

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR
DISCARDED MATERIALS MANAGEMENT
FOR MULTI-FAMILY AND COMMERCIAL GENERATORS
AND FOR PROVIDING
TEMPORARY SOLID WASTE HANDLING SERVICES**

BETWEEN

CITY OF COSTA MESA

AND

WARE DISPOSAL, INC.

EFFECTIVE JANUARY 1, 2022

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FOR
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FOR MULTI-FAMILY AND COMMERCIAL GENERATORS
AND FOR PROVIDING
TEMPORARY SOLID WASTE HANDLING SERVICES
BETWEEN
CITY OF COSTA MESA
AND
WARE DISPOSAL, INC.**

This Non-Exclusive Franchise Agreement for Discarded Materials Management for Commercial Generators and for Providing Temporary Solid Waste Services (“Agreement”) is entered into this 23rd day of November, 2021, by and between the City of Costa Mesa (“City”) and Ware Disposal, Inc. (“Contractor”) (collectively, the “Parties”), for the Collection and subsequent Transfer, Transportation, Recycling, Processing, and/or Disposal of Discarded Materials and provision of other related services.

RECITALS:

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (“AB 939”), has declared that it is in the public interest to authorize and require local agencies to make adequate provision for the handling of all Solid Waste within their jurisdictions.

WHEREAS, the State of California has found and declared that the amount of Solid Waste generated in California, coupled with diminishing Disposal capacity and interest in minimizing potential environmental impacts from landfilling and the need to conserve natural resources, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has, through enactment of AB 939 and subsequent related legislation including, but not limited to: the Jobs and Recycling Act of 2011 (AB 341), the Event and Venue Recycling Act of 2004 (AB 2176), SB 1016 (Chapter 343, Statutes of 2008 [Wiggins, SB 1016]), the Mandatory Commercial Organics Recycling Act of 2014 (AB 1826), and the Short-Lived Climate Pollutants Bill of 2016 (SB 1383), directed the responsible State agency, and all local agencies, to promote a reduction in Landfill Disposal and to maximize the use of feasible waste reduction, Reuse, Recycling, and composting options in order to reduce the amount of material that must be Disposed; and,

WHEREAS, SB 1383 establishes regulatory requirements for jurisdictions, Generators, haulers, Solid Waste facilities, and other entities to support achievement of State-wide Organic Waste Disposal reduction targets; and,

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

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2) and Chapter IV of Title 8 of the Costa Mesa Municipal Code, the City Council has determined that the public health, safety, and well-being require that Non-Exclusive Franchise Agreements for Discarded Materials Management for Multi-Family and Commercial Customers be awarded to qualified companies for the Collection and subsequent Transfer, Transportation, Recycling, Processing, and/or Disposal of Discarded Materials; and

WHEREAS, Contractor desires to engage in the business of Collecting Discarded Materials in the City; and

WHEREAS, City wishes to utilize the Contractor's services to offer Discarded Materials Collection services to Multi-Family and Commercial Generators in the City; and

WHEREAS, it is the intent of the Parties to this Agreement that compliance with the operative requirements hereof shall commence on January 1, 2022.

NOW, THEREFORE, in consideration of the promises above stated and the terms, conditions, covenants, and agreements contained herein, the Parties do hereby agree as follows:

**SECTION 1.
RECITALS**

The Parties acknowledge the above recitals are true and correct and incorporate them herein as if they were fully restated.

**SECTION 2.
DEFINITIONS**

Whenever any term used in this Agreement has been defined by the California Public Resources Code, the definition of such term set forth therein shall apply unless the term is otherwise defined in this Agreement.

2.1 AB 341

"AB 341" shall mean Assembly Bill 341 from the 2011-2012 Regular Session of the California Legislature (Chapter 476, Statutes 2011).

2.2 AB 876

"AB 876" means the Assembly Bill approved by the Governor of the State of California on October 8, 2015, which added Section 418214 to the Public Resources Code, relating to Solid Waste as amended, supplemented, superseded, and replaced from time to time.

2.3 AB 901

“AB 901” means the Assembly Bill approved by the Governor of the State of California on October 10, 2015, which amended Section 41821.5 of, amended, renumbered and added Section 41821.6 of, and added Sections 41821.7 and 41821.8 to, the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time.

2.4 AB 939

“AB 939” shall mean the California Integrated Waste Management Act of 1989, currently codified as California Public Resources Code Section 40000 et seq., as it may be amended from time to time.

2.5 SB 1383

“SB 1383” shall mean Senate Bill 1383, the Short-Lived Climate Pollutants Bill of 2016, from the 2015-2016 Regular Session of the California Legislature (Chapter 395, Statutes of 2016).

2.6 AB 1594

“AB 1594” shall mean Assembly Bill 1594 from the 2013-2014 Regular Session of the California Legislature (Chapter 719, Statutes 2014).

2.7 AB 1826

“AB 1826” shall mean Assembly Bill 1826 from the 2013-2014 Regular Session of the California Legislature (Chapter 727, Statutes 2014).

2.8 Affiliate

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

2.9 Alternative Daily Cover (ADC)

“Alternative Daily Cover” or “ADC” has the same meaning as in 27 CCR Section 20690.

2.10 Alternative Intermediate Cover (AIC)

“Alternative Intermediate Cover” or “AIC” has the same meaning as in 27 CCR Section 20700.

2.11 Animal Waste

“Animal Waste” shall mean animal carcasses, dead animals, and/or parts or portions of dead animals. Animal Waste shall not include manure.

2.12 Applicable Laws

“Applicable Laws” shall mean all federal, state, county, and local laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirements of any governmental agency having jurisdiction over an aspect of this Agreement that are in force on the Effective Date, and as may be enacted, issued or amended thereafter, including without limitation City’s Municipal Code, AB 341, AB 939, AB 1594, AB 1826 and SB 1383.

2.13 Approved C&D Processing Facility

“Approved C&D Processing Facility” means the Facility Name at Facility Address, which is owned and operated by Owner Name, that is a C&D Processing Facility and was Contractor selected and City approved.

2.14 Approved Disposal Facility

“Approved Disposal Facility” means the Facility Name at Facility Address, which is owned and operated by Owner Name, that is a Disposal Facility and was Contractor selected and City approved.

2.15 Approved Facilities

“Approved Facility(ies)” means any one of or any combination of the: Approved C&D Processing Facility; Approved Disposal Facility; Approved High Diversion Organic Waste Processing Facility; Approved Organic Waste Processing Facility; Approved Source Separated Recyclable Materials Processing Facility; and, Approved Transfer Facility, each of which are defined in this Section.

2.16 Approved High Diversion Organic Waste Processing Facility

“Approved High Diversion Organic Waste Processing Facility” means the Facility Name at Facility Address, that is a High Diversion Organic Waste Processing Facility and was Contractor selected and City approved.

2.17 Approved Organic Waste Processing Facility

“Approved Organic Waste Processing Facility” means the Facility Name at Facility Address, which is owned and operated by Owner Name, that is an Organic Waste Processing Facility and was Contractor selected and City approved.

2.18 Approved Source Separated Recyclable Materials Processing Facility

“Approved Source Separated Recyclable Materials Processing Facility” means the Facility Name at Facility Address, which is owned and operated by Owner Name, that is a Source Separated Recyclable Materials Processing Facility and was Contractor selected and City approved.

2.19 Approved Transfer Facility

“Approved Transfer Facility” means the Facility Name at Facility Address, which is owned and operated by Owner Name, that is a Transfer Facility and was Contractor selected and City approved.

2.20 Back-Haul

“Back-Haul” means generating and transporting Organic Waste to a destination owned and operated by the Generator using the Generator’s own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).

2.21 Billings

“Billings” or “Billing” or “Bill” means the statements of charges provided to Customers or Responsible Customers for services rendered by Contractor pursuant to the terms of this Agreement.

2.22 Bins

“Bins” shall mean a Container, including dumpsters, compactors, and any similar such devices with a capacity of under ten (10) cubic yards.

2.23 Blue Container or Blue Lid

“Blue Container” has the same meaning as in 14 CCR Section 18982.2(a)(5) and shall be used for the purpose of storage and Collection of Source Separated Recyclable Materials or SSBCOW.

2.24 Brown Container or Brown Lid

“Brown Container” has the same meaning as in 14 CCR Section 18982.2(a)(5.5) and shall be used for the purpose of storage and Collection of Source Separated Food Waste.

2.25 Bulky Items

“Bulky Items” means Solid Waste that cannot and/or would not typically be accommodated within a Cart or Bin including specifically: furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators with and without Freon, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as “white goods”); residential wastes (including wood waste, tree branches, scrap wood, in the aggregate not exceeding one cubic yard per Collection); and clothing. For purposes of this Agreement, and notwithstanding any provision hereof to the contrary, Bulky Items shall specifically include items commonly known in the waste industry as “brown goods,” “e-waste” and “universal waste” (including, without limitation all types of electronic waste, stereos, televisions, computers and monitors, cellular phones, VCRs, microwaves and other similar type of equipment and products). Bulky Items do not include car bodies, Construction and Demolition Debris, Hazardous Waste, or (with the exception of appliances/white goods described above) items that cannot reasonably and safely be loaded and unloaded into a vehicle by two people using equipment of the type which, pursuant to industry standards, would normally be carried in a vehicle used in Collecting Bulky Items. In the event a question arises as to whether a specific item, or category of items meets the definition of Bulky Items, City shall be responsible to determine whether said definition shall apply, which determination shall be final and binding on the Parties.

2.26 C&D

“C&D” means Construction and Demolition Debris.

2.27 C&D Collection Site

“C&D Collection Site” means properties where construction and demolition work is performed as evidenced by City issuance of a land clearing, building, or demolition permit, or from a non-permitted municipal project or as otherwise stated in Section 5-10 of the Municipal Code.

2.28 California Code of Regulations (CCR)

“California Code of Regulations” or “CCR” means the State of California Code of Regulations. CCR references in this Agreement are preceded with a number that refers to the relevant Title of the CCR (e.g., “14 CCR, Division 7, Chapter 12” refers to Title 14, Division 7, Chapter 12 of the California Code of Regulations).

2.29 CalRecycle

“CalRecycle” means California’s Department of Resources Recycling and Recovery, which is the Department designated with responsibility for developing, implementing, and enforcing SB 1383 Regulations on jurisdictions and other regulated entities.

2.30 Cart

“Cart” means a plastic Container with a hinged lid and wheels serviced by an automated or semi-automated process, as opposed to a manual process of lifting and dumping.

2.31 City

“City” shall mean the City of Costa Mesa, a municipal corporation, located in Orange County, California.

2.32 City Council

“City Council” shall mean the City Council of City.

2.33 City Limits

“City Limits” shall mean the territorial boundaries of the City together with all amendments and changes thereto, which boundaries are depicted on maps, incorporated herein by reference, that are kept on file in the office of the City Clerk of the City of Costa Mesa, and which are from time to time amended to reflect changes.

2.34 Collect/Collection/Collecting

“Collect,” “Collection,” or “Collecting” shall mean to take physical possession of, transport, and remove Solid Waste from a Premises.

2.35 Collection Vehicle

“Collection Vehicle” shall have the meaning ascribed in Section 9 of this Agreement.

2.36 Commercial Business (Commercial)

“Commercial Business” or “Commercial” means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, or industrial facility, or as otherwise defined in 14 CCR Section 18982(a)(6), with the exception that Multi-Family is excluded from the definition of Commercial Business for the purposes of this Agreement.

2.37 Commercial Edible Food Generators

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

2.38 Community Composting

“Community Composting” means any activity that composts green material, agricultural material, food material, and vegetative food material, alone or in combination, and the total amount of feedstock and Compost on-site at any one time does not exceed 100 cubic yards and 750 square feet, as specified in 14 CCR Section 17855(a)(4); or as otherwise defined in 14 CCR Section 18982(a)(8).

2.39 Compostable Plastics

“Compostable Plastics” or “Compostable Plastic” means plastic materials that meet the ASTM D6400 standard for compostability, or as otherwise described in 14 CCR Section 18984.1(a)(1)(A) or 18984.2(a)(1)(C).

2.40 Compost

“Compost” has the same meaning as in 14 CCR Section 17896.2(a)(4), which stated, as of the Effective Date of this Agreement, that “Compost” means the product resulting from the controlled biological decomposition of organic Solid Wastes that are Source Separated from the municipal Solid Waste stream, or which are separated at a centralized Facility.

2.41 Construction and Demolition Debris (C&D)

“Construction and Demolition Debris” means the nonhazardous waste building material, Inerts, soil, packaging, Yard Trimmings, rubble, and other used or Discarded Materials resulting from construction or demolition.

2.42 Container(s)

“Container(s)” means a receptacle for temporary storage of Discarded Materials. Containers may include Bins, Carts, Roll-Off Boxes, compactors, cans, buckets, bags, or other storage instruments to the extent such Containers are permitted by the City for use for Collection services provided under the Agreement.

2.43 Contractor

“Contractor” means the Party (other than the City) that executed this Non-Exclusive Franchise Agreement and its Affiliates, DBAs, and Subcontractors that perform services on Contractor’s behalf.

2.44 County Agreement

“County Agreement” shall mean that certain waste disposal agreement entered between various Orange County cities, including specifically the City of Costa Mesa, and the County of Orange relating to the use of County landfills for the disposal of Solid Waste collected in such cities, and which is on file in the office of City’s City Clerk, as the same may be amended from time to time.

2.45 Customer

“Customer” or “Customers” shall mean any Person receiving Solid Waste Collection services from Contractor within the Franchise Area.

2.46 Director

“Director” means the Director of Public Services of the City or his/her designee. The Director is also referred to in this Agreement as the “City Contract Manager.”

2.47 Discarded Materials

“Discarded Materials” are a form of Solid Waste, and shall be regulated as such. For purposes of this Agreement, material is deemed to have been discarded, without regard to whether it is destined for Recycling or Disposal, and whether or not it has been separated from other Solid Wastes, in all cases where a fee or other compensation, in any form or amount, is directly or indirectly solicited from, or levied, charged, or otherwise imposed on, or paid by, the Generator or Customer in exchange for handling services. As used herein, handling services include, without limitation, the Collection, removal, Transportation, delivery, and Processing and/or Disposal of the material. Discarded Materials do not include Edible Food that is recovered for human consumption and is not discarded. For the purposes of this Agreement, Discarded Materials include Source Separated Recyclable Materials, SSBCOW, SSGCOW, Food Waste, Gray Container Waste or Mixed Waste, and C&D once the materials have been placed in Containers for Collection.

2.48 Disposal

“Disposal” or “Dispose” means the final disposition of any Solid Waste Collected by the Contractor or Residue from Contractor’s Processing activities at a permitted Landfill or other permitted Solid Waste Facility.

2.49 Diversion

“Diversion (or any variation thereof including “Divert”)” means activities which reduce or eliminate Discarded Materials from Disposal, including, but not limited to, source reduction, Reuse, salvage, Recycling, and composting.

2.50 Dual Stream (or Dual-Stream)

“Dual Stream” or “Dual-Stream” means a Collection method in which the Generators are instructed to separate Source Separated Recyclable Materials (such as, but not limited to, SSBCOW and Non-Organic Recyclables) or SSGCOW (such as, but not limited to, Yard Trimmings and Food Waste) into two streams of materials for placement in two sections of a Split Container or into two different Containers, and in which the Contractor maintains the separation of the two streams during Collection and Processes each stream separately.

2.51 Edible Food

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

2.52 Effective Date

“Effective Date” means the date on which the Agreement becomes binding upon the Parties, which is the date when the latter of the Parties has executed this Agreement.

2.53 Environmental Laws

“Environmental Laws” means all federal and State statutes and City ordinances concerning public health, safety, and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC Section 9601, 6; the Resource Conservation and Recovery Act, 42 USC Section 6901, et seq.; the Federal Clean Water Act, 33 USC Section 1251, et seq.; the Toxic Substance Control Act, 15 USC Section 2601, et seq.; the Occupational Safety and Health Act, 29 USC Section 651, et seq.; the California Hazardous Waste Control Act, California Health and Safety Code Section 25100, et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code Section 25300, et seq.; the Porter-Cologne Water Quality Control Act, California Water Code Section 13000, et seq.; the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, et seq.; all as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

2.54 Excluded Waste

“Excluded Waste” means Hazardous Substance, Hazardous Waste, Infectious Waste, Designated Waste, volatile, corrosive, Medical Waste, infectious, regulated radioactive waste, and toxic substances or material that Approved Facility operator(s) reasonably believe(s) would, as a result of or upon acceptance, Transfer, Processing, or Disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be Disposed of in Class III Landfills or accepted at the Facility by permit conditions, waste that in Contractor’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Family or Multi-Family Solid Waste after implementation of programs for the safe Collection, Processing, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.

2.55 Facility(ies)

“Facility(ies)” means any plant, site, or operation used for the purpose of handling Discarded Materials, including, but not limited to, Disposal, Transfer, Recycling, composting, and Processing facilities or operations.

2.56 Food Recovery

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

2.57 Food Recovery Organization

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

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

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

2.58 Food Recovery Service

“Food Recovery Service” means a Person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery; or as otherwise defined in 14 CCR Section 18982(a)(26).

2.59 Food Scraps

“Food Scraps” means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells. Food Scraps excludes fats, oils, and grease when such materials are Source Separated from other Food Scraps.

2.60 Food-Soiled Paper

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

2.61 Food Waste

“Food Waste” means Source Separated Food Scraps, Food-Soiled Paper, and Compostable Plastics (if an approved material in Contractor’s program). Food Waste is a subset of SSGCOW. Edible Food separated for Food Recovery shall not be considered Food Waste.

2.62 Franchise Area

“Franchise Area” shall mean all Premises within the City Limits, including Premises which may be annexed and thereby added to the City Limits following the Effective Date.

2.63 Franchise Fee

“Franchise Fee” shall mean the franchise fee set forth and more fully defined in Section 11 hereof.

2.64 Generator

“Generator” means any Person whose act first causes Discarded Materials to become subject to regulation under Chapter IV of Title 8 of the Municipal Code or under federal, State, or local regulations.

2.65 Gray Container

“Gray Container” has the same meaning as in 14 CCR Section 18982(a)(28) and shall be used for the purpose of storage and Collection of Gray Container Waste or Mixed Waste.

2.66 Gray Container Waste

“Gray Container Waste” means Solid Waste that is collected in a Gray Container that is part of a three-Container Organic Waste Collection service that prohibits the placement of Organic Waste in the Gray Container as specified in 14 CCR Sections 18984.1(a) and(b) or as otherwise defined in 14 CCR Section 17402(a)(6.5). For the purposes of this Agreement, Gray Container Waste includes carpet and textiles.

2.67 Green Container

“Green Container” has the same meaning as in 14 CCR Section 18982(a)(29) and shall be used for the purpose of storage and Collection of SSGCOW.

