876 shall obtain the City’s written approval of Cart specifications before acquisition. Carts provided
1877 to Customers shall have a useful life of ten (10) or more years or more as evidenced by a
1878 manufacturer’s warranty or other documentation acceptable to the City.

1879 Contractor shall differentiate Solid Waste Containers, Recyclable Materials Containers, Organic
1880 Materials and C&D Containers from each other by: (i) providing Containers of different colors, or
1881 (ii) adhering clearly-visible labels to each Container identifying the allowable material type. The
1882 second option is not acceptable for Carts purchased at the Commencement of the Agreement
1883 and during the Term; any new Carts shall have bodies in colors that differentiate the different
1884 material types to be Collected and such colors shall be approved by the City.

1885 **G. Container Labeling.** On each Container, Contractor shall label with paint, adhesive label, or
1886 white, hot-stamped lettering, the type of materials (e.g., Solid Waste, Recyclable Materials,
1887 mixed Organic materials, cardboard, mixed paper, Yard Trimmings, Food Scraps Recyclable
1888 C&D, C&D Waste, wood waste, metal, etc.) to be placed in the Container for Collection. The
1889 labeling shall be positioned on each Container so it is visible to the Customer at all times.

1890 All Containers shall display the Contractor’s name, local telephone number, and some
1891 identifying inventory or serial number. Contractor-specific information shall not be hot stamped
1892 on Containers.

1893 **H. Maintenance, Cleaning, Painting.** All Containers shall be maintained in a safe, serviceable, and
1894 functional condition and present a clean appearance. Contractor shall repair or replace all
1895 Containers damaged by Collection operations, unless damage is caused by Customer's gross
1896 negligence, in which case, the Customer will be billed for repair or replacement of Container. All
1897 Containers shall be maintained in a functional condition.

1898 Contractor shall steam clean and repaint all Containers as needed (other than Carts) so as to
1899 present a clean appearance. Contractor shall offer steam cleaning service (or clean Container
1900 exchange) to Customers requesting such service, and shall charge Customers for such cleaning
1901 (or Container exchange) at a Rate not to exceed City-approved Maximum Rates.

1902 Contractor shall remove graffiti from Containers within forty-eight (48) hours of identification by
1903 Contractor or notice by City or Customer if such graffiti includes any written or pictorial
1904 obscenities and otherwise within five (5) Business Days.

1905 At the City's request, Contractor shall provide City with a list of Containers and the date each
1906 Container was painted and maintained.

1907 **5.6 Personnel**

1908 **A. General.** Contractor shall furnish such qualified personnel as may be necessary to provide the
1909 services required by this Agreement in a safe and efficient manner. Contractor shall designate at
1910 least one (1) qualified employee as City's primary point of contact with Contractor who is
1911 principally responsible for Collection operations and resolution of service requests and
1912 complaints who shall be available telephonically at all times Transfer and Disposal operations
1913 are taking place Contractor shall use its best efforts to assure that all employees present a neat
1914 appearance and conduct themselves in a courteous manner. Contractor shall not permit its
1915 employees to accept, demand, or solicit, directly or indirectly, any additional compensation, or
1916 gratuity from members of the public.

1917 **B. Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class,
1918 issued by the California Department of Motor Vehicles. Contractor shall use the Class II
1919 California Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers
1920 for safety.

1921 **C. Safety Training.** Contractor shall provide suitable operational and safety training for all of its
1922 employees who operate Collection vehicles or equipment. Contractor shall train its employees
1923 involved in Collection to identify, and not to collect, Excluded Waste. Upon the City Contract
1924 Manager's request, Contractor shall provide a copy of its safety policy and safety training
1925 program, the name of its safety officer, and the frequency of its trainings.

1926 **D. Provision of Field Supervision.** Contractor shall at all times, and at a minimum maintain the City-
1927 approved number of field supervisors specified in Exhibit N. Field supervisors shall devote at
1928 least fifty percent (50%) of their time in direct monitoring of Collection operations, including
1929 responding to complaints.

1930 **E. Identification.** All representatives of the Contractor shall display and/or provide proper
1931 identification or documentation exhibiting their association with the Contractor while operating
1932 in the field.

1933 **F. Hiring Displaced Employees.** Contractor shall make best efforts to offer employment to
1934 qualified employees of the prior contractor for the performance of this Agreement. Such efforts
1935 shall not be required in regard to employees who are (1) exempt under the Fair Labor Standards
1936 Act, (2) employed by the prior contractor for less than six months, or (3) convicted of a job-
1937 related or workplace crime. Contractor shall not be obligated to offer employment to more prior
1938 contractor's employees than the Contractor needs to perform the services required under the
1939 Agreement and the Contractor shall not be obligated to offer employment to prior contractor's
1940 employees that are not working prior to the Commencement Date due to a leave of absence
1941 related to disability or workers' compensation claim. Additionally, the Contractor shall not be
1942 obligated to displace any of its current employees or modify its current job performance
1943 requirements or employee selection standards. Additional employees, if needed, shall be

1944 obtained pursuant to procedures currently in effect under the collective bargaining agreement
1945 with the prior contractor. This requirement, however, shall not be applicable to management or
1946 supervisory personnel. Upon request by the City, the Contractor shall demonstrate to the City
1947 that good faith efforts that have been made to comply with this provision

1948 **G. Wage and Benefits.** Wages and benefits applicable to employees performing work under the
1949 Agreement shall be commensurate with current compensation or in accordance with existing
1950 agreements with represented labor groups.

1951 **H. Subcontractor Obligations.** Subcontractors shall be required to comply with the obligations
1952 stated in this Section 5.6.

1953 **I. Labor Agreements.** Labor agreements for drivers and mechanics shall be included as Exhibit K
1954 and future modification shall be submitted to the City. The Contractor shall provide full copies
1955 of the labor agreements including any and all amendments, extensions, renewals, or other
1956 forms of modification.

1957 **5.7 Hazardous Waste Inspection and Handling**

1958 **A. Inspection Program and Training.** Contractor shall develop a load inspection program that
1959 includes the following components: (i) personnel and training; (ii) load checking activities; (iii)
1960 management of wastes; and, (iv) record keeping and emergency procedures.

1961 Contractor's load checking personnel, including its Collection vehicle drivers, shall be trained in:
1962 (i) the effects of Hazardous Substances on human health and the environment; (ii) identification
1963 of prohibited materials; and, (iii) emergency notification and response procedures. Collection
1964 vehicle drivers shall inspect Containers before Collection when practical.

1965 **B. Response to Excluded Waste Identified During Collection.** If Contractor determines that
1966 material placed in any Container for Collection is Excluded Waste or presents a hazard to
1967 Contractor's employees, the Contractor shall have the right to refuse to accept such material.
1968 The Generator shall be contacted by the Contractor and requested to arrange proper Disposal. If
1969 the Generator cannot be reached immediately, the Contractor shall, before leaving the
1970 Premises, leave a tag at least two (2) inches by six (6) inches in size, which indicates the reason
1971 for refusing to Collect the material and lists the phone number of a facility that accepts the
1972 Excluded Waste or a phone number of an entity that can provide information on proper Disposal
1973 of the Excluded Waste. Under no circumstances shall Contractor's employees knowingly Collect
1974 Excluded Waste or remove unsafe or poorly containerized Excluded Waste from a Collection
1975 Container. Prior to Commencement of this Agreement, the tag that will be used to notice
1976 Customers of reason for non-Collection shall be reviewed and approved by the City Contract
1977 Manager.

1978 If Excluded Waste is found in a Collection Container or Collection area that could possibly result
1979 in imminent danger to people or property, the Contractor shall immediately notify the Fire
1980 Department.

1981 **C. Response to Excluded Waste Identified At Disposal or Processing Facility.** Materials Collected
1982 by Contractor will be delivered to the Approved Facilities for purposes of Processing or Disposal.
1983 In the event that load checkers and/or equipment operators at such facility identify Excluded
1984 Waste in the loads delivered by Contractor, such personnel shall remove these materials for
1985 storage in approved, on-site, Excluded Waste storage Container(s). Contractor shall arrange for

1986 removal of the Excluded Wastes at its cost by permitted haulers in accordance with Applicable
1987 Laws and regulatory requirements. The Contractor may at its sole expense attempt to identify
1988 and recover the cost of Disposal from the Generator. If the Generator can be successfully
1989 identified, the cost of this effort, as well as the cost of Disposal shall be chargeable to the
1990 Generator.

1991 **5.8 City Contract Manager**

1992 City has designated staff, the City Contract Manager, to be responsible for the monitoring and
1993 administration of this Agreement. Contractor shall meet and confer with the City Contract Manager to
1994 resolve differences of interpretation and implement and execute the requirements of this Agreement in
1995 an efficient, effective, manner that is consistent with the stated objectives of this Agreement.

1996 From time to time the City Contract Manager may designate other agents of City to work with
1997 Contractor on specific matters. In such cases, those individuals should be considered designates of the
1998 City Contract Manager for those matters to which they have been engaged. Such designates shall be
1999 afforded all of the rights and access granted thereto. In the event of a dispute between the City Contract
2000 Manager's designate and Contractor, the City Contract Manager's determination shall be conclusive.

2001 In the event of dispute between the City Contract Manager and the Contractor regarding the
2002 interpretation of or the performance of services under this Agreement, the City Contract Manager's
2003 determination shall be conclusive except where such determination results in a material impact to the
2004 Contractor's revenue and/or cost of operations. In the event of a dispute between the City Contract
2005 Manager and the Contractor results in such material impact to the Contractor, Contractor may appeal
2006 the determination of the City Contract Manager to the City Council, whose determination shall be
2007 conclusive. For the purposes of this Section, "material impact" is an amount equal to or greater than
2008 one-quarter (1/4) of one (1) percent of Contractor's annual Gross Receipts under this Agreement.

2009 City Contract Manager or their designate shall have the right to observe and review Contractor
2010 operations and Processing Facilities and enter Premises for the purposes of such observation and
2011 review, including review of Contractor's records, during reasonable hours with reasonable notice. In no
2012 event shall Contractor prevent access to such Premises for a period of more than three (3) calendar days
2013 after receiving such a request.

2014 **5.9 Cooperation with City, County**

2015 The Contractor shall with no added compensation cooperate with the City, its agent, and/or Santa Clara
2016 County and/or its agent if the City or County seek to collect data, perform field work, and/or evaluate
2017 and monitor Diversion program results through characterization of Solid Waste, including providing
2018 reasonably requested data, allowing visits to Approved Facilities, and allowing use of Contractor-
2019 designated areas of Approved Facilities as needed to perform Solid Waste characterizations.

2020

ARTICLE 6. RECORD KEEPING AND REPORTING

2021 **6.1 Record Keeping and Audit of Records**

2022 Contractor shall maintain accounting, statistical, operational, and other records related to its
2023 performance as necessary to provide reporting under SB 1016, AB 939, AB 341 and AB 1826, and to
2024 demonstrate compliance with this Agreement. The Contractor shall maintain complete financial
2025 statements and accounting records for operations under this Agreement. Contractor shall account for
2026 revenues received and expenses incurred as a result of this Agreement separately from the accounting
2027 for other operations performed by Contractor or its Affiliates. The Gross Receipts derived from the
2028 Collection Services under this Agreement, whether such services are performed by the Contractor, by an
2029 Affiliate, or by a Subcontractor, shall be recorded as revenues in the accounts of the Contractor. Upon
2030 demand, the Contractor shall permit the City Contract Manager to examine and audit the books of
2031 account of the Contractor at any and all reasonable times for the purpose of verifying Contractor’s
2032 performance under this Agreement. Upon request, the Contractor shall allow the City Contract Manager
2033 to examine the reports of Gross Receipts and the invoices pertaining to any fee or charge approved by
2034 the City Council for Services provided under this Agreement. Such request shall be made at reasonable
2035 times and with reasonable notice. City reserves the right to produce any such documents examined to
2036 any State or local regulatory or permitting authority upon request.

2037 In the event that an extraordinary Rate adjustment pursuant to Section 8.3, such records shall be subject
2038 to review in accordance with appropriate professional standards, and inspection, for the primary
2039 purpose of reviewing changes in costs to the Contractor attributable to the extraordinary Rate
2040 adjustment request, at any reasonable time by an independent third party. The selection of the
2041 independent third party as well as the scope of work for such review shall be approved in advance by
2042 the City Contract Manager. The independent reviewer shall provide any and all drafts of its review to the
2043 City and the Contractor. The Party requesting the extraordinary Rate adjustment review shall bear the
2044 cost of the review.

2045 Unless otherwise required in this Article, Contractor shall retain all records and data required to be
2046 maintained by this Agreement for the Term of this Agreement plus three (3) years after its expiration or
2047 earlier termination. Records and data shall be in chronological and organized form and readily and easily
2048 interpreted. Upon request, any such records shall be retrieved in a timely manner by Contractor and
2049 made available to the City Contract Manager. Contractor shall maintain adequate record security to
2050 preserve records from events that can be reasonably anticipated such as a fire, theft, and an
2051 earthquake. Electronically-maintained data and records shall be protected and backed-up. The
2052 Contractor shall obtain, within one hundred twenty (120) days of a request by the City Contract
2053 Manager, complete independently audited financial statements for the prior calendar year, including its
2054 balance sheet, statement of revenues and expenses, and statement of changes in cash position, and
2055 provide such financial statements to the City Contract Manager.

2056 City views its ability to defend itself against Comprehensive Environmental Response, Compensation and
2057 Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, City
2058 regards its ability to prove where Collected Solid Waste is taken for transfer or Disposal. Contractor shall
2059 maintain records which can establish where Solid Waste Collected was Delivered to an Approved Facility
2060 with the intent of Disposal. This provision shall survive the expiration or earlier termination of this
2061 Agreement. Contractor shall maintain these records for a minimum of ten (10) years beyond expiration
2062 or earlier termination of the Agreement. Contractor shall provide these records to City (upon request or

2063 at the end of the record retention period) in an organized and indexed manner rather than destroying or
2064 Disposing of them.

2065 **6.2 Report Submittal Requirements**

2066 Contractor shall submit monthly and quarterly reports within thirty (30) calendar days after the end of
2067 the calendar month or quarter, as applicable. Contractor shall submit annual reports no later than forty-
2068 five (45) calendar days after the end of each calendar year. Monthly, quarterly, and annual reports shall,
2069 at a minimum, include all data and information as described in Exhibit C, and shall be provided in Word
2070 and Excel.

2071 Contractor may propose report formats that are responsive to the objectives and audiences for each
2072 report. The format of each report shall be approved by the City Contract Manager and such approval
2073 shall not be unreasonably withheld. City Contract Manager may, from time to time during the Term,
2074 review and request changes to Contractor’s report formats and content and Contractor shall not
2075 unreasonably deny such requests.

2076 Contractor shall submit (via mail and e-mail) all reports to the City Contract Manager.

2077 City reserves the right to require Contractor to provide additional reports or documents as City Contract
2078 Manager reasonably determines to be required for the administration of this Agreement or compliance
2079 with Applicable Law.

2080 **6.3 Performance Monitoring Meetings**

2081 City and Contractor shall meet no less than quarterly to discuss reports and compliance with the
2082 Agreement. Quarterly meetings shall be held within two weeks of submittal of each quarterly report or
2083 at such time as City otherwise specifies. Nothing in this Section 6.3 or in Exhibit C relieves Contractor of
2084 the responsibility to promptly request a meeting should shall if necessary to ensure its ability to comply
2085 with any of the requirements specified in this Exhibit C.

2086 City and Contractor shall meet twice per year to assess performance and compliance with the following
2087 service quality goals, on or before February 28th (for the immediate previous calendar year) and August
2088 31st (for the immediately previous July 1st through June 30th).

- 2089 A. Ten (10) or fewer Liquidated Damages assessed in each applicable twelve (12) month period.
- 2090 B. Completion of all outreach activities by the identified dates as specified in Section 4.9, Exhibit C,
2091 or as contained in Contractor plans developed with relation to the Agreement requirements
2092 contained in Section 4.9 and Exhibit C.
- 2093 C. Completion of bi-annual commercial customer satisfaction survey and analysis as provided in
2094 Section 4.12.C.

ARTICLE 7. FRANCHISE FEES AND OTHER FEES

2095

2096 7.1 Franchise Fee

2097 In consideration of the rights provided Contractor herein, Contractor shall pay Franchise Fees to City
2098 each month equal to fourteen and two tenths percent (14.2%) of Gross Receipts for all services
2099 performed under this Agreement.

2100 7.2 Adjustment to Fees

2101 City may set other fees or adjust the fees established in this Article from time to time during the Term of
2102 this Agreement and such adjustments shall be included in the adjustment of Maximum Rates as
2103 described in Exhibit D.

2104 7.3 Payment Schedule and Late Fees

2105 At the end of each month, during the Term of this Agreement, Contractor shall remit to City all fees for
2106 the previously completed month as described in this Article. Such fees shall be remitted to City and sent
2107 or delivered to the City Contract Manager. If such remittance is not paid to City on or before the last day
2108 of the month, all fees due shall be subject to a delinquency penalty of two percent (2%), which attaches
2109 on the first day of delinquency. The delinquency penalty shall be increased an additional two percent
2110 (2%) for each additional month the payment remains delinquent.

2111 Each monthly remittance to City shall be accompanied by a statement listing the amount of each fee
2112 paid; calculation of each fee; and, statement of Gross Receipts, by Customer Type for the period
2113 collected from all operations conducted or permitted by this Agreement. City Contract Manager may, at
2114 any time during the Term, request a detailed calculation of Gross Receipts which may include, but is not
2115 necessarily limited to, the number of Customers charged at each Service Level and Rate for each billing
2116 period.

2117 City Contract Manager may, at any time during the Term, perform an audit of Contractor's billings and
2118 payment of fees. Contractor shall cooperate with the City Contract Manager in any such audit. Should
2119 City or its agent perform this review and identify billing errors or other errors in payment of fees valued
2120 at one (1) percent or more of Gross Receipts, Contractor shall, in addition to compensating City for lost
2121 fees, reimburse the City's cost of the review.

2122 7.4 Procurement Reimbursement Payment

2123 Within (5) Business Day of the Effective Date of this Agreement, Contractor shall reimburse the City for
2124 its costs related to the procurement and negotiation of this Agreement in the amount of four hundred
2125 twenty five thousand dollars (\$425,000), due immediately upon execution of this Agreement. This
2126 amount shall be paid by Contractor and may not be recovered through Rates charged to Customers.

2127 **ARTICLE 8. CONTRACTOR'S COMPENSATION AND**
2128 **RATE SETTING**

2129 **8.1 General**

2130 The Contractor's Compensation for performance of all its obligations under this Agreement shall be
2131 Gross Receipts. Contractor's Compensation provided for in this Article shall be the full, entire and
2132 complete compensation due to Contractor pursuant to this Agreement for all labor, equipment,
2133 materials and supplies, Processing and Disposal fees, fees due to City, taxes, insurance, bonds,
2134 overhead, operations, profit, and all other things necessary to perform all the services required by this
2135 Agreement in the manner and at the times prescribed. Nothing herein shall obligate City to provide any
2136 compensation to Contractor beyond Gross Receipts.

2137 If Contractor's actual costs, including fees due to City, are more than Gross Receipts, Contractor shall not
2138 be compensated for the difference in actual costs and actual Gross Receipts. If Contractor's actual costs
2139 are less than the actual Gross Receipts, Contractor shall retain the difference provided that Contractor
2140 has paid City fees pursuant to Article 7.

2141 Under this Agreement, Contractor shall have the right and obligation to charge and collect from
2142 Customers, Rates that shall not exceed the Maximum Rates in Exhibit L that are approved by the City for
2143 provision of services to Customers. The Maximum Rates for Rate Period One are based on the
2144 Contractor's Proposal. Contractor's proposed costs and operating assumptions for Rate Period One are
2145 presented in Exhibit N.

2146 The Contractor or its Subcontractor(s) that operates the Approved Facilities shall retain revenues
2147 received for the sale of Recyclable Materials including California Redemption Value revenues, Organic
2148 Materials, and C&D. Such revenues have been considered in the establishment of Maximum Rates for
2149 services provided under this Agreement. Neither Contractor nor its Affiliates or Subcontractor(s) that
2150 operates the Approved Facilities are entitled to grant funds available through the Department of
2151 Resources Recycling and Recovery (CalRecycle) "City/County Payment Program" pursuant to Section
2152 14581(a)(5)(A) of the California Beverage Container Recycling and Litter Reduction Act. Contractor shall
2153 be entitled to apply for any funds made available by that program for the "Curbside Supplemental
2154 Payments" for registered Curbside Recycling programs. Contractor shall not be afforded any relief under
2155 the Change in Law or Change in Scope provisions of this Agreement in the event that those payments
2156 are reduced and/or eliminated during the term of the Agreement.

2157 Contractor is solely responsible for timely payment of invoices submitted to Contractor by Disposal
2158 Contractor, for services provided by Disposal Contractor under City's agreement with the Disposal
2159 Contractor. Contractor shall coordinate with Disposal Contractor regarding the Disposal Contractor's
2160 provision of Disposal services at no charge to the City as provided in Sections 4.5A and 4.6 and Section
2161 8.2 of the City's agreement with the Disposal Contractor.

2162 Contractor shall comply with recordkeeping and reporting requirements of Article 6 and Exhibit C.

2163 **8.2 Rates and Annual Adjustments**

2164 **A. General.** The City shall be responsible for approving Maximum Rates as described in this Article.

2165 A Maximum Rate has been established for each individual Service Level and the initial Rates for
2166 Rate Period One are presented in Exhibit L. Contractor may, in its sole discretion, charge
2167 Customers any amount up to and including the Maximum Rate approved by the City, but in no
2168 case exceeding the Maximum Rate. Contractor shall charge all Customers that have the same
2169 Service Level at the same Rate so that Customers are treated equitably. The comparability of
2170 Service Levels and related Rates shall be considered separately for Solid Waste, Recyclable
2171 Materials, Organics Materials, and C&D services.

2172 If at any time during the Term of the Agreement, the Contractor determines the need for a
2173 Maximum Rate that does not appear on the City-approved Maximum Rate schedule in Exhibit L,
2174 Contractor shall immediately notify the City and request establishment of such Maximum Rate.
2175 For example, if a Customer requires Collection of Organic Materials in a fifteen (15) cubic yard
2176 Compactor five (5) times per week and the City-approved Maximum Rate schedule does not
2177 include this level of service, the Contractor must request that the City approve a Maximum Rate
2178 for this level of service.

2179 **B. Rates for Rate Period One.** Maximum Rates for Rate Period One, which are presented in Exhibit
2180 L, were determined by Contractor and City and were approved by City resolution on or before
2181 the execution of the Agreement. The Maximum Rates for Rate Period One shall be effective
2182 from the Commencement Date of this Agreement through December 31, 2018.

2183 **C. Rates for Subsequent Rate Periods.** Rates for subsequent Rate Periods shall be adjusted
2184 annually in accordance with this Section 8.2 and Exhibit D. Rates for Rate Periods Two, Three,
2185 Five, Six, Seven, Nine and Ten, and, if the Term is extended, Rate Periods Eleven, Thirteen,
2186 Fourteen, and Fifteen shall will be adjusted in accordance with Exhibit D-1, Index-Based Rate
2187 Adjustment Methodology. Rates for Rate Periods Four and Eight, and, if the Term is extended,
2188 Rate Period Twelve, shall will be adjusted in accordance with Exhibit D-2, Cost-Based Rate
2189 Adjustment Methodology.

2190 The index-based adjustment, which is described in Exhibit D-1, involves applying the percentage
2191 change in the consumer price index and a fuel index to calculate adjusted Maximum Rates. Such
2192 Rate adjustment calculations shall be performed in strict conformance to the procedures
2193 described in Exhibit D-1.

2194 The cost-based adjustment, which is described in Exhibit D-2, involves a review of Contractor's
2195 actual costs and projection of cost for the coming Rate Period. This cost-based Rate adjustment
2196 shall be performed instead of the index-based rate adjustment for Rate Periods Four and Eight
2197 and, if the term is extended, for Rate Period Twelve. Such Rate adjustment calculations shall be
2198 performed in strict conformance to the procedures described in Exhibit D-2.

2199 Any calculated adjustment to Rates exceeding five percent (5%) shall be subject to the approval
2200 of the City Council, who may either approve such adjustment or require that the scope and
2201 resultant cost of services be adjusted to allow a lesser Rate adjustment.

2202 **D. Rate Structure.** The City and Contractor shall meet and confer to change the relationship of
2203 individual Rates in comparison with other Rates. Any such changes would occur in conjunction
2204 with the annual Rate adjustment process described in Section 8.2.C or in conjunction with a Rate
2205 adjustment resulting from an extraordinary Rate adjustment in accordance with Section 8.3.
2206 Changes to the rates charged under the new structure shall be calculated in such a way that the
2207 revised Rate structure generates at least the same amount of total revenue when the number of

2208 accounts at each Service Level are multiplied by the Rates charged for each Service Level and
2209 the total for all Service Levels are summed.

2210 **8.3 Extraordinary Rate Adjustments**

2211 It is understood that the Contractor accepts the risk for changes in cost of providing services and the
2212 service levels requested by Customers and therefore the extraordinary adjustments to Maximum Rates
2213 shall be limited to a Change in Law or a City-directed change in scope. If a Change in Law or City-
2214 directed change in scope (pursuant to Section 3.9) occurs, the Contractor may petition City for an
2215 adjustment to the Maximum Rates in excess of the annual adjustment described in Section 8.2.

2216 Contractor shall prepare an application for the extraordinary Rate adjustment calculating the net
2217 financial effect on its operations (both increases and decreases of costs and revenues) resulting from the
2218 Change in Law or City Directed Change in Scope (but not resulting from unrelated changes in costs and
2219 revenues), clearly identifying all assumptions related to such calculations and providing the underlying
2220 documentation supporting the assumptions. The application shall be prepared in compliance with the
2221 procedures described in Exhibit D-2 and shall provide all information requested by City Contract
2222 Manager specific to the nature of the request being made. City Contract Manager shall evaluate the
2223 application for reasonableness. As part of that review, the City Contract Manager may request access to
2224 the financial statements and accounting records required to be maintained by the Contractor (pursuant
2225 to Article 6) in order to determine the reasonableness of the Contractor’s application. Should the
2226 Contractor not grant such access, then the City may rely on the Contractor’s Proposal and other
2227 information available to it as the basis for making reasonable assumptions regarding what those
2228 accounting and financial records would have shown and therefore the reasonableness of the
2229 Contractor’s application. Contractor shall pay all reasonable costs incurred by the City, including the
2230 costs of outside accountants, attorneys, and/or consultants, in order to make a determination of the
2231 reasonableness of the requested Rate adjustment.

2232 In the event of such an application for extraordinary Rate adjustment, it is understood that the City or
2233 Contractor, as the case may be, shall have the burden of demonstrating the reasonableness of the
2234 requested adjustment

2235 The Contractor may appeal the decision of the City Contract Manager to the City Council, which shall
2236 then make the final determination as to whether an adjustment to the Maximum Rates will be made,
2237 and if a Rate adjustment is permitted, the amount of the Rate adjustment. With respect to an
2238 extraordinary Rate adjustment requested by the City Contract Manager, the City Council shall then make
2239 the final determination as to whether an adjustment to the Maximum Rates will be made, and if a Rate
2240 adjustment is permitted, the amount of the Rate adjustment.

2241 **ARTICLE 9. INDEMNITY, INSURANCE, PERFORMANCE**
2242 **BOND, AND RIGHT TO PERFORM SERVICE**

2243 **9.1 Indemnification**

2244 **A. General.** Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless
2245 (to the full extent permitted by law) City and its officers, officials, employees, volunteers, and

2246 agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs
2247 (including without limitation costs and fees of litigation, including attorneys' and expert witness
2248 fees) (collectively, "Damages") of every nature arising out of or in connection with Contractor's
2249 performance under this Agreement, or its failure to comply with any of its obligations contained
2250 in the Agreement, except to the extent such loss or damage was caused by the sole negligence
2251 or willful misconduct of City.

2252 **B. Excluded Waste.** Contractor acknowledges that it is responsible for compliance during the
2253 entire Term of this Agreement with all Applicable Laws. Contractor shall not store, transport,
2254 use, or Dispose of any Excluded Waste except in strict compliance with all Applicable Laws.

2255 In the event that Contractor negligently or willfully mishandles Excluded Waste in the course of
2256 carrying out its activities under this Agreement, Contractor shall at its sole expense promptly
2257 take all investigatory and/or remedial action reasonably required for the remediation of such
2258 environmental contamination. Prior to undertaking any investigatory or remedial action,
2259 however, Contractor shall first obtain City's approval of any proposed investigatory or remedial
2260 action. Should Contractor fail at any time to promptly take such action, City may undertake such
2261 action at Contractor's sole cost and expense, and Contractor shall reimburse City for all such
2262 expenses within thirty (30) calendar days of being billed for those expenses, and any amount not
2263 paid within that thirty (30) calendar day period shall thereafter be deemed delinquent and
2264 subject to the delinquent fee payment provision of Section 7.3. These obligations are in addition
2265 to any defense and indemnity obligations that Contractor may have under this Agreement. The
2266 provisions of this Section shall survive the termination or expiration of this Agreement.

2267 Notwithstanding the foregoing, Contractor's duties under this subsection shall not extend to any
2268 claims arising from the Disposal of Solid Waste at the Approved Transfer Facility or Disposal
2269 Facility that accepted Solid Waste from the Approved Transfer Facility, including, but not limited
2270 to, claims arising under Comprehensive Environmental Response, Compensation and Liability
2271 Act (CERCLA) unless such claim is a direct result of Contractor's negligence or willful misconduct.

2272 **C. Environmental Indemnity.** Contractor shall defend, indemnify, and hold City harmless against
2273 and from any and all claims, suits, losses, penalties, damages, and liability for damages of every
2274 name, kind and description, including attorneys' fees and costs incurred, attributable to the
2275 negligence or willful misconduct of Contractor in handling Excluded Waste.

2276 **D. Related to AB 939, AB 341, AB 1826 and AB 1594.** Contractor's duty to defend and indemnify
2277 herein includes all fines and/or penalties imposed by CalRecycle if the requirements of AB 939,
2278 AB 341, AB 1826 and/or AB 1594 are not met by the Contractor with respect to the materials
2279 Collected under this Agreement and/or Contractor's other obligations under this Agreement,
2280 and such failure is: (i) due to the failure of Contractor to meet its obligations under this
2281 Agreement; or, (ii) due to Contractor delays in providing information that prevents Contractor or
2282 the City from submitting reports to regulators in a timely manner.

2283 **E. Related to Proposition 218.** Should there be a Change in Law or a new judicial interpretation of
2284 Applicable Law, including, but not limited to, Article XIII C and D of the California Constitution
2285 (Commonly Proposition 218), which impacts the Rates for the Collection services established in
2286 accordance with this Agreement, Contractor agrees to meet and confer with City to discuss the
2287 impact of such Change in Law on either Party's ability to perform under this Agreement.

2288 If, at any time, a Rate adjustment determined to be appropriate by both City (which
2289 determination shall not be unreasonably withheld) and Contractor to compensate Contractor

2290 for increases in costs as described in this Agreement cannot be implemented for any reason,
2291 Contractor shall be granted the option to negotiate with City, in good faith, a reduction of
2292 services equal to the value of the Rate adjustment that cannot be implemented. If City and
2293 Contractor are unable to reach agreement about such a reduction in services, then Contractor
2294 may terminate this Agreement upon one hundred eighty (180) calendar days prior written
2295 notice to City, in which case the Contractor and City shall each be entitled to payment of
2296 amounts due for contract performance through the date of termination but otherwise will have
2297 no further obligation to one another pursuant to this Agreement after the date of such
2298 termination. Should a court of competent jurisdiction determine that the Contractor cannot
2299 charge and/or increase its Rates for charges related to Franchise Fees, other City fees or
2300 payments to County, and governmental fees and charges, Contractor shall reduce the Rates it
2301 charges Customers a corresponding amount, providing said fees, Rates and/or charges
2302 disallowed by the court are not related to the cost of providing service hereunder and had been
2303 incorporated in the Rates charged by Contractor to its Customers.

2304 Nothing herein is intended to imply that California Constitution, Articles XIII C or XIII D, apply to
2305 the Rates established for services provided under this Agreement; rather this Section is provided
2306 merely to allocate risk of an adverse judicial interpretation between the Parties.

2307 This provision (i.e., Section 9.1) shall survive the expiration or earlier termination of this
2308 Agreement and shall not be construed as a waiver of rights by City to contribution or indemnity
2309 from third parties.

2310 **F. Survival of Provisions.** Section 9.1 will survive the expiration or earlier termination of this
2311 Agreement and shall not be construed as a waiver of rights by City to contribution or indemnity
2312 from third parties.

