

# **Collection Service Agreement**

**Executed Between  
City of Emeryville  
and**

**Waste Management of Alameda  
County, Inc.**

February 1, 2011



# Collection Service Agreement

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# Collection Service Agreement

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## CITY OF EMERYVILLE

1  
2 THIS FRANCHISE AGREEMENT ("Agreement") is made and entered into as of this first day of  
3 February 1, 2011, by and between the City of Emeryville, a municipal corporation ("CITY") and  
4 Waste Management of Alameda County, Inc., a California corporation ("CONTRACTOR").

## RECITALS

5  
6 **WHEREAS;** the Legislature of the State of California, by enactment of the California Integrated  
7 Waste Management Act of 1989 ("Act") and subsequent additions and amendments (codified at  
8 California Public Resources Code Section 40000 et seq.), has declared that it is in the public  
9 interest to authorize and require local agencies to make adequate provisions for Solid Waste  
10 Collection within their jurisdiction;

11 **WHEREAS;** the State of California has found and declared that the amount of Solid Waste  
12 generated in California, coupled with diminishing landfill space and potential adverse  
13 environmental impacts from landfilling and the need to conserve natural resources, have  
14 created an urgent need for State and local agencies to enact and implement an aggressive  
15 integrated waste management program. The State has, through enactment of the Act, directed  
16 the responsible State agency, and all local agencies, to promote disposal site diversion and to  
17 maximize the use of feasible Solid Waste reduction, re-use, recycling, and composting options  
18 in order to reduce the amount of Solid Waste that must be disposed of in disposal sites;

19 **WHEREAS;** the CITY finds that the voters of Alameda County, through the Alameda County  
20 Source Reduction and Recycling Plan required by the Waste Reduction and Recycling Act of  
21 1990 (Measure D), have adopted a policy goal to reduce the total quantity of Solid Waste  
22 landfilled in Alameda County by diverting seventy five (75) percent of the materials generated in  
23 Alameda County from landfills by 2010;

24 **WHEREAS;** the City of Emeryville adopted a new General Plan in October of 2009 which  
25 included a Sustainability Element with environmental goals, objectives and policies and which  
26 incorporated the City's Climate Action Plan which was adopted in November of 2008 with the  
27 goal of reducing greenhouse gas emissions in the City by twenty-five (25) percent over 2004  
28 levels by 2020 and reducing the tons of waste sent to the landfill by fifty (50) percent over 2004  
29 levels by 2020."

30 **WHEREAS;** pursuant to California Public Resources Code Section 40059(a) as may be  
31 amended from time to time, the CITY has determined that the public health, safety, and well-  
32 being require that an exclusive right be awarded to a qualified CONTRACTOR to provide for the  
33 Collection of Solid Waste, Recyclables, and Compostable Materials, except for Collection of  
34 materials excluded herein, and other services related to meeting the Act's 50% Diversion goal  
35 and other requirements of the Act;

36 **WHEREAS;** the CITY further declares its intent to regulate CONTRACTOR'S compensation  
37 and set the rates CONTRACTOR will charge customers for the Collection, transportation,  
38 processing, recycling, composting, and/or disposal of Solid Waste, Recyclables, Compostable  
39 Materials;

40 **WHEREAS;** the City Council has determined that CONTRACTOR, by demonstrated  
41 experience, reputation and capacity, is qualified to provide for the Collection of Solid Waste,  
42 Recyclables, and Compostable Materials within the corporate limits of the CITY, the

43 transportation of such material to appropriate places for processing, recycling, composting  
44 and/or disposal; and the City Council desires that CONTRACTOR be engaged to perform such  
45 services on the basis set forth in this Agreement;

46 **WHEREAS;** the CONTRACTOR, through its proposal to the CITY, has proposed and  
47 represented that it has the experience, the ability and capacity to provide for the Collection of  
48 Solid Waste, Recyclables, and Compostable Materials within the corporate limits of the CITY;  
49 the transportation of such material to appropriate places for processing, recycling, composting  
50 and/or disposal; and the processing of materials at the rates provided for herein; and

51 **WHEREAS,** this Agreement has been developed by and is satisfactory to the CITY and the  
52 CONTRACTOR.

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

## 55 **ARTICLE 1. Definitions**

56 For the purpose of this Collection Service Agreement, hereinafter referred to as "Agreement",  
57 the definitions contained in this Article shall apply unless otherwise specifically stated. When  
58 not inconsistent with the context, words used in the present tense include the future, words in  
59 the plural include the singular, and words in the singular include the plural. Use of the  
60 masculine gender shall include the feminine gender.

61 1.01 AB 939. The California Integrated Waste Management Act of 1989 (California  
62 Public Resources Code Sections 40000 et seq.), as it may be amended from time to time.

63 1.02 Agreement. The written document and all amendments thereto between CITY  
64 and CONTRACTOR governing the provision of Collection Services as provided herein, including  
65 all exhibits hereto, as it may be amended from time to time.

66 1.03 Agreement Year. During 2011 an eleven (11) month period beginning February  
67 1, 2011 and ending December 31, 2011, thereafter a twelve (12) month period beginning on  
68 January 1<sup>st</sup> and ending on December 31<sup>st</sup>.

69 1.04 Alternative Daily Cover (ADC). Disposal Facility cover material, other than  
70 Compostable Material and at least six (6) inches of earthen material, placed on the surface of  
71 the active face of the refuse fill area at the end of each operating day to control vectors, fires,  
72 odor, blowing litter and scavenging, as defined in Section 20164 of the California Code of  
73 Regulations.

74 1.05 Backyard Service. The Collection of Discarded Material from any physical  
75 location on the Customer's property that is not "curbside."

76 1.06 Bag-it Bags. A plastic bag approved by CITY and provided by the  
77 CONTRACTOR or CITY which may be purchased by residents for the Collection of Solid Waste  
78 overages.

79 1.07 Bin. A Container, with a capacity of at least one (1) cubic yard designed or  
80 intended to be mechanically dumped into a loader packer type truck. Bins may also include  
81 Compactors that are owned by the MFD or Commercial Customer wherein the MFD or  
82 Commercial Collection Service occurs.

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83           1.08 Bulky Goods. Materials, such as large and small household appliances  
84 (including refrigerators), furniture, carpets, mattresses, White Goods, clothing, un-mounted  
85 tires, and oversized Compostable Materials such as tree trimmings and large branches, and  
86 similar large items which are attributed to the normal activities of a SFD, MFD, or CITY  
87 Customer. Bulky Goods may also include E-Waste and U-Waste to the extent agreed to  
88 between CONTRACTOR and CITY. Bulky Goods must be generated by the Customer and at  
89 the service address wherein the Bulky Goods are Collected. Limitations to the size and weight  
90 of Bulky Goods, the number of specific Bulky Goods which may be set out and the manner in  
91 which Bulky Goods are to be set out for Collection shall be as agreed upon between CITY and  
92 CONTRACTOR. Bulky Goods do not include items herein defined as Unacceptable Waste or  
93 Construction and Demolition Debris.

94           1.09 Cart. A heavy plastic receptacle with a rated capacity of approximately ten (10),  
95 twenty (20), thirty two (32), sixty four (64) or ninety-six (96) gallons, having, except for the ten  
96 (10 ) gallon Cart, a hinged tight-fitting lid, and two (2) wheels, that is approved by CITY and is  
97 labeled as designated by CITY.

98           1.10 CITY. The City of Emeryville and all the territory lying within its boundaries as  
99 presently existing or as such boundaries may be modified during the term of this Agreement.

100           1.11 CITY Council. The City Council of the City of Emeryville.

101           1.12 CITY Clean-up Service. The Collection of Solid Waste, Compostable Material,  
102 Recyclables, or Bulky Goods by CONTRACTOR resulting from written or verbal requests from  
103 CITY for temporary clean-up of Solid Waste, Compostable Material, Recyclables, or Bulky  
104 Goods and the transport and delivery of the Collected materials to the appropriate facilities.  
105 Such service shall include the provision of Roll-Off Boxes and Carts by CONTRACTOR and  
106 shall be limited to the equivalent of five hundred (500) cubic yards in any full or partial calendar  
107 year.

108           1.13 CITY Collection Services. CITY Solid Waste Collection Service, CITY  
109 Recyclables Collection Service, CITY Compostable Materials Collection Service, CITY Clean-up  
110 Services, CITY Container Services, and CITY Special Event Services.

111           1.14 CITY Compostable Materials Collection Service. The Collection of Compostable  
112 Materials from CITY Facilities in the Service Area, the delivery of the Compostable Material to a  
113 Composting Facility and the processing, and marketing of the Compostable Material.

114           1.15 CITY Container Service. The Collection of Solid Waste and Recyclables from  
115 public Containers within the Service Area and the transport and delivery of the Collected  
116 materials to the appropriate facility.

117           1.16 CITY Recyclables Collection Service. The Collection of Recyclables from CITY  
118 Facilities in the Service Area, the delivery of the Recyclables to a Recyclables Processing  
119 Facility, and the processing and marketing of the Recyclables.

120           1.17 CITY Facilities. Any building, structure, yard, park, or any other facility owned,  
121 leased, or operated by CITY as currently set forth in Exhibit 5 or as such Exhibit may be  
122 amended by CITY for time to time.

123           1.18 CITY Solid Waste Collection Service. The Collection of Solid Waste from CITY  
124 Facilities in the Service Area and the delivery of the Solid Waste to the Transfer Station.

125           1.19 CITY Special Event Collection Service. The Collection of Solid Waste,  
126 Recyclables and other materials as appropriate at CITY-sponsored special events.

127           1.20 Collect/Collection. To pick up, transport, and remove Discarded Materials.

128           1.21 Collection Services. SFD Collection Services, MFD Collection Services,  
129 Commercial Collection Services, CITY Collection Services and Construction and Demolition  
130 Debris Services.

131           1.22 Commercial. A commercial establishment and/or industrial facility including, but  
132 not limited to, Small Business, governmental, religious, and, those educational facilities set forth  
133 in Exhibit 6 to this Agreement.

134           1.23 Commercial Collection Services. Commercial Solid Waste Collection Service,  
135 Commercial Recyclables Collection Service and Commercial Compostable Collection Service.

136           1.24 Commercial Compostable Materials Collection Service. The Collection of  
137 Compostable Materials from Commercial Customers in the Service Area, the delivery of the  
138 Compostable Materials to the Composting Facility and the processing and marketing of the  
139 Compostable Material.

140           1.25 Commercial Solid Waste Collection Service. The Collection of Solid Waste from  
141 Commercial Customers in the Service Area and the delivery of the Solid Waste to the Transfer  
142 Station.

143           1.26 Commercial Recyclables Collection Service. The Collection of Recyclables from  
144 Commercial Customers in the Service Area participating in the recycling program, the delivery  
145 of the Recyclables to a Recyclables Processing Facility, and the processing and marketing of  
146 the Recyclables.

147           1.27 Compactor. Any Container which has compaction mechanisms whether  
148 stationary or mobile, used or unused, operable or inoperable, all inclusive.

149           1.28 Compostable Materials. Organics, and Yard Waste, which are segregated from  
150 Solid Waste at the source of generation by the Customer and set out for Collection.

151           1.29 Composting. The purposeful or engineered physical, chemical, and biological  
152 degradation of biodegradable Compostable Materials into mature compost as determined by  
153 standard laboratory analysis.

154           1.30 Composting Facility. Any facility in Alameda County designated by CITY, or if no  
155 facility is designated by CITY, any facility designated by CONTRACTOR and approved by the  
156 CITY for the receipt, processing and Composting of Compostable Materials Collected under this  
157 Agreement.

158           1.31 Construction and Demolition Debris. Discarded Materials removed from  
159 premises during construction or renovation of a structure resulting from construction,  
160 remodeling, repair or demolition operations on any house, or residential property, commercial  
161 building, pavement, or other structure. Construction and Demolition Debris includes rocks, soils,

162 tree remains and other Yard Waste which results from land clearing or land development  
163 operations in preparation for construction but does not include Unacceptable Waste.

164 1.32 Construction and Demolition Debris Processing Facility. Any facility designated  
165 by CONTRACTOR and approved by the CITY for the receipt, storage, and processing of  
166 Construction and Demolition Debris.

167 1.33 Construction and Demolition Debris Service. The Collection of Construction and  
168 Demolition Debris from a Customer in the Service Area and the transportation and delivery of  
169 the Collected material to an approved Construction and Demolition Debris Processing Facility.

170 1.34 Covered Electronic Device or CED. Discarded electronic devices that the  
171 California Department of Toxic Substances Control (DTSC) has determined to be a covered  
172 electronic device. CEDs include cathode ray tube (CRT) devices (including televisions and  
173 computer monitors); LCD desktop monitors; laptop computers with LCD displays; LCD  
174 televisions; plasma televisions; portable DVD players with LCD screens; and other electronic  
175 devices as may be added by the DTSC from time to time.

176 1.35 Container. A Bin, Cart, Roll-Off Box, Compactor, CITY litter receptacles or other  
177 item approved by CITY for use in containing materials set out for Collection under the terms of  
178 this Agreement.

179 1.36 Contract Administrator. The CITY Manager or his/her designee.

180 1.37 CONTRACTOR. Waste Management of Alameda County, Inc., a California  
181 Corporation.

182 1.38 CONTRACTOR'S Job Truck. A wheeled vehicle used by CONTRACTOR to  
183 Collect Bulky Goods or Construction and Demolition Debris.

184 1.39 Customer. A Generator of Solid Waste, Recyclables, Compostable Materials,  
185 Bulky Goods, Construction and Demolition Debris or other Disposed Materials within the CITY'S  
186 jurisdiction including homeowners, managers or owners or occupants of rental Single Family  
187 Dwellings or Multi-family Dwellings , and Commercial representatives.

188 1.40 Discarded Material. Solid Waste, Recyclables, Compostable Materials, Bulky  
189 Goods, Waste Oil, Waste Oil Filters, E-Waste, Universal Waste or Construction and Demolition  
190 Debris placed by a Generator in a Container and/or at a location that is designated for  
191 Collection pursuant to this Agreement.

192 1.41 Disposal. The final processing and disposition by the Disposal Contractor of Solid  
193 Waste Collected by CONTRACTOR under the terms of this Agreement.

194 1.42 Disposal Contractor. The entity who has obtained from the CITY an Agreement  
195 to provide Disposal Services.

196 1.43 Disposal Facility. The Altamont Landfill and Resource Recovery Facility located  
197 at 10840 Altamonte Pass Road, Livermore, California as designated by CITY pursuant to this  
198 Agreement.

199 1.44 Disposal Tons. The tons of Solid Waste reported to CITY, Alameda County  
200 Waste Management Authority, and the State of California as Solid Waste Disposed of and  
201 Collected within this Agreement by CONTRACTOR.

202           1.45 Dwelling Unit. Any individual living unit, including Live/Work, in a: Single Family  
203 Dwelling or Multi-family Dwelling structure or building, a mobile home, or a motor home located  
204 on a permanent site intended for, or capable of being utilized for, residential living other than a  
205 hotel or motel.

206           1.46 E-Waste. Waste that is powered by batteries or electricity, such as computers,  
207 telephones, answering machines, radios, stereo equipment, tape players/recorders,  
208 phonographs, videocassette players/recorders, compact disc players/recorders, calculators and  
209 other items also defined as CED's.

210           1.47 Fiscal Year. The twelve month period beginning July 1<sup>st</sup> and ending June 30<sup>th</sup>.

211           1.48 Fixed Body Vehicle. Any wheeled vehicle that does not rely on a Roll-Off Box or  
212 other detachable Container to Collect, contain and transport material. Dump trucks shall be  
213 considered Fixed Body Vehicles.

214           1.49 Force Majeure. Any acts of God, such as landslides, lightning, fires, storms,  
215 floods, pestilence, freezing, and earthquakes; explosions, sabotage, civil disturbances, acts of a  
216 public enemy, wars, blockades, riots, or other industrial disturbances, eminent domain,  
217 condemnation or other taking, or other events of a similar nature, not caused or maintained by  
218 the CITY or CONTRACTOR, which event is not reasonably within the control of the party  
219 claiming the excuse from its obligations due to such event, to the extent such event has a  
220 significant and material adverse effect on the ability of a party to perform its obligations  
221 thereunder. Force Majeure shall not include power outages, fuel shortages, strikes, work  
222 stoppage or slowdown, sickout, lockout, picketing or other concerted job action conducted by  
223 the CONTRACTOR, CONTRACTOR'S employees or subcontractors. Force Majeure shall  
224 include a change in law if such change in law prohibits a party's performance hereunder.  
225 Notwithstanding the foregoing, (i) no event relating to the Disposal Facility or the delivery of  
226 Solid Waste and/or materials to that facility shall constitute a Force Majeure under this  
227 Agreement unless (and then only to the extent) that such event prevents the delivery of or  
228 acceptance of Solid Waste to or by that facility; (ii) no failure of performance by any  
229 subcontractor of the CONTRACTOR shall be a Force Majeure unless such failure was itself  
230 caused by a Force Majeure; (iii) except as provided herein, no event which merely increases  
231 CONTRACTOR'S cost of performance shall be a Force Majeure; and (iv) no event, the effects  
232 of which could have been prevented by reasonable precautions, including compliance with  
233 agreements and applicable laws, shall be a Force Majeure.

234           1.50 Guarantor. USA Waste of California, Inc. a Delaware Corporation.

235           1.51 Guaranty Agreement. The agreement contained in Exhibit 3, which is attached  
236 to and included in this Agreement that is executed by the Guarantor guaranteeing the timely and  
237 full performance of CONTRACTOR'S obligations.

238           1.52 Generator. A Person, Commercial business or any other entity that produces  
239 Solid Waste, Recyclables, Compostables, Bulky Goods, Construction and Demolition Debris or  
240 other Discarded Material.

241           1.53 Hazardous Waste. Any material, substance, waste or component thereof which  
242 poses an actual or potential risk to public health and safety or the environment by virtue of being  
243 actually or potentially toxic, corrosive, bioaccumulative, reactive, ignitable, radioactive, infectious

244 or otherwise harmful to public health and safety or the environment, and which requires special  
245 handling under any present or future federal, state or local law, excluding de minimis quantities  
246 of waste of a type and amount normally found in residential Solid Waste after implementation of  
247 programs for the safe Collection, Recycling, treatment and Disposal of household hazardous  
248 waste in compliance with Sections 41500 and 41802 of the California Public Resources Code.

249 1.54 Live/Work. Units permitted under the Emeryville Municipal Code Title 9 Chapter  
250 4, Article 3, Section 16. Live/Work units shall be deemed Dwelling Units for the purposes of this  
251 Agreement.

252 1.55 Multi-family Dwelling or MFD. Any residence with four (4) or more Dwelling  
253 Units, when each Dwelling Unit is designed or used for occupancy by one (1) family, including  
254 any flat, apartment, condominium, town home or other premises, other than a hotel or motel,  
255 used for housing persons including such premises when combined in the same building with  
256 Commercial establishments and serviced with one (1) or more common Containers.

257 1.56 MFD Collection Services. MFD Solid Waste Collection Service, MFD  
258 Recyclables Collection Service, MFD Compostable Materials Collection Service, and MFD  
259 Bulky Goods Service.

260 1.57 MFD Bulky Goods Service. The Collection of Bulky Goods from MFD Customers  
261 in the Service Area, the delivery of the Bulky Goods to the appropriate facilities and the  
262 processing, and marketing of the Bulky Goods.

263 1.58 MFD Compostable Materials Collection Service. The Collection of Compostable  
264 Materials in Containers from MFD Customers in the Service Area, the delivery of the  
265 Compostable Materials to a Composting Facility and the processing, and marketing of the  
266 Compostable Materials.

267 1.59 MFD Solid Waste Collection Service. The Collection of Solid Waste in  
268 Containers from MFD Customers in the Service Area and the delivery of the Solid Waste to the  
269 Transfer Station.

270 1.60 MFD Recyclables Collection Service. The Collection of Recyclables in  
271 Containers from MFD Customers in the Service Area, the delivery of the Recyclables to a  
272 Recyclables Processing Facility, and the processing and marketing of the Recyclables.

273 1.61 MFD Waste Oil Service. The Collection of Waste Oil in Waste Oil Containers  
274 and Waste Oil Filters in Waste Oil Filter Containers, by the CONTRACTOR, from those MFD  
275 Customers in SFD neighborhoods as set forth in Exhibit 8 of this Agreement receiving Recycling  
276 Cart Service and utilizing Waste Oil and Filter Containers for the accumulation and set-out of  
277 Waste Oil and Waste Oil Filters and the appropriate disposition of the Waste Oil and Waste Oil  
278 Filters in accordance with the requirements of this Agreement.

279 1.62 Non-Collection Notice. A form developed by CONTRACTOR and provided at  
280 CONTRACTOR'S cost at least 2" by 6" in size, on which CONTRACTOR has provided  
281 CONTRACTOR'S phone number and indicated the reasons for CONTRACTOR'S refusal to  
282 Collect material, giving reference to the Section(s) of this Agreement which has/have been  
283 violated, and which gives grounds for CONTRACTOR'S refusal in writing.

284           1.63 Organics. All organic materials of plant or animal origin which are or were  
285 components of human foodstuffs. Organics shall also include non-recyclable and soiled paper,  
286 vegetable trimmings, clean uncontaminated wood and sawdust, and other compostable Organic  
287 waste common to the occupancy of Single Family and Multi-family Dwelling Units and  
288 Commercial establishments.

289           1.64 Person. A natural person, firm, corporation, association, partnership, consortium,  
290 joint venture, Commercial entity, governmental entity, or any other legal entity.

291           1.65 Processing Residues. Materials remaining after the processing of Recyclables,  
292 Compostable Materials, Bulky Goods and Construction and Demolition Debris, which cannot  
293 reasonably be diverted from the landfill.

294           1.66 Recyclables. Those materials designed in this Agreement or City Legislation for  
295 Collection and Recycling under this Agreement which are segregated from Solid Waste by the  
296 Customer at the source of generation and set out for Collection. Recyclables include those  
297 materials defined by the CITY, including newsprint (including inserts, coupons and store  
298 advertisements); mixed paper (including magazines, catalogs, envelopes, junk mail, corrugated  
299 cardboard, brown bags and paper, paperboard, paper egg cartons, office ledger paper, legal  
300 pad backing, shoeboxes and telephone books); glass containers, (including brown, clear and  
301 green glass bottles and jars) ; aluminum, (including beverage containers and foil products);  
302 small scrap and cast aluminum (not exceeding ten (10) pounds in weight nor two (2) feet in any  
303 dimension for any single item); steel including "tin" cans, aerosol cans (empty, non-toxic  
304 products) and small scrap (not exceeding ten (10) pounds in weight nor two (2) feet in any  
305 dimension for any single item); bimetal containers; all rigid food packaging plastics of resin type  
306 #1 or #5 and narrow-neck plastic bottles of resin type #2; dry cell household batteries when  
307 placed in a sealed clear heavy-duty bag and set out for Collection in the manner prescribed  
308 herein; and those materials added by the CONTRACTOR or CITY from time to time.

309           1.67 Recyclables Processing Facility. Any facility designated by CONTRACTOR and  
310 approved by the CITY for the temporary or permanent receipt, storage, and/or processing of  
311 some or all of the Recyclables

312           1.68 Roll-Off Box. A metal Container of between six (6) and fifty (50) cubic yards that  
313 is normally loaded onto a motor vehicle and transported to an appropriate facility. A Roll-Off Box  
314 may be open topped or enclosed with or without a compaction unit.

315           1.69 Self-Haul Customer. A Generator of Solid Waste, Recyclables, Compostable  
316 Materials, Construction and Demolition Debris, Bulky Goods, E-Waste, or Universal Waste  
317 within the CITY'S jurisdiction who delivers materials to a permitted facility rather than being  
318 Collected by the CONTRACTOR.

319           1.70 Service Area. That area within the corporate limits of the City of Emeryville.

320           1.71 Single Family Dwelling or SFD. A detached or attached residence containing  
321 three (3) or fewer Dwelling Units when each Dwelling Unit is designed or used for occupancy by  
322 one (1) family.

323           1.72 SFD Bulky Goods Service. The Collection of Bulky Goods from SFD Customers  
324 in the Service Area, the delivery of the Bulky Goods to the appropriate facilities and the  
325 processing, and marketing of the Bulky Goods.

326           1.73   SFD Collection Services. SFD Solid Waste Collection Service, SFD Recyclables  
327 Collection Service, SFD Compostable Materials Collection Service, SFD Bulky Goods Service  
328 and SFD Waste Oil Service.

329           1.74   SFD Compostable Materials Collection Service. The Collection of Compostable  
330 Materials in Containers from SFD Customers in the Service Area, the delivery of the  
331 Compostable Material to a Composting Facility and the processing, and marketing of the  
332 Compostable Material.

333           1.75   SFD Recyclables Collection Service. The Collection of Recyclables in Containers  
334 from SFD Customers in the Service Area, the delivery of the Recyclables to a Recyclables  
335 Processing Facility, and the processing and marketing of the Recyclables.

336           1.76   SFD Solid Waste Collection Service. The Collection of Solid Waste in  
337 Containers from SFD Customers in the Service Area and the delivery of the Solid Waste to the  
338 Transfer Station.

339           1.77   SFD Waste Oil Service. The Collection of Waste Oil in Waste Oil Containers and  
340 Waste Oil Filters in Waste Oil Filter Containers, by the CONTRACTOR, from SFD Customers in  
341 the Service Area utilizing Waste Oil and Filter Containers for the accumulation and set-out of  
342 Waste Oil and Waste Oil Filters and the appropriate disposition of the Waste Oil and Waste Oil  
343 Filters in accordance with the requirements of this Agreement.

344           1.78   Small Business. A Commercial establishment that is located within the Service  
345 Area and uses a two (2) cubic yard Bin Collected once per week or lesser service for Solid  
346 Waste Collection.

347           1.79   Solid Waste. Except as provided below, all "Solid Waste" as defined in California  
348 Public Resources Code Section 40191, as that section may be amended from time to time,  
349 which is generated within the CITY. Solid Waste means all putrescible and non-putrescible  
350 solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes,  
351 industrial wastes, dewatered, treated, or chemically fixed sewage sludge which is not  
352 Hazardous Waste, manure, vegetable or animal solid and semisolid wastes, and other  
353 discarded wastes, but does not include abandoned vehicles, Hazardous Waste or other  
354 Unacceptable Waste. Solid Waste includes Recyclables, Compostable Materials, Bulky Goods,  
355 and Construction and Demolition Debris if such materials are not source separated from Solid  
356 Waste at the site of generation or Collected for Recycling, Composting, processing and  
357 marketing.

358           1.80   Transfer Station. The facility designated by CONTRACTOR and approved by  
359 CITY for the receipt, processing and transfer of some or all of the Discarded Material Collected  
360 under this Agreement. The Davis Street Transfer Station has been designated by  
361 CONTRACTOR as a Transfer Station and approved by CITY pursuant to this Agreement.

362           1.81   Unacceptable Waste. Any and all waste, including but not limited to, Hazardous  
363 Waste, the acceptance or handling of which would cause a violation of any permit condition or  
364 legal or regulatory requirement, damage or threatened damage to CONTRACTOR'S equipment  
365 or facilities, or present a substantial endangerment to the health or safety of the public or  
366 CONTRACTOR'S employees; provided, that de minimis quantities or waste of a type and  
367 amount normally found in residential Solid Waste after implementation of programs for the safe

368 Collection, Recycling, treatment, and Disposal of household hazardous waste in compliance  
369 with Sections 41500 and 41802 of the California Public Resources Code shall not constitute  
370 Unacceptable Waste. Unacceptable Waste does not include Waste Oil, Waste Oil Filters, or  
371 household batteries when placed for Collection as set forth in this Agreement or as otherwise  
372 directed by the CITY.

373           1.82 Universal Waste ("U-Waste"). Materials that the California Department of Toxic  
374 Substances Control considers Universal Waste, including materials such as batteries,  
375 thermostats, lamps, cathode ray tubes, computers, telephones, answering machines, radios,  
376 stereo equipment, tape players/recorders, phonographs, video cassette players/recorders,  
377 compact disc players/recorders, calculators, some appliances, aerosol cans, and certain  
378 mercury-containing devices.

379           1.83 Waste Oil. Used oil fluids for vehicles including motor oil, brake, transmission and  
380 hydraulic fluids, crankcase and differential oils, lubricating oils for vehicles and oil filters from  
381 automobile and light trucks. Waste Oil must be generated by and at the SFD or MFD residence  
382 wherein the Waste Oil is Collected.

383           1.84 Waste Oil Container. A plain copoly container provided by the CONTRACTOR  
384 for the accumulation of Waste Oil that is at least four (4) quarts in capacity, leak-proof, has a  
385 screw-on lid and has a label, pre-approved by CITY designating it for use as a Waste Oil  
386 Container or such container as may be provided by the CITY at their discretion.

387           1.85 Waste Oil Filter. Any oil filter that is no longer useful to the SFD or MFD  
388 Customer because of extended storage, spillage or contamination with non-hazardous  
389 impurities such as dirt or water; or has been used and as a result of such use has been  
390 contaminated with physical or chemical impurities. Waste Oil Filters must be generated by and  
391 at the SFD or MFD residence wherein the Waste Oil Filter is Collected.

392           1.86 Waste Oil Filter Container. A heavy duty zip lock bag provided by the Customer  
393 for the accumulation of Waste Oil Filters.

394           1.87 White Goods. Discarded household appliances such as washers, dryers,  
395 refrigerators, stoves, water heaters, freezers, small air conditioning units, and other similar  
396 items.

397           1.88 Work Day. Any day, Monday through Saturday that is not a holiday as set forth  
398 in Section 6.07 of this Agreement.

399           1.89 Yard Waste. Untreated and unpainted wood, pruning, brush, leaves, or grass  
400 clippings and such other types of vegetative material resulting from normal yard and  
401 landscaping maintenance. Yard Waste must be generated by the Customer and at the service  
402 address wherein the Yard Waste is Collected, segregated from Solid Waste at the source of  
403 generation and set out by the Customer for Collection. Yard Waste does not include items  
404 herein defined as Unacceptable Waste.

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**ARTICLE 2. Representations and Warranties of CONTRACTOR**

406  
407 CONTRACTOR hereby makes the following representations and warranties for the benefit of  
408 the CITY as of the date of this Agreement.

409       2.01 Corporate Status. CONTRACTOR is a corporation duly organized, validly  
410 existing and in good standing under the laws of the State of California. It is qualified to transact  
411 business in the State of California and has the corporate power to own its properties and to  
412 carry on its business as now owned and operated and as required by this Agreement.

413       2.02 Corporate Authorization. CONTRACTOR has full legal right, power, and authority  
414 to execute, deliver, and perform its obligations under this Agreement. The Board of Directors of  
415 CONTRACTOR (or the shareholders if necessary) has taken all actions required by law, its  
416 articles of incorporation, its bylaws or otherwise to authorize the execution and delivery of this  
417 Agreement. The Persons signing this Agreement on behalf of CONTRACTOR have authority to  
418 do so.

419       2.03 Agreement Duly Executed. The Persons signing this Agreement on behalf of  
420 CONTRACTOR have been authorized by CONTRACTOR to do so, and this Agreement has  
421 been duly executed and delivered by CONTRACTOR in accordance with the authorization of its  
422 Board of Directors or shareholders, if necessary, and constitutes a legal, valid, and binding  
423 obligation of CONTRACTOR enforceable against CONTRACTOR in accordance with its terms.

424       2.04 No Conflict With Applicable Law or Other Documents. Neither the execution and  
425 delivery by CONTRACTOR of this Agreement nor the performance by CONTRACTOR of its  
426 obligations hereunder:

427               2.04.1 Conflicts with, violates or will result in a violation of any existing  
428 applicable law; or

429               2.04.2 Conflicts with, violates or will result in a breach or default under any  
430 term or condition of any existing judgment, order or decree of any court, administrative  
431 agency or other governmental authority, or of any existing agreement or instrument to which  
432 CONTRACTOR is a party, or by which CONTRACTOR or any of CONTRACTOR'S  
433 properties or assets is bound; or

434               2.04.3 Will result in the creation or imposition of any lien, charge, or  
435 encumbrance of any nature whatsoever upon any of the properties or assets of  
436 CONTRACTOR which will interfere materially with CONTRACTOR'S performance hereunder.

437       2.05 No Litigation. There is no action, suit, proceeding or action at law or equity, or to  
438 the best of CONTRACTOR'S knowledge, any investigation before or by any court or  
439 governmental entity, pending or threatened against CONTRACTOR or otherwise affecting  
440 CONTRACTOR, wherein an unfavorable decision, ruling or finding, in any single case or in the  
441 aggregate, would materially adversely affect CONTRACTOR'S performance hereunder, or  
442 which in any way would adversely affect the validity or enforceability of this Agreement, or which  
443 would have a material adverse effect on the financial condition of CONTRACTOR or its parent  
444 company. In addition, to the best of CONTRACTOR'S knowledge there is no litigation pending  
445 in any court challenging the execution of this Agreement or seeking to restrain or enjoin its  
446 performance.

447           2.06 Financial Ability, Disclosures, No Material Change. CONTRACTOR has sufficient  
448 financial resources to perform all aspects of its obligations hereunder. CONTRACTOR has  
449 provided CITY with financial statements which present fairly, in accordance with generally  
450 accepted accounting principles, the financial resources of CONTRACTOR. There has been no  
451 material adverse change in CONTRACTOR'S or CONTRACTOR'S parent company's financial  
452 circumstances since the date of the most recent financial statements.

453           2.07 Expertise. CONTRACTOR has the expert, professional, and technical capability  
454 to perform all of its obligations under this Agreement.

455           2.08 CONTRACTOR'S Investigation. CONTRACTOR has made an independent  
456 investigation (satisfactory to it) of the conditions and circumstances surrounding this Agreement  
457 and the work to be performed by CONTRACTOR under the Agreement, and enters into this  
458 Agreement on the basis of that independent investigation.

459           2.09 Guarantee of CONTRACTOR'S Performance. Pursuant to a guaranty in  
460 substantially the form attached as Exhibit 3, which is attached to and included in Agreement,  
461 USA Waste of California, Inc. has agreed to guarantee CONTRACTOR'S performance of this  
462 Agreement.

### 463           **ARTICLE 3. Representations and Warranties of CITY**

464           3.01 Representations and Warranties of CITY. CITY hereby makes the following  
465 representations and warranties to and for the benefit of CONTRACTOR as of the date of this  
466 Agreement.

467           3.02 Duly Organized. The CITY is a government entity, duly organized and validly  
468 existing under the laws of the State of California, with full legal right, power, and authority to  
469 enter into and perform its obligations under this Agreement.

470           3.03 Execution Authorized. The parties executing this Agreement on behalf of the  
471 CITY are duly authorized by the City Council to do so. This Agreement constitutes the legal,  
472 valid, and binding agreement of the CITY and is enforceable against the CITY in accordance  
473 with its terms.

474           3.04 No Conflict with Applicable Law or Other Documents. Neither the execution and  
475 delivery by CITY of this Agreement, nor the performance by CITY of its obligations hereunder:

476                   3.04.1 Conflicts with, violates or will result in a violation of any existing  
477 applicable law; or

478                   3.04.2 Conflicts with, violates or will result in a breach or default under any  
479 term or condition of any existing judgment, order or decree of any court, administrative  
480 agency or other governmental authority, or of any existing agreement or instrument to which  
481 CITY is a party.

482           3.05 No Litigation. There is no action, suit, proceeding or, to the best of CITY'S  
483 knowledge, investigation at law or equity, before or by any court or governmental entity, pending  
484 or threatened against CITY or otherwise affecting CITY, wherein an unfavorable decision, ruling  
485 or finding, in any single case or in the aggregate, would materially adversely affect the

486 performance by CITY of its obligations hereunder or which, in any way, would adversely affect  
487 the validity or enforceability of this Agreement.

#### 488 **ARTICLE 4. CONTRACTOR'S Covenants; CITY Option to Terminate**

489 4.01 General. CONTRACTOR covenants that it shall obtain and deliver to CITY the  
490 documents set forth in Sections 4.02 through 4.03 below and use its best efforts to deliver them  
491 on or before January 1, 2011. If such documents are not delivered to CITY in satisfactory form  
492 by January 15, 2011, CITY may terminate this Agreement with absolutely no continuing  
493 obligations to CONTRACTOR and may resort to the rights and remedies provided for in Article  
494 26 hereof.

495 4.02 Receipt of Performance Bond. CONTRACTOR shall provide CITY with, and  
496 CITY shall accept if it complies with Section 27.07, the performance bond described in Section  
497 27.07 of this Agreement.

498 4.03 Parent Corporation Guaranty. CONTRACTOR shall provide CITY with a guaranty  
499 executed by CONTRACTOR'S parent corporation, USA Waste of California, Inc., in a form  
500 substantially identical to Exhibit 3 in this Agreement.

501 4.04 Termination. This Agreement may be terminated prior to the expiration of its term  
502 only in accordance with the provisions of this Agreement. At the expiration of the term provided  
503 for hereunder, or in the event of a termination as allowed under this Agreement,  
504 CONTRACTOR, at its own expense for a period of up to six (6) months, shall cooperate fully  
505 with CITY, as reasonably necessary, to ensure an orderly transition to any and all new service  
506 providers, and CITY shall have no continuing obligations to CONTRACTOR other than those  
507 expressly provided for under this Agreement. CONTRACTOR shall transfer and dispose of all  
508 Solid Waste and process all materials that have been Collected or are in process under this  
509 Agreement as of the date of expiration or termination.

#### 510 **ARTICLE 5. Term and Scope of Franchise**

511 5.01 Initial Term of Agreement. The initial term of this Agreement shall be for a ten  
512 (10) year period commencing on February 1, 2011 and terminating at midnight on December  
513 31, 2020.

514 5.01.1 Extension of Term. CITY shall have the option to offer to extend this  
515 Agreement for up to two (2) additional five (5) year periods, provided the CITY determines  
516 that CONTRACTOR has met the minimum diversion requirements as set forth in Article 13 in  
517 each year of this Agreement. Offers shall be made in writing no later than seventeen (17)  
518 months prior to the termination date of the then current Collection Services Agreement.

519 5.01.2 Upon receipt of an offer to extend the Agreement, CONTRACTOR  
520 shall provide written notice to CITY as to whether CONTRACTOR accepts or rejects CITY'S  
521 offer within twenty (20) Work Days of the date of the offer. If CONTRACTOR fails to provide  
522 such notice to CITY within said twenty (20) Work Days, CITY'S offer shall be deemed  
523 withdrawn and CITY shall have no obligation to extend the term of this Agreement.

524           5.02 Other Provisions. CITY may, at the end of the Agreement term, either  
525 renegotiate the terms and conditions of the Agreement with the current CONTRACTOR or  
526 request proposals from qualified contractors to provide Collection Services.

527           5.03 Carryover Terms. CITY may elect to carryover the term of the Agreement for up  
528 to two (2) consecutive three (3) month periods upon the same terms and conditions set forth  
529 herein providing CONTRACTOR agrees. The Contract Administrator will notify CONTRACTOR  
530 in writing on CITY'S intent to exercise this right at least thirty (30) days before the carryover  
531 term is to begin.

532           5.04 Grant of Exclusive Franchise. Subject to the requirements, conditions and  
533 exceptions of this Agreement, CITY hereby grants to CONTRACTOR the exclusive franchise,  
534 right, privilege, and duty during the term of this Agreement and any extension thereof to Collect  
535 and transport the following materials to the facilities designated in this Agreement.

536                   5.04.1 Solid Waste, Recyclables, Compostable Materials, Waste Oil, Waste  
537 Oil Filters, holiday trees, Construction and Demolition Debris and Bulky Goods, except for E-  
538 Waste, Universal Waste, and CED's, that is accumulated and set out for Collection by  
539 Customers pursuant to this Agreement.

540           5.05 Limitations to Scope of Exclusive Franchise

541                   5.05.1 Nothing in this Agreement shall limit the right of any Person to donate  
542 or sell his or her Recyclables, Compostable Materials, Bulky Goods, Waste Oil, Waste Oil  
543 Filters, holiday trees, E-Waste, U-Waste and CED's and/or Construction and Demolition  
544 Debris. Persons other than CONTRACTOR may pay to collect or collect at no charge such  
545 Recyclables, Compostable Materials, Bulky Goods, Waste Oil, Waste Oil Filters, holiday  
546 trees, E-Waste, U-Waste and CED's, and/or Construction and Demolition Debris. Similarly,  
547 nothing in this Agreement shall limit the right of any Person to haul the Solid Waste,  
548 Recyclables, Compostable Materials, Bulky Goods, Waste Oil, Waste Oil Filters, holiday  
549 trees, E-Waste, U-Waste and CED's and/or Construction and Demolition Debris he or she  
550 generates to a facility that holds all applicable permits;

551                   5.05.2 Notwithstanding CONTRACTOR'S rights under this Agreement as  
552 described above, the following materials may be Collected by Persons other than  
553 CONTRACTOR:

554                   5.05.3 Construction and Demolition Debris that is:

555                           5.05.3.1 removed from a premises by a licensed Contractor as an  
556 incidental part of a total construction, remodeling, or demolition service offered by that  
557 contractor, rather than as a separately contracted or subcontracted hauling service; or

558                           5.05.3.2 collected by a Fixed Body Vehicle and hauled directly to a  
559 facility that holds all applicable permits;

560                   5.05.4 Yard Waste that is:

561                           5.05.4.1 removed from residential or Commercial premises by a  
562 contractor as an incidental part of a total gardening or landscaping service offered by that  
563 contractor, rather than as a separately contracted or subcontracted hauling service; or

- 
- 564                    5.05.4.2        loaded onto a Fixed Body Vehicle and hauled directly to a
  - 565 facility that holds all applicable permits;
  - 566                    5.05.5 Bulky Goods removed from a premises by a property cleanup or
  - 567 maintenance company as an incidental part of the total cleanup or maintenance service
  - 568 offered by the company rather than as a hauling service;
  - 569                    5.05.6 Bulky Goods removed from a premises for a nominal charge by a
  - 570 retailer as an incidental part of a sale of merchandise;
  - 571                    5.05.7 Bulky Goods removed from a premises for a nominal charge by a
  - 572 reuse facility or business;
  - 573                    5.05.8 Compostable Materials Composted at the site where it is generated
  - 574 (e.g., backyard composting);
  - 575                    5.05.9 Metal of any type that can be collected and recycled except consumer
  - 576 food/beverage cans;
  - 577                    5.05.10        Wood of any type;
  - 578                    5.05.11        Old corrugated cardboard, (OCC);
  - 579                    5.05.12        Animal remains and grease waste Collected for use as tallow;
  - 580                    5.05.13        Animal waste Collected for use as a soil amendment;
  - 581                    5.05.14        Materials that can be turned into animal feed;
  - 582                    5.05.15        Recyclables which the CONTRACTOR is not required to Collect
  - 583 and process under this Agreement as of the effective date of this Agreement which
  - 584 subsequently, in the CITY'S reasonable judgment, become economically feasible to recycle.
  - 585 In such event, CONTRACTOR shall have the exclusive right to Collect and process such new
  - 586 Recyclables if CONTRACTOR agrees to do so without any change in rates. If
  - 587 CONTRACTOR is unwilling to provide service for such new Recyclables at existing rates, the
  - 588 CITY may provide for Collection and processing of new Recyclables in any manner it deems
  - 589 appropriate.
  - 590                    5.05.16        Containers delivered for Recycling under the California Beverage
  - 591 Container Recycling Litter Reduction Act, Section 14500, et seq., California Public Resources
  - 592 Code, as such statute may be amended from time to time;
  - 593                    5.05.17        Hazardous Waste regardless of its source;
  - 594                    5.05.18        By-products of sewage treatment, including sludge, grit, and
  - 595 screenings;
  - 596                    5.05.19        E-Waste, U-Waste and/or CED's if hauled for recycling or reuse;
  - 597                    5.05.20        Exemptions as listed and detailed from time to time in CITY
  - 598 Legislation subject to Section 21.02 of this Agreement;
  - 599                    5.05.21        The provisions allowing the CITY to provide for Collection,
  - 600 processing and Disposal as specified elsewhere in this Agreement.