2.68 Gross Receipts

“Gross Receipts” shall mean and include all monies, fees, charges, consideration, and revenue received by Contractor and any Affiliate of Contractor attributable to the Solid Waste Handling Services carried out by or on behalf of Contractor pursuant to this Agreement. Gross Receipts includes, without limitation, monthly or quarterly Customer charges that are received by Contractor for Collection of Solid Waste, without subtracting Franchise Fees, fees imposed and collected pursuant to this Agreement, sums collected in connection with Temporary Services, and transportation charges. Gross Receipts does not include revenue from the sale of Recyclable Material, Green Waste, food waste, and other material which is diverted from disposal.

2.69 Hauler Route

“Hauler Route” means the designated itinerary or sequence of stops for each segment of the City’s Collection service area, or as otherwise defined in 14 CCR Section 18982(a)(31.5).

2.70 Hazardous Substance

“Hazardous Substance” shall mean any of the following: (a) any substance defined, regulated or listed (directly or by reference) as “hazardous substances”, “hazardous materials”, “hazardous wastes”, “toxic waste”, “pollutant” or “toxic substances” or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC Section 9601, et seq.;

(ii) the Hazardous Materials Transportation Act, 49 USC Section 5101, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC Section 6901, et seq.; (iv) the Clean Water Act, 33 USC Section 1251, et seq.; (v) California Health and Safety Code Sections 25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC Section 7401, et seq.; and (vii) California Water Code Section 13050; (b) any amendments, rules, or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereinafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste, or pollutant identified as hazardous or toxic or regulated under any other applicable federal, State, and local environmental laws currently existing or hereinafter enacted, including without limitation, friable asbestos, polychlorinated biphenyl (“PCBs”), petroleum, natural gas and synthetic fuel products, and by-products.

2.71 Hazardous Waste

“Hazardous Waste” or “Hazardous Wastes” means any waste which meets the definitions set forth in 22 CCR Section 66261.3, et seq. and is required to be managed; or as otherwise defined in 14 CCR Section 17402(a)(7). Hazardous Waste includes hazardous wood waste, which means wood that falls within the definition of “treated wood” or “treated wood waste” in 22 CCR Section 67386.4, or as otherwise defined in 14 CCR Section 18982(a)(30.5).

2.72 High Diversion Organic Waste Processing Facility

“High Diversion Organic Waste Processing Facility” means a High Diversion Organic Waste Processing Facility as defined in 14 CCR Section 18982(a)(33).

2.73 Inerts

“Inerts” means materials such as concrete, soil, asphalt, and ceramics.

2.74 Landfill

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

2.75 Large Event

“Large Event” means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event. If the definition in 14 CCR Section 18982(a)(38) differs from this definition, the definition in 14 CCR Section 18982(a)(38) shall apply to this Agreement.

2.76 Large Venue

“Large Venue” means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of 14 CCR, Division 7, Chapter 12 and this Agreement, a venue facility

includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of 14 CCR, Division 7, Chapter 12 and this Agreement, a site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to this Agreement.

2.77 Medical Waste

“Medical Waste” means any Solid Waste that is generated or has been used in the diagnosis, treatment, or immunization of human beings or animals, or research pertaining thereto, and shall include, but not be limited to, biomedical, biohazardous and medical waste, or other Solid Waste resulting from medical activities or services as defined by Chapter IV of Title 8 of the Municipal Code or any State or federal law or regulation, all as currently enacted or subsequently amended.

2.78 Mixed Waste

“Mixed Waste” means Mixed Waste Organic Collection Stream and Solid Waste Collected in a Container that is required by 14 CCR Sections 18984.1, 18984.2, or 18984.3 to be Transported to a High Diversion Organic Waste Processing Facility.

2.79 Mixed Waste Organic Collection Stream

“Mixed Waste Organic Waste Collection Stream” means Organic Waste Collected in a Container that is required by 14 CCR Sections 18984.1, 18984.2, or 18984.3 to be Transported to a High Diversion Organic Waste Processing Facility, or as otherwise defined in 14 CCR Section 17402(a)(11.5).

2.80 Mulch

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

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

-
- c. A Solid Waste Landfill as defined in PRC Section 40195.1 that is permitted under 27 CCR, Division 2.

2.81 Multi-Family or Multi-Family Dwelling Unit

“Multi-Family” means of, from, or pertaining to residential Premises with five (5) or more dwelling units. A “Residential Multi-Family Premises” is a residential Premises with four (4) or less dwelling units. A “Commercial Multi-Family Premises” is a residential Premises with five (5) or more dwelling units. Multi-Family Premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial Businesses. References to “Multi-Family Dwelling Unit” refer to an individual residential unit of the Multi-Family Premises.

2.82 Municipal Code

“Municipal Code” shall mean the Costa Mesa Municipal Code.

2.83 Non-Compostable Paper

“Non-Compostable Paper” includes, but is not limited to, paper that is coated in a plastic material that will not breakdown in the composting process, or as otherwise defined in 14 CCR Section 18982(a)(41).

2.84 Non-Exclusive Franchise Agreement (NEFA)

“Non-Exclusive Franchise Agreement” or “NEFA” means this Agreement entered into between the Contractor and the City where the Contractor agrees to Collect Discarded Materials, and subsequently Transport, Transfer, Process, and/or Dispose of the Discarded Materials that Contractor has Collected in the City.

2.85 Non-Organic Recyclables

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

2.86 Organic Waste

“Organic Waste” means Solid Wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, food, Yard Trimmings, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.

2.87 Paper Products

“Paper Products” include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling; or as otherwise defined in 14 CCR Section 18982(a)(51).

2.88 Parent Company

“Parent Company” means a company that has a controlling interest in another company, enabling the Parent Company to control management and operations of the Affiliate or Subsidiary company.

2.89 Party or Parties

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

2.90 Person

“Person” has the same meaning as in Public Resources Code Section 40170, which states, as of the Effective Date of this Agreement, that a Person includes an individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

2.91 Premises

“Premises” means a tract of land with or without habitable buildings or appurtenant structures.

2.92 Printing and Writing Papers

“Printing and Writing Papers” include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications, or as otherwise defined in 14 CCR Section 18982(a)(54).

2.93 Process, Processed, or Processing

“Process”, “Processed”, or “Processing” means the controlled separation, recovery, volume reduction, conversion, or Recycling of Solid Waste including, but not limited to, organized, manual, automated, or mechanical sorting, the use of vehicles for spreading of waste for the purpose of recovery, and/or includes the use of conveyor belts, sorting lines, or volume reduction equipment, or as otherwise defined in 14 CCR Section 17402(a)(20).

2.94 Prohibited Container Contaminants

Option 1: Three-Container Collection service (Blue, Green, and Gray Containers) “Prohibited Container Contaminants” means the following: (i) Discarded Materials placed in the Blue

Container that are not identified as acceptable Source Separated Recyclable Materials for the City's Blue Container; (ii) Discarded Materials placed in the Green Container that are not identified as acceptable SSGCOW for the City's Green Container; (iii) Discarded Materials placed in the Gray Container that are acceptable Source Separated Recyclable Materials and/or SSGCOW to be placed in City's Green Container and/or Blue Container ; and (iv) Excluded Waste placed in any Container.

Option 2a: Two-Container Collection Service for SSGCOW and Mixed Waste (Green and Gray Containers) "Prohibited Container Contaminants" means the following: (i) Discarded Materials placed in the Green Container that are not identified as acceptable SSGCOW for the City's Green Container; (ii) Discarded Materials placed in the Gray Container that are identified as acceptable SSGCOW, which are to be separately collected in City's Green Container; and, (iii) Excluded Waste placed in any Container.

Option 2b: Two-Container Collection Service for Source Separated Recyclable Materials and Mixed Waste (Blue and Gray Containers) "Prohibited Container Contaminants" means the following: (i) Discarded Materials placed in the Blue Container that are not identified as acceptable Source Separated Recyclable Materials for City's Blue Container; (ii) Discarded Materials placed in the Gray Container that are identified as acceptable Source Separated Recyclable Materials, which are to be separately Collected in City's Blue Container; and, (iii) Excluded Waste placed in any Container.

2.95 Property Owner

"Property Owner" means the owner of real property, or as otherwise defined in 14 CCR Section 18982(a)(57).

2.96 Public Resources Code (PRC)

"Public Resources Code" or "PRC" means the California Public Resources Code.

2.97 Putrescible Waste

"Putrescible Waste" means wastes that are capable of being decomposed by micro-organisms with sufficient rapidity as to cause nuisances because of odors, gases, or other offensive conditions, and includes materials such as, but not limited to Food Waste, offal, and dead animals; or as otherwise defined in 14 CCR Section 17402(a)(21).

2.98 Rate

"Rate" means the amount, expressed as a dollar unit, that Contractor bills a Customer for providing specified services under this Agreement.

2.99 Recycle/Recycling

"Recycle" or "Recycling" means the process of Collecting, sorting, cleansing, treating, and reconfiguring materials for the purpose of returning them to the economic mainstream in the form of raw material for new, Reused, or reconstituted products that meet the quality standards

necessary to be used in the marketplace. Recycling includes processes deemed to constitute a reduction of Landfill Disposal pursuant to 14 CCR, Division 7, Chapter 12, Article 2. Recycling does not include gasification or transformation as defined in Public Resources Code Section 40201.

2.100 Remnant Organic Material

“Remnant Organic Material” means the Organic Waste that is Collected in a Gray Container that is part of the Gray Container Collection stream, or as otherwise defined in 14 CCR 17402(a)(23.5).

2.101 Renewable Natural Gas (RNG)

“Renewable Natural Gas” or “RNG” means gas derived from Organic Waste that has been diverted from a Landfill and Processed at an in-vessel digestion facility that is permitted or otherwise authorized by 14 CCR to recover Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(62).

2.102 Residual (or Residue)

“Residual” or “Residue” means the Solid Waste destined for Disposal, further transfer/processing as defined in 14 CCR Section 17402(a)(30) or 14 CCR Section 17402(a)(31), or transformation which remains after Processing has taken place and is calculated in percent as the weight of Residual divided by the total incoming weight of materials.

2.103 Responsible Customer

“Responsible Customer” means the Customer who is responsible for making arrangements with Contractor to ensure Collection services are provided at Commercial Premises or Residential Premises in circumstances where a management company, homeowner association, or similar type entity arranges Collection services for such Premises. In the event of any dispute as to whether a right or obligation set forth herein is held by a Customer or a Responsible Customer, the Director is authorized to resolve such dispute in a manner that he determines best implements the intent of this Agreement.

2.104 Reusable Items

“Reusable Items” means items that are capable of being Reused after minimal Processing. Reusable Items may be Collected Source Separated or recovered through a Processing Facility. Reusable Items may include, but are not limited to, clothing, furniture, and/or sporting equipment.

2.105 Reuse

“Reuse” or any variation thereof, means the use, in the same, or similar, form as it was produced, of a material which might otherwise be discarded, or as otherwise defined in 14 CCR Section 17402.5(b)(2).

2.106 Roll-Off Box

“Roll-Off Box” means an open- or closed-top metal Container, roll-top Container, or closed compactor Container serviced by a roll-off truck and with a Container capacity of 10 to 50 cubic yards. Roll-off boxes are also known as drop boxes or debris boxes.

2.107 Salvageable Material (or Salvaged Material)

“Salvageable Material” or “Salvaged Material” means an object or material that results from salvaging, where salvaging means the controlled separation of Solid Waste material which do not require further processing for Reuse or Recycling prior to Transfer activities, or as otherwise defined in 14 CCR Section 17402(a)(24).

2.108 SB 1383

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

2.109 SB 1383 Regulations

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

2.110 Self-Hauler (or Self-Haul)

“Self-Hauler” or “Self-Haul” means a Person who hauls Solid Waste, Organic Waste, or recovered material solely using the Person’s equipment and employees, without payment of compensation or discounted fees of any kind to any third party they have generated to another Person, or as otherwise defined in 14 CCR Section 18982(a)(66). Self-Hauler also includes a Person who Back-Hauls waste.

2.111 Service Level

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

2.112 Solid Waste

“Solid Waste” has the same meaning as defined in PRC Section 40191, which defines Solid Waste as all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes,

abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes, with the exception that Solid Waste does not include any of the following wastes:

(1) Hazardous waste, as defined in PRC Section 40141.

(2) Radioactive waste regulated pursuant to the Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code).

(3) Medical waste regulated pursuant to the Medical Waste Management Act (Part 14, commencing with Section 117600, of Division 104 of the Health and Safety Code). Untreated medical waste shall not be disposed of in a solid waste Landfill, as defined in PRC Section 40195.1. Medical waste that has been treated and deemed to be Solid Waste shall be regulated pursuant to PRC, Division 30.

2.113 Source Separated

“Source Separated” means materials, including commingled Recyclable materials, that have been separated or kept separate from the Solid Waste stream, at the point of generation, for the purpose of additional sorting or Processing those materials for Recycling or Reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace, or as otherwise defined in 14 CCR Section 17402.5(b)(4). For the purposes of the Agreement, Source Separated shall include separation of materials by the Generator, Property Owner, Property Owner’s employee, property manager, or property manager’s employee into different Containers for the purpose of Collection such that Source Separated materials are separated from Gray Container Waste or Mixed Waste and other Solid Waste for the purposes of Collection and Processing.

2.114 Source Separated Blue Container Organic Waste (SSBCOW)

“Source Separated Blue Container Organic Waste” or “SSBCOW” means Source Separated Organic Waste that can be placed in a Blue Container that is limited to the Collection of those Organic Wastes and Non-Organic Recyclables as defined in 14 CCR Section 18982(a)(43); or as otherwise defined by 14 CCR Section 17402(a)(26.7). The accepted types of SSBCOW and process for modifying the accepted types of SSBCOW are specified in Section 7.

2.115 Source Separated Green Container Organic Waste (SSGCOW)

“Source Separated Green Container Organic Waste” or “SSGCOW” means Source Separated Organic Waste that can be placed in a Green Container that is specifically intended for the separate Collection of Organic Waste by the Generator, excluding SSBCOW, carpets, Non-Compostable Paper, and textiles. The accepted types of SSGCOW and process for modifying the accepted types of SSGCOW are specified in Section 7. SSGCOW is a subset of Organic Waste.

2.116 Source Separated Recyclable Materials

“Source Separated Recyclable Materials” means Source Separated Non-Organic Recyclables and SSBCOW. The accepted types of Source Separated Recyclable Materials and process for modifying the accepted types of Source Separated Recyclable Materials are specified in Section 7.

2.117 Split Container or Split-Container

“Split Container” or “Split-Container” means a Container that is split or divided into segregated sections, instead of an entire Container, or as otherwise allowed pursuant to 14 CCR, Division 7, Chapter 12, Article 3.

2.118 State

“State” means the State of California.

2.119 Subcontractor

“Subcontractor” means any Person, firm, or entity hired by Contractor to carry out any of Contractor’s duties under this Agreement.

2.120 Subsidiary

“Subsidiary” means an Affiliate with fifty percent (50%) or more of its ownership controlled by Contractor.

2.121 Temporary Service

“Temporary Service” shall mean Solid Waste Handling Services provided by Contractor on an as-needed and temporary basis to any Premises within the City in conjunction with construction, demolition, cleanup or other projects, and by use of temporarily placed Bins or Rolloff Boxes.

2.122 Term

“Term” means the duration of this Agreement, including extension periods if granted, as provided for in Section 5.

2.123 Tier One Commercial Edible Food Generators

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

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

If the definition in 14 CCR Section 18982(a)(73) of Tier One Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(73) shall apply to this Agreement.

2.124 Tier Two Commercial Edible Food Generators

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

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

If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(74) shall apply to this Agreement.

2.125 Ton

“Ton” or “Tonnage” or “Tons” means a unit of weight equal to 2,000 pounds (907.18474 kg).

2.126 Transfer

“Transfer” means the act of transferring Discarded Materials Collected by Contractor from Contractor’s Collection vehicles into larger vehicles at a Transfer Facility for Transport to other Facilities for Processing or Disposing of such materials. Transfer allows for removal of materials excluded or prohibited from handling at the Transfer Facility (e.g., removal of Hazardous Waste).

2.127 Transformation

“Transformation” means incineration, pyrolysis, distillation, gasification, or biological conversion other than composting. “Transformation” does not include composting.

2.128 Transportation or Transport

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

2.129 Universal Waste (or U-Waste)

“Universal Waste” or “U-Waste” means all wastes defined by 22 CCR Subsections 66273.1 through 66273.9. These include, but are not limited to, batteries, fluorescent light bulbs, mercury switches, and electronic waste.

2.130 Work Days

“Work Days” or “Working Days” means days on which the Contractor is required to provide regularly scheduled Collection services under this Agreement.

2.131 Yard Trimmings

“Yard Trimmings” means types of SSGCOW resulting from normal yard and landscaping installation, maintenance, or removal that the Generators Source Separate and set out in Green Containers for Collection for the purpose of Processing by the Contractor. The accepted types of Yard Trimmings and process for modifying the accepted types of Yard Trimmings are specified in Section 7. Yard Trimmings are a subset of SSGCOW.

**SECTION 3.
GRANT OF NON-EXCLUSIVE FRANCHISE FOR DISCARDED
MATERIALS MANAGEMENT FOR MULTI-FAMILY AND
COMMERCIAL GENERATORS AND FOR PROVIDING
TEMPORARY SOLID WASTE HANDLING SERVICE**

3.1 Scope of Franchise

Except as hereinafter expressly set forth, City hereby grants to Contractor and Contractor hereby accepts from City, for the Term hereof, the non-exclusive franchise, right and privilege to Collect, Transport, and Dispose of Solid Waste generated or accumulated within the Franchise Area. The non-exclusive franchise, right and privilege to provide Solid Waste Handling Services within City granted to Contractor by this Agreement shall be interpreted to be consistent with all applicable state and federal laws, now in effect and adopted during the Term of this Agreement, and the scope of this Agreement shall be limited by all applicable current and developing laws and regulations. In the event that future interpretations of current law or future enactments limit the ability of City to lawfully grant Contractor the scope of services as specifically set forth herein, Contractor agrees that the scope of this Agreement will be limited to those services and materials which may be lawfully provided, and that City shall not be responsible for any lost profits claimed by Contractor as a result thereof.