2313 **9.2 Insurance**

2314 **A. General Requirements.** Contractor/Subcontractor shall, at its sole cost and expense, maintain in
2315 effect at all times during the Term of this Agreement not less than the following coverage and
2316 limits of insurance:

2317 **B. Coverages and Requirements.** During the Term of this Agreement, Contractor/Subcontractor
2318 shall at all times maintain, at its expense, the following coverages and requirements. The
2319 comprehensive general liability insurance shall include broad form property damage insurance.

2320 1. Minimum Coverages. Insurance coverage shall be with limits not less than the following:

2321 **Commercial General Liability** – \$10,000,000 combined single limit per occurrence for
2322 bodily injury, personal injury, and property damage.

2323 **Automobile Liability** – \$10,000,000 combined single limit per accident for bodily injury and
2324 property damage (include coverage for hired and non-owned vehicles).

2325 **Workers' Compensation** – Statutory Limits/Employers' Liability - \$1,000,000/accident for
2326 bodily injury or disease.

2327 **Blanket Fidelity/Crime Policy** – \$500,000 per event covering the City for any and all acts
2328 including, but not limited to, dishonesty, forgery, alteration, theft, disappearance, and
2329 destruction (inside or outside).

2330 General Liability and Auto Liability Limits of Insurance may be satisfied by a combination of
2331 primary and umbrella or excess insurance.

2332 2. Additional Insured. City, its officers, agents, employees, and volunteers shall be named as
2333 additional insured on all but the workers' compensation and Blanket Fidelity/Crime Policy
2334 coverages.

2335 3. Said policies shall remain in force through the life of this Agreement and, with the
2336 exception of professional liability coverage, shall be payable on a "per occurrence" basis
2337 unless City's Risk Manager specifically consents in writing to a "claims made" basis. For all
2338 "claims made" coverage, in the event that the Contractor/Subcontractor changes insurance
2339 carriers Contractor/Subcontractor shall purchase "tail" coverage or otherwise provide for
2340 continuous coverage covering the Term of this Agreement and not less than three (3) years
2341 thereafter. Proof of such "tail" or other continuous coverage shall be required at any time
2342 that the Contractor/Subcontractor changes to a new carrier prior to receipt of any
2343 payments due.

2344 4. The Contractor/Subcontractor shall declare all aggregate limits on the required coverage
2345 are in place before commencing performance of this Agreement and are available
2346 throughout the performance of this Agreement.

2347 Each insurance policy required by this clause shall be endorsed to state that coverage shall
2348 not be canceled by either party, except after thirty (30) days' prior written notice (10 days
2349 for non-payment) by certified mail, return receipt requested, has been given to the City. If
2350 Contractor's insurer refuses to provide this endorsement, Contractor shall be responsible
2351 for providing written notice to the City that coverage will be canceled thirty (30) days after
2352 the date of the notice or ten (10) days for non-payment.

2353 5. The deductibles or self-insured retentions are for the account of Contractor/Subcontractor
2354 and shall be the sole responsibility of the Contractor/Subcontractor.

2355 6. Contractor shall furnish the City with original certificates and amendatory endorsements
2356 effecting coverage required by this clause. The endorsements should be on insurance
2357 industry forms, provided those endorsements or policies conform to the contract
2358 requirements. All certificates and endorsements are to be received and approved by the
2359 City before work commences. "The City reserves the right to require complete copies of all
2360 required insurance policies, including endorsements evidencing the coverage required by
2361 these specifications. The Contractor shall be allowed to redact information that it
2362 considers confidential".

2363 The Certificate with endorsements and notices shall be mailed to: City of Milpitas,
2364 Attention: Purchasing, 455 East Calaveras Boulevard, Milpitas California, 95035-5411.7.

2365 Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-
2366 VII, unless otherwise approved by City Risk Manager.

2367 8. The policies shall cover all activities of Contractor/Subcontractor, its officers, employees,
2368 agents and volunteers arising out of or in connection with this Agreement.

2369 9. For any claims relating to this Agreement, the Contractor/Subcontractor's insurance
2370 coverage shall be primary, including as respects City, its officers, agents, employees, and
2371 volunteers. Any insurance maintained by City shall apply in excess of, and not contribute
2372 to, coverage provided by Contractor/Subcontractor's liability insurance policy.

2373 10. The Contractor/Subcontractor shall waive, by evidenced endorsement to the policy, all
2374 rights of subrogation against City, its officers, employees, agents, and volunteers.

2375 **C. Endorsements.** Prior to the Effective Date pursuant to this Agreement,
2376 Contractor/Subcontractor shall furnish City Contract Manager with certificates or original
2377 endorsements reflecting coverage required by this Agreement. The certificates or endorsements
2378 are to be signed by a Person authorized by that insurer to bind coverage on its behalf. All
2379 certificates or endorsements are to be received by, and are subject to the approval of, City Risk
2380 Manager before work commences.

2381 **D. Renewals.** During the Term of this Agreement, Contractor/Subcontractor shall furnish City
2382 Contract Manager with certificates or original endorsements reflecting renewals, changes in
2383 insurance companies, and any other documents reflecting the maintenance of the required
2384 coverage throughout the entire Term of this Agreement. The certificates or endorsements are to
2385 be signed by a Person authorized by that insurer to bind coverage on its behalf.

2386 **E. Workers' Compensation.** Contractor/Subcontractor shall provide workers' compensation
2387 coverage as required by State law, and prior to the Effective Date pursuant to this Agreement,
2388 Contractor/Subcontractor shall file the following statement with City.

2389 "I am aware of the provisions of Paragraph 3700 of the Labor Code that require every employer
2390 to be insured against liability for workers' compensation or to undertake self-insurance in
2391 accordance with the provisions of that code, and I will comply with such provisions before
2392 commencing any services required by this Agreement."

2393 "Contractor agrees to include in their subcontract the same requirements and provisions of this
2394 agreement including the indemnity and insurance requirements to the extent they apply to the
2395 scope of the Subcontractor's work. Subcontractors hired by Contractor agree to be bound to
2396 Contractor and City in the same manner and to the same extent as Contractor is bound to City
2397 under the Contract Documents. Subcontractor further agrees to include these same provisions
2398 with any Sub-subcontractor. A copy of the Contract/Agreement and Insurance Provisions will be
2399 furnished to the Subcontractor. The Contractor shall require all Subcontractor's to provide a
2400 valid certificate of insurance and the required endorsements included in the agreement prior to
2401 commencement of any work and will provide proof of compliance to the City."

2402 "The Person executing this Certificate on behalf of Contractor/Subcontractor affirmatively
2403 represents that she/he has the requisite legal authority to do so on behalf of
2404 Contractor/Subcontractor, and both the Person executing this Agreement on behalf of
2405 Contractor/Subcontractor and Contractor/Subcontractor understand that City is relying on this
2406 representation in entering into this Agreement."

2407 **9.3 Performance Bond**

2408 Within seven (7) calendar days of the City's notification to Contractor that the City has executed this
2409 Agreement, Contractor shall file with the City a bond, payable to the City, securing the Contractor's
2410 performance of its obligations under this Agreement and such bond shall be renewed annually if
2411 necessary so that the performance bond is maintained at all times during the Term. The principal sum of
2412 the bond shall be four million one hundred twenty five thousand dollars (\$4,125,000) and shall be
2413 adjusted every three (3) years, commencing with Rate Period Three, to equal three (3) months of the
2414 prior Rate Period's annual Gross Receipts. The bond shall be executed as surety by a corporation
2415 authorized to issue surety bonds in the State of California that has a rating of A or better in the most

2416 recent edition of Best’s Key Rating Guide, and that has a record of service and financial condition
2417 satisfactory to the City. The bond shall be in the form attached as Exhibit J.

2418 As an alternative to the performance bond required above, at City's option, Contractor may deposit with
2419 City a fully prepaid irrevocable letter of credit for at least the duration of the Contract Year for which the
2420 letter of credit is deposited. Such letter of credit shall be in the amount of four million one hundred
2421 twenty five thousand dollars (\$4,125,000). The form of the letter of credit and the issuer of the letter of
2422 credit are subject to the approval of City's Risk Manager and the City Attorney. Nothing in this Section
2423 9.3 shall in any way obligate City to accept a letter of credit in lieu of the performance bond.

2424 City shall have the right to draw against the faithful performance bond or the letter of credit in the event
2425 of a breach or default of Contractor or the failure of Contractor to perform fully any obligation under
2426 this Agreement. Within five (5) calendar days of receipt of notice from City, Contractor shall renew or
2427 replace such sums of money as needed to bring the faithful performance bond or letter of credit
2428 current.

2429 **9.4 Guaranty**

2430 Concurrently with execution of this Agreement, Contractor shall furnish a Guaranty of its performance
2431 under this Agreement, in the form of Exhibit G, properly executed by Republic Services, Inc., a Delaware
2432 Corporation, which owns all of the issued and outstanding common stock of Contractor.

2433 **9.5 Emergency Conditions**

2434 The City Manager may declare the existence of an Emergency Condition and shall provide notice as soon
2435 as practicable to Contractor of said declaration. Within 72 hours an emergency meeting of the City
2436 Council shall be scheduled and consideration of the continuation of an Emergency Condition shall be
2437 heard by the City Council. The City Council shall, by resolution, declare the continued existence of the
2438 emergency condition, if appropriate, and transmit a certified copy of the resolution to Contractor.

2439 “Emergency Condition” means the declaration of a State of Emergency by the City Manager or the City
2440 Council resulting from a major disaster in or proximate to the City.

2441 **A. Emergency Operations**

2442 The Parties acknowledge that either temporary cessation or cessation of indeterminate duration of the
2443 services to be provided by Contractor hereunder may result in conditions detrimental to the public
2444 health, safety and welfare and that, in order to protect the public, invoking the extraordinary provisions
2445 of this section may be necessary. From and after the declaration of the existence of an Emergency
2446 Condition, City or the designee of City (irrespective of whether such designee is another public agency or
2447 privately-owned entity) may assume and carry out, as the “Emergency Operator”, any or all Collection
2448 operations of Contractor hereunder. During the period of the Emergency Condition exists all revenues
2449 which, but for the Emergency Condition, would accrue hereunder to Contractor, shall instead accrue and
2450 be payable to the Emergency Operator.

2451 **B Use of Contractor’s Facilities**

2452 Upon the declaration of the existence of an Emergency Condition pursuant to this Section, Contractor
2453 shall make available and relinquish to the Emergency Operator all of Contractor’s operable vehicles,
2454 equipment, and other facilities necessary or convenient for providing Collection in the Service Area.
2455 Further, Contractor shall provide the Emergency Operator access, and/or rights of access, to such
2456 transfer station facilities and/or Disposal or Processing facilities available to, or under the control of,
2457 Contractor for the transferring and disposal of Discarded Materials, and Contractor shall, to the extent it
2458 possesses rights to use such transfer, Disposal, or Processing facilities, assign such rights to the
2459 Emergency Operator for use during the existence of the Emergency Condition. Notwithstanding the
2460 foregoing provisions of this section, the use of Contractor’s vehicles, equipment, and other facilities and
2461 the assignment of rights to Contractor shall, in the case of Contractor’s insolvency, bankruptcy or other
2462 adverse financial condition, be subject to the provisions of the United States Bankruptcy Act (11
2463 U.S.C. §§101 et seq.) to the extent applicable. During the existence of an Emergency Condition the
2464 Emergency Operator shall operate, maintain and repair, and adequately insure, without cost to
2465 Contractor, Contractor’s vehicles, equipment and other facilities used by it. Upon the cessation of the
2466 Emergency Condition the right to use such vehicles, equipment and facilities shall expire and the
2467 Emergency Operator shall return said vehicles, equipment and facilities to Contractor in a condition
2468 substantially the same as that which existed upon acquiring said vehicles, equipment and facilities,
2469 ordinary wear and tear excepted.

2470 **C. Indemnification**

2471 In the event that an Emergency Operator appointed by City utilizes any facilities and/or equipment of
2472 Contractor, City shall defend, indemnify and hold harmless Contractor and its affiliates from and against
2473 any and all losses, expenses, liens, claims, demands and causes of action of every kind and character
2474 (excluding those based upon the sole active or passive negligence or willful misconduct of Contractor, its
2475 officers, employees and agents) for death, personal injury, property damage or any other liability or
2476 damages, including costs, attorney’s fees, and settlements arising out of, or in connection with, the use
2477 of Contractor’s facilities and/or equipment.

2478 **D. Cessation of Emergency**

2479 At any time after the Emergency Operator has commenced the Collection of Discarded Materials, City
2480 may hold a hearing on the question of the cessation of the Emergency Condition upon giving not less
2481 than forth-eight (48) hours’ prior written notice to Contractor and the Emergency Operator. At the
2482 hearing Contractor, the Emergency Operator, and any and all interested persons shall be given the
2483 opportunity to be heard on the question aforesaid. Upon the conclusion of the hearing, City shall
2484 determine if the Emergency Condition has ceased. If it is determined that the Emergency Condition has
2485 ceased, the City Council shall, by resolution, declare the cessation of the Emergency Condition, and
2486 transmit a certified copy of the resolution to Contractor.

2487 **E. Resumption of Service**

2488 Upon the declaration of cessation of the Emergency Condition, the Emergency Operator shall return to
2489 Contractor its vehicles, equipment, and other facilities acquired and used by it. Further, upon the
2490 declaration of cessation of the Emergency Condition, and unless City has terminated this Agreement

2491 pursuant to Article 10, Contractor shall recommence its operations hereunder and shall perform all of its
2492 duties and obligations in accordance with the provisions hereof, and shall be entitled to all of its rights
2493 hereunder, including accrual of revenues for its benefit, from and after the date upon which the
2494 Emergency Condition shall be deemed to have ceased.

2495 **F. Limitation**

2496 Notwithstanding anything herein contained to the contrary, no Emergency Condition shall exist for more
2497 than 180 consecutive days. Upon the expiration of said 180 days, and unless the Emergency Condition
2498 has ceased prior thereto, this Agreement shall terminate. In the event of such termination no rights shall
2499 accrue to Contractor under this Agreement from and after the date of termination.

2500 **G. City Termination of Agreement**

2501 Notwithstanding the provisions of Section 9.5.E., if, upon the cessation of the Emergency Condition, the
2502 City Council determines that Contractor is not substantially able to perform its duties and obligations
2503 hereunder due to the effects of the Emergency Condition, the City Council may declare this Agreement
2504 terminated effective upon the date of the cessation of the Emergency Condition. In the event of such
2505 termination no rights shall accrue to Contractor under this Agreement from and after the date of
2506 termination.

2507 **9.6 Disaster Operations**

2508 **A. Availability of Contractor's Personnel and Equipment**

2509 In event of wartime, natural, physical or other disaster in or proximate to the City Limits resulting in the
2510 declaration of a State of Emergency by the City Manager or City Council, Contractor shall make available
2511 to City, at no cost to City, all equipment, vehicles, and/or personnel normally performing services under
2512 this Agreement, for emergency operations conducted or directed by the City.

2513 **B. Temporary Possession and Employment**

2514 City shall have the right to take temporary possession of all such vehicles and equipment made available
2515 by Contractor, and to temporarily employ all such Contractor personnel as emergency operations forces
2516 of City, under the direction and control of the City.

2517 **C Use of Additional Equipment**

2518 Contractor may make available, in addition to the vehicles, equipment, and personnel provided in
2519 Section 9.6.A above, equipment, vehicles, and personnel from those Contractor operations and
2520 resources not otherwise serving City pursuant to this Agreement, to the extent necessary to conduct
2521 effective Discarded Materials Collection and removal services during any declared State of Emergency,
2522 subject to the direction and control of the City.

2523 **D. Reimbursement**

2524 City shall not be required to compensate Contractor in any manner or form for Contractor’s provision of
2525 Equipment, vehicles, or personnel normally performing services under this Agreement within the City
2526 Limits, when made available during a declared State of Emergency. When additional equipment,
2527 vehicles, or personnel are provided during such an emergency, pursuant to Section 9.6.C above, City
2528 shall compensate Contractor for actual expenses incurred by Contractor in providing such equipment,
2529 vehicles, and/or personnel upon submission by Contractor to City of detailed records of costs and
2530 expenses actually borne by Contractor, and upon approval by the appropriate Federal agency of City’s
2531 reimbursement of expenses incurred by Contractor during such State of Emergency.

2532 **E. Indemnity**

2533 In the event of a declared State of Emergency during which City takes possession of and utilizes the
2534 equipment, vehicles and/or personnel of Contractor pursuant to this Section 9.6, City agrees to
2535 indemnify and defend Contractor and its officers, directors, agents, and employees, and hold such
2536 parties harmless against all actions, suits, liabilities, costs, and expenses (including reasonable attorneys’
2537 fees and costs of defense) arising out of or related to City’s possession and operation of all Contractor’s
2538 equipment, vehicles, and facilities utilized by City to render services during any such State of Emergency.

2539 **ARTICLE 10. DEFAULT AND REMEDIES**

2540 **10.1 Events of Default**

2541 All provisions of the Agreement are considered material. Each of the following shall constitute an event
2542 of default.

2543 **A. Fraud or Deceit.** Contractor practices, or attempts to practice, any fraud or deceit upon the
2544 City.

2545 **B. Insolvency or Bankruptcy.** Contractor becomes insolvent, unable, or unwilling to pay its debts,
2546 or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.

2547 **C. Failure to Maintain Coverage.** Contractor fails to provide or maintain in full force and affect the
2548 Workers' Compensation, liability, or indemnification coverage as required by this Agreement.

2549 **D. Violations of Regulation.** Contractor violates any orders or filings of any regulatory body having
2550 authority over Contractor relative to this Agreement, provided that Contractor may contest any
2551 such orders or filings by appropriate proceedings conducted in good faith, in which case no
2552 breach or default of this Agreement shall be deemed to have occurred.

2553 **E. Violations of Applicable Law.** Contractor violates Applicable Law relative to this Agreement.

2554 **F. Failure to Perform Direct Services.** Contractor ceases to provide Collection, Transportation, or
2555 Processing services as required under this Agreement for a period of two (2) consecutive
2556 calendar days or more, for any reason within the control of Contractor.

2557 **G. Failure to Pay or Report.** Contractor fails to make any payments to City required under this
2558 Agreement including payment of City fees or Liquidated Damages and/or refuses to provide City
2559 with required information, reports, and/or records in a timely manner as provided for in the

- 2560 Agreement.
- 2561 **H. Acts or Omissions.** Any other act or omission by Contractor which violates the terms,
 2562 conditions, or requirements of this Agreement, AB 939, as it may be amended from time to
 2563 time, or any law, statute, ordinance, order, directive, rule, or regulation issued there under and
 2564 which is not corrected or remedied within the time set in the written notice of the violation or, if
 2565 Contractor cannot reasonably correct or remedy the breach within the time set forth in such
 2566 notice, if Contractor should fail to commence to correct or remedy such violation within the
 2567 time set forth in such notice and diligently effect such correction or remedy thereafter.
- 2568 **I. False, Misleading, or Inaccurate Statements.** Any representation or disclosure made to the City
 2569 by Contractor in connection with or as an inducement to entering into this Agreement, or any
 2570 future amendment to this Agreement, which proves to be false or misleading in any material
 2571 respect as of the time such representation or disclosure is made, whether or not any such
 2572 representation or disclosure appears as part of this Agreement; and, any Contractor-provided
 2573 report containing a misstatement, misrepresentation, data manipulation, or an omission of fact
 2574 or content explicitly defined by the Agreement, excepting non-numerical typographical and
 2575 grammatical errors.
- 2576 **J. Seizure or Attachment.** There is a seizure of, attachment of, or levy on, some or all of
 2577 Contractor’s operating equipment, including without limits its equipment, maintenance or office
 2578 facilities, Approved Facility(ies), or any part thereof.
- 2579 **K. Suspension or Termination of Service.** Except as set forth in Section 10.7 hereof, there is any
 2580 termination or suspension of the transaction of business by Contractor related to this
 2581 Agreement, including without limit, due to labor unrest including strike, work stoppage or
 2582 slowdown, sick-out, picketing, or other concerted job action lasting more than two (2) calendar
 2583 days.
- 2584 **L. Criminal Activity.** Contractor, its officers, managers, or employees are found guilty of criminal
 2585 activity related directly or indirectly to performance of this Agreement or any other agreement
 2586 held with the City.
- 2587 **M. Assignment without Approval.** Contractor transfers or assigns this Agreement without the
 2588 expressed written approval of the City unless the assignment is permitted without City approval
 2589 pursuant to Section 12.6.
- 2590 **N. Failure to Provide Proposal or Implement Change in Service.** Contractor fails to provide a
 2591 proposal for new services or changes to services or fails to implement a change in service as
 2592 requested by the City as specified in Section 3.9.
- 2593 **O. Failure to Perform Any Obligation.** Contractor fails to perform any obligation established under
 2594 this Agreement.

2595 City shall provide Contractor written notice of default within seven (7) calendar days of the occurrence
 2596 of default or within seven (7) calendar days of the City’s first knowledge of the Contractor’s default,
 2597 whichever occurs first.

2598 **10.2 Right to Terminate Upon Event of Default**

2599 Contractor shall be given ten (10) Business Days from written notification by City to cure any default
 2600 which, in the City Contract Manager’s sole opinion, creates a potential public health and safety threat.

2601 Contractor shall be given ten (10) Business Days from written notification by City to cure any default
2602 arising under subsections C, E, F, I, J, and K in Section 10.1 provided, however, that the City shall not be
2603 obligated to provide Contractor with a notice and cure opportunity if the Contractor has committed the
2604 same or similar breach/default within a twenty-four (24) month period.

2605 Contractor shall be given thirty (30) calendar days from written notification by City to cure any other
2606 default (which is not required to be cured within ten (10) Business Days); however, that the City shall
2607 not be obligated to provide Contractor with a notice and cure opportunity if the Contractor has
2608 committed the same or similar breach/default within a twenty-four (24) month period.

2609 **10.3 City's Remedies in the Event of Default**

2610 In the event of Contractor's default, City maintains following remedies:

2611 **A. Waiver of Default.** City may waive any event of default or may waive Contractor's requirement
2612 to cure a default event if City determines that such waiver would be in the best interest of the
2613 City. City's waiver of an event of default is not a waiver of future events of default that may have
2614 the same or similar conditions.

2615 **B. Suspension of Contractor's Obligation.** City may suspend Contractor's performance of its
2616 obligations if Contractor fails to cure default in the time frame specified in Section 10.2 until
2617 such time the Contractor can provide assurance of performance in accordance with Section
2618 10.8.

2619 **C. Liquidated Damages.** City may assess Liquidated Damages for Contractor's failure to meet
2620 specific performance standards pursuant to Section 10.6 and Exhibit E.

2621 **D. Termination.** In the event that Contractor should default and subject to the right of the
2622 Contractor to cure, in the performance of any provisions of this contract, and the default is not
2623 cured for any default within in ten (10) calendar days if the default creates a potential public
2624 health and safety threat or arises under Section 10.1.C., E, F, I, J, or K, or otherwise thirty (30)
2625 calendar days after receipt of written notice of default from the City, then the City may, at its
2626 option, terminate this Agreement and/or hold a hearing at its City Council meeting to determine
2627 whether this Agreement should be terminated. In the event City decides to terminate this
2628 Agreement, the City shall serve twenty (20) calendar days written notice of its intention to
2629 terminate upon Contractor. In the event City exercises its right to terminate this Agreement, the
2630 City may, at its option, upon such termination, either directly undertake performance of the
2631 services or arrange with other Persons to perform the services with or without a written
2632 agreement. This right of termination is in addition to any other rights of City upon a failure of
2633 Contractor to perform its obligations under this Agreement.

2634 Contractor shall not be entitled to any further Gross Receipts or other revenues from Collection
2635 operations authorized hereunder from and after the date of termination.

2636 **E. Other Available Remedies.** City's election of one (1) or more remedies described herein shall
2637 not limit the City from any and all other remedies at law and in equity including injunctive relief,
2638 etc.

2639 **10.4 Possession of Records Upon Termination**

2640 In the event of termination for an event of default, the Contractor shall furnish City Contract Manager
2641 with immediate access to all of its business records, including without limitation, proprietary Contractor
2642 computer systems, related to its Customers, Collection routes, and billing of accounts for Collection
2643 services.

2644 **10.5 City's Remedies Cumulative; Specific Performance**

2645 City's rights to terminate the Agreement under Section 10.2 and to take possession of the Contractor's
2646 records under Section 10.4 are not exclusive, and City's termination of the Agreement and/or the
2647 imposition of Liquidated Damages shall not constitute an election of remedies. Instead, these rights shall
2648 be in addition to any and all other legal and equitable rights and remedies which City may have.

2649 By virtue of the nature of this Agreement, the urgency of timely, continuous, and high quality service;
2650 the lead time required to effect alternative service; and, the rights granted by City to the Contractor, the
2651 remedy of damages for a breach hereof by Contractor is inadequate and City shall be entitled to
2652 injunctive relief (including but not limited to specific performance).

2653 **10.6 Performance Standards and Liquidated Damages**

2654 **A. General.** The Parties find that as of the time of the execution of this Agreement, it is
2655 impractical, if not impossible, to reasonably ascertain the extent of damages which shall be
2656 incurred by City as a result of a breach by Contractor of its obligations under this Agreement.
2657 The factors relating to the impracticability of ascertaining damages include, but are not limited
2658 to, the fact that: (i) substantial damage results to members of the public who are denied
2659 services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety,
2660 frustration, and deprivation of the benefits of the Agreement to individual members of the
2661 general public for whose benefit this Agreement exists, in subjective ways and in varying
2662 degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that
2663 exclusive services might be available at substantially lower costs than alternative services and
2664 the monetary loss resulting from denial of services or denial of quality or reliable services is
2665 impossible to calculate in precise monetary terms; and, (iv) the termination of this Agreement
2666 for such breaches, and other remedies are, at best, a means of future correction and not
2667 remedies which make the public whole for past breaches.

2668 **B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The
2669 Parties further acknowledge that provision of all services specified in this Agreement in a
2670 consistent, reliable manner is of utmost importance to City and that City has considered and
2671 relied on Contractor's representations as to its quality of service commitment in awarding the
2672 Agreement to it. The Parties recognize that some quantified standards of performance are
2673 necessary and appropriate to ensure consistent and reliable service and performance. The
2674 Parties further recognize that if Contractor fails to achieve the performance standards, or fails to
2675 submit required documents in a timely manner, City and its residents and businesses will suffer
2676 damages, and that it is, and will be, impractical and extremely difficult to ascertain and
2677 determine the exact amount of damages which City will suffer. Therefore, without prejudice to
2678 City's right to treat such non-performance as an event of default under this Section, the Parties
2679 agree that the Liquidated Damages amounts established in Exhibit E of this Agreement and the

2680 Liquidated Damage amounts therein represent a reasonable estimate of the amount of such
2681 damages considering all of the circumstances existing on the Effective Date of this Agreement,
2682 including the relationship of the sums to the range of harm to City that reasonably could be
2683 anticipated and the anticipation that proof of actual damages would be costly or impractical.

2684 Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in
2685 the Performance Standards and Liquidated Damages, Exhibit E.

2686 Before assessing Liquidated Damages, City shall give Contractor notice of its intention to do so.
2687 The notice will include a brief description of the incident(s) and non-performance. City may
2688 review (and make copies at its own expense) all information in the possession of Contractor
2689 relating to incident(s) and/or non-performance. City may, within ten (10) Business Days after
2690 issuing the notice, request a meeting with Contractor. City may present evidence of non-
2691 performance in writing and through testimony of its employees and others relevant to the
2692 incident(s) and non-performance. City Contract Manager will provide Contractor with a written
2693 explanation of their determination on each incident(s) and non-performance prior to
2694 authorizing the assessment of Liquidated Damages under this Section 10.6. The decision of City
2695 Contract Manager shall be final and Contractor shall not be subject to, or required to exhaust,
2696 any further administrative remedies.

2697 Except as otherwise noted in Exhibit E, all Liquidated Damages shall apply during the transition
2698 period beginning ninety (90) days prior to, and ending ninety (90) days after the
2699 Commencement Date

2700 **C. Two-Phase Performance Management.** The Parties desire to minimize the time and cost
2701 involved in monitoring Contractor’s performance under this Agreement, particularly with regard
2702 to the assessment of Liquidated Damages. Exhibit E to this Agreement identifies each
2703 “Performance Area” for which the City desires to establish performance standards for this
2704 Agreement. Contractor’s performance within each “Performance Area” shall be primarily
2705 monitored using the “Performance Indicator” described for each. The City shall not assess
2706 Liquidated Damages for the “Specific Performance Measures” identified in Exhibit E unless
2707 Contractor fails to meet the minimum standard for the “Performance Indicator” within the same
2708 “Performance Area”.

2709 **D. Amount.** City may assess Liquidated Damages for each calendar day or event, as appropriate,
2710 that Contractor is determined to be liable in accordance with this Agreement in the amounts
2711 specified in Exhibit E subject to annual adjustment described below.

2712 **E. Timing of Payment.** Contractor shall pay any Liquidated Damages assessed by City within ten
2713 (10) Business Days of the date the Liquidated Damages are assessed. If they are not paid within
2714 the ten (10) Business Day period, City may proceed against the performance bond required by
2715 the Agreement, order the termination of the rights or “franchise” granted by this Agreement, or
2716 all of the above.

2717 **F. Repeated Failure to Meet Goals.** Should the City determine as provided in Section 6.3 that more
2718 than ten (10) Liquidated Damages have been assessed in the prior twelve (12) month period, the
2719 Liquidated Damages provided in Exhibit E shall be increased by one hundred percent (100 %) for
2720 the next twelve (12) month period.

2721 **10.7 Excuse from Performance**

2722 The Parties shall be excused from performing their respective obligations hereunder and from any
2723 obligation to pay Liquidated Damages if they are prevented from so performing by reason of floods,
2724 earthquakes, other acts of nature, war, terrorist activity, civil insurrection, riots, acts of any government
2725 (including judicial action), and other similar catastrophic events which are beyond the control of and not
2726 the fault of the Party claiming excuse from performance hereunder. In the case of labor unrest or job
2727 action directed at a third party over whom Contractor has no control, the inability of Contractor to
2728 provide services in accordance with this Agreement due to the unwillingness or failure of the third party
2729 to: (i) provide reasonable assurance of the safety of Contractor's employees while providing such
2730 services; or, (ii) make reasonable accommodations with respect to Container placement and point of
2731 Delivery, time of Collection, or other operating circumstances to minimize any confrontation with
2732 pickets or the number of Persons necessary to make Collections shall, to that limited extent, excuse
2733 performance. The foregoing excuse shall be conditioned on Contractor's cooperation in performing
2734 Collection services at different times and in different locations. Further, in the event of labor unrest,
2735 including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted
2736 job action conducted by the Contractor's employees or directed at the Contractor, or a subsidiary, the
2737 Contractor shall not be excused from performance. In such case, Contractor shall continue to provide a
2738 reasonably satisfactory level of performance during the pendency thereof, but the Contractor shall not
2739 be required to adhere strictly to the specific requirements of this Agreement regarding routes,
2740 Collection times or similar matters; provided, however, that in no event shall more than seven (7)
2741 calendar days elapse between pickups for Residential and Commercial Customers.

2742 The Party claiming excuse from performance shall, within two (2) calendar days after such Party has
2743 notice of such cause, give the other Party notice of the facts constituting such cause and asserting its
2744 claim to excuse under this Section.

2745 If either Party validly exercises its rights under this Section, the Parties hereby waive any claim against
2746 each other for any damages sustained thereby.

2747 The partial or complete interruption or discontinuance of Contractor's services caused by one (1) or
2748 more of the events described in this Article shall not constitute a default by Contractor under this
2749 Agreement. Notwithstanding the foregoing, however, if Contractor is excused from performing its
2750 obligations hereunder for any of the causes listed in this Section for a period of thirty (30) calendar days
2751 or more, City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by
2752 giving ten (10) Business Days' notice to Contractor, in which case the provisions of Section 10.4 shall
2753 apply.

2754 **10.8 Right to Demand Assurances of Performance**

2755 The Parties acknowledge that it is of the utmost importance to City and the health and safety of all those
2756 members of the public residing or doing business within City who will be adversely affected by
2757 interrupted waste management service, that there be no material interruption in services provided
2758 under this Agreement.