642                   6.02.2 Saturday Collection. Customers receiving Commercial Solid Waste or  
643 Compostable Materials Collection Service at least three (3) times per week shall be entitled  
644 to receive an additional Collection of that material on Saturday of each week upon request.

645                   6.02.3 Manner of Collection. The CONTRACTOR shall provide Collection  
646 Service with as little disturbance as possible and shall leave any Cart or Bin in an upright  
647 position at the same point it was Collected without obstructing alleys, roadways, driveways,  
648 sidewalks or mail boxes. CONTRACTOR shall insure its employees close all gates opened  
649 by CONTRACTOR, and avoid crossing landscaped areas and climbing or jumping over  
650 hedges and fences. CITY shall refer complaints about damage to private property caused by  
651 its employees to CONTRACTOR.

652                   6.02.4 Dangerous Animals. Employees of the CONTRACTOR shall not be  
653 required to expose themselves to the danger of being bitten by vicious animals in order to  
654 accomplish Collection. In any case, where the Customer or tenants have such animals at  
655 large, the CONTRACTOR shall immediately notify the Contract Administrator of such  
656 condition and of his/her inability to provide Collection Services because of such conditions.

657                   6.02.5 New Customers. CONTRACTOR shall commence service to a new  
658 Customer account within seven (7) Work Days after receipt of notification by the Customer or  
659 the Contract Administrator.

660                   6.02.6 Service Changes. CONTRACTOR shall commence service to  
661 Customer accounts requesting service level changes within seven (7) Work Days after  
662 receipt of notification by the Customer or the Contract Administrator.

663                   6.03 Record of Non-Collection. When any Solid Waste, Recyclables, Compostable  
664 Materials, Bulky Goods or other materials set out for regular or special Collection are not  
665 Collected by the CONTRACTOR for sufficient reason, CONTRACTOR shall leave a Non-  
666 Collection Notice. The Non-Collection Notice shall be provided at CONTRACTOR'S cost and be  
667 at least 2" x 6" in size, on which the CONTRACTOR has provided CONTRACTOR'S telephone  
668 number, and indicated reason, giving reference to the section of the CITY Municipal Code or to  
669 the Sections of this Agreement which has been violated, for the refusal to Collect the materials  
670 set out for regular or special Collection. At CITY'S request, a copy of any Non-Collection  
671 Notice, along with the name and address of the party noticed, shall be delivered to the Contract  
672 Administrator within twenty-four (24) hours of CITY'S request.

673                   6.03.1 In addition thereto, CONTRACTOR shall maintain, at  
674 CONTRACTOR'S place of business, a log, computerized or written, listing all complaints and  
675 notices. Said log shall contain the names and addresses of parties involved, date of such  
676 complaint or noticing, nature of same, and the date and manner of disposition of each case.  
677 Such log shall be kept so that it may conveniently be inspected by representatives of the  
678 CITY upon request and be in a format that can be emailed to CITY within two (2) business  
679 days of a request from the Contract Administrator.

680                   6.04 Containers.

681                   6.04.1 Purchase and Distribution of Containers. The CONTRACTOR shall be  
682 responsible for the purchase and distribution of fully assembled and functional Carts, Bins,  
683 (and Roll-Off Boxes or Compactors as required) to Customers in the Service Area.

684 CONTRACTOR shall also distribute Carts, Bins (and Roll-Off Boxes or Compactors as  
685 required) to new Customers that are added to CONTRACTOR'S Service Area during the  
686 term of this Agreement. Distributions of Containers occurring during the transition period as  
687 set forth in Exhibit 7 to this Agreement shall be completed within the time set forth in Exhibit  
688 7. Distributions of Containers occurring after the end of the transition period shall be  
689 completed within seven (7) Work Days of receipt of notification from CITY or the Customer.

690           6.04.2 Carts and Bins Labeling. Carts are to be labeled with the type of  
691 materials to be Collected (i.e., Solid Waste, Compostable Materials, Recyclables) and  
692 instructions for proper usage. Bins are to be labeled with the type of materials to be  
693 Collected (i.e., Solid Waste, Compostable Materials, Recyclables) and instructions for proper  
694 usage. Labeling and graphics of the Carts and Bins shall be approved by the Contract  
695 Administrator. Labels shall be of a type and material that can reasonably be anticipated to  
696 last for five (5) years without replacement. CONTRACTOR shall replace any label which has  
697 become worn and tattered or when the information provided on the label is no longer  
698 intelligible.

699           6.04.3 Replacement of Carts and Bins. CONTRACTOR'S employees shall  
700 take care to prevent damage to Carts or Bins by unnecessary rough treatment. However,  
701 any Cart or Bin damaged by CONTRACTOR shall be replaced by CONTRACTOR, at  
702 CONTRACTOR'S expense, within seven (7) Work Days at no cost or inconvenience to the  
703 Customer.

704           6.04.3.1       Upon notification to CONTRACTOR by CITY or a  
705 Customer that the Customer's Cart(s) or Bin(s) have been stolen or damaged beyond repair  
706 through no fault of CONTRACTOR, CONTRACTOR shall deliver a replacement Cart(s) or  
707 Bin(s) to such Customer no later than the next regularly scheduled Collection service day, or if  
708 requested by CITY or a Customer, within seven (7) Work Days. CONTRACTOR shall maintain  
709 records documenting all Cart and Bin replacements occurring on a monthly basis.

710           6.04.3.2       Where such Cart is lost, stolen or damaged beyond repair  
711 through no fault of CONTRACTOR, each SFD Customer shall be entitled to the replacement of  
712 two (2) lost, destroyed, or stolen Solid Waste Carts, two (2) lost, destroyed, or stolen Recycling  
713 Carts, and two (2), lost, destroyed, or stolen Compostable Material Carts during the initial term  
714 of this Agreement at no cost to the Customer. In the event this Agreement is extended as set  
715 forth in Section 5.01.1 of this Agreement, Customers shall be entitled to received the number of  
716 replacement Carts as provided in this Section during the term of the extension. Additional Cart  
717 replacements under this Section 6.04.3.2 shall be charged to the Customer pursuant to the  
718 rates set forth in Exhibit 1.

719           6.04.3.3       Where such Cart or Bin is lost, stolen or damaged beyond  
720 repair through no fault of CONTRACTOR, each MFD, Commercial and CITY Customer shall be  
721 entitled to the replacement of lost, destroyed, or stolen Bins and Carts during the initial term of  
722 this Agreement at no cost to the Customer. Such replacement shall be limited to a number  
723 equal to the number of Bins and Carts representing the normal service level of the customer. In  
724 the event this Agreement is extended as set forth in Section 5.01.1 of this Agreement,  
725 Customers shall be entitled to received the number of replacement Carts or Bins as provided in

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726 this Section during the term of the extension. Additional Cart or Bin replacements under this  
727 Section 6.04.3.3 shall be charged to the Customer pursuant to the rates set forth in Exhibit 1.

728                   6.04.3.4       Where such Bin or Cart replacement occurs through no  
729 fault of CONTRACTOR, CONTRACTOR shall be compensated by the Customer for the cost of  
730 those replacements in excess of the requirements set forth above in accordance with the "Cart  
731 or Bin Exchange" service rate, as appropriate, as set forth in Exhibit 1 which is attached to and  
732 included in this Agreement or as may be adjusted under the terms of this Agreement.

733                   6.04.4 Repair of Carts and Bins.   CONTRACTOR shall be responsible for  
734 repair of Carts in the areas to include but not be limited to, hinged lids, wheels and axles. No  
735 later than the next regularly scheduled Collection service day, or if requested by CITY or a  
736 Customer, within seven (7) Work Days of notification of the need for such repairs,  
737 CONTRACTOR shall repair the Cart or Bin or if necessary, remove the Cart or Bin for repairs  
738 and deliver a replacement Cart or Bin to the Customer.

739                   6.04.5 Cart or Bin Exchange.   Upon notification to CONTRACTOR by CITY,  
740 or a Customer, that a change in the size or number of Carts or Bins is required, the  
741 CONTRACTOR shall deliver such Carts or Bins to such Customer within seven (7) Work  
742 Days. Each SFD Customer shall be entitled to receive one (1) free Solid Waste Cart  
743 exchange, one (1) free Recycling Cart exchange and one (1) free Compostable Material Cart  
744 exchange per Agreement Year during the term of this Agreement. Each MFD or Commercial  
745 Customer shall be entitled to receive two (2) free service exchanges, per Agreement Year  
746 during the term of this Agreement. For the purposes of this Section, a service exchange  
747 represents the exchange of as few as one (1) and as many as the total number of Bins and  
748 Carts provided by CONTRACTOR and utilized by the Customer. Accordingly CONTRACTOR  
749 shall be compensated for the cost of those exchanges in excess of the limitations set forth  
750 herein per Agreement Year, in accordance with the "Cart or Bin Exchange" service rate as  
751 set forth in Exhibit 1 of this Agreement.

752                   6.04.6 Additional Recycling or Compostable Materials Capacity.   Upon  
753 request, CONTRACTOR shall provide an additional Recycling and/or Compostable Materials  
754 Cart(s) of up to ninety-six (96) gallons of additional capacity to any SFD, or MFD Customer  
755 for the provision of Recyclables and/or Compostable Materials Collection Service(s). This  
756 service shall be provided by CONTRACTOR at no additional charge to the Customer or to  
757 the CITY. CONTRACTOR shall be compensated for the delivery or exchange of additional  
758 Recycling and/or Compostable Materials Carts in accordance with Section 6.04.5 above.

759                   6.04.7 Ownership of Carts.   Ownership of Carts purchased by CITY shall rest  
760 with CITY until such Carts are replaced by CONTRACTOR at which time such ownership  
761 shall rest with CONTRACTOR. Ownership of Carts purchased by CONTRACTOR shall rest  
762 with CONTRACTOR, except that ownership of Carts in the possession of a Customer at the  
763 end of this Agreement shall rest with CITY provided said Carts are fully depreciated. In the  
764 event the Carts are not fully depreciated, CITY shall have the option of purchasing them from  
765 CONTRACTOR at their then net book value. At its sole discretion, CITY may elect not to  
766 exercise its rights with regards to this Section and in such case all of the Carts shall be the  
767 property of CONTRACTOR upon termination of this Agreement. In this event,  
768 CONTRACTOR shall be responsible for removing all Carts in service from the Service Area

769 and reusing or Recycling such Carts. In addition, in the case of the termination of this  
770 Agreement prior to the expiration of the initial term or optional extension term due to the  
771 default of CONTRACTOR as set forth in Article 26 of this Agreement CITY shall have the  
772 right to take possession of the Carts and shall retain such possession until satisfactory  
773 arrangements can be made to provide Collection Services using other equipment. Such time  
774 of possession shall not be limited and regardless of the time of possession there shall be no  
775 monies owing to CONTRACTOR from CITY for the use of the equipment. Upon the receipt  
776 of written notice from CITY, CONTRACTOR shall submit to the Contract Administrator an  
777 inventory of Carts, including their locations.

778           6.04.8 Ownership of Bins. Ownership of Bins distributed by CONTRACTOR  
779 shall rest with CONTRACTOR except in the case of the termination of the Agreement prior to  
780 the expiration of the initial term or optional extension term due to the default of  
781 CONTRACTOR as set forth in Article 26 of this Agreement. Under such circumstances,  
782 CITY shall have the right to take possession of the Bins and shall retain such possession  
783 until satisfactory arrangements can be made to provide Collection Services using other  
784 equipment. Such time of possession shall not be limited and regardless of the time of  
785 possession there shall be no monies owing to CONTRACTOR from CITY for the use of the  
786 equipment for the first six (6) months of that use. In the event CITY uses the Bins for more  
787 than six (6) months CITY shall pay CONTRACTOR a mutually agreed rental for each full or  
788 partial month beginning with the seventh (7<sup>th</sup>) month. Upon the receipt of written notice from  
789 CITY, CONTRACTOR shall submit to the Contract Administrator an inventory of Bins,  
790 including their locations.

791           6.04.9 Ownership of Roll-Off Boxes. Ownership of Roll-Off Boxes or  
792 Compactors distributed by CONTRACTOR shall rest with CONTRACTOR except in the case  
793 of the termination of the Agreement prior to the expiration of the initial term or optional  
794 extension term due to the default of CONTRACTOR. Under such circumstances, CITY shall  
795 have the right to take possession of the Containers and shall retain such possession until  
796 satisfactory arrangements can be made to provide Collection Services using other  
797 equipment. Such time of possession shall not be limited and regardless of the time of  
798 possession there shall be no monies owing to CONTRACTOR from CITY for the use of the  
799 equipment for the first six (6) months of that use. In the event CITY uses the equipment for  
800 more than six (6) months CITY shall pay CONTRACTOR a mutually agreed rental for each  
801 full or partial month beginning with the seventh (7<sup>th</sup>) month. Upon the receipt of written notice  
802 from the Contract Administrator, CONTRACTOR shall submit to the Contract Administrator  
803 an inventory of Containers, including their locations.

804           6.04.9.1           Compactor equipment may be owned by the Customer or  
805 leased from the CONTRACTOR or any other source provided the Compactor Container is  
806 compatible with CONTRACTOR'S Collection vehicles.

807           6.04.10           Compostable Materials Containers. Upon mutual agreement  
808 between CITY and CONTRACTOR, CONTRACTOR shall allow the use of liners by the  
809 Customer for the containment of the Compostable Materials and shall Collect both the  
810 Compostable Materials and the liners as part of the Commercial Compostable Collection  
811 Service provided under the terms of this Agreement.

812           6.05 Bag-It Bags. CONTRACTOR shall make Bag-It Bags readily available to SFD  
813 Customers, through the mail, at CONTRACTOR'S office at 172 98<sup>th</sup> Avenue, Oakland, CA  
814 94603 or at the CITY office at 1333 Park Avenue, Emeryville, CA 94608. CONTRACTOR shall  
815 maintain a sufficient inventory of Bag-It Bags to accommodate Customers needs.

816           6.06 Labor and Equipment. CONTRACTOR shall provide and maintain all labor,  
817 equipment, tools, facilities, and personnel supervision required for the performance of  
818 CONTRACTOR'S obligations under this Agreement. CONTRACTOR shall at all times have  
819 sufficient backup equipment and labor to fulfill CONTRACTOR'S obligations under this  
820 Agreement. No compensation for CONTRACTOR'S services or for CONTRACTOR'S supply of  
821 labor, equipment, tools, facilities or supervision shall be provided or paid to CONTRACTOR by  
822 CITY or by any Customer except as expressly provided by this Agreement.

823           6.07 Holiday Service. CONTRACTOR shall not be required to provide Collection  
824 Services or maintain office hours on the following designated holidays: New Years Day,  
825 Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. In any week in which  
826 one of these holidays falls on a Work Day and CONTRACTOR does not provide SFD Collection  
827 Services on that holiday, SFD Collection Services for the holiday and each Work Day thereafter  
828 will be delayed one Work Day for the remainder of the week with normally scheduled Friday  
829 Collection Services being performed on Saturday. MFD, Commercial and CITY Collection  
830 Services shall be adjusted as agreed between the CONTRACTOR and the Customer but must  
831 meet the minimum frequency requirement of one (1) time per week. CONTRACTOR shall be  
832 responsible for adequately notifying all Customers and the CITY at least thirty (30) days in  
833 advance of changes in the Collection day because of a holiday schedule.

834           6.08 Transfer, Disposal and Processing.

835                   6.08.1 Transfer Station. Except as set forth below, all Solid Waste Collected  
836 as a result of performing Collection Services shall be delivered to the Transfer Station for  
837 transfer to the Disposal Facility. In the event the Transfer Station or Disposal Facility is  
838 closed on a Work Day, CONTRACTOR shall transport and dispose of the Solid Waste at  
839 such other legally permitted facility as is approved by CITY. Failure to comply with this  
840 provision shall result in the levy of liquidated damages as specified in Article 23 of this  
841 Agreement and may result in CONTRACTOR being in default under this Agreement.

842                   6.08.2 Recyclables Processing Facility. All Recyclables Collected as a result  
843 of performing Collection Services shall be delivered to the Processing Facility. In the event  
844 the Processing Facility is closed on a Work Day, CONTRACTOR shall transport and deliver  
845 the Recyclables to such other legally permitted facility as is approved by CITY.  
846 CONTRACTOR shall ensure that all Recyclable Material Collected pursuant to this  
847 Agreement, except contaminants and residue resulting from processing, is diverted from the  
848 landfill. Failure to comply with this provision shall result in the levy of liquidated damages as  
849 specified in Article 23 of this Agreement and may result in CONTRACTOR being in default  
850 under this Agreement.

851                   6.08.3 Composting Facility. CONTRACTOR shall deliver all Collected  
852 Compostable Material to the Composting Facility. In the event the facility is closed on a Work  
853 Day, the CONTRACTOR shall transport and deliver the Compostable Material to such other  
854 legally permitted facility as is approved by CITY. CONTRACTOR shall ensure that all

855 Compostable Material Collected pursuant to this Agreement, except residue resulting from  
856 processing, is diverted from the landfill. In no event shall Compostable Material be used for  
857 ADC at a landfill. Failure to comply with this provision shall result in the levy of liquidated  
858 damages as specified in Article 23 of this Agreement and may result in CONTRACTOR being  
859 in default under this Agreement.

860                   6.08.4 Bulky Goods Processing and Disposal. To the extent feasible,  
861 CONTRACTOR will process and dispose of Bulky Goods Collected from Customers pursuant  
862 to Sections 7.09, 8.02 and other appropriate sections of this Agreement in accordance with  
863 the following hierarchy:

864                   6.08.4.1           Reuse as is (where energy efficiency is not compromised);

865                   6.08.4.2           Disassemble for reuse or recycling;

866                   6.08.4.3           Recycle; or

867                   6.08.4.4           Disposal.

868                   6.08.5 CONTRACTOR shall not landfill such Bulky Goods unless the Bulky  
869 Goods cannot be reused or recycled.

870                   6.08.6 Bulky Goods Containing Freon. In the event CONTRACTOR Collects  
871 Bulky Goods that contain freon, CONTRACTOR shall handle such Bulky Goods in a manner  
872 such that the Bulky Goods are not subject to regulation as Hazardous Waste under  
873 applicable state and federal laws or regulations.

874                   6.08.7 Construction and Demolition Debris Processing Facility. All  
875 Construction and Demolition Debris Collected as a result of performing Collection Services  
876 shall be delivered to the Construction and Demolition Debris Processing Facility. In the event  
877 the Processing Facility is closed on a Work Day, CONTRACTOR shall transport and deliver  
878 the Construction and Demolition Debris to such other legally permitted facility as is approved  
879 by CITY. Failure to comply with this provision shall result in the levy of liquidated damages  
880 as specified in Article 23 of this Agreement and may result in CONTRACTOR being in default  
881 under this Agreement.

882                   6.08.8 Waste Oil Processing. CONTRACTOR shall recycle all Waste Oil  
883 Collected pursuant to this Agreement to the extent feasible and shall properly dispose of all  
884 Waste Oil and Waste Oil Filters that are contaminated or otherwise cannot be recycled.

885                   6.08.8.1           CONTRACTOR shall recycle the Waste Oil only with  
886 persons who are authorized by the State of California to recycle oil. In the event the Waste Oil  
887 or Waste Oil Filters Collected pursuant to this Agreement is contaminated to the extent that the  
888 Waste Oil or Waste Oil Filters require disposal as a Hazardous Waste, CONTRACTOR shall  
889 dispose of such Waste Oil or Waste Oil Filters, at CONTRACTOR'S own cost and expense in  
890 accordance with applicable state and federal law.

891                   6.08.8.2           CONTRACTOR shall notify the Contract Administrator,  
892 either by Fax or email, of any contamination which renders the Waste Oil unacceptable for  
893 recycling or which requires disposal of the Waste Oil or Waste Oil Filters as a Hazardous  
894 Waste.

895                   6.08.9 Segregation of Waste Oil. CONTRACTOR shall keep all Waste Oil  
896 and Waste Oil Filters Collected pursuant to this Agreement segregated from other materials.

897                   6.09 Recycling - Improper Procedure. Except as set forth below, CONTRACTOR  
898 shall not be required to Collect Recyclables if the Customer does not segregate the Recyclables  
899 from Solid Waste. If Recyclables are contaminated through commingling with Solid Waste,  
900 CONTRACTOR shall, if practical, separate the Solid Waste from the Recyclables. The  
901 Recyclables shall then be Collected and the Solid Waste shall be left in the Recycling Cart or  
902 Bin along with a Non-Collection Notice explaining why the Solid Waste is not considered a  
903 Recyclable and how to dispose of it as Solid Waste. However, in the event the Recyclables and  
904 Solid Waste are commingled to the extent that they cannot easily be separated by  
905 CONTRACTOR or the nature of the Solid Waste renders the entire Recycling Cart or Bin  
906 contaminated, CONTRACTOR will leave the Recycling Cart or Bin un-emptied along with a  
907 Non-Collection Notice that contains instructions on the proper procedures for setting out  
908 Recyclables and Solid Waste.

909                   6.10 Recycling - Changes to Work. Should changes in law arise that necessitate any  
910 additions or deletions to the work described herein including the type of items included as  
911 Recyclables, the parties shall negotiate any necessary cost changes and shall enter into an  
912 Agreement amendment covering such modifications to the work to be performed and the  
913 compensation to be paid before undertaking any changes or revisions to such work in  
914 accordance with Section 21.01.

915                   6.11 Inspections. CITY shall have the right to inspect CONTRACTOR'S facilities or  
916 the contents of Collection vehicles used in the provision of Collection Services under this  
917 Agreement at any time while operating inside or outside the CITY. Inspection of the contents of  
918 a Collection vehicle shall take place at the appropriate facility and shall not require the vehicle to  
919 be off route for more than one (1) hour. CITY shall provide CONTRACTOR with notice at least  
920 twenty-four (24) hours prior to inspecting CONTRACTOR'S facilities.

921                   6.12 Commingling of Materials.

922                   6.12.1 Solid Waste and Recyclables. CONTRACTOR shall not commingle  
923 Solid Waste, Collected pursuant to this Agreement, with any Recyclables separated for  
924 Collection pursuant to this Agreement prior to deliver to the Transfer Facility, without the  
925 express prior written authorization of the Contract Administrator.

926                   6.12.2 Solid Waste Collected in CITY. CONTRACTOR shall not commingle  
927 any Solid Waste, Collected pursuant to this Agreement, with any other material Collected by  
928 CONTRACTOR inside or outside the CITY prior to delivery to the Transfer Facility unless  
929 CONTRACTOR has provided written documentation, in a form that is satisfactory to the  
930 Contract Administrator, explaining how the mixed material will be allocated to the  
931 jurisdiction(s) of origin and CONTRACTOR has received express, written consent from the  
932 Contract Administrator.

933                   6.12.3 Recyclables. CONTRACTOR shall not commingle Recyclables  
934 Collected pursuant to this Agreement, with any other material Collected by CONTRACTOR  
935 inside or outside the CITY prior to delivery to the Processing Facility unless CONTRACTOR  
936 has provided written documentation, in a form that is satisfactory to the Contract  
937 Administrator, explaining how the mixed material will be allocated to the jurisdiction(s) of

938 origin and CONTRACTOR has received express, written consent from the Contract  
939 Administrator.

940           6.12.4 Compostable Materials. CONTRACTOR shall not commingle  
941 Compostable Materials Collected pursuant to this Agreement, with any other material  
942 Collected by CONTRACTOR inside or outside the CITY prior to delivery to the Processing  
943 Facility unless CONTRACTOR has provided written documentation, in a form that is  
944 satisfactory to the Contract Administrator, explaining how the mixed material will be allocated  
945 to the jurisdiction(s) of origin and CONTRACTOR has received express, written consent from  
946 the Contract Administrator.

947           6.12.5 Bulky Goods. CONTRACTOR shall not commingle Bulky Goods  
948 Collected pursuant to this Agreement, with any other material Collected by CONTRACTOR  
949 inside or outside the CITY prior to delivery to the appropriate Processing Facility unless  
950 CONTRACTOR has provided written documentation, in a form that is satisfactory to the  
951 Contract Administrator, explaining how the mixed material will be allocated to the  
952 jurisdiction(s) of origin and CONTRACTOR has received express, written consent from the  
953 Contract Administrator.

954           6.12.6 Material Separation. Solid Waste, Compostable Materials,  
955 Recyclables, Bulky Goods, E-Waste, Universal Waste, Construction and Demolition Debris,  
956 Waste Oil and Waste Oil Filters shall not be mixed together in CONTRACTOR'S Collection  
957 equipment. Each category of material Collected shall be kept separated according to type or  
958 classification.

959           6.13 Spillage and Litter. The CONTRACTOR shall not litter premises in the process  
960 of providing Collection Services or while its vehicles are on the road. The CONTRACTOR shall  
961 transport all materials Collected under the terms of this Agreement in such a manner as to  
962 prevent the spilling or blowing of such materials from the CONTRACTOR'S vehicle. The  
963 CONTRACTOR shall exercise all reasonable care and diligence in providing Collection Services  
964 so as to prevent spilling or dropping of Discarded Materials and shall immediately, at the time of  
965 occurrence, clean up such spilled or dropped materials.

966           6.13.1 Litter Cleanup. CONTRACTOR is required to clean up litter whether or  
967 not CONTRACTOR has caused the litter on a one-time basis and shall discuss the spillage  
968 directly with the Customer responsible and shall report such instances to CITY.  
969 CONTRACTOR shall work with the Customer to resolve the spillage problem.  
970 CONTRACTOR shall clean up any spillage or litter caused by CONTRACTOR within two (2)  
971 hours of spilling or dropping any material or residue or within two (2) hours upon notice from  
972 the Contract Administrator.

973           6.13.2 Damage to Public Streets. In the event where damage to public  
974 streets within CITY is caused by a hydraulic oil spill, or a vehicle load fire which is dumped  
975 onto the street for containment purposes, CONTRACTOR shall be responsible for all repairs  
976 to return the street to the same condition it was in prior to the spill or fire. CONTRACTOR  
977 shall also be responsible for all clean-up activities related to the spill or fire. Repairs and  
978 clean-up shall be performed in a manner satisfactory to the Contract Administrator and at no  
979 cost to CITY.

980                    6.13.3 Oil, Other Vehicle Fluid Spills or Vehicle Load Fires. In the event of a  
981 vehicle load fire CONTRACTOR shall immediately contact first responders. CONTRACTOR  
982 is responsible for cleaning-up all oil, vehicle fluid spills, and/or materials resulting from the  
983 containment and extinguishment of a vehicle load fire immediately and must notify CITY  
984 within twenty-four (24) hours of each incident. Such notification shall be by email and shall  
985 contain at least the following information:

- 986                    6.13.3.1            Location of incident;
- 987                    6.13.3.2            What type of fluid was involved;
- 988                    6.13.3.3            How much fluid was involved;
- 989                    6.13.3.4            What clean-up measures were taken; and
- 990                    6.13.3.5            Date and time of the incident and the completion of the  
991 clean-up.

992                    6.13.4 All vehicles must carry an acceptable absorbent material to use in the  
993 event of incidents. Each Collection vehicle shall carry a broom and shovel at all times for this  
994 purpose. Repair for damages caused by oil, other vehicle fluid spills or fire incidents shall be  
995 at CONTRACTOR’S expense. CONTRACTOR will follow the incident procedures below:

- 996                    6.13.4.1            Driver will determine the cause and source of incident;
- 997                    6.13.4.2            Each driver or shop employee is responsible for having  
998 enough absorbent in their vehicle to contain or prevent any hydraulic fluid, oil, or other material  
999 from entering a storm drain or sewer and to clean up small spills as they occur;
- 1000                    6.13.4.3            Driver will contain or stop the leak and clean it up without  
1001 endangering self;
- 1002                    6.13.4.4            Driver may extinguish the fire without endangering self  
1003 prior to the arrival of the fire department;
- 1004                    6.13.4.5            Driver will immediately notify dispatch or supervisor;
- 1005                    6.13.4.6            Driver will not leave the incident until either a supervisor or  
1006 incident response personnel arrive at the scene;
- 1007                    6.13.4.7            Driver will keep all people, cars, or other vehicles from  
1008 walking or driving through the incident; and
- 1009                    6.13.4.8            Driver or incident response personnel shall use any  
1010 measures necessary to ensure that no runoff from the debris ends up in the storm water system  
1011 in accordance with BMP Guidelines for Non-Point Source Pollutants.

1012                    6.14 Care of Private Property. CONTRACTOR shall not damage private property,  
1013 including private streets. CONTRACTOR shall ensure that its employees close all gates  
1014 opened by CONTRACTOR, and avoid crossing landscaped areas and climbing or jumping over  
1015 hedgers and fences. CITY shall refer complaints about damage to private property caused by  
1016 CONTRACTOR’S employees to CONTRACTOR. CONTRACTOR shall be responsible for all  
1017 repairs to return the private property, including private streets to the same condition the property  
1018 was in prior to the damage.

1019           6.15 Care of Public Property. CONTRACTOR shall not damage public property within  
1020 the CITY. CONTRACTOR shall be responsible for all repairs to return the public property to the  
1021 same condition the property was in prior to the damage.

1022           6.16 Ownership of Materials. Title to Solid Waste, Recyclables, Compostable  
1023 Materials, Bulky Goods, Waste Oil, Waste Oil Filters, E-Waste, Universal Waste, or  
1024 Construction and Demolition Debris shall pass to CONTRACTOR at such time as said materials  
1025 are placed in CONTRACTOR'S Collection Container and the Container is set out for Collection,  
1026 or for those materials that are not required to be Containerized, at the time the materials are set  
1027 out for Collection. Title to material Collected as part of CITY requested CITY Clean-up Service  
1028 or CITY Special Collection Service shall pass to CONTRACTOR at the time the material is  
1029 placed in the Roll-Off Box or other Collection vehicle or Container approved for use at the event.

1030           6.17 Hazardous Waste. Under no circumstances shall CONTRACTOR'S employees  
1031 knowingly Collect Hazardous Waste, or remove unsafe or poorly containerized Hazardous  
1032 Waste, from a Collection Container. If CONTRACTOR determines that material placed in any  
1033 Container for Collection is Hazardous Waste, or other material that may not legally be accepted  
1034 at the Transfer Station or one of the processing facilities, or presents a hazard to  
1035 CONTRACTOR'S employees, CONTRACTOR shall have the right to refuse to accept such  
1036 material. The generator shall be contacted by CONTRACTOR and requested to arrange for  
1037 proper Disposal Service. If the generator cannot be reached immediately, CONTRACTOR  
1038 shall, before leaving the premises, leave a Non-Collection Notice, which indicates the reason for  
1039 refusing to Collect the material.

1040                   6.17.1 If Hazardous Waste is found in a Collection Container that poses an  
1041 imminent danger to people or property, CONTRACTOR shall immediately notify the Alameda  
1042 County Fire Department. CONTRACTOR shall immediately notify CITY of any Hazardous  
1043 Waste that has been identified.

1044                   6.17.2 If Hazardous Waste is identified at the time of delivery to the Transfer  
1045 Station, or one of the processing facilities and the generator cannot be identified,  
1046 CONTRACTOR shall be solely responsible for handling and arranging transport and  
1047 disposition of the Hazardous Waste.

1048           6.18 Regulations and Record Keeping. CONTRACTOR shall comply with emergency  
1049 notification procedures required by applicable laws and regulatory requirements. All records  
1050 required by regulations shall be maintained at CONTRACTOR'S facility. These records shall  
1051 include waste manifests, waste inventories, waste characterization records, inspection records,  
1052 incident reports, and training records.

1053           6.19 Transition. CONTRACTOR understands and agrees that the time between the  
1054 formal Agreement signing and February 1, 2011 is intended to provide the CONTRACTOR with  
1055 ample and sufficient time to, among other things, order equipment, prepare necessary routing  
1056 schedules and route maps, obtain any permits and licenses, establish/build facilities, and begin  
1057 the public awareness campaign as part of the CONTRACTOR'S transition program as specified  
1058 in Exhibit 7 which is attached to and included in this Agreement. CONTRACTOR shall specify  
1059 in Exhibit 7 the delivery schedule for new Collection vehicles to be utilized in performing  
1060 Collection Services under this Agreement. CONTRACTOR shall be responsible for the

1061 provision of all Collection Services beginning February 1, 2011, except that new Collection  
1062 vehicles will be provided in the timeframe set forth in Exhibit 7.

1063 **ARTICLE 7. SFD Collection Services**

1064 7.01 SFD Collection Services. These services shall be governed by the following  
1065 terms and conditions:

1066 7.01.1 Conditions of Service. CONTRACTOR shall provide SFD Collection  
1067 Service to all SFD Customers in the Service Area whose Solid Waste is properly  
1068 Containerized in Carts, except as set forth in Section 7.06, Recyclables are properly  
1069 Containerized in Carts, except as set forth in Section 7.07; and Compostable Materials are  
1070 properly Containerized in Carts except as set forth in Section 7.08; where the Carts have  
1071 been placed within three (3) feet of the curb, swale, paved surface of the public roadway,  
1072 closest accessible roadway, or other such location agreed to by CONTRACTOR and  
1073 Customer, that will provide safe and efficient accessibility to CONTRACTOR'S Collection  
1074 crew and vehicle.

1075 7.02 Non-Subscription Backyard Service. Notwithstanding any term or definition set  
1076 forth in this Agreement, CONTRACTOR shall provide Backyard Service Collection of Solid  
1077 Waste, Recyclables, and Compostable Materials to a SFD Customer if the Customers residing  
1078 therein are disabled due to age or infirmity and are unable to place their Solid Waste,  
1079 Recyclables, and Compostable Materials Carts at the curb for Collection and if a request for  
1080 Backyard Service has been made to, and approved by, CONTRACTOR in the manner required  
1081 by CITY. No additional monies shall be due to CONTRACTOR for the provision of non-  
1082 subscription Backyard Service.

1083 7.03 Subscription Backyard Service. CONTRACTOR shall provide Backyard Service  
1084 Collection of Solid Waste, Recyclables, and Compostable Material to a SFD Customer if  
1085 requested by the Customer for their convenience. CONTRACTOR shall be compensated for  
1086 such services at the rates set forth in Exhibit 1 for subscription Backyard Service.

1087 7.03.1 Collection Day. CONTRACTOR shall provide Backyard Collection  
1088 Service on the same Work Day that curbside Collection would otherwise be provided to the  
1089 SFD Customer.

1090 7.04 Frequency and Scheduling of Service. Except as set forth in Section 7.09, SFD  
1091 Collection Services shall be provided one (1) time per week on a scheduled route basis. SFD  
1092 Collection Services shall be scheduled so that a SFD Customer receives SFD Solid Waste  
1093 Collection Service, SFD Recyclables Collection Service, SFD Compostable Material Collection  
1094 Service, and SFD Waste Oil Service on the same Work Day.

1095 7.05 Non-Collection. Except as set forth in Sections 7.06, 7.07 and 7.08  
1096 CONTRACTOR shall not be required to Collect any Solid Waste, Recyclables, or Compostable  
1097 Material that is not placed in a Roll-out Cart. In the event of non-collection, CONTRACTOR  
1098 shall affix to the cart a Non-Collection Notice explaining why Collection was not made.  
1099 CONTRACTOR shall maintain a copy of such notices during the term of this Agreement.

1100 7.06 Solid Waste Overages. CONTRACTOR shall Collect Solid Waste overage to the  
1101 extent the overage is set out by the Customer using a Bag-it Bag.

1102           7.07 Recycling Overages. In the event the Recycling Cart is full, flattened corrugated  
1103 cardboard of a size not exceeding four feet by four feet (4' x 4') may be placed beside the  
1104 Recycling Cart for Collection.

1105           7.08 Household Battery Collection. CONTRACTOR shall Collect household batteries  
1106 that are contained in a Customer provided sealed heavy-duty plastic bag and placed on the top  
1107 of the Recycling Cart as part of SFD Recyclables Collection Service.

1108           7.09 Holiday Tree Collection. Annually, CONTRACTOR shall Collect holiday trees  
1109 from all SFD Customers. CONTRACTOR'S Collection of holiday trees shall commence January  
1110 1, and end on the last regularly scheduled Collection day of January for each specific route.  
1111 Holiday trees shall be Collected that have been placed within three (3) feet of the curb, swale,  
1112 paved surface of the public roadway, closest accessible roadway, or other such location agreed  
1113 to by CONTRACTOR and Customer, that will provide safe and efficient accessibility to  
1114 CONTRACTOR'S Collection crew and vehicle on the Customer's regular Collection day.  
1115 Holiday tree Collection services shall be provided at no additional cost to CITY or the Customer.

1116           7.09.1 Diversion. Except as set forth in Section 7.09.2 below, holiday trees  
1117 shall be used to produce mulch or compost product or diverted from landfill Disposal in an  
1118 alternative manner to count as diversion in accordance with AB 939 with the exception that  
1119 holiday trees may not be used for ADC without prior written approval from CITY.

1120           7.09.2 Contaminated Holiday Trees. Holiday trees that are flocked, contain  
1121 tinsel or other decorations, or are attached to a tree stand shall be Collected but may be  
1122 delivered to the Transfer Station for Disposal at the discretion of CONTRACTOR.

1123           7.10 SFD Bulky Goods Service. This service will be governed by the following terms  
1124 and conditions:

1125           7.10.1 Conditions of Service. CONTRACTOR shall provide SFD Bulky Goods  
1126 Service to all SFD Customers in the Service Area whose Bulky Goods have been placed  
1127 within three (3) feet of the curb, swale, paved surface of the public roadway, closest  
1128 accessible roadway, or other such location agreed to by the CONTRACTOR and Customer,  
1129 that will provide safe and efficient accessibility to the CONTRACTOR'S Collection crew and  
1130 vehicle. The Customer shall be limited to those materials and amounts agreed to between  
1131 CITY and CONTRACTOR. Accordingly CONTRACTOR shall be compensated for the cost of  
1132 Collecting Bulky Goods in excess of this limitation in accordance with the "Additional Bulky  
1133 Goods Collection" service rate as set by CITY and as may be adjusted under the terms of  
1134 this Agreement. CONTRACTOR'S website and other public information materials shall  
1135 provide lists of acceptable materials and instructions for setting out the Bulky Goods.

1136           7.10.2 On-Call Bulky Goods Service. Beginning February 1, 2011,  
1137 CONTRACTOR, when requested by Customer shall provide services to each SFD Customer  
1138 for one (1) on-call Bulky Goods cleanup each full calendar year during the term of this  
1139 Agreement by arrangement between CONTRACTOR and the Customer. Collection of Bulky  
1140 Goods shall be scheduled within one (1) week of the request for service, unless the  
1141 Customer requests a later date.

1142           7.10.3 Annual Neighborhood Bulky Goods Event. Beginning April, 2011, and  
1143 annually thereafter in April of each year, CONTRACTOR shall provide SFD Customers with

1144 one (1) neighborhood Bulky Goods cleanup event. CONTRACTOR shall schedule the event  
1145 on a "neighborhood" basis, subject to approval by the Contract Administrator, in such a  
1146 manner that all SFD Customers in each "neighborhood" receive the service on the same day.  
1147 No later than thirty (30) days prior to the Collection event, CONTRACTOR shall provide each  
1148 SFD Customer with information that provides guidelines for the event, lists of acceptable  
1149 materials and instructions for setting out the Bulky Goods.

1150 7.10.4 Non-Collection. In the event of non-collection CONTRACTOR shall  
1151 affix to the item a Non-Collection Notice explaining why Collection was not made and how the  
1152 item may be properly Disposed of and shall maintain a copy of such notice during the term of  
1153 this Agreement. CONTRACTOR shall not be required to Collect the following items as part  
1154 of SFD Bulky Goods Service:

- 1155 7.10.4.1 Any single item that cannot be handled by two (2) people
- 1156 or weighs in excess of seventy-five (75) pounds (except for Recyclable items or furniture);
- 1157 7.10.4.2 Hazardous Waste, including anti-freeze;
- 1158 7.10.4.3 concrete,
- 1159 7.10.4.4 dirt; or
- 1160 7.10.4.5 more than four (4) automobile tires from any SFD
- 1161 Customer per Collection.