3.2 Matters Excluded from Scope of Franchise

Notwithstanding any other provisions set forth in this Agreement to the contrary, the non-exclusive franchise granted herein shall exclude the Collection, transportation, recycling, and disposal of:

- (A) any Solid Waste otherwise within the scope of this Agreement which is transported by a Self-Hauler as that term is used in the Municipal Code, or any other City

ordinance, resolution, regulation or policy, as such may be adopted or amended from time to time;

(B) any Solid Waste otherwise within the scope of this Agreement during a locally proclaimed emergency (defined as a "local emergency" pursuant to Section 8630 of the California Emergency Services Act) or subsequent recovery period, provided that Contractor lacks the ability to perform the necessary work in a timely manner, or for any other reason determined by City related to public health, safety or welfare;

(C) the sale, donation, or transfer of Recyclable Material by the person or entity that generated such Recyclable Material (the "Generator") to any person or entity other than Contractor; provided, however, if the Generator is required to pay monetary or non-monetary consideration of any consideration for the Collection, Transportation, Transfer, or Processing of Recyclable Material to any person or entity other than Contractor, including the Generator receiving a reduction or discount in price (or in other terms of the consideration the Generator is required to pay), such arrangements shall not be considered a sale or donation;

(D) any Solid Waste otherwise within the scope of this Agreement which is Collected or Transported to a Disposal or Recycling Facility by City agents or employees in the course and scope of services provided for the City;

(E) any Solid Waste Collected at any City sponsored event if City does not request Contractor provide Collection services for the City sponsored event;

(F) the Collection, Transportation, or Disposal of Hazardous Waste; universal waste; E-Waste; biohazardous waste; untreated medical waste; infectious waste; Animal Waste; used cooking fats, oils, grease and similar waste; or other materials which do not constitute Solid Waste;

(G) the Collection, Transportation, and Disposal of Construction and Demolition Waste by a contractor, handyman, repairman, or other similar service provider, using its own equipment, as an incidental part of the services provided to its Customers, rather than as a hauling service, provided that such waste is not Collected or Transported by a third party hired for the primary purpose of Collecting and transporting said materials;

(H) the Collection, Transportation, and Disposal of Green Waste, including, but not limited to Green Waste and related Solid Waste by a gardener, or landscaper, as an incidental part of the gardening or landscaping services provided to its customers, rather than as a hauling service provided that such Solid Waste is not collected or transported by a third party hired for the primary purpose of Collecting and Transporting said materials; and

(I) Solid Waste Handling Services provided by any Person having a legal right to continue doing so, pursuant to Public Resources Code Section 49520, et seq., or otherwise, as long as and to the extent such legal right continues to exist; except that to the degree any territory in which Contractor has a franchise granted by another governmental entity is annexed into City during the Term, Contractor agrees the provisions of this

Agreement shall apply to such territory and further acknowledges that this Agreement constitutes any notice required by the Public Resources Code in connection therewith.

(J) **Edible Food.** Edible Food that is collected from a Generator by other Person(s), such as a Person from a Food Recovery Organization or Food Recovery Service, for the purposes of Food Recovery; or that is Transported by the Generator to another location(s), such as the location of a Food Recovery Organization, for the purposes of Food Recovery, regardless of whether the Generator donates, sells, or pays a fee to the other Person(s) to collect or receive the Edible Food from the Generator.

(K) **Food and Beverage Byproducts.** The hauling of byproducts from the processing of food or beverages and use of such material as animal feed if the byproducts originate from agricultural or industrial sources, do not include animal (including fish) processing byproducts, are Source Separated by the Generator of the byproducts, and are not discarded; and, if the use as animal feed is in accordance with 14 CCR Section 18983.1(b)(7). "Food and Beverage Byproducts" does not include Solid Waste, Organic Waste or Recyclable Materials from restaurants, grocery stores, supermarkets or discount warehouse outlets.

(L) **On-Site or Community Composting.** Organic Waste that is composted or otherwise legally managed at the site where it is generated or at a Community Composting site.

SECTION 4. ACCEPTANCE; WAIVER

Contractor agrees to be bound by and comply with all the requirements of this Agreement. Contractor waives Contractor's right to challenge the terms of this Agreement under federal, state, or local law, or administrative regulation. Contractor waives any right or claim to serve the City or any part of the City under any prior grant of franchise, contract, license, or permit issued or granted by any governmental entity including any right under Section 49520 of the Public Resources Code.

SECTION 5. TERM

The term of this Agreement (the "Term") shall be for an approximate period of seven (7) years commencing on the Effective Date. The Solid Waste Collection services provided to Customers shall commence on January 1, 2022 ("Service Commencement Date"). The Term of this Agreement shall end at midnight on December 31, 2028 unless this Agreement is terminated sooner pursuant to Section 18 hereof, or otherwise. Unless Contractor provides written notice to City on or before January 1, 2028 for the first option, and January 1, 2033 for the second option, that it desires to opt out of the City's right to unilaterally extend this Agreement as provided herein, the City Council shall have the option to exercise two (2) five (5) year extensions to the Term of this Agreement such that if the two (2) five (5) year extension options are exercised, the Term of this Agreement would expire at midnight on December 31, 2038. Prior to exercising an extension option, the City Council may, at its discretion, require the Director to conduct a performance

review during the preceding fiscal year after receiving an advance deposit from Contractor to cover the cost of such review, in an amount subject to the Director's reasonable determination, and said performance review will be separate from and in addition to the performance review set forth in Section 17. This performance review may include, but is not limited to, an assessment of opportunities for Contractor to reduce vehicle miles traveled based on data acquired by Contractor pursuant to Section 9.3(T), as well as an assessment of the greenhouse gas emissions generated by Contractor during Contractor's performance of this Agreement.

If the City Council does not exercise the option to extend the Term as set forth above, as evidenced by a formal action of the City Council taken in a duly noticed open meeting, on or before September 30, 2028 for the first option, and September 30, 2033 for the second option, said option shall expire and this Agreement shall automatically terminate at 11:59 p.m. on December 31, 2028, or December 31, 2033 if the first option is exercised. The decision to exercise each extension option shall be subject to the City Council's sole, absolute and unfettered discretion.

SECTION 6. CONDITIONS TO EFFECTIVENESS OF AGREEMENT

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

6.1 Accuracy of Representation

All representations and warranties made by Contractor and set forth in this Agreement shall be accurate, true, and correct on and as of the Effective Date of this Agreement.

6.2 Absence of Litigation

There shall be no litigation pending in any court challenging the award of this Agreement to Contractor or the execution of this Agreement or seeking to restrain or enjoin its performance.

6.3 Furnishing of Insurance and Bonds, Letter of Credits, or Asset Pledge

Contractor shall have furnished evidence of the insurance and sureties required by Sections 14 and 15 hereof, and shall comply with all ongoing requirements relating thereto.

6.4 Effectiveness of City Council Action

The City Council's action approving this Agreement shall have become effective pursuant to California law.

6.5 Payment of Fees and Costs

Contractor shall have made payment to City of all fees, costs and other payments due as more fully set forth in Section 11.

**SECTION 7.
SOLID WASTE HANDLING SERVICES
PROVIDED BY CONTRACTOR**

7.1 General

- A. **Overall Performance Obligations.** The scope of services to be performed by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform all requirements of the Agreement. The enumeration of, and specification of requirements for, particular items of labor or equipment shall not relieve the Contractor of the duty to furnish all others, as may be required, whether enumerated or not.

The scope of services to be performed by Contractor pursuant to this Agreement shall be accomplished in a manner so that Customers are provided reliable, courteous, and high-quality Collection services and other services described in this Agreement at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects in the manner generally provided in this Section for the delivery of services, whether such other aspects are enumerated elsewhere in the Agreement or not.

Contractor shall not knowingly Collect Blue, Green, Brown, or Gray Containers that include Prohibited Container Contaminants.

- B. **Requirements for Parent Company and Affiliates.** Upon approval by City, Contractor, its Parent Company, and Affiliates operating under the terms of this Agreement are allowed, at their option, to use each entity's name to comply with Collection vehicle and Container labeling requirements and may use each entity's name on any education and outreach materials.
- C. **Ownership of Discarded Materials.** By operation of this Agreement, ownership and the right to possession of all Discarded Materials shall be transferred to Contractor from the Person discarding the materials (Customer and/or Generator) once such materials are placed in Containers and properly placed for Collection. If Prohibited Container Contaminants are found in Containers set out for Collection, the materials shall be considered not properly placed for Collection, and Contractor shall have the right to reject Collection of the contaminated Containers pursuant to Section 8.3, and the ownership of materials shall remain with the Person discarding the materials (Customer and/or Generator). Except as required in the City's sole discretion for law enforcement purposes, at no time shall the City obtain any right of ownership or possession of Discarded Materials placed for collection and nothing in this Agreement shall be construed as giving rise to any inference that City has such rights. Refer to Section 8.1 for transfer of ownership of Discarded

Materials from Contractor to Facility operator(s) of Approved/Designated Facilities.

7.2 Three-Container System (Blue, Green, and Gray Containers)

A. **General.** No later than January 1, 2022 or insert earlier date, if desired, Contractor shall provide a three-Container Collection program for the separate Collection of Source Separated Recyclable Materials, SSGCOW, and Gray Container Waste or Mixed Waste as specified in this Section, using Containers that comply with the requirements of Section 7.9.7.

B. **Source Separated Recyclable Materials Collection (Blue Container).** Contractor shall provide Blue Containers to Customers for Collection of Source Separated Recyclable Materials and shall provide Source Separated Recyclable Materials Collection service. Contractor shall Transport the Source Separated Recyclable Materials to (i) the Approved/Designated Source Separated Recyclable Materials Processing Facility, or (ii) the Approved/Designated Transfer Facility for Transfer and Transport to the Approved/Designated Source Separated Recyclable Materials Processing Facility, as specified in Section 8.1.

Source Separated Recyclable Materials that are to be accepted for Collection in the Source Separated Recyclable Materials Collection program include the following: The Parties agree that the list of accepted types of Source Separated Recyclable Materials may be added to or removed from this list from time to time by mutual consent or at the sole discretion of the City provided that in all cases SSGCOW is included for Collection. Contractor shall not add or remove materials to or from this list without written approval from the City Contract Manager or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. Prohibited Container Contaminants shall not be Collected in the Blue Containers. The Containers shall comply with the requirements of Section 7.9.7.

C. **SSGCOW Collection (Green Container).**

1. **Option 1: Established SSGCOW Collection Program with Commingling of Yard Trimmings and Food Waste (Green Container)**

Contractor shall provide Green Containers to Customers for Collection of SSGCOW and shall provide SSGCOW Collection service. Contractor shall Transport the SSGCOW to (i) the Approved/Designated Organic Waste Processing Facility, or (ii) the Approved/Designated Transfer Facility for Transfer and Transport to Approved/Designated Organic Waste Processing Facility, as specified in Section 8.1.

SSGCOW that are to be accepted for Collection in the SSGCOW Collection program include the following: Food Scraps; Food-Soiled Paper; Yard Trimmings, which are defined below; and Compostable Plastics, which are optional to include. The Parties agree that types of SSGCOW may be added

to or removed from this list from time to time by mutual consent or at the sole discretion of the City. Contractor shall not add or remove materials to or from this list without written approval from the City Contract Manager or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. Carpets, non-Compostable Paper, textiles, and Prohibited Container Contaminants shall not be Collected in the Green Containers.

Yard Trimmings that are to be accepted for Collection in the SSGCOW Collection program will be submitted to the City annually, at the time and in the format established by the City Contract Manager. The Parties agree that accepted types of Yard Trimmings may be added to or removed from this list from time to time by mutual consent or at the sole discretion of the City. Contractor shall not add or remove materials to or from this list without written approval from the City Contract Manager or signed amendment to the Agreement, and such approval shall not be unreasonably withheld.

Contractor shall have the option to Collect Compostable Plastics in the Green Containers for Processing at the Approved/Designated Organic Waste Processing Facility. If Compostable Plastics are an accepted material, Contractor shall provide written notification to the City that the Facility can Process and recover these Compostable Plastics. Annually, Contractor shall provide written notification to the City that the Facility has and will continue to have the capabilities to Process and recover the Compostable Plastics. If, at any time during the Term of the Agreement, the Approved Organic Waste Processing Facility can no longer accept Compostable Plastics, Contractor shall notify the City within thirty (30) days of the Facility's inability to accept the Compostable Plastics. The notification shall include: a description of the reasons the Facility is no longer able to Process and recover the Compostable Plastics; the period of time the Facility will not Process and recover these materials; and, the Contractor's proposed plan to assist in education and outreach of Customers in the event these materials are no longer accepted for Collection. Such changes shall be handled as a change in scope.

2. Option 2: Established Yard Trimmings Collection Program; Plan to Expand to Include Food Waste Collection (Green Container)

Contractor shall provide Green Containers to Customers for Collection of Yard Trimmings and shall provide Yard Trimmings Collection service. Contractor shall Transport the Yard Trimmings to (i) the Approved/Designated Organic Waste Processing Facility, or (ii) the Approved/Designated Transfer Facility for Transfer and Transport to the Approved/Designated Organic Waste Processing Facility, as specified in Section 6.1.

Yard Trimmings that are to be accepted for Collection in the SSGCOW Collection program will be submitted to the City annually, at the time and in the format established by the City Contract Manager. The Parties agree that accepted types of Yard Trimmings may be added to or removed from this list from time to time by mutual consent or at the sole discretion of the City. Contractor shall not add or remove materials to or from this list without written approval from the City Contract Manager or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. Carpets, Non-Compostable Paper, textiles, and Prohibited Container Contaminants shall not be Collected in the Green Containers. The Containers shall comply with the requirements of Section 7.9.7.

No later than January 1, 2022 or insert earlier date if desired, Contractor shall implement a Food Waste Collection program that allows Generators to intentionally commingle Food Waste and Yard Trimmings in the Green Containers. Contractor shall provide SSGCOW Collection service and Transport the SSGCOW to (i) the Approved/Designated Organic Waste Processing Facility, or (ii) the Approved/Designated Transfer Facility for Transfer and Transport to an Approved/Designated Organic Waste Processing Facility.

Contractor shall have the option to Collect Compostable Plastics in the Green Containers for Processing at the Approved/Designated Organic Waste Processing Facility. If Compostable Plastics are an accepted material, Contractor shall provide written notification to the City that the Facility can Process and recover these Compostable Plastics. Annually, Contractor shall provide written notification to the City that the Facility has and will continue to have the capabilities to Process and recover the Compostable Plastics. If, at any time during the Term of the Agreement, the Approved Organic Waste Processing Facility can no longer accept Compostable Plastics, City may deem such failure an event of default. Contractor shall notify the City within thirty (30) days of the Facility's inability to accept Compostable Plastics. The notification shall include: a description of the reasons the Facility is no longer able to Process and recover Compostable Plastics; the period of time the Facility will not Process and recover Compostable Plastics; and, the Contractor's proposed plan to assist in education and outreach of Customers in the event that Compostable Plastics are no longer accepted for Collection. Such changes shall be handled as a change in scope.

3. Option 3: Established Yard Trimmings Collection Program; Plan for Food Waste to be Separately Collected (Green Container and Brown Container)

As of the Commencement Date, Contractor shall provide Green Containers for Customers for Collection of Yard Trimmings and shall provide Yard Trimmings Collection service. Contractor shall Transport the Yard Trimmings to (i) the Approved/Designated Organic Waste Processing

Facility, or (ii) the Approved/Designated Transfer Facility for Transfer and Transport to an Approved/Designated Organic Waste Processing Facility, as specified in Section 8.1.

Yard Trimmings that are to be accepted for Collection in the SSGCOW Collection program will be submitted to the City annually, at the time and in the format established by the City Contract Manager. The Parties agree that accepted types of Yard Trimmings may be added to or removed from this list from time to time by mutual consent or at the sole discretion of the City. Contractor shall not add or remove materials to or from this list without written approval from the City Contract Manager or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. Carpets, Non-Compostable Paper, textiles, and Prohibited Container Contaminants shall not be Collected in the Green Containers. The Containers shall comply with the requirements of Section 7.9.7.

No later than January 1, 2022 or insert earlier date if desired, Contractor shall implement a Food Waste Collection program for all Customers. Contractor shall provide Brown Containers to Customers for Collection of Source Separated Food Waste and shall provide Food Waste Collection service. Contractor shall Transport the Food Waste to (i) the Approved/Designated Organic Waste Processing Facility, or (ii) Approved/Designated Transfer Facility for Transfer and Transport to an Approved/Designated Organic Waste Processing Facility, as specified in Section 8.1.

Contractor shall have the option to Collect Compostable Plastics in the Brown Containers for Processing at the Approved/Designated Organic Waste Processing Facility. The Containers shall comply with the requirements of Section 7.9.7. If Compostable Plastics are an accepted material, Contractor shall provide written notification to the City that the Facility can Process and recover these Compostable Plastics. Annually, Contractor shall provide written notification to the City that the Facility has and will continue to have the capabilities to Process and recover the Compostable Plastics. If, at any time during the Term of the Agreement, the Approved Organic Waste Processing Facility can no longer accept Compostable Plastics, City may deem such failure an event of default. Contractor shall notify the City within thirty (30) days of the Facility's inability to accept Compostable Plastics. The notification shall include: a description of the reasons the Facility is no longer able to Process and recover Compostable Plastics; the period of time the Facility will not Process and recover Compostable Plastics; and, the Contractor's proposed plan to assist in education and outreach of Customers in the event that Compostable Plastics are no longer accepted for Collection. Such changes shall be handled as a change in scope.

4. **Option 4: New Collection Program needed for SSGCOW (including Yard Trimmings and Food Waste) (Green Container)**

No later than January 1, 2022 or insert earlier date if desired, Contractor shall provide Green Containers to Customers for SSGCOW Collection, and shall provide SSGCOW Collection service. Contractor shall Transport the SSGCOW to (i) the Approved/Designated Organic Waste Processing Facility, or (ii) the Approved/Designated Transfer Facility for Transfer and Transport to an Approved/Designated Organic Waste Processing Facility, as specified in Section 8.1.

SSGCOW that are to be accepted for Collection in the SSGCOW Collection program include the following: Food Scraps, Food-Soiled Paper, Compostable Plastics, and Yard Trimmings. The Parties agree that types of SSGCOW may be added to or removed from this list from time to time by mutual consent or at the sole discretion of the City. Contractor shall not add or remove materials to or from this list without written approval from the City Contract Manager or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. Carpets, Non-Compostable Paper, textiles, and Prohibited Container Contaminants shall not be Collected in the Green Containers. The Containers shall comply with the requirements of Section 7.9.7.

Contractor shall have the option to Collect Compostable Plastics in the Green Containers for Processing at the Approved/Designated Organic Waste Processing Facility. If Compostable Plastics are an accepted material, Contractor shall provide written notification to the City that the Facility can Process and recover these Compostable Plastics. Annually, Contractor shall provide written notification to the City that the Facility has and will continue to have the capabilities to Process and recover the Compostable Plastics. If, at any time during the Term of the Agreement, the Approved Organic Waste Processing Facility can no longer accept Compostable Plastics, City may deem such failure an event of default. Contractor shall notify the City within thirty (30) days of the Facility's inability to accept Compostable Plastics. The notification shall include: a description of the reasons the Facility is no longer able to Process and recover Compostable Plastics; the period of time the Facility will not Process and recover Compostable Plastics; and, the Contractor's proposed plan to assist in education and outreach of Customers in the event that Compostable Plastics are no longer accepted for Collection. Such changes shall be handled as a change in scope.