2759 If Contractor: (i) is the subject of any labor unrest including work stoppage or slowdown, sick-out,
2760 picketing or other concerted job action; (ii) appears in the reasonable judgment of City to be unable to
2761 regularly pay its bills as they become due; or, (iii) is the subject of a civil or criminal judgment or order

2762 entered by a Federal, State, regional or local agency for violation of an Applicable Law, and City believes
2763 in good faith that Contractor's ability to perform under the Agreement has thereby been placed in
2764 substantial jeopardy, City may, at its sole option and in addition to all other remedies it may have,
2765 demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in
2766 such form and substance as City believes in good faith is reasonably necessary in the circumstances to
2767 evidence continued ability to perform under the Agreement. If Contractor fails or refuses to provide
2768 satisfactory assurances of timely and proper performance in the form and by the date required by City,
2769 such failure or refusal shall be an event of default for purposes of Section 10.1.

2770 **ARTICLE 11. REPRESENTATIONS AND WARRANTIES**
2771 **OF THE PARTIES**

2772 The Parties, by acceptance of this Agreement, represents and warrants the conditions presented in this
2773 Article.

2774 **11.1 Contractor's Corporate Status**

2775 Contractor is a corporation duly organized, validly existing and in good standing under the laws of the
2776 State. It is qualified to transact business in the State and has the power to own its properties and to
2777 carry on its business as now owned and operated and as required by this Agreement.

2778 **11.2 Contractor's Corporate Authorization**

2779 Contractor has the authority to enter this Agreement and perform its obligations under this Agreement.
2780 The Board of Directors of Contractor (or the shareholders, if necessary) has taken all actions required by
2781 law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement.
2782 The Person signing this Agreement on behalf of Contractor represents and warrants that they have
2783 authority to do so. This Agreement constitutes the legal, valid, and binding obligation of the Contractor.

2784 **11.3 Agreement Will Not Cause Breach**

2785 To the best of Contractor's and City's knowledge after reasonable investigation, the execution or
2786 delivery of this Agreement or the performance by either Party of their obligations hereunder does not
2787 conflict with, violate, or result in a breach: (i) of any Applicable Law; or, (ii) any term or condition of any
2788 judgment, order, or decree of any court, administrative agency or other governmental authority, or any
2789 agreement or instrument to which Contractor or City is a party or by which Contractor or any of its
2790 properties or assets are bound, or constitutes a default hereunder.

2791 **11.4 No Litigation**

2792 To the best of Contractor's and City's knowledge after reasonable investigation, there is no action, suit,
2793 proceeding or investigation, at law or in equity, before or by any court or governmental authority,
2794 commission, board, agency or instrumentality decided, pending or threatened against either Party
2795 wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would:

2796 A. Materially adversely affect the performance by Party of its obligations hereunder;

- 2797 B. Adversely affect the validity or enforceability of this Agreement; or,
2798 C. Have a material adverse effect on the financial condition of Contractor, or any surety or entity
2799 guaranteeing Contractor's performance under this Agreement.

2800 **11.5 No Adverse Judicial Decisions**

2801 To the best of Contractor's and City's knowledge after reasonable investigation, there is no judicial
2802 decision that would prohibit this Agreement or subject this Agreement to legal challenge.

2803 **11.6 No Legal Prohibition**

2804 To the best of each Party's knowledge, after reasonable investigation, there is no Applicable Law in
2805 effect on the date that Party signed this Agreement that would prohibit the performance of either their
2806 obligations under this Agreement and the transactions contemplated hereby.

2807 **11.7 Contractor's Ability to Perform**

2808 Contractor possesses the business, professional, and technical expertise to perform all services,
2809 obligations, and duties as described in and required by this Agreement including all Exhibits thereto.
2810 Contractor possesses the ability to secure equipment, facility, and employee resources required to
2811 perform its obligations under this Agreement.

2812 **11.8 Obligations Regarding City's Disposal Contractor**

2813 Contractor has exercised due diligence to fully familiarize itself with its rights regarding, and obligations
2814 to the City's Disposal Contractor as enumerated in this Agreement and in the City's agreement with the
2815 Disposal Contractor. Such rights and obligations include but are not limited to: Disposal of Solid Waste
2816 intended for Disposal, Disposal of Residue from City-directed Processing of Solid Waste, and payment to
2817 the Disposal Contractor. Contractor warrants that it shall fully cooperate with City and Disposal
2818 Contractor in the event that there is a change in the Disposal Contractor and/or use of an Alternative
2819 Disposal Facility is required.

2820 **ARTICLE 12. OTHER AGREEMENTS OF THE PARTIES**

2821 **12.1 Relationship of Parties**

2822 The Parties intend that Contractor shall perform the services required by this Agreement as an
2823 independent Contractor engaged by City and neither as an officer nor employee of City, nor as a partner
2824 or agent of, or joint venturer with, City. No employee or agent of Contractor shall be, or shall be deemed
2825 to be, an employee or agent of City. Contractor shall have the exclusive control over the manner and
2826 means of performing services under this Agreement, except as expressly provided herein. Contractor
2827 shall be solely responsible for the acts and omissions of its officers, employees, Subcontractors and
2828 agents. Neither Contractor nor its officers, employees, Subcontractors, or agents shall obtain any rights
2829 to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City
2830 employees by virtue of their employment with City.

2831 **12.2 Compliance with Law**

2832 Contractor shall at all times, at its sole cost, comply with all Applicable Laws, permits and licenses of the
2833 United States, the State, County of Santa Clara, and City and with all applicable regulations promulgated
2834 by Federal, State, regional or local administrative and regulatory agencies, now in force and as they may
2835 be enacted, issued or amended during the Term.

2836 **12.3 Governing Law**

2837 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the
2838 State.

2839 **12.4 Jurisdiction**

2840 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the
2841 courts of Santa Clara County in the State of California, which shall have exclusive jurisdiction over such
2842 lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed
2843 in Santa Clara County.

2844 **12.5 Binding on Successors**

2845 The provisions of this Agreement shall inure to the benefit to and be binding on the successors and
2846 permitted assigns of the Parties.

2847 **12.6 Assignment**

2848 Contractor acknowledges that this Agreement involves rendering a vital service to City’s residents and
2849 businesses, and that City has selected Contractor to perform the services specified herein based on (i)
2850 Contractor’s experience, skill and reputation for conducting its operations in a safe, effective and
2851 responsible fashion, and (ii) Contractor’s and the Guarantor’s financial resources to maintain the
2852 required equipment and to support its indemnity obligations to City under this Agreement. City has
2853 relied on each of these factors, among others, in choosing Contractor to perform the services to be
2854 rendered by Contractor under this Agreement.

2855 **A. City Consent Required.** Contractor shall not assign its rights or delegate or otherwise transfer
2856 any or all of its obligations under this Agreement to any other Person without the prior written
2857 consent of City which may be withheld with or without cause at City’s sole discretion. City may
2858 refuse to consent to a proposed assignment unless it is satisfied that the proposed assignee is
2859 ready, willing and able to provide services in a manner equal to or better than Contractor. Any
2860 assignment made in violation of this Section 12.6.A shall be void and the attempted assignment
2861 shall constitute a Contractor default.

2862 **B. Assignment Defined.** For the purpose of this Section, “assignment” shall include, but not be
2863 limited to, (i) a documentary assignment of Contractor’s interest in, and obligations under, this
2864 Agreement; (ii) a sale, exchange or other transfer to a third Party of substantially all of
2865 Contractor’s assets dedicated to service under this Agreement; (iii) a sale, exchange or other
2866 transfer of over thirty percent (30%) of outstanding common stock of Contractor to a Person
2867 who is not a shareholder as of the Effective Date; (iv) any dissolution, reorganization,

2868 consolidation, merger, re-capitalization, stock issuance or reissuance, voting trust, pooling
2869 agreement, escrow arrangement, liquidation or other transaction which results in a change of
2870 ownership or control of Contractor; (v) any assignment by operation of law, including insolvency
2871 or bankruptcy, an assignment for the benefit of creditors, a writ of attachment for an execution
2872 being levied against this Agreement, appointment of a receiver taking possession of Contractor's
2873 property, or transfer occurring in the event of a probate proceeding; and (vi) any combination of
2874 the foregoing (whether or not in related or contemporaneous transactions) which has the effect
2875 of any such transfer or change of ownership, or change of control of Contractor.

2876 **C. Consent Requirements.** No request by Contractor for consent to an assignment need be
2877 considered by City unless and until Contractor has met the following requirements:

2878 1. Contractor shall pay City its reasonable expenses for attorneys' fees, consultants' fees and
2879 other costs of investigation necessary to investigate the suitability of any proposed
2880 assignee, and to review and finalize any documentation required as a condition for
2881 approving any such assignment. With its written request for consideration of assignment,
2882 Contractor shall submit a non-refundable deposit to City in the amount of \$250,000 to
2883 provide City funding for its review of the assignment;

2884 2. Contractor shall be granted no opportunity to review or approve proposed agents of the
2885 City associated with assignment process;

2886 3. Contractor shall furnish City with audited financial statements of the proposed assignee's
2887 operations for the immediately preceding three (3) operating years. City, following review
2888 of financial health of the assignee, may require provision of additional performance surety,
2889 insurance, or secured Closure/Post-Closure funding;

2890 4. Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at
2891 least ten (10) years of Solid Waste Transfer and Disposal management experience on a
2892 scale equal to or exceeding the scale of operations conducted by Contractor under this
2893 Agreement; (ii) that in the last five (5) years, the proposed assignee has not been the
2894 subject of any administrative or judicial proceedings initiated by a federal, State or local
2895 agency having jurisdiction over its operations due to an alleged failure to comply with
2896 federal, State or local laws or that the proposed assignee has provided City with a complete
2897 list of such proceedings and their status; (iii) that the proposed assignee conducts its
2898 operations in a safe and environmentally conscientious manner; (iv) that the proposed
2899 assignee conducts its operations in accordance with sound Solid Waste management
2900 practices in full compliance with all federal, State and local laws regulating the Transfer and
2901 Disposal of Solid Waste and all Environmental Laws; (v) of any other information required
2902 by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely,
2903 safe and effective manner; and

2904 5. Any permitted assignee must assume Contractor's responsibilities under this Agreement.

2905 6. Should City consent to the assignment, Contractor shall make an assignment payment to
2906 the City in the amount of 2% of the annual Gross Receipts for the services provided under
2907 this Agreement for the most recently completed calendar year.

2908 **D. No Obligation to Consider.** City will not be obligated to consider a proposed assignment if
2909 Contractor is in default.

2910 **E. Retention of Records.** Assignment of the Agreement in no way relieves Contractor of its record
2911 retention responsibilities under Section 6.1, nor of any and all other Contractor obligations that survive

2912 the Agreement.

2913 **12.7 No Third Party Beneficiaries**

2914 This Agreement is not intended to, and will not be construed to, create any right on the part of any third
2915 party to bring an action to enforce any of its terms.

2916 **12.8 Waiver**

2917 The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be
2918 deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach
2919 of violation of the same or any other provision. The subsequent acceptance by either Party of any
2920 monies which become due hereunder shall not be deemed to be a waiver of any pre-existing or
2921 concurrent breach or violation by the other Party of any provision of this Agreement.

2922 **12.9 Notice Procedures**

2923 All notices, demands, requests, proposals, approvals, consents, and other communications, which this
2924 Agreement requires, authorizes or contemplates, shall be in writing and shall either be personally
2925 delivered to a representative of the Parties at the address below or deposited in the United States mail,
2926 first class postage prepaid, addressed as follows:

2927 If communications to the City are notices of legal action or request for public information, such
2928 communication shall be directed to:

2929 City Clerk
2930 City of Milpitas
2931 455 East Calaveras Boulevard
2932 Milpitas, CA 95035

2933 All other communications shall be directed to:

2934 Director of Engineering/City Engineer
2935 City of Milpitas
2936 455 East Calaveras Boulevard
2937 Milpitas, CA 95035
2938

2939 If to Contractor:

2940 General Manager
2941 Republic Services, Inc.
2942 1601 Dixon Landing Rd.
2943 Milpitas, CA 95035

2944 The address to which communications may be delivered may be changed from time to time by a notice
2945 given in accordance with this Section. Notice shall be deemed given on the day it is personally delivered
2946 or, if mailed, three (3) calendar days from the date it is deposited in the mail.

2947 **12.10 Representatives of the Parties**

2948 References in this Agreement to the “City” shall mean the City’s elected body and all actions to be taken
2949 by City except as provided below. The City may delegate, in writing, authority to the City Contract
2950 Manager and/or to other City officials and may permit such officials, in turn, to delegate in writing some
2951 or all of such authority to subordinate officers. The Contractor may rely upon actions taken by such
2952 delegates if they are within the scope of the authority properly delegated to them.

2953 The Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as
2954 the representative of the Contractor in all matters related to the Agreement and shall inform City in
2955 writing of such designation and of any limitations upon his or her authority to bind the Contractor. City
2956 may rely upon action taken by such designated representative as actions of the Contractor unless they
2957 are outside the scope of the authority delegated to him/her by the Contractor as communicated to City.

2958 **ARTICLE 13. MISCELLANEOUS AGREEMENTS**

2959 **13.1 Entire Agreement**

2960 This Agreement is the entire agreement between the Parties with respect to the subject matter hereof
2961 and supersedes all prior and contemporaneous oral and written agreements and discussions. Each Party
2962 has cooperated in the drafting and preparation of this Agreement and this Agreement shall not be
2963 construed against any Party on the basis of drafting. This Agreement may be amended only by an
2964 agreement in writing, signed by each of the Parties hereto.

2965 **13.2 Section Headings**

2966 The article headings and section headings in this Agreement are for convenience of reference only and
2967 are not intended to be used in the construction of this Agreement nor to alter or affect any of its
2968 provisions.

2969 **13.3 References to Laws**

2970 All references in this Agreement to laws and regulations shall be understood to include such laws as
2971 they may be subsequently amended or recodified, unless otherwise specifically provided herein.

2972 **13.4 Amendments**

2973 This Agreement may not be modified or amended in any respect except in writing signed by the Parties.

2974 **13.5 Severability**

2975 If any non-material provision of this Agreement is for any reason deemed to be invalid and
2976 unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining
2977 provisions of this Agreement, which shall be enforced as if such invalid or unenforceable provision had
2978 not been contained herein.

2979 **13.6 Counterparts**

2980 This Agreement may be executed in counterparts, each of which shall be considered an original.

2981 **13.7 Exhibits**

2982 Each of the Exhibits identified as Exhibit "A" through "N" is attached hereto and incorporated herein and
2983 made a part hereof by this reference. In the event of a conflict between the terms of this Agreement
2984 and the terms of an Exhibit, the terms of this Agreement shall control.

2985 IN WITNESS WHEREOF, City and Contractor have executed this Agreement as of the day and year first
2986 above written.

2987

2988

2989

2990 ATTEST:

2991

2992 City CLERK

City of Milpitas ("City")

2993

2994 By _____

By _____

2995 City Clerk

City Manager

2996

2997 Date: _____

Date: _____

2998

2999

3000 APPROVED AS TO FORM:

3001

3002

3003 _____

3004 City Attorney

3005

3006 Date: _____

3007

3008

3009

3010

3011 APPROVED AS TO FORM:

Allied Waste Services of North America, LLC
dba Republic Services of Santa Clara County ("Contractor")

3012

3013

3014

3015

3016 _____

By: _____

3017 Contractor Attorney

Michael Caprio, Area President, West Area

3018

3019

3020 Date: _____

Date: _____

EXHIBIT A: DEFINITIONS

EXHIBIT A DEFINITIONS

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

“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.

“AB 939” 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.

“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.

“AB 1826” means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 [Chesbro, AB 1826]), also commonly referred to as “AB 1826”, as amended, supplemented, superseded, and replaced from time to time.

“Accept” or **“Acceptance”** (or other variations thereof) means the transfer of ownership of Solid Waste intended for Disposal from the Contractor to the Disposal Contractor upon Delivery to an Approved Disposal Facility, transfer of ownership of Discarded Materials other than Solid Waste from the Contractor to the owner of an Approved Facility for the purposes of Processing, and transfer of ownership of Solid Waste from the Contractor to the owner of an Approved Solid Waste Processing Facility with City direction and for the purposes of Solid Waste Processing as provided in Section 4.8.J.

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

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

“Alternative Daily Cover (ADC)” means CalRecycle-approved materials other than soil used as a temporary overlay on an exposed landfill face. Generally, these materials must be processed so that they do not allow gaps in the face surface, which would provide breeding grounds for insects and

EXHIBIT A DEFINITIONS

vermin.

“Alternative Facility(ies)” means the Transfer and/or Processing facility(ies) proposed by Contractor and approved by City for use in the event that an Approved Facility is unavailable for use.

“Alternative Intermediate Cover (AIC)” means CalRecycle-approved materials other than soil used at a landfill on all surfaces of the fill where no additional Solid Waste will be deposited within one hundred eighty (180) days. Generally, these materials must be processed so that they do not allow gaps in the face surface, which would provide breeding grounds for insects and vermin.

“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, and Processing of Solid Waste, Recyclable Materials, Organic Materials, and C&D, and of street sweeping that are in force on the Effective Date and as may be enacted, issued or amended during the Term of this Agreement.

“Approved C&D Processing Facility” means the Newby Island Resource Recovery Park at 1601 Dixon Landing Road, Milpitas, CA 95035 which is owned and operated by the Browning Ferris Industries of California which may be used for Processing of Source Separated Recyclable C&D.

“Approved Disposal Facility” means the Guadalupe Landfill at 15999 Guadalupe Mines Road, San Jose, CA, which is owned and operated by the Disposal Contractor.

“Approved Facility(ies)” means any one of or any combination of the: Approved C&D Processing Facility; Approved Disposal Facility; Approved Organics Processing Facility; Approved Recyclable Materials Processing Facility; and/or Approved Transfer Facility.

“Approved Organic Materials Processing Facility” means the Newby Island Resource Recovery Park at 1601 Dixon Landing Road, Milpitas CA, which is owned by Browning Ferris Industries of California, which may be used for Processing of Food Scraps and other Organic Materials.

“Approved Recyclable Materials Processing Facility” means the Newby Island Resource Recovery Park at 1601 Dixon Landing Road, Milpitas, CA, which is owned and operated by Browning Ferris Industries of California.

“Approved Solid Waste Processing Facility” means the Newby Island Resource Recovery Park at 1601 Dixon Landing Road, Milpitas, CA, which is owned and operated by Browning Ferris Industries of California.

“Approved Transfer Facility” means the Newby Island Resource Recovery Park at 1601 Dixon Landing Road, Milpitas CA, which is owned by Browning Ferris Industries of California, which may be used for Transferring materials to Alternative Facilities.

“Beneficial Reuse” means use of material for beneficial reuse which shall include, but not be limited to, the following: Alternative Daily Cover, Alternative Intermediate Cover, final cover foundation layer, liner operations layer, leachate and landfill gas collection system, construction fill, road base, wet weather operations pads and access roads, and soil amendments for erosion control and landscaping.

“Bin” means a Container with capacity of approximately one (1) to eight (8) cubic yards, with a hinged lid, and with wheels (where appropriate), that is serviced by a front end-loading Collection vehicle.

“Bulky Item” means discarded appliances, furniture, tires, carpets, mattresses, and similar large items

EXHIBIT A DEFINITIONS

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. It does not include abandoned automobiles, large auto parts, or trees.

“Business Days” mean days during which the City offices are open to do business with the public.

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

“Change in Law” means any of the following events or conditions that has a material and adverse effect on the performance by the Parties of their respective obligations under this Agreement (except for payment obligations):

- 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 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.

“City” means the City of Milpitas, a municipal corporation, and all the territory lying within the municipal boundaries of the City as presently existing or as such boundaries may be modified during the Term.

“City Contract Manager” means the City representative specified in Section 5.8, who is the main point of contact for this Agreement.

“Collect or Collection (or any variation thereof)” means the act of collecting Solid Waste, Recyclable Materials, Organic Materials, C&D, Bulky Items, and other material at the place of generation in City.

“Commencement Date” means the date specified in Section 2.1 when Collection, Transportation, Processing, and Composting services required by this Agreement shall be provided.

“Commercial” shall mean of, from or pertaining to non-Residential Premises where business activity is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing, and industrial operations, but excluding businesses conducted upon Residential property which are permitted under applicable zoning regulations and are not the primary use of the property.

“Compactor” means a mechanical apparatus that compresses materials together with 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.

“Composting or Compost (or any variation thereof)” includes a controlled biological decomposition of Organic Materials yielding a safe and nuisance free compost product.

“Construction and Demolition Debris”, “C&D Debris”, “C&D” includes discarded building materials, packaging, debris, and rubble resulting from construction, alteration, remodeling, repair or demolition

EXHIBIT A DEFINITIONS

operations on any pavements, excavation projects, houses, Commercial buildings, or other structures, excluding Excluded Waste. Source Separated Recyclable C&D and C&D Waste are subsets of C&D.

“Container(s)” mean Bins, Carts, Compactors, and Drop Boxes.

“Contractor” means Allied Waste Services of North America, LLC (dba Republic Services of Santa Clara County) organized and operating under the laws of the State and its officers, directors, employees, agents, companies, related-parties, affiliates, subsidiaries, and Subcontractors.

“Contractor’s Compensation” means the monetary compensation received by Contractor in return for providing services in accordance with this Agreement as described in Article 8.

“Contractor’s Proposal” means the proposal submitted to City by Contractor on October 27th, 2015 and subsequently negotiated for provision of Solid Waste, Recyclables, and Organic Materials services and certain supplemental written materials, which are included as Exhibit I to this Agreement and are incorporated by reference.

“County” means the County of Santa Clara.

“Curb or Curbside (or any variation thereof)” means the location of a Collection Container for pick-up, where such Container is placed on the street or alley against the face of the Curb, or where no Curb exists, the Container is placed not more than five (5) feet from the outside edge of the street or alley nearest the property’s entrance.

“Customer” means the Person whom Contractor submits its billing invoice to and collects payment from for Collection services provided to a Premises. The Customer may be either the Occupant or Owner of the Premises provided that the Owner of the Premises shall be responsible for payment of Collection services if an Occupant of a Premises, which is identified as the Customer of Owner’s Premises, fails to make such payment.

“Customer Type” means the Customer’s sector category including, but not limited to, Single-Family, Multi-Family, Commercial, C&D, Drop Box/Compactor, and City.

“Delivered” or **“Delivery”** (or other variations thereof) means the action of the Contractor in Delivering Discarded Materials or street sweepings to an Approved Facility.

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

“Discarded Materials” means Solid Waste, Recyclable Materials, Organic Materials, and C&D placed by a Generator in a receptacle and/or at a location for the purposes of Collection by Contractor, excluding Excluded Waste.

“Disposal or Dispose” (or any variation thereof) means the final disposition of Solid Waste at a Disposal Facility.

“Disposal Contractor” means Waste Management of the South Bay, Inc., the party separately contracted by the City for provision of Disposal services, and compensated by Contractor.

EXHIBIT A DEFINITIONS

“Disposal Facility” means a facility for ultimate Disposal of Solid Waste.

“Diversion” (or any variation thereof) means activities which reduce or eliminate the amount of Solid Waste to be Disposed including, but not limited to, Recycling and Composting, and to Processing of Solid Waste for recovery of Recyclable or Organic Materials.

“Drop Box” means an open-top Container with a capacity of ten (10) to fifty (50) cubic yards that is serviced by a roll-off Collection vehicle.

“Effective Date” means the date on which the latter of the two Parties signs this Agreement.

“Excluded Waste” means Hazardous Substance, Hazardous Waste, Infectious Waste, Designated Waste, volatile, corrosive, biomedical, infectious, biohazardous, 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 batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.

“Exclusive Right” is the right and privilege granted by City to Contractor to be the only Franchisee that Collects, Transports, and Processes Solid Waste, Recyclable Materials, Organic Materials, and C&D in the City.

“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.

“Federal” means belonging to or pertaining to the Federal government of the United States.

“Food Scraps” means those Discarded Materials that will decompose and/or putrefy including: (i) all kitchen and table food waste; (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs; (iii) discarded paper that is contaminated with Food Scraps; (iv) fruit waste, grain waste, dairy waste, meat, and fish waste; and, (v) non-Recyclable paper or contaminated paper. Food Scraps are a subset of Organic Materials.

“Franchise Fee” means the fee paid by Contractor to City for the privilege to hold the rights granted by this Agreement.

“Generator” means any Person whose act or process produces Solid Waste, Recyclable Materials, Organic Materials, or C&D as defined in the Public Resources Code, or whose act first causes Solid Waste to become subject to regulation.

“Gross Receipts” shall mean total cash receipts collected from Customers by the Contractor for the provision of services pursuant to this Agreement, without any deductions. Gross Receipts do not include revenues from the sale of Recyclable Materials, Organic Materials, or C&D.

EXHIBIT A DEFINITIONS

“Hazardous Substance” means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to: (i) the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, 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 there under 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.

“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.

“Holidays” are defined as New Year's Day, Thanksgiving Day and Christmas Day.

“Household Hazardous Waste” or **“HHW”** means Hazardous Waste generated at Residential Premises within the City. HHW includes, but is not limited to: paint, stain, varnish, thinner, adhesives, auto products such as old fuel, Used Motor Oil, Used Oil Filter, batteries, household batteries, fluorescent bulbs, tubes, cleaners and sprays, pesticides, fertilizers and other garden products, needles, syringes, and lancets.

“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.

“Liquidated Damages” means the amounts due by Contractor for failure to meet specific quantifiable standards of performance as described in Section 10.6 and Exhibit E.

“Mixed Waste” means materials placed by a Customer in a Solid Waste Container with contents that, if separated, could be accepted as Recyclable Materials and/or Organic Materials. Mixed Waste differs from Solid Waste only to the extent that Mixed Waste is processed for Diversion of those Recyclable Materials and/or Organic Materials prior to delivering such material for Disposal. Under no circumstances should this definition be interpreted to have any relationship to the Contractor's rights or obligations with regard to the delivery of materials under this Agreement.

“Multi-Family” means any Residential Premises, other than a Single-Family Premises, with five (5) or more dwelling units used for Residential purposes (excluding units used for temporary residential purposes such as hotels) that receive centralized Collection service for all units on the Premises which

EXHIBIT A DEFINITIONS

are billed to one (1) Customer at one (1) address. Multi-Family residences are further defined in terms of relative density and type of service as provided in Section 4.2.

“Occupant” means the Person who occupies a Premises.

“Organic Materials” means those Yard Trimmings and Food Scraps that are specifically accepted at the applicable Approved Facilities. No Discarded Material shall be considered to be Organic Materials, however, unless it is separated from Solid Waste, Recyclable Material, and C&D.

“Owner” means the Person(s) holding legal title to real property and/or any improvements thereon, and shall include the Person(s) listed on the latest equalized assessment roll of the County Assessor.

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

“Permits” means all federal, State, county, City, other local and any other governmental unit permits, orders, licenses, approvals, authorizations, consents and entitlements that are required under Applicable Law to be obtained or maintained by any Person with respect to services performed under this Agreement, as renewed or amended from time to time.

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

“Per-Ton Rate” means the per-unit compensation owed Disposal Contractor by Contractor for each ton of Solid Waste Delivered by Contractor, as initially specified in Exhibit N and as adjusted annually as provided in Article 8.

“Personal Recycling Bin” or **“PRB”** refers to a small easily portable Container with a capacity of at least three (3) gallons to be included by Contractor in the Multi-Family Move-in kit to facilitate convenient accumulation of Recyclable Materials within a Multi-Family dwelling unit.

“Premises” means any land or building in the City where Solid Waste, Recyclable Materials, Organic Materials, or C&D are generated or accumulated.

“Processing” means to prepare, treat, or convert through some special method. Processing of Solid Waste requires prior City-approval as provided in Section 4.8.J of the Agreement.

“Processing Facility” means any plant or site used for the purpose of sorting, cleansing, treating or reconstituting Recyclable Materials, Organic Materials, or Source Separated Recyclable C&D for the purpose of making such material available for Recycling or reuse or the facility for the Processing and/or Composting of Organic Materials.

“Rate” means the maximum amount, expressed as a dollar unit, that the Contractor bills a Customer for providing services under this Agreement. Contractor may, in its sole discretion, charge any amount up to and including the Rate approved by the City, but in no case exceeding the Rate.

“Rate Period” means a twelve (12) month period, commencing January 1 and concluding December 31, with the exception that Rate Period One shall be an approximately sixteen (16) month period, commencing September 6, 2017 and concluding December 31, 2018.

“Recyclable Materials” means those Discarded Materials that Generators set out in Recyclables Containers for Collection for the purpose of Recycling by the Contractor, and that are at least ninety percent (90%) Recyclable and that exclude Excluded Waste. No Discarded Materials shall be considered

EXHIBIT A DEFINITIONS

Recyclable Materials unless such material is separated from Solid Waste, Organic Materials, and C&D. Recyclable Materials to be Collected from Single-Family and Multi-Family Premises include, at a minimum, magazines, catalogs, phone books, shredded paper (placed in paper bags for collection), envelopes, junk mail, corrugated cardboard, brown paper grocery bags, mixed or colored paper, paperboard, paper egg cartons, office ledger paper, white plastic grocery bags, glass bottles and jars, food (bimetal) and aluminum cans, newspaper, and plastic containers #1-7 excluding #6, polystyrene in all forms. Recyclable Materials to be Collected from Commercial Generators, includes at a minimum, white paper, computer paper, copy paper, fax paper, carbonless forms, envelopes (with or without windows), colored, white, and manila file folders, laser-printed paper, junk mail, newspapers, magazines, phone books, glossy paper, corrugated cardboard, chipboard, shredded paper, bi-metal cans, aluminum, tin, glass bottles and jars, and plastic containers #1 – 7 excluding polystyrene (#6) in all forms.

“Recycle or Recycling” means the process of sorting, cleansing, treating, and reconstituting at a Processing Facility materials that would otherwise be Disposed of at a landfill for the purpose of returning such materials to the economy in the form of raw materials for new, reused, or reconstituted products.

“Residential” shall mean of, from, or pertaining to a Single-Family Premises or Multi-Family Premises including Single-Family homes, apartments, condominiums, townhouse complexes, mobile home parks, cooperative apartments, and yacht harbors and marinas where residents live aboard boats.

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

“Reusable Materials” means items that are capable of being used again with no or minimal Processing.

“SB 1016” means Chapter 343, Statutes of 2008, Wiggins, also commonly referred to as “SB 1016”, as amended, supplemented, superseded, and replaced from time to time.

“SB 1383” or the “Short-Lived Climate Pollutants Act of 2016” as it received final legislative approval during the 2016 legislative session, means 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). The Parties mutually acknowledge it likely that it will be signed into law by the Governor prior to the Commencement Date of this Agreement.

“Senior” means a Person sixty-two (62) years of age or older.

“Service Area” means the physical area encompassed by the jurisdiction of the City, in which the Contractor provides Collection service.

“Service Level” refers to the size of a Customer’s Container and the frequency of Collection service.

“Single-Family” means, notwithstanding any contrary definition in City Code, any detached or attached house or residence designed or used for occupancy by one (1) family, provided that Collection service feasibly can be provided to such Premises as an independent unit, and the Owner or Occupant of such independent unit is billed directly for the Collection service. Single-Family includes Residential units of a duplex, tri-plex, or four-plex Residential structure provided that each unit is separately billed for their

EXHIBIT A DEFINITIONS

specific service level.

“Solid Waste” means solid waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated hereunder. Excluded from the definition of Solid Waste are Excluded Waste, C&D, Source Separated Recyclable Materials, Source Separated Organic Materials, and radioactive waste. Notwithstanding any provision to the contrary, Solid Waste includes Mixed Waste and may include 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 Household Hazardous Waste in compliance with Section 41500 and 41802 of the California Public Resources Code as may be amended from time to time. Solid Waste includes salvageable materials only when such materials are included for Collection in a Solid Waste Container, or when Solid Waste is directed by City for Processing as provided in Section 4.8.J. Except as provided in Section 4.8., all Collected Solid Waste is intended for Disposal.

“Source Separated” means the segregation, by the Generator, of materials designated for separate Collection for some form of Recycling, Composting, recovery, or reuse. Solely for the purpose of Section 1.3, Source Separated materials have a Processing residue level of less than 10% by weight and volume

“Source Separated Recyclable C&D” means C&D materials which are Source Separated by the Customer or Generator and which have a Processing residue level of less than ten percent (10%) by weight.

“Specialty Recyclable Material” means material not specified in this Agreement that can be or will be Collected for purposes of Recycling. Such Specialty Recyclable Material may include, but is not limited to, scrap metal, high-grade paper (including office mixed paper), pallets, and plastic film.

“State” means the State of California.

“Subcontractor” means a Party, as approved by the City 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 and supplies, and professional services to Contractor shall not be considered Subcontractors.

“Term” means the Term of this Agreement, including extension periods if granted, as provided for in Article 2.