1162 7.11 SFD Waste Oil Service. This service will be governed by the following terms and  
1163 conditions:

1164 7.11.1 Conditions of Service. Upon request CONTRACTOR shall provide  
1165 SFD Waste Oil Service to all SFD Customers in the Service Area utilizing Waste Oil  
1166 Containers for the accumulation and set-out of their Waste Oil, and Waste Oil Filter  
1167 Containers for the accumulation and set out of their Waste Oil Filters where the Waste Oil  
1168 Containers and Waste Oil Filter Containers have been placed within three (3) feet of the curb,  
1169 swale, paved surface of the public roadway, closest accessible roadway, or other such  
1170 location agreed to by CONTRACTOR, CITY and Customer, that will provide safe and efficient  
1171 accessibility to CONTRACTOR'S Collection crew and vehicle.

1172 7.11.2 Non-Collection. CONTRACTOR shall not be required to Collect  
1173 material placed in Waste Oil or Waste Oil Filter Containers unless the material is Waste Oil or  
1174 Waste Oil Filters, as appropriate, and is free of contamination other than contamination  
1175 normally expected to be present as a result of the use, storage or spillage of the oil or filter.  
1176 In the event of non-collection, CONTRACTOR shall affix to the Waste Oil or Waste Oil Filter  
1177 Container a Non-Collection Notice explaining why Collection was not made and maintain a  
1178 copy of such notice during the term of this Agreement. Prior to the end of each Work Day,  
1179 CONTRACTOR shall notify the Contract Administrator, either by Fax or email, of any non-  
1180 collection occurrences. If non-collection is because the Waste Oil or Filter was placed in an  
1181 improper container, CONTRACTOR shall also leave Waste Oil Containers in a number  
1182 sufficient to contain the Waste Oil set out, but not exceeding sixteen (16) quarts along with  
1183 the Non-Collection Notice.

1184                   7.11.3 Spillage. CONTRACTOR shall carry oil absorbent material on all  
1185 Waste Oil Collection vehicles and shall cleanup any Waste Oil that spills during Collection,  
1186 which has leaked from the Waste Oil or Waste Oil Filter Container, or which spills or leaks  
1187 during the time the Waste Oil or Waste Oil Filter is in the Collection vehicle.

1188                   7.11.4 Waste Oil Containers. Within seven (7) Work Days of receipt of a  
1189 verbal request of CITY or a Customer, CONTRACTOR shall, at CONTRACTOR'S sole cost  
1190 and expense, provide the SFD Customer at their residence with Waste Oil Containers in the  
1191 number requested by CITY or the Customer but not exceeding a number sufficient to hold  
1192 sixteen (16) quarts of Waste Oil.

1193                   7.11.4.1           At the time CONTRACTOR Collects Waste Oil from a SFD  
1194 Customer, CONTRACTOR shall, at CONTRACTOR'S sole cost and expense, leave at the  
1195 premises one (1) Waste Oil Container for each Waste Oil Container Collected. CONTRACTOR  
1196 shall keep the outside of all Waste Oil Containers clean and may re-use the Waste Oil  
1197 Containers until the condition of the Waste Oil Container makes it inappropriate for re-use.

## 1198                   **ARTICLE 8. MFD Collection Services**

1199                   8.01 Emery Bay Village. MFD Collection Services for Emery Bay Village Customers  
1200 will be governed by the following terms and conditions:

1201                   8.01.1 Basic Services. CONTRACTOR shall provide Backyard Solid Waste  
1202 Collection Service, using customer provided thirty (30) or forty-five (45) gallon cans,  
1203 centralized MFD Recyclables Collection Service, centralized Compostable Materials  
1204 Collection Service, and MFD Bulky Goods Service to all MFD Customers in the Emery Bay  
1205 Village Association. CONTRACTOR agrees that the level of service and Collection  
1206 requirements will be considered "curbside" service for the purpose of billing.

1207                   8.01.2 Frequency of Service. Each service shall be provided at least once  
1208 every week on a scheduled route basis. However, in those instances where the scheduled  
1209 Collection day falls on a holiday as set forth in Section 6.07 herein, the Collection day may be  
1210 adjusted in a manner agreed to between the Customer and CONTRACTOR as long as  
1211 service is received a minimum of one (1) time per week. The size of the can, or Bin and the  
1212 frequency (above the minimum) of Collection shall be determined between the Customer and  
1213 CONTRACTOR. However, size and frequency shall be sufficient to provide that no Solid  
1214 Waste, Recyclables, or Compostable Materials need be placed outside the can, or Bin on a  
1215 regular basis.

1216                   8.01.3 Accessibility. CONTRACTOR shall Collect all cans or Bins that are  
1217 readily accessible to the CONTRACTOR'S crew and vehicles and not blocked. However,  
1218 CONTRACTOR shall provide "push services" as necessary during the provision of MFD  
1219 Collection Services. Push services shall include, but not be limited to, dismounting from the  
1220 Collection vehicle, moving the cans or Bins from their storage location for Collection and  
1221 returning the cans or Bins to the place of pick-up.

1222                   8.01.3.1           The CONTRACTOR may notify the Contract Administrator  
1223 daily, either by Fax or email, of all situations that prevent or hinder Collection from any MFD  
1224 Customer.

1225 8.01.4 Non-Collection. CONTRACTOR shall not be required to Collect any  
1226 Solid Waste, Recyclables, or Compostable Materials that are not placed in a can or Bin  
1227 unless such Solid Waste, Recyclables, or Compostable Materials is outside the can or Bin as  
1228 a result of overflow. In the event of non-collection, CONTRACTOR shall affix to the can or  
1229 Bin a Non-Collection Notice explaining why Collection was not made. CONTRACTOR shall  
1230 maintain copies of the Non-Collection Notice during the term of this Agreement.

1231 8.01.5 Overflow. The first time that a MFD Customer does not discard Solid  
1232 Waste, Recyclables or Compostable Materials inside a can or Bin, CONTRACTOR will  
1233 Collect that material without surcharge, but it will leave a Non-Collection Notice indicating  
1234 that: 1) the Customer must place all materials in a can or Bin; 2) describing how the  
1235 Customer can arrange for additional capacity; and 3) warning that if the Customer discards  
1236 material outside cans or Bins again, CONTRACTOR will Collect the material and charge the  
1237 un-containerized surcharge listed on the rate schedule set forth in Exhibit 1.

1238 8.01.5.1 The second time, and each time thereafter, that a MFD  
1239 Customer does not discard Solid Waste, Recyclables or Compostable Material inside a can or  
1240 Bin CONTRACTOR will Collect the can or Bin and the un-containerized material and will charge  
1241 the un-containerized surcharge listed on the rate schedule set forth in Exhibit 1.

1242 8.01.6 Household Battery Collection. CONTRACTOR shall provide Customer  
1243 with BatteryTracker™ mail back boxes for the Collection of household batteries.

1244 8.01.7 Holiday Tree Collection. Annually, CONTRACTOR shall Collect  
1245 holiday trees from all Emery Bay Village MFD Customers. CONTRACTOR shall offer to  
1246 Collect holiday trees curbside, from Roll-Off Boxes, or by such other Collection venue that is  
1247 mutually agreed to between CITY, Customer and CONTRACTOR. CONTRACTOR'S  
1248 Collection of holiday trees shall commence January 1, and end on the last regularly  
1249 scheduled Collection day of January for each specific route. Holiday trees shall be Collected  
1250 on the Customer's regular Collection day. Holiday tree Collection services shall be provided  
1251 at no additional cost to CITY or the Customer.

1252 8.01.7.1 Diversion. Except as set forth in Section 8.01.7.2 below,  
1253 Holiday trees shall be used to produce mulch or compost product or diverted from landfill  
1254 disposal in an alternative manner to count as diversion in accordance with AB 939 with the  
1255 exception that holiday trees may not be used for ADC without prior written approval from CITY.

1256 8.01.7.2 Contaminated Holiday Trees. Holiday trees that are  
1257 flocked, contain tinsel or other decorations, or are attached to a tree stand shall be Collected but  
1258 may be delivered to the Transfer Station for Disposal at the discretion of CONTRACTOR.

1259 8.01.8 MFD Bulky Goods Service. CONTRACTOR shall provide MFD Bulky  
1260 Goods Service to all Dwelling Units in the Emery Bay Village complex whose Bulky Goods  
1261 have been placed in Bins, Roll-Off Boxes or within three (3) feet of the curb, swale, paved  
1262 surface of the public roadway, closest accessible roadway, or other such location agreed to  
1263 by the CONTRACTOR, HOA manager and Customer, that will provide safe and efficient  
1264 accessibility to the CONTRACTOR'S Collection crew and vehicle. The Customer shall be  
1265 limited to those materials and amounts agreed to between CITY and CONTRACTOR.  
1266 Accordingly CONTRACTOR shall be compensated for the cost of Collecting Bulky Goods in  
1267 excess of this limitation in accordance with the "Additional Bulky Goods Collection" service

1268 rate as set by CITY and as may be adjusted under the terms of this Agreement.  
1269 CONTRACTOR'S website and other public information materials shall provide lists of  
1270 acceptable materials and instructions for setting out the Bulky Goods.

1271 8.01.8.1 MFD On-Call Bulky Goods Service. Beginning January 1,  
1272 2011, and annually thereafter, CONTRACTOR, when requested by the Customer or the HOA  
1273 manager, shall provide up to the equivalent of one (1) MFD On-Call Bulky Goods Service  
1274 cleanup to each Dwelling Unit in the Emery Bay Village complex in a manner agreed to between  
1275 the CONTRACTOR, the HOA manager and the Customer. Each Collection shall be scheduled  
1276 within one (1) week of the request for service unless a later date is requested.

1277 8.01.8.2 Annual Neighborhood Bulky Goods Event. Beginning  
1278 April, 2011, and annually thereafter in April of each year, CONTRACTOR shall provide MFD  
1279 Customers in the Emery Bay Village complex with one (1) neighborhood Bulky Goods cleanup  
1280 event. No later than thirty (30) days prior to the Collection event, CONTRACTOR shall provide  
1281 each Dwelling Unit with information that provides guidelines for the event, lists of acceptable  
1282 materials and instructions for setting out the Bulky Goods.

1283 8.01.9 Non-Collection. In the event of non-collection CONTRACTOR shall  
1284 affix to the item a Non-Collection Notice explaining why Collection was not made and how the  
1285 item may be properly disposed of and shall maintain a copy of such notice during the term of  
1286 this Agreement. CONTRACTOR, shall not be required to Collect the following items as part  
1287 of MFD Bulky Goods Collection service:

1288 8.01.9.1 Any single item that cannot be handled by two (2) people  
1289 or weighs in excess of seventy-five (75) pounds (except for Recyclable items or furniture);

1290 8.01.9.2 Hazardous Waste, including anti-freeze;

1291 8.01.9.3 concrete,

1292 8.01.9.4 dirt; or

1293 8.01.9.5 more than a total of four (4) automobile tires from each  
1294 Dwelling Unit per Collection.

1295 8.02 MFD Customers in SFD Neighborhoods. MFD Collection Services for MFD  
1296 Customers in SFD Neighborhoods as set forth in Exhibit 8 will be governed by the following  
1297 terms and conditions:

1298 8.02.1 CONTRACTOR shall provide MFD Solid Waste Collection Service,  
1299 MFD Recyclables Collection Service, including the MFD Compostable Materials Collection  
1300 Service, and MFD Bulky Goods Service to all MFD Customers in the SFD neighborhood  
1301 areas whose Solid Waste, Recyclables, and Compostable Materials are properly  
1302 Containerized in Carts, Bins or Roll-Off Boxes as appropriate where the Carts, Bins, or Roll-  
1303 Off Boxes are accessible as set forth in Section 8.02.3.

1304 8.02.2 Frequency of Service. Each service shall be provided at least once  
1305 every week on a scheduled route basis. However, in those instances where the scheduled  
1306 Collection day falls on a holiday as set forth in Section 6.07 herein, the Collection day may be  
1307 adjusted in a manner agreed to between the Customer and CONTRACTOR as long as  
1308 service is received a minimum of one (1) time per week. The size of the Cart, Bin or Roll-Off

1309 Box and the frequency (above the minimum) of Collection shall be determined between the  
1310 Customer and CONTRACTOR. However, size and frequency shall be sufficient to provide  
1311 that no Solid Waste, Recyclables, or Compostable Materials need be placed outside the Cart,  
1312 Bin or Roll-Off Box on a regular basis.

1313 8.02.3 Accessibility. CONTRACTOR shall Collect all Carts, Bins or Roll-Off  
1314 Boxes that are readily accessible to the CONTRACTOR'S crew and vehicles and not  
1315 blocked. However, CONTRACTOR shall provide "push services" as necessary during the  
1316 provision of MFD Collection Services. Push services shall include, but not be limited to,  
1317 dismounting from the Collection vehicle, moving the Carts or Bins from their storage location  
1318 for Collection and returning the Carts or Bins to the place of pick-up.

1319 8.02.3.1 The CONTRACTOR may notify the Contract Administrator  
1320 daily, either by Fax or email, of all situations that prevent or hinder Collection from any MFD  
1321 Customer.

1322 8.02.4 Recycling Overages. In the event the Recycling Cart is full, flattened  
1323 corrugated cardboard of a size not exceeding four feet by four feet (4' x 4') may be placed  
1324 beside the Recycling Cart for Collection.

1325 8.02.5 Non-Collection. CONTRACTOR shall not be required to Collect any  
1326 Solid Waste, Recyclables, or Compostable Materials that are not placed in a Cart, Bin or  
1327 Roll-Off Box unless such Solid Waste, Recyclables, or Compostable Materials is outside the  
1328 Cart, Bin or Roll-Off Box as a result of overflow. In the event of non-collection,  
1329 CONTRACTOR shall affix to the Cart, Bin or Roll-Off Box a Non-Collection Notice explaining  
1330 why Collection was not made. CONTRACTOR shall maintain copies of the Non-Collection  
1331 Notice during the term of this Agreement.

1332 8.02.6 Overflow. The first time that a MFD Customer does not discard Solid  
1333 Waste, Recyclables or Compostable Materials inside a Cart, Bin or Roll-Off Box,  
1334 CONTRACTOR will Collect that material without surcharge, but it will leave a Non-Collection  
1335 Notice indicating that: 1) the Customer must place all materials in a Cart, Bin or Roll-Off Box;  
1336 2) describing how the Customer can arrange for additional capacity; and 3) warning that if the  
1337 Customer discards material outside the Cart, Bin or Roll-Off Box again, CONTRACTOR will  
1338 Collect the material and charge the un-containerized surcharge listed on the rate schedule  
1339 set forth in Exhibit 1.

1340 8.02.6.1 The second time, and each time thereafter, that a MFD  
1341 Customer does not discard Solid Waste, Recyclables or Compostable Material inside a Cart,  
1342 Bin or Roll-Off Box, CONTRACTOR will Collect the Cart, Bin or Roll-Off Box and the un-  
1343 containerized material and will charge the un-containerized surcharge listed on the rate  
1344 schedule set forth in Exhibit 1.

1345 8.02.7 Household Battery Collection. CONTRACTOR shall Collect household  
1346 batteries that are contained in a Customer supplied sealed heavy-duty plastic bag and placed  
1347 on the top of the Recycling Cart, for those Customers using Carts for the accumulation and  
1348 Collection of their Recyclables. CONTRACTOR shall provide Customers using Bins or Roll-  
1349 Off boxes for the accumulation and Collection of their Recyclables with BatteryTracker™ mail  
1350 back boxes as part of MFD Recyclables Collection Service.

1351                   8.02.8 Holiday Tree Collection. Annually, CONTRACTOR shall Collect  
1352 holiday trees from all MFD Customers. CONTRACTOR shall offer to Collect holiday trees  
1353 curbside, from Roll-Off Boxes, or by such other Collection venue that is mutually agreed to  
1354 between CITY, Customer and CONTRACTOR. CONTRACTOR'S Collection of holiday trees  
1355 shall commence January 1, and end on the last regularly scheduled Collection day of  
1356 January for each specific route. Holiday trees shall be Collected on the Customer's regular  
1357 Collection day. Holiday tree Collection services shall be provided at no additional cost to  
1358 CITY or the Customer.

1359                   8.02.8.1       Diversion. Except as set forth in Section 8.02.8.2 below,  
1360 Holiday trees shall be used to produce mulch or compost product or diverted from landfill  
1361 disposal in an alternative manner to count as diversion in accordance with AB 939 with the  
1362 exception that holiday trees may not be used for ADC without prior written approval from CITY.

1363                   8.02.8.2       Contaminated Holiday Trees. Holiday trees that are  
1364 flocked, contain tinsel or other decorations, or are attached to a tree stand shall be Collected but  
1365 may be delivered to the Transfer Station for Disposal at the discretion of CONTRACTOR.

1366                   8.02.9 MFD Bulky Goods Service. CONTRACTOR shall provide MFD Bulky  
1367 Goods Service to all MFD Complex in SFD neighborhoods whose Bulky Goods have been  
1368 placed in Bins, Roll-Off Boxes or within three (3) feet of the curb, swale, paved surface of the  
1369 public roadway, closest accessible roadway, or other such location agreed to by the  
1370 CONTRACTOR and Customer, that will provide safe and efficient accessibility to the  
1371 CONTRACTOR'S Collection crew and vehicle. CONTRACTOR'S website and other public  
1372 information materials shall provide lists of acceptable materials and instructions for setting  
1373 out the Bulky Goods.

1374                   8.02.9.1       MFD On-Call Bulky Goods Service. Beginning January 1,  
1375 2011 and annually during the term of this Agreement, CONTRACTOR, when requested by the  
1376 MFD complex management, shall provide one (1) MFD On-Call Bulky Goods Service cleanup to  
1377 each MFD complex in SFD neighborhoods in a manner agreed to between the CONTRACTOR  
1378 and the MFD complex management. Each Collection shall be limited to thirty (30) cubic yards  
1379 and one (1) flat-bed truck load. Collection of Bulky Goods shall be scheduled within one (1)  
1380 week of the request for service unless a later date is requested. Accordingly CONTRACTOR  
1381 shall be compensated for the cost of Collecting Bulky Goods in excess of this limitation in  
1382 accordance with the "Additional Bulky Goods Collection" service rate as set by CITY and as  
1383 may be adjusted under the terms of this Agreement. CONTRACTOR'S website shall provide  
1384 lists of acceptable materials and instructions for setting out the Bulky Goods.

1385                   8.02.9.2       Annual Neighborhood Bulky Goods Event. Beginning  
1386 January 1, 2011, and annually thereafter during the tem of this Agreement at a time mutually  
1387 agreed to between CITY and CONTRACTOR, CONTRACTOR shall provide MFD Customers in  
1388 SFD neighborhoods with one (1) neighborhood Bulky Goods cleanup event. CONTRACTOR  
1389 shall schedule the event on a "neighborhood" basis, subject to approval by the Contract  
1390 Administrator, in such a manner that all MFD complexes in each "neighborhood" receive the  
1391 service on the same day. No later than thirty (30) days prior to the Collection event,  
1392 CONTRACTOR shall provide each MFD complex with information that provides guidelines for  
1393 the event, lists of acceptable materials and instructions for setting out the Bulky Goods.

1394 8.02.10 Non-Collection. In the event of non-collection CONTRACTOR  
1395 shall affix to the item a Non-Collection Notice explaining why Collection was not made and  
1396 how the item may be properly disposed of and shall maintain a copy of such notice during the  
1397 term of this Agreement. CONTRACTOR, shall not be required to Collect the following items  
1398 as part of MFD Bulky Goods Collection service:

1399 8.02.10.1 Any single item that cannot be handled by two (2) people  
1400 or weighs in excess of seventy-five (75) pounds (except for Recyclable items or furniture);

1401 8.02.10.2 Hazardous Waste, including anti-freeze;

1402 8.02.10.3 concrete,

1403 8.02.10.4 dirt; or

1404 8.02.10.5 more than a total of four (4) automobile tires from each  
1405 MFD Dwelling Unit per Collection.

1406 8.02.11 MFD Waste Oil Service. The CONTRACTOR shall provide MFD  
1407 Waste Oil Service to all participating MFD complexes in the SFD neighborhood areas that  
1408 receive MFD Recycling Collection Service using Carts and that utilize Waste Oil Containers  
1409 for the accumulation and set out of their Waste Oil, and Waste Oil Filter Containers for the  
1410 accumulation and set out of their Waste Oil Filters. Waste Oil Containers and Waste Oil  
1411 Filter Containers shall either be placed next to the Cart or at a location that has been agreed  
1412 to by the CONTRACTOR, and management of the MFD complex that will provide safe and  
1413 efficient accessibility to the CONTRACTOR'S Collection crew and vehicle.

1414 8.02.12 Frequency of Service. This service shall be provided once every  
1415 week on a scheduled route basis on the same Work Day as MFD Solid Waste, Recyclables,  
1416 or Compostable Materials Collection Service. However, in those instances where the  
1417 scheduled Collection day falls on a holiday as set forth in Section 6.07 herein, the Collection  
1418 day may be adjusted in a manner agreed to between the MFD complex management and  
1419 CONTRACTOR as long as service is received a minimum of one (1) time per week.

1420 8.02.13 Non-Collection. CONTRACTOR shall not be required to Collect  
1421 material placed in Waste Oil or Waste Oil Filter Containers unless the material is Waste Oil or  
1422 Waste Oil Filters, as appropriate, and is free of contamination other than contamination  
1423 normally expected to be present as a result of the use, storage or spillage of the oil or filter.  
1424 In the event of non-collection, CONTRACTOR shall affix to the Waste Oil or Waste Oil Filter  
1425 Container a Non-Collection Notice explaining why Collection was not made. Prior to the end  
1426 of the Work Day, CONTRACTOR shall notify the Contract Administrator, either by Fax or  
1427 email, of any non-collection occurrences. If non-collection is because the Waste Oil or Filter  
1428 was placed in an improper Container, CONTRACTOR shall also leave Waste Oil Containers  
1429 in a number sufficient to contain the Waste Oil set out, but not exceeding sixteen (16) quarts  
1430 per Dwelling Unit, along with the Non-Collection Notice.

1431 8.02.14 Spillage. CONTRACTOR shall carry oil absorbent material on all  
1432 Waste Oil Collection vehicles and shall cleanup any Waste Oil that spills during Collection,  
1433 which has leaked from the Waste Oil or Waste Oil Filter Container, or which spills or leaks  
1434 during the time the Waste Oil or Waste Oil Filter is in the Collection vehicle.

1435                    8.02.15    Waste Oil Containers. Within seven (7) Work Days of receipt of  
1436                    request for Waste Oil Collection Services, CONTRACTOR shall, at CONTRACTOR'S sole  
1437                    cost and expense, provide management of the MFD complex with a sufficient number of  
1438                    Waste Oil Containers.

1439                    8.02.15.1        At the time CONTRACTOR Collects Waste Oil from a MFD  
1440                    complex, CONTRACTOR shall, at CONTRACTOR'S sole cost and expense, leave at the  
1441                    complex one (1) Waste Oil Container for each Waste Oil Container Collected. CONTRACTOR  
1442                    shall keep the outside of all Waste Oil Containers clean and may re-use the Containers until the  
1443                    condition of the Container makes it inappropriate for re-use.

1444                    8.03    Other MFD Customers. Except as set forth in Sections 8.01 and 8.02 above  
1445                    MFD Collection Services for MFD Customers in the Service Area will be governed by the  
1446                    following terms and conditions:

1447                    8.03.1    Conditions of Service. CONTRACTOR shall provide MFD Solid Waste  
1448                    Collection Service, MFD Recyclables Collection Service, MFD Compostable Materials  
1449                    Collection Service, and MFD Bulky Goods Service to all MFD Customers in the Service Area  
1450                    whose Solid Waste, Recyclables, and Compostable Materials are properly Containerized in  
1451                    Carts, Bins or Roll-Off Boxes as appropriate where the Carts, Bins, or Roll-Off Boxes are  
1452                    accessible as set forth in Section 8.03.3.

1453                    8.03.2    Frequency of Service. Each service shall be provided at least once  
1454                    every week on a scheduled route basis. However, in those instances where the scheduled  
1455                    Collection day falls on a holiday as set forth in Section 6.07 herein, the Collection day may be  
1456                    adjusted in a manner agreed to between the Customer and CONTRACTOR as long as  
1457                    service is received a minimum of one (1) time per week. The size of the Cart, Bin or Roll-Off  
1458                    Box and the frequency (above the minimum) of Collection shall be determined between the  
1459                    Customer and CONTRACTOR. However, size and frequency shall be sufficient to provide  
1460                    that no Solid Waste, Recyclables, or Compostable Materials need be placed outside the Cart,  
1461                    Bin or Roll-Off Box on a regular basis.

1462                    8.03.3    Accessibility. CONTRACTOR shall Collect all Carts, Bins or Roll-Off  
1463                    Boxes that are readily accessible to the CONTRACTOR'S crew and vehicles and not  
1464                    blocked. However, CONTRACTOR shall provide "push services" as necessary during the  
1465                    provision of MFD Collection Services. Push services shall include, but not be limited to,  
1466                    dismounting from the Collection vehicle, moving the Carts or Bins from their storage location  
1467                    for Collection and returning the Carts or Bins to the place of pick-up.

1468                    8.03.3.1        The CONTRACTOR may notify the Contract Administrator  
1469                    daily, either by Fax or email, of all situations that prevent or hinder Collection from any MFD  
1470                    Customer.

1471                    8.03.4    Recycling Overages. In the event the Recycling Cart is full, flattened  
1472                    corrugated cardboard of a size not exceeding four feet by four feet (4' x 4') may be placed  
1473                    beside the Recycling Cart for Collection.

1474                    8.03.5    Non-Collection. CONTRACTOR shall not be required to Collect any  
1475                    Solid Waste, Recyclables, or Compostable Materials that are not placed in a Bin or Cart  
1476                    unless such Solid Waste, Recyclables, or Compostable Materials is outside the Bin or Cart

1477 as a result of overflow. In the event of non-collection, CONTRACTOR shall affix to the Bin or  
1478 Cart a Non-Collection Notice explaining why Collection was not made. CONTRACTOR shall  
1479 maintain copies of the Non-Collection Notice during the term of this Agreement.

1480 8.03.6 Overflow. The first time that a MFD Customer does not discard Solid  
1481 Waste, Recyclables or Compostable Materials inside a Bin or Cart, CONTRACTOR will  
1482 Collect that material without surcharge, but it will leave a Non-Collection Notice indicating  
1483 that: 1) the Customer must place all materials in a Bin or Cart; 2) describing how the  
1484 Customer can arrange for additional capacity; and 3) warning that if the Customer discards  
1485 material outside Bins or Carts again, CONTRACTOR will Collect the material and charge the  
1486 un-containerized surcharge listed on the rate schedule set forth in Exhibit 1.

1487 8.03.6.1 The second time, and each time thereafter, that a MFD  
1488 Customer does not discard Solid Waste, Recyclables or Compostable Material inside a Bin or  
1489 Cart, CONTRACTOR will Collect the Bin or Cart and the un-containerized material and will  
1490 charge the un-containerized surcharge listed on the rate schedule set forth in Exhibit 1.

1491 8.03.7 Household Battery Collection. CONTRACTOR shall Collect household  
1492 batteries that are contained in a Customer supplied sealed heavy-duty plastic bag and placed  
1493 on the top of the Recycling Cart, for those Customers using Carts for the accumulation and  
1494 Collection of their Recyclables. CONTRACTOR shall provide Customers using Bins or Roll-  
1495 Off boxes for the accumulation and Collection of their Recyclables with BatteryTracker™ mail  
1496 back boxes as part of MFD Recyclables Collection Service.

1497 8.03.8 . Holiday Tree Collection. Annually, CONTRACTOR shall Collect  
1498 holiday trees from all MFD Customers. CONTRACTOR shall offer to Collect holiday trees  
1499 curbside or, for MFD complexes with more than one hundred (100) units, from Roll-Off  
1500 Boxes, or for all MFD Customers by such other Collection venue that is mutually agreed to  
1501 between CITY, Customer and CONTRACTOR. CONTRACTOR'S Collection of holiday trees  
1502 shall commence January 1, and end on the last regularly scheduled Collection day of  
1503 January for each specific route. Holiday trees shall be Collected on the Customer's regular  
1504 Collection day. Holiday tree Collection services shall be provided at no additional cost to  
1505 CITY or the Customer.

1506 8.03.8.1 Diversion. Except as set forth in Section 8.03.8.2 below,  
1507 Holiday trees shall be used to produce mulch or compost product or diverted from landfill  
1508 disposal in an alternative manner to count as diversion in accordance with AB 939 with the  
1509 exception that holiday trees may not be used for ADC without prior written approval from CITY.

1510 8.03.8.2 Contaminated Holiday Trees. Holiday trees that are  
1511 flocked, contain tinsel or other decorations, or are attached to a tree stand shall be Collected but  
1512 may be delivered to the Transfer Station for Disposal at the discretion of CONTRACTOR.

1513 8.03.9 MFD Bulky Goods Service. The CONTRACTOR shall provide MFD  
1514 Bulky Goods Service to all MFD complexes in the Service Area in a manner agreed to  
1515 between the CONTRACTOR and the MFD complex management on an on-call basis For  
1516 large complexes (over 500 Dwelling Units), Collection shall be limited to four (4) Collection  
1517 events per year. For all other complexes (less than 500 Dwelling Units), Collection shall be  
1518 limited to two (2) Collection events per year. Each Collection event shall be limited to thirty  
1519 (30) cubic yards and one (1) flat-bed truck load. Collection of Bulky Goods shall be

1520 scheduled within one (1) week of the request for service unless a later date is requested.  
1521 Accordingly CONTRACTOR shall be compensated for the cost of Collecting Bulky Goods in  
1522 excess of this limitation in accordance with the "Additional Bulky Goods Collection" service  
1523 rate as set by CITY and as may be adjusted under the terms of this Agreement.  
1524 CONTRACTOR'S website shall provide lists of acceptable materials and instructions for  
1525 setting out the Bulky Goods.

1526 8.03.10 Non-Collection. In the event of non-collection CONTRACTOR  
1527 shall affix to the item a Non-Collection Notice explaining why Collection was not made and  
1528 how the item may be properly disposed of and shall maintain a copy of such notice during the  
1529 term of this Agreement. CONTRACTOR, shall not be required to Collect the following items  
1530 as part of MFD Bulky Goods Collection service:

1531 8.03.10.1 Any single item that cannot be handled by two (2) people  
1532 or weighs in excess of seventy-five (75) pounds (except for Recyclable items or furniture);

1533 8.03.10.2 Hazardous Waste, including anti-freeze;

1534 8.03.10.3 concrete,

1535 8.03.10.4 dirt; or

1536 8.03.10.5 more than a total of four (4) automobile tires from each  
1537 MFD Dwelling Unit per Collection.

1538 8.04 Recycling Assessment. During calendar year 2011, CONTRACTOR shall visit  
1539 each MFD complex which does not receive MFD Recyclables Collection Service or which  
1540 contains twenty (20) or more Dwelling Units to perform a recycling site assessment. Beginning  
1541 January 1, 2012 CONTRACTOR shall visit each MFD complex which does not receive MFD  
1542 Recyclables Collection Service or which contains twenty (20) or more Dwelling Units at least  
1543 once every two (2) years. The assessment schedule shall be coordinated with the Contract  
1544 Administrator. As part of the assessment, CONTRACTOR shall meet with the property  
1545 manager to review level of service and to discuss recycling opportunities. The results of each  
1546 visit shall be documented and reported in the annual report to CITY.

## 1547 **ARTICLE 9. Commercial Collection Services**

1548 9.01 Commercial Collection Services. These services will be governed by the  
1549 following terms and conditions:

1550 9.01.1 Commercial Solid Waste Collection Service. CONTRACTOR shall  
1551 provide Commercial Solid Waste Collection Service to all Commercial Customers in the  
1552 Service Area whose Solid Waste, is properly containerized in Bins, Carts or Compactors,  
1553 Roll-Off Boxes and where the Bins, Carts, Compactors or Roll-Off Boxes are accessible as  
1554 set forth in Section 9.03.

1555 9.01.2 Commercial Compostable Materials Collection Service.  
1556 CONTRACTOR shall provide Commercial Compostable Materials Collection Service to all  
1557 Commercial Customers in the Service Area subscribing to such service whose Compostable  
1558 Materials are properly containerized in Bins or Carts as appropriate and where the Bins and  
1559 Carts are accessible as set forth in Section 9.03.

1560 9.01.2.1 Compostable Materials Collection Days. CONTRACTOR  
1561 shall allow Commercial Compostable Materials Collection Service Customers to schedule  
1562 Collection on the Work Day or Work Days that will allow the Customer to maximize diversion.

1563 9.01.3 Commercial Recyclables Collection Service. CONTRACTOR shall  
1564 provide Commercial Recyclables Collection Service to all Commercial Customers in the  
1565 Service Area subscribing to such service who's Recyclables are properly containerized in  
1566 Bins or Carts as appropriate and where the Bins and Carts are accessible as set forth in  
1567 Section 9.03.

1568 9.01.3.1 Recyclable Collection Days. CONTRACTOR shall allow  
1569 Commercial Recyclables Collection Service Customers to schedule Collection on the Work Day  
1570 or Work Days that will allow the Customer to maximize diversion.

1571 9.01.4 Small Business Recyclable and Compostable Materials.  
1572 CONTRACTOR shall provide Small Business Customers with up to one (1) cubic yard of  
1573 capacity for Recyclables Collection and sixty-four (64) gallons of capacity for Compostable  
1574 Materials Collection, or some combination thereof as requested by the Customer at no  
1575 additional charge to the Customer. Such capacity shall be provided, using a one (1) cubic  
1576 yard Bin and a combination of Carts, or a combination of Carts at the sole discretion of the  
1577 Customer. Total Recyclables and Compostable Materials capacity shall not exceed two  
1578 hundred sixty-four (264) gallons unless additional capacity is subscribed to by the Small  
1579 Business Customer.

1580 9.01.5 Small Business Household Battery Collection. CONTRACTOR shall  
1581 Collect household batteries, from Small Business Customers who utilize a Cart for Recycling,  
1582 when the household batteries are contained in a Customer provided sealed heavy-duty  
1583 plastic bag and placed on the top of the Recycling Cart.

1584 9.02 Frequency of Service. Each service which utilizes a Cart or Bin shall be provided  
1585 at least once every week on a scheduled route basis. If a Collection service is provided which  
1586 utilizes a Roll-Off Box or Compactor and such service does not include the Collection of  
1587 putrescible material the service may be provided less than once per week on a scheduled route  
1588 basis or on an "on-call" basis in which case CONTRACTOR shall be required to provide service  
1589 no later than the end of the next Work Day. However, in those instances where the scheduled  
1590 Collection day falls on a holiday as set forth in Section 6.07 herein, the Collection day may be  
1591 adjusted in a manner agreed to between the Customer and CONTRACTOR. The size of the  
1592 Cart, Bin, Roll-Off Box or Compactor and the frequency (above the minimum) of Collection shall  
1593 be determined between the Customer and the CONTRACTOR. However, size and frequency  
1594 shall be sufficient to provide that no Solid Waste or Recyclables need be placed outside the  
1595 Container on a regular basis and that no Compostable Materials be placed outside the  
1596 Container at any time.

1597 9.03 Accessibility. CONTRACTOR shall Collect all Containers that are readily  
1598 accessible to CONTRACTOR'S crew and vehicles and not blocked. However, CONTRACTOR  
1599 shall provide "push services" as necessary during the provision of Commercial Collection  
1600 Services. Push services shall include, but not be limited to, dismounting from the Collection  
1601 vehicle, moving the Bins or Carts from their storage location for Collection and returning the  
1602 Bins or Carts to the proper placement in their storage location.

1603 9.03.1 CONTRACTOR may notify the Contract Administrator daily, by Fax  
1604 and email, of all situations that prevent or hinder Collection from any Commercial Customer,  
1605 unless otherwise directed by CITY.

1606 9.03.2 Recycling Overages. In the event the Recycling Cart of a Small  
1607 Business customer is full, flattened corrugated cardboard of a size not exceeding four feet by  
1608 four feet (4' x 4') may be placed beside the Recycling Cart for Collection.

1609 9.04 Non-Collection. Except as set forth below, CONTRACTOR shall not be required  
1610 to Collect any Solid Waste, Recyclables or Compostable Materials that are not placed in an  
1611 appropriate Container. In the event of non-collection, CONTRACTOR shall affix to the  
1612 Container a Non-Collection Notice explaining why Collection was not made. CONTRACTOR  
1613 shall maintain copies of the Non-Collection Notice during the term of this Agreement.

1614 9.05 Overflow. The first time that a Commercial Customer does not discard Solid  
1615 Waste, Recyclables or Compostable Materials inside a Bin or Cart, CONTRACTOR will Collect  
1616 that material without surcharge, but it will leave a Non-Collection Notice indicating that: 1) the  
1617 Customer must place all materials in a Bin or Cart; 2) describing how the Customer can arrange  
1618 for additional capacity; and 3) warning that if the Customer discards material outside Bins or  
1619 Carts again, CONTRACTOR will Collect the material and charge the un-containerized  
1620 surcharge listed on the rate schedule set forth in Exhibit 1.

1621 9.05.1 The second time, and each time thereafter, that a Commercial  
1622 Customer does not discard Solid Waste, Recyclables or Compostable Material inside a Bin or  
1623 Cart, CONTRACTOR will Collect the Bin or Cart and the un-containerized material and will  
1624 charge the un-containerized surcharge listed on the rate schedule set forth in Exhibit 1.

## 1625 **ARTICLE 10. CITY Collection Services**

1626 10.01 CITY Collection Services. These services will be governed by the following  
1627 terms and conditions:

1628 10.01.1 Conditions of Service. The CONTRACTOR shall provide CITY  
1629 Collection Services to all CITY Facilities. Except as set forth below, CITY Collection Services  
1630 shall be provided at no cost to CITY.

1631 10.01.2 Frequency of Service. CITY Solid Waste Collection Service, CITY  
1632 Recyclables Collection Service, and CITY Compostable Material Collection Service, shall be  
1633 provided at least once every week on a scheduled route basis. However, in those instances  
1634 where the scheduled Collection day falls on a holiday as set forth in Section 6.07 herein, the  
1635 Collection day may be adjusted in a manner agreed to between the Customer and the  
1636 CONTRACTOR as long as service is received a minimum of one (1) time per week. The size  
1637 of the Container and the frequency (above the minimum) of Collection shall be determined  
1638 between CITY and CONTRACTOR.

1639 10.01.3 Accessibility. CONTRACTOR shall Collect all Containers that are  
1640 readily accessible to the CONTRACTOR'S crew and vehicles and not blocked. However,  
1641 CONTRACTOR shall provide "push services" as necessary during the provision of CITY  
1642 Collection Services. Push services shall include, but not be limited to, dismounting from the

1643 Collection vehicle, moving the Bins or Carts from their storage location for Collection and  
1644 returning the Bins or Carts to the proper placement in their storage location.

1645 10.01.3.1 The CONTRACTOR may notify the Contract Administrator  
1646 daily, either by Fax or email, of all situations that prevent or hinder Collection from any CITY site  
1647 or returning Bins or Carts to their original position.

1648 10.02 CITY Clean-Up Services.

1649 10.02.1 Each full or partial calendar year during the term of this  
1650 Agreement CONTRACTOR shall, at no charge to CITY, provide for a maximum of five  
1651 hundred (500) cubic yards of CITY Clean-up Service capacity. CONTRACTOR shall be  
1652 entitled to charge CITY for amounts that exceed five hundred (500) cubic yards per full or  
1653 partial calendar year in accordance with the rates specified in Exhibit 1.

1654 10.02.2 CONTRACTOR shall, in response to the written request of the  
1655 Contract Administrator, deliver and Collect Roll-Off Boxes or Carts for use in CITY clean-up  
1656 programs. Each clean-up event shall consist of a single Collection day beginning at 6:00  
1657 a.m. and ending at 6:00 p.m. The Contract Administrator shall notify CONTRACTOR in  
1658 writing not less than five (5) calendar days prior to the date of the service. The notice to  
1659 CONTRACTOR shall specify the date of delivery and Collection of the Roll-Off Boxes, the  
1660 location(s) for delivery, and the number of and size of the Roll-Off Boxes or Carts to be  
1661 delivered. At such time as the Roll-Off Box is full, but not later than the end of the CITY  
1662 Clean-Up Service day, CONTRACTOR shall transport and deliver the Collected materials to  
1663 the Disposal Facility, the Transfer Station, or such other facility as is appropriate for the  
1664 disposition of the materials and approved by the Contract Administrator.

1665 10.02.3 With the prior written consent of the Contract Administrator,  
1666 CONTRACTOR may provide for the Collection of materials at a CITY Clean-up Service event  
1667 in a vehicle or Container other than a Roll-Off Box or Cart. However, in the event the  
1668 CONTRACTOR elects to utilize this alternative Collection process, CONTRACTOR is  
1669 responsible for obtaining documentation of the weight of the materials Collected, diverted and  
1670 disposed in a manner that is acceptable to CITY.

1671 10.03 CITY Container Service. CONTRACTOR shall provide Collection service to  
1672 those public Solid Waste or Recycling Containers on sidewalks, along main thoroughfares, and  
1673 in and around park and marina areas in the Service Area, as set forth in Exhibit 4 during the  
1674 term of this Agreement and as such Exhibit may be amended by CITY from time to time. Such  
1675 Collection services shall include monitoring Containers and emptying them as per the schedule  
1676 set forth in Exhibit 4 including Saturdays, Memorial Day, Independence Day or Labor Day.

1677 10.03.1 No later than January 1, 2011, CONTRACTOR shall provide two  
1678 (2) "Waste Management Solar Compactors Powered by Big Belly" litter cans for the marina.  
1679 The litter cans shall include the CITY logo and be marked in a manner as directed by CITY.