D. Gray Container Waste Collection (Gray Container).

Contractor shall provide Gray Containers to Customers for Collection of Gray Container Waste, and shall provide Gray Container Waste Collection service. Contractor shall Transport the Gray Container Waste to (i) the

Approved/Designated Disposal Facility, or (ii) the Approved/Designated Transfer Facility for Transfer and Transport to an Approved/Designated Disposal Facility, as specified in Section 8.1. Contractor may allow carpets and textiles to be placed in the Gray Containers. Prohibited Container Contaminants shall not be Collected in the Gray Containers. The Containers shall comply with the requirements of Section 7.9.7.

E. Mixed Waste Collection (Gray Container).

Contractor shall provide Gray Containers to Customers for Collection of Mixed Waste, and shall provide Mixed Waste Collection service. Contractor shall Transport the Mixed Waste to (i) the Approved/Designated High Diversion Organic Waste Processing Facility, or (ii) the Approved/Designated Transfer Facility for Transfer and Transport to an Approved/Designated High Diversion Organic Waste Processing Facility, as specified in Section 8.1. Contractor may allow carpets and textiles to be placed in the Gray Containers. Prohibited Container Contaminants shall not be Collected in the Gray Containers.

7.3 Two-Container System

A. Option 1: SSGCOW and Mixed Waste Two-Container System (Green and Gray Containers)

No later than January 1, 2022 or insert earlier date if desired, Contractor shall provide a two-Container Collection program for all Customers for Collection of SSGCOW and Mixed Waste, as specified in this Section.

Contractor shall provide Green Containers to Customers for the Collection of SSGCOW, and shall Transport the SSGCOW to (i) the Approved/Designated Organic Waste Processing Facility, or (ii) the Approved/Designated Transfer Facility for Transfer and Transport to the Approved/Designated Organic Waste Processing Facility, as specified in Section 8.1.

SSGCOW that are to be accepted for Collection in the SSGCOW Collection program include the following: Food Scraps; Food-Soiled Paper; Yard Trimmings, which are defined below; and Compostable Plastics (which are optional to include). The Parties agree that types of SSGCOW may be added to or removed from this list from time to time by mutual consent or at the sole discretion of the City. Contractor shall not add or remove materials to or from this list without written approval from the City Contract Manager or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. Carpet, Non-Compostable Paper, textiles, and Prohibited Container Contaminants shall not be Collected in the Green Containers.

Yard Trimmings that are to be accepted for Collection in the SSGCOW Collection program will be submitted to the City annually, at the time and in the format established by the City Contract Manager. The Parties agree that accepted types of Yard Trimmings may be added to or removed from this list from time to time by mutual consent or at the sole discretion

of the City. Contractor shall not add or remove materials to or from this list without written approval from the City Contract Manager or signed amendment to the Agreement, and such approval shall not be unreasonably withheld.

Contractor shall have the option to Collect Compostable Plastics in the Green Containers for Processing at the Approved/Designated Organic Waste Processing Facility. If Compostable Plastics are an accepted material, Contractor shall provide written notification to the City that the Facility can Process and recover these Compostable Plastics. Annually, Contractor shall provide written notification to the City that the Facility has and will continue to have the capabilities to Process and recover the Compostable Plastics. If, at any time during the Term of the Agreement, the Approved Organic Waste Processing Facility can no longer accept Compostable Plastics, City may deem such failure an event of default. Contractor shall notify the City within thirty (30) days of the Facility's inability to accept Compostable Plastics. The notification shall include: a description of the reasons the Facility is no longer able to Process and recover Compostable Plastics; the period of time the Facility will not Process and recover Compostable Plastics; and, the Contractor's proposed plan to assist in education and outreach of Customers in the event that Compostable Plastics are no longer accepted for Collection. Such changes shall be handled as a change in scope.

Contractor shall provide Gray Containers to Customers for Collection of Mixed Waste, and shall allow Generators to intentionally commingle all Mixed Waste, excluding SSGCOW, in the Gray Containers. Contractor shall Transport the contents of the Gray Containers to (i) the Approved/Designated High Diversion Organic Waste Processing Facility, or (ii) the Approved/Designated Transfer Facility for subsequent Transfer and Transport to the Approved/Designated High Diversion Organic Waste Processing Facility, as specified in Section 8.1. Prohibited Container Contaminants shall not be Collected in the Gray Containers.

The Containers shall comply with the requirements of Section 7.9.7.

B. Option 2: Source Separated Recyclable Materials and Mixed Waste (Blue and Gray Containers)

No later than January 1, 2022 or insert earlier date if desired, Contractor shall provide a two-Container Collection program for all Customers for Collection of Source Separated Recyclable Materials and Mixed Waste as specified in this Section.

Contractor shall provide Blue Containers to Customers for the Collection of Source Separated Recyclable Materials, and shall Transport the Source Separated Recyclable Materials to (i) the Approved/Designated Source Separated Recyclable Materials Processing Facility, or (ii) the Approved/Designated Transfer Facility for subsequent Transport to the Approved/Designated Source Separated Recyclable Materials Processing Facility, as specified in Section 8.1.

Source Separated Recyclable Materials that are to be accepted for Collection in the Source Separated Recyclable Materials Collection program will be submitted to the City annually,

at the time and in the format established by the City Contract Manager. The Parties agree that Source Separated Recyclable Materials may be added to or removed from this list from time to time by mutual consent or at the sole discretion of the City provided that in all cases SSBCOW is included for Collection. Contractor shall not add or remove materials to or from this list without written approval from the City Contract Manager or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. Prohibited Container Contaminants shall not be Collected in the Blue Containers.

Contractor shall provide Gray Containers to Customers for Collection of Mixed Waste, and shall allow Generators to intentionally commingle all Mixed Waste, excluding Source Separated Recyclable Materials, in the Gray Containers. Contractor shall Transport the contents of the Gray Container to (i) the Approved/Designated High Diversion Organic Waste Processing Facility, or (ii) the Approved/Designated Transfer Facility for subsequent Transfer and Transport to the Approved/Designated High Diversion Organic Waste Processing Facility, as specified in Section 8.1. Prohibited Container Contaminants shall not be Collected in the Gray Containers.

The Containers shall comply with the requirements of Section 7.9.7.

C. Option 3: Use of Split Containers (see Section 7.4, Use of Split Container Systems)

7.4 Use of Split-Container Systems

A. **Example Split-Container Systems**

Examples of Split-Containers that can be used include, but are not limited to, the following:

1. Split-Container Options for Three-Stream System
 - a. Gray/Green Split-Container (Gray Container Waste/SSGCOW) and a Blue Container (Source Separated Recyclable Materials);
 - b. Blue/Gray Split-Container (Source Separated Recyclable Materials/Gray Container Waste) and a Green Container (SSGCOW); or,
 - c. Blue/Green Split-Container (Source Separated Recyclable Materials/SSGCOW) and a Gray Container (Gray Container Waste)
2. Split-Container Options for Three-Plus-Stream System
 - a. Gray/Brown Split-Container (Gray Container Waste/Food Waste) with a Blue Container (Source Separated Recyclable Materials) and Green Container (SSGCOW);
 - b. Blue Split-Container (Dual-Stream SSBCOW and Non-Organic Recyclables) with Gray Container (Gray Container Waste) and Green Container (SSGCOW);

- c. Gray/Blue Split-Container (Gray Container Waste/Source Separated Recyclable Materials), Green/Brown Split Container (SSGCOW/Food Waste);
 - d. Gray/Green Split-Container (Gray Container Waste/SSGCOW), Blue Split-Container (Dual-Stream SSBCOW and Non-Organic Recyclables); or,
 - e. Blue/Gray Split-Container (Source Separated Recyclable Materials/Gray Container Waste), Green/Brown Split Container (SSGCOW/Food Waste).
3. Split Container Options for Two-Stream Split-Container Systems
- a. Gray/Blue Split-Container (Mixed Waste/Source Separated Recyclable Materials); or,
 - b. Gray/Green Split-Container (Mixed Waste/SSGCOW).

B. Split-Container Collection Description

- 1. Option 1: Two-Stream Split-Container System (Blue and Gray Split-Container) Contractor shall provide Split-Containers to Customers and Split-Container Collection service. Contractor shall allow Generators to place Mixed Waste in the gray section of the Split-Container and shall Collect and Transport the Mixed Waste to (i) the Approved/Designated High Diversion Organic Waste Processing Facility, or (ii) the Approved/Designated Transfer Facility for subsequent Transport to the Approved/Designated High Diversion Organic Waste Processing Facility, as specified in Section 8.1. Prohibited Container Contaminants shall not be Collected in the gray portion of the Split Containers.

Contractor shall allow Generators to place Source Separated Recyclable Materials in the blue section of the Split Container and shall Collect and Transport the Source Separated Recyclable Materials to (i) the Approved/Designated Source Separated Recyclable Materials Processing Facility, or (ii) the Approved/Designated Transfer Facility for Transfer and Transport to the Approved/Designated Source Separated Recyclable Materials Processing Facility, as specified in Section 8.1. The Split-Containers shall comply with the requirements of Section 7.9.7.

Source Separated Recyclable Materials that are to be accepted for Collection in the Source Separated Recyclable Materials Collection program will be submitted to the City annually, at the time and in the format established by the City Contract Manager. The Parties agree that accepted types of Source Separated Recyclable Materials may be added to or removed from this list from time to time by mutual consent or at the sole discretion of the City provided that in all cases SSBCOW is included for Collection. Contractor shall not add or remove materials to or from this list without written approval from the City Contract Manager or signed

amendment to the Agreement, and such approval shall not be unreasonably withheld. Prohibited Container Contaminants shall not be Collected in the Blue portion of the Split-Containers.

2. Option 2: Three-Stream Split-Container System (Blue and Gray Split-Container, Green Container). Contractor shall provide Split-Containers to Customers and Split-Container Collection service. Contractor shall allow Generators to place Gray Container Waste in the gray section of the Split-Container and shall Collect and Transport the Gray Container Waste to the Approved/Designated Transfer Facility or the Approved/Designated Disposal Facility, as specified in Section 8.1. Prohibited Container Contaminants shall not be Collected in the gray portion of the Split-Containers.

Contractor shall allow Generators to place Source Separated Recyclable Materials in the blue section of the Split Container and shall Collect and Transport the Source Separated Recyclable Materials to (i) the Approved/Designated Source Separated Recyclable Materials Processing Facility, or (ii) the Approved/Designated Transfer Facility for Transfer and Transport to the Approved/Designated Source Separated Recyclable Materials Processing Facility, as specified in Section 8.1.

Source Separated Recyclable Materials that are to be accepted for Collection in the Source Separated Recyclable Materials Collection program will be submitted to the City annually, at the time and in the format established by the City Contract Manager. The Parties agree that the list of accepted types of Source Separated Recyclable Materials may be added to or removed from this list from time to time by mutual consent or at the sole discretion of the City provided that in all cases SSBCOW is included for Collection. Contractor shall not add or remove materials to or from this list without written approval from the City Contract Manager or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. Prohibited Container Contaminants shall not be Collected in the Blue portion of the Split-Containers.

Contractor shall provide Green Containers to Customers for Collection of SSGCOW and shall provide SSGCOW Collection services. Contractor shall Transport the SSGCOW to Approved/Designated Organic Waste Processing Facility, or (ii) the Approved/Designated Transfer Facility for Transfer and Transport to Approved/Designated Organic Waste Processing Facility, as specified in Section 8.1. The Split Containers shall comply with the requirements of Section 7.9.7.

SSGCOW that are to be accepted for Collection in the SSGCOW Collection program include the following: Food Scraps; Food-Soiled Paper; Compostable Plastics (optional item) and Yard Trimmings, which are defined below. The Parties agree that types of SSGCOW may be added to

or removed from this list from time to time by mutual consent or at the sole discretion of the City. Contractor shall not add or remove materials to or from this list without written approval from the City Contract Manager or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. Carpets, Non-Compostable Paper, textiles, and Prohibited Container Contaminants shall not be Collected in the Green Containers.

Yard Trimmings that are to be accepted for Collection in the SSGCOW Collection program will be submitted to the City annually, at the time and in the format established by the City Contract Manager. The Parties agree that accepted types of Yard Trimmings may be added to or removed from this list from time to time by mutual consent or at the sole discretion of the City. Contractor shall not add or remove materials to or from this list without written approval from the City Contract Manager or signed amendment to the Agreement, and such approval shall not be unreasonably withheld.

Contractor shall have the option to Collect Compostable Plastics in the Green Containers for Processing at the Approved/Designated Organic Waste Processing Facility. If Compostable Plastics are an accepted material, Contractor shall provide written notification to the City that the Facility can Process and recover these Compostable Plastics. Annually, Contractor shall provide written notification to the City that the Facility has and will continue to have the capabilities to Process and recover the Compostable Plastics. If, at any time during the Term of the Agreement, the Approved Organic Waste Processing Facility can no longer accept Compostable Plastics, City may deem such failure an event of default. Contractor shall notify the City within thirty (30) days of the Facility's inability to accept the Compostable Plastics. The notification shall include: a description of the reasons the Facility is no longer able to Process and recover the Compostable Plastics; the period of time the Facility will not Process and recover these materials; and, the Contractor's proposed plan to assist in education and outreach of Customers in the event these materials are no longer accepted for Collection. Such changes shall be handled as a change in scope.

3. Option 3: Three-Plus-Stream Split-Container System (Gray and Brown Split-Container, Green Container, Blue Container). Contractor shall provide a three-Container system that relies on use of a Split-Container and two, undivided Containers. Contractor shall provide Split-Containers to Customers and Split-Container Collection service for Gray Container Waste and Food Waste. Contractor shall allow Generators to place Gray Container Waste in the gray section of the Split Container and shall Collect and Transport the Gray Container Waste to (i) the Approved/Designated Disposal Facility, or (ii) the Approved/Designated Transfer Facility for Transfer and Transport to the Approved/Designated Disposal Facility, as

specified in Section 8.1. Prohibited Container Contaminants shall not be Collected in the gray portion of the Split-Containers. Contractor shall allow Generators to place Source Separated Food Waste in the brown section of the Split-Container and shall Collect and Transport the Food Waste to (i) the Approved/Designated Organic Waste Processing Facility, or (ii) the Approved/Designated Transfer Facility for Transfer and Transport to an Approved/Designated Organic Waste Processing Facility, as specified in Section 8.1.

Contractor shall have the option to Collect Compostable Plastics in the Brown Containers for Processing at the Approved/Designated Organic Waste Processing Facility. If Compostable Plastics are an accepted material, Contractor shall provide written notification to the City that the Facility can Process and recover these Compostable Plastics. Annually, Contractor shall provide written notification to the City that the Facility has and will continue to have the capabilities to Process and recover the Compostable Plastics. If, at any time during the Term of the Agreement, the Approved Organic Waste Processing Facility can no longer accept Compostable Plastics, City may deem such failure an event of default. Contractor shall notify the City within thirty (30) days of the Facility's inability to accept Compostable Plastics. The notification shall include: a description of the reasons the Facility is no longer able to Process and recover Compostable Plastics; the period of time the Facility will not Process and recover Compostable Plastics; and, the Contractor's proposed plan to assist in education and outreach of Customers in the event that Compostable Plastics are no longer accepted for Collection. Such changes shall be handled as a change in scope.

Contractor shall provide Green Containers to Customers for Yard Trimmings Collection and shall Transport the Yard Trimmings to (i) the Approved/Designated Organic Waste Processing Facility, or (ii) the Approved/Designated Transfer Facility for Transfer and Transport to an Approved/Designated Organic Waste Processing Facility, as specified in Section 8.1.

Yard Trimmings that are to be accepted for Collection in the Yard Trimmings Collection program will be submitted to the City annually, at the time and in the format established by the City Contract Manager. The Parties agree that the accepted types of Yard Trimmings may be added to or removed from this list from time to time by mutual consent or at the sole discretion of the City. Contractor shall not add or remove materials to or from this list without written approval from the City Contract Manager or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. Carpets, Non-Compostable Paper, textiles, and Prohibited Container Contaminants shall not be Collected in the Green Containers.

Contractor shall provide Blue Containers to Customers for Source Separated Recyclable Materials Collection and shall Transport the Source Separated Recyclable Materials to (i) the Approved/Designated Source Separated Recyclable Materials Processing Facility, or (ii) the Approved/Designated Transfer Facility for Transfer and Transport to an Approved/Designated Source Separated Recyclable Materials Processing Facility, as specified in Section 8.1.

Source Separated Recyclable Materials that are to be accepted for Collection in the Source Separated Recyclable Materials Collection program will be submitted to the City annually, at the time and in the format established by the City Contract Manager. The Parties agree that the list of accepted types of Source Separated Recyclable Materials may be added to or removed from this list from time to time by mutual consent or at the sole discretion of the City, provided that in all cases SSBCOW are included for Collection. Contractor shall not add or remove materials to or from this list without written approval from the City Contract Manager or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. Prohibited Container Contaminants shall not be Collected in the Blue Containers.

The Containers shall comply with the requirements of Section 7.9.7.

7.5 Use of Plastic Bags for SSGCOW Collection

A. Option 1: Food Waste in Plastic Bags in the Green Containers

Contractor shall allow Customers and Generators to place Food Waste in plastic bags and put the bagged Food Waste in the Green Container. At least one (1) month prior to the commencement of the use of plastic bags for the Food Waste program, Contractor shall provide written notification to the City that allowing the use of bags does not inhibit the ability of the City to comply with SB 1383 Regulations, and that the Approved Organic Waste Processing Facility can Process and remove plastic bags when it recovers SSGCOW. Annually, in accordance with Exhibit G, Contractor shall provide written notification to the City that the Facility has and will continue to have the capabilities to Process and remove plastic bags when it recovers SSGCOW. If, at any time during the Term of the Agreement, the Approved Organic Waste Processing Facility can no longer accept plastic bags, City may deem such failure an event of default. Contractor shall notify the City within fifteen (15) days of the Facility's inability to accept plastic bags. The notification shall include: a description of the reasons the Facility is no longer able to Process and recover plastic bags; the period of time the Approved Facility will not Process and recover plastic bags; and, the Contractor's proposed plan to assist in education and outreach of Customers in the event that plastic bags are no longer accepted for Collection. Such changes shall be handled as a change in scope.