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

“Transfer(ring)” (or other variations thereof) means receipt, Acceptance and reloading of Discarded Materials or street sweepings at an Approved Transfer Facility for Transport for Processing or Disposal.

“Transfer Facility” means a Facility that receives and temporarily stores materials, and then transfers the materials into larger trailers for Transport to a Processing Facility or Disposal Facility.

“Transfer Vehicle” means a tractor and trailer designed to haul Discarded Materials or street sweepings from the Approved Transfer Facility to an Approved Processing Facility or Approved Disposal Facility.

“Transport”, “Transportation” means the act of transporting or state of being transported.

“Used Motor Oil and Filter” means motor oil and the subsequent oil filter that has been used in a vehicle and cannot be reused.

EXHIBIT A DEFINITIONS

“Used Oil Recovery Kit” means a kit containing: one (1) reusable plastic jug of at least one (1) gallon capacity with a watertight screw-on top to contain Used Motor Oil; one (1) plastic disposable resealable bag of sufficient capacity to accommodate one (1) Used Motor Oil Filter; and, a flyer, brochure, or other informational media approved by the City intended to educate Customers about the Used Motor Oil and Filter Collection program and the benefits resulting from the proper handling of Used Motor Oil and Filters. The Used Oil Recovery Kit is to be provided to Customers by Contractor to recover Used Motor Oil and Filters from Single-Family and Multi-Family residents.

“Universal Waste (U-Waste)” means all wastes as defined by Title 22, Subsections 66273.1 through 66273.9 of the California Code of Regulations. These include, but are not limited to, batteries, fluorescent light bulbs, mercury switches, and E-Waste.

“Yard Trimmings” means those Discarded Materials that will decompose and/or putrefy, including, but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of organic waste. Yard Trimmings are a subset of Organic Materials. Yard Trimmings placed for Collection may not exceed six (6) inches in diameter and three (3) feet in length and must fit within the Contractor-provided Container. Yard Trimmings are a subset of Organic Materials.

**EXHIBIT B:
PUBLIC OUTREACH
REQUIREMENTS**

EXHIBIT B

PUBLIC OUTREACH REQUIREMENTS

Contractor understands and recognizes the importance of effective outreach and promotion as the key to helping residents and businesses understand more about source reduction, reuse, Recycling, and Composting. In addition to, and in coordination with the requirements of Section 4.9 of the Agreement, Contractor shall include, at a minimum, the following services as part of its public outreach program.

1. STAFFING PLAN AND STAFF ROLES

Contractor shall at all times maintain the minimum levels of staffing specified below.

To best achieve the highest possible level of public outreach and awareness, Contractor shall designate a Public Outreach Manager to supervise, coordinate and implement all public outreach activities in the City. The Public Outreach Manager shall be assigned to support the City for a minimum of 20 hours per week. The Public Outreach Manager shall perform the following tasks in the following four principal areas of responsibility:

A. Government and Community Relations

1. Serve as a liaison between the City and Contractor
2. Represent Contractor at City Council, City staff, City strategy development meetings and quarterly coordination meetings
3. Work with the City in partnership to develop and incorporate municipal activities into Contractor activities, and vice versa
4. Participate and represent Contractor in community activities
5. Oversee customer satisfaction of all program services
6. Ensure compliance with City and regulatory agencies
7. Support local community service organizations

B. Media Relations

1. Develop relationships with news media outlets, including online services
2. Track media coverage

C. Contract Compliance

1. Coordinate and produce annual outreach plan required by Section 4.9 of the Agreement
2. Coordinate implementation of the annual public outreach plan

The Public Outreach Manager will be assisted in the public outreach efforts by one (1) full-time, or two (2) part-time recycling coordinator(s) assigned to the City for a minimum of 40 hours per week in total. These positions shall be filled by Contractor's personnel.

The Recycling Coordinator(s) shall provide field marketing for the Multi-family and Commercial Recycling Programs.

EXHIBIT B

PUBLIC OUTREACH REQUIREMENTS

2. SINGLE-FAMILY OUTREACH PROGRAMS

A. Initial Start-Up Public Outreach Activities

1. Lead development, writing and design of an initial mailing to Single-Family Customers explaining the change from the existing hauler to the new Contractor (if applicable); changes from the existing Collection programs to new programs; date of change, etc.
2. Lead development of a “how-to” flyer describing how to prepare Recyclable and Organic Materials for Collection and describe the acceptable materials that can be included in the Recyclable and Organic Materials Containers. The flyer should emphasize any new Recyclable Materials to be included in the Recycling Cart.
3. Lead development of a “how-to” flyer describing the proper set out procedures for Collection Containers.
4. Prepare drafts and distribute public service announcements (PSA) for local radio and cable television broadcast, as well as door-hangers and print advertising including editorial content for local newspapers.
5. Promote the new food scraps program to Single-Family Customers through appropriate methods including, at a minimum, distribution of Kitchen Food Scraps Pails and an introductory flyer describing best practices for effectively participating in the program to all Single-Family customers prior to the Commencement Date.

B. Continuing Programs Throughout Agreement

1. Visit homeowner associations and other groups to promote and explain the program, as requested by the associations or as scheduled by the City.
2. Lead development of annual newsletters that creatively inform residents about topics such as availability of free on-call curbside Bulky Item pick-ups, home Composting, proper handling of Household Hazardous Waste, E-Waste, and U-Waste, and environmental conservation.
3. Lead development of an annual bill insert, brochure, and/or feature quarterly newsletter articles describing how to prepare Recyclable and Organic Materials for Collection. Contractor shall inform residents as to the acceptable materials that can be included in the Recyclable Materials and Organic Materials Containers and any common contaminants to be excluded from Collection to customers.
4. Produce and implement corrective actions notices for use in instances where the Resident sets out inappropriate materials.
5. Two weeks prior to Christmas tree Collection events provide written notification to each Single-Family Customer specifying event details and tree Collection schedule as provided by Sections 4.1.C and 4.2.C of this Agreement. Notifications include preparation of local newspaper advertising, banners for the City web page and information flyers.

EXHIBIT B

PUBLIC OUTREACH REQUIREMENTS

6. On each bill, Contractor shall include a brief statement to Customers providing service-related announcements such as messages about new services, the on-call clean-up and Bulky Item pick-up services, proper handling of Household Hazardous Waste, Food Scraps Collection, Christmas tree Collection, etc.
7. Prepare and make available through Contractor's website "how-to" information on Recycling, Composting, and proper Container set-outs in Adobe Acrobat PDF and video format, and provide Single-Family Customers with links for additional resources.
8. Enable Single-Family Customers to access information regarding Collection days by address, as well as other Customer- or City-specific information, through its website including access to Adobe Acrobat PDF copies of newsletters and other outreach materials required herein.
9. Regularly promote the Single-Family Organic Materials program to Customers through the methods described in items 1 through 8 above and, at the direction of the City Contract Manager, through direct postcard mailings or door-hangers to targeted Customers on specific routes or route segments that appear to be under-participating or creating excess contamination.

3. MULTI-FAMILY OUTREACH PROGRAMS

A. Initial Start-Up Public Outreach Activities

1. Lead development of an initial mailing to Multi-Family Customers explaining the change from the existing hauler to the new Contractor (if applicable); changes from the existing Collection programs to new programs; date of change, etc.
2. Lead development of a "how-to" flyer describing how to prepare Recyclable and Organic Materials for Collection and describe the acceptable materials that can be included in the Recyclable and Organic Materials Containers. The flyer should emphasize the requirements of AB 341 and AB 1826 and how to comply as well as identify any new Recyclable or Organic Materials to be included in the applicable cart.
3. Lead development of a "how-to" flyer describing the Recyclable and Organic Materials Collection program for distribution to tenants and distribute to Multi-Family property managers for distribution to tenants.
4. Lead development of posters describing Collection programs and distribute to Multi-Family property managers for on-site use.

B. Continuing Programs Throughout Agreement

1. Visit apartment managers and apartment units or home owners' association meetings or other groups to promote and explain the Contractor's Collection programs and the requirements of AB 341, and AB 1826 throughout the Term of the Agreement, as requested by the associations or as scheduled by the City.

EXHIBIT B

PUBLIC OUTREACH REQUIREMENTS

2. Prepare annual public outreach material on Recycling, the requirements of AB 341 and AB 1826, and how to comply, and proper handling of Household Hazardous Waste, E-Waste, and U-Waste and distribute (or arrange for distribution of) materials directly to tenants of Multi-family Premises.
3. Conduct site visits and provide technical assistance as specified in Section 4.10 of this Agreement.
4. Prepare reporting of AB 341 achievements including a list of complexes out of compliance, and actions taken to improve recycling.
5. Offer and respond to requests for on-site meetings and workshops. Contractor will conduct workshops (when requested) that will show property managers and residents, in a hands-on interactive format, how to use the Recyclable and Organic Materials program and will provide resources for additional information and support.
6. Lead development of and distribute “move-in” kits for property managers and owners of Multi-Family complexes to provide new tenants. Move-in kits shall provide Recycling information and Contractor’s Customer service phone number where questions can be answered.
7. Prepare and distribute at least two bill inserts annually for Multi-Family Owners and Property Managers that are each focused on a key subject (e.g. Recycling procedures, AB 341 and AB 1826 compliance, technical assistance, on-call Bulky Item collection, etc.).
8. Two weeks prior to Christmas tree Collection event, provide written notification to each Multi-Family Customer specifying event details and schedule as provided by Section 4.2.F of this Agreement.
9. On each bill, include a brief statement to Customers providing service-related announcements such as messages about new services, complying with the requirements of AB 341 and AB 1826, the on-call Bulky Item pick-up services, proper handling of Household Hazardous Waste, Christmas tree Collection, etc.
10. As part of Contractor’s website, provide tenants and property managers with access to a dedicated multi-family page which will present “how-to” information in Adobe Acrobat PDF and video formats for tenants and property managers as well as links to other resources.
11. Develop and use a corrective actions notice for use in situations where residents set out inappropriate materials.
12. For the Multi-Family Yard Trimmings program implemented as required by AB 1826, conduct the following activities, at a minimum:
 - i. Provide a starter kit to inform Multi-Family property owners and managers of the Multi-Family Yard Trimmings Collection program;
 - ii. Place Yard Trimmings presentation posters in highly trafficked areas of Multi-Family complexes; and,

EXHIBIT B

PUBLIC OUTREACH REQUIREMENTS

- iii. Produce and distribute periodically, but at Contractor's discretion not more than quarterly, newsletters informing Multi-Family property owners and managers about the Multi-Family Yard Trimmings Collection program.
13. At least semi-annually, prepare and distribute notices to Customers that are not compliant with the requirements of AB 341 and/or AB 1826, which identify why the Customer is not compliant and what actions Customer can take to be compliant.

4. COMMERCIAL OUTREACH PROGRAMS

A. Initial Start-Up Public Outreach Activities

1. Lead development of a flyer and/or "how-to" brochure to businesses explaining the services provided to each general business type (restaurants, office/commercial buildings, strip malls, and large commercial businesses). The brochure should emphasize the requirements of AB 341 and AB 1826 and how to comply.
2. Prepare and distribute a flyer and/or "how-to" brochure describing the Organic Materials Collection services available to each business type and how to prepare Organic Materials for Collection.
3. Meet with up to four (4) business associations (Chamber of Commerce, Rotary Club, etc.) in separate venues to inform businesses of the Recyclable and Organic Materials Collection programs, the requirements of AB 341 and AB 1826, answer questions, and provide service and Rate information.

B. Continuing Programs Throughout Agreement

1. Prepare and distribute a quarterly newsletter to all Commercial Customers promoting and explaining Recyclable Materials and Organic Materials Collection programs and the requirements of AB 341 and AB 1826. The newsletter shall be distributed to Commercial Customers at the same time bills are issued.
2. Prepare brochures, flyers, and articles for the quarterly newsletter related to non-franchise-related programs such as source reduction, reuse and non-Contractor Recyclable Materials programs (e.g., the requirements of AB 341 and AB 1826, green business recognition, Hazardous Waste management, buy-recycled policies, etc.). These materials shall be available upon request, and articles shall be published annually in the quarterly newsletter.
3. Conduct site visits and provide technical assistance as specified in Section 4.10 of this Agreement.
4. For the Commercial Food Scraps program implemented as required by AB 1826, conduct the following activities, at a minimum:
 - i. Lead development of a starter kit to inform businesses of the Commercial Food Scraps Collection program;
 - ii. Conduct initial site visits to all schools, institutions, restaurants, bakeries, grocery stores, and other food scrap generators in the City to encourage

EXHIBIT B

PUBLIC OUTREACH REQUIREMENTS

- participation in the program and customize the program to fit the Customer's needs;
- iii. Place Food Scraps presentation posters in highly trafficked areas in the City; and,
 - iv. Produce and distribute periodically, but at Contractor's discretion not more than quarterly, newsletters or bill inserts that inform customers about the Commercial Food Scrap Collection program.
5. Attend business associations' meetings to promote and explain the Collection programs and the requirements of AB 341 and AB 1826 throughout the Term of the Agreement, as requested by the associations or as scheduled by the City.
 6. Provide employee training to businesses that participate in Recyclable Materials and/or Organic Materials Collection programs, annually upon the Customer's request.
 7. Develop and use a corrective actions notice for use in situations where businesses set out inappropriate materials.
 8. On each bill, Contractor shall include a brief statement to Customers providing service-related announcements such as messages about new services, Recyclable and Organic Materials Collection services, complying with AB 341 and AB 1826, proper handling of Hazardous Waste, etc.
 9. Prepare and make available through Contractor's website "how-to" information for Commercial Generators on Recycling, Composting, and Disposal in Adobe Acrobat PDF and video format.
 10. Distribute outreach materials describing the requirements of AB 341 and AB 1826.
 11. At least semi-annually, prepare and distribute notices to Customers that are not compliant with the requirements of AB 341 and/or AB 1826, which identify why the Customer is not compliant and what actions Customer can take to be compliant.

5. STREET SWEEPING

Contractor shall at all times comply with the minimum outreach provisions specified in Section 4.15.E of the Agreement.

6. SCHOOL OUTREACH

Develop and implement an annual "Mini-Grants" Program to assist teachers with materials needed for instruction of how to Recycle and Compost at school and at home. Educational mini-grants in total of up to \$10,000 per year shall be offered, up to \$5,000 at beginning of fall semesters and up to \$5,000 at beginning of spring semesters, to all elementary and middle school principals and science teachers. City and Contractor shall collaborate to determine mini-grant scope, amount of per classroom to per school awards, notification and award schedule. Contractor shall support a curriculum of City's choosing with a minimum of six (6) presentations to schools in the City or provide on-site tours for classes from schools in the City to promote Recycling and Composting and provide age appropriate materials pertaining to

EXHIBIT B

PUBLIC OUTREACH REQUIREMENTS

Recycling and Composting. In addition, Contractor shall provide visits to schools upon request, including a recycling truck and knowledgeable driver to demonstrate equipment for school children.

7. SPECIAL EVENTS

- A. Arrange for and staff a booth or table at City events to promote source reduction, reuse, Recycling, Composting, and proper handling of E-Waste, U-Waste, and Hazardous Waste and answer questions about Collection services. Contractor will develop a stand-alone and table-top professional display for use at the City events and will provide corresponding informational components that can be used to inform Customers and the general public about Recycling in general, and Milpitas Recyclable and Organic Materials programs. At a minimum, Contractor shall provide this outreach service at up to six (6) events annually to be determined with input from the City.
- B. Inform any event sponsor or venue organizer on the requirements of AB 2176 for large events and venues, which are required to comply with AB 2176, and assist the sponsor or organizer in preparation of a recycling plan, which shall include all information required by AB 2176.

8. ADDITIONAL YARD TRIMMINGS PROGRAMS

Contractor shall, at a minimum provide the following programs:

- A. Compost for vermicomposting activities delivered free to designated school sites.
- B. Planning and implementation for up to two annual special events intended to promote Yard Trimmings programs, including:
 - i. One event targeting the schools.
 - ii. One event targeting Milpitas single family residents for free giveaway of up to two (2) bags of Compost in one (1) cubic foot bags per household, and including an annual “Second Chance Giveaway” with the same offer within two weeks from the scheduled free giveaway event. Contractor shall provide convenient pick-up location within or near Milpitas and shall provide a safe method to line-up and place compost into cars.
- C. Speaking engagements reaching homeowners, community and civic organizations.

9. ALL SECTORS

- A. Produce press releases and advertisements tied to specific community events at intervals determined by the City. Press releases shall be developed and reviewed by the City regarding new or enhanced services as needed. Advertisements shall be developed in conjunction with workshops, training programs, etc.
- B. Conduct informational tours of the Approved Facilities to familiarize residents, businesses, and school children with each facility’s activities.
- C. Provide public outreach materials that address the multi-lingual diversity of the City through use of visual images and/or other techniques.
- D. Attend community workshops as requested by City to explain Collection services and respond to questions from the community.

EXHIBIT B
PUBLIC OUTREACH REQUIREMENTS

- E. Develop and maintain a website describing services provided in the City as required by Section 4.9 of the Agreement and publishing all current Rates approved under this Agreement as required by Section 4.12.A.3 of the Agreement.

This page intentionally left blank

**EXHIBIT C:
REPORTING
REQUIREMENTS**

EXHIBIT C

REPORTING REQUIREMENTS

Report Format

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. City reserves right to review, and to require changes to Contractor reporting formats. At City's request, Contractor shall use standardized reporting forms provided by City. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

1. Determine and set Rates and evaluate the financial efficacy of operations.
2. Evaluate past and expected progress towards achieving the Diversion requirements specified in Section 4.14 and Exhibit E.
3. Provide concise and comprehensive program information and metrics for use in fulfilling reporting requirements under AB 939, AB 341 AB 1826 and AB 1594.
4. Determine needs for adjustment to programs.
5. Evaluate Customer service and

Monthly City Report Content

The monthly tonnage reports shall be presented by Contractor to show the following information for each month. In addition, each monthly report shall show the monthly data for the past twelve (12) months.

1. Tonnage Report

- Total tonnages collected for the month by route by material type.
- Tonnage delivered to each Approved Facility by Customer and Material Type, subtotaling and clearly identifying those Tons that are Disposed and those that are Diverted.
- Total Units of Used Oil, Used Oil Filters, E-Waste, U-Waste, and Bulky Items Collected by Customer Type and Units Recycled and Disposed.
- Tonnage of Recyclable Materials Marketed (by commodity and including average commodity value for each) and Processing Residue Tonnage Disposed.
- Tonnage of Organic Materials Marketed and Processing Residue Tonnage Disposed.
- Tonnage of C&D Marketed and Processing Residue Tonnage Disposed.

EXHIBIT C

REPORTING REQUIREMENTS

2. Revenue Report

- Provide a statement detailing Gross Receipts from all operations conducted or permitted pursuant to this Agreement as required by Section 8.1.
- Maintain a list of Customers that are forty five (45) or more calendar days past due and include the following information for each delinquent account: name; service address; contact information; number of days the account is delinquent; method(s) the Contractor has used to attempt collection of the bad debt including date of such attempt(s); and, identification, if, and when the Contractor plans to or did stop service to a delinquent account. Provide this list only upon request of the City.

Quarterly City Report Content

Quarterly reports shall be presented by Contractor showing the monthly information requested above plus the following information for each quarter.

1. Customer Report

- Number of Customers by Customer Type.
- Number of Containers at each Service Level by Customer Type and program summarizing the type of material Collected, total gallons of Cart service, cubic yards of Bin service, and pulls and cubic yards or Tons of Drop Box and Compactor service by Customer Type. Report should calculate the average volume of service received per: Single-Family Customer; Multi-Family dwelling unit; Commercial Customer; and, C&D Customer.
- Number of free and for-fee On-Call Bulky Item Collections by Customer Type.
- Participation percentage by program and Customer Type where the participation percentage is calculated as the number of Customers who have subscribed to or requested service under the program relative to the number of Customers of that Customer Type subscribing to Solid Waste service. Contractor shall not be required to submit participant Customer names and addresses as part of the regular reporting; however, such information shall be provided to the City Contract Manager upon request.
- Detailed Customer account data in Microsoft Excel format including, but not limited to: customer name, service location address, Solid Waste, Recyclable Materials, Organic Materials, and C&D Service Level information, contact name, address, and phone number. Such detail shall be sufficient for the City to verify Customers' compliance/non-compliance with the requirements of AB 341 and/or AB 1826. If necessary for compliance purposes, information shall be submitted on a monthly basis at the City's request.
- Other reports required by the State or as may be required in the future related to the requirements of AB 341 and AB 1826. If City necessary for compliance purposes, information shall be submitted on a monthly basis at City request.

EXHIBIT C

REPORTING REQUIREMENTS

2. Customer Service Report

Customer service reporting requirements apply to both Collection and street sweeping services.

- Number of Customer calls listed separately by complaints and inquiries (where inquiries include requests for Recycling information, Rate information, etc.) listed separately by month. For complaints, list the number of calls separately by category (e.g., missed pickups, scheduled cleanups, billing concerns, damage claims, etc.) and provide details regarding complaint resolution.
- Number of new service requests and Service Level changes for each Customer Type and program listed separately by month.
- Number of technical assistance requests and/or onsite services provided, listed by month.
- Number of events of Discarded Materials being tagged for non-Collection summarized by the reason for tagging (e.g., inclusion of non-Recyclable or non-Compostable materials, improper setout, Hazardous Waste, etc.) listed by month.
- Call center and web analytics such as hold times, number of hits and unique visitors to the Contractor's website listed by month.

3. Outreach

Outreach reporting requirements apply to both Collection and street sweeping services.

- Provide a status report of Contractor's actual activities completed compared to the annual public outreach plan. For each completed item, document the results including what date the activity was performed, how many Customers were targeted or participated, and what methods were used to accomplish the task, if different from the plan.
- Summarize the Recycling opportunity assessments/on-site meetings provided to Customers (reporting Multi-Family separately from Commercial) by identifying the number of Recycling opportunity assessments conducted each month in the most-recently completed quarter, and contact information including address, contact names, telephone number of Persons contacted, number of units (for Multi-Family), and the Solid Waste, Recyclable Materials, and Organic Materials Service Level. Include any Service Level changes resulting from such site visits.
- Dates, times, and group names of meetings and events attended.

4. Diversion Compliance

- Contractor's Diversion percentage rate for the quarter, calculated as total tons Delivered for Processing minus Residue tons divided by total tons Collected.
- Contamination and Residue rates.
- Listing of Multi-Family and Commercial Customers that are not in compliance with the requirements of AB 341 and/or AB 1826. Such list shall include, at a minimum, Customer name, service location address, Solid Waste, Recyclable Materials, and Organic Materials Service Level information, contact name, address, and phone number, and the date(s) Contractor provided a

EXHIBIT C

REPORTING REQUIREMENTS

notice of non-compliance, and a complete description of Contractor efforts to inform, and to gain compliance by each listed Customer.

5. Pilot and New Programs (If applicable)

For each pilot and/or new program, provide activity related and narrative reports on goals, milestones, and accomplishments. Describe problems encountered, actions taken and any recommendations to facilitate progress. Describe vehicles, personnel, and equipment utilized for each program.

6. Public Outreach Plan

Pursuant to Section 4.9, as part of the Contractor's third quarterly report for the Rate Period, Contractor shall submit a plan outlining its public outreach efforts for the coming Rate Period.

Annual City Report Content

The annual report shall include all the monthly and quarterly report information plus the following additional information.

1. Summary Assessment

Provide a summary assessment of the programs performed under this Agreement from Contractor's perspective relative to the financial and physical status of the program. The physical status assessment shall reflect how well the program is operating in terms of efficiency, economy, and effectiveness in meeting all the goals and objectives of this Agreement, particularly the Contractor's Diversion goals. Provide recommendations and plans to improve. Highlight significant accomplishments and problems. Results shall be compared to other similar size communities served by the Contractor in the State, if applicable.

2. Vehicle Inventory

Provide a listing of all vehicles used in performing services under this Agreement including the license plate number, VIN, make, model, model year, purchase date, engine overhaul/rebuild date (if applicable), and mileage at December 31.

3. Recyclables, Organics, and C&D Markets

Contractor shall include a listing of markets for Recyclable Materials, Organic Materials, and C&D and the end use of these materials. This type of information is intended to help the City gauge the sustainability of Recycling and Organics markets.

4. Cost-Based Rate Adjustment Data

Provide the following information **only if Rates are to be determined for the upcoming Rate Period using a cost-based adjustment process** pursuant to Exhibit D-2. With the exception of the "Financial Information" listed below, all other items listed may be requested by the City Contract Manager at any time during the Term of the Agreement and Contractor shall comply with that request in a timely fashion.

- A. **Financial Information.** Within one hundred twenty (120) calendar days after the close of the Rate Period, Contractor shall deliver to the City two (2) hard copies and one (1) electronic copy of the audited consolidated financial statements and profit and loss statements of

EXHIBIT C

REPORTING REQUIREMENTS

Contractor for the preceding Rate Period. Financial statements shall include a supplemental combining schedule showing Contractor's results of operations, including the specific revenues and expenses in connection with the operations provided for in this Agreement from others included in such financial statements. The financial statements and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) consistently applied and fairly reflecting the results of operation and Contractor's financial condition. Annual financial statements shall be audited, in accordance with Generally Accepted Auditing Standards (GAAS) by a Certified Public Accountant (CPA) licensed (in good standing) to practice public accounting in the State as determined by the State Department of Consumer Affairs Board of Accountancy, and that the CPA's opinion on Contractor's annual financial statements shall be unqualified, and shall contain the CPA's conclusions regarding the Contractor's accounting policies and procedures, internal controls, and operating policies. The CPA shall perform an evaluation and, if necessary, shall cite recommendations for improvement.

- B. **Related Party Entities.** As part of the annual reporting requirement, Contractor shall provide the City with a copy of each related party entity's (whose cost of services are not pre-determined in this Agreement on a unit price basis or by a governmental contractor) audited annual financial statements and management letter for that fiscal year, or within ninety (90) calendar days of each related party entity's fiscal year-end, if timing does not coincide with the annual report date. Financial statements shall be prepared in accordance with GAAP and audited, in accordance with GAAS, by a CPA licensed in the State, and that the CPA's opinion on each related party entity's annual financial statements shall be unqualified, and that the CPA make available to the City (or the City's designated representative) such CPA's working papers related to the audit.

Contractor agrees that all financial transactions with all related party entities shall be approved in advance in writing and disclosed in a separate disclosure letter to the City, upon request. This letter shall include, but not be limited to, the following information:

- A general description of the nature of each related party entity transaction, or type of transaction (if many similar transactions exist) shall be provided, as applicable. Such description shall include for each (or similar) transaction, amounts, specific related party entity, basis of amount (how amount was determined), description of the allocation methodology used to allocate any common costs, and profit amount. Amounts shall be reconciled to the related party entity disclosures made in Contractor's annual audited financial statements referred to in this Exhibit.
- At the City's request, Contractor shall provide the City with copies of working papers or other documentation deemed relevant by the Contractor relating to information shown in the annual disclosure letter.

- C. **Operational Information:** Provide the following operational information:

1. **Routes by Customer Type**

- a. Number of routes per day for each line of business.
- b. Types of vehicles.
- c. Crew size per route.
- d. Number of full time equivalent (FTE) routes.
- e. Number of accounts and cubic yards scheduled per route.

EXHIBIT C REPORTING REQUIREMENTS

- f. Total route hours per Customer Type per year.
 - g. Average cost per route.
 - h. Percentage of Drop Box routes attributable to C&D Collection
2. **Personnel**
- a. Organizational chart.
 - b. Job classifications and number of employees (e.g., administrative, Customer service representatives, drivers, supervisors, outreach staff).
 - c. Wages by job classification.
 - d. Number of FTE positions for each job classification.
 - e. Number of hours per job classification per year.
3. **Productivity Statistics**
- a. Average number of accounts per route per day by Customer Type.
 - b. Average number of setouts per route per day by Customer Type.
 - c. Average Tons per route per day by vehicle type (i.e. side-loader, front-loader, roll-off).
 - d. Average cubic yards of Collection scheduled per route.
 - e. Analysis of Drop Box Collection service and calculation of the percentage of Drop Box route time attributable to C&D Collection.
4. **Vehicles**
- a. List of collection vehicles including year purchased and mileage.
 - b. Average age of mobile equipment with oldest and newest.
 - c. List of major maintenance and/or replacement events, including costs.
5. **Operational Changes**
- a. Number of routes.
 - b. Staffing.
 - c. Supervision.
 - d. Collection services.
 - e. Other data as applicable related to any programmatic or operational changes implemented within the Agreement.
- D. **Variance Analysis.** Provide the following variance analysis for each Customer Type. For any variances greater than five (5) percent annually, Contractor shall provide sufficient rationale to support variance:
- 1. Variance analysis comparing the current Rate Period to each of the prior Rate Periods of Agreement.
 - 2. Variance analysis comparing the current Rate Period to each of the future projected Rate Periods.
- E. **Allocations.** Provide the following allocation data:
- 1. Provide a concise general explanation of the various allocation methodologies used for each Rate application line item.
 - 2. Provide specific examples of each type of allocation used showing how an entry is reported in the general ledger and ties to the Rate application

EXHIBIT C

REPORTING REQUIREMENTS

3. Provide a statement indicating whether there have been any changes in allocation methods used since the last Rate application. If any allocation methods have changed clearly identify those changes.
- F. **Projections.** Provide the following projection data:
1. Provide support for the basis for projected Gross Receipts and line item expenses, clearly indicate the supporting calculations and assumptions
 2. Provide support for the most-recent twelve (12) months of Tonnage data for the Rate Period. Clearly indicate the supporting calculations and assumptions.

Event-Specific Requirements

- A. **Special Events.** Within fourteen (14) calendar days of the end of a special event, Contractor shall submit a report to the City Contract Manager and event organizer documenting at a minimum: the number of event collection stations deployed at the event, the number of collection station monitors, the Tonnage of each material type (i.e., Solid Waste, Recyclable Materials, and Organic Materials) Collected, and a description of the public outreach conducted at the event.
- B. **Litter/Spillage of Materials.** Pursuant to Sections 5.3.B. and 5.3.C, Contractor shall discuss instances of repeated spillage not caused by it directly with the Generator responsible and report such instances to City.
- C. **Notice of Non-Collection.** Pursuant to Sections 5.3.H Contractor notify the City Contract Manager via email of Premises where materials are tagged by Contractor and not picked up, describing the type of material(s) and reason.

Required State Reporting

Contractor shall be solely responsible for anticipating and understanding State reporting requirements for AB 341 and AB 1826, except that it shall take direction as relates to such reporting if and as provided by the City. Contractor shall develop and submit each report for City review and comment no less than forty five (45) days prior to its required submittal date.

This page intentionally left blank

**EXHIBIT D:
RATE ADJUSTMENT
METHODOLOGY**

EXHIBIT D

RATE ADJUSTMENT METHODOLOGY

Adjustment Process

General

Subject to the terms herein, the City shall adjust all Rates on an annual basis. Contractor shall submit its application for a Rate adjustment to the City Contract Manager on or before September 1 of each Rate Period where Rates shall be adjusted using the index-based methodology described in Exhibit D-1. Contractor shall submit its application on or before July 1 for any Rate Period where Rates shall be adjusted using the cost-based methodology described in Exhibit D-2. Contractor's Rate application shall document all calculations and include all supporting schedules, documentation of per-Ton charges for Approved Facilities, documentation of changes in governmental fees at Approved Facilities (if applicable), and any other documentation or evidence determined by the City Contract Manager to be reasonably necessary to ensure that the calculation of Rate adjustments has been performed in strict conformance to the requirements of this Exhibit D.

The City shall make a good faith effort to approve Rates by December 1 of each year, and such Rates shall be effective on each subsequent January 1. If Rates are not effective by January 1 due to a delay caused solely by City, City shall allow Contractor to retroactively bill Customers for the amount of the Rate increase for any period of said delay that is solely caused by City (subject to the City's approval of how the retroactive adjustment is billed) or the City may compensate the Contractor for lost Gross Rate Revenues. In the case of a delayed Rate adjustment, the Contractor may bill the Customer during the next billing cycle to recoup the deferred Rate increase. If Rates are not effective by January 1 as a result of Contractor's delay in submitting the Rate application in a complete and accurate form, then prior Rates remain in effect until such adjustment is made and Contractor shall not be entitled to a retroactive adjustment for lost Gross Rate Revenues.