1680 10.04 CITY Special Event Collection Service. CONTRACTOR shall provide  
1681 Collection, Disposal and processing as appropriate, of materials for four (4) CITY events per  
1682 year. CONTRACTOR shall deliver and pickup wheeled Carts for Solid Waste, Recyclables and  
1683 Compostable Materials at the request of CITY in an amount not to exceed thirty (30) Carts of  
1684 each type, per year in the size requested by CITY at no cost of any kind to CITY. CITY shall

1685 make the request to CONTRACTOR in the form if an email for the Carts no later that then (10)  
1686 business days before each event.

1687 10.05 HHW/ E-Waste/ U-Waste/ or Other Material Collection Events. CONTRACTOR  
1688 may provide HHW, E-Waste, U-Waste or other material collection events as part of this  
1689 Agreement. Prior to the event taking place the details of the event, such as date, location,  
1690 materials to be collected and compensation shall be mutually agreed to between  
1691 CONTRACTOR and City

1692 10.06 Abandoned Waste. CONTRACTOR shall direct its Collection vehicle drivers to  
1693 note (i) the addresses of any premises at which the driver observes that Solid Waste,  
1694 Recyclables, and/or Compostable Materials are accumulating; and (ii) the address, or other  
1695 location description, at which Solid Waste, Recyclables, Compostable Materials and/or Bulky  
1696 Goods have been dumped in an apparently unauthorized manner. CONTRACTOR shall deliver  
1697 the address or description to CITY within three (3) Work Days of such observation.

1698 10.07 School Services. Unless directed by CITY in writing, CONTRACTOR will, during  
1699 the term of this Agreement, provide all Emery Unified School District facilities, as listed in Exhibit  
1700 6 and as such Exhibit may be amended by CITY from time to time, with Recyclable and  
1701 Compostable Materials Collection services at no additional cost to the school or CITY.

1702 10.07.1 CONTRACTOR shall provide all CITY Facilities and all schools in  
1703 the Emery Unified School District with BatteryTracker™ mail back boxes for the Collection of  
1704 household batteries at no additional cost to the school or CITY.

## 1705 **ARTICLE 11. Construction and Demolition Debris Services**

1706 11.01 General. CONTRACTOR shall perform Construction and Demolition Debris  
1707 Services as described in this Agreement as set forth below. CONTRACTOR shall provide all  
1708 labor, insurance, supervision, machinery, and equipment, plant building, tipping fees, permits,  
1709 licenses, materials, supervision and other items necessary for the performance of the services  
1710 under this Agreement.

1711 11.02 Construction and Demolition Debris Service. The Construction and Demolition  
1712 Debris Service to be performed by CONTRACTOR shall include the following:

1713 11.02.1 Collection of Construction and Demolition Debris (Recyclables,  
1714 commingled Recyclables, and non-recyclables) from construction contractors and other  
1715 Construction and Demolition Debris Generators from construction sites. CONTRACTOR shall  
1716 respond by the end of the next Work Day to requests by SFD, MFD, or Commercial  
1717 Customers for Construction and Demolition Debris Service and shall provide the appropriate  
1718 Container for such Collection according to the circumstances;

1719 11.02.2 Provision, maintenance, and replacement of all Containers and  
1720 receptacles required for the provision of all Construction and Demolition Debris Service;

1721 11.02.3 Transfer of Construction and Demolition Debris to the  
1722 Construction and Demolition Debris Processing Facility designated under this Agreement for  
1723 separation and processing; and

1724 11.02.4 Provision of a Contractor's Job Truck on an on-call basis for SFD  
1725 and MFD Customers to use for Collection of uncontained materials that do not qualify for the  
1726 Bulky Goods program. Examples of such uncontained material are residential Construction  
1727 and Demolition Debris, painted wood, trees and tree branches, and other material to be  
1728 Disposed as Solid Waste or Recycled as Construction and Demolition Debris depending  
1729 upon the materials' level of contamination. Individual pieces of material cannot exceed  
1730 seventy-five (75) pounds or one thousand (1,000) pounds in the aggregate for the individual  
1731 Customer, cannot be of unreasonably large sizes, and no liquid flammables banned from the  
1732 Transfer Station shall be taken by the Contractor's Job Truck.

1733 11.03 Processing of Construction and Demolition Debris.

1734 11.03.1 All Construction and Demolition Debris Collected shall be visually  
1735 inspected by CONTRACTOR to estimate if the load contains fifty (50) percent or more of  
1736 Recyclable materials. If so, the material shall be processed in a manner that will maximize  
1737 the rate of diversion from the Transfer Station. This processing must, on a calendar year  
1738 basis beginning January 1, 2011 and each calendar year thereafter during the term of this  
1739 Agreement, divert a minimum of ninety (90) percent of all asphalt and concrete and a  
1740 minimum of fifty (50) percent of all other Construction and Demolition Debris Collected under  
1741 the terms of this Agreement by weight from being Disposed. If CONTRACTOR does not  
1742 maintain these minimum percentages and defaults in accord with Article 26, then, in addition  
1743 to the other remedies provided by this Agreement, CITY may provide for such service by any  
1744 other means notwithstanding the terms of this Agreement.

1745 11.04 Rates. The rates for Construction and Demolition Debris Collection and  
1746 processing shall be as specified in Exhibit 1.

1747 11.05 Records. CONTRACTOR will conduct proper record keeping to be sure that the  
1748 Construction and Demolition Debris materials are Recycled to the extent possible and the  
1749 amount Disposed and amount diverted are properly recorded and reported. Reported amounts  
1750 may be based on allocation methodologies that have been reviewed and approved by the  
1751 Contract Administrator.

1752 11.06 Designated Construction and Demolition Debris Processing Facility. The  
1753 CONTRACTOR and CITY agree that the Davis Street Transfer Station, shall be the designated  
1754 Processing Facility for Construction and Demolition Debris. The CONTRACTOR may propose  
1755 use of an alternate Processing Facility for Construction and Demolition Debris which must be  
1756 approved by CITY. Approval by CITY may not be unreasonably withheld, except that CITY may  
1757 withhold consent if use of another facility would result in an increase in rates.

1758 11.07 Revenues Generated from Construction and Demolition Debris. Any revenues  
1759 generated from the sale of Construction and Demolition Debris shall be retained by  
1760 CONTRACTOR.

1761 **ARTICLE 12. Billing and Payment**

1762 12.01 Generally. CONTRACTOR shall (i) bill Customers for Collection Services utilizing  
1763 the rates and fees set forth in Exhibit 1; (ii) collect payment for those services; (iii) maintain  
1764 billing and payment records; (iv) provide for the collection of delinquent payments and bad  
1765 debts; (v) provide notification regarding cancellation of services due to non-payment of services

1766 in accordance with this Article; and (vi) remit franchise and regulatory fees to CITY monthly in  
1767 accordance with this Article.

1768                   12.01.1     CONTRACTOR shall provide CITY with all Customer account and  
1769     billing information in the form and format requested by CITY as may be needed by CITY  
1770     under the provisions of Section 12.08.1 below.

1771                   12.02 Invoices. SFD Collection Services shall be billed quarterly in advance of services  
1772     provided or as otherwise scheduled by CONTRACTOR and approved by CITY. MFD and  
1773     Commercial Collection Services, shall be billed monthly as scheduled by CONTRACTOR.  
1774     Construction and Demolition Debris Collection Services and any service utilizing Roll-Off Boxes  
1775     shall be billed in arrears of the provision of service although a deposit may be required in  
1776     advance. Billing errors brought to the attention of CONTRACTOR by CITY or the Customer  
1777     shall be corrected on the next billing cycle.

1778                   12.03 CITY Inserts. CITY also may direct CONTRACTOR to enclose the equivalent of  
1779     up to three (3) 8½" by 11" pages per billing, with invoices CONTRACTOR mails to Customers.

1780                   12.04 Partial Month Service. If, during a month, a Customer is added to or deleted from  
1781     CONTRACTOR'S service area, the CONTRACTOR'S billing shall be pro-rated based on the  
1782     weekly service rate (the weekly service rate shall be the service rate established in Exhibit 1  
1783     divided by four (4)) times the number of actual weeks in the month that service was provided to  
1784     the Customer.

1785                   12.05 Low Income Discount. CONTRACTOR shall provide to those SFD Customers  
1786     who can demonstrate to CONTRACTOR that they receive assistance under PG&E's California  
1787     Alternative Rates for Energy Program (CARE) as it currently exists and is administered, a  
1788     discount of twelve and one-half (12.5) percent discount on their monthly Collection Service rate.

1789                   12.06 Full Compensation. Rates and ancillary fees charged and collected by  
1790     CONTRACTOR as provided for in this Article and as set forth in Exhibit 1 shall be the full, entire,  
1791     and complete compensation due to CONTRACTOR pursuant to this Agreement for all costs  
1792     necessary to perform all the services required by this Agreement in the manner and at the times  
1793     prescribed.

1794                   12.07 Methods of Payment. CONTRACTOR shall provide the means for customers to  
1795     pay bills through the following methods: cash, checks, credit cards, internet payment service or  
1796     automatic withdrawal from bank account.

1797                   12.08 Delinquent Service Accounts. CONTRACTOR may take such action as is legally  
1798     available to collect or cause collection of past due amounts, including termination of Collection  
1799     Services in accordance with the process in accordance with this Article.

1800                   12.08.1     Service Termination Due to Non-Payment for Services.  
1801     CONTRACTOR may terminate services to Customers whose accounts are over ninety (90)  
1802     days past due as follows:

1803                   12.08.1.1     CONTRACTOR sends Customer a Notice of Intent to  
1804     Terminate Service. The Notice of Intent to Terminate Service will be sent by certified mail. The  
1805     Notice of Intent to Terminate Service will state that service will terminate ten (10) calendar days  
1806     after the postmarked date of the Notice of Intent to Terminate Service.

1807                           12.08.1.2     After ten (10) calendar days from the postmarked date of  
1808 the Notice Of Intent To Terminate Services, CONTRACTOR may terminate service to the  
1809 Customer. CONTRACTOR shall send a Notice Of Cancellation to the Customer by certified  
1810 mail, within one (1) business day of terminating service. CONTRACTOR shall send a copy of  
1811 the Notice Of Cancellation to the Contract Administrator, by certified mail as well as by an  
1812 electronic format designated by the CITY within one (1) business day of mailing the notice of  
1813 cancellation.

1814                   12.09 Adjustments to Service Rates, Surcharges and Fees. Beginning on January 1,  
1815 2012 and annually thereafter, CONTRACTOR may, in compliance with the provisions of this  
1816 Article, adjust the applicable Collection Service rates, fees or surcharges using the Refuse Rate  
1817 Index methodology as set forth in this Article and in Exhibit 1 to this Agreement.

1818                           12.09.1     Refuse Rate Index (RRI) Adjustment. The RRI adjustment shall be  
1819 the lower of five (5) percent or the sum of the weighted percentage change in the annual  
1820 average of each RRI index number between the base Fiscal Year, which shall be the prior  
1821 preceding Fiscal Year ending June 30<sup>th</sup> and the preceding Fiscal Year ending June 30<sup>th</sup> and  
1822 the percentage change in the prior Fiscal Year and current Fiscal Year Disposal tip fee  
1823 charged to CONTRACTOR at the Transfer Station. However, in the event the RRI  
1824 adjustment is less than zero (0) percent, the RRI adjustment for that year shall be zero (0)  
1825 percent. Therefore, the first rate adjustment will be based on the percentage changes  
1826 between the annual average of the RRI indices for the Fiscal Year ending June 30 2010 and  
1827 the annual average of the RRI indices for the Fiscal Year ended June 30, 2011. The RRI  
1828 shall be calculated using the RRI methodology included in Exhibit 2.

1829                           12.09.2     Annual Rate Adjustment.

1830                           12.09.2.1    On January 1, 2012, and annually thereafter, the service  
1831 rates, fees and surcharges set forth in Exhibit 1 shall be adjusted upward or downward by  
1832 multiplying them by the RRI percentage adjustment.

1833                           12.09.2.2    Annual adjustments shall be made only in units of one cent  
1834 (\$0.01). Fractions of less than one cent (\$0.01) shall not be considered in making adjustments.  
1835 The indices shall be truncated at four (4) decimal places for the adjustment calculations.

1836                   12.10 Financial Information. On or before July 15, 2011, and annually thereafter during  
1837 the term of this Agreement, CONTRACTOR shall deliver to CITY financial information for the  
1838 specific services performed under this Agreement for the preceding full or partial Fiscal Year.  
1839 Such financial information shall be in the format as set forth in Exhibit 2, or as may be further  
1840 revised by CITY from time to time. If CONTRACTOR fails to submit the financial information in  
1841 the required format by July 15<sup>th</sup>, it is agreed that CONTRACTOR shall be deemed to have  
1842 waived the annual rate adjustment for that year unless such failure is due to Force Majeure.

1843                   12.11 Service Rate Elements. Collection Service rates, fees and surcharges shall  
1844 consist of some combination of the following elements: a Collection Service Element, which  
1845 shall be the funds collected by the CONTRACTOR from the Customer for the provision of  
1846 Collection Services and retained by CONTRACTOR, a Franchise Fee Element, which shall be  
1847 the funds collected by the CONTRACTOR from the Customer for the provision of Collection  
1848 Services and remitted to the CITY, and such other elements as may be added during the term  
1849 of this Agreement.

1850           12.12 Adjustments to Franchise Fee Elements. The “*Franchise Fee Element*” shall be  
1851 adjusted as needed so that it always equals

1852                   12.12.1     the “*Collection Service Element*”

1853                   12.12.2     *divided by*

1854                   12.12.3     *1 minus the authorized franchise fee percentage*

1855                   12.12.4     *multiplied by*

1856                   12.12.5     *the authorized franchise fee percentage.*

1857           12.13 CONTRACTOR’S Payments to CITY. CONTRACTOR shall make payment to  
1858 the CITY of a franchise fee, and such other fees as may be specified in this Section 12.13 or as  
1859 provided for in Section 12.14 below. Payment to the CITY shall be due, on the thirtieth (30<sup>th</sup>)  
1860 day of the month following the month the revenues are collected. Each such payment shall be  
1861 accompanied by an accounting, which sets forth CONTRACTOR’S gross revenues collected  
1862 during the preceding month. Such accounting shall be in a form and manner that is acceptable  
1863 to CITY.

1864                   12.13.1     Franchise Fee. The franchise fee shall be a percentage of  
1865 CONTRACTOR’S gross revenue collected each month under the terms of this Agreement.  
1866 Except as set forth below, gross revenue shall specifically include revenue received by  
1867 CONTRACTOR from any entity, including Federal, State, County or other local facilities  
1868 within the Service Area for the provision of Collection Services by CONTRACTOR. However,  
1869 revenue received by the CONTRACTOR from the sale of Recyclables and from related  
1870 California Redemption Value (CRV) payments shall not be considered as gross revenues for  
1871 purpose of the calculation of franchise fees. The franchise fee percentage shall be twenty-  
1872 one (21) percent during the term of this Agreement unless adjusted by CITY.

1873                   12.13.1.1   Revenues derived from Collection Services provided to  
1874 federal, state or county local agencies at the rates set forth under the terms of this Collection  
1875 Service Agreement shall be considered “gross revenues” for purposes of calculating franchise  
1876 fees. Notwithstanding the foregoing, if the federal, state or county local agency receives  
1877 Collection Services outside the scope of this Collection Service Agreement, or otherwise  
1878 invokes its legal rights to pay fees for services excluding any portion of franchise fees, then  
1879 such revenues shall not be considered “gross revenues” hereunder for purpose of payment of  
1880 franchise fees to CITY.

1881                   12.13.2     Agreement Negotiation Fee. No later than thirty (30) calendar  
1882 days after the execution of this Agreement CONTRACTOR shall submit Agreement  
1883 negotiation fees to CITY in the amount of twenty-five thousand (\$25,000.00).

1884                   12.13.3     Environmental Programs Fee. On or before February 1, 2011,  
1885 and starting on January 1, 2012, annually thereafter during the term of this Agreement,  
1886 CONTRACTOR shall submit to CITY an environmental programs fee. The initial  
1887 environmental programs fee shall be in the amount of one hundred fifty thousand dollars  
1888 (\$150,000) and shall be adjusted upward each year by three (3) percent.

1889                    12.13.4    Unused CITY Services Funds. CONTRACTOR agrees to fund  
1890                    certain services as set forth below at specific dollar levels on an annual basis or to submit the  
1891                    unexpended monies to CITY.

1892                    12.13.4.1    Public Education as set forth in Article 18 to be funded at a  
1893                    base amount of twenty thousand dollars (\$20,000) the first year of the Agreement, and ten  
1894                    thousand dollars (\$10,000), the second year of the Agreement. Thereafter the base amount  
1895                    shall be increased by the annual average change in the Consumer Price Index as set forth in  
1896                    Exhibit 2 and as calculated as part of the annual RRI calculation in each subsequent year of the  
1897                    Agreement.

1898                    12.13.4.2    Additional services as set forth in Section 10.2 to be  
1899                    funded at a base amount of fifteen thousand dollars (\$15,000) the first year of the Agreement.  
1900                    Thereafter the base amount shall be increased by the annual average change in the Consumer  
1901                    Price Index as set forth in Exhibit 2 and as calculated as part of the annual RRI calculation in  
1902                    each subsequent year of the Agreement.

1903                    12.13.4.3    Household Battery Mail Back Program as set forth in  
1904                    Articles 7 – 10 to be funded at a base amount of five thousand dollars (\$5,000) the first year of  
1905                    the Agreement. Thereafter the base amount shall be increased by the annual average change  
1906                    in the Consumer Price Index as set forth in Exhibit 2 and as calculated as part of the annual RRI  
1907                    calculation in each subsequent year of the Agreement.

1908                    12.13.4.4    CITY-wide CFL Mail Back Program as set forth in Section  
1909                    17.04 to be funded at a base amount of ten thousand dollars (\$10,000) the first year of the  
1910                    Agreement. Thereafter the base amount shall be increased by the annual average change in  
1911                    the Consumer Price Index as set forth in Exhibit 2 and as calculated as part of the annual RRI  
1912                    calculation in each subsequent year of the Agreement.

1913                    12.13.5    On or before January 1, 2012 and annually thereafter during the  
1914                    term of this Agreement, CONTRACTOR shall submit to CITY any unused funds from those  
1915                    services set forth in Section 12.13.4 of this Agreement along with a reconciliation report  
1916                    detailing the expenditures incurred for each of the services.

1917                    12.14 Other Fees. CITY may set such other fees as it deems necessary which fees  
1918                    may be passed through to the Customer by CONTRACTOR.

1919                    12.15 Acceptance of Payment. No acceptance by CITY of any payment shall be  
1920                    construed as an accord that the amount is in-fact the correct amount, nor shall such acceptance  
1921                    of payment be construed as a release of any claim CITY may have against CONTRACTOR for  
1922                    any additional sums payable under the provisions of this Agreement. All amounts paid shall be  
1923                    subject to independent audit and recompilation by CITY. If, after the audit, such recompilation  
1924                    indicates an underpayment CONTRACTOR shall pay to CITY the amount of the underpayment  
1925                    and shall reimburse CITY for all reasonable costs and expenses incurred in connection with the  
1926                    audit and recompilation within ten (10) Work Days of receipt of written notice from CITY that  
1927                    such is the case. If, after audit, such recompilation indicates an overpayment, CITY shall notify  
1928                    the CONTRACTOR in writing of the amount of the overpayment, less costs and expenses  
1929                    incurred in connection with the audit and recompilation. CONTRACTOR may offset the  
1930                    amounts next due following receipt of such notice by the amount specified therein.

1931           12.16 Billing Records. CONTRACTOR shall keep records, electronically or paper, of all  
1932 billing documents and Customer account records, including but not limited to, invoices, receipts,  
1933 and collection notices, each in chronological order, for a period of three (3) years after the date  
1934 of receipt or issuance.

1935           12.17 Collection Service Census Data. On or before February 15, 2012 and annually  
1936 thereafter during the term of this Agreement, CONTRACTOR shall deliver to CITY, Collection  
1937 Service census data for all Customers as of the preceding December 31<sup>st</sup>.

1938                   12.17.1     Census data for SFD Customers shall consist of the number of  
1939 SFD Customers receiving, SFD Collection Service during the previous month. The census  
1940 data shall be segregated by type of service and as appropriate, Container size, number of  
1941 Containers and frequency of Collection.

1942                   12.17.2     Census data for MFD, Commercial and CITY Customers shall  
1943 consist of the number of Customers receiving MFD, Commercial or CITY Collection Service  
1944 during the preceding month. The census data shall be segregated by type of service and as  
1945 appropriate, Container size, number of Containers and frequency of Collection.

1946           12.18 Tonnage Data. On or before March 20, 2011 and monthly thereafter during the  
1947 term of this Agreement, CONTRACTOR shall deliver to CITY a listing of the actual tonnage  
1948 delivered by CONTRACTOR at the Transfer Station for the preceding month sorted between  
1949 SFD, MFD Commercial and CITY Customers and between Roll-Off Boxes and all other  
1950 Containers to the extent practical.

1951           12.19 Extraordinary Rate Review. CONTRACTOR may petition CITY in writing at any  
1952 time for an adjustment in the maximum rates on the basis of extraordinary and unusual changes  
1953 in the costs of operations or programs that result from legal or regulatory changes as set forth in  
1954 Article 21. CONTRACTOR'S request shall contain substantial proof and justification to support  
1955 the need for the adjustment. CITY may request from CONTRACTOR such further information as  
1956 it deems necessary to fully evaluate the request and make its determination. CITY shall in the  
1957 exercise of its reasonable discretion approve or deny the request, in whole or in part, within one  
1958 hundred twenty (120) calendar days of receipt of the written request and all other additional  
1959 information requested by CITY.

1960           12.20 Rates for Non-Regular Services. If Customer requests Collection Services not  
1961 provided in the rates set forth in Exhibit 1, CONTRACTOR may charge Customer that rate  
1962 agreed upon with Customer and approved by CITY in writing.

## 1963                                   **ARTICLE 13. Diversion Requirements**

1964           13.01 Minimum Requirements.     The CITY requires the CONTRACTOR to reduce  
1965 the annual Disposal Tons to eight thousand (8,000) tons by December 31, 2020. As part of this  
1966 requirement, on or before October 1, 2010, CONTRACTOR shall submit a diversion plan to the  
1967 Contract Administrator for review and approval which:

1968                   13.01.1     Estimates the tons of material to be Collected by calendar year for  
1969 calendar years 2011 through 2020 by service type;

1970                   13.01.2     Estimates the tons of material to be recycled, reused, processed  
1971 or otherwise diverted from Disposal for calendar years 2011 through 2020 by service type;

1972 13.01.3 Estimates the projected tons of material to be disposed for  
1973 calendar years 2011 through 2020 by service type;

1974 13.01.4 Estimates the maximum tons (the annual compliance tonnage) of  
1975 material to be disposed for calendar years 2011 through 2020 by service type; and

1976 13.01.5 Meets the goal of reducing total Disposal Tons to eight thousand  
1977 (8,000) tons by the end of calendar year 2020.

1978 13.02 MRF Fines. For purposes of the diversion requirements set forth in Section  
1979 13.01 above, MRF fines shall be designated as beneficial re-use unless such designation is  
1980 revised in accordance with the provisions of Section 13.03 below.

1981 13.03 Annual Review. On or before January 15, 2012 and annually thereafter,  
1982 CONTRACTOR shall meet with CITY to compare the actual results of the previous year to the  
1983 projected results and to adjust the diversion plan projections as needed in order to meet the  
1984 maximum disposal goal of eight thousand (8,000) tons by the end of calendar year 2020. As  
1985 part of the 2016 annual review, CONTRACTOR and CITY agree to review the reasonableness  
1986 of the maximum disposal goal in light of changes in factors such as population and economic  
1987 growth. In addition CONTRACTOR and CITY agree to review the reasonableness of continuing  
1988 to classify MRF fines as beneficial re-use for purposes of the diversion calculation.

1989 13.04 Failure to Maintain Disposal Maximum Limits. CONTRACTOR'S failure to  
1990 maintain total annual Disposal tonnage at or below the maximum disposal limits proposed by  
1991 CONTRACTOR in the diversion plan set forth in Section 13.01 and as adjusted in accordance  
1992 with the provisions of Section 13.03 may result in the termination of this Agreement or the  
1993 imposition of liquidated damages providing that before CITY exercises any right of termination  
1994 under this provision it first gives CONTRACTOR a minimum of thirty (30) days written notice of  
1995 the alleged failure to meet stated diversion requirements, supported by reasonable proof of said  
1996 claim, CONTRACTOR shall have ninety (90) days in which to demonstrate to the CITY that it  
1997 has adequate procedures in place to ensure that the diversion requirements are met. In  
1998 determining whether or not to assess liquidated damages or terminate the Agreement, CITY will  
1999 consider the good faith efforts put forth by CONTRACTOR to meet the minimum diversion  
2000 requirements. This consideration will include the methods and level of effort of CONTRACTOR  
2001 to meet the diversion requirements.

2002 **ARTICLE 14. Collection Routes**

2003 14.01 Collection Routes. Thirty (30) days prior to commencement of Collection  
2004 Services, CONTRACTOR shall provide CITY with maps precisely defining Collection routes, by  
2005 number, together with the days and the times at which Collection shall regularly commence,  
2006 start and end points, number of accounts and collection vehicle type. To the extent possible,  
2007 CONTRACTOR will provide the map data in a GIS format that is compatible with the format  
2008 used by CITY.

2009 14.02 Subsequent Collection Route Changes. CONTRACTOR shall submit to CITY, in  
2010 writing, any proposed route change (including maps thereof) not less than sixty (60) calendar  
2011 days prior to the proposed date of implementation. To the extent possible, CONTRACTOR will  
2012 provide the map data in a GIS format that is compatible with the format used by CITY.  
2013 CONTRACTOR shall not implement any route changes without the prior review of the Contract

2014 Administrator. If the route change will change the Collection day for a Customer,  
2015 CONTRACTOR shall notify those Customers and CITY in writing of route changes not less than  
2016 thirty (30) days before the proposed date of implementation.

2017 14.03 CONTRACTOR Audit of Routes. In addition to any other auditing requirements  
2018 under this Agreement, CONTRACTOR shall perform a comprehensive audit of SFD, MFD and  
2019 Commercial Customer Routes every full or partial three (3) calendar years, and submit to CITY  
2020 a written report on the results of that audit, no later than thirty (30) calendar days after  
2021 completion of the audit. The report should include the testing protocols, and the details of the  
2022 route audit findings along with recommendations, if any, on how CONTRACTOR will modify the  
2023 current system to correct any errors noted during the audit. If CITY requests, CONTRACTOR  
2024 shall cooperate fully with CITY to allow CITY to verify the accuracy of CONTRACTOR'S route  
2025 audit report.

## 2026 **ARTICLE 15. Collection Equipment**

2027 15.01 General Provisions. All equipment used by CONTRACTOR in the performance  
2028 of services under this Agreement shall be of a high quality. The vehicles shall be designed and  
2029 operated so as to prevent Collected materials from escaping from the vehicles. Hoppers shall  
2030 be closed on top and on all sides with screening material to prevent Collected materials from  
2031 leaking, blowing or falling from the vehicles. The bodies of any vehicle, or any Container, used  
2032 in Collection or transportation of Solid Waste must have watertight beds of metal or impervious  
2033 material that can be cleaned.

2034 15.02 Alternate Fuel Vehicles. CONTRACTOR'S Collection Service vehicles shall  
2035 utilize compressed natural gas (CNG), or liquefied natural gas (LNG) as a fuel or other CITY  
2036 approved alternative low emission fuel. During the term of this Agreement, to the extent required  
2037 by law, CONTRACTOR shall provide its Collection vehicles to be in full compliance with local,  
2038 State and federal clean air requirements that were adopted or proposed to be adopted,  
2039 including, but not limited to, the California Air Resources Board Heavy Duty Engine Standards  
2040 as currently proposed to be contained in CCR Title 13, Section 2020 et seq; the Federal EPA's  
2041 Highway Diesel Fuel Sulfur regulations and any other applicable air pollution control laws.  
2042 Changes in regulations adopted or enacted after the effective date of this Agreement shall not  
2043 be subject to the Change in Law provisions set forth in this Agreement.

2044 15.03 Bulky Goods. Vehicles used for Collection of Bulky Goods containing freon or  
2045 other gases shall not use compactor mechanisms or mechanical handling equipment that may  
2046 release freon or other gases from pressurized appliances.

2047 15.04 Safety Markings. All Collection equipment used by CONTRACTOR shall have  
2048 appropriate safety markings including, but not limited to, highway lighting, flashing and warning  
2049 lights, and clearance lights. All such safety markings shall be subject to the approval of the  
2050 CITY shall be in accordance with the requirements of the California Vehicle Code, as may be  
2051 amended from time to time.

2052 15.05 Vehicle Signage and Painting. Collection vehicles shall be painted and  
2053 numbered without repetition and shall have the CONTRACTOR'S name, CONTRACTOR'S  
2054 customer service telephone number, and the number of the vehicle painted in letters of  
2055 contrasting color, at least two and one-half (2 1/2) inches high, on the front and back of each

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2056 vehicle. No advertising shall be permitted other than the name of the CONTRACTOR except  
2057 promotional advertisement of the Recyclables and Compostable Materials programs or such  
2058 other signage as may be approved by the Contract Administrator in writing. CONTRACTOR  
2059 shall repaint all vehicles (including vehicles striping if appropriate) during the term of this  
2060 Agreement on a frequency as necessary to maintain a positive public image as reasonably  
2061 determined by the Contract Administrator.

2062                   15.05.1 Bin, Compactor and Roll-Off Box Signage, Painting, and Cleaning.  
2063 All metal Bins, Compactors or Roll-Off Boxes furnished by the CONTRACTOR shall be either  
2064 painted or galvanized. All Bins, Compactors or Roll-Off Boxes shall display the  
2065 CONTRACTOR'S name, CONTRACTOR'S toll free customer service telephone number, and  
2066 shall be kept in a clean and sanitary condition. Each Bin, Compactor or Roll-Off Box shall  
2067 include a description of the type of material to be placed in the Container and shall be painted  
2068 in a color and manner, acceptable to CITY, which is unique to that type of material. Such  
2069 Bins, Compactors or Roll-Off Boxes as are provided by CONTRACTOR shall be steam  
2070 cleaned and repainted by CONTRACTOR as frequently as necessary, but no more often  
2071 than one (1) time per quarter, so as to maintain them in a sanitary condition. However, no  
2072 more often than one (1) time per quarter, upon receipt of notification by CONTRACTOR of  
2073 graffiti on a Bin, Compactor or Roll-Off Box, CONTRACTOR shall clean or replace such Bin,  
2074 Compactor or Roll-Off Box within seven (7) Work Days. Bins, Compactors or Roll-Off Boxes  
2075 will be subject to periodic, unscheduled inspections by CITY and determination as to sanitary  
2076 condition.

2077                   15.06 Collection Vehicle Noise Level. All Collection operations shall be conducted as  
2078 quietly as possible and shall conform to applicable CITY noise level regulations. CITY may  
2079 request CONTRACTOR to check any piece of equipment for conformance with the noise limits  
2080 when reasonable to do so. CITY may conduct random checks of noise emission levels to  
2081 ensure such compliance.

2082                   15.07 Vehicle Registration, Licensing and Inspection. CONTRACTOR shall maintain  
2083 documentation to verify that each of CONTRACTOR'S Collection vehicles are in compliance  
2084 with all registration, licensing and inspection requirements of the California Highway Patrol, the  
2085 California Department of Motor Vehicles, and any other applicable laws or regulations. Upon  
2086 written request by the Contract Administrator copies of such documentation shall be provided to  
2087 CITY within two (2) Work Days of the request. CONTRACTOR shall not use any vehicle to  
2088 perform Collection Services that is not in compliance with applicable registration, licensing and  
2089 inspection requirements.

2090                   15.08 Equipment Maintenance. CONTRACTOR shall maintain Collection equipment in  
2091 a clean condition and in good repair at all times. All parts and systems of the Collection  
2092 equipment shall operate properly and be maintained in a condition satisfactory to CITY.  
2093 CONTRACTOR shall wash all Collection vehicles at least once a week and steam cleaned  
2094 regularly. All graffiti shall be removed immediately. All washings shall be conducted in a  
2095 manner that conforms to the BMP Guidelines for Non-Point Source Pollutants in the publication  
2096 entitled Storm Water Best Management Practices Handbook for Industrial Commercial.

2097                    15.08.1     CONTRACTOR shall make vehicles available to the Alameda  
2098     County Health Department for inspection, at any frequency it requests. CONTRACTOR  
2099     shall:

2100                    15.08.1.1     Inspect each vehicle daily to ensure all equipment is  
2101     operating properly. Vehicles which are not operating properly shall be taken out of service until  
2102     they are repaired and operate properly; and

2103                    15.08.1.2     Perform all scheduled maintenance functions in  
2104     accordance with the manufacturer's specifications and schedule. CONTRACTOR shall keep  
2105     accurate records of all vehicle maintenance, recorded according to date and mileage, and shall  
2106     make such records available to the CITY upon request.

2107                    15.08.2     Maintenance Log. CONTRACTOR shall maintain a maintenance  
2108     log for all Collection vehicles. The log shall at all times be accessible to CITY by physical  
2109     inspection upon request of Contract Administrator, and shall show, at a minimum, each  
2110     vehicles' CONTRACTOR assigned identification number, date purchased or initial lease,  
2111     dates of performance of routine maintenance, dates of performance of any additional  
2112     maintenance, and description of additional maintenance performed.

2113                    15.09 Equipment Inventory. On or before February 1, 2011, CONTRACTOR shall  
2114     provide to CITY an inventory of Collection vehicles and major equipment used by  
2115     CONTRACTOR for Collection or transportation and performance of services under this  
2116     Agreement. The inventory shall indicate each Collection vehicle by CONTRACTOR assigned  
2117     identification number, DMV license number, the age of the chassis and body, type of fuel used,  
2118     the type and capacity of each vehicle, the number of vehicles by type, the date of acquisition,  
2119     the decibel rating and the maintenance status. CONTRACTOR shall submit to the Contract  
2120     Administrator, either by Fax or email, an updated inventory annually to CITY.

2121                    15.10 Reserve Equipment. The CONTRACTOR shall have available to it, at all times,  
2122     reserve Collection equipment which can be put into service and operation within one (1) hour of  
2123     any breakdown. Such reserve equipment shall correspond in size and capacity to the  
2124     equipment used by the CONTRACTOR to perform the contractual duties.

2125                    15.11 Covering of Loads. All loads not in covered body trucks shall be tarped or  
2126     restrained to prevent spilling.

2127                    15.12 Weight Restrictions. CONTRACTOR shall not load vehicles in excess of the  
2128     manufacturer's recommendations or limitations imposed by state or local weight restrictions on  
2129     vehicles. CONTRACTOR acknowledges that CITY may document compliance with this  
2130     provision of the Agreement through review of scale tickets and records of the Disposal and  
2131     Processing Facilities.

2132                    15.13 Vehicle Tare Weights. Between the time this Agreement is executed and  
2133     December 1, 2010, CONTRACTOR shall have the Disposal Contractor weigh and determine  
2134     the unloaded ("tare") weight of each of CONTRACTOR'S vehicles that will be used to deliver  
2135     Solid Waste and other materials to the Transfer Station and Disposal Facility. CONTRACTOR  
2136     shall, at least every two (2) years, have the Disposal Contractor reweigh and revise tare weights  
2137     for all CONTRACTOR'S vehicles used to deliver Solid Waste and other materials to the  
2138     Transfer Station and Disposal Facility.

2139                   15.13.1    When new vehicles are placed into service and immediately after  
2140 any significant repairs to vehicles by CONTRACTOR, CONTRACTOR shall have the  
2141 Disposal Contractor promptly weigh such vehicles and determine the tare weight of each  
2142 vehicle. CONTRACTOR, CITY, and Disposal Contractor shall have the right to request re-  
2143 tarring of vehicles up to two (2) times per year, unless there is reasonable suspicion or  
2144 evidence that tare weights are not accurate, in which case, tare weights may be updated  
2145 more frequently to ensure accuracy.

2146                                   **ARTICLE 16. CONTRACTOR'S Personnel**

2147                   16.01 Personnel Requirements. CONTRACTOR shall employ and assign qualified  
2148 personnel to perform all services set forth herein. CONTRACTOR shall be responsible for  
2149 ensuring that its employees comply with all applicable laws and regulations and meet all federal,  
2150 state and local requirements related to their employment and position.

2151                   16.02 Employee Appearance and Conduct. All employees of CONTRACTOR, while  
2152 engaged in providing Collection Services within CITY, shall carry an identification badge clearly  
2153 identifying the employee as an employee of CONTRACTOR and be attired in suitable and  
2154 acceptable uniforms of a type standard in the industry. Employees shall also have embroidered  
2155 on the uniform or prominently displayed on the badge, their name for identification by the  
2156 Customer. CONTRACTOR shall use its best efforts to assure that all employees present a neat  
2157 appearance and conduct themselves in a courteous manner. CONTRACTOR shall regularly  
2158 train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and  
2159 shall instruct Collection crews to perform the work as quietly as possible. If any employee is  
2160 found not to be courteous or not to be performing services in the manner required by this  
2161 Agreement, CONTRACTOR shall take all appropriate corrective measures.

2162                   16.03 No Gratuities. CONTRACTOR shall not permit its employees to demand or  
2163 solicit, directly or indirectly, additional compensation or gratuity from members of the public for  
2164 any of the services provided under this Agreement.

2165                   16.04 Valid License. Each driver of a Collection vehicle shall at all times carry a valid  
2166 California driver's license and all other required licenses for the type of vehicle that is being  
2167 operated.

2168                   16.05 Safety Training. CONTRACTOR shall provide suitable operational and safety  
2169 training for all its employees who utilize or operate vehicles or equipment for Collection.  
2170 CONTRACTOR shall train its employees to identify, and not collect, Hazardous Waste or  
2171 Unacceptable Waste.

2172                   16.06 Provision of Field Supervision. CONTRACTOR shall designate an adequate  
2173 number of field supervisors to check on Collection operations, including responding to  
2174 complaints.

2175                   16.07 Report Accumulation of Solid Waste. CONTRACTOR shall direct its drivers to  
2176 note (a) the addresses of any premises at which they observe that Solid Waste is accumulating  
2177 and is not being delivered for Collection; and (b) the address, or other location description, at  
2178 which Solid Waste has been dumped in an apparently unauthorized manner. CONTRACTOR  
2179 shall deliver the address or description to the Contract Administrator within one (1) Work Day of  
2180 such observation.



2223 This service shall consist of the provision of LampTracker™ mail-back boxes in the amount  
2224 requested by the Customer. CONTRACTOR shall make provision for Customers to request  
2225 LampTracker™ service by phone or electronically through CONTRACTOR'S web-site.  
2226 CONTRACTOR shall also provide LampTracker™ containers for distribution through CITY  
2227 events.

2228           17.05 Program Funding. CONTRACTOR'S cost for providing household battery  
2229 Collection services, as described in Section 17.03, shall be limited to ten thousand dollars  
2230 (\$10,000) in the initial year of this Agreement. CONTRACTOR'S cost for providing CFL service,  
2231 as described in Section 17.04, shall be limited to ten thousand dollars (\$10,000) in the initial  
2232 year of this Agreement. Thereafter, these amounts shall be increased by the annual average  
2233 change in the Consumer Price Index as set forth in Exhibit 2 and as calculated as part of the  
2234 annual RRI calculation each year. CITY may at its sole discretion allocate these annual funds,  
2235 plus any unspent funds from prior years to other services during the term of this Agreement.

2236           17.06 Compost Give-Back. CONTRACTOR shall provide CITY with twenty (20) cubic  
2237 yards of compost delivered one (1) time per Agreement Year at CITY'S request and at no  
2238 charge.

2239                   17.06.1 Compost, Mulch and Other Landscaping Materials for CITY  
2240 Projects. Each calendar year of this Agreement, for an amount of tons not to exceed the total  
2241 tons of Compostable Materials Collected by CONTRACTOR in the CITY during the prior  
2242 calendar year under the terms of this Agreement, CITY shall consider CONTRACTOR as the  
2243 preferred vendor for the provision of Compost, mulch and other landscaping materials for  
2244 CITY projects requiring the use of those materials providing CONTRACTOR meets the  
2245 following requirements:

2246                           17.06.1.1       Material must meet the specific standards set by the CITY  
2247 for the project, including but not limited to USDA material standards; and

2248                           17.06.1.2       Material must be priced as low or lower than comparable  
2249 material available to the CITY which meets the standards set by the CITY as per Section  
2250 17.06.1.1 above.

2251           17.07 Additional Programs and Services. CONTRACTOR shall provide additional  
2252 services and programs as requested by CITY at a price to be mutually agreed upon between  
2253 CONTRACTOR and the Contract Administrator. In the event CONTRACTOR and the Contract  
2254 Administrator cannot reach a mutually agreed upon price for the requested service or program,  
2255 CITY shall have the right to procure the service of other vendors or contractors to provide the  
2256 requested service.

2257           17.08 News Media Relations. CONTRACTOR shall notify the Contract Administrator  
2258 by Fax, email or phone of all requests for news media interviews related to the Collection  
2259 Services programs provided to CITY under the terms of this Agreement no later than the end of  
2260 the next Work Day after CONTRACTOR'S receipt of the request. Before responding to any  
2261 inquiries involving controversial issues or any issues likely to affect participation or Customer  
2262 perception of services, CONTRACTOR will discuss CONTRACTOR'S proposed response with  
2263 the Contract Administrator.

2264 17.08.1 Copies of draft news releases or proposed trade journal articles  
2265 related to the provision of Collection Services under this Agreement shall be submitted to  
2266 CITY for prior review and approval at least five (5) Work Days in advance of release, except  
2267 where CONTRACTOR is required by any law or regulation to submit materials to any  
2268 regulatory agency in a shorter period of time, in which case CONTRACTOR shall submit  
2269 such materials to CITY simultaneously with CONTRACTOR'S submittal to such regulatory  
2270 agency.