B. Option 2: SSGCOW in Plastic Bags in the Green Containers

Contractor shall allow Customers and Generators to place SSGCOW in plastic bags and put the bagged SSGCOW in the Green Container. At least one (1) month prior to the commencement of the use of plastic bags for the SSGCOW program, Contractor shall provide written notification to the City that allowing the use of bags does not inhibit the ability of the City to comply with SB 1383 Regulations, and that the Approved Organic Waste Processing Facility can Process and remove plastic bags when it recovers SSGCOW. Annually, Contractor shall provide written notification to the City that the Facility has and will continue to have the capabilities to Process and remove the plastic bags when it recovers SSGCOW. If, at any time during the Term of the Agreement, the Approved Organic Waste Processing Facility can no longer accept plastic bags, City may deem such failure an event of default. Contractor shall notify the City within fifteen (15) days of the Facility's inability to accept plastic bags. The notification shall include: a description of the reasons the Facility is no longer able to Process and recover plastic bags; the period of time the Approved Facility will not Process and recover plastic bags; and, the Contractor's proposed plan to assist in education and outreach of Customers in the event that plastic bags are no longer accepted for Collection. Such changes shall be handled as a change in scope.

7.6 Food Waste Collection (Brown Containers)

No later than January 1, 2022 or insert earlier date if desired, Contractor shall provide Brown Containers to Customers for Collection of Source Separated Food Waste, and shall provide Food Waste Collection service. Contractor shall Transport the Food Waste to (i) the Approved/Designated Organic Waste Processing Facility, or (ii) the Approved/Designated Transfer Facility for Transfer and Transport to an Approved/Designated Organic Waste Processing Facility, as specified in Section 8.1.

Prior to program implementation, Contractor shall develop a detailed plan and timeline for distribution of new Brown Containers to Customers. Contractor shall submit the plan to the City Contract Manager a minimum of one hundred and twenty (120) days prior to the commencement date of the Food Waste program for review and approval by City Contract Manager. When the distribution of Containers commences, Contractor shall provide a daily email or verbal report to the City Contract Manager on the status of the Container distribution process, areas of concerns and proposed resolutions, and other relevant information. The detailed plan shall include a description of the education and outreach efforts that will accompany the Container distribution process and commencement of the Food Waste program.

Contractor shall have the option to Collect Compostable Plastics in the Brown Containers for Processing at the Approved/Designated Organic Waste Processing Facility. If Compostable Plastics are an accepted material, Contractor shall provide written notification to the City that the Facility can Process and recover these Compostable Plastics. Annually, Contractor shall provide written notification to the City that the Facility has, and will continue to have, the capabilities to Process and recover the Compostable Plastics. If, at any time during the Term of the Agreement, the Approved Organic Waste

Processing Facility can no longer accept Compostable Plastics, City may deem such failure an event of default. Contractor shall notify the City within thirty (30) days of the Facility's inability to accept Compostable Plastics. The notification shall include: a description of the reasons the Facility is no longer able to Process and recover Compostable Plastics; the period of time the Approved Facility will not Process and recover Compostable Plastics; and, the Contractor's proposed plan to assist in education and outreach of Customers in the event that Compostable Plastics bags are no longer accepted for Collection. Such changes shall be handled as a change in scope.

7.7 Other Organic Streams

Contractor shall offer Collection of insert material type using insert unique color Containers, pursuant to Section 7.9.7. This material shall be Processed at an Approved/Designated Processing Facility and not Disposed. The Tonnage of material type Collected shall be reported in the Contractor's monthly Tonnage report.

7.8 C&D Collection

Non-Exclusive Right to Collect C&D Materials

Contractor shall Collect C&D materials from C&D Collection Sites from Customers that subscribe to its C&D Collection services and Transport the C&D to (i) the Approved/Designated C&D Processing Facility, or (ii) the Approved/Designated Transfer Facility for Transfer and Transport to an Approved/Designated C&D Processing Facility, as specified in Section 8.1. Contractor shall provide C&D Collection and Processing services. Contractor shall charge Customers for C&D Collection services at Rates agreed upon by Generators and Contractor.

7.9 Multi-Family Bulky Items and Reusable Materials Collection

Contractor shall offer Bulky Item Collection services to Multi-Family Customers as a recurring for-fee service. In addition, twice each year free Bulky Items collections, for up to two-items per-household, shall be provided to Multi-Family Customers free of charge. Contractor shall Transport all Bulky Items and Reusable Materials Collected under this Agreement to the appropriate facility.

7.9.1 Equipment

Contractor shall furnish all labor, supervision, materials, supplies, and equipment necessary to provide for all services required by the terms of this Agreement.

7.9.2 Performance Standards

Contractor shall perform Solid Waste Handling Services as required hereunder in a workmanlike manner consistent with good housekeeping standards and all relevant provisions of Applicable Laws.

7.9.3 Noise and Disruption

Contractor shall perform Solid Waste Handling Services as required hereunder in such a manner as to minimize noise and other disruptive impacts including, without limitation, those upon traffic.

7.9.4 Collection Times

Contractor shall not commence Collection of Solid Waste for Customers until 7:00 a.m., nor shall such activities occur after 5:00 p.m. at Multi-Family Premises and after 8:00 p.m. for Commercial Premises. No Solid Waste Collection shall occur on Sundays at Multi-Family Premises or Commercial Premises, except in exceptional circumstances for which specific approval is given by the Director. Solid Waste Collection shall not occur on the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

7.9.5 Collection Schedule

All Collection routes shall be subject to final approval by the Director. Customers at all Residential and Commercial Premises within the City shall have not less than one (1) established Collection day each week. Contractor shall provide notice to each Customer of its established Collection day(s), and shall provide at least thirty (30) days' notice to Customers of any change in their established Collection day(s). Notwithstanding any provision herein to the contrary, should any established Collection day fall on a legal holiday, or on any other holiday which is observed by either a landfill or other lawful disposal site to which Solid Waste is taken for disposal, or a recycling facility to which Recyclable Material is taken, Contractor shall provide for Collection one (1) day later during the pick-up week, and the regular Collection schedule shall be resumed the following week. A pick-up week shall be defined as Monday through Saturday. Contractor may not change its established Collection schedules without obtaining the prior written consent of the Director.

7.9.6 Commingling of Routes

Contractor shall not during its Collection process commingle Solid Waste Collected hereunder with Solid Waste Collected in any other city, or on behalf of any other entity operating or existing within City that is not subject to this Agreement, and is specifically prohibited from combining Collection routes related to services provided pursuant to this Agreement with Collection routes for other jurisdictions it may service.

7.9.7 Contractor's Containers

A. **Provision of Containers by Contractor and Color Standards**

1. **General**

a. **Option 1: Colors Already Compliant**

Contractor shall provide all Customers with Collection Containers that comply with the Container color requirements specified in this Section 7.9.7 or as otherwise specified in 14 CCR Section 18982; 14 CCR, Division 7, Chapter 12, Article 3; or other Applicable Law. At least thirty (30) days in advance of Contractor Container purchases or repainting of metal Containers, Contractor shall present proposed colors to the City for review and approval.

b. **Option 2: Colors Not Compliant; Containers Replaced Upon Commencement**

As of the Commencement Date of this Agreement, Contractor shall provide all Customers with new Collection Containers that comply with the Container color requirements specified in this Section or as otherwise specified in 14 CCR Section 18982; 14 CCR, Division 7, Chapter 12, Article 3; or other Applicable Law.

Contractor shall develop a detailed plan and timeline for distribution of new Containers to Customers and the emptying and removal of existing Containers from Customers, which may involve coordination with the City's current contractor. Contractor shall submit the plan to the City Contract Manager at a minimum of thirty (30) days prior to the Commencement Date for review and approval by City Contract Manager. When the distribution of Containers commences, Contractor shall provide a daily email or verbal report to the City Contract Manager on the status of the Container distribution process, areas of concerns and proposed resolutions, and other relevant information. The detailed plan shall include a description of the education and outreach efforts that will accompany the Container distribution process.

c. **Option 3: Colors Not Compliant; Containers Replaced During the Term of the Agreement**

Contractor shall use the Contractor-provided Collection Containers that are currently located at Customers' Premises or provide Customers with Collection Containers from Contractor's current inventory.

No later than March 1, 2022, Contractor shall provide all Customers with Collection Containers that comply with the Container color requirements specified in this Section or as otherwise specified in 14 CCR Section 18982; 14 CCR, Division 7, Chapter 12, Article 3; or other Applicable Law. At least thirty (30) days in advance of Contractor Container purchases or repainting of metal Containers, Contractor shall present proposed colors to the City for review and approval. If an existing Container breaks or is otherwise rendered non-functional on or after January 1, 2022, the Contractor shall replace the non-functional Container with a Container that complies with the color requirements of this Section. Notwithstanding this Section, the Contractor is not required to replace functional Containers, including Containers purchased prior to January 1, 2022, that do not comply with the color requirements of this Section prior to the end of the useful life of those Containers, or prior to January 1, 2036, whichever comes first.

2. Blue Containers (Source Separated Recyclable Materials)

Option 1: Blue Containers must have a lid that is blue in color; and a body that is insert any other color in color. Hardware such as hinges and wheels on the Blue Containers may be a different color.

Option 2: Blue Containers must have a body that is blue in color, and a lid that is gray in color. Hardware such as hinges and wheels on the Blue Containers may be a different color.

Option 3: Blue Containers must have a lid and body that is blue in color. Hardware such as hinges and wheels on the Blue Containers may be a different color.

3. Green Containers (SSGCOW)

Option 1: Green Containers must have a lid that is green in color; and a body that is insert any other color in color. Hardware such as hinges and wheels on the Green Containers may be a different color.

Option 2: Green Containers must have a body that is green in color, and a lid that is gray in color. Hardware such as hinges and wheels on the Green Containers may be a different color.

Option 3: Green Containers must have a lid and body that are green in color. Hardware such as hinges and wheels on the Green Containers may be a different color.

4. Gray Containers (Gray Container Waste or Mixed Waste)

Option 1: Gray Containers must have a lid that is gray in color, and a body that is insert any other color in color. Hardware such as hinges and wheels on the Gray Container may be a different color.

Option 2: Gray Containers must have a lid and body that are gray in color. Hardware such as hinges and wheels on the Gray Container may be a different color.

5. **Brown Containers (Food Waste)**

Option 1: Brown Containers must have a lid that is brown in color; and a body that is insert any other color in color. Hardware such as hinges and wheels on the Brown Containers may be a different color.

Option 2: Brown Containers must have a body that is brown in color, and a lid that is gray in color. Hardware such as hinges and wheels on the Brown Containers may be a different color.

Option 3: Brown Containers must have a lid and body that are brown in color. Hardware such as hinges and wheels on the Brown Containers may be a different color.

6. **Split Containers**

Option 1: Blue Split-Container (Dual-Stream Source Separated Recyclable Materials Collection)

For Split Containers that segregate SSBCOW and Non-Organic Recyclables, Contractor shall provide Split Containers with the section of the Container designated for the Collection of SSBCOW with a lid that is blue in color and a body that is insert any color in color. The section of the Container designated for the Collection of Non-Organic Recyclables must have a lid that is a lighter shade of blue than the SSBCOW section of the Container or insert any color not already designated for other materials specified in this Section 7.9.7 and a body that is insert any color. Hardware such as hinges and wheels on the Split Container may be a different color.

Option 2: Split Containers for Other Combinations of Materials

Option 2.a, Split-color Lids; Split-color Bodies: For Split Containers that segregate Material 1 and Material 2, Contractor shall provide Split Containers with the sections of the Containers designated for Collection of Material 1 with lids that are Color 1 (compliant color) in color, and bodies that are Color 2 (any color) in color. The sections of the Containers designated for Collection of Material 2 must have lids that are Color 3 (compliant color) in color, and bodies that are Color 4 (any color) in color. Hardware such as hinges and wheels on the Split Container may be a different color.

Option 2.b, Split-color Lids; Single-color Body: For Split Containers that segregate Material 1 and Material 2, Contractor shall provide Split Containers with the sections of the Containers designated for Collection of

Material 1 with lids that are Color 1 in color. The sections of the Containers designated for Collection of Material 2 must have lids that are Color 2 in color. The bodies of the Split Containers must be Color 3 (insert any color) in color. Hardware such as hinges and wheels on the Split Container may be a different color.

7. **C&D Bins and Roll-Off Boxes.** Bins and Roll-Off Boxes for Collection of C&D may be in any color, provided that the colors do not conflict with the Container color requirements of this Section 7.9.7 and provided that the C&D Container colors are consistent for all C&D Containers. The C&D Container color shall be reviewed and approved by the City.

8. **Colors for Other Organic Streams**

Option 1: (Color X – insert any color not specified above) Lids; Any Color Bodies. Containers for the Collection of Source Separated (insert material type) must have lids that are Color X in color and bodies that are insert any color in color. Hardware such as hinges and wheels on Color X Containers may be a different color. Guidance: An example of how this option can be used is as follows: “Maroon Lids, Gray Bodies. Containers for the Collection of Source Separated manure must have lids that are maroon in color and bodies that are gray in color. Hardware such as hinges and wheels on the maroon Containers may be a different color.”

Option 2: (Color X) Bodies; Matching or Gray Lids. Containers for the Collection of Source Separated (insert material type) must have bodies that are Color X in color and lids that are Color X or gray in color. Hardware such as hinges and wheels on Color X Containers may be a different color.

B. **Labeling Requirements**

Option 1: Labels on New Containers or New Lids

Commencing on or before January 1, 2022 or insert earlier date if desired, Contractor shall place a label on each new Container body or lid that includes language or graphic images, or both, that indicate the primary materials accepted and the primary materials prohibited in that Container. Labels shall clearly indicate items that are Prohibited Container Contaminants for each Container. Prior to ordering labels for Containers, Contractor shall submit a copy of its proposed label, proposed location(s) for placement of labels on each type of Container, and its labeling plan to the City Contract Manager for approval.

Option 2: Imprinted or In-Mold Labels for New Containers or New Lids

On or before January 1, 2022 or insert earlier date if desired, Contractor shall imprint new Container bodies or lids with text or graphic images that indicate the primary materials accepted and the primary materials prohibited in that Container. Labels shall clearly indicate items that are Prohibited Container Contaminants for

each Container. Prior to ordering any Containers or lids with in-mold labels, Contractor shall submit a sample of its proposed label, proposed location(s) for placement of labels on each type of Container, and its labeling plan to the City Contract Manager for approval.

Option 3: Labels for Existing Containers

On or before insert date, Contractor shall place a label on the body or lid of each Container that has been provided to a Customer that includes language or graphic images, or both, that indicate the primary materials accepted and the primary materials prohibited in that Container. Labels shall clearly indicate items that are Prohibited Container Contaminants for each Container. Prior to ordering labels for Containers, Contractor shall submit a copy of its proposed label, proposed location(s) for placement of labels on each type of Container, and its labeling plan to the City Contract Manager for approval.

Option 4: Imprinted or In-Mold Labels for Existing Containers

On or before insert date, Contractor shall imprint the bodies or lids of Containers that have been provided to Customers with text or graphic images that indicate the primary materials accepted and the primary materials prohibited in that Container. Labels shall clearly indicate items that are Prohibited Container Contaminants for each Container. Prior to ordering any Containers or lids with in-mold labels, Contractor shall submit a sample of its proposed label, proposed location(s) for placement of labels on each type of Container, and its labeling plan to the City Contract Manager for approval.

C. Container Standards

- (A) Contractor's Containers shall meet the minimum standards set forth herein.
- (B) Contractor shall be responsible to maintain and replace, as necessary, all Containers.
- (C) All Containers shall be maintained by Contractor in good repair, and any question as to the meaning of this standard shall be resolved by the Director.
- (D) Contractor shall deliver Containers to each Customer at no additional charge.
- (E) Contractor shall ensure it maintains an accurate list that contains the total number of Carts, Bins, and indoor recycling containers at each service address or other identifying location associated with each account and the serial number or other identifying information associated with each Cart or Bin. Contractor shall keep this list up to date at all times, provide it to City upon request, and shall include a current updated list with each quarterly report as set forth in Section 22. In addition, Contractor shall provide this list to City within thirty (30) days of the Service Commencement Date.

(F) Contractor shall, at Responsible Customer's request, refurbish, replace, and steam clean as necessary all Bins and Rolloff Boxes at no charge to Customers up to two (2) times per calendar year. City may require the steam cleaning or replacement of Bins more frequently if it determines such action is needed to protect public health and safety. Additional steam cleaning or replacement shall be provided within 24 hours of notification by City or request by a Responsible Customer.

(G) Contractor shall remove any graffiti that appears on a Container within twenty-four (24) hours (Sundays and holidays excepted) after becoming aware of it at no charge to Customers.

(H) All Bins and Rolloff Boxes shall be kept freshly painted in a uniform fashion. All Bins and Rolloff Boxes shall be identified with Contractor's name and phone number in letters not less than three (3) inches high on its exterior so as to be visible and legible when the Container is placed for use.

(I) At a Customer's request, Contractor shall provide Bins with locking lids and locks and may charge rates to Customers for locking Bins.

(J) Contractor shall mark its Containers with conspicuous warning notices stating disposal of Hazardous Substances in the Containers is prohibited.

(K) Contractor is responsible for cleaning and maintaining Collection Container enclosures in a manner reasonably acceptable to City, including, but not limited to, sweeping and removing litter and debris from the floor of the enclosure after each Collection and annually steam cleaning the enclosure area.

7.9.8 Missed Pick-ups

In case of a missed pick-up called in by a Customer, Contractor shall Collect Solid Waste and Recyclable Material from such Customer by 5:00 p.m. on the day of the call if Contractor was notified before 12:00 p.m. that same day, or, for calls received after 12:00 p.m., within twenty-four (24) hours after the call is received. Records of the addresses of all missed pick-ups shall be maintained by Contractor, and shall be reported to City on a quarterly basis. If Contractor demonstrates to the satisfaction of the Director a pattern of ongoing late "set-outs" by a given Customer, missed pick-ups resulting from late set-outs by that Customer shall not be counted as missed pick-ups in evaluating Contractor's performance hereunder. The Customer service phone system required by Section 10.8.2 hereof is intended, among other things, to serve as a "hotline" for Customers to call in the event Solid Waste placed for Collection is not Collected by Contractor and to facilitate having such Solid Waste Collected as soon as reasonably possible, and in no event later than as required by the provisions hereof.

7.9.9 Record of Non-collection

As more fully set forth herein, Contractor shall Collect all Solid Waste placed for Collection by Customers in Containers, excepting materials that do not meet the definition of Solid Waste (such as hazardous materials) or which are commingled with such materials.