Table 1 - Schedule of Rate Periods

Rate Period	Dates
1	September 6, 2017 - December 31, 2018
2	January 1, 2019 – December 31, 2019
3	January 1, 2020 – December 31, 2020
4	January 1, 2021 – December 31, 2021
5	January 1, 2022 – December 31, 2022
6	January 1, 2023 – December 31, 2023
7	January 1, 2024 – December 31, 2024
8	January 1, 2025 – December 31, 2025
9	January 1, 2026 – December 31, 2026
10	January 1, 2027 – September 4, 2027

EXHIBIT D

RATE ADJUSTMENT METHODOLOGY

Definitions

Certain terms which are specific to this Exhibit (including Exhibits D-1 and D-2) are defined below:

- A. **“Annual Percentage Change”** means the average value of an index for the 12-month period ending June of the then-current Rate Period minus the average index value for the 12-month period ending June of the most-recently completed Rate Period, divided by the average index value for the 12-month period ending June of the most-recently completed Rate Period. The Annual Percentage Change shall be rounded to the nearest thousandth (1,000th).

For example, if the Contractor is preparing its Rate application for Rates to be effective for Rate Period 2, the Annual Percentage Change in CPI shall be calculated as follows: $[(\text{Average CPI for July 2017 through June 2018}) - (\text{Average CPI for July 2016 through June 2017})] / (\text{Average CPI for July 2016 through June 2017})$.

- B. **“Average Index Value”** means the sum of the monthly index values during the 12-month period ending in June divided by 12 (in the case of indices published monthly), the sum of the bi-monthly index values divided by 6 (in the case of indices published bi-monthly), or the sum of the quarterly index values divided by 4 (in the case of indices published based on a 3-month percent change).
- C. **“CPI-U”** means the Consumer Price Index, All Urban Consumers, all items, not seasonally adjusted San Francisco-Oakland-San Jose Metropolitan Area compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.
- D. **“ECI”** means the Employment Cost Index, Total Compensation, Private Industry, Service-Providing Industries, seasonally adjusted, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.
- E. **“Fuel Index” or “CNG Fuel Pricing Index”** means the per-therm price for Core Natural Gas Service for Compression on Customer’s Premises, Schedule G-NGV1, compiled and published by the Pacific Gas and Electric Company Analysis and Rate Department and reported monthly in its “Gas RateFinder” publication (<http://www.pge.com/tariffs/GRF.SHTML>). The March 2015 CNG Fuel Pricing Index is \$0.51999 per therm, which reflects the sum of the customer charge, procurement charge, transportation charge, and public purpose program (PPP) charge for natural gas service for compression on customer’s premises as reported by Pacific Gas and Electric Company. {Note to Proposer: this index will be used if the selected proposal utilizes CNG powered Collection vehicles.}
- F. **“Motor Vehicle Maintenance and Repair Index”** means the Consumer Price Index, All Urban Consumers, Motor Vehicle Maintenance and Repair, not seasonally adjusted U.S. city average, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.

EXHIBIT D RATE ADJUSTMENT METHODOLOGY

- G. **“Net Organic Materials Processing Cost”** means cost of Processing Organic Materials less revenues earned from sale of Compost Product.
- H. **“Net Recyclable Materials Processing Revenue”** means revenues earned from sale of Processed Recyclable Materials, less the cost of Processing. Contractor has proposed a Net Recyclable Materials Processing Revenue of \$0 per ton for the Term of the Agreement. In doing so, Contractor shall take all risks associated with the commodity markets for Recyclable Materials.
- H. **“Total Calculated Costs”** means the total amount to be used as a basis for determining the Rate Adjustment Factor. The Total Calculated Costs do not reflect or in any way guarantee the Gross Rate Revenues that are to be generated by Rates or retained by the Contractor. Note that for determining Rates for Rate Period Two, Total Proposal Costs for Rate Period One shall be used for the calculations.

Table 2 provides additional information about the four indices defined above.

TABLE 2*- Detailed Index Information

	CPI-U	ECI	Fuel	Motor Vehicle Maintenance and Repair Index
Description	Consumer Price Index - All Urban Consumers	Employment Cost Index	Producer Price Index -- Commodities	Consumer Price Index – All Urban Consumers, Motor Vehicle Maintenance and Repair
Series ID	CUURA422SA0	CIS201000000000Q Replacement index to be inserted	WPS057303	CUUR0000SETD
Adjusted	Not seasonally adjusted	Seasonally adjusted	Seasonally adjusted	Not seasonally adjusted
Area	San Francisco-Oakland-San Jose Metropolitan Area	Service-Providing Industries, United States	N/A	U.S. City average
Item	All items	All workers	No. 2 diesel fuel	Motor vehicle maintenance and repair
Base Period	1982-84=100	N/A	1982-84=100	1982-84=100
Periodicity	Bi-monthly	3-month percent change	3-month percent change	Monthly

* All indices published by the U.S. Bureau of Labor Statistics.

EXHIBIT D

RATE ADJUSTMENT METHODOLOGY

Cost of Rate Adjustment Process

The City may incur costs, including consulting and legal fees, when determining adjustments to the Rates in accordance with this Exhibit and may require the Contractor to pay for such costs within sixty (60) calendar days of receipt of the City's invoice for such costs. The Contractor may recover such costs through the Rates by treating the costs as an allowable Pass-Through Cost. Regardless of Contractor's payment of costs associated with said review, the City shall retain full and unimpeded discretion in selection of its agents to ensure, at a minimum, that no conflict of interest arises in the review of Contractor's request. The City retains the right to select its agents on the basis of their qualifications and experience and without regard to cost.

**EXHIBIT D-1:
MULTIPLE INDEX-
BASED RATE
ADJUSTMENT
METHODOLOGY**

EXHIBIT D-1

INDEX-BASED RATE ADJUSTMENT METHODOLOGY

1. GENERAL

The purpose of this attachment is to describe and illustrate the method by which the City will calculate the annual adjustment to Rates to reflect changes in various cost indices and changes to Disposal and Processing costs based on Tonnages of materials Collected and changes in tipping fees. This index-based adjustment process shall be used to determine Rates for all Rate Periods beginning with Rate Period Two (FY January 1, 2019 through December 31, 2019) with the exception that the Rate adjustment process for Rate Periods Four and Eight, and, if the Term is extended, for Rate Period Twelve, shall involve a detailed review of actual costs, pursuant to Section 8.2 of the Agreement and Exhibit D-2.

The index-based adjustment involves application of indices to various costs that comprise the total proposed annual costs for Rate Period One (and to Total Calculated Costs for future Rate Periods) to determine the Total Calculated Costs for the coming Rate Period. In addition, Processing and Disposal costs shall be adjusted to reflect actual Tonnage Collected during the most-recently completed Rate Period. The index-based Rate adjustments may be approved by the City Contract Manager.

The difference (measured as a percentage) between the Total Calculated Costs for the coming Rate Period and the Total Calculated Costs for the then-current Rate Period is the Rate Adjustment Factor. The Rate Adjustment Factor is applied to the current Rates to determine the Rates for the coming Rate Period.

The Rate Adjustment Factor calculated pursuant to this Exhibit D-1 may not exceed five percent (5%). In the event that the calculation results in a calculated increase exceeding five percent (5%), Contractor may elect to either: i) accept a Customer Rate increase of no more than five percent (5%); or, ii) require that a cost-based Rate adjustment be performed under the procedures described in Exhibit D-2. In the event that Contractor requires a cost-based rate adjustment, Contractor shall pay City's costs of the cost-based rate adjustment review and may not influence or control the City's selection of professional service providers to perform such review. In the event that calculated increase exceeds five percent (5%), and Contractor accepts a Rate increase of no more than five percent (5%), Contractor shall have the ability to include the excess dollar amount as an adjustment to the Total Calculated Costs in Contractor's Rate adjustment application for the following year, as described in more detail in Section F.2 of this Exhibit. However, such adjustment to the following year shall not be granted to the extent that it results in exceeding the five percent (5%) limit in that year. Under no circumstances shall any amount disallowed during the term of the Agreement as a result of the five percent (5%) limit be considered due to the Contractor by the City or Customers upon the expiration or early termination of this Agreement.

In the event that the index-based adjustment as calculated by this Exhibit D-1 results in a negative Rate Adjustment Factor, the City reserves the right to "roll-under" the Rate reduction, such that there is no Rate adjustment in the Rate Period for which the negative Rate Adjustment Factor was calculated, but the calculated Rate reduction may be deferred to the following Rate Period, as a credit against future Rate increases.

2. ADJUSTMENT OF TOTAL CALCULATED COSTS

The cost categories of the main components of Total Calculated Costs are presented in detail in Exhibit

EXHIBIT D-1

INDEX-BASED RATE ADJUSTMENT METHODOLOGY

N. Adjustments to these components to calculate costs for the coming Rate Period shall be calculated as follows:

A. Total Annual Cost of Operations

1. **Labor-Related Costs.** The Labor-Related Costs component of Total Calculated Costs for the then-current Rate Period is multiplied by one plus the Annual Percentage Change in the ECI.

For example, in Rate Period Two when calculating the Labor-Related Costs for Rate Period Three, the Labor-Related Costs of Rate Period Two shall be multiplied by one plus the Annual Percentage change in the ECI.

2. **Vehicle-Related Costs (excluding Fuel).** The Vehicle-Related Costs component of Total Calculated Costs for the then-current Rate Period is multiplied by one plus the Annual Percentage Change in the Motor Vehicle Maintenance and Repair Index.
3. **Fuel Costs.** The Fuel Cost component of Total Calculated Costs for the then-current Rate Period is multiplied by one plus the Annual Percentage Change in the Fuel Index.
4. **Net Recyclables Processing Revenue.** In exchange for a net processing cost and revenue of \$0 per ton for the term of the Agreement Contractor shall retain all revenue from sale of Recyclable Materials and shall take all risks associated with the commodities markets for Recyclable Materials.
5. **Net Organic Materials Processing Cost.** The Net Organic Materials Processing Costs component of Total Calculated Costs is calculated as follows:

Net Organic Materials Processing Cost = [(Per-Ton Organic Materials Processing Cost for the then-current Rate Period - All regulatory fees identified on Form 5 of Exhibit N, (Contractor's Proposal) and included in the then-current per-Ton cost) x (1 + Annual Percentage Change in the CPI-U) + (Then-current per-Ton regulatory fees)] x (Total Tons of Organic Materials Collected for the most-recently completed 12-month period ending June 30*)

* Note that Tonnage calculations for Rate Period Two will be based on the estimated total Tons for Rate Period One identified in Contractor's proposal, Exhibit __, adjusted to reflect Tons for a single, complete, 12-month period.

6. **Other Costs.** The Other Costs component of the Total Calculated Costs for the then-current Rate Period is multiplied by one plus the Annual Percentage Change in the CPI-U.
7. **Direct Depreciation.** Direct Depreciation is \$ [REDACTED] per year for Rate Periods Two through Ten, and is not annually adjusted, with the exception that an adjustment shall be made

EXHIBIT D-1

INDEX-BASED RATE ADJUSTMENT METHODOLOGY

when calculating Rate Period Two costs if the Contractor received grant monies to offset the capital costs of compressed natural gas (CNG) Collection vehicles. In such case the direct depreciation cost shall be \$_____ less one ninth of the grant monies received. This adjusted depreciation amount shall remain fixed for Rate Periods Two through Ten. If the Agreement is extended beyond Rate Period Ten, direct depreciation shall be zero in any subsequent Rate Periods unless Parties mutually agree to a different amount.

8. **Allocated Costs (Labor, Vehicle, Fuel, and Other Costs).** The Allocated Costs (Labor, Vehicle, Fuel, and Other Costs) component for the then-current Rate Period is multiplied by one plus the Annual Percentage Change in the CPI-U.
9. **Allocated Depreciation and Start-Up Costs.** The Allocated Depreciation and Start-Up Costs shall be \$_____ per year for Rate Period Two through Ten, and are not annually adjusted. These costs shall be zero for all subsequent Rate Periods unless Parties mutually agree to a different amount.
10. **Total Annual Cost of Operations.** The Total Annual Cost of Operations for the coming Rate Period equals the sum of the costs calculated in subsections (1) through (9) above.

B. Profit

Profit for the coming Rate Period shall be calculated by dividing the Total Annual Cost of Operations for the coming Rate Period (the value calculated in Section 2.A.8 above) by an operating ratio (____) and subtracting from the result the Total Annual Cost of Operations for the coming year.

$$\text{Profit} = \frac{\text{Total Annual Cost of Operations for Coming Rate Period}}{\text{Operating Ratio}} - \text{Total Annual Cost of Operations for Coming Rate Period}$$

C. Pass-Through Costs (Excluded from the Calculation of Profit)

1. **Disposal Costs.** The Disposal Costs shall be calculated by multiplying the per-Ton Disposal fee at the Designated Disposal Facility and Designated Transfer Facility (to be specified by the City) for the coming Rate Period by the total Tons of Solid Waste Collected for the most-recently completed Rate Period (with the exception of calculating Rates for Rate Period Two, which shall be based on the estimated total Tons for Rate Period One identified in Exhibit N).
2. **Interest Expense.** The Interest Expense amount is \$_____ in Rate Period Two through Ten, is not annually adjusted, and shall be zero in any subsequent Rate Period unless Parties mutually agree to a different amount.
3. **Direct Lease Costs.** The Direct Lease Costs amount is \$_____ in Rate Period Two through

EXHIBIT D-1

INDEX-BASED RATE ADJUSTMENT METHODOLOGY

Ten, is not annually adjusted, and shall be zero in any subsequent Rate Period unless Parties mutually agree to a different amount.

4. **Allocated Lease Costs.** The Allocated Lease Costs amount is \$_____ for Rate Period Two through Ten (including interest costs for Allocated General and Administrative of \$_____, Allocated Vehicle Maintenance costs of \$_____, and Allocated Container Maintenance of \$_____) is not annually adjusted, and shall remain unadjusted in any subsequent Rate Period unless Parties mutually agree to a different amount.
5. **Total Pass-Through Costs.** Total Pass-Through Costs for the coming Rate Period are the sum of the amounts in Sections 2.C.1 through 2.C.4 above.

D. Total Calculated Costs before City Fees

The Total Calculated Costs before City Fees shall be the sum of the Total Annual Cost of Operations, Profit, and Total Pass-Through Costs for the coming Rate Period.

E. City Fees/Payments (Pass-Through Fees)

1. **Franchise Fee.** Franchise Fees for the coming Rate Period shall equal fourteen and two tenths percent (13.9%) of Contractor's Total Calculated Costs, unless another amount has been approved by the City.
2. **Rate Application Review Costs.** An amount determined by the City to reimburse the Contractor for payment of the City's costs, including consulting and legal fees associated with determination of Rates under this Exhibit. Such Rate application review costs may or may not be one-time costs and shall be included in subsequent Rate Periods if it is not a one-time cost.
3. **Total City Fees.** The Total City Fees for the coming Rate Period shall equal costs calculated in Section 2.E.1 and 2.E.2 above; provided, however, that any adjustment in any such fee shall be pass-through fees (which are excluded from the calculation of profit) and reflected in the Total City Fees/Payments.

F. Other Adjustments

1. **General.** From time to time during the Term of the Agreement, it may be necessary to make other adjustments to the compensation calculations. All such adjustments shall be subject to the approval of the City Contract Manager. For example, if the Contractor obtains grant funds or subsidies, the annual amount of funds Contractor received or is forecasted to receive shall be reflected as an adjustment. In such case, the adjustment would be a reduction to the Total Calculated Costs to reduce the Rates since Contractor has secured funds from other sources to cover a portion of the costs required to provide service to the City.

EXHIBIT D-1

INDEX-BASED RATE ADJUSTMENT METHODOLOGY

2. **“Roll-Over” of Dollars Exceeding Rate Cap.** In the event that the calculated Rate increase exceeds five percent (5%) in any Rate Period, and Contractor accepts a Rate increase of no more than five percent (5%), Contractor shall have the ability to include the excess dollar amount as an adjustment to the Total Calculated Costs in Contractor’s Rate adjustment application for the following year. Contractor’s ability to “roll-over” such excess calculated costs shall not expire until the expiration or early termination of the base Term of this Agreement. In the event that there are remaining excess (i.e. “rolled-over”) calculated costs which have not been included in the Rates for any Rate Period upon expiration or early termination of this Agreement, Contractor shall not be compensated for the excess costs.

G. Total Calculated Costs

The Total Calculated Costs for the coming Rate Period shall equal the sum of the Total Annual Cost of Operations, Profit, Total Pass-Through Costs, Total City Fees, and Other Adjustments (if applicable), for the coming Rate Period.

3. RATE ADJUSTMENT FACTOR

The Rate Adjustment Factor shall equal the Total Calculated Costs for the coming Rate Period divided by the Total Calculated Costs for the then-current Rate Period, which shall be rounded to the nearest thousandth. Note that when determining the Rate Adjustment Factor for Rate Period Two, the Rate Adjustment Factor shall equal the Total Calculated Costs for Rate Period Two divided by the Total Proposed Costs of \$ _____ for twelve (12) months of Rate Period One.

4. ADJUSTMENT OF RATES

Each then-current Rate shall be multiplied by the Rate Adjustment Factor to calculate the effective Rate for the coming Rate Period. The adjustment to each Rate shall be rounded to the nearest cent.

5. EXAMPLE CALCULATION

The following example illustrates the index-based adjustment method for determining Rates for Rate Period Three (January 1, 2020 through December 31, 2020). The dollar amounts shown are hypothetical amounts for Total Calculated Costs for Rate Period Two (January 1, 2019 through December 31, 2019) and the adjustment factors are based on assumed changes in the various indices between the average index values for the twelve (12) months ending June 2018 and for the twelve (12) months ending June 2019.

A. Assumptions for Example Adjustment to Contractor’s Compensation:

Most-Recently Completed Rate Period = Rate Period One (September 6, 2017 through December 31, 2018)

Then-current Rate Period = Rate Period Two (January 1, 2019 through December 31, 2019)

EXHIBIT D-1

INDEX-BASED RATE ADJUSTMENT METHODOLOGY

Coming Rate Period = Rate Period Three (January 1, 2020 through December 31, 2020)

32-gallon Single-Family Rate for Rate Period Two = \$19.00

Net Recyclable Materials Processing Revenue per Ton for the ten-current Rate Period = \$15.00 per ton

Net Organic Materials Processing Costs per Ton for the then-current Rate Period = \$38.00 per ton

Disposal cost for the coming Rate Period = \$43.00 per Ton

Annual Percentage Change in the CPI-U = 0.040

Annual Percentage Change in the ECI = 0.018

Annual Percentage Change in the Motor Vehicle Maintenance and Repair Index = 0.031

Annual Percentage Change in the Fuel Index = 0.075

Tonnages for the most-recently completed Rate Period:

Solid Waste – 50,000 Tons

Recyclable Materials – 35,000 Tons

Organic Materials – 22,000 Tons

EXHIBIT D-1 INDEX-BASED RATE ADJUSTMENT METHODOLOGY

**Table 2:
Example – Hypothetical Calculation of Total Calculated Costs for Rate Period Three**

	Rate Period Two	Adjustment Factor*	Rate Period Three
Annual Cost of Operations			
Labor-related costs	\$2,000,000	1.018	\$2,036,000
Vehicle-related costs (excluding fuel)	\$400,000	1.031	\$412,400
Fuel costs	\$800,000	1.075	\$860,000
Net Recyclable Materials Processing Revenue	\$525,000	35,000 x \$15.48	\$541,800
Net Organic Materials Processing Costs	\$836,000	22,000 x \$39.40	\$866,800
Other Costs	\$250,000	1.040	\$260,000
Direct Depreciation	\$700,000	N.A.	\$700,000
Allocated Costs (Labor, Vehicle, Fuel, and Other Costs)**	\$1,000,000	1.040	\$1,040,000
Allocated Costs (Depreciation and Start- Up)	\$100,000	N.A.	\$100,000
Total Annual Cost of Operations	\$6,611,000	N.A.	\$6,817,000
Profit (assuming operating ratio of 0.92)	\$574,870	N.A.	\$592,782.61
Pass-Through Costs			
Solid Waste Disposal costs	\$1,720,000	50,000 x \$44.60	\$1,784,000
Interest expense	\$150,000	N.A.	\$150,000
Direct lease	\$200,000	N.A.	\$200,000
Allocated lease costs	\$25,000	N.A.	\$25,000
Total Pass-Through Costs	\$12,166,870	N.A.	\$12,535,583
Total Calculated Costs before City Fees	\$19,352,739	N.A.	\$19,945,365
City Fees/Payments*			
Franchise Fee**	\$2,642,014	N.A.	\$2,722,859
Rate Application Review Costs	\$35,000	N.A.	\$35,000
Total City Fees/Payments	\$2,677,014	N.A.	\$2,757,859
Other Adjustments (as needed from time to time)	N.A.	N.A.	N.A.
Total Calculated Costs	\$22,029,754		\$22,703,224

* Fuel costs included in allocated costs shall be adjusted using the CPI-U not the Fuel Index.

**Assumes current franchise fee of 12%.

{NOTE: This example table to be updated with final cost figures prior to execution.}

EXHIBIT D-1

INDEX-BASED RATE ADJUSTMENT METHODOLOGY

B. Example Calculation of the Rate Adjustment Factor and Adjusted Rate for Rate Period Three

Rate Adjustment Factor = $\$22,703,224 / \$22,029,754 = 1.031$

35-gallon Single-Family Rate for Rate Period Three = $\$19.00 \times 1.031 = \19.59 , which shall be effective January 1, 2020.

6. OTHER

If an index described in in this Exhibit D is discontinued, the successor index with which it is replaced shall be used for subsequent calculations. If no successor index is identified by the Bureau of Labor Statistics or Pacific Gas and Electric Company, the index published by either organization which is most comparable shall be used.

**EXHIBIT D-2:
COST-BASED RATE
ADJUSTMENT
METHODOLOGY**

EXHIBIT D-2

COST-BASED RATE ADJUSTMENT METHODOLOGY

1. GENERAL

The City shall use the cost-based Rate adjustment method described in this Exhibit D-2 to determine Rates for Rate Periods Four and Eight, and, if the Term is extended, for Rate Period Twelve. The cost-based adjustment involves review of the Contractor's actual cost of operations and operational statistics (staffing levels, routes, route hours, Customers and their service levels, etc.) to determine the Actual Allowable Total Annual Cost of Operations for the most-recently completed Rate Period and to forecast the Total Contractor's Compensation for the coming Rate Period. The difference (measured as a percentage) between the Total Contractor's Compensation for the coming Rate Period and the Projected Gross Rate Revenues (which is calculated based on most-recent Customer subscription levels at then-current Rates) is the "Rate Adjustment Factor". The Rate Adjustment Factor is applied to the then-current Rates to determine the Rates for the coming Rate Period.

The intent of performing the cost-based adjustment is to examine the actual impact of changes in inflation or deflation, the number of Customers, and the Service Level of Customers.

The City Contract Manager may approve Rate adjustments if the Rate Adjustment Factor is equal to or less than five percent (5%), calculated in accordance with this Exhibit D-2. If the Rate Adjustment Factor is greater than five percent (5%), the Rate adjustment shall be presented to the City Council for approval.

In the event that the cost-based adjustment calculated in accordance with this Exhibit D-2 results in a negative Rate Adjustment Factor, the City reserves the right, but shall not be obligated, to "roll-under" the Rate reduction, such that there is no Rate adjustment in the Rate Period for which the negative Rate Adjustment Factor was calculated, but the calculated Rate reduction may be deferred to the following Rate Period, as a credit against future Rate increases.

2. FORECASTING TOTAL CONTRACTOR'S COMPENSATION

The Total Contractor's Compensation for the coming Rate Period shall be forecasted in the manner described in this Section.

A. Forecasting Total Annual Cost of Operations

1. **Determine Actual Allowable Total Annual Cost of Operations.** Contractor's financial statement, books, and records shall be reviewed to determine Contractor's "Actual Allowable Total Annual Cost of Operations" for the most-recently completed Rate Period to perform all the services in the manner required by this Agreement for each of the following cost categories:
 - a. Actual labor-related costs
 - b. Actual vehicle-related costs (excluding fuel and depreciation)
 - c. Actual fuel costs
 - d. Actual Net Recyclable Materials Processing Revenues
 - e. Actual Net Organic Materials Processing Costs
 - f. Actual other costs as specified in Exhibit N)

EXHIBIT D-2

COST-BASED RATE ADJUSTMENT METHODOLOGY

- g. Direct depreciation costs (in the amount specified in Exhibit D-1)
 - h. Actual allocated costs (labor, vehicle, general and administrative, and other costs)
 - i. Actual allocated costs (depreciation and start-up) (in the amount stated in Exhibit D-1)
- 2. Non-Allowable Costs.** The following list of non-allowable costs shall be deducted from the Contractor's actual costs when determining the Actual Allowable Total Annual Cost of Operations.
- a. Labor, equipment, fuel, and start-up costs for personnel, vehicles, and facilities that are not specified in the operating statistics, staffing, and capital requirements proposal forms contained in Exhibit N.
 - b. Payments to directors and/or owners of Contractor unless the amount paid is reasonable compensation for services actually rendered and consistent with the corporate overhead allocation used in Exhibit N. Reasonableness shall be determined based on available market pricing for similar services and shall be in the sole discretion of the City.
 - c. Travel expenses and entertainment (above five thousand dollars (\$5,000) annually in total) expenses, unless authorized in advance by the City.
 - d. Payments to repair damage to public or private property for which Contractor is legally liable.
 - e. Fines or penalties of any nature.
 - f. Liquidated Damages assessed under this Agreement.
 - g. Federal or State income taxes.
 - h. Cash donations or value of in-kind services provided to charitable, political, youth, civic, or other community organizations unless such donation has been previously approved in writing as an allowable expense by the City Contract Manager.
 - i. Depreciation or interest expense for Collection vehicles, Containers, other equipment, offices and other facilities if such items are leased as specified in Exhibit N.
 - j. Attorney's fees and other expenses incurred by Contractor in any court proceeding in which the City and Contractor are adverse Parties.
 - k. Attorney's fees and other expenses incurred by Contractor arising from any act or omission in violation of this Agreement.

EXHIBIT D-2

COST-BASED RATE ADJUSTMENT METHODOLOGY

- l. Attorneys' fees and other expenses incurred by Contractor in any court proceeding in which Contractor's own negligence, violation of law or regulation, or wrong doing are in issue and occasion, in whole or in part, the attorneys' fees and expenses claimed; and attorneys' fees and expenses incurred by Contractor in a court proceeding in which the legal theory or statute providing a basis of liability against Contractor also provides for separate potential liability for the City derived from the action of its citizens or Rate payers (such as in a CERCLA lawsuit) unless the Contractor is found not liable in such claims and such claims arise from acts or occurrences within the Term of the Agreement.
 - m. Payments to Related-Party Entities for products or services, in excess of the cost to the Related-Party Entities for those products or services.
 - n. Goodwill.
 - o. Unreasonable profit sharing distributions.
 - p. Replacement costs for Containers that need to be replaced because the useful life of such Container was less than the Term.
 - q. Administrative costs greater than the administrative costs contained in Exhibit N adjusted annually by one plus the Annual Percentage Change in the CPI-U.
 - r. Bad debt write-offs in excess of one percent (1%) of annual Rate revenues.
 - s. Transfer and Processing costs for Recyclable Materials.
- 3. Forecast Total Annual Cost of Operations.** Forecasted Total Annual Cost of Operations for the coming Rate Period shall be calculated based on Actual Allowed Total Cost of Operations for the most-recently completed Rate Period determined in accordance with Sections 2.A.1 and 2.A.2 above. The forecasts shall be performed in the following manner:
- a. **Forecasted labor-related costs** shall be calculated for the coming Rate Period by (i) multiplying the allowed labor-related costs, both direct and allocated, for the most-recently completed Rate Period by one plus the Annual Percentage Change in the ECI, and (ii) multiplying the result of step one once more by one plus the Annual Percentage Change in the ECI.
 - b. **Forecasted vehicle-related costs** (excluding fuel and depreciation costs) shall be calculated for the coming Rate Period by (i) multiplying the allowed vehicle-related costs, both direct and allocated, for the most-recently completed Rate Period by one plus the Annual Percentage Change in the Motor Vehicle Maintenance and Repair Index, and (ii) multiplying the result of step one once more by one plus the Annual Percentage Change in the Motor Vehicle

EXHIBIT D-2

COST-BASED RATE ADJUSTMENT METHODOLOGY

Maintenance and Repair Index.

- c. **Forecasted fuel costs** shall be calculated for the coming Rate Period by (i) multiplying the allowed fuel costs, both direct and allocated, for the most-recently completed Rate Period by one plus the Annual Percentage Change in the Fuel Index, and (ii) multiplying the result of step one once more by one plus the Annual Percentage Change in the Fuel Index.
- d. **Forecasted Net Recyclables Processing Revenue.** Throughout the term of this Agreement, the Net Recyclables Processing Revenue shall equal zero dollars (\$0) per ton.
- e. **Forecasted Net Organic Materials Processing Costs** shall be calculated for the coming Rate Period in the following manner:

Forecasted Net Organic Materials Processing Cost = (Net Organic Materials Processing Cost per Ton for the then-current Rate Period) x (1 + Annual Percentage Change in the CPI-U) x (total Tons of Organic Materials Collected for the most-recently completed 12-month period ending June 30)
- f. **Forecasted other costs** shall be calculated for the coming Rate Period by (i) multiplying the allowed other-related costs, both direct and allocated, for the most-recently completed Rate Period by one plus the Annual Percentage Change in CPI-U, and (ii) multiplying the result of step one once more by one plus the Annual Percentage Change in the CPI-U.
- g. **Forecasted direct depreciation expense** shall be the amount specified in Exhibit D-1 for vehicles, Containers, and facilities. Direct depreciation expense is a fixed cost and is not subject to inflation.
- h. **Forecasted allocated labor-related, vehicle-related, general and administrative, and other costs** shall be calculated for the coming Rate Period by (i) multiplying the allowed other-related costs for most-recently completed Rate Period by one plus the Annual Percentage Change in CPI-U, and (ii) multiplying the result of step one once more by one plus the Annual Percentage Change in CPI-U.
- i. **Forecasted allocated depreciation and start-up expense** shall be the amount specified in Section 2.A.7 of Exhibit D-1 for vehicles, Containers, and facilities.
- j. **Forecasted Total Annual Cost of Operations** for the coming Rate Period shall equal the sum of the following costs, which shall have been calculated in accordance with the procedures in this Exhibit D-2:

- (1) Forecasted labor-related costs

EXHIBIT D-2

COST-BASED RATE ADJUSTMENT METHODOLOGY

- (2) Forecasted vehicle-related costs (excluding fuel and depreciation costs)
- (3) Forecasted fuel costs
- (4) Forecasted Net Recyclable Materials Processing Revenues
- (5) Forecasted Net Organic Materials Processing Costs
- (5) Forecasted other costs
- (6) Forecasted direct depreciation expense
- (7) Forecasted allocated labor-related, vehicle-related, general and administrative, and other costs
- (8) Forecasted allocated costs for depreciation and start-up

B. Forecast Profit

Contractor shall be entitled to Profit on Forecasted Total Annual Cost of Operations. Profit shall be calculated using an operating ratio of eighty nine and forty nine hundredths percent (89.49%) as proposed by Contractor and specified in Exhibit N. Profit shall be calculated using the following formula:

$$\text{Profit} = (\text{Forecasted Total Annual Cost of Operations} / \text{Operating Ratio}) - \text{Forecasted Total Annual Cost of Operations}$$

For example:

- 1. Assuming an operating ratio of 92%
- 2. Assuming a Forecasted Total Annual Cost of Operations of \$1,000,000
- 3. Profit = $(\$1,000,000 / 0.92) - \$1,000,000 = \$86,956.52$

C. Forecast Pass-Through Costs

Pass-Through Costs for the coming Rate Period shall be forecasted in the following manner:

- 1. **Disposal Costs.** The Disposal Costs shall be calculated by multiplying the per-Ton Disposal fee at the Designated Disposal Facility and Designated Transfer Facility (to be specified by the City) for the coming Rate Period by the total Tons of Solid Waste Collected for the most-recently completed Rate Period.
- 2. **Forecasted Interest Expense.** Interest Expense is \$XXX,XXX per year and shall not be adjusted over the Term of the Agreement.
- 3. **Forecasted Direct Lease Costs.** Direct Lease Costs are \$0 per year and shall not be adjusted over the Term of the Agreement.
- 4. **Forecasted Allocated Lease Costs.** Allocated Lease Costs are \$0 per year and shall not be adjusted over the Term of the Agreement.
- 5. **Cost of Rate Adjustment Process.** Costs incurred by the City related to the review of the Rate adjustment process, including consulting and legal fees. Such amounts shall be

EXHIBIT D-2

COST-BASED RATE ADJUSTMENT METHODOLOGY

provided by the City.

D. Forecast City Fees

City fees shall be calculated in the manner described in Section 2.E of Exhibit D-1.