2271 17.08.2 Copies of articles resulting from media interviews or news  
2272 releases shall be provided to CITY within five (5) Work Days after publication.

2273 17.09 Waste Generation and Characterization Studies. CONTRACTOR acknowledges  
2274 that CITY may need to perform Solid Waste generation and characterization studies periodically  
2275 to comply with AB 939 or other federal, state, regional or City requirements. CONTRACTOR  
2276 agrees to participate and cooperate with CITY and its agents and to perform studies and data  
2277 collection exercises, as needed, to determine weights, volumes and composition of Solid Waste  
2278 generated, disposed, transformed, diverted or otherwise processed to comply with AB 939. If  
2279 CITY requires CONTRACTOR to participate in such a study, CONTRACTOR and CITY shall  
2280 mutually agree on the scope of services to be provided by CONTRACTOR.

2281 17.10 StopWaste.Org Programs. CONTRACTOR acknowledges that it will cooperate  
2282 with StopWaste.Org on behalf of CITY to provide StopWaste.Org with data from the provision of  
2283 Collection Services in the CITY for possible use with the Green Halo System being studied by  
2284 StopWaste.Org. CONTRACTOR further agrees to work with CITY and StopWaste.Org. to  
2285 implement the Green Halo System program, or other initiatives and/or studies within CITY if  
2286 requested in writing by CITY.

2287 17.11 Annual Performance and Billing Review. At CITY'S sole discretion, within thirty  
2288 (30) days after written notification to CONTRACTOR, CITY may conduct an annual performance  
2289 and billing review. The review will be performed by CITY or a qualified firm under contract with  
2290 CITY. CITY shall have the final responsibility for the selection of the firm but shall seek and  
2291 accept comments and recommendations from CONTRACTOR.

2292 17.12 Purpose. The review shall be designed to meet the following objectives:

2293 17.12.1 Verify that Customer billing rates including special services/fees  
2294 have been properly calculated and they correspond to the level of service received by the  
2295 Customer.

2296 17.12.2 Verify that franchise fees, and other fees required under this  
2297 Agreement have been properly calculated and paid to CITY.

2298 17.12.3 Verify CONTRACTOR'S compliance with the reporting  
2299 requirements and performance standards of the Collection Service Agreement.

2300 17.12.4 Verify the Disposal tons reported by CONTRACTOR.

2301 17.13 Funding of the Performance and Billing Reviews. During the initial term of this  
2302 Agreement as set forth in Section 2.01, CONTRACTOR shall be responsible for the cost of one  
2303 (1) review up to a maximum of thirty-five thousand dollars (\$35,000.00) adjusted by the CPI (as  
2304 defined in Exhibit 2) at the same time as the Collection Service rates under Article 12. Nothing

2305 in this section shall prohibit CITY from conducting additional performance and billing reviews at  
2306 CITY'S own expense.

2307 17.14 CONTRACTOR'S Cooperation. CONTRACTOR shall cooperate fully with the  
2308 review and provide all requested data, including operational data, financial data and other data  
2309 requested by CITY within thirty (30) Work Days of receipt of the request. Failure of  
2310 CONTRACTOR to cooperate or provide the requested documents in the required time shall be  
2311 considered an event of default.

2312 17.15 Special Services. In addition to the services described in this Agreement,  
2313 CONTRACTOR shall provide to Customers in CITY such special services as may be agreed  
2314 upon between CITY and CONTRACTOR from time to time. The additional charge to the  
2315 Customer for provision of such services shall be determined between CONTRACTOR and the  
2316 Customer prior to provision of the service, and shall be established in conformity with the rates  
2317 set out in Exhibit 1, or such parameters agreed to by CITY and CONTRACTOR from time to  
2318 time. Upon request by the Customer to CITY, charges for special services shall be subject to  
2319 review and approval or adjustment by CITY. If CONTRACTOR is unwilling to provide such  
2320 service or CITY and CONTRACTOR are unable to agree on a price for such service, Customer  
2321 can seek service from another vendor.

2322 17.16 Report Accumulation of Solid Waste and Unauthorized Dumping.  
2323 CONTRACTOR shall direct its drivers to note 1) the addresses of any premises at which they  
2324 observe that Solid Waste or other materials are accumulating and not being delivered for  
2325 Collection; and 2) the address, or other location description, at which Solid Waste or other  
2326 materials has been dumped in an apparent unauthorized manner, CONTRACTOR shall deliver  
2327 the address or description to the Contract Administrator within three (3) working days of such  
2328 observation.

2329 **ARTICLE 18. Public Education Programs**

2330 18.01 Public Information/Education Campaign. Within ten (10) days of approval of the  
2331 Agreement CONTRACTOR shall submit the initial public education plan for calendar year 2011.  
2332 Beginning on September 1, 2011 and annually thereafter, CONTRACTOR shall submit an  
2333 annual public education plan for the following calendar year. CITY shall review and respond in  
2334 writing within forty-five (45) calendar days. Implementation of the annual plan will begin on  
2335 January 1<sup>st</sup> of each calendar year of the Agreement. At a minimum, the CONTRACTOR shall  
2336 submit for approval and implement a public education plan with the following components:

2337 18.01.1 SFD Customers. At least annually, the CONTRACTOR shall  
2338 include a flyer, notice or other printed device as a part of the Collection Service billing,  
2339 describing the services provided under this Agreement to all eligible SFD Customers. At a  
2340 minimum, this flyer, notice or other printed device shall describe the current program's  
2341 components and notify all SFD Customers about complaint procedures, rates, regulations,  
2342 acceptable and non-acceptable materials, proper preparation, and set-out of materials,  
2343 Household Hazardous Waste Disposal alternatives, as well as days of Collection. If  
2344 requested by CITY, CONTRACTOR shall provide a camera-ready copy of this material.

2345 18.01.2 MFD Customers. CONTRACTOR shall make available for CITY  
2346 use, a camera-ready copy of a flyer describing the services provided under this Agreement to

2347 MFD Customers. This camera-ready flyer shall be updated as necessary to reflect changes  
2348 in service at the expense of CONTRACTOR. CONTRACTOR shall also provide additional  
2349 copies of this material as may be requested by CITY.

2350 18.01.3 Commercial and Roll-Off Box Services. CONTRACTOR shall  
2351 make available for CITY use, a camera-ready copy of a flyer describing the services provided  
2352 under this Agreement for Commercial and Roll-Off Box Services. This camera-ready flyer  
2353 shall be updated as necessary to reflect changes in service at the expense of  
2354 CONTRACTOR. CONTRACTOR shall also provide additional copies of this material as may  
2355 be requested by CITY.

2356 18.01.4 Bulky Goods Services. CONTRACTOR shall mail each SFD  
2357 Customer, information regarding Bulky Goods services: one (1) scheduled neighborhood  
2358 Bulky Goods Collection, and one (1) Bulky Goods Collection by appointment, per calendar  
2359 year, at the resident's request. Information will include the program's components,  
2360 acceptable and non-acceptable materials, proper preparation and set out of materials,  
2361 Household Hazardous Waste Disposal alternatives, as well as date and time of Collection.  
2362 CONTRACTOR shall also provide additional copies of this material as may be requested by  
2363 CITY.

2364 18.01.5 CITY Events. CONTRACTOR agrees to participate in the Earth  
2365 Day event and one (1) other event within CITY, either as an independent participant or a joint  
2366 participant with CITY.

2367 18.01.6 Public Education Budget. CITY and CONTRACTOR acknowledge  
2368 CONTRACTOR'S start-up public education/outreach budget is twenty thousand dollars  
2369 (\$20,000) for calendar year 2011. Beginning in calendar year 2012, CONTRACTOR'S annual  
2370 budget will be at least ten thousand dollars (\$10,000) which beginning with calendar year  
2371 2013 will be increased by the annual average change in the Consumer Price Index as set  
2372 forth in Exhibit 2 and as calculated as part of the annual RRI calculation each year. At the  
2373 direction of CITY, Any unexpended amounts from a given year shall accumulate for CITY'S  
2374 future public education use or be submitted to CITY in accordance with the requirements of  
2375 Section 12.13.4 of this Agreement. Partial years shall be prorated. CONTRACTOR shall  
2376 inform CITY of funds expended on public education by quarter.

2377 18.02 Public Education Materials.

2378 18.02.1 CONTRACTOR shall not perform or produce public education  
2379 materials without the prior written approval from CITY. CITY may, at its option, cause to be  
2380 produced or produce any or all written public information materials. In the event CITY elects  
2381 to produce such material, any and all expenses shall be paid by CONTRACTOR from its  
2382 designated CITY public education/outreach budget. CITY will seek input from  
2383 CONTRACTOR prior to finalizing production and method of distribution of said materials  
2384 produced. All materials produced by CONTRACTOR, including art work, shall be submitted in  
2385 writing for CITY review and approval. CITY shall have seven (7) Work Days to review and  
2386 approve or amend said materials. If CONTRACTOR is not advised of changes within said  
2387 seven (7) day period, the materials shall be deemed approved by CITY. Written  
2388 authorization by CITY is required prior to final production of any public educational materials.

2389 Such authorization shall not be unreasonably withheld. CONTRACTOR shall provide  
2390 bilingual/Spanish educational materials upon request of CITY.

2391 18.02.2 All public education materials must be printed on one hundred  
2392 (100) percent recyclable paper, with at least fifty (50) percent post-consumer recycled  
2393 content with soy-based (or other non-toxic) ink unless otherwise approved by CITY. All public  
2394 education materials must include the CONTRACTOR’S refuse and recycling telephone  
2395 number.

2396 18.02.3 CITY may insert information in the SFD, MFD and Commercial  
2397 bills. The format of such inserts will be mutually agreed upon by CONTRACTOR and CITY  
2398 and shall relate to CITY-sponsored events and activities. If a postage increase is incurred for  
2399 said mailing, the CITY will be responsible for the actual reasonable amount of the increase.

2400 18.03 Annual Collection Service Notice. Starting in 2012, and annually thereafter,  
2401 during the term of this Agreement, the CONTRACTOR shall publish and distribute separate  
2402 notices to all SFD Customers regarding the SFD Collection Service programs, to all MFD  
2403 Customers regarding MFD Collection Service programs and to all Commercial Customers  
2404 regarding Commercial Collection Service programs. To the extent appropriate, based on the  
2405 category of Customer receiving the notice, said notice shall contain at a minimum; definitions of  
2406 the materials to be Collected, procedures for setting out the materials, maps of the Service Area  
2407 indicating the day that Solid Waste Collection Service, Recyclables Collection Service, including  
2408 Waste Oil Collection Service, and Compostable Materials Collection Service will be provided,  
2409 the availability of Bulky Goods Service and Construction and Demolition Debris Collection  
2410 Service and the CONTRACTOR customer service phone number. Unless CONTRACTOR is  
2411 notified by CITY the notice shall be provided in English, and shall be distributed by  
2412 CONTRACTOR no later than January 1, of each year during the term of the Agreement. If  
2413 requested by City, CONTRACTOR shall also provide the notice in Spanish, and provide CITY  
2414 with a camera-ready copy.

2415 18.04 Collection Service Mailing Labels. CONTRACTOR shall provide CITY with a set  
2416 of reproducible mailing labels, updated annually, for all site addresses receiving SFD, MFD and  
2417 Commercial Collection Services.

2418 **ARTICLE 19. CONTRACTOR’S Office**

2419 19.01 CONTRACTOR’S Office. CONTRACTOR shall maintain an office that provides  
2420 toll-free telephone access to residential and commercial Customers of CITY and is staffed by  
2421 trained and experienced customer service representatives (CSR’s). CSR staff available during  
2422 the Work Day must include at least one (1) CSR who has been specifically trained on the  
2423 service requirements of the CITY Such office shall be equipped with sufficient telephones that  
2424 all Collection Service related calls received during normal business hours are answered by an  
2425 employee within five (5) rings, and shall have responsible persons in charge during Collection  
2426 hours and shall be open during such normal business hours, 8:00 a.m. to 5:00 p.m. on all Work  
2427 Days. CONTRACTOR shall provide either a telephone answering service or mechanical device  
2428 to receive Customer inquiries during those times when the office is closed. Calls received after  
2429 normal business hours shall be addressed the morning of the next Work Day.

2430           19.02 Emergency Contact. CONTRACTOR shall provide the Contract Administrator  
2431 with an emergency phone number where CONTRACTOR can be reached outside of the  
2432 required office hours. The emergency contact number must be answered by an individual at all  
2433 times.

2434           19.03 Multilingual/TDD Service. CONTRACTOR shall at all times maintain the CSR's  
2435 with the capability of responding to telephone calls in English, Spanish, and provide the  
2436 capability to respond to other languages through the use of "Language Line Service".  
2437 CONTRACTOR shall at all times maintain the capability or responding to telephone calls  
2438 through Telecommunications Device for the Deaf (TDD) Services.

2439           19.04 Customer Calls. During office hours, CONTRACTOR shall maintain a  
2440 telephone answering system capable of accepting at least fifteen (15) incoming calls at one (1)  
2441 time. CONTRACTOR shall record all calls including any inquiries, service requests and  
2442 complaints into a customer service log.

2443                   19.04.1 All incoming calls, whether directed to the call center or a local  
2444 customer service representative at CONTRACTORS local office will be answered within five  
2445 (5) rings. Any call "on-hold" in excess of one and one half (1.5) minutes shall have the option  
2446 to remain "on-hold" or to be switched to a message center where Customer can leave a  
2447 message. Customers electing to remain on-line shall not wait longer than three (3) minutes  
2448 on the average from the time their call was originally answered, but in no case longer than  
2449 ten (10) minutes from the time their call was originally answered to speak to a CSR.  
2450 CONTRACTOR'S customer service representative shall return Customer calls. For all  
2451 messages left before 3:00 p.m., all "call backs" shall be attempted a minimum of one time  
2452 prior to 5:00 p.m. on the day of the call. For messages left after 3:00 p.m., all "call backs"  
2453 shall be attempted a minimum of one time prior to noon the next Work Day. CONTRACTOR  
2454 shall make minimum of three (3) attempts within twenty-four (24) hours of the receipt of the  
2455 call. If CONTRACTOR is unable to reach the Customer on the next Work Day, the  
2456 CONTRACTOR shall send a postcard to the Customer on the second Work Day after the call  
2457 was received, indicating that the CONTRACTOR has attempted to return the call.

2458                   19.04.2 CONTRACTOR will utilize the customer service log to maintain a  
2459 record of all inquiries and complaints in a manner approved by CITY; complaints shall be  
2460 recorded in a separate log. CONTRACTOR shall note in the complaint log the address of the  
2461 complainant, date and time of the complaint, nature of the complaint, and nature and date of  
2462 the resolution.

2463           19.05 Web Site. CONTRACTOR shall develop and maintain a web site describing  
2464 services provided in the CITY that is accessible by the public. The site shall be complete and  
2465 available to the public beginning no later than February 1, 2011 and shall include answers to  
2466 frequently asked questions, rates for all Collection Services, specifications for Recyclables and  
2467 Compostable Materials Collection Service schedules and maps, and other related topics.  
2468 CONTRACTOR shall arrange for CITY'S web site to include an email link to CONTRACTOR  
2469 and a link to CONTRACTOR'S web site. CONTRACTOR'S web site shall provide the public the  
2470 ability to email complaints to CONTRACTOR.

2471 **ARTICLE 20. Service Inquiries and Complaints**

2472 20.01 CONTRACTOR'S Customer Service. All service inquiries and complaints shall  
2473 be directed to CONTRACTOR. A representative of CONTRACTOR shall be available to receive  
2474 the complaints during normal business hours. All service complaints will be handled by  
2475 CONTRACTOR in a prompt and efficient manner. An initial response to the Customer shall be  
2476 within one (1) Work Day. In the case of a dispute between CONTRACTOR and a Customer, the  
2477 matter will be reviewed and a decision made by the Contract Administrator.

2478 20.02 Customer Service data Base. CONTRACTOR shall insure that the customer  
2479 service data base contains complete and current information related to the CITY and its  
2480 Collection Services in order to allow CSR'S to provide accurate information to CITY Customers.  
2481 CONTRACTOR shall correct or update data in the customer service data base within three (3)  
2482 Working Days of notification by CITY.

2483 20.03 CSR Accuracy. CONTRACTOR CSR's shall fully utilize the customer service  
2484 data base and other resources as necessary in order to provide an accurate and complete  
2485 response to questions from CITY Customers.

2486 20.04 Response Requirements. For those complaints related to missed Collections  
2487 that are received by 3:00 p.m. on a Work Day, CONTRACTOR will return to the Customer  
2488 address and Collect the missed materials before leaving the Service Area for the day. For  
2489 those complaints related to missed Collections that are received after 3:00 p.m. on a Work Day,  
2490 the CONTRACTOR shall have twenty-four (24) hours to resolve the complaint. For those  
2491 complaints related to repair or replacement of Carts or Bins, the appropriate Articles of this  
2492 Agreement shall apply.

2493 20.05 Missed Collections. CONTRACTOR agrees that it is in the best interest of the  
2494 CITY that all Solid Waste, Recyclables and Compostable Materials be Collected on the  
2495 scheduled Collection day. Accordingly, missed Collections will normally be Collected as set  
2496 forth above regardless of the reason that the Collection was missed. However, in the event a  
2497 Customer requests missed Collection Service more than two (2) times in any consecutive two  
2498 (2) month period the Contract Administrator will work with CONTRACTOR to determine an  
2499 appropriate resolution to that situation. In the event CONTRACTOR believes any complaint to  
2500 be without merit, CONTRACTOR shall notify the Contract Administrator, either by Fax or email.  
2501 The Contract Administrator will investigate all disputed complaints and render a decision.

2502 20.06 Disputes about Collection of Certain Items. It is recognized that disputes may  
2503 arise between CITY and CONTRACTOR with regard to the Collection of certain items due to  
2504 disputes over the specific language of this Agreement. The Contract Administrator may from  
2505 time to time notify CONTRACTOR to remove all such material. If it is determined that the  
2506 disputed material did not conform to this Agreement's specifications, CONTRACTOR shall be  
2507 entitled to compensation for removal as set forth in Exhibit 1 to this Agreement.

2508 **ARTICLE 21. Modifications to the Agreement**

2509 21.01 Agreement Modifications and Changes in Law. CITY and CONTRACTOR  
2510 understand and agree that the California Legislature has the authority to make comprehensive  
2511 changes in Solid Waste Management legislation and that these and other changes in law in the

2512 future which mandate certain actions or programs for counties or municipalities may require  
2513 changes or modifications in some of the terms, conditions or obligations under this Agreement.  
2514 CONTRACTOR agrees that the terms and provisions of CITY Legislation, as it now exists or as  
2515 it may be amended in the future, shall apply to all of the provisions of this Agreement and the  
2516 Customers of CONTRACTOR located within the Service Area. In the event any future change  
2517 in law, modifications to CITY Legislation, or directed changes by CITY materially alters the  
2518 obligations of CONTRACTOR, then the affected compensation as established under this  
2519 Agreement shall be adjusted. Nothing contained in this Agreement shall require any party to  
2520 perform any act or function contrary to law. CITY and CONTRACTOR agree to enter into good  
2521 faith negotiations regarding modifications to this Agreement which may be required in order to  
2522 implement changes in the interest of the public welfare or due to change in law. When such  
2523 modifications are made to this Agreement, CITY and CONTRACTOR shall negotiate in good  
2524 faith, a reasonable and appropriate compensation adjustment for any increase or decrease in  
2525 the services or other obligations required of CONTRACTOR due to any modification in the  
2526 Agreement under this Article. CITY and CONTRACTOR shall not unreasonably withhold  
2527 agreement to such compensation adjustment.

2528         21.02 CITY-Directed Changes. CITY may direct CONTRACTOR to perform additional  
2529 services (including new diversion programs, additional public education activities, etc.),  
2530 eliminate programs, or modify the manner in which it performs existing services. Changes in  
2531 the minimum diversion requirement set forth in Article 13 of this Agreement, pilot programs and  
2532 innovative services, which may entail new Collection methods, targeted routing, different kinds  
2533 of services, different types of Collection vehicles, and/or new requirements for Customers are  
2534 included among the kinds of changes which CITY may direct. CONTRACTOR shall be entitled  
2535 to an adjustment in its compensation for providing such additional or modified services but not  
2536 for the preparation of its proposal to perform such services.

2537         21.03 Service Proposal. Within thirty (30) calendar days of receipt of a request for a  
2538 service change from CITY, CONTRACTOR shall submit a proposal to provide such service. At  
2539 a minimum, the proposal shall contain a complete description of the following:

2540                 21.03.1 Program objectives and goals to be used in measuring the  
2541 success of the program as discussed in Section 21.07 below;

2542                 21.03.2 Collection methodology to be employed (equipment, manpower,  
2543 etc.);

2544                 21.03.3 Equipment to be utilized (vehicle number, types, capacity, age,  
2545 etc.);

2546                 21.03.4 Labor requirements (number of employees by classification);

2547                 21.03.5 Type of Carts or Bins to be utilized;

2548                 21.03.6 Provision for program publicity, education, and marketing; and

2549                 21.03.7 Five (5) year projection of the financial results of the program's  
2550 operations in an operating statement format including documentation of the key assumptions  
2551 underlying the projections and the support for those assumptions, giving full effect to the  
2552 savings or costs to existing services.

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2553           21.04 Incremental Costs. In the event the change(s) in service results in an  
2554 incremental cost increase over the life of the Agreement, CONTRACTOR will be responsible for  
2555 the first ten thousand (\$10,000) of such increase in the aggregate. To the extent costs are  
2556 projected to exceed ten thousand dollars (\$10,000), CITY and CONTRACTOR shall agree on  
2557 the amount of additional costs to be reimbursed to CONTRACTOR prior to the initiation of the  
2558 service change.

2559           21.05 Other Contractors. CONTRACTOR acknowledges and agrees that CITY may  
2560 permit other contractors or companies besides CONTRACTOR to provide additional Collection  
2561 Services and such other services not otherwise contemplated by this Agreement if  
2562 CONTRACTOR and CITY cannot agree on terms and conditions, including compensation  
2563 adjustments, of such services in one hundred twenty (120) calendar days from the date when  
2564 CITY first requests a proposal from CONTRACTOR to perform such services.

2565           21.06 Monitoring and Evaluation. At CITY'S request, CONTRACTOR shall meet with  
2566 CITY to describe the progress of each new program and other service issues. At each meeting,  
2567 CITY and CONTRACTOR shall have the opportunity to discuss revisions to the program. If  
2568 applicable, CONTRACTOR shall document the results of the new programs on a monthly basis,  
2569 including at a minimum the tonnage diverted by material type, the end use or processor of the  
2570 diverted materials and the cost per ton for transporting and processing each type of material  
2571 and other such information requested by CONTRACTOR and/or CITY necessary to evaluate  
2572 the performance of each program.

2573           21.07 Termination for Cause. CITY shall have the right to terminate a program or  
2574 assign the program to a third party for cause at no cost to CITY or CITY'S ratepayers if  
2575 CONTRACTOR is not achieving the program's agreed to and defined goals and objectives.  
2576 Prior to such termination or assignment, CITY shall meet and confer with CONTRACTOR for a  
2577 period of up to ninety (90) calendar days to resolve CITY'S concerns. Thereafter, CITY may  
2578 terminate the program or utilize a third party to perform these services if CITY reasonably  
2579 believes CONTRACTOR cannot meet or is not meeting the agreed to and defined project goals  
2580 and objectives. Notwithstanding these changes, CONTRACTOR shall continue the program  
2581 during the ninety (90) day period and, in the event CITY elects to utilize a third party to continue  
2582 the program, thereafter until the third party takes over the program.

2583           21.08 Termination without Cause. CITY shall also have the right to terminate a  
2584 program without cause. As a condition of the termination, CITY shall reimburse CONTRACTOR  
2585 for all costs incurred for implementation and performance of the program that were identified in  
2586 the program proposal prepared and submitted by CONTRACTOR and agreed to by CITY which  
2587 will have not been funded or otherwise recovered through program compensation at the time  
2588 the program is terminated.

2589           21.09 Rate Adjustment at Termination. In the event a program is terminated as set  
2590 forth in Section 21.07 or 21.08 above, CONTRACTOR shall adjust all Customer rates to remove  
2591 the component of the rate used to fund the program. The rates shall be adjusted as of the  
2592 effective date of the termination of the program.

## 2593           **ARTICLE 22. Recordkeeping, Inspections, and Reporting**

2594           22.01 Record Keeping.

2595                   22.01.1    Accounting Records. CONTRACTOR shall maintain full,  
2596 complete and separate financial, statistical and accounting records, pertaining to cash, billing,  
2597 and provisions of all Collection Services provided under this Agreement, prepared on an  
2598 accrual basis in accordance with generally accepted accounting principles. Such records  
2599 shall be subject to audit, copy, and inspection. Gross revenues derived from provision of the  
2600 Collection Services, including revenues from the sale of Recyclables, including CRV revenue  
2601 or revenue from the sale of Composted Material, whether such services are performed by the  
2602 CONTRACTOR or by a subcontractor or subcontractors, shall be recorded as revenues in  
2603 the accounts of CONTRACTOR. These records shall be separate and segregated from other  
2604 records maintained by CONTRACTOR for the provision of other services outside the scope  
2605 of this Agreement as may be provided by CONTRACTOR. CONTRACTOR shall maintain  
2606 and preserve all cash, billing and disposal records for a period of not less than five (5) years  
2607 following the close of each of CONTRACTOR'S fiscal years. CITY shall have access to any  
2608 statistics and data related to this Agreement.

2609                   22.01.1.1    CONTRACTOR shall submit to CITY a monthly, quarterly,  
2610 and annual statement of revenues collected and a breakdown of the franchise fees being  
2611 remitted.

2612                   22.01.1.2    CONTRACTOR shall submit to CITY a monthly, quarterly,  
2613 and annual statement of expenditures related to the household batteries collection program and  
2614 the CFL program.

2615                   22.01.2    Agreement Materials Records. CONTRACTOR shall maintain  
2616 records, by material type, of the quantities of Discarded Material Collected, processed, sold,  
2617 donated or given for no compensation, and Disposed, including residue, under the terms of  
2618 this Agreement. CITY shall have access to any statistics and data related to this Agreement.

2619                   22.01.3    Other Records. CONTRACTOR shall maintain all other records  
2620 reasonably related to provision of Collection Services, whether or not specified in this Article  
2621 22 or elsewhere in the Agreement. CITY shall have access to any statistics and data  
2622 related to this Agreement.

2623                   22.02 Reporting Requirements. Monthly reports shall be submitted quarterly within  
2624 twenty (20) days of the end of the last calendar month in which service was provided. Quarterly  
2625 summaries of the monthly reports shall be submitted at the same time. Annual reports shall be  
2626 submitted no later than sixty (60) calendar days after the end of each calendar year. Except as  
2627 set forth herein, monthly, quarterly and annual reports shall be submitted electronically in a  
2628 format that is approved by CITY using software acceptable to CITY.

2629                   22.03 Monthly Reports. Monthly reports to the CITY shall include:

2630                   22.03.1    Solid Waste Data. The number of SFD, MFD, school, CITY and  
2631 Commercial Customers and the number of Solid Waste Bins and Carts distributed by size  
2632 and Customer type. A listing of the actual tonnage from all Collection Services, including  
2633 Bulky Goods Service, Collected, diverted and Disposed by CONTRACTOR at the Disposal  
2634 Facility for the preceding month sorted between SFD, MFD, CITY and Commercial  
2635 Customers and between Roll-Off Boxes and all other Containers to the extent practical, and  
2636 CITY Special Event Collection Service results. All tonnage data should be compared to the  
2637 corresponding tonnage data from the prior year comparable period.

2638                   22.03.1.1     CONTRACTOR shall only be responsible for providing  
2639 self-haul data from CONTRACTOR owned facilities. CONTRACTOR shall use the best  
2640 available data to determine material type, diversion and disposal information.

2641                   22.03.2     Recycling Data. The number of gross tons Collected monthly on  
2642 average by material type by route for SFD, MFD, CITY, school and Commercial Customers,  
2643 including Recyclables Collected as part of Bulky Goods Service, for the preceding month.  
2644 The weekly and average participation rates for each month relative to the total number of  
2645 Customers by Customer type and set-outs by percent. All tonnage data should be compared  
2646 to the corresponding tonnage data from the prior year comparable period. Separate reports  
2647 shall be prepared for the following major program components: (1) SFD; (2) MFD; (3) CITY  
2648 facilities; (4) Emery Unified School District; (5) Commercial.

2649                   22.03.3     Compostable Material Data. The average daily gross tons  
2650 Collected monthly by route for SFD, MFD, CITY, school and Commercial Customers, and  
2651 average daily number of set-outs. Indicate average participation rates relative to the total  
2652 number of Customers in terms of weekly set-out counts. Indicate number of Compostable  
2653 Bins and Carts distributed by size and Customer type. All tonnage data should be compared  
2654 to the corresponding tonnage data from the prior year comparable period.

2655                   22.03.4     Bulky Goods Collection Data. The number of gross tons  
2656 Collected monthly, along with the number of tires and appliances Collected.

2657                   22.03.5     Customer Service Log. A summary of the customer service log,  
2658 including the type and number of complaints and their resolution. Copies of all written and/or  
2659 electronic records of all calls related to missed pickups and responses to such calls.

2660                   22.04     Quarterly Reports. Quarterly reports to CITY shall include:

2661                   22.04.1     Monthly Data. All monthly reports in Section 22.04 summarized  
2662 by month and averaged for the quarter. All tonnage data should be compared to the  
2663 corresponding tonnage data from the prior year comparable period.

2664                   22.04.2     Public Education and Information Activities. CONTRACTOR shall  
2665 report on all public education and information activities undertaken during the period,  
2666 including distribution of bill inserts, Collection notification tags, community information and  
2667 events, school visits, tours and other activities related to the provision of Collection Services.  
2668 This report shall discuss the impact of these activities on Recycling and Compostable  
2669 Material program participation and provide details of events and activities planned for the  
2670 next period.

2671                   22.04.3     Recycling and Compostable Material Programs. An analysis of  
2672 any Recycling and Compostable Material Collection, processing and marketing issues or  
2673 conditions occurring during the previous quarter (such as participation, setouts,  
2674 contamination, etc.) and possible solutions, discussed separately for SFD, MFD, CITY,  
2675 school and Commercial programs. This data shall contain the percentage of total Commercial  
2676 service volume that is Solid Waste, Recyclables, and Compostable Materials and other  
2677 materials as appropriate so that the total equals one hundred (100) percent of the total  
2678 volume Collected during the quarter.

2679                    22.04.4    Customer Service Data. A summary narrative of problems  
2680 encountered with Collection and processing activities and actions taken. Indicate type and  
2681 number of Non-Collection Notices left at Customer locations. Indicate instances of property  
2682 damage or injury, significant changes in operation, market factors, publicity conducted, needs  
2683 for publicity. Include description of processed material loads rejected for sale, reason for  
2684 rejection and disposition of load after rejection. A printed copy of the "screen print-out" of the  
2685 most current Emeryville customer service data base pages.

2686                    22.04.5    Customer Base Data. CONTRACTOR shall provide, Customer  
2687 base data consisting of the number of SFD, MFD and Commercial Customers billed, sorted  
2688 by Customer type, Container size, number of Containers and frequency of Collection. This  
2689 data shall contain the percentage and number of MFD and Commercial Customers that have  
2690 Recycling Collection Service reported separately for Commercial and MFD Customers. This  
2691 data shall also include a separate list of all service accounts cancelled due to non-payment,  
2692 consisting of name, service address, billing address, service received, service level for each  
2693 service received including Cart or Bin size and frequency of service, days of Collection and  
2694 for SFD, MFD, and Commercial Customers, the Customer contact information.

2695                    22.04.6    Special Events. Summary of each special event activity, (CITY-  
2696 sponsored or drop-off) including; the name and date of the event, the tonnage Collected,  
2697 diverted and Disposed by material type, and other services provided. CONTRACTOR shall  
2698 also provide information regarding the logistics of the event and suggestions for improving  
2699 future events.

2700                    22.04.7    Summary of Historical and Proposed Activities. CONTRACTOR  
2701 shall provide a narrative of activities undertaken during the quarter and those planned or  
2702 proposed for the upcoming quarter.

2703                    22.05    Annual Reports. The annual report to CITY shall include:

2704                    22.05.1    Quarterly Data. All quarterly reports in Section 22.05 summarized  
2705 by quarter and averaged for the year. For all annual reports beginning with the report for the  
2706 second calendar year, CONTRACTOR shall include a historical comparison of the last  
2707 calendar year and the average of all calendar years.

2708                    22.05.2    Recycling Data. Indicate, by material type (and grade where  
2709 appropriate), the monthly totals of Recyclables processed and sold including facility name  
2710 and location, average price received per ton and total recycling revenue received. Indicate  
2711 any quantities, by material type, donated or otherwise disbursed without compensation.  
2712 Indicate number of Recycling Bins and Carts distributed by size and Customer type. Also  
2713 provide the total and location for residue Disposed.

2714                    22.05.3    Waste Oil Program. CONTRACTOR shall provide detailed  
2715 financial data regarding the cost of providing Waste Oil Collection Service. To the extent  
2716 practical segregate the program costs between the SFD and MFD programs. Financial data  
2717 should include but not be limited to costs in the following four categories, administration,  
2718 Collection, transportation and Disposal.

2719                    22.05.4    Compostable Materials. Indicate the monthly totals of  
2720 Compostable Materials Collected, processed and sold including facility name and location,

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2721 average price received per ton and total Compostable Materials revenue received. Indicate  
2722 total tons provided to CITY, or otherwise disbursed without compensation. Indicate number  
2723 of Compostable Material Bins and Carts distributed by size and Customer type. Indicate  
2724 number of Commercial indoor Compostable Materials Containers distributed. Also provide  
2725 the total and location for residue Disposed.

2726                   22.05.5 Customer Base Data. CONTRACTOR shall provide, Customer  
2727 base data, segregated by Customer class into SFD, MFD, Commercial, school and CITY  
2728 Customers, consisting of name, service address, billing address service received, service  
2729 level for each service received including Cart or Bin size and frequency of service, days of  
2730 Collection and for MFD and Commercial Customers, the Customer contact information. This  
2731 data shall also include a separate list of all service accounts cancelled due to non-payment,  
2732 consisting of name, service address, billing address, service received, service level for each  
2733 service received including Cart or Bin size and frequency of service, days of Collection and  
2734 for SFD, MFD, and Commercial Customers, the Customer contact information.

2735                   22.05.6 Special Events. Provide a summary of each special event activity,  
2736 including; the name and date of the event, the tonnage Collected, diverted and Disposed by  
2737 material type, and other services provided. CONTRACTOR shall also provide information  
2738 regarding the logistics of the event and suggestions for improving future events. For all  
2739 annual reports beginning with the report for the second Agreement Year, CONTRACTOR  
2740 shall include a historical comparison of the last Agreement Year and the average of all  
2741 Agreement Years.

2742                   22.05.7 Recycling Assessments. Provide a summary of each visit,  
2743 including; the name and service address of the complex, the date of the visit, and the results  
2744 of the assessment in a form and format mutually agreed to between CITY and  
2745 CONTRACTOR.

2746                   22.06 Additional Reporting. CONTRACTOR shall furnish CITY with any additional  
2747 reports as may reasonably be required, such reports to be prepared within a reasonable time  
2748 following the reporting period.

2749                   22.07 Correction of Reports. In the event CONTRACTOR is notified in writing by CITY  
2750 of the need to resubmit a corrected monthly or annual report, as set forth above,  
2751 CONTRACTOR shall submit the corrected report within three (3) Work Days of the written  
2752 notification.

2753                   22.08 Inspection. CITY shall be granted access upon two (2) Work Days notice to all  
2754 records and reports maintained or submitted by CONTRACTOR under this Agreement,  
2755 including all computerized records maintained by CONTRACTOR, and shall be granted access  
2756 upon reasonable notice to hard copies of such records at CONTRACTOR'S facilities. CITY  
2757 shall be granted access upon one (1) Work Days notice to inspect CONTRACTOR'S facilities.  
2758 CITY shall have the right to accompany Collection vehicles on routes with one (1) week prior  
2759 notice to CONTRACTOR. Expense information submitted by CONTRACTOR under the terms of  
2760 this Agreement shall be held in strict confidence by CITY to the extent permitted by law;  
2761 provided, however, that CONTRACTOR shall indemnify CITY (in the manner specified in Article  
2762 27) and, with counsel reasonably acceptable to CITY, assume the defense of (including all fees

2763 and costs of defense) any suit or other action challenging CITY'S confidential treatment of such  
2764 information.

2765           22.09 Records Security. Adequate record security shall be maintained to preserve  
2766 records from events that can be reasonably anticipated such as fire, theft, and earthquake.  
2767 Electronically maintained data/records shall be protected and backed up at least monthly.  
2768 Where CITY has reason to believe that such records or documents may be lost or discarded  
2769 due to the dissolution, disbandment or termination of CONTRACTOR'S business, CITY may, by  
2770 written request or demand of the Contract Administrator, require that custody of the records be  
2771 given to CITY and that the records and documents be maintained at CITY offices. Access to  
2772 such records and documents shall be granted to any party authorized by CONTRACTOR,  
2773 CONTRACTOR'S representatives, or CONTRACTOR'S successor-in-interest.

2774           22.10 Financial Records. In addition to all other reports required under this Agreement,  
2775 CONTRACTOR shall submit annually to CITY, year-end financial statements for its parent  
2776 corporation.

## 2777           **ARTICLE 23. Quality of Performance of Contractor**

2778           23.01 Intent. CONTRACTOR acknowledges and agrees that one of CITY'S primary  
2779 goals in entering into this Agreement is to ensure that the Collection Services are of the highest  
2780 caliber, that Customer satisfaction remains at the highest level, that maximum diversion levels  
2781 are achieved, and that materials Collected are put to the highest and best use to the extent  
2782 feasible.

2783           23.02 Service Supervisor. CONTRACTOR will provide the name of the supervisor to  
2784 be in charge of the Collection Service within the Service Area to the CITY no later than January  
2785 1, 2011. At least thirty (30) calendar days prior to replacing the supervisor, CONTRACTOR  
2786 shall notify CITY in writing of the name and qualifications of the new service supervisor.  
2787 CONTRACTOR shall insure that such replacement is an individual with like qualifications and  
2788 experience. The supervisor shall be available to the Contract Administrator through the use of  
2789 telecommunication equipment, and be able to respond to voice messages within thirty (30)  
2790 minutes at all times that CONTRACTOR is providing Collection Services. In the event the  
2791 supervisor is unavailable due to illness or vacation, CONTRACTOR shall designate an  
2792 acceptable substitute who shall be available and who has the authority to act in the same  
2793 capacity as the supervisor. The service supervisor shall provide CITY with an emergency  
2794 phone number where the supervisor can be reached outside of normal business hours.

2795           23.03 Liquidated Damages. The parties further acknowledge that consistent and  
2796 reliable Collection Service is of utmost importance to CITY and that CITY has considered and  
2797 relied on CONTRACTOR'S representations as to its quality of service commitment in awarding  
2798 the Agreement to it. The parties further recognize that some quantified standards of  
2799 performance are necessary and appropriate to ensure consistent and reliable service and  
2800 performance. The parties further recognize that if CONTRACTOR fails to achieve the  
2801 performance standards or fails to submit required documents in a timely manner CITY, and  
2802 residents and businesses of CITY will suffer damages and that it is and will be impractical and  
2803 extremely difficult to ascertain and determine the exact amount of damages. Therefore, without  
2804 prejudice to CITY'S right to treat such non-performance as an event of default under Article 26,  
2805 the parties agree that the liquidated damage amounts defined in this Article represent

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12/06/10

2806 reasonable estimates of the amount of such damages considering all of the circumstances  
 2807 existing on the effective date of this Agreement, including the relationship of the sums to the  
 2808 range of harm to CITY, Customers and the community as a whole that reasonably could be  
 2809 anticipated and the anticipation that proof of actual damages would be costly or impractical. In  
 2810 placing their initials at the places provided, each party specifically confirms the accuracy of the  
 2811 statements made above and the fact that each party has had ample opportunity to consult with  
 2812 legal council and obtain an explanation of the liquidated damage provisions at the time that the  
 2813 Agreement was made.

2814 CITY Initial Here \_\_\_\_\_ CONTRACTOR Initial Here \_\_\_\_\_

2815 CONTRACTOR agrees to pay (as liquidated damages and not as penalty) the following  
 2816 amounts:

LIQUIDATED DAMAGES			
Item	Section	Amount	
a.	Failure to obtain any approval, or consent of CITY or to notify CITY when required.	5.01.2 and Various Sections (See Exhibit 9)	\$100.00 per incident.
b.	Failure to comply with the hours of operation as required by this Agreement.	6.02.1	\$100.00 per incident.
c.	Failure to properly return empty Carts or Bins, upon notification of the Customer to the place and position in which the Cart or Bin was found or to place Carts upright with lids secured in excess of twenty-five (25) occurrences per quarter.	6.02.3	\$100.00 per incident per day.
d.	Failure to commence service to a new Customer account within seven (7) Work Days after initial order or date scheduled by the Customer.	6.02.5	\$100.00 per incident.
e.	Failure to change service to a Customer account within seven (7) Work Days or date scheduled by the Customer after notification.	6.02.6	\$100.00 per incident per day.
f.	Delivery of Carts or Bins without proper labels.	6.04.3	\$100.00 per Cart or Bin .
g.	Failure to repair or replace damaged Carts, Bins, or other Containers within the time required by this Agreement in excess of five (5) occurrences per commodity per quarter.	6.04.4	\$100.00 per incident.
h.	Failure to deliver or exchange Carts, Bins, or other Containers within the time required by this Agreement or date scheduled by the Customer.	6.04.5	\$100.00 per incident.