Whenever Contractor determines not to Collect any Solid Waste deposited for Collection, Contractor shall leave a tag at least two inches (2") by six inches (6") in size, indicating the reason for Contractor's refusal to do so. This information may be either handwritten or left by means of a check system (i.e., checking off boxes on a preprinted form). The tag shall provide Contractor's business name and its local telephone number and shall be securely fastened to the Container or the article refused. Contractor shall maintain a record of all such taggings at its place of business. Such record shall contain the date of such notice, street address, reason for non-collection, and a summary of any communications between Contractor and the Customer involved. Such record shall be retained and reported to the City on a quarterly basis. Contractor shall follow-up with all Customers receiving a tag for non-collection by telephone within twenty-four (24) hours.

7.9.10 Commercial Bulky Item Service

Contractor shall provide unlimited Bulky Item Collection services to Commercial Customers on an on-call basis. Contractor may charge rates for such services. Bulky Item Collection service calls shall be responded to within a reasonable time but not longer than seven (7) days from the date of the Customer's call for service. Contractor shall produce, keep current, and provide public information specifically outlining the Bulky Item pick-up service. Bulky Items Collected pursuant to this Section are subject to the diversion and handling requirements set forth herein.

7.9.11 Scout and Push Out Services

Certain Commercial Premises within the City Limits are uniquely configured such that Contractor may determine that a smaller vehicle may be needed to retrieve a Customer's Container in order for a regular Collection vehicle to service the Container ("Scout Service"). Certain Commercial Premises may be configured such that a Customer's Container must be manually moved in order to be serviced by a Collection Vehicle ("Push Out Service"). Contractor shall provide Scout Service and Push Out Service to Commercial Premises as it deems appropriate; however, Contractor may not charge for either Scout Service or Push Out Service.

7.10 Other Collection Programs As May Be Required by Law

In the event CalRecycle, or any federal, state, or local law or regulation, imposes upon City or Contractor a requirement for the implementation of any source separated program for the Collection of any waste material (whether or not meeting the definition of Solid Waste hereunder) not already covered by this Agreement, Contractor shall design and present a program to City to comply with such requirement, which program shall meet the Director's reasonable approval ("Proposed Program").

7.11 Temporary Services

Contractor shall provide Temporary Services on an on call basis to any Customer requesting such service pursuant to the following conditions:

(A) Bins and Rolloff Boxes utilized in connection with Temporary Services shall meet the minimum standards set forth herein.

(B) Contractor to determine appropriate charges related to customer use of Bins or Rolloff Boxes.

(C) Temporarily placed Bins may be used for small cleanup type projects at Single Family and Multi-Family Dwellings; provided, however, Bins used for such purposes shall not remain at the same address for a period that exceeds four (4) consecutive weeks. Bins may not be placed in any public rights-of-way so as to create a safety hazard or so as to block any right-of-way to a degree that it is not reasonably usable. Bins placed in City's rights-of-way shall be subject to such requirements as may be imposed by City, and at a minimum shall be equipped with reflectors, reflective tape, reflective paint, or other reflective devices which, to the satisfaction of the Director, make such Bins reasonably visible to vehicle traffic at night.

(D) Contractor shall work with Customers requesting construction and demolition debris Collection services to ensure that requirements under the Municipal Code regulating the recycling and disposal of construction and demolition waste are met, including, but not limited to, ensuring that each covered project meets the minimum required diversion level. Contractor agrees to comply with all provisions of the Municipal Code, as may be amended from time to time, and to provide services for construction contractors in City as may be contemplated by any such Municipal Code provisions at no charge (such as assistance in preparing plans for the collection, recycling and disposal of construction and demolition waste in accordance with this Agreement and providing data for reporting to the City).

(E) In addition to complying with any related requirements that may exist in any City ordinance which may be in effect in City regulating construction and demolition waste, including specific diversion levels that may be required by any such ordinance, Contractor shall make all reasonable efforts to recycle all construction and demolition waste it Collects, especially to the degree such loads contain clean inert materials. Towards this end, Contractor shall make available to Customers involved in construction separate containers within which to Collect different types of marketable materials, such as dirt, steel, concrete and wood.

7.11.1 Extent of Applicable Franchise Rights

Nothing in this Agreement shall be construed as giving Contractor the right to Collect Recyclable Material or Green Waste which has not been discarded and placed for Collection in Containers provided by Contractor in the location designated for that purpose.

7.11.2 AB 939 Obligations, Guarantee, and Indemnification

7.11.2.1 Warranties and Representations

Contractor warrants and represents that it is aware of and familiar with City's Source Reduction and Recycling Element (the "SRRE"), that it is familiar with

City's waste stream, and that it has the ability to and will provide sufficient programs and services to assist its Customers will meet or exceed the diversion requirements set forth in AB 939 and elsewhere in state law. Contractor acknowledges that it is responsible for providing all state mandated recycling programs to its Customers. Contractor specifically acknowledges that the City's current mandated diversion goal as set forth pursuant to the Applicable Laws is fifty percent (50%), and that this is subject to possible modification pursuant to the provisions of AB 341.

7.11.2.2 Mutual Cooperation

City and Contractor shall reasonably cooperate in good faith with all efforts by each other to meet City's diversion and other compliance requirements imposed by AB 939, AB 341, SB 1383 and other Applicable Laws. In this regard, City's obligations shall include, without limitation, making such petitions and applications as may be reasonably requested by Contractor for time extensions in meeting diversion goals, or other exceptions from the terms of AB 939, AB 341, SB 1383 and other Applicable Laws.

7.11.2.3 Waste Reduction and Program Implementation

Contractor shall implement the programs identified in the SRRE immediately upon the Service Commencement Date hereof, and will implement any programs required by any amendments or modifications thereto. In meeting this obligation, Contractor shall be mindful of and comply with all requirements of the County Agreement, including specifically, without limitation, the requirements thereof generally relating to (i) the delivery of Solid Waste only to transfer stations that provide quarterly certifications of Solid Waste delivered, and (ii) the disposal of residual Solid Waste that remains after recycling processes have been completed. On and after the Service Commencement Date, Contractor shall provide City with monthly, quarterly and annual written reports in a form adequate to meet City's AB 939 and SB 1383 related filings and reporting requirements to CalRecycle and to the County of Orange throughout the Term of this Agreement wherein City's performance under the above programs shall be set forth in detail. Contractor shall be responsible to prepare, or assist City with the preparation of, all reports and other information as may be required by any agency, including specifically, the State of California, in order to comply with AB 939, AB 341 and/or SB 1383. Contractor shall reimburse City for any costs City incurs in appearing before CalRecycle and/or the County of Orange in relation thereto.

7.11.2.4 Warranties and Indemnification

Contractor represents and warrants that it will carry out its obligations under this Agreement such that: (i) both it and City will at all times be in compliance with the requirements of all Applicable Laws including specifically AB 939, and SB 1383, and (ii) City will meet or exceed the diversion requirements

(including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements) set forth in AB 939, SB 1383 and all amendments thereto with respect to waste stream collected by Contractor under this Agreement. In this regard, Contractor agrees that it will, in addition to any other requirement contained herein, at its sole cost and expense:

(A) to the extent legally permitted, defend, with counsel approved by City, indemnify, and hold harmless City and City's officials, employees, and agents from and against all fines and/or penalties and other liabilities which may be imposed by CalRecycle or any other regulatory agency if: (1) Contractor fails or refuses to timely provide information relating to its operations which is required pursuant to this Agreement or any Applicable Laws and such failure or refusal prevents or delays City from submitting reports required by Applicable Laws in a timely manner; or (2) the source reduction and recycling goals, diversion goals, program implementation requirements, or any other requirements of Applicable Laws are not met with respect to the waste stream Collected under this Agreement;

(B) assist City in responding to inquiries from CalRecycle;

(C) assist City in preparing for, and participating in, any review of City's SRRE pursuant to Applicable Laws;

(D) assist City in applying for any extension if so directed by City;

(E) assist City in any hearing conducted by CalRecycle relating to City's compliance with Applicable Laws;

(F) assist City with the development of and implement a public awareness and education program as mutually agreed by Contractor and City that is consistent with the City's SRRE, as well as any related requirements of Applicable Laws;

(G) provide City with recycling, source reduction, and other technical assistance related to compliance with the Applicable Laws;

(H) defend, with counsel acceptable to City, City and City's officials, employees, and agents against the imposition of fines and/or penalties, or any other liabilities, issued by CalRecycle pursuant to AB 939 and SB 1383 that are based on the actions or inactions of Contractor;

(I) be responsible for and pay, any fees, penalties or other costs imposed against the City by CalRecycle, and indemnify and hold harmless City from and against any fines, penalties, or other liabilities, levied against it for violation of AB 939's diversion requirements, or violation of any other

provision of the Applicable Laws, arising from or in any way related to Contractor's performance of its obligations under this Agreement.

7.11.3 Guaranteed Minimum Contractor Recycling Rate

Contractor shall divert a minimum of fifty percent (50%) of all Solid Waste it Collects under this Agreement for each calendar year beginning January 1, 2022 ("Recycling Diversion Requirement"). Diversion of materials not Collected by Contractor shall be counted towards meeting the Recycling Diversion Requirement, provided the Contractor assists the City in verifying this diversion. For the purposes of this section, Contractor diversion includes only Recycling methods, Transformation, and/or other forms of diverting solid waste from landfills which are accepted by the State toward meeting the City's diversion goal under AB 939. Contractor shall not be entitled to a reduction in the Recycling Diversion Requirement, if or when:

- Transformation or other facilities are no longer available for any reason;
- CalRecycle diversion credit under AB 939 or other Applicable Laws is no longer provided for Solid Waste sent to a Transformation facility; or

To comply with this section, Contractor is required to submit timely tonnage reports supporting the Recycling Diversion Requirement, and to provide supporting documentation as may be requested by City or its designee as part of, or independent of, an audit. Failure to meet, and fully support, the Recycling Diversion Requirement may result in termination of this Agreement pursuant to Section 18.

7.11.4 Waste Generation/Characterization Studies

Contractor acknowledges that City must perform Solid Waste generation and disposal characterization studies periodically to comply with the requirements of AB 939. Contractor agrees to participate and cooperate with City and its agents and to accomplish studies and data collection and prepare reports, as needed and directed by City, to determine weights and volumes of Solid Waste Collected and characterize Solid Waste generated, disposed, transformed, diverted or otherwise handled/processed to satisfy the requirements of AB 939.

SECTION 8. OTHER SERVICES

8.1 Transfer, Processing, and Disposal

Option 1: Selection of Facilities by Contractor

- A. Contractor shall Transport all Discarded Materials to the Approved Facility(ies) and shall Transfer, Process, and Dispose of Discarded Materials in accordance with

this Section. The Approved Facilities shall comply with the following requirements.

Option 1A: Three-Container System (Blue, Green, and Gray Containers) (Standard Compliance Approach)

1. **Approved Transfer Facility.** Contractor's Approved Transfer Facility shall be a Transfer Facility or operation that Transfers Single-Family, Multi-Family, and Commercial Source Separated Recyclable Materials, SSGCOW, and Gray Container Waste/Mixed Waste Collected in accordance with this Agreement.
2. **Approved Source Separated Recyclable Materials Processing Facility (Blue Containers).** Contractor's Approved Recyclables Processing Facility shall be a Facility or operation that Processes Single-Family, Multi-Family, and Commercial Source Separated Recyclable Materials to recover materials designated for Collection in the Blue Container.
3. **Approved Organic Waste Processing Facility (Green Containers).** Contractor's Approved Organic Waste Processing Facility shall be a Facility that Processes Single-Family, Multi-Family, and Commercial SSGCOW to recover Source Separated Organic Waste.
4. **Approved Disposal Facility (Gray Containers).** Contractor's Approved Disposal Facility shall be a Disposal Facility that accepts Single-Family, Multi-Family, and Commercial Gray Container Waste Collected in accordance with this Agreement for Disposal.
5. **Approved High Diversion Organic Waste Processing Facility (Gray Containers).** Contractor's Approved High Diversion Organic Waste Processing Facility shall be a facility or operation that: (i) Processes Single-Family, Multi-Family, and Commercial Mixed Waste Collected in accordance with this Agreement; and, (ii) is a High Diversion Organic Waste Processing Facility.

Per SB 1383 Regulations (14 CCR Section 18982(a)(33)), the Facility must be in compliance with the reporting requirements of 14 CCR Section 18815.5(d) and meet or exceed an annual average Mixed Waste organic content recovery rate of fifty (50) percent between January 1, 2022 and December 31, 2024, and seventy-five (75) percent after January 1, 2025, as calculated pursuant to 14 CCR Section 18815.5(e), for Organic Waste received from the Mixed Waste Organic Waste Collection Stream

Option 1B: Three-Container System (Blue, Green, and Gray Containers) (Performance-Based Compliance Approach, which specifies Facility types/standards for Source Separated Recyclable Materials and Organic Waste Processing)

1. **Approved Transfer Facility.** Contractor's Approved Transfer Facility shall be a Transfer Facility or operation that Transfers Single-Family, Multi-Family, and Commercial Source Separated Recyclable Materials, SSGCOW, and Gray Container Waste/Mixed Waste Collected in accordance with this Agreement.
2. **Approved Source Separated Recyclable Materials Processing Facility (Blue Containers).** Contractor's Approved Source Separated Recyclable Materials Processing Facility shall be a Facility or operation that Processes Single-Family, Multi-Family, and Commercial Source Separated Recyclable Materials to recover materials designated for Collection in the Blue Container.
3. **Approved Organic Waste Processing Facility (Green Containers).** Contractor's Approved Organic Waste Processing Facility shall be a facility that: (i) Processes Single-Family, Multi-Family, and Commercial SSGCOW Collected in accordance with this Agreement; and, (ii) is a "transfer/processor" or "composting operation" or "composting Facility" as defined within the definition of "Designated Source Separated Organic Waste Processing Facility" in 14 CCR Section 18982(a)(14.5).
4. **Approved Disposal Facility (Gray Containers).** Contractor's Approved Disposal Facility shall be a Disposal Facility that accepts Single-Family, Multi-Family, and Commercial Gray Container Waste Collected in accordance with this Agreement for Disposal.
5. **Approved High Diversion Organic Waste Processing Facility (Gray Containers).** Contractor's Approved High Diversion Organic Waste Processing Facility shall be a facility or operation that: (i) Processes Single-Family, Multi-Family, and Commercial Mixed Waste Collected in accordance with this Agreement; and, (ii) is a High Diversion Organic Waste Processing Facility.

Per SB 1383 Regulations (14 CCR Section 18982(a)(33)), the Facility must be in compliance with the reporting requirements of 14 CCR Section 18815.5(d) and meet or exceed an annual average Mixed Waste organic content recovery rate of fifty (50) percent between January 1, 2022 and December 31, 2024, and seventy-five (75) percent after January 1, 2025, as calculated pursuant to 14 CCR Section 18815.5(e), for Organic Waste received from the Mixed Waste Organic Waste Collection Stream.

Option 1C: Two-Container System for Source Separated Recyclable Materials and Mixed Waste (Blue and Gray Containers)

1. **Approved Transfer Facility.** Contractor's Approved Transfer Facility shall be a Transfer Facility or operation that Transfers Single-Family, Multi-Family, and Commercial Source Separated Recyclable Materials and

Mixed Waste Collected in accordance with this Agreement.

2. **Approved Source Separated Recyclable Materials Processing Facility (Blue Containers).** Contractor's Approved Source Separated Recyclable Materials Processing Facility shall be a facility or operation that Processes Single-Family, Multi-Family, and Commercial Source Separated Recyclable Materials to recover materials designated for Collection in the Blue Container.
3. **Approved High Diversion Organic Waste Processing Facility (Gray Containers).** Contractor's Approved High Diversion Organic Waste Processing Facility shall be a facility or operation that: (i) Processes Single-Family, Multi-Family, and Commercial Mixed Waste Collected in accordance with this Agreement; and, (ii) is a High Diversion Organic Waste Processing Facility.

Option 1D: Two-Container System for SSGCOW and Mixed Waste (Green and Gray Containers)

1. **Approved Transfer Facility.** Contractor's Approved Transfer Facility shall be a Transfer Facility or operation that Transfers Single-Family, Multi-Family, and Commercial SSGCOW and Mixed Waste Collected in accordance with this Agreement.
 2. **Approved Organic Waste Processing Facility (Green Containers).** Contractor's Approved Organic Waste Processing Facility shall be an Organic Waste Processing Facility that Processes Single-Family, Multi-Family, and Commercial SSGCOW to recover Source Separated Organic Waste.
 3. **Approved High Diversion Organic Waste Processing Facility (Gray Containers).** Contractor's Approved High Diversion Organic Waste Processing Facility shall be a facility or operation that: (i) Processes Single-Family, Multi-Family, and Commercial Mixed Waste Collected in accordance with this Agreement; and, (ii) is a High Diversion Organic Waste Processing Facility.
- B. **Allowable Organic Waste Facilities.** If Contractor is interested in Transporting Discarded Materials to a type of Facility that is not described above, Contractor shall obtain written approval from the City Contract Manager and such Facilities or activities shall constitute a reduction in Landfill Disposal pursuant to 14 CCR Section 18983.1(b). If Contractor is interested in using a Facility, operation, or activity not listed above and not specifically identified in 14 CCR Section 18983.1(b), Contractor shall be responsible for securing the necessary approvals from CalRecycle, pursuant to 14 CCR Section 18983.2, that the Facility's process

or technology constitutes a reduction in Landfill Disposal prior to the City's final approval of such Facility or activity.

- C. **Guaranteed Capacity and Facility Standards.** Contractor shall guarantee Transfer, Processing, and Disposal capacity at the Approved Facility(ies) to receive all Discarded Materials Collected by the Contractor throughout the Term of the Agreement and shall comply with Facility standards set forth herein.
- D. **Transportation and Facility Costs.** Contractor shall pay all costs for the Transport, Transfer, Processing, and/or Disposal of Discarded Materials Collected in accordance with this Agreement. Contractor's compensation for such services is included in the Rates charged to Customers.
- E. **Subcontractor.** If the Contractor does not own or operate one or more of the Approved Facilities, Contractor shall enter into a subcontract agreement with the owner or operator of such Approved Facility(ies) and the requirements of Section 8.1 shall pertain to the Subcontractor. In addition, Subcontractor requirements or obligations related to indemnification (Section 25) and insurance requirements (Section 15) shall apply, as well as any other Subcontractor requirements or obligations stated in other sections of this Agreement.
- F. **Transportation to Non-Approved Facilities Prohibited.** If Contractor Transports Discarded Materials to a Facility other than the Approved Facility(ies) or an alternative facility without prior City approval, Contractor's failure to comply may result in termination of this Agreement and revocation of Contractor's franchise.