E. Other Adjustments

1. **General.** From time to time during the Term of the Agreement, it may be necessary to make other adjustments to the compensation calculations. All such adjustments shall be subject to the approval of the City Contract Manager. For example, if the Contractor obtains grant funds or subsidies, the annual amount of funds Contractor received or is forecasted to receive shall be reflected as an adjustment. In such case, the adjustment would be a reduction to the Total Calculated Costs to reduce the Rates since Contractor has secured funds from other sources to cover a portion of the costs required to provide service to the City.
2. **“Roll-Over” of Dollars Exceeding Rate Cap.** In the event that the calculated Rate increase exceeds five percent (5%) in any Rate Period, and Contractor accepts a Rate increase of no more than five percent (5%), Contractor shall have the ability to include the excess dollar amount as an adjustment to the Total Calculated Costs in Contractor’s Rate adjustment application for the following year. Contractor’s ability to “roll-over” such excess calculated costs shall not expire until the expiration or early termination of the base Term of this Agreement. In the event that there are remaining excess (i.e. “rolled-over”) calculated costs which have not been included in the Rates for any Rate Period upon expiration or early termination of this Agreement, Contractor shall not be compensated for the excess costs.

3. PROJECTED GROSS RATE REVENUE

Projected Gross Rate Revenue at then-current Rates shall reflect projected annual Gross Rate Revenues from all Customers based on then-current Rates and then-current Customer Service Levels.

4. RATE ADJUSTMENT FACTOR

The Rate Adjustment Factor shall equal the Forecasted Total Calculated Costs for the coming Rate Period divided by the Projected Gross Rate Revenues calculated in accordance with Section 2 herein. The Rate Adjustment Factor shall be rounded to the nearest thousandth.

5. ADJUSTMENT OF RATES

Each then-current Rate shall be multiplied by the Rate Adjustment Factor to calculate the effective Rate for the coming Rate Period.

**EXHIBIT E:
PERFORMANCE
STANDARDS AND
LIQUIDATED
DAMAGES**

EXHIBIT E PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES

City wishes to establish standards of performance under the Agreement in each of the “Performance Areas” listed below. The City Contract Manager may monitor Contractor’s performance in each of those areas based on the “Overall Performance Indicator” listed below for each area. In the event that Contractor fails to meet the performance standard established for any “Overall Performance Indicator,” City Contract Manager may review Contractor’s performance relative to the “Specific Performance Measures” within that performance area. In the event that the City Contract Manager determines that Contractor has failed to meet the performance standard established for any “Specific Performance Measure,” the City may assess Liquidated Damages pursuant to Section 10.6 of the Agreement. Liquidated Damages, if assessed, shall only be assessed for the number of events, days, or other measure in excess of the acceptable performance level.

Defined Terms

Certain terms that are specific to this Exhibit are defined below:

“Complaint” shall mean each written or orally communicated statement made by any Person, whether to City or Contractor, alleging: (1) non-performance, or deficiencies in Contractor’s performance, of its duties under this Agreement; or, (2) a violation by Contractor of this Agreement.

“Service Opportunity” shall mean each individual scheduled opportunity the Contractor has to Collect from a Container at a Customer’s location. For example, a Multi-Family or Commercial Customer receiving Solid Waste Collection service three (3) times per week from two (2) Containers and Recyclable Materials Collection service two (2) times per week from two (2) Containers would have a total of ten (10) Service Opportunities each week. Service Opportunities shall be calculated based on the subscription levels presented in Contractor’s most recent Quarterly Report to City. For a Single-Family Customer with three Carts for Collection of Solid Waste, Recyclable Materials, and Organic Materials, the Customer would have a total of three (3) Service Opportunities each week.

“Total Service Opportunities” shall mean the sum of all Service Opportunities in a given time period

EXHIBIT E PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES

Performance Area No. 1: Service Quality and Reliability

Overall Performance Indicator: Contractor’s service quality and reliability shall be considered acceptable by the City if the total number of calls and emails (including, without limitation: Complaints, inquiries, billing questions, service requests, and compliments) received by Contractor from Customers served under this Agreement does not exceed twenty (20) per one thousand (1,000) Total Service Opportunities in any calendar quarter. If the number exceeds this level, City may assess Liquidated Damages for the specific performance measures identified in the following table.

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Missed Collections	Each Service Opportunity where Contractor fails to Collect a Container from a Customer who properly placed said Container for Collection.	Less than ten (10) per one thousand (1,000) Service Opportunities	\$50/Event
Failure to Correct Missed Collections	Each “Missed Collection” as defined above which is not Collected by the end of the Business Day following the receipt of the Customer Complaint about the Missed Collection.	Less than one (1) per one hundred (100) Missed Collections	\$50/Event
Failure to Clean-Up Spillage	Each failure by Contractor to clean up: (1) any items or materials spilled during the Collection of a Container; or, (2) any fluids spilled or leaked from a Container or Collection vehicle prior to leaving the Collection location.	Less than five (5) per one thousand (1,000) Service Opportunities	\$100/Event
Damage to Property	Each event of damage to either public or private property as a result of Collection activity, including without limitation curbs, sidewalks, landscapes, Container enclosures and gates, signs, light fixtures, and overhead wires and cables.	Less than two (2) per one thousand (1,000) Service Opportunities	\$250/Event
Excessive Noise or Discourteous Behavior	Each Complaint received that is related to either noise during Collection activity or the behavior of Contractor’s employees.	Less than five (5) per one thousand (1,000) Service Opportunities	\$250/Event

EXHIBIT E
PERFORMANCE STANDARDS AND
LIQUIDATED DAMAGES

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Inaccurate Billing	Each Complaint received where the Contractor billed a Customer in error. Inaccurate billing may include, but is not limited to: (i) either over- or under-charging of the Customer relative to the approved Rates for services, (ii) charging the Customer a Rate that is not the same as other Customers with the same Service Level; (iii) charging a Customer for an increased Service Level prior to providing the service; (iv) not charging a Customer for reduced Service Level within seven (7) of the date Customer requested the change regardless of whether or not Contractor delivers the appropriate Containers or modifies the Service Level within that timeframe.	Less than five (5) per one thousand (1,000) bills issued.	\$100/Event
Failure to Perform Other Requirement	Each failure to perform any obligation of the Agreement not specifically stated above.	No acceptable failure level	\$100/Event

EXHIBIT E PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES

Performance Area No. 2: Customer Service

Overall Performance Indicator: The level of Customer service provided by Contractor shall be considered acceptable if the total number of Complaints received by City regarding Contractor does not exceed 10 per one thousand (1,000) Total Service Opportunities in any calendar quarter. If the number exceeds this level, City may assess Liquidated Damages for the specific performance measures identified in the following table.

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Failure to Commence Service	Any failure by Contractor to deliver a Container and begin providing Collection to a Customer, at the Service Level requested by said Customer, within seven (7) calendar days of receiving such request. This may include a new Customer receiving new service or an existing Customer requesting a change in or addition to existing Service Levels. This may also include delivering Used Oil Recovery Kits to Customers upon request.	Less than one (1) per one hundred 100 Service Requests	\$50/Event
Failure to Replace Container or Remove Graffiti	Any failure by Contractor to replace or repair a damaged Container within seven (7) calendar days of receiving such a request from a Customer, or any failure by Contractor shall remove graffiti from Containers within forty-eight (48) hours of identification by Contractor or notice by City or Customer if such graffiti includes any written or pictorial obscenities and otherwise within five (5) Business Days.	No acceptable failure level	\$100/Event
Failure to Resolve Complaint	Any failure by Contractor to resolve or remedy a Complaint within seven (7) calendar days of receiving such Complaint.	Less than one (1) per one hundred (100) Complaints	\$250/Event
Failure to Answer Phones	Any failure by Contractor to answer a telephone call from a Customer during normal business hours. A call is not considered to be answered if the Customer does not speak with a live operator. A call is considered to be answered if the Customer hangs-up or abandons the call following a hold time of less than three (3) minutes.	Less than five (5) per one thousand (1,000) Calls Received Under this Agreement	\$50/Event

EXHIBIT E PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Excessive Call Center Hold Time	Each occurrence of a call being placed “on hold” for more than two (2) minutes.	Less than two (2) per one thousand (1,000) Calls Received Under this Agreement	\$50/Event
Unauthorized Hours of Operation	Each occurrence of Contractor Collecting from Customers during unauthorized hours.	Less than two (2) per one thousand (1,000) Service Opportunities	\$250/Event

Performance Area No. 3: Outreach

Overall Performance Indicator: Contractor’s street sweeping shall be considered acceptable if service meets the requirements of Section 4.9, Exhibit C and the following table.

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Failure to Perform Public Outreach Activities	Each individual failure by Contractor to develop, produce, and distribute public outreach material or perform community outreach activities in the form and manner required under Exhibit B to this Agreement.	No acceptable failure level	\$500/Activity
Failure to Provide Targeted Technical Assistance	Each individual failure to provide targeted technical assistance to a Commercial or Multi-Family Customer in the manner required under Exhibit B to this Agreement.	No acceptable failure level	\$50/Customer

EXHIBIT E PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES

Performance Area No. 4: Diversion

Overall Performance Indicator: Contractor’s Diversion performance shall be considered acceptable if based on monthly report data, Contractor must Divert the minimum amounts described in Section 4.14.B.1 of the Agreement. If the calculated percentage is less, City may assess Liquidated Damages for the specific performance measures identified in the following table.

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Failure to Maintain the Contractor’s Minimum Required Diversion Level	Failure to meet minimum Diversion percentage in any month.	No acceptable failure level	\$100/Ton of material that would have needed to be Diverted to meet the requirement for the given month

Performance Area No. 5: Facilities

Overall Performance Indicator: Contractor’s performance relative to facilities shall be considered acceptable when one hundred percent (100%) of all material types Collected by Contractor shall be Delivered to the appropriate Approved Facility as required under Sections 4.7 and 4.8 of this Agreement. If Contractor fails to meet this level of performance, City may assess Liquidated Damages for the specific performance measures identified in the following table.

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Delivery to Non-Approved Facility	Each individual occurrence of delivering materials to a facility other than the Approved Facility designated for each material type under Sections 4.7 and 4.8 of this Agreement.	No acceptable failure level	\$100/Ton
Disposal of Material Targeted Diversion	Each individual occurrence of Disposal rather than Processing of Recyclable Materials, Organic Materials, C&D, or Reusable Materials set out for Collection by the Customer.	No acceptable failure level	\$500/Ton

EXHIBIT E PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Mixing Material Types During Collection	Each individual Container that is Collected by Contractor in a vehicle intended or designated for the purpose of Collecting a different material type (e.g. Recyclable Materials Collected in Solid Waste vehicle, Solid Waste Collected in Organic Materials vehicle, etc.)	No acceptable failure level	\$100/Container

Performance Area No. 6: Reporting

Overall Performance Indicator: Contractor’s reporting shall be considered acceptable if Reports required under Exhibit C and record requests allowed under Article 6 to this Agreement are received, complete, and accurate within seven (7) calendar days after the date due or date of requested. If Contractor fails to meet this level of performance, City may assess Liquidated Damages for the specific performance measures identified in the following table.

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Late Report	Each occurrence of a report, as required under Exhibit C to this Agreement, being submitted after the due date. Reports shall be considered late until they are submitted in a complete and accurate format.	Less than seven (7) calendar days after report due date	\$250/Day
Failure to Maintain or Provide Access to Records	Each occurrence of City Contract Manager requesting information required to be maintained by Contractor where Contractor fails to provide such information.	Less than seven (7) calendar days after report due date	\$500/Event
Misleading/ Inaccurate Reporting	Each occurrence of Contractor providing misleading or otherwise inaccurate information or reporting to City under or in regard to this Agreement. Typographical, cell reference, mathematical, and/or logic errors shall not be considered legitimate excuses from this requirement, nor shall ignorance.	No acceptable failure level	\$500/Event

EXHIBIT E PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES

Performance Area No. 7: Street Sweeping

Overall Performance Indicator: Contractor’s street sweeping shall be considered acceptable if service meets the requirements of Section 4.15, Exhibit O and the following table.

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Service	Two or more callbacks for substandard service within a thirty (30) day period	One callback for substandard service within a thirty (30) day period	\$500/Each Callback after the Second
Complaints	Failure to report action taken on complaints within three (3) working days	No acceptable failure level	\$250/Event

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

Contractor
Initial Here: _____

City
Initial Here: _____

This page intentionally left blank

**EXHIBIT F:
LIST OF FACILITIES
AND CITY
CONTAINERS**

EXHIBIT F

LIST OF CITY FACILITIES AND PUBLIC CONTAINERS

City Facilities

- City Hall complex
- Community Center
- Senior Center
- City Public Works Corporation Yard
- Police stations
- Fire stations
- Sports Center
- Vehicle Maintenance Facility
- Milpitas Public Library
- Santa Clara County Library
- Midtown Parking Garage
- Higuera Adobe Park

Contractor shall provide Collection service to other similar facilities which City may acquire during the term of the Agreement.

Public Containers

{Final list to be inserted prior to execution.}

This page intentionally left blank

**EXHIBIT G:
GUARANTY
AGREEMENT**

EXHIBIT G GUARANTY AGREEMENT

THIS GUARANTY (the "Guaranty") is given as of the [___] day of [____], 2016, by _____ {Insert Guarantor's name}, ("Guarantor"), to the CITY OF MILPITAS, a California municipal corporation ("City").

THIS GUARANTY is made with reference to the following facts and circumstances:

- A. _____ {Insert contractor name} ("Contractor") is a corporation organized under the laws of the State of California, all of the issued and outstanding stock of which is owned by Guarantor.
- B. Guarantor is a corporation organized under the laws of the State of California.
- C. Contractor and City have negotiated an Agreement for Collection of Solid Waste and Collection and Processing of Recyclable Materials and Organic Materials (such agreement, as it may be amended, modified or waived from time to time, the "Agreement"), under which Contractor is to provide specified services to City. A copy of this Agreement is attached hereto and incorporated herein by this reference.
- D. It is a requirement of the Agreement, and a condition to City's entering into the Agreement, that Guarantor guaranty Contractor's performance of the Agreement.
- E. Guarantor is providing this Guaranty to induce City to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. **Guaranty of the Agreement.** Guarantor hereby irrevocably and unconditionally guarantees to City the complete and timely performance, satisfaction and observation by Contractor of each and every term and condition of the Agreement which Contractor is required to perform, satisfy or observe. In the event that Contractor fails to perform, satisfy or observe any of the terms or conditions of the Agreement, Guarantor will promptly and fully perform, satisfy or observe them in the place of the Contractor. Guarantor hereby guarantees prompt payment to City of each and every sum due from Contractor to City under the Agreement, as and when due from time to time, and the prompt performance of every other task and duty required to be performed by the Contractor under the Agreement.
2. **Guarantor's Obligations Are Absolute.** The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited and, with respect to any payment obligation of Contractor under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditioned upon the genuineness, validity, regularity or enforceability of the Agreement.
3. **Waivers and Subordination.** The Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under Section 1 hereof for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the Contractor; (2) any amendment, modification or waiver

EXHIBIT G

GUARANTY AGREEMENT

of any provision of the Agreement or the extension of its Term; (3) the actual or purported rejection of the Agreement by a trustee in bankruptcy, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (4) any waiver, extension, release or modification with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of City's rights or remedies against Contractor; or (5) any merger or consolidation of the Contractor with any other organization, or any sale, lease or transfer of any or all the assets of the Contractor.

The Guarantor hereby waives any and all rights, benefits and defenses under California Civil Code Sections 2809, 2815, 2819, 2845, 2849 and 2850, and all other rights permitted to be waived by Section 2856(a) including, without limitation, the right to require City to (a) proceed against Contractor, (b) proceed against or exhaust any security or collateral City may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agree that City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Contractor or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral City may hold now or hereafter hold. City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Contractor or any other guarantor or pledgor without impairing City's rights and remedies in enforcing this Guarantee.

The Guarantor hereby waives and agrees to waive at any future time at the request of City, to the extent now or then permitted by applicable law, any and all rights which the Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of the Guarantor hereunder: (a) at any time or from time to time, without notice to the Guarantor, the time for Contractor's performance of or compliance with any of its obligations under the Agreement is extended, or such performance or compliance is waived; (b) the Agreement is modified or amended in any respect; (c) any other indemnification with respect to Contractor's obligations under the Agreement or any security therefor is released or exchanged in whole or in part or otherwise dealt with; (d) any assignment of the Agreement is effected which does not require City's approval; or (e) any termination or suspension of the Agreement arising by reason of a default by Contractor.

The Guarantor hereby expressly waives diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Contractor prior to such avoidance or recovery, or (b) payment in full of any obligations then outstanding.

The Guarantor expressly subordinates and waives its rights to subrogation, reimbursement, contribution or indemnity with respect to performance by Guarantor of the obligations of Contractor

EXHIBIT G GUARANTY AGREEMENT

guaranteed hereby, until such time as City receives payment or performance in full of all such obligations.

4. Term. This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed by Contractor, and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by City of any performance bond or other collateral to assure the performance of Contractor's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by City against Contractor arising out of the Agreement based on Contractor's failure to perform which has not been settled or discharged.

5. No Waivers by City. No delay on the part of City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of City to take other or further action without notice or demand. No modification or waiver by City of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by City and by Guarantor, nor shall any waiver by City be effective except in the specific instance or matter for which it is given.

6. Attorney's Fees. In addition to the amounts guaranteed under this Guaranty, Guarantor agrees to pay actual attorney's fees and all other costs and expenses incurred by City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. Governing Law; Jurisdiction. This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws rules for all purposes, including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any action brought by City to enforce this Guaranty may be brought in any court of the State of California and Guarantor consents to personal jurisdiction over it by such courts. Guarantor appoints the following person as its agent for service of process in California:

Insert Guarantor's contact person and address

8. Severability. If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity shall have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

9. Binding on Successors. This Guaranty shall inure to the benefit of City and its successors and shall be binding upon Guarantor and its successors, including a successor entity formed by a merger or consolidation, a transferee of substantially all of its assets, and its shareholders in the event of its dissolution or insolvency.

EXHIBIT G GUARANTY AGREEMENT

10. Authority. Guarantor represents and warrants that it has the corporate power to give this guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Articles of Incorporation and by-laws, and that the person signing this Guaranty on its behalf has authority to do so.

11. Notices. Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To City: City Clerk
 City of Milpitas
 455 East Calaveras Boulevard
 Milpitas, CA 95035

With a copy to City Contract Manager and City Attorney at the same address.

To Guarantor: Insert Guarantor's name, address, and contact person

The parties may change the address to which notice is to be sent by giving the other party notice of the change as provided in this Section.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty on the day and year first above written.

_____ {Insert Guarantor's Name}

By: _____
 {Insert name}
 {Insert title}

By: _____
 {Insert name}
 Corporate Secretary

**EXHIBIT H:
CART
SPECIFICATIONS**

EXHIBIT H

CART SPECIFICATIONS

The Cart specifications provided in this Exhibit H shall pertain to all Carts provided by the Contractor to Customers on the Commencement Date of this Agreement and during the Term of the Agreement.

1. CART DESIGN REQUIREMENTS

A. General

The Carts shall be manufactured by injection or rotational molding and meet the Cart design and performance requirements as specified below. Contractor shall purchase Carts that contain a minimum of 30% post-consumer recycled plastic content. Contractor must submit Cart orders (including material and design specifications, colors and identification marks) to City for City's written approval prior to submitting the order to the manufacturer.

B. Materials Identification and Decals

Carts or their lids must be in bright, readily identifiable colors to facilitate Customer's ready recognition of Solid Waste, Recyclable Materials, and Organic Materials, subject to City's written approval as described in this Exhibit. Subject to City approval, Contractor shall display Contractor's name and telephone number using labels, decals, or other acceptable method. Contractor shall provide and attach decals or emboss the Cart number and information describing correct materials and methods for Collection; forbidding disposal therein of Hazardous Waste and describing proper disposal thereof; and forbidding scavenging (through words and international symbols) and describing the penalties therefore under California law or City Municipal Code.

C. Cart Handles

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

D. Cart Lid

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

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;
- Enables the free and complete flow of material from the Cart during the dump cycle without interference with the material already deposited in the truck body or the truck body itself and its lifting mechanism;
- Permits users of the Cart to conveniently and easily open and shut the lid throughout the serviceable life of the Cart;
- The lid handle shall be an integrally molded part of the lid;

EXHIBIT H CART SPECIFICATIONS

- The lid (and body) must be of such design and weight that would prevent an empty Cart from tilting backward when flipping the lid open; and,
- The lid shall be hinged to the Cart body in such a manner so as to enable the lid to be fully opened, free of tension, to a position whereby it may rest against the backside of the Cart body.

E. Cart Colors

The Solid Waste, Recyclable Materials, and Organic Materials Carts shall be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color of lids and Cart bodies must be uniform for each Cart type (i.e., Solid Waste, Recyclable Materials, and Organic Materials). Solid Waste Cart bodies and lids shall be gray, brown, tan, or black as agreed-upon between the Contractor and City Contract Manager. Recyclable Materials Cart bodies and/or lids shall be blue. Organic Materials Cart bodies or lids shall be green. Contractor may propose other colors for Cart lids or Cart bodies, which are subject to written approval by the City. For all colors including those prescribed in this paragraph, the Contractor shall obtain written approval from the City for the Cart colors before Contractor's purchase of the Carts.

F. Identification Markings

All markings on the Carts shall be approved by the City in advance of ordering Carts. Information specific to the Contractor (e.g., name, phone number, etc) may not be hot stamped or otherwise permanently affixed such that such markings cannot be easily covered by decals. An arrow (at least 3 inches by 5 inches) hot stamped in white color shall be placed on the lid, indicating the direction of Cart placement.

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

PLACE CART WITH ARROW FACING
STREET FOR COLLECTION

The same phrase shall also be provided in Spanish, Vietnamese and Chinese.

Additionally, the SOLID WASTE, RECYCLABLES or ORGANIC MATERIALS must be hot stamped in white on the top and sides of the Cart in characters no less than one inch tall.

2. CART PERFORMANCE REQUIREMENTS

A. General

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

EXHIBIT H CART SPECIFICATIONS

B. Cart Load Capacity

Depending on the capacity, the Carts shall have a minimum load capacity as noted on the following table without Cart distortion, damage, or reduction in maneuverability or any other functions as required herein.

Cart Size (Gallons)	Minimum Load Capacity (Pounds)
96	200
64	130
32/35	70
20	40

C. Cart Durability

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

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that shall interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Cart bodies must remain impervious to any damage, that would interfere with the Cart's intended use after repeated contact with gravel, concrete, asphalt, or any other rough and abrasive surface;
- All wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

D. Chemical Resistant

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

E. Stability and Maneuverability

The Carts shall be stable and self-balancing in the upright position, when either empty or loaded to its maximum design capacity with an evenly distributed load, and with the lid in either a closed or an open position. The Carts shall be capable of maintaining its upright position in sustained or gusting winds of up to 25 miles per hour as applied from any direction. The Carts shall be capable of being easily moved

EXHIBIT H CART SPECIFICATIONS

and maneuvered, with an evenly distributed load equal in weight to its maximum design capacity on a level, sloped or stepped surface.

F. Lid Performance

Cart lid assemblies shall meet the following minimum requirements:

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

G. Reparability

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

EXHIBIT I: CONTRACTOR'S PROPOSAL

I-1. Contractor's Proposal

I-2. Contractor's Responses During Clarification

**EXHIBIT I-1:
CONTRACTOR'S
PROPOSAL**

EXHIBIT I-1
CONTRACTOR'S PROPOSAL

This Exhibit shall be prepared to include Contractor's Proposal prior to execution of the Agreement.

This page intentionally left blank

**EXHIBIT I-2:
CONTRACTOR'S
RESPONSES DURING
CLARIFICATION**

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

City of Milpitas
Evaluation Team – Collection Proposals
Republic Services Interview Questions
May 26, 2016

REPUBLIC WRITTEN RESPONSES TO CITY OF MILPITAS INTERVIEW QUESTIONS INTERVIEW HELD ON MAY 26, 2016

Please address the following questions during the May 26th interview, and provide written responses to them no later than May 31st.

1. Management and Related Functions

- a. What are the roles of each of your proposed key management and supervisory staff prior to and after commencement of services under the new agreement?**
- b. What other responsibilities do each of these individuals have?**
- c. How much time (percent of an FTE) will each individual devote to Milpitas, both prior to and after commencement of services?**

Roles of each manager and supervisor are listed below:

Evan Boyd, General Manager

Provide leadership for the collections operations of a business unit by providing management oversight to route supervisors, dispatchers, operations clerks, drivers and helpers, who are responsible for the route system for commercial, roll-off and residential customers, including prompt and courteous waste removal service and customer service. Manage staff, including hiring, training, coaching, performance management; develop supervisory goals and objectives; and effective resolution of safety issues and claims. Implement and execute plans to complement the business unit's strategic and operating plan; champion the execution of tactical initiatives within the division to maximize the customer experience and ensure full compliance with the Franchise Agreement. Lead all matters related to collections operations to ensure overall operations meet safety and compliance standards. Ensure maximum productivity and route management systems for commercial, roll-off and residential routes and establish productivity goals where needed; ensure adherence to operating standards; and manage labor hours and disposal expenses. Interact with customers and local, state and federal government employees to resolve customer service concerns; ensure regulatory compliance standards are met. Oversee effective safety and accident prevention programs to ensure all reasonable action are taken to prevent accidents and injuries; ensure a safe and productive work environment for all employees; Implement and maintain an effective loss control and safety program. Lead operations to ensure compliance with all standards including environmental, operating, regulatory, safety, accounting and ethics. Develop a best-in-class team and workplace culture and effectively manage performance and talent development; drive best-practice sharing. Build and maintain strong and effective relations with relevant government, community and environmental groups. Evan will devote approximately 50% of his time to the City of Milpitas during commencement of services, which will taper off to approximately 15% of his time once services are successfully implemented. Evan will increase the time he devotes to Milpitas as needed based on constant

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

assessment of the performance of programs and services delivered to Milpitas.

Eugene Suslowicz, Division Manager, Collection

Provide leadership for the collections operations of a business unit by providing management oversight to route supervisors, dispatchers, operations clerks, drivers and helpers, who are responsible for the route system for commercial, roll-off and residential customers, including prompt and courteous waste removal service and customer service. Manage staff, including hiring, training, coaching, performance management; develop supervisory goals and objectives; and effective resolution of safety issues and claims. Implement and execute plans to complement the business unit's strategic and operating plan; champion the execution of tactical initiatives within the division to maximize the customer experience. Drive functional plans within the operations group to execute against the business plan to achieve or exceed customer experience goals and meet or exceed service business objectives. Lead matters related to collections operations to ensure overall operations meet safety and compliance standards. Ensure maximum productivity and route management systems for commercial, roll-off and residential routes and establish productivity goals where needed; ensure adherence to operating standards; and manage labor hours and disposal expenses. Interact with customers and local, state and federal government employees to resolve customer service concerns; ensure regulatory compliance standards are met. Oversee effective safety and accident prevention programs to ensure all reasonable action are taken to prevent accidents and injuries; ensure a safe and productive work environment for all employees; implement and maintain an effective loss control and safety program. Lead operations to ensure compliance with all standards including environmental, operating, regulatory, safety, accounting and ethics. Develop a best-in-class team and workplace culture and effectively manage performance and talent development; drive best-practice sharing. Build and maintain strong and effective relations with relevant government, community and environmental groups. Eugene will devote approximately 80% of his time to the City of Milpitas during commencement of services, which will taper off to approximately 40% of his time once services are successfully implemented. Eugene will increase the time he devotes to Milpitas as needed based on constant assessment of the performance of programs and services delivered to Milpitas.

Connor Vander Zalm, Assistant Division Controller

Performs complex accounting activities to record, analyze and monitor financial information. Responsible for monthly reconciliation of all balance sheet accounts. Prepares and reviews required supporting documentation and financial statements to ensure compliance with Generally Accepted Accounting Principles (GAAP) and Company policies and procedures. Assists the Division Controller in the management of accounting personnel. Provides direction to the different accounting functional areas (invoice processing, billing, cash receipts, work order processing, credit analysis, receivable collections, month-end close, journal entries, statistical data, and payroll). Assists the Division Controller in the management of the accounting workflow across all division departments (sales, customer service, operations, HR, etc.). Ensures there are proper internal controls in place including compliance with Company policies and procedures, Sarbanes Oxley and all other statutory requirements. Ensures that all internal and external reporting deadlines are met. Assists the Division Controller with the training and development of accounting staff at the division. Provides direction and acts as a resource to accounting and general administrative staff to ensure complete, accurate, and timely completion of work. Assists

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

the Division Controller with accounting direction and analytical support for other departments in the division (general management, sales, operations, maintenance, customer service, etc.). Supports the Division Controller during the annual budget and interim forecasting process and assists with analytical review. Supports the accounting aspects of capital expenditures, transfers and retirements. Assists with periodic financial audits including internal audits, external audits and peer reviews. Provides support and responds to information requests from corporate (accounting, tax, treasury, IT, HR, sales, environmental compliance, legal, etc.) as well as region and area field financial management as required. Connor will devote approximately 50% of his time to the City of Milpitas during commencement of services, which will taper off to approximately 40% of his time once services are successfully implemented. Connor will increase the time he devotes to Milpitas as needed based on constant assessment of the performance of programs and services delivered to Milpitas.

Nancy Clement, Operations Manager

Provide leadership for the collections operations by providing management oversight to operations supervisors, route supervisors, dispatchers, operations clerks, drivers and helpers, who are responsible for the route system for commercial, roll-off and residential customers, including prompt and courteous waste removal service and customer service. Manage staff, including hiring, training, coaching, performance management; develop supervisory goals and objectives; and effective resolution of safety issues and claims. Implement and execute plans to complement the business unit's strategic and operating plan; champion the execution of tactical initiatives within the division to maximize the customer experience. Drive functional plans within the operations group to execute against the business plan to achieve or exceed the Business Unit's budget and strategic plan to grow the business, achieve customer experience goals, and meet or exceed service business objectives. Lead all matters related to collections operations to ensure overall operations meet safety and compliance standards. Ensure maximum productivity and route management systems for commercial, roll-off and residential routes and establish productivity goals where needed; ensure adherence to operating standards; and manage labor hours and disposal expenses. Interact with customers and local, state and federal government employees to resolve customer service concerns; ensure regulatory compliance standards are met. Oversee effective safety and accident prevention programs to ensure all reasonable action are taken to prevent accidents and injuries; ensure a safe and productive work environment for all employees; implement and maintain an effective loss control and safety program. Lead operations to ensure compliance with all standards including environmental, operating, regulatory, safety, accounting and ethics. Develop a best-in-class team and workplace culture and effectively manage performance and talent development; drive best-practice sharing. Nancy will devote approximately 80% of her time to the City of Milpitas during commencement of services, which will taper off to approximately 40% of her time once services are successfully implemented. Nancy will increase the time she devotes to Milpitas as needed based on constant assessment of the performance of programs and services delivered to Milpitas.

Jeanne Serpa, Municipal Relationship Manager

Prospects, sells and proactively manages the business relationship within an assigned division for the municipal market. Negotiates contracts, including contract extensions, as appropriate. Ensures that all approved contract terms are met. Develops and implements comprehensive account plans sales,

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

marketing and service programs/strategies. Involves the Area President and/or General Manager in government relation's activities as needed. Takes a leadership role in the design and development of outreach materials. Ensures Franchise Agreement compliance, as it relates to outreach, public education and technical assistance. Meets regularly with key decision-makers within assigned municipalities, state and federal agencies to continuously bring value-added services to the relationship. Conducts on-site client reviews continually to ensure that quality service is effectively delivered, documents deficiencies and effectively recommends corrective action to operations team as appropriate. Meets with operations management as appropriate to coordinate surveys, and service efforts for assigned territory. Must be politically astute in daily dealings with client family. May seek out and coordinate development of new solid waste infrastructure projects and manages projects through the development cycle and conclusion. Jeanne will devote approximately 80% of her time to the City of Milpitas during commencement of services, which will taper off to approximately 50% of her time once services are successfully implemented. Jeanne will increase the time she devotes to Milpitas as needed based on constant assessment of the performance of programs and services delivered to Milpitas.