**LIQUIDATED DAMAGES**

LIQUIDATED DAMAGES		
Item	Section	Amount
i.	Failure to deliver any Collected materials to a CITY approved Disposal, transfer or processing facility as appropriate, except as otherwise expressly provided in this Agreement.	6.08 \$1,000.00 first failure. \$5,000.00 each subsequent failure.
j.	Disposal of Recyclables or Compostable Materials in the Disposal Facility without first obtaining the required permission of CITY.	6.08.2 & 6.08.3 \$1,000.00 per load.
k.	Commingling Solid Waste with Recyclables during Collection and transportation to the Transfer Station.	6.12.1 \$500.00 per incident.
l.	Failure to clean up litter or spillage of material, or vehicle fluids proven to be caused by CONTRACTOR.	6.13 \$100.00 per incident.
m.	Damage to public streets within the CITY proven to be caused by CONTRACTOR to its condition immediately prior to the incident.	6.13.2 Actual cost of repair to CITY'S reasonable satisfaction at no cost to CITY.
n.	Failure to repair damage to private property proven to be caused by CONTRACTOR or its personnel to its condition immediately prior to the incident.	6.14 \$100.00 per incident.
o.	Damage to private streets within the CITY proven to be caused by CONTRACTOR to its condition immediately prior to the incident.	6.14 Actual cost of repair to Customers reasonable satisfaction at no cost to Customer.
p.	Failure to repair damage to public property proven to be within the CITY caused by CONTRACTOR or its personnel to its condition immediately prior to the incident.	6.15 \$100.00 per incident.
q.	Failure to replace Waste Oil Container at the time of Collection in excess of five (5) occurrences per quarter.	7.11.4 & 8.02.15 \$100.00 per incident.
r.	Failure to deliver Waste Oil Container within seven (7) Work Days of notification of need for delivery or replacement in excess of five (5) occurrences per quarter.	7.11.4 & 8.02.15 \$100.00 per incident.
s.	Failure to empty public litter Containers as required by this Agreement in excess of five (5) occurrences per quarter.	10.03 \$100.00 per incident per location.

LIQUIDATED DAMAGES			
Item	Section	Amount	
t.	Charging rates that are not included in Exhibit 1	12.01	\$100.00 per incident.
u.	Failure to correct incorrect billing of a Customer brought to the attention of CONTRACTOR by CITY or Customer, by the next billing cycle.	12.02	\$100.00 per incident.
v.	Failure to provide notice of intent to cancel service or notice of cancelation as required under the provisions of this Agreement.	22.08.1	\$500.00 per incident.
w.	Failure to meet the annual compliance tonnage requirements of the diversion plan approved by CITY. (Calculated per calendar year.)	13.0	Shortfall of 5.001% - 10%: \$7,500.00 per calendar year.  Shortfall of 10.001% or greater: \$15,000.00 per calendar year.
x.	Changing residential routes without proper notification to the Customer.	14.02	\$50.00 per Customer.
y.	Failure to conduct route audits as required by this Agreement.	14.03	\$100.00 per incident.
z.	Failure to provide and utilize required vehicles, as specified in this Agreement in excess of five (5) occurrences per quarter.	15.01	\$100.00 per incident.
aa.	Failure to display CONTRACTOR'S name and customer service phone number on Collection vehicles, Bins Compactors and Roll-Off Boxes.	15.05	\$100.00 per incident.
bb.	Failure to maintain equipment, vehicles, Carts, Bins and other Containers in a clean, safe, and sanitary manner.	15.08	\$100.00 per incident.
cc.	Failure to properly cover materials in Collection vehicles.	15.11	\$250.00 per incident.
dd.	For each proven occurrence of obvious uncustomary discourteous behavior to a Customer in excess of one (1) occurrence per quarter.	16.02	\$100.00 per incident.
ee.	Failure to have CONTRACTOR personnel in proper uniform.	16.02	\$50.00 per incident.
ff.	Failure to have a vehicle operator properly licensed.	16.04	\$500.00 per incident.

LIQUIDATED DAMAGES

LIQUIDATED DAMAGES			
Item		Section	Amount
gg.	Failure to maintain office hours as required by this Agreement.	19.01	\$100.00 per incident.
hh.	Failure to provide Spanish, speaking customer service representatives and Language Line Service as required by this Agreement.	19.03	\$100.00 per incident.
ii.	Failure to provide Telecommunications Device for the Deaf (TDD) Services.	19.03	\$100.00 per incident.
jj.	Failure to have a Customer service representative answer a phone call within a three (3) minute average for any month and or for each single caller having to wait more than ten (10) minutes. In excess of five (5) occurrences per quarter.	19.04.1	\$100.00 per incident.
kk.	Failure to initially respond to a Customer complaint within the time period set in this Agreement.	20.01	\$100.00 per incident.
ll.	Failure to maintain data approved by CITY in customer service data base, not corrected within three (3) Working Days	20.02	\$100.00 per incident
mm.	Failure by a CSR to provide complete and accurate information in response to a Customer inquiry or complaint in excess of five (5) occurrences per quarter.	20.03	\$100.00 per incident
nn.	Failure or neglect to resolve each missed Collection within the time set forth in Section 20.04, in excess of twenty-five (25) occurrences per commodity per quarter.	20.04	\$100.00 per incident.
oo.	Failure to provide accurate documents and reports as required under the provisions of this Agreement.	22.03, 22.04 & 22.05	\$100.00 per incident.
pp.	Failure to correct submittal of inaccurate data within three (3) days (or such other time period as may be agreed to in writing between CITY and CONTRACTOR) of notification by CITY.	22.08	\$250.00 per incident per day.
qq.	Failure to cure non-compliance with the provisions of Sections 26.01.4 and 26.01.5 of this Agreement in the manner and time set forth herein.	26.01	\$150.00 per incident.
rr.	Failure to comply with applicable CITY Ordinances, laws and permit requirements.	24.01 and 24.02	\$500.00 per incident.

LIQUIDATED DAMAGES			
Item		Section	Amount
ss.	Failure to meet the requirements of the CITY Living Wage Ordinance.	33.01	\$50.00 per employee per pay period.
tt.	Failure or neglect to complete at least eighty (80) percent of each route on the regular scheduled Collection Service Work Day.	General Requirement	\$500.00 for each route not completed.
uu.	Failure to Collect from the same Customer on two (2) consecutive schedule pick-up days.	General Requirement	\$100.00 per incident.

2817

2818           23.04 Procedure for Assessing Liquidated Damages.

2819                     23.04.1     CITY may determine the occurrence of events giving rise to  
 2820 liquidated damages through the observation of its own employees or representative or  
 2821 investigation of Customer complaints.

2822                     23.04.2     Prior to assessing liquidated damages, CITY shall give  
 2823 CONTRACTOR notice of its intention to do so. The notice will include a brief description of  
 2824 the incident(s)/non-performance. CONTRACTOR may review (and make copies at its own  
 2825 expense) all information in the possession of CITY relating to incident(s)/non-performance.  
 2826 CONTRACTOR may, within ten (10) working days after receiving notice, request a meeting  
 2827 with CITY to present evidence regarding the accuracy of the facts related to the incident. If a  
 2828 meeting is requested, it shall be held by the Contract Administrator or his/her designee.  
 2829 CONTRACTOR may present evidence in writing and through testimony of its employees and  
 2830 others relevant to the incident(s)/non-performance. The Contract Administrator or designee  
 2831 will provide CONTRACTOR with a written explanation of his or her determination on each  
 2832 incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The  
 2833 decision of the Contract Administrator or designee may be appealed to the CITY Council.  
 2834 The decision of the CITY Council shall be final and CONTRACTOR shall have been deemed  
 2835 to have exhausted its administrative remedies and can thereafter challenge such ruling in  
 2836 court or through procedures established herein.

2837                     23.04.3     CITY may assess liquidated damages for each calendar day or  
 2838 event, as appropriate, CONTRACTOR is determined to be liable in accordance with this  
 2839 Agreement.

2840                     23.04.4     CONTRACTOR shall pay any liquidated damages assessed by  
 2841 CITY within ten (10) days after they are assessed. If they are not paid within the ten (10) day  
 2842 period, CITY may proceed against the performance bond required by the Agreement or  
 2843 terminate the franchise granted by this Agreement, or both.

**ARTICLE 24. Compliance with Laws and Permits**

2845           24.01 Compliance with Law. CONTRACTOR shall comply, at its expense, fully and  
 2846 faithfully with all local, state, and federal laws, ordinances, regulations and permit requirements,



2888 to be served as provided in Article 32.07, upon the occurrence of any one of the following  
2889 events:

2890                   26.01.1    Insolvency. CONTRACTOR takes the benefit of any present or  
2891 future insolvency statute, or makes a general assignment for the benefit of creditors, or files a  
2892 voluntary petition in bankruptcy court or a petition or answer seeking reorganization or  
2893 readjustment of its indebtedness under the federal bankruptcy laws or under any other law or  
2894 statute of the United States or any state thereof, or consents to the appointment of a receiver,  
2895 trustee or liquidator of all or substantially all of its property; or

2896                   26.01.2    Bankruptcy. By order or decree of a Court, CONTRACTOR is  
2897 adjudged bankrupt or an order is made approving a petition filed by any of its creditors or by  
2898 any of the stockholders of CONTRACTOR, seeking reorganization or readjustment of its  
2899 indebtedness under the federal bankruptcy laws or under any law or statute of the United  
2900 States or of any state thereof, provided that if any such judgment or order is stayed or  
2901 vacated within sixty (60) calendar days after the entry thereof, any notice of default shall  
2902 become null, void and of no effect, unless such stayed judgment or order is reinstated in  
2903 which case, said default shall be deemed immediate; or

2904                   26.01.3    Receivership. By, or pursuant to, or under the authority of any  
2905 legislative act, resolution or rule or any order or decree of any Court or governmental board,  
2906 agency or officer having jurisdiction, a receiver, trustee or liquidator takes possession or  
2907 control of all or substantially all of the property of CONTRACTOR, and such possession or  
2908 control continues in effect for a period of sixty (60) calendar days; or

2909                   26.01.4    Refusal to Pay Liquidated Damages. CONTRACTOR has  
2910 defaulted, by failing or refusing to pay in a timely manner the liquidated damages or other  
2911 monies due CITY and said default is not cured within thirty (30) calendar days of receipt of  
2912 written notice by CITY to do so; or

2913                   26.01.5    Final Judgment Unsatisfied. CONTRACTOR has defaulted by  
2914 allowing any final judgment for the payment of money to CITY stand against it unsatisfied and  
2915 said default is not cured within thirty (30) calendar days of entry of judgment or receipt of  
2916 written notice by CITY to do so, whichever date occurs earlier; or

2917                   26.01.6    Failure to Perform. CONTRACTOR has failed or refused to  
2918 perform or observe the terms, conditions or covenants in this Agreement, including  
2919 satisfactory compliance with the requirements of the service levels prescribed herein, or any  
2920 of the rules and regulations promulgated by CITY pursuant thereto or has wrongfully failed or  
2921 refused to comply with the instructions of the Contract Administrator relative thereto: and said  
2922 default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do  
2923 so; or, if by reason of the nature of such default, the same cannot be remedied within thirty  
2924 (30) calendar days following receipt by CONTRACTOR of written demand from CITY to do  
2925 so, CONTRACTOR fails to commence the remedy of such default within said thirty (30)  
2926 calendar days following such written notice or having so commenced, fails thereafter to  
2927 diligently pursue a cure to the default.

2928                   26.02   Performance Bond or Letter of Credit. In the event that the monies due CITY  
2929 under Article 26.01.4 above or an unsatisfied final judgment under Article 26.01.5 above is the  
2930 subject of a judicial proceeding, CITY may, at its option call the performance bond or letter of

2931 credit, or hold CONTRACTOR in default of this Agreement. All bonds shall be in the form  
2932 acceptable to the City Attorney; or

2933         26.03 Burden of Proof. In any dispute concerning failure to remedy or diligence in  
2934 pursuing a cure, CONTRACTOR shall have the burden of proof to demonstrate: (a) that the  
2935 default cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with  
2936 diligence to cure said default, and such default will be cured within a reasonable period of time.

2937         26.04 Interim Collection Services. In the event CONTRACTOR fails to provide  
2938 Collection Services for a period of three (3) consecutive Work Days, on the fourth (4th) Work  
2939 Day, CITY may secure CONTRACTOR'S equipment, records and other property used or useful  
2940 in providing Collection Services under this Agreement in order to provide interim Collection  
2941 Services until such time as the matter is resolved and CONTRACTOR is again able to perform  
2942 pursuant to this Agreement. If CONTRACTOR is unable for any reason or cause to resume  
2943 performance at the end of thirty (30) calendar days all liability of CITY under this Agreement to  
2944 CONTRACTOR shall cease and this Agreement may be deemed terminated by CITY, and CITY  
2945 shall retain equipment, records and other property used in providing Collection Services on an  
2946 interim basis until CITY has made other suitable arrangements for the provision of Collection  
2947 Services, which may include award of this Agreement to another contractor.

2948         26.05 Business Records. In the event that the Agreement is terminated,  
2949 CONTRACTOR shall furnish CITY with immediate access to all of its business records related  
2950 to its Customer and billing accounts for Collection Services.

2951         26.06 Violations. Notwithstanding the foregoing and as supplemental and additional  
2952 means of termination of this Agreement under this Article, in the event CONTRACTOR'S record  
2953 of performance shows CONTRACTOR has frequently, regularly or repetitively defaulted in the  
2954 performance of any of the covenants and conditions required herein to be kept and performed  
2955 by CONTRACTOR in the reasonable opinion of CITY, and regardless of whether  
2956 CONTRACTOR has corrected each individual condition of default, CONTRACTOR shall be  
2957 deemed a "habitual violator". If CONTRACTOR is deemed a habitual violator in the opinion of  
2958 CITY, CONTRACTOR shall be deemed to have waived the right to any further notice or grace  
2959 period to correct, and all of said defaults shall be considered cumulative and collectively shall  
2960 constitute a condition of irredeemable default. CITY shall thereupon issue CONTRACTOR a  
2961 final warning citing the circumstances. Any single default by CONTRACTOR of whatever  
2962 nature, subsequent to the occurrence of the last of said cumulative defaults, shall be grounds  
2963 for immediate termination of this Agreement. A history of substantial liquidated damages  
2964 imposed pursuant to Article 23 may be used as a basis for deeming CONTRACTOR as a  
2965 habitual violator. Any failure by CITY to have imposed liquidated damages where applicable  
2966 shall not prevent CITY from considering CONTRACTOR'S underlying failures in any  
2967 determination by CITY that CONTRACTOR shall be deemed as a habitual violator. In the event  
2968 of any default, CITY may terminate this Agreement upon final, written notice of cancellation to  
2969 CONTRACTOR, to be effective upon the date specified in CITY'S written notice to  
2970 CONTRACTOR. All contractual fees due, plus any and all charges and interest, shall be  
2971 payable to said date, and CONTRACTOR shall have no further rights. Immediately upon the  
2972 specified date in such final notice, CONTRACTOR shall cease any further performance under  
2973 this Agreement

2974            26.07 Effective Date. In the event of any of the events specified above, and except as  
2975 otherwise provided in this Article, termination shall be effective upon the date specified in  
2976 CITY'S written notice to CONTRACTOR and upon said date this Agreement shall be deemed  
2977 immediately terminated and upon such termination all liability of CITY under this Agreement to  
2978 CONTRACTOR shall cease, and CITY shall have the right to call the performance bond or letter  
2979 of credit and shall be free to negotiate with other contractors for the Services specified in this  
2980 Agreement. For failure to perform under the terms of this Agreement, CONTRACTOR shall  
2981 reimburse CITY all direct and indirect costs of providing interim Collection Services.

2982            26.08 Immediate Termination. CITY may terminate this Agreement immediately upon  
2983 written notice to CONTRACTOR in the event CONTRACTOR fails to provide and maintain the  
2984 performance bond or letter of credit as required by this Agreement, CONTRACTOR fails to  
2985 obtain or maintain insurance policies and/or endorsements as required by this Agreement, or  
2986 CONTRACTOR fails to provide the proof of insurance as required by this Agreement.

2987            26.09 Termination Cumulative. CITY'S right to terminate this Agreement is cumulative  
2988 to any other rights and remedies provided by law or by this Agreement.

2989            26.10 Force Majeure. CONTRACTOR shall not be in default of its obligations under  
2990 this Agreement in the event, and for so long as, it is impossible or extremely impracticable for it  
2991 to perform its obligations due to an "act of Force Majeure" which is not the fault of, and beyond  
2992 the reasonable control of, the party claiming excuse from performance. Any labor unrest,  
2993 including but not limited to, strike, work stoppage or slowdown, lockout, sick-out, picketing, or  
2994 other concerted job action conducted by CONTRACTOR, CONTRACTOR'S employees,  
2995 subcontractor or directed at CONTRACTOR is not an excuse from performance under this  
2996 provision and CONTRACTOR shall be obligated to continue to perform Collection Services  
2997 notwithstanding the occurrence of any or all of such events. To claim excuse under this Section  
2998 CONTRACTOR must: (i) have taken reasonable precautions, if possible, to avoid being affected  
2999 by the cause, including and (ii) notify CITY in writing within five (5) Work Days after the  
3000 occurrence of the event specifying the nature of the event, the expected length of time that the  
3001 CONTRACTOR expects to be prevented from performing, and the steps which the  
3002 CONTRACTOR intends to take to restore its ability to perform.

3003            26.11 The interruption or discontinuance of CONTRACTOR'S ability to perform  
3004 Collection Services caused by one or more of the events described in this Section shall not  
3005 constitute a default by CONTRACTOR under this Agreement. Notwithstanding the foregoing,  
3006 however, if CONTRACTOR is excused from performing its obligations hereunder for any of the  
3007 causes listed in this Section for a period of thirty (30) calendar days or more, upon expiration of  
3008 the thirty (30) calendar days, CITY shall have the right, in its sole discretion, to terminate this  
3009 Agreement by giving ten (10) calendar days' notice except that such termination may be  
3010 effective two (2) Work Days after receiving notice by certified mail if such event(s) result in  
3011 CONTRACTOR'S failure to perform Collection Services.

3012            **ARTICLE 27. Indemnity, Insurance, Use Of Performance Bond**

3013            27.01 CONTRACTOR'S Duty to Indemnify CITY. CONTRACTOR shall and does  
3014 indemnify and hold harmless the CITY, its agents (for purposes of this Article, including  
3015 attorneys and consultants), officers, employees, volunteers, successors, assigns, and appointed

3016 and elected officials (collectively "Indemnitees") from and against any and all losses, liabilities,  
3017 claims, suits, allegations, actions, damages, interest, penalties, fines, forfeitures, demands  
3018 and/or causes of action (collectively "claims") arising from or in connection with  
3019 CONTRACTOR'S performance hereunder, except to the extent such claims arise out of the  
3020 negligence or willful misconduct of CITY, in which case CONTRACTOR'S indemnification shall  
3021 be reduced in proportion to the CITY'S degree of comparative fault. CONTRACTOR shall  
3022 indemnify and hold harmless the Indemnitees from and against all costs of investigation,  
3023 litigation, negotiation or alternative dispute resolution; counsel fees; expenses incurred in  
3024 obtaining expert testimony and the attendance of witnesses; and all other expenses and  
3025 liabilities incurred in connection with the defense of any action or proceedings brought thereon,  
3026 and from and against any orders, judgments, or decrees which may be entered therein. The  
3027 CITY shall provide CONTRACTOR with prompt notice of any claims, and CONTRACTOR shall  
3028 assume the defense of any claim, with counsel reasonably acceptable to the Indemnitees, and  
3029 CONTRACTOR shall have authority to settle any claim, with the CITY'S consent which may not  
3030 be unreasonably withheld and provided such settlement fully releases and extinguishes  
3031 Indemnitees' alleged liability under the claim. Where a conflict of interest exists between the  
3032 Indemnitees and CONTRACTOR with respect to a claim, CONTRACTOR shall provide the  
3033 Indemnitees with independent legal counsel of the Indemnitees' choice, at CONTRACTOR'S  
3034 expense. Without limiting the generality of the foregoing, CONTRACTOR'S indemnification shall  
3035 include: personal injury, death or damage to property (including contamination); product liability,  
3036 violation of federal, state, or local law; or any other claim whatsoever connected with the  
3037 activities of CONTRACTOR, its subcontractors, agents, and/or employees under this  
3038 Agreement or on account of the performance of character of the work performed hereunder,  
3039 including unforeseen difficulties, accidents, occurrence, or omissions, including but not limited  
3040 to, any failure to exclude Hazardous Waste from Collection or processing; any claim that  
3041 CONTRACTOR, or its agents, subcontractors, directors, officers, employees or representatives,  
3042 has breached an express or implied warranty of merchantability or fitness for particular use or  
3043 any other warranty relating to any materials marketed pursuant to this Agreement; or any claim  
3044 that any of them has violated any license, copyright, or other limitation on CONTRACTOR'S use  
3045 of computer software in connection with CONTRACTOR'S performance of services under this  
3046 Agreement; any claim that the Indemnitees have provided CONTRACTOR a franchise for the  
3047 Collection of Solid Waste, Recyclables, Compostable Materials, Bulky Goods and Construction  
3048 and Demolition Debris which allegedly violates state or federal law under then current judicial  
3049 precedent; and any claim arising from CITY'S performance under this Agreement.  
3050 Notwithstanding the foregoing, CONTRACTOR shall not be required to indemnify the  
3051 Indemnitees for: (i) claims resulting entirely from the acts or omissions of independent (not  
3052 affiliated with Contractor) third party owners or operators of facilities approved by CITY under  
3053 this Agreement, where such third party acts or omissions are beyond CONTRACTOR'S control;  
3054 and (ii) third party claims based solely on CONTRACTOR'S delivery of the de minimis amounts  
3055 of materials excluded from the definition of Hazardous Waste under this Agreement to a facility  
3056 approved by the CITY under this Agreement. Approval of insurance coverage, or acceptance of  
3057 work or services by the CITY under this Agreement does not relieve CONTRACTOR or its  
3058 agents, subcontractors, directors, officers, employees, or representatives of liability under this  
3059 Section. Notwithstanding anything to the contrary in the foregoing provisions, the indemnity  
3060 obligations of CONTRACTOR herein shall not in any way extend to indemnifying and/or  
3061 defending the CITY or any other Indemnitees for any claim, liability, damages, liens, penalties,

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3062 or any costs or obligations whatsoever arising from, or related to, the CITY'S setting of rates or  
3063 fees under this Agreement or in connection with Proposition 218, Article XIII C and Article XIII D  
3064 of the California Constitution.

3065           27.02 Insurance. CONTRACTOR shall secure and maintain throughout the course of  
3066 the Agreement insurance against claims for injuries to persons or damages to property which  
3067 may arise from or in connection with the performance of the work hereunder by the  
3068 CONTRACTOR, its agents, representatives, employees or subcontractors.

3069                   27.02.1 Commercial General Liability Insurance. CONTRACTOR, at its  
3070 own expense, shall maintain liability and property damage insurance for the period covered  
3071 by this Agreement in the amount of five million dollars (\$5,000,000) per occurrence combined  
3072 single limit coverage. The scope of such coverage shall be at least as broad as Insurance  
3073 Services Office Commercial General Liability Coverage (occurrence form CG0001). CITY  
3074 and CONTRACTOR shall review coverage within sixty (60) days of the end of calendar year  
3075 2015. CITY may require reasonable changes in the amount of the insurance coverage set  
3076 forth herein based on documented changes in industry standards during the five (5) year  
3077 period ended December 31, 2015. Such coverage shall include, but not be limited to,  
3078 protection against claims arising from: bodily and personal injury, including death resulting  
3079 therefrom; damage to property resulting from activities contemplated under this Agreement;  
3080 product liability; and claims relating to completed operations. Any failure to comply with  
3081 reporting or other provisions of the policies including breaches of warranties, shall not affect  
3082 coverage provided to the additional insured parties. The policy shall stipulate that this  
3083 insurance is primary insurance and that no other insurance carried by CITY will be called  
3084 upon to contribute to a loss suffered by CONTRACTOR hereunder, except where indemnity  
3085 from the CITY applies. The policy shall stipulate that this insurance shall apply separately to  
3086 each of the insured parties against whom a claim is made, except with respect to the limits of  
3087 the insurer's liability. Such insurance shall be with insurers and under forms of policies  
3088 reasonably satisfactory in all respects to the CITY and shall provide that written notice must  
3089 be given to the CITY thirty (30) days prior to policy cancellation by certified mail, return  
3090 receipt requested. CONTRACTOR shall notify the CITY within thirty (30) days of its  
3091 knowledge of or any material change in coverage that impacts this Collection Service  
3092 Agreement.

3093                   27.02.2 Motor Vehicle Liability Insurance. CONTRACTOR, at its own  
3094 expense, shall maintain motor vehicle liability insurance for the period covered by this  
3095 Agreement in the amount of five million dollars (\$5,000,000) per occurrence combined single  
3096 limit coverage for personal and bodily injury and property damage. The scope of such  
3097 coverage shall be at least as broad as Insurance Services Office form number CA 0001  
3098 Covering Automobile Liability, Code (any auto). CITY and CONTRACTOR shall review  
3099 coverage within sixty (60) days of the end of calendar year 2015. CITY may require  
3100 reasonable changes in the amount of the insurance coverage set forth herein based on  
3101 documented changes in industry standards during the five (5) year period ended December  
3102 31, 2015. Such insurance shall be with insurers and under forms of policies reasonably  
3103 satisfactory in all respects to CITY and shall provide that written notice must be given to the  
3104 CITY thirty (30) days prior to policy cancellation by certified mail, return receipt requested.

3105 CONTRACTOR shall notify CITY within thirty (30) days of its knowledge or any material  
3106 change in coverage that impacts this Collection Service Agreement.

3107                   27.02.3    Worker Compensation Insurance. CONTRACTOR at its own  
3108 expense, shall carry and maintain full Worker Compensation Insurance, as required by the  
3109 California Labor Code and Employer's Liability insurance with limits not less than five million  
3110 dollars (\$5,000,000) for each employee per accident or disease. The scope of such coverage  
3111 shall be at least as broad as the Worker's Compensation insurance required by the State of  
3112 California and Employer's liability insurance. Such insurance shall be with insurers and under  
3113 forms of policies reasonably satisfactory in all respects to CITY, unless CONTRACTOR is  
3114 self-insured and complies with the requirements of Section 27.02.5. Such policies shall  
3115 provide that written notice must be given to the CITY thirty (30) days prior to cancellation by  
3116 certified mail, return receipt requested. CONTRACTOR shall notify CITY within thirty (30)  
3117 days of its knowledge of any actual or impending material change in coverage that impacts  
3118 this Collection Service Agreement.

3119                   27.02.4    Environmental Impairment and Pollution Liability. CONTRACTOR,  
3120 at its own expense, shall carry and maintain environmental impairment liability insurance for  
3121 the term, including any extensions thereto, in the amount of ten million dollars (\$10,000,000)  
3122 per loss and in annual aggregate, covering liability arising from the release of waste materials  
3123 and/or irritants, contaminants or pollutants. Such coverage shall, if commercially available,  
3124 without involvement of CITY, automatically broaden in its form of coverage to include  
3125 legislative changes in the definition of waste materials and/or irritants, contaminants or  
3126 pollutants. The policy shall stipulate this insurance is primary insurance and no other  
3127 insurance carried by CITY will be called upon to contribute to a loss suffered by  
3128 CONTRACTOR hereunder and waive subrogation against the CITY and other additional  
3129 insureds.

3130                   27.02.5    Other Insurance Provisions. The liability policies are to contain, or  
3131 be endorsed to contain, the following provisions:

3132                   27.02.5.1    The CITY, its officers, officials, employees, agents and  
3133 volunteers are to be covered as respects: liability arising out of activities performed by or on  
3134 behalf of the CONTRACTOR, products and completed operations of CONTRACTOR; premises  
3135 owned, occupied or used by CONTRACTOR; or vehicles owned, leased, hired, or borrowed by  
3136 CONTRACTOR. The coverage shall contain no special limitations on the scope of protection  
3137 afforded to the CITY, its officers, officials, employee's agents (including attorneys and  
3138 consultants) or volunteers.

3139                   27.02.5.2    For any claims related to this Agreement,  
3140 CONTRACTOR'S insurance coverage shall be primary insurance as respects the CITY, its  
3141 officers, employees, agents and volunteers. Any insurance or self-insurance maintained by  
3142 CITY, its officers, officials, employees, agents, or volunteers, to the extent of the indemnities  
3143 contained in this Agreement shall be excess of CONTRACTOR'S insurance and shall not  
3144 contribute with it.

3145                   27.02.5.3    Any failure to comply with reporting or other provisions of  
3146 the policies including breaches of warranties shall not affect coverage provided to CITY, its  
3147 officers, officials, employees, agents, or volunteers.

3148                   27.02.5.4     CONTRACTOR'S insurance shall apply separately to each  
3149 insured against whom claim is made or suit is brought, except with respect to the limits of the  
3150 insurer's liability. CONTRACTOR shall monitor its insurance contracts and coverage at all times  
3151 to provide the minimum coverage specified by this Article.

3152                   27.02.5.5     Each insurance policy required by this Article shall be  
3153 occurrence based (except as provided in Section 27.02.5.10), shall be endorsed to state  
3154 coverage, shall not be canceled by either party or changed materially except after thirty (30)  
3155 days' prior written notice by certified mail, return receipt requested, has been given to CITY.

3156                   27.02.5.6     The CITY, its officers, agents, and employees shall be  
3157 named as additional insured on all policies except Workers Compensation. In the event of  
3158 cancellation, or material change in coverage, thirty (30) days prior written notice thereof shall be  
3159 given to CITY. Notice shall be sent by certified mail to:

3160 Contract Administrator  
3161 City of Emeryville  
3162 1333 Park Avenue  
3163 Emeryville, CA 94608-3517

3164                   27.02.5.7     CONTRACTOR shall furnish the CITY with original  
3165 certificates affecting coverage required by this clause. The certificates are to be signed by a  
3166 person authorized by that insurer to bind coverage on its behalf. All certificates are to be  
3167 received and approved by CITY before work commences. The insurance information required  
3168 by this provision shall be provided to the CITY by December 1, 2010.

3169                   27.02.5.8     Insurance is to be placed with insurers with a current A.M.  
3170 Best's rating of no less than A:VII or a rating which is acceptable to CITY.

3171                   27.02.5.9     The CONTRACTOR and insurer agree to waive all rights  
3172 of subrogation against CITY under this Agreement for losses arising from work performed by  
3173 CONTRACTOR for CITY. CONTRACTOR shall deliver the insurer's consent to such waiver  
3174 within thirty (30) days of the effective date of this Agreement.

3175                   27.02.5.10    The Commercial General Liability Insurance and  
3176 Automobile Liability insurance shall be written on an occurrence basis and kept in force during  
3177 the entire term of this Agreement; Environmental Impairment and Pollution Liability Insurance is  
3178 written on a claims-made basis and shall be maintained through continuous renewals so as to  
3179 provide the same levels of coverage after the expiration of this Agreement as might be  
3180 necessary to protect CITY from any and all liability during all applicable statutes of limitation  
3181 which might apply to claims of third parties arising out of the activities of CONTRACTOR during  
3182 the term of this Agreement. The deductibles or self-insured retention with respect to any  
3183 Environmental Impairment and Pollution Liability Insurance, including any renewals as set forth  
3184 herein, shall not exceed five million dollars (\$5,000,000).

3185                   27.02.5.11    CONTRACTOR shall comply with all requirements of the  
3186 insurers issuing policies. The carrying of insurance shall not relieve CONTRACTOR from any  
3187 obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-  
3188 insured reserves is made by any third person against CONTRACTOR or any subcontractor on



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3231 herein of an assignment by CONTRACTOR. "Assignment" or "assign" as used in this  
3232 Agreement shall include, but not be limited to, (i) a sale, exchange or other transfer of  
3233 substantially all of CONTRACTOR'S assets dedicated to any or all of the services to be  
3234 provided under this Agreement to a third party (ii) a sale, exchange or other transfer of  
3235 outstanding common stock of CONTRACTOR to a third party provided said sale, exchange or  
3236 transfer results in a change of control of CONTRACTOR or any sale, exchange or transfer of  
3237 the common stock of CONTRACTOR which results in the effective transfer of control of  
3238 substantially all of the CONTRACTOR'S assets dedicated to any or all of the services to be  
3239 provided under this Agreement to a third party; (iii) any dissolution, reorganization,  
3240 consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling  
3241 agreement, escrow arrangement, liquidation or other transaction to which results in a change of  
3242 ownership or control of CONTRACTOR; (iv) any assignment by operation of law, including  
3243 insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for  
3244 an execution being levied against this Agreement, appointment of a receiver taking possession  
3245 of CONTRACTOR'S property, or transfer occurring in the event of a probate proceeding; and (v)  
3246 any combination of the foregoing (whether or not in related or contemporaneous transactions)  
3247 which has the effect of any such transfer or change of ownership, or change of control of  
3248 CONTRACTOR, or substantially all of the assets used for providing any of the services under  
3249 this Agreement to a third party.

3250           28.02 Procedure for CITY Evaluation of Proposed Assignment. If CONTRACTOR  
3251 requests CITY'S consideration of and consent to an Assignment, CONTRACTOR shall meet the  
3252 following preliminary requirements:

3253           28.02.1 CONTRACTOR shall pay CITY its reasonable expenses for  
3254 attorney's fees and investigation costs necessary to investigate the suitability of any  
3255 proposed assignee, and to review and finalize any documentation required as a condition for  
3256 approving any such assignment;

3257           28.02.2 CONTRACTOR shall furnish CITY with audited financial  
3258 statements of the proposed assignee's operations for the immediately preceding three (3)  
3259 operating years;

3260           28.02.3 CONTRACTOR shall furnish CITY with satisfactory proof that: (1)  
3261 the proposed assignee has at least ten (10) years of solid waste management experience on  
3262 a scale equal to or exceeding the scale of operations conducted by CONTRACTOR under  
3263 this Agreement; (2) in the last five (5) years, the proposed assignee has not suffered any  
3264 significant citations or other censure from any federal, state or local agency having  
3265 jurisdiction over its solid waste operations due to any significant failure to comply with state,  
3266 federal or local environmental laws and the assignee has provided CITY with a complete list  
3267 of such citations and censures; (3) the proposed assignee has at all times conducted its  
3268 operations in an environmentally safe and conscientious fashion; (4) the proposed assignee  
3269 conducts its solid waste practices in accordance with sound management practices in full  
3270 compliance with all federal, state and local laws regulating the Collection and Disposal of  
3271 Solid Waste including hazardous substances; and, (5) of any other information required by  
3272 CITY to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe  
3273 and effective manner.

3274                    28.02.4    CONTRACTOR Default. Under no circumstances shall CITY be  
3275                    obliged to consider any proposed assignment if CONTRACTOR is in default at any time  
3276                    during the period of consideration.

3277                    28.03    CITY Discretion to Accept or Reject Assignment. CITY, in its sole discretion,  
3278                    may accept, reject or conditionally accept the proposed assignment. If CITY accepts a partial  
3279                    assignment, the corporate guaranty provided in Section 2.09 and the performance bond  
3280                    provided in Section 27.07 shall remain in effect unless CITY in its sole discretion consents to  
3281                    adequate substitutes by the assignee or to a novation, and absent a novation CONTRACTOR  
3282                    shall not be released from liability under this Agreement.

3283                    28.04    Subcontractor. The use of a subcontractor to perform services under this  
3284                    Agreement shall not constitute delegation of CONTRACTOR'S duties provided that  
3285                    CONTRACTOR has received prior written authorization from the Contract Administrator to  
3286                    subcontract such services and the Contract Administrator has approved a subcontractor who  
3287                    will perform such services. CONTRACTOR shall be responsible for directing the work of  
3288                    CONTRACTOR'S subcontractors and any compensation due or payable to CONTRACTOR'S  
3289                    subcontractor shall be the sole responsibility of CONTRACTOR. The Contract Administrator  
3290                    shall have the right to require the removal of any approved subcontractor for reasonable cause.  
3291                    No subcontractors have been approved by the CITY.

## 3292                    **ARTICLE 29. CITY Right to Perform Service**

3293                    29.01    Right to Perform. In the event CONTRACTOR, for any reason whatsoever, fails,  
3294                    refuses, or is unable to Collect, transport, process, market or Dispose of any or all Solid Waste,  
3295                    Recyclables, Compostable Materials, Bulky Goods, Construction and Demolition Debris and/or  
3296                    other Discarded Materials which are required by this Agreement, at the time and in the manner  
3297                    provided in this Agreement, for a period of more than forty-eight (48) hours, and if, as a result  
3298                    thereof, Solid Waste, Recyclables, Compostable Materials, Bulky Goods, Construction and  
3299                    Demolition Debris and/or other Discarded Materials should accumulate in CITY to such an  
3300                    extent, in such a manner, or for such a time that CITY should find that such accumulation  
3301                    endangers or menaces the public health, safety, or welfare or upon CONTRACTOR default as  
3302                    set forth in Article 26, then CITY shall have the right, even if CONTRACTOR is not in breach of  
3303                    this Agreement, but not the obligation, upon twenty-four (24) hours prior written notice to  
3304                    CONTRACTOR during the period of such emergency as determined by CITY, (i) to perform, or  
3305                    cause to be performed, such services itself with its own or other personnel and equipment  
3306                    without liability to CONTRACTOR; and/or (ii) to take possession of any or all of CONTRACTOR  
3307                    owned equipment or licensed equipment and utilize other property owned by the  
3308                    CONTRACTOR used or useful in the Collection, transportation, and Disposal of Solid Waste,  
3309                    Recyclables, Compostable Materials, Bulky Goods, Construction and Demolition Debris and/or  
3310                    other Discarded Materials, and to use such property to Collect, transport, and Dispose any Solid  
3311                    Waste, Recyclables, Compostable Materials, Bulky Goods, Construction and Demolition Debris  
3312                    and/or other Discarded Materials generated within CITY which CONTRACTOR would otherwise  
3313                    be obligated to Collect, transport, and properly Dispose or process pursuant to this Agreement.  
3314                    In such an event, CONTRACTOR shall immediately make available to CITY a listing and  
3315                    description, including street names, of SFD, MFD and Commercial service Collection routes.

3316           29.02 CONTRACTOR'S Notice. Notice of CONTRACTOR'S failure, refusal, or neglect  
3317 to Collect, transport, and properly dispose of process Solid Waste, Recyclables, Compostable  
3318 Materials, Bulky Goods, Construction and Demolition Debris and/or other Discarded Materials  
3319 may be given orally by telephone to CONTRACTOR at its principal office and shall be effective  
3320 immediately. Written confirmation of such oral notification shall be sent to CONTRACTOR within  
3321 twenty-four (24) hours of the oral notification.

3322           29.03 CONTRACTOR further agrees in such event:

3323                   29.03.1     It will take direction from CITY to effect the transfer of possession  
3324 of equipment and property to CITY for CITY'S use.

3325                   29.03.2     It will, if CITY so requests, keep in good repair and condition all of  
3326 such equipment, provide all such equipment needed to perform Collection Services with fuel,  
3327 oil, and other service, and provide such other service as may be necessary to maintain said  
3328 property in operational condition.

3329                   29.03.3     Subject to any labor agreements then in effect, CITY may  
3330 immediately engage all or any personnel necessary or useful for the Collection and  
3331 transportation of Solid Waste, Recyclables, Compostable Materials, Bulky Goods,  
3332 Construction and Demolition Debris and/or other Discarded Materials, including, if CITY so  
3333 desires, employees previously or then employed by CONTRACTOR. CONTRACTOR further  
3334 agrees, if CITY so requests, to furnish CITY the services of any or all management or office  
3335 personnel employed by CONTRACTOR whose services are necessary or useful for Solid  
3336 Waste, Recyclables, Compostable Materials, Bulky Goods, Construction and Demolition  
3337 Debris and/or other Discarded Materials Collection, transportation, processing, and Disposal  
3338 operations and for the billing and Collection of fees for these services.

3339                   29.03.4     CITY agrees it assumes complete responsibility for the proper and  
3340 normal use of such equipment and facilities while in its possession.

3341                   29.03.5     If the interruption or discontinuance in service is caused by reason  
3342 of Force Majeure as described herein, CITY shall pay to CONTRACTOR the reasonable  
3343 rental value of equipment, possession of which is taken by CITY, for the period of CITY'S  
3344 possession, if any, which extends beyond the period of time for which CONTRACTOR has  
3345 rendered bills in advance of service, for the class of service involved. In any other  
3346 circumstance where the CITY provides service under this Article, the CITY shall have no  
3347 liability to CONTRACTOR and CITY will have all of the other remedies available to it under  
3348 this Agreement or by law.

3349           29.04 Temporary Possession of CONTRACTOR'S Equipment and Personnel. If CITY  
3350 suffers an interruption or discontinuance of service, CITY may take possession of and use all of  
3351 CONTRACTOR'S equipment and personnel described above until other suitable arrangements  
3352 can be made for the provision of Solid Waste, Recyclables, Compostable Materials, Bulky  
3353 Goods and/or Construction and Demolition Debris Collection Services which may include the  
3354 grant of a franchise to another company.

3355           29.05 Billing and Compensation to CITY During CITY'S Possession. During such time  
3356 CITY is providing Solid Waste, Recyclables, Compostable Materials, Bulky Goods, and/or  
3357 Construction and Demolition Debris Collection Services, as above provided, CONTRACTOR

3358 shall bill and collect payment from all users of the above-mentioned services. CONTRACTOR  
3359 further agrees that, in such event, it shall reimburse CITY for any and all costs and expenses  
3360 incurred by CITY in taking over possession of the above-mentioned equipment and property for  
3361 Solid Waste, Recyclables, Compostable Materials, Bulky Goods, and/or Construction and  
3362 Demolition Debris Collection service in such manner and to an extent as would otherwise be  
3363 required of CONTRACTOR under the terms of this Agreement. Such reimbursement shall be  
3364 made from time to time after submission by CITY to CONTRACTOR of each statement listing  
3365 such costs and expenses, but in no event later than five (5) working days from and after each  
3366 such submission.