8.2 City reserves right to direct use of City-Designated Facility at a later date

Contractor agrees that the City Council may, upon making a finding of public health, safety, well-being, or benefit, direct Contractor to deliver any or all Source Separated Recyclable Materials, SSGCOW, Mixed Waste, and/or Gray Container Waste Collected within the City to any type of Designated Facility, as City may designate. Such a change shall be considered a City-directed change in scope. The Residue remaining after Processing, or recovery of Source Separated Recyclable Materials, SSGCOW, and C&D shall be subject to the Council's authority to direct Disposal at a Disposal Facility designated by the Council. City shall reserve the right to direct such Residue in accordance with the Council's direction in any agreement with the Facility operator of any Transfer Facility or Processing Facility where Contractor delivers Source Separated Recyclable Materials, SSGCOW, Mixed Waste, and/or Gray Container Waste. Contractor agrees to Transport Discarded Materials to the Designated Facility(ies) designated by the Council, commencing no later than fifteen (15) days from receipt of notice from the Director.

8.3 Contamination Monitoring

8.3.1 Contamination Monitoring Procedures

A. **General.** This Section presents inspection method(s) for Prohibited Container Contaminants to be used by the Contractor in conducting contamination monitoring required by Sections 8.3.2 and 8.3.3/8.3.4.

B. **Container Inspection Methods.**

1. Option 1: Physical Container Inspections. When Contractor's Hauler Route personnel dismounts from Collection vehicles to empty a Container, such personnel shall lift the Container lid and observe the contents. Upon finding Prohibited Container Contaminants in a Container, Contractor shall follow the contamination noticing procedures and contaminated Container handling protocols set forth in Section 8.3.1.C.
2. Option 2: Visual Inspections via On-Board Monitoring System. For Collection vehicles with automated Collection service, the Collection vehicle hopper shall be equipped with a video camera and monitoring system. The Contractor's Hauler Route personnel shall observe, via the hopper video camera and monitoring system, the contents of the Containers as the materials are emptied into the vehicle. Upon finding Prohibited Container Contaminants in a Container, Contractor shall follow the contamination noticing procedures and contaminated Container handling protocols set forth in Section 8.3.1.C.

The next day on which that Customer is to receive service, the Contractor's Hauler Route personnel shall dismount the Collection vehicle, lift the lid of the Container, and visually inspect the contents of the Container. If the Contractor's Hauler Route personnel determines that the Container again contains Prohibited Container Contaminants, Contractor shall follow the contamination noticing procedures and contaminated Container handling protocols set forth in Section 8.3.1.C.

3. Option 3: Visual Inspection via Remote Monitoring.
 - a. Contractor shall install camera equipment in Containers or on Contractor's vehicles and use a cloud-based software that will enable Contractor, City, and/or other applicable enforcement personnel to monitor or review and examine the contents of Multi-Family, and/or Commercial Containers using digital photographic images obtained from the cameras installed in the Containers. The digital images shall be maintained and accessible for examination through the Contractor's cloud-based software platform. Contractor will perform regular and frequent remote monitoring of each Container, automatically, manually, or in combination using the

remote monitoring system.

- b. The Container monitoring system will capture digital pictures or video of the contents of the Container upon Collection to document and visualize various layers of material in the Container. Capturing multiple digital pictures or video is necessary to detect Prohibited Container Contaminants throughout the Container.

C. Actions upon Identification of Prohibited Container Contaminants.

1. **Record Keeping.** The driver or other Contractor representative shall record each event of identification of Prohibited Container Contaminants in a written log or in the on-board computer system including date, time, Customer's address, type of Container (Blue, Green, or Gray Container); and maintain photographic evidence, if required. Contractor shall submit this record to the Contractor's Customer service department, and Contractor's Customer service department shall update the Customer's account record to note the event, if the documentation if the on-board computer system did not automatically update the Customer's account record.
2. **Identification of Excluded Waste.** If Contractor's personnel observe Excluded Waste in an uncollected Container, the Contractor's personnel shall issue a non-Collection notice for this Container in accordance with Section 8.3.1.C.5 and shall not Collect the Discarded Materials that contain Excluded Waste. Contractor's personnel shall record that observation in accordance with Section 8.3.1.C.1 and immediately inform their route supervisor. Contractor shall follow protocols specified in Sections 8.3.1.C.5 and 8.3.1.C.6. The route supervisor shall investigate and initiate applicable action within one (1) Business Day or sooner if the Hazardous Waste may cause immediate danger.
3. **Courtesy Pick-Up Notices.** Upon identification of Prohibited Container Contaminants in a Customer's Container, Contractor shall provide the Customer a courtesy pick-up notice. The courtesy pick-up notification shall: (i) inform the Customer of the observed presence of Prohibited Container Contaminants; (ii) include the date and time the Prohibited Container Contaminants were observed; (iii) include information on the Customer's requirement to properly separate materials into the appropriate Containers, and the accepted and prohibited materials for Collection in the Blue Container, Green Container, and/or Gray Container; (iv) inform the Customer of the courtesy pick-up of the contaminated materials on this occasion with information that following two (2) instances (See guidance in subsection C.4 below) Contractor may assess contamination Processing fees or issue a non-Collection notice; and, (v) may or shall include photographic evidence. Contractor shall leave the courtesy pick-up notice attached to or adhered to the Generators' contaminated Containers; at the

Premises' door or gate; or, subject to City's approval, may deliver the notice by mail, e-mail, text message, or other electronic message.

Contractor shall Collect the contaminated Source Separated Recyclable Materials or SSGCOW and Transport the material to the appropriate Approved Facility for Processing; or, Contractor may Collect the contaminated materials with Gray Container Waste/Mixed Waste and Transport the contaminated materials to the appropriate Approved/Designated Facility for Disposal/ Processing.

4. **Notice of Assessment of Contamination Processing Fees.** If the Contractor observes Prohibited Container Contaminants in a Generator's Container on more than two (2) consecutive occasions and issued courtesy pick-up notices on each of those occasions, the Contractor may impose a contamination Processing fee. Contractor shall notify the City in its quarterly report of Customers for which contamination Processing fees were assessed. Contractor shall leave a contamination Processing fee notice attached to or adhered to the Generators' contaminated Containers; at the Premises' door or gate; or, subject to City's approval, may deliver the notice by mail, e-mail, text message, or other electronic message. The contamination Processing fee notice shall describe the specific material(s) of issue, explain how to correct future set outs, and indicate that the Customer will be charged a contamination Processing fee on its next bill. The format of the contamination Processing fee notice shall be approved by the City Contract Manager.

Contractor shall Collect the contaminated Source Separated Recyclable Materials or SSGCOW and Transport the material to the appropriate Approved/Designated Facility for Processing.

5. **Non-Collection Notices.** Upon identification of Prohibited Container Contaminants in a Container in excess of standards agreed upon by the Parties or Excluded Waste, Contractor shall provide a non-Collection notice to the Generator. The non-Collection notice shall, at a minimum: (i) inform the Customer of the reason(s) for non-Collection; (ii) include the date and time the notice was left or issued; (iii) describe the premium charge to Customer for Contractor to return and Collect the Container after Customer removes the Contamination; and, (iv) provide a warning statement that a contamination Processing fee may be assessed if Prohibited Container Contaminants are observed on more than two (2) consecutive occasions. The non-Collection notice may or shall include photographic evidence of the violation(s).

The Contractor's notice of non-Collection may be left attached to or adhered to the Generator's Container, or at the Premises' door or gate at the time the violation occurs, or subject to City's approval, may be delivered by mail, e-mail, text message, or other electronic message.

Contractor shall submit a sample of its non-Collection notice to the City Contract Manager for approval prior to implementing use of it with Customers.

6. **Communications with Customer.** Whenever a Container at the Premises of a Commercial or a Multi-Family Customer is not Collected, Contractor shall contact the Customer on the scheduled Collection day or within twenty-four (24) hours of the scheduled Collection day by telephone, email, text message, or other verbal or electronic message to explain why the Container was not Collected. Whenever a Container is not Collected because of Prohibited Container Contaminants, a Customer service representative shall contact the Customer to discuss, and encourage the Customer to adopt proper Discarded Materials preparation and separation procedures.
7. **Contractor Return for Collection.** Upon request from a Customer, Contractor shall Collect Containers that received non-Collection notices within one (1) Working Day of the Customer's request if the request is made at least two (2) Working Days prior to the regularly scheduled Collection Day. Contractor shall bill the Customer for the extra Collection service event ("extra pick-up") at the applicable City-approved Rates only if Contractor notifies Customer of the premium Rate for this service at the time the request is made by Customer.

- D. **Disposal of Contaminated Materials.** If the Contractor observes Prohibited Container Contaminants in a Generator's Container(s), Contractor may Dispose of the Container's contents, provided Contractor complies with the noticing requirements in Section 8.3.1.C.5 above.

8.3.2 Ongoing Contamination Monitoring

- A. **Route Personnel Monitoring.** Contractor shall assist on an ongoing basis in minimizing contamination by helping to educate Customers on acceptable and non-acceptable materials through ongoing education and outreach efforts in Section 8.4 and through on-going monitoring of the contents of Collection Containers. The ongoing Container monitoring shall be performed by Contractor using the method described in Section 8.3.1.B.

- B. **Periodic Sampling and Sorting**

Contractor shall implement a monthly contamination monitoring program of Source Separated Recyclable Materials and SSGCOW that involves Contractor's performance of visual inspections of aggregate Collection vehicle contents from City Hauler Routes to assess the level of Prohibited Container Contaminants. This shall be conducted through a "pad inspection" in which Source Separated Recyclable Materials or SSGCOW from a Collection vehicle are emptied onto a pad at the Approved/Designated Facility and an assessment of the Prohibited

Container Contaminants is made. Up to fifteen (15) visual pad inspections shall be performed by Contractor once a year, targeting different Hauler Routes. Based on pad inspection results, Contractor shall perform targeted outreach to Customers on the City Hauler Routes found to have Prohibited Container Contaminants in excess of the standards agreed upon by the Contractor and City. Outreach shall take the form of Hauler Route-level direct mailings to highlight common Prohibited Container Contaminants and to provide instruction on proper separation of Discarded Materials. Contractor shall maintain records and provide reports monthly regarding contamination inspections.

8.3.3 Contamination Monitoring (Hauler Route Review Option)

Hauler Route Review Contamination Monitoring by Contractor

1. Methodology and Frequency

Commencing on or before January 1, 2022, the Contractor shall, at its sole expense, conduct Hauler Route reviews for Prohibited Container Contaminants in Collection Containers in a manner that is deemed safe by the Contractor; is approved by the City; and, is conducted in a manner that results in all Hauler Routes being reviewed annually or more frequently.

The Contractor shall conduct Hauler Route reviews that include inspection of the contents of Customers' Collection Containers for Prohibited Container Contaminants in a manner such that a minimum of five percent (5%) of Containers on each and every Hauler Route are inspected annually. The Containers shall be randomly selected by (insert method if desired).

Contractor shall develop a Hauler Route review methodology to accomplish the above Container inspection requirements and such methodology shall comply with the requirements of 14 CCR Section 18984.5(b). Contractor shall submit its proposed Hauler Route review methodology for the coming year to the City no later than January 15 of each year describing its proposed methodology for the calendar year and schedule for performance of each Hauler Route's annual review. Contractor's proposed Hauler Route review methodology shall include not only its plan for Container inspections, but may or shall also include its plan for prioritizing the inspection of Customers that are more likely to be out of compliance. City and/or CalRecycle will review and approve the proposed methodology. Contractor may commence with the proposed methodology upon approval.

If the City and/or CalRecycle notifies the Contractor that the methodology is inadequate to meet the requirements of 14 CCR Section 18984.5(b), Contractor shall, at its sole expense, revise the methodology and, after obtaining City or CalRecycle approval, conduct additional Hauler Route reviews, increased Container inspections, or implement other changes using the revised procedure. If the Contractor's proposed methodology meets the requirements of 14 CCR Section 18984.5(b), but has been deemed inadequate by the City, the Contractor shall, at

the expense of the City, revise the methodology and implement the necessary changes using the revised procedure.

The City Contract Manager may request, and Contractor shall accept, modifications to the schedule to permit observation of the Hauler Route reviews by the City. In addition, Contractor shall provide an email notice to the City Contract Manager no less than ten (10) Working Days prior to each scheduled Hauler Route review that includes the specific time(s), which shall be within the City's normal business hours, and location(s).

2. **Noticing of Generators with Contamination, Non-Collection, and Disposal of Materials.**

Upon finding Prohibited Container Contaminants in a Container, Contractor shall follow the contamination noticing procedures and contaminated Container handling protocols set forth in Sections 8.3.1.C.

3. **Monthly Reporting Requirements.**

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

8.4 Education and Outreach

Option 1: Education Primarily by City or Third Party

- A. **Program Objectives.** The City shall be responsible for designing, implementing, and conducting a public education and outreach program. The City's public education and outreach strategy shall focus on improving Generator understanding of the benefits of and opportunities for source reduction, Reuse, and Landfill Disposal reduction and supporting compliance with Applicable Laws and regulations, including, but not limited to SB 1383 and SB 1383 regulations. In general, City-provided public education and outreach aims to: (i) inform Generators about the services that are provided under this Agreement with specific focus on describing the methods and benefits of source reduction, Reuse, Recycling, and Composting (if applicable); (ii) instruct Generators on the proper method for placing materials in Containers for Collection and setting Containers out for Collection, with specific focus on minimizing contamination of Source Separated Recyclable Materials and SSGCOW; (iii) clearly define Excluded Waste and educate Generators about the hazards of such materials and their opportunities for proper handling; (iv) discourage Generators from buying products if the product and its packaging are not readily Reusable, Recyclable, or compostable; (v) inform Generators subject to Food Recovery requirements under SB 1383 Regulations of their obligation to recover Edible Food and actions they can take to prevent the creation of Food Waste; (vi) encourage the use of Compost; and, (vii) encourage Generators to purchase products/packaging made with Recycled-content materials. The cumulative intended effect of these efforts is to reduce each Generator's Solid

Waste and, ultimately, Disposal of Solid Waste, and Contractor agrees to support and not undermine or interfere with such efforts.

- B. **Contractor Cooperation and/or Support for City or Third Party Educational Efforts.** Contractor acknowledges that it is part of a multi-party effort to operate and educate the public about the regional integrated waste management system. Contractor shall cooperate and coordinate with the City Contract Manager on public education activities to minimize duplicative, inconsistent, or inappropriately timed education campaigns. The Contractor shall cooperate with and shall not impede, interfere, or attempt to impede or interfere with the implementation, expansion, or operation of public education and outreach programs or campaigns conducted by the City or their designee.

Contractor shall obtain approval from the City Contract Manager on all Contractor-provided public education materials outside of the City's education plan, including, but not limited to: print, radio, television, or internet media before publication, distribution, and/or release. City shall have the right to request that Contractor include City identification and contact information on public education materials and approval of such requests shall not be unreasonably withheld.

- C. **Content and Production Requirements.** The City will be responsible, in its sole discretion and subject to budgetary constraints, to prepare all public education materials, in accordance with the requirements of 14 CCR, Division 7, Chapter 12, Article 4, and may request that they be reviewed by Contractor prior to production. Contractor shall review and comment on the materials within two (2) weeks of request from the City.
- D. **Bill Inserts.** Contractor agrees to insert and distribute brochures, newsletters, or other information developed by the City as inserts in Contractor's Customer invoices at no additional charge to the City. Bill inserts shall be designed and produced by the City with review and comment by Contractor, and final approval by the City. Upon City request, Contractor shall be responsible for printing the bill inserts. For Customers receiving electronic bills, Contractor agrees to distribute brochures, newsletters, or other information developed by the City as attachments to Customer invoices at no additional charge to the City. Contractor shall provide electronic bill inserts (or separate email attachments) to Customers who are billed electronically, and paper bill inserts to Customers who receive paper bills. Electronic bill inserts/attachments must be readily available for the Customer to view upon receipt of the invoice (attachments shall not be provided as links). Upon City's request for such inserts, Contractor shall comply with such request during its

next billing cycle for the targeted Customer group. Contractor shall perform this service with no additional requirement for compensation.

Option 2: Education by Contractor

- A. **General.** In order to promote public education, Contractor shall create all public education materials and conduct education programs and activities described in this Section at its expense.
- B. **Program Objectives.** Contractor's public education and outreach strategy shall focus on improving Generators' understanding of the benefits of and opportunities for source reduction, Reuse, and Landfill Disposal reduction. In general, Contractor-provided public education and outreach, which shall include all content required by this Section 8.4, should: (i) inform Generators about the services that are provided under this Agreement with specific focus on describing the methods and benefits of source reduction, Reuse, and reduction of Solid Waste Disposal; (ii) instruct Generators on the proper method for placing materials in Containers for Collection and setting Containers out for Collection with specific focus on minimizing contamination of Source Separated Recyclable Materials and SSGCOW; (iii) clearly define Excluded Waste and educate Generators about the hazards of such materials and their opportunities for proper handling; (iv) discourage Generators from buying products if the product and its packaging are not readily reusable, recyclable, or compostable; (v) inform Generators subject to Food Recovery requirements under SB 1383 Regulations of their obligation to recover Edible Food and actions they can take to prevent the creation of Food Waste; (vi) encourage the use of Compost; and, (vii) encourage Generators to purchase products/packaging made with Recycled-content materials. The cumulative intended effect of these efforts is to reduce each Generator's reliance on Contractor-provided Gray Container Waste/Mixed Waste service and, ultimately, Disposal, and Contractor agrees to support and not undermine or interfere with such efforts
- C. **Contractor Cooperation and/or Support for City Educational Efforts.** Contractor acknowledges that it is part of a multi-party effort to operate and educate the public about the integrated waste management system. Contractor shall cooperate and coordinate with the City Contract Manager on public education activities to minimize duplicative, inconsistent, or inappropriately timed education campaigns.

Contractor shall obtain approval from the City Contract Manager on all Contractor-provided public education materials including, but not limited to: print, radio, television, or internet media before publication, distribution, and/or release. City shall have the right to request that Contractor include City identification and contact information on public education materials and approval of such requests shall not be unreasonably withheld. The City reserves the right to direct the Contractor to modify the education and outreach program at any time.

D. **Annual Education Plan.** Annually, Contractor shall develop and submit an annual public education plan to promote the programs performed by Contractor under this Agreement. The annual public education plan shall present the education activities for the upcoming calendar year and shall be submitted with the Contractor's annual report. Each public education plan shall specify the target audience for services provided, include upcoming promotions for ongoing and known special events, identify program objectives, individual tasks, public education materials to be developed or updated, opportunities for expanded partnerships, a timeline for implementation, and an itemized description of how Contractor's annual public education budget (described in Section 8.4.E) will be spent. The City Contract Manager shall be permitted to provide input on each annual public education plan, and the plan shall not be finalized or implemented without approval of the City Contract Manager. Each plan's implementation success shall be measured according to the deadlines identified and products developed. Contractor shall meet with the City Contract Manager to present and discuss the plan. City Contract Manager shall be allowed up to thirty (30) days after receipt to review and request modifications. The City Contract Manager may request, and Contractor shall not unreasonably deny, modifications to be completed prior to approving the plan. Contractor shall have up to fifteen (15) Business Days to revise the plan in response to any requested changes by the City Contract Manager.