Jennifer Redondo, Customer Service Manager

Performs all responsibilities related to the management of the CSR staff including but not limited to managing, training, hiring, mentoring, developing, scheduling and directing. Manages customer service center processes and procedures to drive operational excellence for all touch points in the customer experience, including handling customer inquiries and problem resolution for all lines of business. Defines expectations for service teams regarding service level goals, individual and team performance goals, quality assurance targets and productivity levels. Leads and motivates the team to meet their service goals. Meets periodically with direct reports to review performance, identify any issues and set expectations of goals. Drives performance results by managing process improvements, team quality and productivity standards and metrics. Monitors, evaluates and analyzes metrics relating to productivity to ensure operating requirements and compliance with Franchise Agreement standards, including quality assurance evaluations, metrics reports and dashboards for the customer service center. Directs actions necessary to achieve service level and performance goals. Forecasts demands utilizing historical information and current industry trends to anticipate internal and external customer requirements and provide guidelines to ensure continuous improvements. Builds strong relationships and provides customer service expertise to support functional counterparts. Works closely with Division, Area or Corporate personnel to evaluate changes in business processes/procedures and implement appropriate action plans. Plans, coordinates and conducts meetings and presentations to discuss operational procedures, reports and interpret information for all levels of the organization. Participates actively in ongoing training to the team as needed. Maintains and delivers accurate, timely and effective reporting and analysis of customer service metrics and activities. Oversees maintenance and timely updates of information for the customer service center's knowledge management tool to ensure accuracy of information. Partners with operations and sales teams after identifying specific customer services issues/trends; implements appropriate action plans to address. Jennifer will devote approximately 70% of her time to the City of Milpitas during commencement of services, which will taper off to approximately 30% of her time once services are successfully implemented. Nancy will increase the time she devotes to Milpitas as needed based on constant assessment of the performance of programs and services delivered to Milpitas.

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

Shawn Smith, Maintenance Manager

Provide direction to all technician levels, as well as the lead technicians, in the maintenance shop and may manage a Site Maintenance Supervisor in a satellite maintenance shop or a Maintenance Shift Supervisor, assigned to his or her work group to ensure that all repair and maintenance work is performed in a safe, efficient and timely manner. Oversee the planning and scheduling of all repair work to increase productivity, while effectively managing the department's overtime. Monitor the shop's operational performance and efficiency and take action to redirect activities as appropriate. Report to management on shop performance, and implement procedures for process or programmatic changes for improvement for efficiencies. Manage lead technicians and maintenance supervisor(s) in the maintenance shop, to include such responsibilities as overseeing daily shop huddles; fleet walks; coaching and counseling lead technician and maintenance supervisor(s) on performance and corrective action, when necessary; make hiring and termination decisions, in concert with Human Resources and appropriate management; oversee employee training and performance evaluation. Maintain an on-going preventive maintenance program for assigned locations. Identify trends in road calls, break downs; oversee maintenance of the building and other facilities on site; control maintenance costs relating to personnel, purchasing, inventory control and outsourcing of repairs. Manage outside repair facilities and repairs to ensure all work is properly completed in accordance with the Company's safety and compliance procedures, and federal and state regulations; follow up where appropriate. Identify training opportunities and, as necessary, document issues and constructively discusses corrective action, as needed, with maintenance supervisor. Conduct Quality Control Inspections, track issues and issue resolution to ensure all works is properly completed and is in accordance with the Company's safety and compliance procedures, and federal and state regulations. Maintain advanced knowledge of engine, emission systems, transmission, brake, hydraulic and electrical systems to manage advanced preventive and repair maintenance functions of heavy equipment and vehicles used by the company, on site and on the road, including: knowledge of vehicle body control systems, including hydraulics and electrical systems to manage the maintenance and repair the vehicles in a timely and safe manner; engine chassis repair and maintenance; knowledge of heating and air conditioning systems to manage diagnosis and repair of complex heating and cooling systems in the vehicles in a timely and safe manner; and knowledge of welding tools to fix heavy equipment in a safe and efficient manner to ensure the equipment is back in an operable condition as quickly and as safely as possible. Manage related administrative matters for the team, including payroll, maintain employee records, maintain records of all preventive and corrective maintenance performed, ensure the appropriate recording of all information into Dossier Maintenance Software, set departmental goals to align with the targets and performance objectives established by the division's leadership team. Shawn will devote approximately 50% of his time to the City of Milpitas during commencement of services, which will taper off to approximately 40% of his time once services are successfully implemented. Shawn will increase the time he devotes to Milpitas as needed based on constant assessment of the performance of programs and services delivered to Milpitas.

Hosea Saffold, Operations Supervisor

Understand and provide leadership to achieve and communicate about safety goals and objectives. Work to remove unsafe conditions or situations from drivers' routes. Work with the sales team to identify and eliminate any unsafe conditions on new routes or for new customers. Partner with the maintenance department to ensure all equipment remains in working order and in compliance with safety

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

standards. Oversee effective safety and accident prevention programs to ensure all reasonable actions are taken to prevent accidents and injuries; ensure a safe and productive work environment for all employees; implement and maintain an effective loss control and safety program. Engage assigned employees in active participation to instill a culture of safety by demonstration of a personal commitment to safe operations and active personal outreach to operational employees. Provide service to all customers that meets or exceeds customer expectations with regard to the entire customer experience. Understand missed pick-up goals and meet or exceed expectations related to those goals. Resolve unusual service requests, equipment breakdowns and schedule changes with timely communications to all stakeholders. Interact with customers to solve and rectify any issues and improve the overall customer experience. Serves as a positive representative of the Company to drive customer satisfaction and loyalty to the company. Establish productivity goals where needed; ensure adherence to operating standards; and manage labor hours and disposal expenses per established and agreed plans. Lead drivers to exceed productivity goals and expectations for all routes. Create, modify and improve routes to maximize density and improve efficiency. Reduce route hours to the extent possible with techniques such as service conversions and container upsizing. Execute other operational plans to help achieve or exceed goals. Understand, support and execute service delivery while actively supporting maintenance and the operational role in fleet quality and maintenance. Create a collaborative, communicative team environment and drive employee engagement with the Company. Build and develop talent on the team, understand employees' career goals and provide coaching to get employees ready for advancement with the Company. Hosea will devote approximately 100% of his time to the City of Milpitas before, during and after commencement of services.

Jennifer Crozier, Recycling Coordinator

Develops and implements customer specific recycling and diversion programs and assists in the promotion of recycling efforts. She works directly with the customer base and in collaboration with City staff via telephone, onsite visits, events, trade shows and outreach educational programs to identify and educate customers on proper recycling techniques to improve the quality of materials collected. Monitors and evaluates existing commercial and special event recycling programs and makes recommendations for educational and service improvement. Coordinates and provides input and strategic guidance regarding the customer collection schedule with the Operations department. Creates, develops and implements food waste recycling outreach programs and collateral material for use in promoting food waste education, recycling, and diversion to schools and businesses within the service area. Drafts, organizes and conducts classroom presentations and responds to inquiries about recycling and other waste reduction programs. Drafts, compiles and disseminates communications to customers to assist them in eliminating materials that contaminate recycling waste. Creates or assists in the creation of the company newsletter, semi-annual/annual reports, brochures, pamphlets, ads, slide shows, and other related company publications for internal and external use. Performs commercial waste audits/assessments and recommends service levels for waste and recycling. Conducts and participates in waste characterization studies upon request. Provides customers written reports of findings and recommendations. Compiles statistics for contractual food waste recycling tonnage reports, analyzes data for accuracies and trends. Analyzes monthly reports on outreach activities and maintains a calendar of reporting deadlines. Participates in researching the availability of grants and other funding sources for recycle and waste reduction projects and assists in securing applicable funds. Builds relationships and increases company visibility to promote recycling and diversion programs through participation in community events, trade shows, chamber of commerce meetings and other applicable events, as

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

necessary as the company's representative. Organizes and completes proactive scheduled phone block activities to establish initial and follow-up appointments with customer decision-makers. Utilizes the company's tracking and customer based tools on a daily basis, schedules and documents all activities, and develops robust information profiles on current customer base to facilitate and ensure proper recycling habits. Schedules and conducts tours of local transfer stations, landfills or other facilities.

2. Routes/Vehicles/Crew Count

a. Describe your process for determining the number and type of routes, number of vehicles, and required number of crew.

With 30 years of experience in providing service in Milpitas, Republic has created an operational framework that allows the integration of collection techniques and service routes to be done in the most efficient and timely manner. The new services required by the RFP will be complementary to our existing service offerings. Therefore, any service transition will be minimal and can benefit from the experience we have gained locally and throughout our Northern California Area.

Republic's experience and use of advanced industry technologies allow us to create efficient routes that can be modified to accommodate any transition requirements. Our team has a proven track record of working in partnership with City staff to ensure customers receive seamless collection on a daily basis.

Through the use of routing software, Route Editor, in tandem with Republic's customer management system, InfoPro, we can ensure a thorough approach to routing to enhance worker/public safety, create efficiencies, reduce carbon emissions and street wear and tear. The integration of Route Editor and InfoPro ensure the best routing plans for all collection systems within Milpitas. Additionally, our choice of collection vehicles (refer to question 2b) only requires one driver per vehicle. Routing software, estimated truck trip, capacity and payload calculations coupled with institutional knowledge and experience in other jurisdictions is how we determined the number of routes, crew and type of routes to be used in Milpitas.

b. Describe how you decided on your proposed approach to cart collection, including choice of truck type, method of collection, and why you believe it will be more effective than other approaches.

Republic took the proactive step of introducing compressed natural gas (CNG) automated front end load (AFL) vehicles, fitted with a Curotto-Can, in Milpitas in 2012. The AFL is the only vehicle that can efficiently and effectively meet the demands of unlimited collection service in Milpitas. Since all our vehicles currently servicing the City of Milpitas have been recently purchased and are essentially new, we propose beginning the new service agreement with the existing fleet of trucks serving the City.

The automated front-end load vehicle, equipped with a Curotto-can attachment is one of the most efficient and safe collection methods available, as it places the point of collection directly in front of the

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

driver's field of vision versus other collection vehicles, which are at the rear or side of the vehicle. This truck also incorporates a 42-cubic yard body for increased payloads and far fewer trips than many other residential collection trucks. The Currotto-can attachment provides for the most universal collection, which is a very important feature in a community with a wide-range of set out options and unlimited service.

The AFL vehicle has 42-cubic yard body and a 4.6-cubic yard device – developed by the Curotto-Can Company in Sonoma, CA - that attaches to the fork of a front-end loader when servicing carts. A lift-arm on the device picks up carts and dumps them into the Curotto-Can. It takes five seconds to stop the vehicle, grip and dump a can and start moving down the street again. In addition to carts, the arm can pick up bulky items like refrigerators and sofas eliminating the need for separate bulky item and clean up routes and further reducing the wear and tear on road surfaces and reducing emissions. After 10 to 15 lifts, the front-end loader's fork arm empties the Curotto-Can into the truck's hopper. The AFL is proven to retrieve and return carts in even the most hard-to-reach locations such as narrow streets, courts and alleyways.

3. How many residential accounts will have a change in day of service?

We do not anticipate any changes in day of service for customers.

4. Base Services - Discuss your proposed Base Services in general, with regard to:

a. How they differ from current services.

Republic proposes to supply all residential customers with a trash carts as part of the cost of residential collection service and eliminate the current practice of charging a cart rental fee. Customers will continue to have the option to use a personal trash can rather than a Republic cart. If this option is selected by the customer, Republic will remove its trash cart at no fee. Inclusion of cooking oil collection, used motor oil and used motor oil filters recycling collection, battery recycling collection, two annual compost giveaway events and sharps disposal by mail. Multi-family dwelling (MFD) yard trimmings service. Commercial organics (yard trimmings and food scraps) collection. This service is an expansion of the existing commercial organics food waste pilot program. Use of the Newby Island Recyclery which offers a commercial diversion rate of 80% diversion of recoverable material and 95% diversion of recoverable residential material. Addition of four free curbside bulky collections for residents or bin-for- a-day, on-call MFD and commercial bulky collections. The latter bulky collection services will be complimented by the assistance of Republic's recycling coordinator to determine logistics of these collections in a way that is most convenient to the customer. Enhanced outreach and technical assistance. Searchable residential collection and street sweeping database. Customer use of Republic's My Resource[®] app which allows all customers to request additional services, check their bill, inquire about their account, report a service issue and manage other account activities all via their mobile device.

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

b. Whether your proposed Base Services exceed the requirements of the RFP, and if yes, how.

The RFP does not require CNG collection vehicles, a feature Republic implemented several years ago despite it not being mandated by the current franchise agreement. The AFL vehicle proposed provides the most efficient, effective and safest collection services. These vehicles are not required in the base proposal, yet are far superior than any other residential collection vehicle. The RFP offers that residential cart rental fees may be charged, however Republic proposes to provide residential trash carts at no additional fee to customers. Enhanced public outreach includes comprehensive education programs and incorporates several new programs involving residents and businesses in Milpitas. Such programs include:

- Green Family Spotlight
- Senior Citizen Recycling Ambassador program.
- Business Recycling Recognition
- Green Business Ambassador Training and Engagement Program

School outreach beyond the requirements of the future franchise agreement. Significant community support, leadership and participation in the greening of local special events.

5. Single Family Solid Waste – Discuss:

a. The proposed approach to continued use of customer containers, and why you selected it.

As the incumbent contractor, Republic has provided service to both types of receptacles for many years. This service is familiar to Milpitas residents, so Republic takes no issue in offering the same service upon commencement of the new franchise agreement. The only difference is the proposed option of providing Republic trash carts at no additional cost to the customer and elimination of the current monthly rental fee.

b. The proposed approach to a cart-only system, and why you selected it.

Encouraging residents to subscribe to volume-based trash collection services allows the opportunity for residents to choose the service level that best fits their household and provides for additional opportunities to significantly increase single-family diversion in the Milpitas.

c. Whether the City selects to continue or change collection practices, how will you address customers that may not like the decision?

Over the years, many customers have approached Republic to request smaller carts to accommodate storage restrictions as well as amount of waste generated. Therefore, Republic views the option of offering three cart sizes to meet all customer needs as an advantage, including if the Base Proposal is selected. If the City chooses cart-only service, Republic will address the change in a positive manner by communicating to customers that carts can be replaced at no additional charge when damaged or in need of annual cleaning, that cart sizes may be selected to best meet the needs of the household, that

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

lids are attached to the carts and include molded-in signage with guidelines for use, which includes a list of acceptable and unacceptable materials for each container. In either scenario, customers shall receive information advertising unlimited collection for all three collection streams.

d. Customer options for overages under each approach.

Base Proposal:

- Customers may set out an unlimited number of 32-gallon trash bags at the curbside next their can or cart.
- Additional recycling carts may be requested at no additional charge. Customers also have the option to place extra recyclables next to the recycling cart, preferably in paper bags, and cardboard should be broken down for easy collection.
- Yard trimmings overages are addressed by allowing customers to set out their own 32-gallon can labeled with an “Extra Yard Trimmings” sticker provided by Republic customer service. Holiday trees are collected at the curbside during a specified period of time.

Alternative Proposal:

- Customers may set out an unlimited number of 32-gallon trash bags at the curbside next to their cart. Additional trash carts may be requested for a fee.
- Additional recyclables should be placed next to the recycling cart, preferably in paper bags, and cardboard should be broken down for easy collection.
- Additional yard trimmings carts may be requested at no additional charge. Yard trimmings overages are also addressed by allowing customers to set out their own 32-gallon can labeled with an “Extra Yard Trimmings” sticker provided by Republic customer service. Holiday trees are collected at the curbside during a specified period of time.

e. Proposed on-call and “bin for a day” options.

Republic proposes to sort all on-call bulky items at our Newby Island C&D processing facility – an effective method which will result in increased diversion for the City.

Residential Bulky Item Clean-Ups

Republic’s goal is to increase household diversion rates while being responsive to customer needs. Both single-family and MFD which receive curbside collection will have the opportunity request four (4) free on-call bulky item clean-ups per year. Customers will have two options for scheduling a bulky item clean-up which include a convenient bulky item collection request form on our website or call customer service to schedule a pick-up, at which time they will be asked for their name, service address and daytime phone number, as well as what types of items they will be setting out for collection.

Bulky item collection will occur on regularly scheduled collection days with tracking managed via our InfoPro system. Once an on-call appointment is scheduled, the customer will receive a mailed brochure

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

confirming collection date and detailing reuse options. It will also include set-out guidelines and provide a visual aid to support the guidelines and accepted materials list. To perform bulky item clean-up service, Republic will collect in AFL trucks - as specified in the collection portion of the Technical Proposal for Base Services - and a flatbed truck to collect large appliances and other recyclable materials. Residents will be instructed to leave materials at the curb on their collection day by 6 a.m.

Bin for a Day

In addition to curbside bulky collection, Republic will offer "Bin for a Day" services as specified by the Future Franchise Agreement. Customers will have the option to order a free "Bin for a Day" as a substitute for the free bulky clean-up. 1- to 4-cubic yard containers will be offered for delivery Monday- Friday on the customer's regular collection day. Republic proposes to remove the container 48 hours after initial delivery. Customers may order the service through customer service or via our website.

MFD and Commercial On-Call Bulky Clean-ups

Prior to the start of the new franchise agreement, Republic staff will meet with each MFD property manager/owner to determine collection locations for on-call bulky items collection. The agreed upon collection details will be provided to customer service and communicated to the MFD resident during scheduling. A brochure, triggered by the customer's request of an on-call bulky item collection, will be sent to the customer's unit prior to their on-call bulky item collection and will include set out guidelines, accepted materials, reuse options (as mentioned above) and move in/move out information. Residents will be billed individually for on-call clean-ups.

For MFD locations that cannot accommodate a specific bulky-item collection location, Republic will coordinate with the property owner/manager to schedule community bulky-item clean-up day. Roll-off box(es) will be delivered to a mutually agreed upon location on the MFD site where residents can dispose of bulky material. Each clean-up event handled in this manner will include a site visit and walk-through with a member of Republic's staff. The clean-up cost will be billed to the MFD directly.

Because Republic has been providing service to MFD in Milpitas for many years, we understand the complexities of overloaded containers due to move in/move out situations, something which infrequent on-call bulky item collection may not always resolve. To that end, Republic has already created collateral material specific to this challenge and regularly delivers them to MFD property owners/managers for distribution to residents. These materials will also be made available on Republic's website and in the bulky collection brochure. The on-call bulky collection program will also aid in minimizing abandoned waste. Commercial customers are offered the option to request a bulky item collection for a fee.

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

6. Alternative Services – Food Scraps Collection/Processing and “Other” Alternatives - Discuss:

- a. The proposed approach(es) to food scrap collection and processing, including why you have selected the approach(es) and other communities in which you have used it.**

Single-Family Food Scraps with Yard Trimmings

Republic proposes a comprehensive commingled organics program that adds food scraps and food soiled paper to the existing yard trimmings program for single-family customers. Commingled systems, which collect all organics, maximize diversion and efficiently collect these materials using a single container, unified collection infrastructure, and integrated processing. Republic proposes to collect clean green waste, all food scraps, and food soiled papers that are placed in a single 32-, 64- or 96- gallon cart. Cart size selection will be offered through a subscription mailer. All organic materials will be delivered and processed at Republic's owned and operated, fully permitted Newby Island Composting Facility.

Milpitas single-family residents currently divert 5,157 tons of yard trimmings material each year. By adding food scraps collection, it is anticipated that an additional 479 tons of material will be diverted, which would be 3.5 percent decrease in annual residential disposal. This is based on 87 percent of customer participation.

Republic will offer all residential customers weekly automated collection of organic materials including food scraps and will be serviced with the same equipment and manner as residential solid waste and recycling carts. All residents will receive outreach materials describing how to participate in the program, a kitchen food scraps pail to collect their food and food soiled paper, and an organics cart (blue body with a green lid). The carts will have an in-mold label with organic recycling information and instructions. Food scraps pails will be delivered along with organics carts. Food scraps may be placed in approved biodegradable bags that are accepted at the composting facility. Residents can also use the pail to transport food scraps directly to their cart or use biodegradable plastic or paper bags for this purpose.

Implementing this single-family food scraps recycling program will entail an extensive outreach campaign informing residents of the change and when the program will begin. Our educational materials will highlight specific materials accepted in the program, including food scraps and food soiled paper. Republic will also plan three single-family informational meetings located in different parts of the city, to outline the residential organics implementation plan, discuss what is acceptable in the program, outline the importance of food scrap recycling, and answer any questions. Additional information will be placed on the Republic Milpitas website in a “Frequently Asked Questions” section, and will be updated on a regular basis to add any new questions that arise. Residents are also encouraged to call customer service or stop by the Republic offices to ask questions and receive further clarification. Diversion for this program will be tracked and compared to the existing baseline yard trimmings program annually. This will be accomplished by placing a new code on the customers' account that specifies a commingled organics recycling container. Those codes will generate reports that will identify the cubic yards being generated as well as tonnage from the route servicing the containers. An outreach plan and timeline will be agreed upon by the City and Republic. Republic is proposing full implementation of a comprehensive comingled residential organics program on day one of the new Agreement.

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

Republic provides residential organics collection in a number of its service cities including Fremont, Newark and Union City. The method proposed, including distribution of food scrap pails and outreach materials, has proven very successful in ease of use and increasing diversion in these cities and we believe the same results be achieved in Milpitas.

Commercial Yard Trimmings and Food Scraps Collection as Mandated by AB1826 – Post 2017

Republic has proven successful in encouraging participation in recycling services through our AB341 efforts (98% compliance as of May 2016) and intends to respond to AB1826 compliance with the same dedication. It is our intention to expand the commercial organics program by January 1, 2019 for businesses that generate 4 cubic yards or more of commercial solid waste a week.

AB1826 also provides that beginning January 1, 2020, generators of 2 cubic yards or more of solid waste per week must divert yard trimmings and food scraps. However, the 2020 requirement is contingent on a State finding that the level of organics disposal has decreased by less than 50 percent compared to 2014 levels. Republic intends to expand the commercial organics program to include all customers regardless of the State's decision regarding the smaller generators.

Commercial recycling and organics collection will be performed with the same equipment (carts and containers) and vehicles as indicated in Section A of our proposal, under Collection. Republic is proposing to add one full route to collect all organic material and will maintain one full route for recycling collection.

The following areas are a priority for Republic in order to meet Milpitas' needs for reporting and compliance with AB 1826 post 2017:

- Outreach and education: Republic will conduct outreach activities to inform the affected commercial generators of the mandatory recycling requirements and educate commercial generators about recycling opportunities available to them.
- Monitoring: Republic will review lists of affected generators to ensure they are subscribing to and participating in the commercial recycling and organics collection programs. We will also identify and notify businesses that are not in compliance, as well as provide the proper technical assistance to ensure they have recycling and comply with the ordinance.
- Reporting: Republic will report on progress implementing the commercial recycling programs, including outreach, education, and monitoring efforts as part of the Cal Recycle annual report process. This reporting will include the activities to educate businesses on the mandatory requirements, as well as efforts to track and monitor compliance on the part of business.
- Enforcement: Republic will actively seek businesses that do not comply with the regulation and provide technical assistance efforts to recycle. If the business chooses not to comply, Republic will work with the City to develop an appropriate solution and potential enforcement follow through.

Republic currently provides commercial food scraps collection to Milpitas customers through a

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

successful pilot program by employing similar methods as proposed. We anticipate the expansion of this program will be seamless and increase diversion exponentially. We also provide commercial organics collection in numerous cities around the Bay Area (Daly City, Fremont, Newark, Union City, Contra Costa County cities, etc.) in the same manner and have reported positive diversion results.

b. Any "Other" services you have proposed.

Republic recognizes the importance of providing multi-family customers with the opportunity to participate in a successful recycling program, especially with the advent of State recycling mandates. As an additional alternative Post-2017 proposal, Republic proposes to go beyond the AB 1826 requirements to offer MFD a two-stream collection service, which includes mixed waste processing and single-stream recycling to significantly increase diversion, with no change in behavior required for residents. No other company can offer MFD collection and processing to the extent Republic is able to for the simple reason that our Newby Island Resource Recovery Park (NIRRP) houses the largest and most capable recycling facility in the world.

With the ability to process up to 145 tons of multi-stream material per hour, this system marks a revolutionary shift in how materials are processed by diverting 80 percent of recoverable commercial material processed and 95 percent of recoverable residential material processed. Our exclusive mixed waste collection and processing system is the optimal solution to easily increase MFD diversion across the board for MFD communities of ALL sizes.

Republic has attempted to find a balance between development of a service package that is comprehensive and state of the art while at the same time being cost effective. We believe we have found this balance in terms of utilizing our extensive asset base in Northern California with the centerpiece being the Newby Island Resource Recovery Park. Republic believes this is the best solution for increasing MFD diversion city-wide, for properties of all sizes. There is no other company that can offer a collection and processing program that will significantly increase diversion with little to no inconvenience to the customer.

It is worth noting that the same high level of customer education and outreach described in our Base Proposal will also occur in our Alternative Proposal for MFD. However, we believe that use of the Newby Island Resource Recovery Park for processing of multi-family waste, which has been historically difficult to achieve high levels of diversion from, is unique and game changing.

To assist Milpitas in 100 percent MFD AB 1826 compliance, while at the same time nearly eliminating any program transition challenges, Republic proposes to offer all MFD communities a two-container system allowing for the continued collection of single-stream recyclables and mixed waste/trash.

Because Republic has the most advanced sorting technology at our fingertips, MFD residents won't be required to make any special considerations or engage in significant source separation beyond the process they are accustomed to.

Through this collection system, we anticipate diverting at least 50 percent more from the multi-family sector than what is currently being diverted. Most importantly, implementation of mixed waste processing in this manner to the MFD sector is essentially invisible to the customer. We will perform the

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

characterization of the material within their container and simply route the collection of the material to consolidate it with like kind feedstock from other customers.

Other Service Enhancements and Innovations

Republic proposed a number of service enhancements – some already in place – and additional innovations for the City to consider:

- Continuation of Household Dump Day in its current form
- Replacement of carts at the inception of the new contract and replacement of metal containers over a period of five (5) years. This decreases upfront capital investment and delivery costs.
- We're Looking out for You" Neighborhood Watch Program
- Recyclables Theft Prevention Program - installation of gravity locks on all new and replacement commercial containers.
- Stop-And-Swap Community Reuse Event
- Multi-Cultural and Community Faith-Based Outreach
- Republic Services School Recycling Fair: A school to school contest
- High School Summer Internship Program
- Youth Engagement Dumpster Art Contest
- Eco-Diversion Calculator
- Residential Recycling Pledge Campaign

As a part of our proposal, Republic has submitted an additional considerations section, Section 3A, that we believe will provide the City and its residents with the most comprehensive solid waste and recycling services available, while addressing several long standing issues that are of great importance to the City and its residents. We believe that this element of our proposal would be of great value to the City on many fronts and is worth further discussion as part of the planned negotiation process. We strongly encourage you to review this section of our proposal.

c. Proposer's recommendations for phasing-in, or not phasing-in programs.

Single Family Solid Waste Carts (cart-only service)

Republic proposes to deliver residential trash carts by August 31, 2017 in preparation for the September 6, 2017 franchise start date. Program communication and subscription information will be mailed to residents by June 2017.

Single Family Food Scraps with Yard Trimmings

Program will commence September 6, 2017. Customers will receive program communication and subscription information by June 2017. Food scrap pails organics carts (carts as necessary) will be delivered by August 31, 2017. This method means that new single family co-mingled food scraps and yard trimmings service would be provided at the commencement of the new contract.

Commercial Yard Trimmings and Organics Services

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

Program will officially commence September 6, 2017. However, we anticipate a seamless transition to this service due to Republic's current AB1826 practices leading up to the start of the new contract. Program communication, including technical assistance, will already be in place. Any collection day changes will be communicated prior to contract start.

MFD Mixed Waste Collection

Beginning January 1, 2019, Republic is proposing a two stream approach for all MFD. In this collection program, each MFD would receive separate containers for source-separated recyclables and for mixed waste. All materials will be delivered to the NIRRP for processing. It's important to note that this system can work for small or large MFD so it does not matter what the threshold or number of units is. Currently food scraps are not being collected from MFD nor does AB 1826 require this service. However, Republic's proposed post-collection mixed waste processing will recover food scraps and any dry recyclables placed in the trash.

7. "Single-Family Style"

a. What does "Single-Family Style" mean to you in the context of collection in Milpitas?

Republic's definition of "Single-Family Style" services is in line with the City's definition as any detached or attached house or residence designed or used for occupancy by one (1) family, provided that collection service feasibly can be provided to such premises as an independent unit, and the owner or occupant of such independent unit is billed directly for the collection service. Single-Family includes residential units of a duplex, tri-plex, or four-plex residential structure provided that each unit is separately billed for their specific service level.

b. How does the concept influence the selected services and service approaches?

As the incumbent proposer, Republic is an expert at properly routing and providing the correct service type and billing services for single family dwelling residents. Our selected services and approach to single family collection is tailored specifically to the requirements of curbside service. Further, we are the only proposer that fully understands the needs and intricacies of the numerous high-density single family housing developments throughout Milpitas. This knowledge drove our decision in selecting the AFL vehicle previously described because of the flexibility it affords in can type, material type, containerized material or non-containerized material, unlimited set-out, etc.

8. "Multi-Family Style"

a. What does "Multi-Family Style" mean to you in the context of collection in Milpitas?

Republic's definition of "Multi-Family Style" is in line with the City's definition as residential premises, other than a Single-Family Premises, with five (5) or more dwelling units used for residential purposes (excluding units used for temporary residential purposes such as hotels) that receive centralized collection service for all units on the premises which are billed to one (1) Customer at one (1) address.

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

b. How does the concept influence the selected services and service approaches?

As the incumbent proposer, Republic is an expert at properly routing and providing the correct service type and billing services for multi-dwelling residents. Our selected services and approach to this type of collection is tailored specifically to the requirements of MFDs of any size. Further, State recycling mandates are already being met at 100% of MFD locations.

Having interacted with every multi-family location in Milpitas, we are aware of those that can begin yard trimmings service immediately upon commencement of the contract. Additionally, only Republic has the understanding of how mixed waste service (if selected by the City) will easily be implemented at all MFD locations.

9. Hard-to-Serve

a. What does "Hard-to-Serve" mean to you in the context of collection in Milpitas?

Republic identifies hard to serve accounts as those premises in Milpitas which require special service considerations resulting from one or more factors that affect vehicle operations, access, and safety, including narrow streets, steep streets, areas with overhanging plant growth, cul-de-sacs or other terrain or geography that may interfere with regular collection.

Republic intends to service all single-family carts using an automated front-end load (AFL) truck fitted with a Curotto-Can. The AFL is proven to retrieve and return carts in even the most hard-to-reach locations such as narrow streets, courts and alleyways, enabling the industry's most efficient, safe, and environmentally responsible curbside automated collection services. The AFL is currently being used successfully for collection of residential material.

b. How does the concept influence the selected services and service approaches?

As Milpitas' collection provider for 30 years, Republic is the expert at maneuvering hard to service areas with success and safety. We have met the demands of servicing the increasing number of high-density housing developments in Milpitas efficiently and effectively through open communication with city staff, developers and property managers. As proof of our proficiency, city staff shares new development plans with Republic and relies on our comments including estimated waste generation, suggestions for alternate collection plans and approval for interim collection plans during construction.

c. How does the concept inform service implementation initially, and over time?

Republic is the only company who can continue to provide collection to these areas without transition challenges or interruption in regular service.

10. Street Sweeping – Please describe:

a. Your proposed approach to street sweeping.

The following section details Republic's plan to perform collection for residential and commercial street

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

sweeping services within Milpitas. Having served the sweeping needs of the City for over a decade, Republic is the only company that possesses the extensive local expertise and knowledge to meet the objectives of the City.

Our drivers and administrative staff are familiar with every detail and every special circumstance surrounding sweeping in Milpitas – something that can only come from a company with our longevity in the community. Our experience and understanding of the various requirements are of great value in serving the residents and businesses in Milpitas.

We understand the complexities of providing street sweeping service and have established a system, in partnership with City staff, which responds to the requirements to keep the streets as debris-free as possible. Due to extensive outreach efforts, we touch every customer to ensure they understand the importance of moving cars off the street and proper preparation of yard trimmings for collection.

As we have historically done, our approach involves performing street sweeping routes the day following collection in order to ensure that; 1) materials set out on the day of collection do not interfere with the sweeper's ability to get as close as possible to the curb, where debris tends to collect, and; 2) any debris that might exist from the previous collection day is collected and cleaned up by the sweeper. Republic has proposed the use of a brush/vacuum combination sweeper. This sweeper includes two curb (side) brushes and a center rear brush. Republic's proposed sweeper includes a central vacuum designed to vacuum up loose debris that is either left in the curb or on the roadway or that is dislodged by the sweepers rotating brushes. The sweeper also includes a magnet for nails, screws or small metal material that has the potential to puncture tires.