3367         29.06 CITY'S Right to Relinquish Possession. It is further mutually agreed CITY may,  
3368 at any time, at its discretion, relinquish possession of any or all of the above-mentioned  
3369 equipment or personnel to CONTRACTOR and thereupon demand CONTRACTOR resume  
3370 Solid Waste, Recyclables, Compostable Materials, Bulky Goods, and/or Construction and  
3371 Demolition Debris Collection Services as provided in this Agreement, whereupon  
3372 CONTRACTOR shall be bound to resume the same.

3373         29.07 CITY'S Possession Not a Taking. CITY'S exercise of its rights under this Article  
3374 (i) does not constitute a taking of private property for which compensation must be paid; (ii) will  
3375 not create any liability on the part of CITY to CONTRACTOR; and (iii) does not exempt  
3376 CONTRACTOR from the indemnity provisions of this Agreement, which are meant to extend to  
3377 circumstances arising under this Section, provided CONTRACTOR is not required to indemnify  
3378 CITY against claims and damages arising from the sole negligence of CITY, its elective and  
3379 appointive boards, commissions, officers, employees, agents and volunteers in the operation of  
3380 Solid Waste, Recyclables, Compostable Materials, Bulky Goods, and/or Construction and  
3381 Demolition Debris Collection vehicles during the time CITY has taken possession of such Solid  
3382 Waste, Recyclables, Compostable Materials, Bulky Goods, and/or Construction and Demolition  
3383 Debris Collection vehicles.

3384         29.08 Duration of CITY'S Possession. CITY'S right pursuant to this Article to retain  
3385 temporary possession of CONTRACTOR'S facilities and equipment and to render Collection  
3386 Services shall terminate when CITY determines such services can be resumed by  
3387 CONTRACTOR, or when CITY no longer reasonably requires such property or equipment. In  
3388 any case, CITY has no obligation to maintain possession of CONTRACTOR'S property or  
3389 equipment and/or continue its use for any period of time and may at any time, in its sole  
3390 discretion, relinquish possession to CONTRACTOR.

## 3391                   **ARTICLE 30. Strikes and Similar Labor Actions**

3392         30.01 Strikes. In the event of a strike or similar labor action, but not including a lockout  
3393 as set forth in Section 30.02 below, whereby employees of CONTRACTOR refuse to perform  
3394 work for CONTRACTOR at normally anticipated levels or efficiency (a "Strike") which affects the  
3395 ability of the CONTRACTOR to provide Collection Services within the jurisdictional limits of  
3396 CITY in accordance with this Agreement, the following guidelines shall apply:

3397                 30.01.1 In conjunction with the execution of this Agreement,  
3398 CONTRACTOR has discussed with CITY a general contingency plan. From time to time  
3399 during the term of this Agreement, CONTRACTOR and CITY shall meet to discuss changes  
3400 to the general contingency plan.

3401                    30.01.2     Within twelve (12) hours of notification to CONTRACTOR by labor  
3402 that it has authorized a strike, CONTRACTOR shall notify CITY Manager, by phone and  
3403 email.

3404                    30.01.3     Within three (3) Work Days of a strike, if CONTRACTOR is not  
3405 providing Collection Services in accordance with normal scheduled pick ups, CONTRACTOR  
3406 shall meet with CITY and to develop a strike implementation plan.

3407                    30.01.4     Within five (5) Work Days of a strike, if CONTRACTOR is not  
3408 providing Collection Services in accordance with the normal schedules and volumes set forth  
3409 in this Agreement, or the schedules and volumes in the agreed-upon strike implementation  
3410 plan, if such plan has been agreed to by the CITY, CITY shall have the right, but not the  
3411 obligation, to bring in outside forces to provide Collection Services which are not being  
3412 provided by CONTRACTOR and charge CONTRACTOR for the reasonable direct and  
3413 indirect expenses (including administrative and overhead) incurred by CITY in this regard.

3414                    30.01.5     Within ten (10) Work Days of a strike, CONTRACTOR is to use  
3415 commercially reasonable efforts to bring in alternate work forces and provide Collection  
3416 Services in accordance with the normal schedules and volumes set forth in this Agreement,  
3417 or the schedules and volumes in the agreed-upon strike implementation plan, if such plan  
3418 has been agreed to by the CITY. In this regard, CITY is not to receive priority over other  
3419 governmental jurisdictions receiving services from CONTRACTOR and likewise affected by  
3420 such Strike, but other such jurisdictional limits are not to receive priority over CITY with  
3421 regard to the promptness and/or quality of service provided to CITY.

3422                    30.01.5.1     In the event CONTRACTOR'S alternate work force is  
3423 unable to provide Collection Services in accordance with the normal schedules, volumes and  
3424 routing set forth in this Agreement, or the schedules, volumes and routing in the agreed-upon  
3425 strike implementation plan, if such plan has been agreed to by the CITY, CITY shall have the  
3426 right, but not the obligation, to bring in outside forces to provide Collection Services which are  
3427 not being provided by CONTRACTOR and charge CONTRACTOR for the reasonable direct and  
3428 indirect expenses (including administrative and overhead) incurred by CITY in this regard.

3429                    30.01.6     In the event CITY elects to retain its own work force as set forth in  
3430 Sections 30.01.4 and 30.01.5 above, CITY shall discuss the alternatives with CONTRACTOR  
3431 before retaining such work force. Once the CITY retains its own work force, CITY shall  
3432 periodically, but not more often than weekly, invoice CONTRACTOR for the reasonable direct  
3433 and indirect expenses of retaining such outside services and CONTRACTOR shall reimburse  
3434 CITY for such expenses within ten (10) calendar days of invoice. CITY shall have the right to  
3435 charge CONTRACTOR interest on invoices which are unpaid after ten (10) calendar days at  
3436 the rate of one and one half (1.5) percent per month.

3437                    30.01.7     In the event of a strike, regardless of when and what level a  
3438 replacement work force is deployed by CONTRACTOR, CONTRACTOR shall not be subject  
3439 to liquidated damages for the first ten (10) Working Days following the actual strike.  
3440 Thereafter, liquidated damages shall be applied using a factor of eighty (80) percent which  
3441 shall be applied as follows:

3442                    30.01.8     In the event the application of the liquidated damage is  
3443 conditioned upon CONTRACTORS failure to complete a certain percentage of a task, that

3444 percentage shall be multiplied by eighty (80) percent. (e.g. liquidated damage item tt. in  
3445 Section 23.03, reads "failure or neglect to complete at least eighty (80) percent of each route  
3446 on the regular scheduled Collection service work day." and results in a liquidated damage of  
3447 one thousand dollars (\$1,000.00) for each route not completed. Application of the eighty (80)  
3448 percent factor would result in a liquidated damage of one thousand dollars (\$1,000.00) for  
3449 "failure or neglect to complete at least seventy-two (72) percent of each route on a regular  
3450 scheduled collection service work day."

3451                           30.01.8.1       In the event the application of the liquidated damage is  
3452 conditioned upon the number of times CONTRACTOR fails to perform or incorrectly performs a  
3453 task, that number shall be divided by eighty (80) percent and rounded up to the nearest whole  
3454 number. (e.g. liquidated damage item c. in Section 23.03, reads "failure to properly return  
3455 empty Carts or Bins, upon notification of the Customer to the place and position in which the  
3456 Cart or Bin was found or to place Carts upright with lids secured in excess of twenty-five (25)  
3457 occurrences per quarter." and results in a liquidated damages of one hundred dollars (\$100.00)  
3458 per incident per day. Application of the eighty (80) percent factor would result in a liquidated  
3459 damage of one hundred dollars (\$100.00) for "failure to properly return empty Carts or Bins,  
3460 upon notification of the Customer to the place and position in which the Cart or Bin was found or  
3461 to place Carts upright with lids secured in excess of thirty-two (32) occurrences per quarter."

3462                           30.01.8.2       In the event the application of the liquidated damage is  
3463 conditioned upon a single occurrence, the amount of the liquidated damage shall be multiplied  
3464 by eighty (80) percent and rounded up to the nearest whole number. (e.g. liquidated damage  
3465 item b. in Section 23.03, reads "failure to comply with the hours of operation as required by this  
3466 Agreement." and results in a liquidated damages of one hundred (\$100.00) per incident.  
3467 Application of the eighty (80) percent factor would result in a liquidated damage of eighty dollars  
3468 (\$80.00) for "failure to comply with the hours of operation as required by this Agreement."

3469                           30.01.8         In the event CITY retains its own forces to provide full or partial  
3470 Collection Service in accordance Sections 30.01.4 or 30.01.5 above, CONTRACTOR agrees  
3471 that the materials Collected by those forces can be taken directly from CITY to the landfill of  
3472 CONTRACTOR at Altamont, California in the event the Davis Street Transfer Station owned by  
3473 CONTRACTOR is not operational. In the event neither the CONTRACTOR'S Davis Street  
3474 Transfer Station nor Altamont landfill are operational during the period of such strike  
3475 CONTRACTOR agrees that the materials Collected by those forces retained by CITY can be  
3476 taken directly from CITY to such other landfill and/or transfer station as selected by CITY.

3477                           30.01.9         After thirty (30) days, if there is a continuing failure to perform  
3478 Collection Services, such failure to perform shall be considered a default under Section 26.01  
3479 and CITY can cancel the existing Collection Agreement between CITY and CONTRACTOR. In  
3480 such an event, CITY shall not waive its right to seek damages from CONTRACTOR for any  
3481 increase in cost of Collection incurred by CITY as a result of the breach of this Agreement by  
3482 CONTRACTOR and the consequential election by CITY to cancel such Agreement and move  
3483 forward with alternate collection alternatives.

3484                           30.02 Lockout. The provisions of Section 30.01 shall not apply in the event of a lockout  
3485 by CONTRACTOR. During such lockout period, CONTRACTOR shall be required to comply

3486 with all requirements of this Agreement and shall be subject to all provisions of this Agreement  
3487 for non-compliance without exception and specifically including liquidated damages and default.

3488 **ARTICLE 31. Transition to Next Contractor**

3489 31.01 Transition. In the event CONTRACTOR is not awarded an Agreement to  
3490 continue to provide Collection Services following the expiration or early termination of this  
3491 Agreement, CONTRACTOR shall cooperate fully with CITY and any subsequent contractors to  
3492 assure a smooth transition of services described in this Agreement. Such cooperation shall  
3493 include but not be limited to transfer of computer data, files and tapes; providing routing  
3494 information, route maps, vehicle fleet information, and list of SFD, MFD and Commercial  
3495 Customers; providing a complete inventory of all Carts, Bins, and other Containers; providing  
3496 adequate labor and equipment to complete performance of all Collection Services required  
3497 under this Agreement; taking all actions necessary to remove or, to the extent required under  
3498 the terms of this Agreement, transfer ownership of Carts, Bins, and other Containers as  
3499 appropriate to CITY; including transporting such Containers to a location designated by the  
3500 Contract Administrator; coordinating Collection of materials set out in new Containers if new  
3501 Containers are provided for a subsequent Agreement and providing other reports and data  
3502 required by this Agreement.

3503 **ARTICLE 32. General Requirements**

3504 32.01 Permits and Licenses. The CONTRACTOR shall obtain, at its own expense, all  
3505 applicable permits and licenses required by law or ordinance and maintain the same in full force  
3506 and effect.

3507 32.02 Successors and Assigns. This Agreement shall be binding upon the successors  
3508 and Assigns of the parties hereto, subject to the ability of CITY, in its sole discretion, to  
3509 terminate the Agreement as prescribed in Section 4.04 in the event of an assignment by  
3510 CONTRACTOR. CONTRACTOR may assign its duties which are defined in this Agreement only  
3511 in accordance with procedures prescribed by CITY in its sole discretion. Any attempt by  
3512 CONTRACTOR to assign or delegate its duties in any other manner shall be void and have no  
3513 effect. CITY must provide written notice and a true copy of the assignment to CONTRACTOR  
3514 in order to assign or delegate CITY'S duties as defined in this Agreement.

3515 32.02.1 In the event CONTRACTOR is a corporation, partnership or other  
3516 equal entity, there shall be no change in the direct or indirect legal or factual control of such  
3517 entity without first obtaining the written consent of the CITY. A change of legal control  
3518 includes, but is not limited to, a transfer of the ownership of over twenty (20) percent of  
3519 CONTRACTOR or any Person owning a twenty (20) percent or greater interest, direct or  
3520 indirect, in CONTRACTOR.

3521 32.03 Subcontractors.

3522 32.03.1 General. CONTRACTOR shall indemnify and hold harmless the  
3523 CITY, its officers, employees, agents (including attorneys and consultants) and volunteers for  
3524 the acts and omissions of its subcontractors, and its subcontractors' officers, employees, and  
3525 agents in the same manner as the indemnification provided by CONTRACTOR in Article 27.  
3526 No provision of this Agreement, or of any subcontract, shall be construed as creating a

3527 contractual relationship between CITY and a subcontractor, unless CITY accepts assignment  
3528 of a subcontract pursuant to this Agreement.

3529           32.03.2 Approval. During the term of this Agreement, CITY shall have the  
3530 right to object to any or all subcontracts of all or part of CONTRACTOR'S duties as defined in  
3531 this Agreement. CONTRACTOR shall notify CITY of a proposed subcontract no later than  
3532 ninety (90) days prior to the date on which the proposed subcontract is to become effective.  
3533 Under no circumstances shall a subcontract to provide services under this Agreement take  
3534 effect without the express written consent of CITY, provided that CITY'S consent shall not be  
3535 withheld unreasonably, except that CITY may withhold consent if such subcontract would  
3536 result in an increase in rates. In no way shall a subcontract, or CITY'S approval of a  
3537 subcontract, relieve CONTRACTOR of its duty to perform pursuant to this Agreement.

3538           32.03.3 Subcontractor's Representations and Warranties. No less than  
3539 thirty (30) days before a subcontract entered to provide services under this Agreement  
3540 becomes effective, CONTRACTOR shall provide CITY a certificate, in a form acceptable to  
3541 CITY, bearing warranties and representations from that subcontractor that are substantially  
3542 similar to those warranties and representations made by CONTRACTOR under Article 2 of  
3543 this Agreement. Each subcontractor's activities must be covered fully by the performance  
3544 bond pursuant to the provisions of Article 27. Each subcontractor's activities must be covered  
3545 expressly and fully by CONTRACTOR'S insurance provided and maintained under Article 27  
3546 of this Agreement.

3547           32.03.4 Subcontractor's Duty to Comply with this Agreement and Other  
3548 Laws. Any subcontract entered to provide services under this Agreement shall be subject to  
3549 the provisions of this Agreement. Any such subcontract shall also be subject to any  
3550 applicable federal, state, and local laws.

3551           32.04 Compliance with Laws and Regulations. CONTRACTOR hereby agrees to abide  
3552 with all applicable federal, state, and local laws, ordinances, and regulations. It is understood  
3553 CITY has ordinances for affecting a refuse control program. It is the responsibility of  
3554 CONTRACTOR to become familiar with such ordinances, and it is understood, if any provision  
3555 of said ordinances are in conflict with the conditions of this Agreement, the ordinances shall be  
3556 the governing factor in regard to performance of the Agreement.

3557           32.05 Nondiscrimination. CONTRACTOR hereby agrees to abide by all local, state and  
3558 federal laws and regulations pertaining to discrimination in employment including that no person  
3559 shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age  
3560 religion, political affiliations or any other non-merit based factors, be subject to discrimination  
3561 under this Agreement. Failure to abide by this provision shall be a breach of this Agreement  
3562 subject to the provisions of Article 26.

3563           32.06 Access to Records. CONTRACTOR shall permit access to its records of  
3564 employment, employment advertisements, application forms, and other pertinent data or  
3565 records relating to CONTRACTOR'S obligation under this Agreement, by the Fair Employment  
3566 Practices Commission, CITY or any appropriate employee, department, or agent designated by  
3567 the Fair Employment Practices Commission or by CITY respectively, for the purpose of  
3568 investigating CONTRACTOR'S compliance with the California Fair Employment Practices Act  
3569 this Agreement.

3570 32.07 Notices. Any and all notices to be given under this Agreement, or which any  
3571 party may desire to give to another, shall be in writing. Said notices shall be deemed to have  
3572 been duly given on the date of personal delivery to the other party's place of business as  
3573 designated below, as may be changed from time to time by written notice, or during regular  
3574 business hours on the date of facsimile to the parties specified below, or on the third day  
3575 following deposit in the mail in the County of Alameda, California, said deposit to be by  
3576 registered or certified mail, return receipt requested, postage prepaid, and addressed as set  
3577 forth below. In the case of a notice of communication by facsimile, the facsimile shall be sent to  
3578 the number specified below and a written copy shall be mailed or personally delivered within  
3579 three (3) days of the transmittal of the facsimile.

3580 32.07.1 If to CONTRACTOR, notices required to be given by CITY to  
3581 CONTRACTOR will be deemed received by CONTRACTOR upon being deemed "delivered"  
3582 according to the provisions of this Section. Notice of Breach by CITY to CONTRACTOR may  
3583 be given to CONTRACTOR orally or by telephone at the principal office if confirmed in writing  
3584 and delivered in person or by facsimile by noon the following day.

3585 32.07.2 Notice to CONTRACTOR shall be addressed to the following  
3586 addresses, as indicated:

3587 Area Vice President  
3588 Waste Management of Alameda County Inc.  
3589 172 98<sup>th</sup> Street  
3590 Oakland, CA 94603-1004  
3591 Telephone: (510) 613-2833  
3592 Facsimile: (510) 633-0106

3593 and

3594  
3595 Vice President and Group General Council  
3596 USA Waste of California, Inc.  
3597 7025 N. Scottsdale Road, #200  
3598 Scottsdale, AZ 85253  
3599 Telephone: (480) 624-8473  
3600 Facsimile: (832) 668-3141

3601 32.07.3 If to CITY, to the name and address shown in the space provided  
3602 at the end of this Agreement, with a copy to the person whose name and address also so  
3603 appears. A copy shall also be provided to:

3604 Contract Administrator  
3605 City of Emeryville  
3606 1333 Park Avenue  
3607 Emeryville, CA 94608  
3608 Telephone: (510) 596-4372  
3609 Facsimile: (510) 596-3724

3610

3611 City Attorney  
3612 City of Emeryville  
3613 1333 Park Avenue  
3614 Emeryville, CA 94608  
3615 Telephone: (510) 596-4380  
3616 Facsimile: (510) 596-3724

3617                   32.07.4     Either party may designate a different mailing address or a  
3618     different facsimile number or telephone number by providing written notice to the other party  
3619     as provided in this Section.

3620                   32.07.5     Notice by CITY to CONTRACTOR of a missed pick-up or a  
3621     Customer problem or complaint may be given to CONTRACTOR orally, by telephone at  
3622     CONTRACTOR'S local office with written confirmation sent by facsimile or U.S. mail within  
3623     twenty-four (24) hours of the oral notification.

3624                32.08 Severability. Should any article(s) or section(s), or any part thereof, later be  
3625     deemed unenforceable by a court of competent jurisdiction, the remainder of this Agreement  
3626     shall remain in full force and affect.

3627                32.09 Conflicts of Interest. CONTRACTOR covenants and declares it has no conflicts  
3628     of interest that would in any manner impair or affect CONTRACTOR'S ability to perform under  
3629     this Agreement.

3630                32.10 Entire Agreement, Exhibits Included. This document incorporates and includes all  
3631     prior negotiations, correspondence, conversations, agreements, and understandings applicable  
3632     to the matters contained in this Agreement; and the parties agree that there are no  
3633     commitments, agreements, or understandings concerning the subject matter of this Agreement  
3634     that are not contained in this document or in the Disposal Service Agreement which is being  
3635     executed in conjunction with this document. Accordingly, it is agreed that no deviation from the  
3636     terms of this Agreement shall be predicated upon any prior representations or agreements,  
3637     whether oral or written. This Agreement and the exhibits attached, which are incorporated  
3638     herein and have the same effect as if they were part of the text hereof, represent the entire  
3639     agreement of CITY and CONTRACTOR with respect to the services to be provided under this  
3640     Agreement. No prior written or oral statement or proposal shall alter any term or provision of this  
3641     Agreement. Except as provided in Article 21 no party shall be bound to any obligations,  
3642     conditions, or representations except as contained herein or as provided for above in this  
3643     paragraph unless agreed to by the parties in a written amendment of this Agreement.

3644                32.11 Amendment or Rescission. Except as provided in Article 21 this Agreement may  
3645     be amended, modified, or rescinded only by a writing duly authorized by CONTRACTOR and  
3646     CITY and executed by their authorized representatives.

3647                32.12 Applicable Law, Jurisdiction, and Attorney's Fees. This Agreement shall be  
3648     governed by, and construed in accordance with, the laws of the State of California, including  
3649     any regulation, ordinance, or other requirements of any governmental agency having jurisdiction  
3650     over the subject matter of this Agreement. The parties agree that any state court action relating  
3651     to this Agreement shall be instituted and prosecuted in the courts of Alameda County, State of  
3652     California. With respect to venue, the parties agree that this Agreement is made in and shall be  
3653     performed in Alameda County, California, and depositions of CITY employees shall be taken in

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3654 Alameda County, unless another location is selected by consent of both parties. Each party  
3655 shall bear its own costs and attorneys' fees in connection with any formal or informal proceeding  
3656 concerning this Agreement. The prevailing party shall be entitled to reasonable attorney's fees  
3657 and cost in addition to any other relief to which the party is entitled.

3658       32.13 CONTRACTOR Representative. CONTRACTOR shall, by the effective date of  
3659 this Agreement, designate in writing a responsible operations supervisor who shall have direct  
3660 operational authority and who shall serve as the representative of CONTRACTOR in all matters  
3661 related to the Agreement and shall inform CITY in writing of such designation and of any  
3662 limitations upon his or her authority to bind CONTRACTOR. CITY may rely upon action taken by  
3663 such designated representative as actions of CONTRACTOR unless they are outside the scope  
3664 of the authority delegated to him/her by CONTRACTOR as communicated to CITY.

3665       32.14 Privacy. CONTRACTOR shall strictly observe and protect the rights of privacy of  
3666 Customers. Information identifying individual Customers or the composition or contents of a  
3667 Customer's waste stream shall not be revealed to any Person, governmental unit, private  
3668 agency, or company, unless upon the authority of a court of law, by statute, or upon valid  
3669 authorization of the Customer. This provision shall not be construed to preclude CONTRACTOR  
3670 from preparing, participating in, or assisting in the preparation of waste characterization studies  
3671 or waste stream analyses which may be required by AB 939.

3672       32.15 Parties in Interest. Nothing in this Agreement, whether express or implied, is  
3673 intended to confer any rights on any persons other than the parties and their representatives,  
3674 successors, and permitted assigns.

3675       32.16 Advice of Counsel/Negotiated Agreement. Each of the parties has received the  
3676 advice of legal counsel prior to signing this Agreement. The parties agree no provision or  
3677 provisions may be subject to any rule of construction based upon any party being considered  
3678 the party "drafting" this Agreement.

3679       32.17 Interpretation. This Agreement shall be interpreted and construed reasonably in  
3680 light of the whole Agreement, and shall not be construed either strictly for or against either party,  
3681 regardless of the degree to which either party participated in its drafting.

3682       32.18 Headings. The section headings used in this Agreement are intended for  
3683 convenience and shall not be considered in determining the rights and obligations of the parties  
3684 to this Agreement.

3685       32.19 Waiver. Waiver of any term or condition contained in this Agreement by any party  
3686 to this Agreement shall be in writing and shall not be construed as a waiver of a subsequent  
3687 breach or failure of the same term or condition or a waiver of any other term or condition  
3688 contained in the Agreement. The failure of the CITY to require performance by the  
3689 CONTRACTOR of any provisions of this Agreement shall in no way affect the right of the CITY  
3690 to enforce the same and shall not be deemed a waiver by the CITY of any breach of any  
3691 provision thereof. The subsequent acceptance by CITY of any fee, tax, or any other monies  
3692 which become due from CONTRACTOR to CITY shall not be deemed to be a waiver by CITY of  
3693 any breach or violation of any term, covenant, or condition of this Agreement.

3694       32.20 Provisions Which Survive Termination or Expiration of Agreement. The following  
3695 provisions of this Agreement shall survive the termination or expiration of the Agreement:





3726

## EXHIBITS

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3728  
3729  
3730

**Exhibit 1 Approved Rates and Charges**  
**City of Emeryville**

<b>Form 1</b>						
<b>SFD COLLECTION SERVICE RATES</b>						
<b>A. SFD COLLECTION SERVICE – CURBSIDE – Monthly Rates Including Franchise Fees</b>						
1	Solid Waste Cart Sizes (gallons)	<b>10</b>	<b>20</b>	<b>32</b>	<b>64</b>	<b>96</b>
2	SFD Collection Service Rate	\$6.74	\$10.21	\$16.91	\$33.80	\$50.71
<b>B. SUBSCRIPTION BACKYARD CART COLLECTION SERVICE-Monthly Charge Including Franchise Fees</b>						
	<b>Per Cart:</b>	<b>\$12.85</b>				
1	Solid Waste Cart Sizes (gallons)	<b>10</b>	<b>20</b>	<b>32</b>	<b>64</b>	<b>96</b>
2	Backyard Collection Charge	\$19.59	\$23.06	\$29.76	\$46.65	\$63.56
<b>C. ADDITIONAL SERVICES (Note: The additional service fees include franchise fees.)</b>						
1	Cart Sizes (gallons)	<b>10</b>	<b>20</b>	<b>32</b>	<b>64</b>	<b>96</b>
2	Extra Curbside Cart -Per Pickup-Normal Collection Day			\$4.74	\$7.80	\$11.82
3	Special Curbside Cart-Per Pickup-Other than Normal Collection Day			\$16.91	\$33.80	\$50.71
4	Bag-it Bags	\$23.71	Per Packet of 5			
5	Excess Gallonage Rate	\$0.36	Each additional gallon			

12/06/10

Form 2 COMMERCIAL CART SOLID WASTE Collection Service Rates						
Number of Carts	Collection Frequency X Per Week					
	1	2	3	4	5	6
<b>A. 32 GALLON CART SOLID WASTE COLLECTION SERVICE RATES-Including Franchise Fees</b>						
<b>CART SOLID WASTE COLLECTION SERVICE RATE: \$23.03 per 32 gallon equivalent.</b>						
1	\$23.03	\$46.06	\$69.09	\$92.12	\$115.15	\$138.18
2	\$46.06	\$92.12	\$138.18	\$184.24	\$230.30	\$276.36
3	\$69.09	\$138.18	\$207.27	\$276.36	\$345.45	\$414.54
4	\$92.12	\$184.24	\$276.36	\$368.48	\$460.60	\$552.72
5	\$115.15	\$230.30	\$345.45	\$460.60	\$575.75	\$690.90
6	\$138.18	\$276.36	\$414.54	\$552.72	\$690.90	\$829.08
7	\$161.21	\$322.42	\$483.63	\$644.84	\$806.05	\$967.26
8	\$184.24	\$368.48	\$552.72	\$736.96	\$921.20	\$1,105.44
9	\$207.27	\$414.54	\$621.81	\$829.08	\$1,036.35	\$1,243.62
10	\$230.30	\$460.60	\$690.90	\$921.20	\$1,151.50	\$1,381.80
<b>B. 64 GALLON SOLID WASTE CART COLLECTION SERVICE RATES-Including Franchise Fees</b>						
1	\$46.06	\$92.12	\$138.18	\$184.24	\$230.30	\$276.36
2	\$92.12	\$184.24	\$276.36	\$368.48	\$460.60	\$552.72
3	\$138.18	\$276.36	\$414.54	\$552.72	\$690.90	\$829.08
4	\$184.24	\$368.48	\$552.72	\$736.96	\$921.20	\$1,105.44
5	\$230.30	\$460.60	\$690.90	\$921.20	\$1,151.50	\$1,381.80
6	\$276.36	\$552.72	\$829.08	\$1,105.44	\$1,381.80	\$1,658.16
7	\$322.42	\$644.84	\$967.26	\$1,289.68	\$1,612.10	\$1,934.52
8	\$368.48	\$736.96	\$1,105.44	\$1,473.92	\$1,842.40	\$2,210.88
9	\$414.54	\$829.08	\$1,243.62	\$1,658.16	\$2,072.70	\$2,487.24
10	\$460.60	\$921.20	\$1,381.80	\$1,842.40	\$2,303.00	\$2,763.60
<b>C. 96 GALLON SOLID WASTE CART COLLECTION SERVICE RATES-Including Franchise Fees</b>						
1	\$69.09	\$138.18	\$207.27	\$276.36	\$345.45	\$414.54
2	\$138.18	\$276.36	\$414.54	\$552.72	\$690.90	\$829.08
3	\$207.27	\$414.54	\$621.81	\$829.08	\$1,036.35	\$1,243.62
4	\$276.36	\$552.72	\$829.08	\$1,105.44	\$1,381.80	\$1,658.16
5	\$345.45	\$690.90	\$1,036.35	\$1,381.80	\$1,727.25	\$2,072.70
6	\$414.54	\$829.08	\$1,243.62	\$1,658.16	\$2,072.70	\$2,487.24
7	\$483.63	\$967.26	\$1,450.89	\$1,934.52	\$2,418.15	\$2,901.78
8	\$552.72	\$1,105.44	\$1,658.16	\$2,210.88	\$2,763.60	\$3,316.32
9	\$621.81	\$1,243.62	\$1,865.43	\$2,487.24	\$3,109.05	\$3,730.86
10	\$690.90	\$1,381.80	\$2,072.70	\$2,763.60	\$3,454.50	\$4,145.40
<b>D. COMMERCIAL CART SOLID WASTE SPECIAL &amp; EXTRA SERVICE RATES-Per Collection-Including Franchise Fees</b>						
<u>Extra Collection Service</u> (Same day as regular collection)				<u>Special Collection Service</u> (Other than normal Collection Day)		
32	\$5.30			32	\$9.21	
64	\$10.60			64	\$18.42	
96	\$15.90			96	\$27.63	

3731

3732

Form 3 COMMERCIAL RECYCLING/ORGANICS CART Collection Service Rates						
Number of Carts	Collection Frequency X Per Week					
	1	2	3	4	5	6
<b>A. 32 GALLON RECYCLING/ORGANICS CART COLLECTION SERVICE RATES -Including Franchise Fees- 50% of the Solid Waste Rate</b>						
<b>CART RECYCLING/ORGANICS COLLECTION SERVICE RATE: \$11.52 per 32 gallon equivalent.</b>						
1	\$11.52	\$23.04	\$34.56	\$46.08	\$57.60	\$69.12
2	\$23.04	\$46.08	\$69.12	\$92.16	\$115.20	\$138.24
3	\$34.56	\$69.12	\$103.68	\$138.24	\$172.80	\$207.36
4	\$46.08	\$92.16	\$138.24	\$184.32	\$230.40	\$276.48
5	\$57.60	\$115.20	\$172.80	\$230.40	\$288.00	\$345.60
6	\$69.12	\$138.24	\$207.36	\$276.48	\$345.60	\$414.72
7	\$80.64	\$161.28	\$241.92	\$322.56	\$403.20	\$483.84
8	\$92.16	\$184.32	\$276.48	\$368.64	\$460.80	\$552.96
9	\$103.68	\$207.36	\$311.04	\$414.72	\$518.40	\$622.08
10	\$115.20	\$230.40	\$345.60	\$460.80	\$576.00	\$691.20
<b>B. 64 GALLON RECYCLING/ORGANICS CART COLLECTION SERVICE RATES -Including Franchise Fees</b>						
1	\$23.04	\$46.08	\$69.12	\$92.16	\$115.20	\$138.24
2	\$46.08	\$92.16	\$138.24	\$184.32	\$230.40	\$276.48
3	\$69.12	\$138.24	\$207.36	\$276.48	\$345.60	\$414.72
4	\$92.16	\$184.32	\$276.48	\$368.64	\$460.80	\$552.96
5	\$115.20	\$230.40	\$345.60	\$460.80	\$576.00	\$691.20
6	\$138.24	\$276.48	\$414.72	\$552.96	\$691.20	\$829.44
7	\$161.28	\$322.56	\$483.84	\$645.12	\$806.40	\$967.68
8	\$184.32	\$368.64	\$552.96	\$737.28	\$921.60	\$1,105.92
9	\$207.36	\$414.72	\$622.08	\$829.44	\$1,036.80	\$1,244.16
10	\$230.40	\$460.80	\$691.20	\$921.60	\$1,152.00	\$1,382.40
<b>C. 96 GALLON RECYCLING/ORGANICS CART COLLECTION SERVICE RATES -Including Franchise Fees</b>						
1	\$34.56	\$69.12	\$103.68	\$138.24	\$172.80	\$207.36
2	\$69.12	\$138.24	\$207.36	\$276.48	\$345.60	\$414.72
3	\$103.68	\$207.36	\$311.04	\$414.72	\$518.40	\$622.08
4	\$138.24	\$276.48	\$414.72	\$552.96	\$691.20	\$829.44
5	\$172.80	\$345.60	\$518.40	\$691.20	\$864.00	\$1,036.80
6	\$207.36	\$414.72	\$622.08	\$829.44	\$1,036.80	\$1,244.16
7	\$241.92	\$483.84	\$725.76	\$967.68	\$1,209.60	\$1,451.52
8	\$276.48	\$552.96	\$829.44	\$1,105.92	\$1,382.40	\$1,658.88
9	\$311.04	\$622.08	\$933.12	\$1,244.16	\$1,555.20	\$1,866.24
10	\$345.60	\$691.20	\$1,036.80	\$1,382.40	\$1,728.00	\$2,073.60
<b>D. COMMERCIAL CART RECYCLING/ORGANICS SPECIAL &amp; EXTRA SERVICE RATES-Per Collection- Including Franchise Fees</b>						
<u>Extra Collection Service</u> (Same day as regular collection)			<u>Special Collection Service</u> (Other than normal Collection Day)			
32	\$2.65		32	\$4.61		
64	\$5.30		64	\$9.21		
96	\$7.95		96	\$13.82		

12/06/10

Form 4 COMMERCIAL BIN SOLID WASTE COLLECTION SERVICE RATES						
Container Size	Collection Frequency X Per Week					
	1	2	3	4	5	6
<b>A. COMMERCIAL BIN SOLID WASTE COLLECTION SERVICE RATES -Including Franchise Fees</b>						
Commercial Bin SOLID WASTE Rate: \$100.67 Per Cubic Yard						
1	\$100.67	\$201.34	\$302.01	\$402.68	\$503.35	\$604.02
1.5	\$151.01	\$302.01	\$453.02	\$604.02	\$755.03	\$906.03
2	\$201.34	\$402.68	\$604.02	\$805.36	\$1,006.70	\$1,208.04
3	\$302.01	\$604.02	\$906.03	\$1,208.04	\$1,510.05	\$1,812.06
4	\$402.68	\$805.36	\$1,208.04	\$1,610.72	\$2,013.40	\$2,416.08
6	\$604.02	\$1,208.04	\$1,812.06	\$2,416.08	\$3,020.10	\$3,624.12
7	\$704.69	\$1,409.38	\$2,114.07	\$2,818.76	\$3,523.45	\$4,228.14
<b>B. COMMERCIAL BIN SOLID WASTE SPECIAL AND EXTRA SERVICE RATES -Per Collection -Including Franchise Fees</b>						
<u>Extra Collection Service</u> (Same day as regular collection)					<u>Special Collection Service</u> (Other than normal Collection Day)	
1	\$23.22				1	\$41.44
1.5	\$34.84				1.5	\$54.83
2	\$46.47				2	\$63.80
3	\$69.70				3	\$85.44
4	\$92.97				4	\$106.70
6	\$139.47				6	\$156.71
7	\$161.21				7	\$179.37

Form 5 COMMERCIAL BIN RECYCLING/ORGANICS COLLECTION SERVICE RATES						
Container Size	Collection Frequency X Per Week					
	1	2	3	4	5	6
<b>A. COMMERCIAL BIN RECYCLING/ORGANICS COLLECTION SERVICE RATES -Including Franchise Fees</b>						
Com Bin Recycling/Organics Rate 50% of SOLID WASTE Rate: <b>\$50.34 Per Cubic Yard</b>						
1	\$50.34	\$100.68	\$151.02	\$201.36	\$251.70	\$302.04
1.5	\$75.51	\$151.02	\$226.53	\$302.04	\$377.55	\$453.06
2	\$100.68	\$201.36	\$302.04	\$402.72	\$503.40	\$604.08
3	\$151.02	\$302.04	\$453.06	\$604.08	\$755.10	\$906.12
4	\$201.36	\$402.72	\$604.08	\$805.44	\$1,006.80	\$1,208.16
6	\$302.04	\$604.08	\$906.12	\$1,208.16	\$1,510.20	\$1,812.24
7	\$352.38	\$704.76	\$1,057.14	\$1,409.52	\$1,761.90	\$2,114.28
<b>B. COMMERCIAL BIN RECYCLING/ORGANICS SPECIAL AND EXTRA SERVICE RATES -Per Collection - Including Franchise Fees</b>						
<u>Extra Collection Service</u> (Same day as regular collection)					<u>Special Collection Service</u> (Other than normal Collection Day)	
1	\$11.61				1	\$20.72
1.5	\$17.42				1.5	\$27.42
2	\$23.24				2	\$31.90
3	\$34.85				3	\$42.72
4	\$46.49				4	\$53.35
6	\$69.74				6	\$78.36
7	\$80.61				7	\$89.69

Form 6 COMMERCIAL COMPACTOR SOLID WASTE COLLECTION SERVICE RATES						
A. COMMERCIAL COMPACTOR BIN SOLID WASTE COLLECTION SERVICE RATES -Including Franchise Fees-2 Times the Uncompacted Rate						
Commercial Compactor SOLID WASTE Rate: \$201.34 Per Cubic Yard						
Container Size	Collection Frequency X Per Week					
	1	2	3	4	5	6
1	\$201.34	\$402.68	\$604.02	\$805.36	\$1,006.70	\$1,208.04
1.5	\$302.01	\$604.02	\$906.03	\$1,208.04	\$1,510.05	\$1,812.06
2	\$402.68	\$805.36	\$1,208.04	\$1,610.72	\$2,013.40	\$2,416.08
3	\$604.02	\$1,208.04	\$1,812.06	\$2,416.08	\$3,020.10	\$3,624.12
4	\$805.36	\$1,610.72	\$2,416.08	\$3,221.44	\$4,026.80	\$4,832.16
6	\$1,208.04	\$2,416.08	\$3,624.12	\$4,832.16	\$6,040.20	\$7,248.24
7	\$1,409.38	\$2,818.76	\$4,228.14	\$5,637.52	\$7,046.90	\$8,456.28
B. COMMERCIAL COMPACTOR BIN SOLID WASTE SPECIAL & EXTRA SERVICE RATES-Per Collection-Including Franchise Fees						
Extra Collection Service (Same day as regular collection)					Special Collection Service (Other than normal Collection Day)	
1	\$46.44				1	\$82.88
1.5	\$69.68				1.5	\$109.66
2	\$92.94				2	\$127.60
3	\$139.40				3	\$170.88
4	\$185.94				4	\$213.40
6	\$278.94				6	\$313.42
7	\$322.42				7	\$358.74

<b>Form 7</b>						
<b>COMMERCIAL COMPACTOR BIN RECYCLING/ORGANICS COLLECTION SERVICE RATES</b>						
<b>A. COMMERCIAL COMPACTOR BIN RECYCLING/ORGANICS COLLECTION SERVICE RATES -Including Franchise Fees-2 Times the Uncompacted Rate</b>						
<b>Commercial Bin RECYCLING/ORGANICS Rate:    \$100.67    Per Cubic Yard</b>						
Container Size	Collection Frequency X Per Week					
	1	2	3	4	5	6
1	\$100.67	\$201.34	\$302.01	\$402.68	\$503.35	\$604.02
1.5	\$151.01	\$302.01	\$453.02	\$604.02	\$755.03	\$906.03
2	\$201.34	\$402.68	\$604.02	\$805.36	\$1,006.70	\$1,208.04
3	\$302.01	\$604.02	\$906.03	\$1,208.04	\$1,510.05	\$1,812.06
4	\$402.68	\$805.36	\$1,208.04	\$1,610.72	\$2,013.40	\$2,416.08
6	\$604.02	\$1,208.04	\$1,812.06	\$2,416.08	\$3,020.10	\$3,624.12
7	\$704.69	\$1,409.38	\$2,114.07	\$2,818.76	\$3,523.45	\$4,228.14
<b>B. COMMERCIAL COMPACTOR BIN RECYCLING/ORGANICS SPECIAL &amp; EXTRA SERVICE RATES-Per Collection-Including Franchise Fees</b>						
<u>Extra Collection Service</u> (Same day as regular collection)					<u>Special Collection Service</u> (Other than normal Collection Day)	
1	\$23.22				1	\$41.44
1.5	\$34.84				1.5	\$54.83
2	\$46.47				2	\$63.80
3	\$69.70				3	\$85.44
4	\$92.97				4	\$106.70
6	\$139.47				6	\$156.71
7	\$161.21				7	\$179.37

