

**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**

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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**

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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**

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### 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

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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**

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**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**

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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 28<sup>th</sup> (for the immediate previous calendar year) and August  
2088 31<sup>st</sup> (for the immediately previous July 1st through June 30<sup>th</sup>).

- 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**

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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**

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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**

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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**

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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**

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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: \_\_\_\_\_