Street Sweeping Vehicle

Republic proposes to provide street sweeping services using a vehicle with specifications similar to the following:

- Freightliner
- M2 chassis with 152" wheel base
- Cummins clean diesel engine (EGR, diesel particulate filter, electronic engine controls.)
- Elgin Crosswinds sweeper body
- John Deere Power Tech Engine (EGR, diesel particulate filter, electronic engine controls)
- 144" sweeping path with recirculating vacuum head
- Dual side broom assembly
- 8 cubic yard capacity

Republic disposes of collected sweeping material through direct haul or through the use of roll-off boxes placed throughout the City. The use of strategically placed boxes allows for the driver to empty the truck and return to the route in a timely manner. Boxes are located at the Milpitas Sports Center and on Redwood Avenue during fall leaf collection. All boxes are delivered and removed from these locations on a daily basis.

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

b. How does your approach meet, or exceed RFP and technical contract requirements?

Republic's approach to street sweeping services meets the requirements of the RFP. We exceed the requirements by providing excellence in service through our approach to routing and outreach. We understand the challenges that come with sweeping services in Milpitas and will continue to support the City by providing outreach services above and beyond contract requirements such as making a searchable sweeping collection day database available on our website.

11. Outreach – Please describe:

a. Your proposed approach to outreach.

Republic is committed to continuing to work in partnership with the City of Milpitas to develop and disseminate effective, targeted public education and promotional materials on a regular basis to all customers as part of a larger effort to achieve the City's sustainability goals. Republic brings a proactive, integrated approach to its customer communications and will use a variety of methods, such as direct mail, posters, media relations, special events, website and other methods as appropriate, to convey service and recycling messages to reach various audiences. As evidenced by our many years of performing outreach in Milpitas, we have extensive experience designing and implementing customized education and outreach programs that effectively promote recycling and increase diversion.

Due to the robust outreach program(s) Republic is proposing, we would like to refer the City to the following sections of our proposal:

- Section 2, E. Public Outreach
- Section 2, F. Multi-Family and Commercial Recycling and Organics Technical Assistance
- Section 2, I. Multi-Family and Commercial and Organics Plan
- Section 3, D. Commercial Yard Trimmings and Food Scraps Collection
Mandated by AB1826 – Post 2017

a. How does your approach meet, or exceed RFP and technical contract requirements?

Republic has succeeded in 100% MFD AB341 compliance and 98% commercial AB341 compliance. Outreach supporting AB1826 will already be in place prior to September 2017. The proposed outreach program is further enhanced than current practices and, upon commencement of the new contract, Milpitas will already be ahead of the curve when it comes to State recycling mandates, as Republic has proposed implementing the proposed programs ahead of the State's schedule. This significantly exceeds expectations of the RFP requirements.

12. Technical Assistance – Please describe:

a. Your proposed approach to technical assistance.

Due to the robust technical assistance Republic is proposing, we would like to refer the City to the following sections of our proposal:

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

- Section 2, E. Public Outreach
- Section 2, F. Multi-Family and Commercial Recycling and Organics Technical Assistance
- Section 2, I. Multi-Family and Commercial and Organics Plan
- Section 3, D. Commercial Yard Trimmings and Food Scraps Collection Mandated by AB1826 – Post 2017

b. How does your approach meet, or exceed RFP and technical contract requirements?

Our proven success in meeting current State recycling requirements is an indicator of how our approaches to technical assistance meet and exceed RFP requirements. We've also proposed innovative technologies, such as the propriety Eco-Diversion Calculator to support technical assistance and diversion practices for MFD and commercial customers. The ease of use and high success rate of our programs offer cannot be surpassed.

13. Summary Diversion Table - Provide a summary table for all collection programs, by material, that addresses:

- a. Initial (1st year) tonnages collected.
- b. Projected increases/decreases in tonnages collected over the term.
- c. The effect of AB 1826 on the multi-family and commercial sectors.
- d. Diversion rates for each processed stream, and in total.
- e. Residue rates for each processed stream.
- f. Estimates of increased diversion over time by program/stream.
- g. Addition of food scrap collection and processing (assumed to be an initial service).
- h. Addition of any "Other" proposed alternatives.
- i. Any other relevant information.

Please see the attached estimated diversion tables labeled Table 1 and Table 2.

14. Billing Services – Please describe:

a. Your proposed approach to contractor-provided single-family billing.

Republic utilizes an industry leading billing software system called Metavante. Billing staff and CSRs have access to the billing system and Republic's corporate office has system administration rights. Any inquiry or support needed is immediate for our local division.

- All customer rates are entered into InfoPro by Republic's billing staff, CSRs and diversion coordinators where appropriate.
- Each month all data files are transmitted via InfoPro to Metavante and a "full-charge" or amount to be invoiced is available for the billing staff to audit to ensure any discrepancies are adjusted before invoices are sent to customers. During month-end close, all approved charges are sent via Metavante and reviewed one more time prior to invoices being released.
- To make bill paying convenient and easy for customers, Republic offers online

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

bill pay service which allows customers to make one-time payments with either a credit card or electronic debit to a checking account. In the interest of conserving paper, customers who select this option will have the ability to have paperless bills, billing inserts, newsletters, and program announcements sent to an email account. As described in Section G, Customer Service, Republic also offers My Resource™ for convenient invoice viewing and payments. Republic's billing department also supports/accepts electronic funds transfers, automated recurring check or credit card payments, payments by mail, payments made at its office at both the customer service center in Fremont and at the NIRRP, and credit card payments by phone.

- Each month, reports are viewed by the billing staff to review stop service accounts as well as reports that show start service. These service changes could be due to past due balances, business closing, moving or opening. All stops/starts are thoroughly reviewed before changes are initiated. When a customer calls the office regarding a billing inquiry, Republic's CSR will first verify the service level on the account and invoice to ensure the customer is being billed correctly. If the service levels and rate are correct, the CSR will go into the AR screen in InfoPro and check the customer's payment history. If the customer claims they are being billed for a service they did not receive or do not subscribe to, a CSR will send out a Route Supervisor to confirm the service level. The account will be credited immediately if Republic has made an error. If the customer has made an error a friendly phone call to the customer will be placed to give them the opportunity to choose the service level that matches their budget and waste generation rate. All options will be reviewed with them.

Republic's system already includes residential addresses and service information to provide the best possible service when interacting with customers. However, an audit will be performed to ensure all addresses are accurate along with service level. Republic currently invoices all commercial and MFD over five (5) units.

Accounts Receivable

The open item Accounts Receivable system is fully integrated with InfoPro and the General Ledger. This module provides invoice tracking/aging, cash application and collection processing. Cash is received electronically from an external lockbox company and is automatically posted to customer accounts/invoices. The system provides a strong query tool to aid in customer collections in addition to monthly and ad-hoc aged trial balances. Accounts receivable invoice history is maintained for a period of 12 months. At any point in time an invoice may be reprinted at the division. Customer collection notices and interruption service takes place automatically but can be overridden by associates at the division.

Invoicing

Invoice amounts for our customers are produced by the system and then transmitted to our printing service provider. Invoicing is integrated with the General Ledger and AR. On average, we generate over 2.5 million invoices per month. Invoice formats can be tailored for specific customer requirements, such as page breaks or total amounts by service location or other the City required inclusions. Included in the

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

invoicing module are features that allow for tax and fee administration such as Franchise, FRF, ERF, Late and SI.

b. How will you ensure a smooth transition in adding single family billing?

Republic is well-versed in providing single family billing services to thousands of residents throughout the Bay Area. Although we do not currently provide this service in Milpitas, we have built a database that is a mirror image of the City of Milpitas' database, including service levels to assist in ensuring the customer receives the best customer service at the first touch point. Having partnered with the City of Milpitas billing staff for 30 years, we anticipate the billing transition to be seamless. Customers will also receive comprehensive communication in the form of mailers, website and social media outreach regarding the change well ahead of the transition.

c. How does your approach meet, or exceed RFP and technical contract requirements?

Republic's approach already exceeds RFP expectations due to the fact that we currently have a residential database in place that will only require an audit to match the City's customer billing list. This reconciliation of account data would happen several months prior to and would lead up to the date of commencement of services. As previously noted, we also offer the My Resource application which allows customers to easily manage their accounts, a feature exclusive to Republic.

15. Customer Service – Please describe:

a. Your proposed approach to customer service.

Delivering exceptional customer experiences is Republic's number one priority and maintaining high customer satisfaction is the cornerstone of our success. We take pride in the efficiency of our local call center and in our friendly, professional and experienced customer service representatives (CSR). Combining the training of our customer service representatives with ongoing development insures that we meet our customer's needs. In fact, placing the customer first in the moment of decision is one of Republic's core priorities and instilled into all of our customer service representatives and staff nationwide at all levels.

Republic has offered a detailed approach to customer service and we'd like to direct the City to the following sections of the proposal for review:

- o Section 2, G. Customer Service
- o Section 2, K. Management and Customer Service Systems

b. How does your approach meet, or exceed RFP and contract requirements?

Selecting Republic to remain as Milpitas' service provider will avoid the challenges that come with transition. Customers can rest assured that any changes to the collection program upon commencement of the new franchise will be handled expertly. Republic's customer service department is known for its organized and systematic planning and implementation of any new services with particular emphasis on a high degree of communication between us, City staff and our residential and commercial customers

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

prior to, during, and after the start of any adjustments to service. This is emblematic of our commitment to excellence in customer experience. Republic's use of propriety mobile applications to allow customers to access their accounts, request service, report a service issue, etc. also far exceeds any of the RFP requirements around customer service. Republic prepares a comprehensive program plan that details the duties and responsibilities among the various key employees.

16. Materials Processing

a. How will you ensure that each type of collected material meets the necessary specifications for processing?

To achieve the highest and best use, Republic processes recovered recyclables to minimize contaminants shipped to the manufacturers of new products who buy our recovered materials. As the most advanced recycling facility in the world, Newby Island has the ability to sort and recover large amounts of recyclables. The process maximizes both the amount of material diverted from the landfill and the amount of recyclables available for our buyers. Additionally, Republic works with the buyers of our materials to make sure that they are getting only the materials that they want.

Republic has historically been able to effectively move recovered materials to buyers because of the rigorous methodology used to ensure the highest quality. The facility has a dedicated material analysis station where randomly selected loads are inspected before being processed. By carefully sorting these materials, we are able to ensure that our high standards are being met by our staff. This is exemplified by our ongoing use of the sorting station to analyze material received, as well as, our fully processed materials. We also sort materials bound for landfill to ensure that we are not losing valuable recyclables.

17. Temporary Debris Box Service - Please describe:

a. Your proposed approach to exclusive provision of temporary debris box service.

Republic would like to direct the City to Section 3, E. Temporary Debris Box Service for a detailed proposal of our debris box service. We believe this approach is most beneficial to the City as it will ensure the City receives proper and promptly reporting of diverted materials, so that the City can be compliant with State reporting requirements and we believe including temporary debris box service in the City's new Franchise Agreement will yield approximately \$160,000/year in otherwise unrecovered franchise fees.

b. Why do you believe a shift to exclusive service would, or would not be beneficial?

Exclusive debris box service will ensure continuity in pricing, provide for guaranteed franchise payments to the City and customer service. Often, other temporary debris box haulers cannot be counted on to provide consistent collection and reporting. We believe this approach is most beneficial to the City as it will ensure the City receives proper and promptly reporting of diverted materials, so that the City can be compliant with State reporting requirements and we believe including temporary debris box service in the City's new Franchise Agreement will yield approximately \$160,000/year in otherwise unrecovered franchise fees.

EXHIBIT I-2 CONTRACTOR’S RESPONSES DURING CLARIFICATION

18. Transition - Should Republic not be selected as the next service provider, what specific steps will you take to coordinate and help ensure a smooth transition to the new service provider? Your response should address, at a minimum sharing current customer lists (with addresses, service levels and billing information), and switching out containers in a manner that ensures uninterrupted service.

Republic is committed to delivering upon the transition requirements indicated in the current franchise agreement with the City of Milpitas. We will provide all current customer lists with the appropriate information in an electronic format (i.e., Excel) including addresses and services levels. We will share all billing information in our system in an electronic format. In the event there is a transition to a new contractor, we will work with that contractor to switch out containers in a manner that ensures uninterrupted service. This will include collaborating on delivery and exchange dates and may also include discussions regarding the purchase of containers already in place.

BASE PROPOSAL - CITY OF MILPITAS ESTIMATED DIVERSION TABLE

TABLE 1

SERVICE	PROGRAMS	ESTIMATED DIVERSION - BASE		
		BASE Proposal Tons Collected YEAR 1	BASE Proposal Estimated Diversion (Net of Residue)	Estimated Annual Increase in Diversion after YEAR 1
CARTS	Solid Waste	13,118	0	N/A
	Recyclable Materials	4,787	4,548	2%-4%
	Yard Trimmings	5,157	5,028	2%-4%
	On-Call Collections	1,727	831	0%
BINS	Solid Waste	24,539	0	N/A
	Recyclable Materials	7,073	6,507	2%-4%
	Multi-Family Yard Trimmings	742	713	2%-4%
	Commercial Yard Trimmings	1,040	998	2%-4%
	Commercial Food Scraps	3,119	2,901	2%-4%
	MF/Comm On-Call Collections	576	271	0%
DEBRIS BOXES	Solid Waste	9,739	0	N/A
	Recyclable Materials	3,502	3,222	2%-4%
	Organic Materials	884	862	2%-4%
		76,003	25,881	
% DIVERSION			34.1%	2%-4%

EXHIBIT I-2 CONTRACTOR'S RESPONSES DURING CLARIFICATION

ALT. SERVICES PROPOSAL - CITY OF MILPITAS ESTIMATED DIVERSION TABLE

TABLE 2

SERVICE	PROGRAMS	ESTIMATED DIVERSION - ALT. SERVICES		
		ALT. SERVICES Proposal Tons Collected YEAR 1	ALT. SERVICES Proposal Estimated Diversion (Net of Residue)	Estimated Annual Increase in Diversion after YEAR 1
CARTS	Solid Waste	12,639	0	N/A
	Recyclable Materials	4,787	4,548	2%-4%
	Organic Materials	5,636	5,473	2%-4%
	On-Call Collections	1,727	1,695	0%
BINS	Solid Waste	17,368	0	N/A
	Multi-Family Mixed Waste ¹	3,409	2,047	2%-4%
	Recyclable Materials	7,073	5,274	2%-4%
	Commercial Yard Trimmings ²	2,280	2,163	2%-4%
	Commercial Food Scraps	6,383	4,533	2%-4%
	MF/Comm On-Call Collections	576	271	0%
DEBRIS BOXES	Solid Waste	9,739	0	N/A
	Recyclable Materials	3,502	3,222	2%-4%
	Organic Materials	884	765	2%-4%
	Construction & Demolition ³	11,050	7,735	2%-4%
		87,053	37,726	
% DIVERSION			43.3%	2%-4%

¹To keep consistent with cost forms, this diversion table assumes all multi-family mixed waste service will be 'Bin' service. Multi-Family Yard Trimmings will be part of the Multi-Family mixed waste stream.

²To keep consistent with cost forms, this diversion table assumes all Commercial Yard Trimmings will be 'Bin' service.

³Assumes exclusive debris box service for C&D

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

Additional Questions Sent via Email May 31, 2016
with Email Responses from Evan Boyd (Republic)
to Peter Deibler (HF&H) June 2nd, 2016

1. Total Tonnages – Please explain the basis for assumption of a drop in total collected tonnage (as seen in Form 2 of the base cost forms) from figures provided in the RFP.
We removed the self-haul and Household Dump Day tonnages.

2. Accounts – Accounts found in Form 2 of the base cost forms show commercial/MFD SW accounts of 543 (almost half of RFP figures), and SW roll-off accounts of 304 (more than five times RFP figures). Please explain the basis for such a large variance from RFP figures.
You need to add up all of the different service types, MSW, Recycling & Organics. Our proposed containers are what we think will be needed for the start-up, after right sizing and waste audits. The rolloff customer list was a snapshot in time and does not represent the full capacity needed to run the system throughout the entire year. There are seasonal increases that require additional resources. Our numbers ensure that we are able to meet the City's peak demand without any delays.

3. "Stinger"/Other Smaller Trucks – Do you commit to provide stringer trucks, pick-ups with lifts, and/or smaller volume route trucks at no added cost if necessary to meet various hard-to-serve collection needs?
Stingers, flatbeds, smaller collection equipment and boom trucks needed to conduct service in hard-to-serve areas are included in our cost proposal for service initiation under current conditions. As new development occurs in the City of Milpitas, we will evaluate that growth on a case by case basis to determine whether it is classified as a hard-to-serve location. If a substantial amount of hard-to-serve developments are added to the City over time, discussions with the City regarding additional costs may be required. However, we do not anticipate those discussions being required in the first five years of the contract with current planned development in the City of Milpitas.

4. Temporary Debris Box Service in the Base Services – Please confirm that your Base services costs do not include any costs associated with providing temporary debris box services through the non-exclusive system.
That is correct.

5. Organics Processing - During your interview, you verbally described your plans to change the current composting process in use at Newby Island. Please provide a written commitment about the selected technology, its environmental advantages with relation to open windrows, and the timeline for implementation.
The Newby Island composting facility will be converted to the Aerated Static Pile (ASP) processing method by the end of 2017. This method utilizes forced air from a pneumatic piping system through the base of the rectangular compost piles approximately 100' X 75' in dimension with periodic watering to bring organic material to maturity after initial removal of

EXHIBIT I-2

CONTRACTOR'S RESPONSES DURING CLARIFICATION

contaminants and shredding/grinding. A layer of finished compost or ground wood chips is placed over the material while it is composting to reduce emissions and filter any potential odors coming from the piles. The footprint of the compost area will be roughly half the size of the current open windrow system and there is no turning of the piles while the material is curing. Each compost area is separated by concrete blocks that delineate segments of material and assist with tracking and management of inbound and outbound individual lots of material. As discussed in our interview, RSG would be willing to enter into discussions with the City which would reduce the amount of organic material accepted at the facility to roughly half of today's current inbound flow (from 160,000 tons annually to approximately 80,000 tons annually). This would further reduce the footprint of the facility.

6. Commercial Food Scraps Carts – The Base cost forms show no costs or operating statistics for commercial food scraps carts. Is this service included in the commercial bins line of business?
That is correct, the costs are on Form 6B column N and the last table on Form 10.

7. SFD Food Scraps – The Alternative cost forms do not include operating statistics (other than tons) for Single Family food scraps, Commercial expanded food scraps, or multi-family or commercial expanded yard trimmings collection. Is the intent that these will be performed within the operating statistics contained in the Form 2 of the Base proposal?
Yes, that is correct.

8. Capital – Form 4 “Capital” shows 547 Debris Boxes to be purchased for \$3,569,940 for a per unit cost of \$6,526. Please confirm the number of debris boxes and the dollar amounts are correct.
Yes, the numbers are correct. The reason that the average cost per unit seems high is that we own all of the compactors at the Great Mall and they will also need to be replaced.

9. Street Sweeping – Form 4 does not include a cost for the Street Sweeping Vehicle. Please explain.
When we were asked to convert our proposal from used CNG to all new CNG we inadvertently left off the Street Sweeper. The cost forms have a replacement in year#5 but we will replace the Sweeper in year#1 without any added costs to our proposal.

This page intentionally left blank

EXHIBIT J PERFORMANCE BOND

This Exhibit shall be prepared based on Contractor's Proposal and included with the final Agreement:

EXHIBIT K LABOR AGREEMENT(S)

This Exhibit shall be prepared based on Contractor's Proposal and included with the final Agreement:

EXHIBIT L
RATES APPROVED BY CITY FOR RATE PERIOD ONE

Single-Family Collection Rates			
Service Level	Solid Waste	Recycling	Organics
32 Gal	\$31.51	Included	Included
64 Gal	\$37.06	Included	Included
96 Gal	\$42.57	Included	Included
32 Gal Senior	\$15.77	Included	Included
32 Gal Mobile Home	\$9.61	Included	N/A
64 Gal Mobile Home	\$14.26	Included	N/A
SFD No Organics Discount	N/A	N/A	-\$6.29
Senior No Organics Discount	N/A	N/A	-\$3.16

EXHIBIT L

RATES APPROVED BY CITY FOR RATE PERIOD ONE

Multi-Family Collection Rates			
Service Level	Solid Waste	Recycling	Organics
32-Gal 1 x/week	\$20.70	\$5.17	\$16.56
32-Gal 2 x/week	\$36.22	\$9.05	\$28.98
32-Gal 3 x/week	\$51.74	\$12.94	\$41.39
32-Gal 4 x/week	\$67.26	\$16.82	\$53.81
32-Gal 5 x/week	\$82.79	\$20.70	\$66.23
32-Gal 6 x/week	\$98.31	\$24.58	\$78.65
64-Gal 1 x/week	\$25.13	\$6.28	\$20.11
64-Gal 2 x/week	\$43.98	\$11.00	\$35.18
64-Gal 3 x/week	\$62.83	\$15.71	\$50.26
64-Gal 4 x/week	\$81.68	\$20.42	\$65.34
64-Gal 5 x/week	\$100.53	\$25.13	\$80.42
64-Gal 6 x/week	\$119.38	\$29.84	\$95.50
96-Gal 1 x/week	\$29.57	\$7.39	\$23.65
96-Gal 2 x/week	\$49.52	\$12.38	\$39.62
96-Gal 3 x/week	\$69.48	\$17.37	\$55.59
96-Gal 4 x/week	\$89.44	\$22.36	\$71.55
96-Gal 5 x/week	\$109.40	\$27.35	\$87.52
96-Gal 6 x/week	\$129.35	\$32.34	\$103.48
1-YD 1 x/week	\$91.17	\$22.79	\$72.94
1-YD 2 x/week	\$141.76	\$35.44	\$113.41
1-YD 3 x/week	\$189.00	\$47.25	\$151.20
1-YD 4 x/week	\$229.95	\$57.49	\$183.96
1-YD 5 x/week	\$275.96	\$68.99	\$220.77
1-YD 6 x/week	\$321.95	\$80.49	\$257.56
1.5-YD 1 x/week	\$112.68	\$28.17	N/A
1.5-YD 2 x/week	\$188.97	\$47.24	N/A
1.5-YD 3 x/week	\$246.01	\$61.50	N/A
1.5-YD 4 x/week	\$312.71	\$78.18	N/A
1.5-YD 5 x/week	\$379.35	\$94.84	N/A
1.5-YD 6 x/week	\$446.03	\$111.51	N/A
2-YD 1 x/week	\$134.16	\$33.54	\$107.32
2-YD 2 x/week	\$229.95	\$57.49	\$183.96
2-YD 3 x/week	\$321.95	\$80.49	\$257.56
2-YD 4 x/week	\$413.93	\$103.48	\$331.15
2-YD 5 x/week	\$505.89	\$126.47	\$404.71
2-YD 6 x/week	\$597.94	\$149.49	\$478.35
3-YD 1 x/week	\$191.10	\$47.77	\$152.88
3-YD 2 x/week	\$334.17	\$83.54	\$267.33
3-YD 3 x/week	\$472.10	\$118.02	\$377.68
3-YD 4 x/week	\$610.09	\$152.52	\$488.07
3-YD 5 x/week	\$748.10	\$187.02	\$598.48
3-YD 6 x/week	\$886.05	\$221.51	\$708.84
4-YD 1 x/week	\$221.38	\$55.34	N/A
4-YD 2 x/week	\$386.86	\$96.71	N/A
4-YD 3 x/week	\$538.35	\$134.59	N/A
4-YD 4 x/week	\$689.92	\$172.48	N/A
4-YD 5 x/week	\$841.45	\$210.36	N/A
4-YD 6 x/week	\$993.00	\$248.25	N/A
6-YD 1 x/week	\$298.58	\$74.64	N/A
6-YD 2 x/week	\$532.84	\$133.21	N/A
6-YD 3 x/week	\$768.61	\$192.15	N/A
6-YD 4 x/week	\$985.13	\$246.28	N/A
6-YD 5 x/week	\$1,220.91	\$305.23	N/A
6-YD 6 x/week	\$1,456.68	\$364.17	N/A
8-YD 1 x/week	\$383.57	\$95.89	N/A
8-YD 2 x/week	\$686.68	\$171.67	N/A
8-YD 3 x/week	\$979.68	\$244.92	N/A
8-YD 4 x/week	\$1,272.78	\$318.19	N/A
8-YD 5 x/week	\$1,565.80	\$391.45	N/A
8-YD 6 x/week	\$1,858.89	\$464.72	N/A

EXHIBIT L

RATES APPROVED BY CITY FOR RATE PERIOD ONE

Commercial Collection Rates			
Service Level	Solid Waste	Recycling	Organics
32-Gal 1 x/week	\$25.33	\$6.33	\$20.26
32-Gal 2 x/week	\$44.32	\$11.08	\$35.46
32-Gal 3 x/week	\$63.32	\$15.83	\$50.65
32-Gal 4 x/week	\$82.31	\$20.58	\$65.85
32-Gal 5 x/week	\$101.30	\$25.33	\$81.04
32-Gal 6 x/week	\$120.30	\$30.07	\$96.24
64-Gal 1 x/week	\$29.78	\$7.45	\$23.83
64-Gal 2 x/week	\$52.12	\$13.03	\$41.70
64-Gal 3 x/week	\$74.46	\$18.61	\$59.57
64-Gal 4 x/week	\$96.80	\$24.20	\$77.44
64-Gal 5 x/week	\$119.13	\$29.78	\$95.31
64-Gal 6 x/week	\$141.47	\$35.37	\$113.18
96-Gal 1 x/week	\$34.22	\$8.55	\$27.37
96-Gal 2 x/week	\$59.88	\$14.97	\$47.90
96-Gal 3 x/week	\$85.54	\$21.38	\$68.43
96-Gal 4 x/week	\$111.20	\$27.80	\$88.96
96-Gal 5 x/week	\$136.86	\$34.22	\$109.49
96-Gal 6 x/week	\$162.52	\$40.63	\$130.02
1-YD 1 x/week	\$103.54	\$25.88	\$82.83
1-YD 2 x/week	\$173.27	\$43.32	\$138.62
1-YD 3 x/week	\$232.56	\$58.14	\$186.05
1-YD 4 x/week	\$284.43	\$71.11	\$227.54
1-YD 5 x/week	\$342.24	\$85.56	\$273.79
1-YD 6 x/week	\$400.08	\$100.02	\$320.06
1.5-YD 1 x/week	\$129.03	\$32.26	N/A
1.5-YD 2 x/week	\$232.42	\$58.11	N/A
1.5-YD 3 x/week	\$305.22	\$76.31	N/A
1.5-YD 4 x/week	\$389.25	\$97.31	N/A
1.5-YD 5 x/week	\$473.23	\$118.31	N/A
1.5-YD 6 x/week	\$557.21	\$139.30	N/A
2-YD 1 x/week	\$154.52	\$38.63	\$123.61
2-YD 2 x/week	\$284.43	\$71.11	\$227.54
2-YD 3 x/week	\$400.08	\$100.02	\$320.06
2-YD 4 x/week	\$515.62	\$128.91	\$412.50
2-YD 5 x/week	\$631.22	\$157.80	\$504.98
2-YD 6 x/week	\$746.87	\$186.72	\$597.50
3-YD 1 x/week	\$220.74	\$55.18	\$176.59
3-YD 2 x/week	\$414.13	\$103.53	\$331.30
3-YD 3 x/week	\$587.54	\$146.88	\$470.03
3-YD 4 x/week	\$760.96	\$190.24	\$608.77
3-YD 5 x/week	\$934.36	\$233.59	\$747.49
3-YD 6 x/week	\$1,107.76	\$276.94	\$886.21
4-YD 1 x/week	\$258.17	\$64.54	N/A
4-YD 2 x/week	\$483.69	\$120.92	N/A
4-YD 3 x/week	\$676.97	\$169.24	N/A
4-YD 4 x/week	\$870.30	\$217.57	N/A
4-YD 5 x/week	\$1,063.56	\$265.89	N/A
4-YD 6 x/week	\$1,256.86	\$314.21	N/A
6-YD 1 x/week	\$350.83	\$87.71	N/A
6-YD 2 x/week	\$670.39	\$167.60	N/A
6-YD 3 x/week	\$970.26	\$242.56	N/A
6-YD 4 x/week	\$1,247.62	\$311.90	N/A
6-YD 5 x/week	\$1,547.46	\$386.86	N/A
6-YD 6 x/week	\$1,847.30	\$461.82	N/A
8-YD 1 x/week	\$451.86	\$112.96	N/A
8-YD 2 x/week	\$866.32	\$216.58	N/A
8-YD 3 x/week	\$1,241.11	\$310.28	N/A
8-YD 4 x/week	\$1,616.04	\$404.01	N/A
8-YD 5 x/week	\$1,990.87	\$497.72	N/A
8-YD 6 x/week	\$2,365.76	\$591.44	N/A

EXHIBIT L
RATES APPROVED BY CITY FOR RATE PERIOD ONE

Roll-off/Compactor Collection Rates				
Service Level	Solid Waste	Recycling	Organics	C&D
Roll-off up to 15 CY (per pull)	\$390.56	\$195.28	\$312.45	\$351.51
Roll-off 16-24 CY (per pull)	\$546.20	\$273.10	\$436.96	\$491.58
Roll-off 26-34 CY (per pull)	\$686.77	\$343.38	\$549.41	\$618.09
Roll-off over 34 CY (per pull)	\$838.25	\$419.13	\$670.60	\$754.43
Compactor up to 15 CY (per pull)	\$449.15	\$224.57	\$359.32	N/A
Compactor 16-24 CY (per pull)	\$628.13	\$314.06	\$502.50	N/A
Compactor 26-34 CY (per pull)	\$789.78	\$394.89	\$631.83	N/A
Compactor over 34 CY (per pull)	\$963.99	\$482.00	\$771.19	N/A
Roll-off/Compactor (per ton)	\$42.78	\$0.00	\$60.00	\$66.50

EXHIBIT M

APPROVED SUBCONTRACTORS

This Exhibit shall be prepared based on Contractor's Proposal and included with the final Agreement:

EXHIBIT N
OPERATING ASSUMPTIONS AND COST BASIS FOR
RATE PERIOD ONE RATES

This Exhibit shall be prepared based on Contractor's Proposal and included with the final Agreement:

EXHIBIT O-1 STREET SWEEPING MONTHLY RECORD KEEPING FORM



**Santa Clara Valley
Urban Runoff
Pollution Prevention**

EXHIBIT O

Exhibit O-1

FY Monthly Record Keeping Form

MONTH AND YEAR: _____

Agency: _____ T

Completed By: _____ Date: _____

STREET SWEEPING	Volume of material collected (cubic yards)		Miles swept* (Curb miles)	

**EXHIBIT O-1
STREET SWEEPING
MONTHLY RECORD KEEPING FORM**

1. Sweeping

Residential Area:

Broom

Regenerative Air

Vacuum

Commercial Areas:

Broom

Regenerative Air

Vacuum

Industrial Areas

Broom

Regenerative Air

Vacuum

Other Areas Swept:

(e.g., parking lots, major arterials)

Broom

Regenerative Air

Vacuum

2) Have there been any changes in your street sweeping program?

(efforts to have parked cars removed, changes sweeping frequency, new equipment, significant downtimes, etc)

**EXHIBIT O-1
STREET SWEEPING
MONTHLY RECORD KEEPING FORM**

<input type="checkbox"/>
LEAF REMOVAL
Volume of leaves removed by City/Town crews: _____ cubic yards.
Leaves bagged by residents and picked up by your City/Town: _____ bags
Check box if you do not have a leaf removal program other than routine street sweeping:

**EXHIBIT O-2
STREET SWEEPING
ABANDONED CAR PARKING CONTROL PROGRAM**

**Street Sweeping Abandoned Car Parking Control Program
Maintenance Activity**

Reporting Agency		Month of
Completed By:		Date
Address	Street	Deficiency
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		

**EXHIBIT O-3
STREET SWEEPING
TREE CONTROL PROGRAM MAINTENANCE ACTIVITY**

**Street Sweeping Tree Control Program
Maintenance Activity**

Reporting Agency

Month of

Completed By:

Date

Address

Street

Deficiency

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

11.

12.

13.

14.

15.

16.

17.

18.

**EXHIBIT O-4
STREET SWEEPING
DAILY REPORT OF MOTOR STREET SWEEPER**

Daily Report of Motor Street Sweeper

Date: _____

Route:	Equip No.	Operator:
Time Start:	Time Finish:	Total Hours:
Miles Start:	Miles Finish:	Total Miles:
Cu. Yards:	Water Use:	

Streets in addition to those listed on Routes: _____

From: _____ To: _____ Mileage: _____

Total to be added to Route: _____

Streets Listed on Route which were not cleaned: _____

Total to be deducted from Route: _____

Curb Miles in Route	Additional Miles	Deducted Miles	Net Miles