<b>Form 8</b>				
<b>COMMERCIAL ROLL OFF SOLID WASTE COLLECTION SERVICE RATES</b>				
<b>A. ROLL-OFF SOLID WASTE BOX COLLECTION SERVICE RATES -Including Franchise Fees</b>				
<b>Uncompacted Rate equals:      \$25.33      Per Cubic Yard *</b>				
Box Size		<u>Pickup /Return</u>	<u>Flashers</u>	<u>Delivery</u>
6*	CY BOX	\$506.60	\$23.14	\$46.25
14*	CY BOX	\$506.60	\$23.14	\$46.25
20	CY BOX	\$506.60	\$23.14	\$46.25
30	CY BOX	\$759.90	\$23.14	\$46.25
40	CY BOX	\$1,013.20	\$23.14	\$46.25
50	CY BOX	\$1,266.50	\$23.14	\$46.25
<b>EXCESS DISPOSAL RATE PER TON:</b>			<b>\$81.29</b>	Over 3 Tons
<p>Note: All Commercial Roll-Off Box per pull service rates consist of collection rates, disposal costs up to the first six thousand (6,000) pounds of material and franchise fees only; disposal costs for material in excess of six thousand (6,000) pounds will be based on actual disposal costs plus the applicable franchise fee. The total customer rate will be the pull rate and any applicable disposal costs on excess material along with the franchise fee. *Note: \$25.33 CY rate does not apply to 6 and 14 CY boxes.</p>				
<b>B. COMPACTED ROLL-OFF SOLID WASTE BOX COLLECTION SERVICE RATES-Including Franchise Fees</b>				
<b>Compacted Rates Are 2X the Uncompacted Rate:      \$50.66      Per Cubic Yard</b>				
Box Size		<u>Pickup/Return</u>		
15	CY BOX	\$759.90		
20	CY BOX	\$1,013.20		
24	CY BOX	\$1,215.84		
30	CY BOX	\$1,519.80		
34	CY BOX	\$1,722.44		
35	CY BOX	\$1,773.10		
40	CY BOX	\$2,026.40		
<b>EXCESS DISPOSAL RATE PER TON:</b>			<b>\$81.29</b>	Over 5 Tons
<p>Note: All Commercial Compacted Roll-Off Box per pull service rates consist of collection rates, disposal costs up to the first ten thousand (10,000) pounds of material and franchise fees only; disposal costs for material in excess of ten thousand (10,000) pounds will be based on actual disposal costs plus the applicable franchise fee. The total customer rate will be the pull rate and any applicable disposal costs on excess material along with the franchise fee.</p>				

<b>Form 9</b>				
<b>COMMERCIAL ROLL OFF RECYCLING COLLECTION SERVICE RATES</b>				
<b>A. COMMERCIAL ROLL-OFF RECYCLING BOX COLLECTION SERVICE RATES -Including Franchise Fees-50% of Solid Waste Rate</b>				
<b>Uncompacted Rate equals:</b>			<b>\$12.67</b>	<b>Per Cubic Yard*</b>
<u>Box Size</u>		<u>Pickup /Return</u>	<u>Flashers</u>	<u>Delivery</u>
6*	CY BOX	\$253.40	\$23.14	\$46.25
14*	CY BOX	\$253.40	\$23.14	\$46.25
20	CY BOX	\$253.40	\$23.14	\$46.25
30	CY BOX	\$380.10	\$23.14	\$46.25
40	CY BOX	\$506.80	\$23.14	\$46.25
50	CY BOX	\$633.50	\$23.14	\$46.25
<b>EXCESS DISPOSAL RATE PER TON:</b>			<b>\$40.65</b>	Over 3 Tons
<p>Note: All Commercial Roll-Off Box per pull service rates consist of collection rates, recycling weights up to the first six thousand (6,000) pounds of material and franchise fees only; costs for recyclable materials in excess of six thousand (6,000) pounds will be based on 50% of the solid waste disposal fee plus the applicable franchise fee. The total customer rate will be the pull rate and any applicable costs on excess material along with the franchise fee. *Note: \$12.67 CY rate does not apply to 6 and 14 CY boxes.</p>				
<b>B. COMMERCIAL COMPACTED ROLL-OFF RECYCLING BOX COLLECTION SERVICE RATES -Including Franchise Fees</b>				
<b>Compacted Rates Are 2X the Uncompacted Rate:</b>			<b>\$25.33</b>	<b>Per Cubic Yard</b>
<u>Box Size</u>		<u>Pickup/Return</u>		
15	CY BOX	\$379.95		
20	CY BOX	\$506.60		
24	CY BOX	\$607.92		
30	CY BOX	\$759.90		
34	CY BOX	\$861.22		
35	CY BOX	\$886.55		
40	CY BOX	\$1,013.20		
<b>EXCESS DISPOSAL RATE PER TON:</b>			<b>\$40.65</b>	Over 5 Tons
<p>Note: All Commercial Compacted Roll-Off Box per pull service rates consist of collection rates, recycling weights up to the first ten thousand (10,000) pounds of material and franchise fees only; costs for recyclable materials in excess of ten thousand (10,000) pounds will be based on 50% of the solid waste disposal fee plus the applicable franchise fee. The total customer rate will be the pull rate and any applicable costs on excess material along with the franchise fee.</p>				

Form 10 COMMERCIAL ROLL OFF C&D COLLECTION SERVICE RATES				
A. COMMERCIAL ROLL-OFF C&D BOX COLLECTION SERVICE RATES -Including Franchise Fees-75% of Solid Waste Rate.				
Uncompacted Rate equals:			\$19.00	Per Cubic Yard*
Box Size		Pickup /Return	Flashers	Delivery
6*	CY BOX	\$380.00	\$23.14	\$46.25
14*	CY BOX	\$380.00	\$23.14	\$46.25
20	CY BOX	\$380.00	\$23.14	\$46.25
30	CY BOX	\$570.00	\$23.14	\$46.25
40	CY BOX	\$760.00	\$23.14	\$46.25
50	CY BOX	\$950.00	\$23.14	\$46.25
<b>EXCESS DISPOSAL RATE PER TON:</b>			<b>\$60.97</b>	Over 3 Tons
<p>Note: All Commercial Roll-Off Box per pull service rates consist of collection rates, C&amp;D weights up to the first six thousand (6,000) pounds of material and franchise fees only; costs for C&amp;D materials in excess of six thousand (6,000) pounds will be based on 75% of the solid waste disposal fee plus the applicable franchise fee. The total customer rate will be the pull rate and any applicable costs on excess material along with the franchise fee. *Note: \$19.00 CY rate does not apply to 6 and 14 CY boxes.</p>				

<b>Form 11</b>				
<b>COMMERCIAL ROLL OFF ORGANICS COLLECTION SERVICE RATES</b>				3734
<b>A. COMMERCIAL ROLL-OFF ORGANICS BOX COLLECTION SERVICE RATES - Including Franchise Fees-75% of Solid Waste Rate.</b>				
<b>Uncompacted Rate equals:</b>			<b>\$19.00</b>	<b>Per Cubic Yard*</b>
Box Size		<u>Pickup /Return</u>	<u>Flashers</u>	<u>Delivery</u>
6*	CY BOX	\$380.00	\$23.14	\$46.25
14*	CY BOX	\$380.00	\$23.14	\$46.25
20	CY BOX	\$380.00	\$23.14	\$46.25
30	CY BOX	\$570.00	\$23.14	\$46.25
40	CY BOX	\$760.00	\$23.14	\$46.25
50	CY BOX	\$950.00	\$23.14	\$46.25
<b>EXCESS DISPOSAL RATE PER TON:</b>			<b>\$60.97</b>	Over 3 Tons
<p>Note: All Commercial Roll-Off Box per pull service rates consist of collection rates, organics weights up to the first six thousand (6,000) pounds of material and franchise fees only; costs for organics materials in excess of six thousand (6,000) pounds will be based on 75% of the solid waste disposal fee plus the applicable franchise fee. The total customer rate will be the pull rate and any applicable costs on excess material along with the franchise fee. *Note: \$19.00 CY rate does not apply to 6 and 14 CY boxes.</p>				
<b>B. COMMERCIAL COMPACTED ROLL-OFF ORGANICS BOX COLLECTION SERVICE RATES -Including Franchise Fees</b>				
<b>Compacted Rates Are 2X the Uncompacted</b>				
<b>Rate:</b>			<b>\$38.00</b>	<b>Per Cubic Yard</b>
Box Size		<u>Pickup/Return</u>		
15	CY BOX	\$570.00		
20	CY BOX	\$760.00		
24	CY BOX	\$912.00		
30	CY BOX	\$1,140.00		
34	CY BOX	\$1,292.00		
35	CY BOX	\$1,330.00		
40	CY BOX	\$1,520.00		
<b>EXCESS DISPOSAL RATE PER TON:</b>			<b>\$60.97</b>	Over 5 Tons
<p>Note: All Commercial Compacted Roll-Off Box per pull service rates consist of collection rates, organics weights up to the first ten thousand (10,000) pounds of material and franchise fees only; costs for organics materials in excess of ten thousand (10,000) pounds will be based on 75% of the solid waste disposal fee plus the applicable franchise fee. The total customer rate will be the pull rate and any applicable costs on excess material along with the franchise fee.</p>				

Form 12 MAXIMUM RATES ANCILLARY FEES	
FEE TYPE	FEE
<b>The following fees shall be adjusted annually using the RRI as set forth in Article 12.</b>	
Additional Cart Exchange	\$50.00 Each Additional Occurrence
Additional Cart Replacement	\$50.00 Each Additional Cart
Additional Bin Exchange	\$100.00 Each Additional Occurrence
Additional Bin Replacement	\$600.00 Each Additional Bin
Additional Bulky Goods Collection Curbside	\$50.00 Each Additional Cubic Yard
Additional Bulky Goods ("Over the water line")	\$50.00 per Cubic Yard
Bin Overage Rate ("Over the water line")	\$50.00 Per Bin Per Occurrence
Roll Off Relocation Fee	\$63.55
Roll Off Dry Run / Cancellation Fee	\$108.26
Roll Off Placement Fee	\$46.25
Roll Off Flasher Fee	\$23.14 per pull
Roll Off Demurrage Fee (After 7 Calendar Days)	\$26.54 per week
Washout of Roll Off Box at Time of Service	\$120.00
Washout of Roll Off Compactor at Time of Service	\$120.00
Steam Cleaning of Roll Off Box at Time of Service	\$300.00
Steam Cleaning of Roll Off Compactor at Time of Service	\$300.00
Overage of Solid Waste, Recyclables (except OCC) and Compostable Materials in Carts (Included Residential and Commercial Customers)	\$0.50 per gallon
Cardboard (OCC) Overage for all Residential and Commercial Cart Customers	No Charge
Overage of MSW, Recyclables and Compostable Materials in Bins (Includes SFD, MFD and Commercial Customers)	\$40.00 per cubic yard
Supplementary Recycling Capacity per Gallon	\$0.50 per gallon
Supplementary Recycling Capacity per Cubic Yard (For Small Business Customers)	\$40.00 per cubic yard
Disputed Material	\$40.00 per cubic yard
Contractor's Job Truck	\$195.00 per Hour plus Disposal @ \$50.00 per CY
Collection of Bagster Bag and Contents	\$202.53 per bag
Handy Hauler	\$134.87
<b>The following fee shall be adjusted annually using the CPI as set forth in Exhibit 2.</b>	
Lock Sale Fee – Bin or Enclosure	\$23.84 per lock
<b>The following fees shall not be adjusted annually.</b>	
Non Sufficient Funds (NSW) Fee	\$25.00
Commercial Finance Charge (on accounts over 30 days past due)	1.5% per Month
Residential Finance Charge (on accounts over 45 days past due)	1.5% per Month
<b>Note: These Ancillary rates and fees include Franchise Fees</b>	

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3736 **Exhibit 2 Refuse Rate Index**

3737 The "Refuse Rate Index" adjustment shall be calculated in the following manner:

3738 The expenses of the collection services for the designated fiscal period shall be prepared in the  
3739 format set forth in the Operating Cost Statement - Description on the following page of this  
3740 Exhibit.

3741 2. The expenses of the collection services shall be broken down into the following six cost  
3742 categories: Labor; Diesel Fuel; Vehicle Replacement; Vehicle Maintenance, All Other and  
3743 Disposal. Each cost category is assigned a weighted percentage factor on that cost category's  
3744 proportionate share of the total of the costs shown for all cost categories.

3745 3. The following indices published by the United States Department of Labor, Bureau of  
3746 Labor Statistics (BLS), are used to calculate the adjustment for each cost category except  
3747 Disposal. The change in each index is calculated on a twelve-month fiscal period in accordance  
3748 with the terms of the Agreement. In the event any index is discontinued, a successor index  
3749 shall be selected by CITY. Successor indices shall be those indices that are most closely  
3750 equivalent to the discontinued indices as recommended by the BLS. The Disposal cost category  
3751 is changed based on the change in the disposal rate per ton calculated in accordance with the  
3752 terms of the CITY'S Disposal Service Agreement

3753	<u>Cost Category</u>	<u>Index</u>
3754	Labor	Series ID: ceu6056210008 Service-Producing Industries
3755	Diesel Fuel	Series ID: wpu057303 #2 Diesel Fuel
3756	Vehicle Replacement	Series ID: pcu3362113362111 Truck, bus, car, and other vehicle
3757		bodies, for sale separately
3758	Vehicle Maintenance	Series ID: pcu3339243339243 Parts and attachments for
3759		industrial work trucks
3760	All Other	Series ID: cuura422sa0 Consumer Price Index, All Urban
3761		Consumers, All Items – Bay Area
3762	Disposal	The disposal rate under the CITY'S Disposal Service Agreement.

3763 4. The percentage weight for each cost category is multiplied by the change in each  
3764 appropriate index, or disposal rate to calculate a weighted percentage for each cost category.  
3765 The weighted percentage changes for each cost category are added together to calculate the  
3766 Refuse Rate Index (see Example).

3767 Operating Cost Statement - Description

- 3768 **Labor:** List all administrative, officer, operation and maintenance salary accounts.
- 3769 List payroll tax accounts directly related to the above salary accounts.
- 3770 List employee group medical and life accounts directly related to the above
- 3771 salary accounts.

- 3772 List employee retirement or profit sharing contributions accounts and Workers  
3773 Compensation costs directly related to the above salary accounts.
- 3774
- 3775 **Diesel Fuel:** List all diesel fuel accounts.
- 3776 **Vehicle Replacement:**
- 3777 List all collection and collection related vehicle depreciation accounts.
- 3778 List all vehicle lease or rental accounts related to collection or collection related  
3779 vehicles.
- 3780 **Vehicle Maintenance:**
- 3781 List all collection or collection related vehicle parts accounts.
- 3782 **All Other:** List all other expense accounts related to the services provided under this  
3783 Agreement. This category includes all insurance including general liability, fire,  
3784 truck damage, and extended coverage; rent on property, truck licenses and  
3785 permits; real and personal property taxes; telephone and other utilities; employee  
3786 uniforms; safety equipment; general yard repairs and maintenance; non-diesel  
3787 fuel; office supplies; postage; trade association dues and subscription;  
3788 advertising; and miscellaneous other expenses.
- 3789 **Disposal:**
- 3790 List disposal accounts.
- 3791

3792 RRI Example

Item #	Category	Data Source	Percentage Change <sup>(1)</sup>	Item Weight <sup>(2)</sup>	Weighted Percentage Change <sup>(3)</sup>
1	Average Hourly Earnings	Series ID: ceu6056210008 Service-Producing Industries	2.19%	42.05%	0.92%
2	Diesel Fuel	Series ID: wpu057303 #2 Diesel Fuel	4.74%	13.15%	0.62%
3	Vehicle Replacement	Series ID: pcu3362113362111 Truck, bus, car, and other vehicle bodies, for sale separately	6.79%	2.57%	0.17%
4	Vehicle Maintenance	Series ID: pcu3339243339243 Parts and attachments for industrial work trucks	0.16%	10.46%	0.02%
5	CPI All Items	Series ID: cuura422sa0 Consumer Price Index, All Urban Consumers, All Items Bay Area	1.70%	21.77%	0.37%
6	Disposal	Disposal rate under the CITY'S Disposal Service Agreement	3.00%	10.00%	0.30%
Total				100.00%.	<b>2.40%</b>

- 3793 1. Assume these are the percentage changes in the indices from year to year.
- 3794 2. Assume the categories represent these percentages as a total of CONTRACTOR'S
- 3795 operating costs.
- 3796 3. Represents the product of Percentage Change x Item Weight

3797 In this example, the Refuse Rate Index is 2.40.

3798 Note that in accordance with Section 12.09.3 of the Agreement the RRI shall never be more  
 3799 than 5% nor less than 0% during the term of the Agreement.

### Exhibit 3 Guarantee

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THIS GUARANTY (the "Guaranty") is given as of the 1st day of February, 2011.

THIS GUARANTY is made with reference to the following facts and circumstances:

A. Waste management of Alameda County, Inc, hereinafter ("CONTRACTOR") is a corporation organized under the laws of the State of California, all of the issued and outstanding stock of which is owned by USA Waste of California, Inc., (Guarantor).

B. CONTRACTOR and the City of Emeryville ("CITY") have negotiated an Agreement for Collection Services dated as of February 1, 2011, (hereinafter "Agreement"). This Guaranty is attached to this Agreement as Exhibit 3 and is incorporated therein.

C. It is a requirement of the Agreement, and a condition to the CITY entering into the Agreement, that Guarantor cause to perform all of the obligations and duties of the Contractor under the Agreement.

D. Guarantor is providing this Guaranty to induce the CITY to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. Guaranty of the Agreement. Guarantor hereby irrevocably and unconditionally guarantees to the CITY that it will cause the full and prompt fulfillment of each and every term and condition of the Agreement which CONTRACTOR is required to perform, satisfy or observe. In the event that CONTRACTOR fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully cause to be performed, cause them to be performed, satisfied or observed. Guarantor hereby guarantees payment to the CITY of any damages, costs or expenses which might become recoverable by the CITY from CONTRACTOR due to its breach of the Agreement.

2. Guarantor's Obligations Absolute. The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional, and unlimited, and with respect to any payment obligation of CONTRACTOR under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditional upon the genuineness, validity, regularity, or enforceability of the Agreement. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to CONTRACTOR in an action to enforce, or for damages for breach of, the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).

3. Waivers. Except as provided herein the Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under this Guaranty for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of CONTRACTOR; (2) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (3) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the CITY'S rights or remedies against CONTRACTOR; or (4) any merger or consolidation of CONTRACTOR with any other corporation, or any sale, lease or

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12/06/10

3841 transfer of any or all the assets of CONTRACTOR. Without limiting the generality of the  
3842 foregoing, Guarantor hereby waives the rights and benefits under California Civil Code §2819.

3843 The Guarantor hereby waives any and all benefits and defenses under California Civil Code  
3844 §2846, 2849, and 2850 as may be amended from time to time, including without limitation, the  
3845 right to require the CITY to (a) proceed against CONTRACTOR, (b) proceed against or exhaust  
3846 any security or collateral the CITY may hold now or hereafter hold, or (c) pursue any other right  
3847 or remedy for Guarantor's benefit, and agrees that CITY may proceed against Guarantor for the  
3848 obligations guaranteed herein without taking any action against CONTRACTOR or any other  
3849 guarantor or pledgor and without proceeding against or exhausting any security or collateral the  
3850 CITY may hold now or hereafter hold. The CITY may unqualifiedly exercise in its sole discretion  
3851 any or all rights and remedies available to it against CONTRACTOR or any other guarantor or  
3852 pledgor without impairing the CITY'S rights and remedies in enforcing this Guaranty.

3853 The Guarantor hereby waives and agrees to waive at any future time at the request of the CITY  
3854 to the extent now or then permitted by applicable law, any and all rights which the Guarantor  
3855 may have or which at any time hereafter may be conferred upon it, by statute, regulation or  
3856 otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this  
3857 Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any  
3858 one or more of the following shall not affect the liability of the Guarantor hereunder: (a) at any  
3859 time or from time to time, without notice the Guarantor, performance or compliance herewith is  
3860 waived; (b) any other of any provision of its Agreement indemnification with respect to  
3861 CONTRACTOR'S obligations under the Agreement or any security therefore is released or  
3862 exchanged in whole or in part or otherwise dealt with; or (c) any assignment of the Agreement is  
3863 effected which does not require the CITY'S approval.

3864 If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's  
3865 obligations hereunder shall continue and remain in full force and effect in the event that all or  
3866 any part of such payment or performance is avoided or recovered directly or indirectly from the  
3867 CITY as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of  
3868 revocation given by Guarantor or CONTRACTOR prior to such avoidance or recovery, and (b)  
3869 payment in full of any obligations then outstanding.

3870 4. Term. This Guaranty is not limited to any period of time, but shall continue in full force and  
3871 effect until all of the terms and conditions of the Agreement have been fully performed or  
3872 otherwise discharged and Guarantor shall remain fully responsible under this Guaranty without  
3873 regard to the acceptance by the CITY of any performance bond or other collateral to assure the  
3874 performance of CONTRACTOR'S obligations under the Agreement. Guarantor shall not be  
3875 released of its obligations hereunder so long as there is any claim by the CITY against  
3876 CONTRACTOR arising out of the Agreement based on CONTRACTOR'S failure to perform  
3877 which has not been settled or discharged.

3878 5. No Waivers. No delay on the part of the CITY in exercising any rights under this Guaranty or  
3879 failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand  
3880 on Guarantor shall be a waiver of any obligation of Guarantor or right of the CITY to take other  
3881 or further action without notice or demand. No modification or waiver of any of the provisions of  
3882 this Guaranty shall be effective unless it is in writing and signed by the CITY and by Guarantor,  
3883 nor shall any waiver be effective except in the specific instance or matter for which it is given.

3884 6. Attorney's Fees. In addition to the amounts guaranteed under this Guaranty, Guarantor  
3885 agrees in the event of Guaranty's breach of its obligations including to pay reasonable  
3886 attorney's fees and all other reasonable costs and expenses incurred by the CITY in enforcing  
3887 this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including  
3888 any action instituted to determine the respective rights and obligations of the parties hereunder  
3889 except in that case which Guarantor is determined to be the prevailing party, in which case  
3890 CITY shall be liable for all of Guarantor's reasonable attorney's fees and costs. .

3891 7. Governing Law: This Guaranty is and shall be deemed to be a contract entered into in and  
3892 pursuant to the laws of the State of California and shall be governed and construed in  
3893 accordance with the laws of California without regard to its conflicts of laws, rules for all  
3894 purposes including, but not limited to, matters of construction, validity and performance.  
3895 Guarantor agrees that any suit, action, and other proceeding brought by the CITY or other party  
3896 to enforce this Guaranty may be brought and concluded in the courts of the State of California  
3897 and Guarantor consents to personal jurisdiction over it by such courts Guarantor appoints the  
3898 following person as its agents for service of process in California:

3899 *CT Corporation System*  
3900 *818 W. 7<sup>th</sup> St., Los Angeles, CA 90017*

3901 8. Severability. If any portion of this Guaranty is held to be invalid or unenforceable, such  
3902 invalidity will have not effect upon the remaining portions of this Guaranty, which shall be  
3903 severable and continue in full force and effect.

3904 9. Binding on Successors. This Guaranty shall inure to the benefit of the CITY and its  
3905 successors and shall be binding upon Guarantor and its successors, including transferee(s) of  
3906 substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.

3907 10. Authority. Guarantor represents and warrants that it has the corporate power and the  
3908 authority to give this Guaranty, that its execution of this Guaranty has been authorized by all  
3909 necessary action under its Article of Incorporation and By-Laws, and that the person signing this  
3910 Guaranty on its behalf has the authority to do so.

3911 11. Notices. Notice shall be given in writing, deposited in the U.S. mail, registered or certified,  
3912 first class postage prepaid, addressed as follows:

3913 To the CITY :  
3914 Contract Administrator  
3915 City of Emeryville  
3916 1333 Park Avenue  
3917 Emeryville, CA 94608-3517

3918 With a copy to  
3919 City Attorney  
3920 City of Emeryville  
3921 1333 Park Avenue  
3922 Emeryville, CA 94608-3517

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3925 As to the GUARANTOR:  
3926 Waste Management of Alameda County, Inc.  
3927 Area Vice President  
3928 172 98<sup>th</sup> Ave., Oakland, CA 94603  
3929

3930 With a copy to:

3931

3932 USA Waste of California, Inc.  
3933 Group General Counsel  
3934 7025 N. Scottsdale Rd. #200  
3935 Scottsdale, AZ 85253

3936 **IN WITNESS WHEREOF**, the CITY and Guarantor have executed this Agreement as of the day  
3937 and year first written above.

3938

3939 CITY OF EMERYVILLE

Waste Management of Alameda County, Inc.

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3941 By:\_\_\_\_\_

By:\_\_\_\_\_

3942 Patrick D. O’Keeffe, City Manager

Barry Skolnick, Area Vice President

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**Approved as to Form:**

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Michael Biddle, City Attorney

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Exhibit 4 Public Containers

#	City Can Code	Street Location	Street Side / Proximity	Street Side	Collection Frequency
1	EM1	Emeryville Marina			MWFS
2	EM2	Emeryville Marina			MWFS
3	EM3	Emeryville Marina			MWFS
4	EM4	Emeryville Marina			MWFS
5	EM5	Emeryville Marina			MWFS
6	EM6	Emeryville Marina			MWFS
7	EM7	Emeryville Marina			MWFS
8	EM8	Emeryville Marina			MWFS
9	EM9	Emeryville Marina			MWFS
10	EM10	Emeryville Marina			MWFS
11	EM11	Emeryville Marina			MWFS
12	EM12	Emeryville Marina			MWFS
13	EM13	Emeryville Marina			MWFS
14	EM14	Emeryville Marina			MWFS
15	EM15	Emeryville Marina			MWFS
16	EM16	Emeryville Marina			MWFS
17	EM17	Emeryville Marina			MWFS
18	EM18	Emeryville Marina			MWFS
19	EM19	Emeryville Marina			MWFS
20	EM20	Emeryville Marina			MWFS
21	EM21	Emeryville Marina			MWFS
22	EM22	Emeryville Marina			MWFS
23	EM23	Emeryville Marina			MWFS
24	EM24	Emeryville Marina			MWFS
25	EM25	Emeryville Marina			MWFS
26	EM26	Emeryville Marina			MWFS
27	EM27	Emeryville Marina			MWFS
28	EM28	Emeryville Marina			MWFS
29	EM29	Emeryville Marina			MWFS
30	EM30	Emeryville Marina			MWFS
31	EM31	Emeryville Marina			MWFS
32	EM32	Emeryville Marina			MWFS
33	EM33	Emeryville Marina			MWFS
34	EM34	Emeryville Marina			MWFS
35	EM35	Emeryville Marina			MWFS
36	EM36	Emeryville Marina			MWFS
37	EM37	Emeryville Marina			MWFS
38	EM38	Emeryville Marina			MWFS
39	EM39	Emeryville Marina			MWFS
40	EM40	Emeryville Marina			MWFS
41	EM41	Emeryville Marina			MWFS
42	EM42	Emeryville Marina			MWFS
43	EM43	Emeryville Marina			MWFS
44	EM44	Emeryville Marina			MWFS
45	EM45	Emeryville Marina			MWFS
46	EM46	Emeryville Marina			MWFS
47	EM47	Emeryville Marina			MWFS
48	EM48	Emeryville Marina			MWFS
49	EM49	Emeryville Marina			MWFS
50	EM50	Emeryville Marina			MWFS
51	EM51	Emeryville Marina			MWFS
52	EM52	Emeryville Marina			MWFS
53	EM53	Emeryville Marina			MWFS
54	EM54	Emeryville Marina			MWFS
55	EM55	Emeryville Marina			MWFS
56	EM56	Emeryville Marina			MWFS
57	EM57	Emeryville Marina			MWFS
58	EM58	Emeryville Marina			MWFS
59	EM59	Emeryville Marina			MWFS
60	EM60	Emeryville Marina			MWFS
61	EM61	Emeryville Marina			MWFS
62	EM62	Emeryville Marina			MWFS
63	EM63	Emeryville Marina			MWFS
64	EM64	Emeryville Marina			MWFS
65	EM65	Emeryville Marina			MWFS

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### Exhibit 4 Public Containers (cont.)

#	City Can Code	Street Location	Street Side / Proximity	Street Side	Collection Frequency
66	EM66	Emeryville Marina			MWFS
67	EM67	Emeryville Marina			MWFS
68	EM68	Emeryville Marina			MWFS
69	EM69	Emeryville Marina			MWFS
70	EM70	Emeryville Marina			MWFS
71	EM71	Emeryville Marina			MWFS
72	EM72	Emeryville Marina			MWFS
73	EM73	Emeryville Marina			MWFS
74	EM74	Emeryville Marina			MWFS
75	EM75	Emeryville Marina			MWFS
76	EM76	Emeryville Marina			MWFS
77	EM77	Emeryville Marina			MWFS
78	EM78	Emeryville Marina			MWFS
79	EM79	Emeryville Marina			MWFS
80	EM80	Emeryville Marina			MWFS
81	EM81	Emeryville Marina			MWFS
82	EM82	Emeryville Marina			MWFS
83	SP1	Shorebird Park			MWF
84	SP2	Shorebird Park			MWF
85	SP3	Shorebird Park			MWF
86	SP4	Shorebird Park			MWF
87	SP5	Shorebird Park			MWF
88	ESP1	Eastshore Park			MWF
89	ESP2	Eastshore Park			MWF
90	ESP3	Eastshore Park			MWF
91	ESP4	Eastshore Park			MWF
92	ESP5	Eastshore Park			MWF
93	ESP6	Eastshore Park			MWF
94	CHRIS1	Christie Ave	South of 64th St	East	MWF
95	CHRIS2	Christie Ave	South of 64th St	East	MWF
96	CHRIS3	Christie Ave	Powell St	Southwest Corner	MWF
97	CHRIS4	Christie Ave	Powell St	Southeast Corner	MWF
98	SHELL1	Shellmound St	Shellmound Wy	Northwest Corner	MWF
99	SHELL2	Shellmound St	Shellmound Wy	Northeast Corner	MWF
100	SHELL3	Shellmound St	Christie Av	Northwest Corner	MWF
101	SHELL4	Shellmound St	North of Christie Av	East	MWF
102	HORT1	Horton St	North of Powell St	West	MWF
103	61st1	61st St	East of Hollis St	North	MWF
104	P1	Powell St	Fremont St	Southwest Corner	MWF
105	P2	Powell St	West of Fremont St	South	MWF
106	P3	Powell St	Vallejo St	South East Corner	MWF
107	P4	Powell St	West of Vallejo St	South	MWF
108	STAN1	Stanford Ave			MWF
109	STAN2	Stanford Ave			MWF
110	STAN3	Stanford Ave			MWF
111	STAN4	Stanford Ave	West of Doyle St	North	MWF
112	HOL1	Hollis St	South of Stanford Av	West	MWF
113	HOL2	Hollis St	South of 53rd St	West	MWF
114	HOL3	Hollis St	South of 40th St	East	MWF
115	HOL4	Hollis St	North of Yerba Buena Av	East	MWF
116	HOL5	Hollis St	South of 40th St	West	MWF
117	TEM1	Temescal Creek Park			
118	TEM2	Temescal Creek Park			
119	TEM3	Temescal Creek Park			
120	TEM4	Temescal Creek Park			
121	TEM5	Temescal Creek Park			
122	TEM6	Temescal Creek Park			
123	TEM7	Temescal Creek Park			

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**Exhibit 4 Public Containers (cont.)**

#	City Can Code	Street Location	Street Side / Proximity	Street Side	Collection Frequency
124	47th1	47th St	West of San Pablo Av	North	MWF
125	47th2	47th St	West of San Pablo Av	North	MWF
126	47th3	47th St	West of San Pablo Av	North	MWF
127	47th4	47th St	West of San Pablo Av	North	MWF
128	41st1	41st St	West of Adeline St	North	MWF
129	40th1	40th St	West of Adeline St	South	MWF
130	40th2	40th St	West of Adeline St	South	MWF
131	40th3	40th St	San Pablo Av	Southeast Corner	MWF
132	40th4	40th St	San Pablo Av	Southwest Corner	MWF
133	40th5	40th St	San Pablo Av	Northwest Corner	MWF
134	40th6	40th St	Emery St	Northeast Corner	MWF
135	40th7	40th St	West of Emery St	South	MWF
136	40th8	40th St	Harlan St	Northeast Corner	MWF
137	40th9	40th St	Harlan St	Southwest Corner	MWF
138	40th10	40th St	Hollis St	Northeast Corner	MWF
139	SAN1	San Pablo Ave	South of 47th St	West	MWF
140	SAN2	San Pablo Ave	South of 48th St	West	MWF
141	SAN3	San Pablo Ave	45th St	Northeast Corner	MWF
142	SAN4	San Pablo Ave	45th St	Southeast Corner	MWF
143	SAN5	San Pablo Ave	North of 43rd St	West	MWF
144	SAN6	San Pablo Ave	North of 43rd St	West	MWF
145	SAN7	San Pablo Ave	South of 43rd St	West	MWF
146	SAN8	San Pablo Ave	South of Park Av	West	MWF
147	SAN9	San Pablo Ave	South of 41st St	West	MWF
148	SAN10	San Pablo Ave	North of 40th St	West	MWF
149	SAN11	San Pablo Ave	41st St	Northeast Corner	MWF
150	SAN12	San Pablo Ave	40th St	Southwest Corner	MWF
151	SAN13	San Pablo Ave	South of 40th St	West	MWF
152	SAN14	San Pablo Ave	South of 40th St	West	MWF
153	SAN15	San Pablo Ave	South of 40th St	East	MWF
154	SAN16	San Pablo Ave	North of Yerba Buena Av	West	MWF
155	SAN17	San Pablo Ave	Yerba Buena Av	Southeast Corner	MWF
156	SAN18	San Pablo Ave	Adeline St	Northwest Corner	MWF
157	SAN19	San Pablo Ave	W MacArthur Bl	Southeast Corner	MWF
158	SAN20	San Pablo Ave	North of 37th St	West	MWF
159	SAN21	San Pablo Ave	North of 37th St	West	MWF
160	SAN22	San Pablo Ave	North of 37th St	East	MWF
161	SAN23	San Pablo Ave	37th St	Southeast Corner	MWF
162	SAN24	San Pablo Ave	North of 36th St	West	MWF
163		Greenway	South of 59th St	North of Powell St	MWF
164		Greenway	South of 59th St	North of Powell St	MWF
165		Greenway	South of 67th St	North of 65th St	MWF
166		Greenway	South of 67th St	North of 65th St	MWF
167		Doyle St	North of 59th St	West	MWF
168		Shellmound St	Shellmound Way	Southwest Corner	MWF
169		Park St	East of Hollis St	South	MWF
170		Hollis	65th St	Southwest Corner	MWF
171		40th St	San Pablo Avenue	Northeast Corner	MWF
172		40th St	Horton St	Southeast Corner	MWF
173		Shellmound St	Across from Public Market	West of Elevator Tower	MWF
174		Shellmound St	Across from Public Market	West of Elevator Tower	MWF
175		San Pablo Avenue	W Mac Arthur Blvd	Southwest Corner	MWF

3974	Exhibit 5	City Facilities
3975	<u>Facility Name</u>	<u>Facility Address</u>
3976	Center for Community Life (being planned)	San Pablo Ave & 47 <sup>th</sup> Street
3977	Child Development Center	1220 53 <sup>rd</sup> Street
3978	Corporation Yard/Public Works	5679 Horton Street
3979	City of Emeryville/City Hall	1333 Park Avenue
3980	Emeryville Community Action Program	3610 San Pablo Avenue
3981	Fire Station #1	2333 Powell Street
3982	Fire Station #2	6303 Hollis Street
3983	Marina	3310 Powell Street
3984	Police Station	2449 Powell Street
3985	Recreation Center	4300 San Pablo Avenue
3986	Senior Center	4321 Salem Street
3987	Doyle Street Community Garden	Corner of Doyle and 59 <sup>th</sup> Streets
3988	Big Daddy's Community Garden	Corner of Peralta and West
3989		MacArthur Blvd
3990	48 <sup>th</sup> Street Community Garden	Corner of 53 <sup>rd</sup> and 48 <sup>th</sup> Streets
3991	Doyle Hollis Park	Between Doyle, Hollis, 61 <sup>st</sup> and 62 <sup>nd</sup>
3992		Streets
3993	Emeryville Arts and Cultural Center	Hollis and 40 <sup>th</sup> Streets
3994	Community Swimming Pool	1100 47 <sup>th</sup> Street
3995		

3996            **Exhibit 6    Emery Unified School District Facilities**

3997	<u>Facility Name</u>	<u>Facility Address</u>
3998	Anna Yates Elementary School	1070 41 <sup>st</sup> Street
3999	Emery Middle School	1271 61 <sup>st</sup> Street
4000	Emery Secondary School	4727 San Pablo Avenue
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## Exhibit 7 Transition Program

### **WASTE MANAGEMENT/CITY OF EMERYVILLE TRANSITION PLAN**

#### **Truck Ordering/Delivery**

WMAC has reserved build slots for the New Emeryville Collection Vehicles. Per Corporate Guidelines, City Council approval is needed to place any orders for vehicles. Once City Council has approved the new franchise agreement, the order will be placed. It is anticipated that the new collection vehicles will arrive at WMAC within six months from the order date. Upon vehicle arrival, drivers will be trained on the vehicles at our 98th Avenue Facility. In addition, WMAC will provide the City with the tare weights of each vehicle and registrations. Once the vehicles are ready to be deployed, WMAC will coordinate a time for City staff to inspect the vehicles. The arrival of vehicles after the February 1st start date will have no impact on the implementation of the new programs.

#### **Route Maps**

WMAC does not anticipate any day changes. However, prior to the January 1st start date, new residential route maps will be created and provided to the City.

#### **Carts and Containers**

While new carts and containers will not be distributed to all existing Emeryville customers, WMAC will place a substantial order for carts and steel containers upon Council Approval, expected in Fourth Quarter 2010. We anticipate that there will be some migration among single-family residential customers to smaller trash carts. However, we believe that the greatest need for containers will be in the commercial/multi-family single-stream recycling and commercial/multi-family organics sectors. During Fourth Quarter 2010, City Staff and WMAC staff will meet to create and agree upon labeling for carts and containers. The labels will state the materials that are to be placed in each container and instructions for proper usage. Method of distribution will also be discussed during these meetings. In addition, prior to April 30<sup>th</sup>, 2011, 2 Solar Powered Compactors will be placed in the Marina.

#### **Batterytracker and Lampracker**

Batterytracker kits for multi-family dwellings and commercial customers and Lampracker Kits for all customers will be purchased during First Quarter 2011. WMAC and City staff will meet and discuss the best options for distributing the kits to our customers during the implementation meetings.

#### **Customer Service**

Perhaps there is no more crucial time period for ensuring that customers are receiving clear and correct information than during the transition and implementation of a new franchise agreement. Customer service representatives will be trained during January 2011 of the new programs and service enhancements for our customers. In fact, we would like to invite a City Designee to visit our Oak Harbor, Washington facility to meet our Customer Experience Leadership Team and our Customer Service Representatives.

4048 **Public Education**

4049 WMAC will meet and work with the City during Fourth Quarter 2010 and beyond, to generate  
4050 program announcements, press releases, outreach schedules and new services brochures. A  
4051 public education plan for year one of the agreement will be submitted to the City within ten (10)  
4052 calendar days of City Council Approval. WM Communications Specialist will attend these  
4053 meetings in efforts to provide the City with a comprehensive Public Education Campaign.  
4054 Whenever possible, local Green Vendors will be used in the printing of the Public Education  
4055 Materials.

4056  
4057 **Performance Bond & Parent Corporation Guaranty**

4058 WMAC will use best efforts to deliver the documents to the City within thirty (30) calendar days  
4059 of City Council Approval.

4060  
4061 **Agreement Negotiation Fee & Environmental Programs Fee**

4062 Within thirty (30) calendar days of City Council Approval, WMAC will submit an agreement  
4063 negotiations fee of \$25,000 to the City, and no later than February 1, 2011, WMAC will submit  
4064 an  
4065 environmental programs fee of \$150,000 to the City.

4066  
4067 **Franchise Service Coordinator & Website**

4068 No later than January 1, 2011, WMAC will provide the name of the Franchise Service  
4069 Coordinator and will have a website describing services available to the public by February 1,  
4070 2011.

4071  
4072 **Implementation Meetings**

4073 Immediately upon Council approval, WMAC would like to meet with City staff at a minimum of  
4074 every other week to discuss and prepare for all facets regarding implementation. The WMAC  
4075 team lead for the implementation of the new franchise agreement will be announced at that  
4076 time.

4077  
4078 **Commercial and Multi-Family Site Surveys and Audits**

4079 Coinciding with the Diversion Plan, WMAC Recycling Coordinator will work in cooperation with  
4080 the City to target diversion opportunities for Commercial and Multi-Family customers. This will  
4081 be covered in greater detail in the Diversion Plan.

Collection Service Agreement

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Transition Calendar	Council Approval	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
<b>Council Approves Franchise Agreement</b>							
<b>Collection Vehicle Order Placed</b>							
<b>Carts &amp; Container Order Placed</b>							
<b>New Route Maps Developed</b>							
<b>Develop Customer Letters &amp; Brochures Announcing New Programs</b>							
<b>Mail First Letter &amp; Brochure</b>							
<b>Order Batterytracker/Lamptracker Kits</b>							
<b>Customer Service Training</b>							
<b>Operations Training (Drivers/Supervisors)</b>							
<b>Submittal of Performance Bond and Parent Corporation Guaranty</b>							
<b>Submittal of Agreement Negotiation Fee Payment</b>							
<b>Submittal of Environmental Programs Fee Payment</b>							
<b>Provide Name of WM Franchised Services Coordinator</b>							
<b>Development of WM Emeryville Specific Website</b>							
<b>Residential, Commercial and MFD Public Education</b>							
<b>Commercial and MFD Site Surveys and Audits</b>							
<b>New Residential, Commercial &amp; MFD Programs Start – February 1, 2011</b>							

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12/06/10





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4118 Exhibit 9 Agreement References for Liquidated Damage Item a.

4120

**Section**

- 5.01.2 12.10.0
- 6.02.1 12.20.0
- 6.02.4 13.01.0
- 6.07.0 14.01.0
- 6.08.8.2 14.02.0
- 6.12.2 15.04.0
- 6.12.3 15.05.0
- 6.12.4 15.07.0
- 6.12.5 15.09.0
- 6.13.1 16.07.0
- 6.13.3 17.02.0
- 6.17.1 17.08.0
- 7.10.3 17.08.1
- 7.11.2 17.15.0
- 8.01.7.1 17.16.0
- 8.02.8.1 18.01.0
- 8.02.9.2 18.02.1
- 8.02.13 20.05.0
- 8.03.8.1 23.02.0
- 10.02.3 24.02.0
- 10.06.0 30.01.2
- 11.05.0 32.02.1
- 11.06.0 32.03.2
- 12.02.0