E. **Education Requirements during Program Implementation/Roll-Out.**

Beginning on the Effective Date of this Agreement and through insert timeframe, Contractor shall conduct an education campaign focused on informing Customers of the Collection program changes that will commence on insert timeframe. At a minimum, Contractor shall perform the activities listed below and shall perform these services in a manner that complies with requirements of this Section 8.4 and 14 CCR, Division 7, Chapter 12, Article 4.

1. Prepare and distribute an initial mailer to all Customers explaining the change from the existing hauler to the new Contractor (if applicable), changes from the existing Collection programs to new programs, Hauler Route changes, dates of program implementation, Recycling and Landfill Disposal reduction programs available, special services available, holiday Collection schedules, proper handling and disposal of Household Hazardous Waste, Contractor's contact information, and any additional education and outreach information specified in 14 CCR, Division 7, Chapter 12, Article 4. The initial mailer shall be printed and mailed or hand delivered to Customers, and shall also be made available in an electronic format through the Contractor's website. Contractor may provide a Customer with an electronic version of the initial mailer, rather than a printed version, if specifically requested by the Customer.
2. Prepare a "how-to" flyer describing how to prepare Source Separated Recyclable Materials, SSGCOW, Gray Container Waste, and Mixed Waste for Collection and describe the acceptable materials that can be included in

the Blue and Green Containers, as well as non-allowable materials. The flyer should emphasize any new types of Source Separated Recyclable Materials to be included in Blue Containers and the new Food Waste Collection program. Prepare separate flyers for Multi-Family and Commercial Customers addressing their unique service conditions. The flyers shall be printed and distributed to each Customer, as well as made available in an electronic format through the Contractor's website. The Contractor shall provide a sufficient number of flyers to each Multi-Family property manager for their distribution to each tenant unit. Contractor may provide a Customer with an electronic version of the flyer rather than a printed version, if specifically requested by the Customer.

3. Prepare printed signage and posters describing Collection programs and distribute to Multi-Family property managers and Commercial Customers for on-site use.
4. Prepare an instructional packet identifying key transition dates and verifying the Customer's specific current Service Level, which shall be printed and distributed to each Customer and made available in an electronic format on the Contractor's website. Contractor may provide an electronic version of the instructional packet rather than a printed version, if requested by the Customer.
5. Prepare and distribute public service announcements (PSA) for local newspapers.
6. Meet with up to four (4) business associations (such as the Chamber of Commerce, Rotary Club, and other similar organizations) in separate venues to: educate Commercial Businesses on the Collection programs, State requirements (including SB 1383 and SB 1383 Regulatory requirements) for the City and Generators; answer questions; and, provide service and Rate information.
7. All education material designed and/or distributed by the Contractor shall be submitted to the City Contract Manager for approval prior to distribution or posting on the Contractor's website.

F. Annual and/or Ongoing Education Requirements.

1. Specific Annual Educational Activities

- a. Annual Notice of Requirements. Not less than once per year during the Term, Contractor shall prepare and distribute to each Generator in the City a mailer that includes information specified in 14 CCR Section 18985.1(a). Such mailer shall be distributed by Contractor to all Residential and Commercial mailing addresses including individual Multi-Family Dwelling Units. Contractor shall also make this notice available in an electronic format through the Contractor's website.

- b. Billing Inserts. Upon City request, Contractor agrees to insert and distribute brochures, newsletters, or other information developed by the City as inserts in Contractor's Customer invoices at no additional charge to the City. Upon City request, Contractor shall be responsible for printing the bill inserts. For Customers receiving electronic bills, Contractor agrees to distribute brochures, newsletters, or other information developed by the City as attachments to Customer invoices at no additional charge to the City. Contractor shall provide electronic bill inserts (or separate email attachments) to Customers who are billed electronically, and paper bill inserts to Customers who receive paper bills. Electronic bill inserts/attachments must be readily available for the Customer to view upon receipt of the invoice (attachments shall not be provided as links). Upon City request for such inserts, Contractor shall comply with such request during its next billing cycle for the targeted Customer group. Contractor shall perform this service with no additional requirement for compensation.
- c. Multi-Family and Commercial Customer Signage. Contractor shall provide all Multi-Family and Commercial Customers with Source Separated Recyclable Materials, SSGCOW, and Gray Container Waste or Mixed Waste program guidelines, including posters to be placed in Collection areas and enclosures and other community areas at each Premises or building where Discarded Materials are stored.
- d. Minimum Website Requirements. Contractor shall develop and maintain a website (with a unique URL specific to the City) that is specifically dedicated to the City to provide Generators with detailed service information. The website or webpage shall be accessible by the public, and shall include all education and outreach materials being provided, without requirement for login. Contractor shall update the website regularly so that information provided is current.
- e. Instructional Service Guide. On or before January 1, 2022, Contractor shall prepare a service guide that describes available services, including how to place Containers for Collection, which materials should be placed in each Container and prohibited materials, and provides Collection holidays and a Customer service phone number. On or before March 1, 2022, the service guide shall be printed and delivered with each set of Containers distributed to a Generator and shall be delivered annually to all Generators. Contractor shall prepare different service guides for Multi-Family, Commercial Generators, and Commercial Edible Food Generators. Contractor shall, at its sole expense, revise, re-print, and redistribute service guides once every two (2) years or at least sixty (60) days prior to a change in the accepted or prohibited materials for any program. Contractor shall make the service guide available in an electronic format through the Contractor's website. Contractor may provide an electronic version of the instructional service guide rather than a printed version, if requested by the Customer.

f. Annual Multi-Family Dwelling Unit Notices. Prior to the Commencement Date of this Agreement, Contractor shall obtain and track in its Customer information system(s) the number and addresses of dwelling units at each Multi-Family Premises serviced by Contractor. Contractor shall maintain this database by auditing the data at least once every three (3) years. At least annually, commencing no later than June 1, 2022, Contractor shall prepare and distribute notices to each Multi-Family Dwelling Unit at Multi-Family Premises serviced by Contractor. The annual notices shall be a minimum of two (2) pages (which may include the front and back of a single printed sheet), and shall include information on regulations governing Discarded Materials, Hazardous Waste, and toxic waste; City and State requirements to properly separate Discarded Materials (such as requirements of the Municipal Code and of State statutes and corresponding regulations, including, but not limited to, AB 341, AB 1826, and SB 1383); instructions on properly separating materials; waste prevention; services available; and any other information required by the City or by State regulations (including SB 1383 Regulatory requirements for education, pursuant to 14 CCR, Division 7, Chapter 12, Article 4). As an alternative, Contractor may comply with these requirements through preparation and distribution of an annual newsletter distributed to each Multi-Family Dwelling Unit that provides the same information. Contractor shall make notices and newsletters available in an electronic format through the Contractor's website. Contractor may provide an electronic version of the notices rather than a printed version, if requested by the Customer.

g. Provision of Educational Materials to Non-Compliant Entities. Contractor shall provide educational materials to non-compliant entities under this Agreement, as further described in Section 8.10.

h. Education Materials for Property and Business Owners and Tenants

Contractor shall annually provide Property Owners and Commercial Business owners with public education materials for their distribution to all employees, contractors, tenants, and Customers of the properties and businesses. The Contractor's public education materials shall include, at a minimum, information about Organic Waste recovery requirements and proper sorting of Discarded Materials, and shall reflect content requirements described in Section 8.4.H below. Contractor shall provide the following materials for this purpose: insert materials (such as, but not limited to, welcome packets, flyers, and signs). A Commercial Business or Multi-Family Property Owner may request these materials more frequently than the standard annual provision if needed to comply with the requirement of 14 CCR Section 18984.10 for Commercial Businesses and Multi-Family Property Owners to provide educational information to new tenants and employees before or within fourteen (14) days of occupation of the Premises. In this case, the Commercial Business or Multi-Family Property Owner may request delivery of materials by contacting the Contractor's

customer service department not later than two (2) weeks in advance of the date that the materials are needed.

- i. Education Requirements for Commercial Edible Food Generators
 - i. On or before February 1, 2022 or insert earlier date if desired, the Contractor shall develop a list of Food Recovery Organizations and Food Recovery Services operating within the City, maintain the list on the Contractor's City-specific website, share the list with the City if the City wants to post the list on additional City websites, and update the list annually. The list shall include, at a minimum, the following information about each Food Recovery Organization and each Food Recovery Service:
 - Name and physical address;
 - Contact information;
 - Collection service area; and,
 - An indication of types of Edible Food the Food Recovery Service or Food Recovery Organization can accept for Food Recovery.
 - ii. At least annually, the Contractor shall provide Commercial Edible Food Generators with the following information:
 - Information about the City's Edible Food Recovery program;
 - Information about the Commercial Edible Food Generator requirements under 14 CCR, Division 7, Chapter 12, Article 10;
 - Information about Food Recovery Organizations and Food Recovery Services operating within the City, and where a list of those Food Recovery Organizations and Food Recovery Services can be found; and,
 - Information about actions that Commercial Edible Food Generators can take to prevent the creation of Food Waste.
 - iii. The Contractor may provide the information required by subsection ii above by including it with regularly scheduled notices, education materials, billing inserts, or other information disseminated to Commercial Businesses.
- G. **Minimum Content Requirements.** Prior to February 1, 2022; or earlier date, if desired, and annually thereafter, the Contractor shall include the following education and outreach content to Customers by incorporation of this content into the public education materials described in Section 8.4.G.
1. Collection system description

- a. Option 1: For a three-, three-plus, or two-Container system: Information on the Generator's requirements to properly separate Source Separated Recyclable Materials, SSGCOW, Mixed Waste, and Gray Container Waste and place such materials in appropriate Containers pursuant to this Agreement, SB 1383 Regulations, and all other Applicable Law.
 - b. Option 2: For a one-Container system: Information indicating that the Organic Waste Collected in the Gray Containers is being Processed and recovered at an Approved/Designated High Diversion Organic Waste Processing Facility.
2. Information on methods for the prevention of Source Separated Recyclable Materials and SSGCOW generation; managing SSGCOW on Generator's Premises through composting or other Landfill Disposal reduction activities allowed under 14 CCR Sections 18983.1 and 18983.2; sending SSGCOW to Community Composting operations; and any other local requirements regarding Discarded Materials
 3. Information regarding the methane reduction benefits of reducing the Disposal of SSGCOW, and the method(s) that the Contractor uses to recover SSGCOW.
 4. Information regarding how to recover Source Separated Recyclable Materials, SSBCOW, and SSGCOW, and a list of haulers approved by the City.
 5. Information related to the public health and safety and environmental impacts associated with the Disposal of SSGCOW and SSBCOW.
 6. Information regarding programs for donation of Edible Food;
 7. For Commercial Customers, information about the City's Edible Food Recovery Collection program; Tier One Commercial Edible Food Generators and Tier Two Edible Food Generators requirements specified in 14 CCR, Division 7, Chapter 12, Article 10; Food Recovery Organizations and Food Recovery Services operating within the City, and where a list of those Food Recovery Organizations and Food Recovery Services can be found; and, information about actions that Commercial Edible Food Generators can take to prevent the creation of Food Waste.
 8. Information regarding Self-Hauling requirements.
 9. Any other federal, State, or local requirements to properly separate Discarded Materials or other necessary actions by Generators, including applicable requirements of the Municipal Code, AB 341, AB 1826, and SB 1383 and corresponding regulations.

H. Material Distribution Methods

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

1. **Printed materials.** Contractor shall provide printed education materials as described in Sections 8.4.F and 8.4.G. The Contractor shall be responsible for the design, printing, and distribution of these materials. All Contractor-printed public education materials shall, at a minimum, use recycled paper and/or be made of recycled material. The Contractor will use 100% post-consumer paper, and procure printed materials from local businesses.
2. **Electronic materials and website content.** Contractor shall provide electronic and website content for education and outreach materials, which may include, but are not limited to: digital graphics, digital versions of print materials, social media posts, and blog posts. The Contractor shall be responsible for the design, posting, and electronic distribution of these materials.

I. Non-English Language Requirements

Option 1:

The Contractor shall make all public education and outreach materials required by this Section available in English and insert language(s).

Option 2:

Upon City request, Contractor shall provide materials in additional languages beyond those specified in this Section in response to shifting demographics within the City; updates to State requirements or Applicable Law; or, any other reason deemed appropriate by the City.

K. Record Keeping and Reporting Requirements

Contractor shall comply with the public education and outreach record keeping and reporting requirements set forth herein.

L. Personnel

1. Option 1: Public Education Outreach Coordinators

The Contractor shall designate one or more staff member(s) to serve as Outreach Coordinators. The duties of the Outreach Coordinator(s) shall be focused on public education, community outreach, Commercial and Multi-Family site visits, and technical assistance. The Outreach Coordinator(s) shall educate Customers and Customers' employees on the importance of

Recycling, Food Recovery, resource recovery, Landfill Disposal reduction, as well as all State, federal, County, local, and City mandates, including SB 1383 and SB 1383 Regulations; and shall work with Customers to implement services, increase participation in Source Separated Recyclable Materials and SSGCOW Collection programs, and reduce contamination. The Outreach Coordinator(s) shall identify potential organizations and partners involved with Food Recovery and resource recovery. The Outreach Coordinator(s) shall be responsible for implementing the education plans and programs specified in this Section.

2. Option 2: Staff Training

Annually, and upon hiring of new staff, Contractor is required to conduct thorough training of all Customer service representatives who may respond to Generator calls regarding Contractor's Collection services and SB 1383 Regulatory requirements. Customer service representatives shall accurately communicate program requirements and the accepted and prohibited materials for each material stream for each Customer type. New Customer service representatives shall not be assigned to the City prior to completing SB 1383 Regulations training. The City reserves the right to require changes to the call routing process and the training and qualifications for Customer service representatives assigned to the City if a pattern of inaccurate information provision is observed.

Annually, and upon hiring of new staff, Contractor shall conduct thorough training of all Hauler Route personnel that come into contact with Generators on the Collection program requirements and the accepted and prohibited materials for each material stream for each Customer type.

3. Option 3: Combination of Education by Contractor and City or Third Party

8.5 Technical Assistance Program

Option 1: Technical Assistance by Contractor

Organizing and Conducting Direct Generator Outreach.

At least ten (10) days prior to the Commencement Date, Contractor will provide an outreach and technical assistance plan to City for approval identifying the site visit schedule for which to send a Contractor representative to visit each Multi-Family and Commercial Generator's Premises for the purpose of assessing how much Source Separated Recyclable Materials and SSGCOW is being Disposed; assessing the Source Separated Recyclable Materials and SSGCOW Collection Service Levels needed to meet the requirements of SB 1383 Regulations; and encouraging all Generators to establish Source Separated Recyclable Materials and SSGCOW Collection service in advance of January 1, 2022 when mandatory service is required. Contractor shall also notify Customers of opportunities to

reduce costs by enrolling in Source Separated Recyclable Materials and SSGCOW Collection service and reducing Gray Container Waste/Mixed Waste Collection service. Contractor shall contact Multi-Family and Commercial Customers and provide site visits according to the City-approved schedule. Contractor will also provide a site visit to any Multi-Family and Commercial Generator that requests a site visit, even if it is ahead of schedule.

Beginning January 1, 2022, and annually thereafter, Contractor representative shall follow up with Multi-Family and Commercial Generators who are required to participate in Source Separated Recyclable Materials and SSGCOW Collection service under Applicable Law, including but not limited to AB 341, AB 1826, and SB 1383 and corresponding regulations. Contractor shall ensure that these Generators are participating in the Source Separated Recyclable Materials and SSGCOW Collection Service. If the Generator is not in compliance or not participating, the Contractor representative shall assist the Customers with selecting appropriate Containers and Container sizing, identify acceptable Discarded Materials Collection services as set forth in the Agreement, and attempt to resolve any logistical barriers to providing Source Separated Recyclable Materials and SSGCOW Collection service. Contractor shall provide ongoing, on-site training for Commercial Generators' staff, including, but not limited to: management, kitchen staff, service employees, and janitorial staff; and Multi-Family Customers' staff, including but not limited to: the Property Manager, janitorial staff, maintenance, and any other on-site staff members or contractors that handle Discarded Materials.

For each on-site waste assessment conducted by Contractor, Contractor shall include documentation of the items listed below. City reserves the right to request Contractor's documentation of additional information, and shall authorize the format for required information.

- a. Pictures of material in all Containers;
- b. Characteristics of the property, business, and Generator type;
- c. Written recommendations for the appropriate Service Level for each material type;
- d. Provision of outreach and education materials appropriate to the Generator type;
- e. Determination of signage placement;
- f. Determination of any on-going training needs;
- g. Determination of any access needs;
- h. Documentation of any special service needs (such as, but not limited to, seasonal Collection service, automated on-call compactor, etc.); and,
- i. Documentation of records of communications with the Generator.

Option 2: Technical Assistance by City or Third Party

- A. **Organizing and Conducting Direct Generator Outreach.** The City and/or its third party designee shall be responsible for designing and conducting a technical

assistance program for Generators, including organizing and conducting workshops; community meetings; site visits; waste assessments; and assessments to measure Generator compliance with State statutes and corresponding regulations, including AB 341, AB 1826, and SB 1383.

- B. Contractor Cooperation and/or Support for Technical Assistance Efforts.** Contractor shall cooperate with and support the technical assistance efforts conducted by the City. Upon request, Contractor shall provide any relevant data or information to the City that is needed for the design, implementation, or on-going performance of the technical assistance program. Contractor shall respond to any request for information from the City in a timely manner, not to exceed fifteen (15) days after receipt of the request.

Based on the results of technical assistance efforts, the City may recommend and request a change in Service Level for certain Customers. Within ten (10) Business Days of Contractor's receipt for a request from Customer for a Service Level change, Contractor shall adjust the Customer's Service Level by providing any Green, Blue, Brown, or Gray Containers needed for the change in Service Level, removing unneeded Containers, and revising the Customer's Service Level in Contractor's billing system to reflect the monthly Rate for the new Service Level. At the time new Containers are delivered or existing Containers are removed, Contractor shall confirm that all Containers are properly labeled and meet the specifications of Section 7.9.7.

- C. Record Keeping and Reporting Requirements.** The City shall be responsible for record keeping and reporting requirements for the technical assistance program. Upon request, the Contractor shall provide any relevant data or information to the City that is needed for the completion of record keeping and/or reporting requirements. Contractor shall respond to any request for information from the City in a timely manner, not to exceed fifteen (15) days after receipt of the request.

Option 3 – Combination of Option 1 and 2

8.6 Food Recovery Program Support

- A. Option 1: Hauler Cooperation and Non-Interference with Food Recovery Efforts by Others**

Contractor shall cooperate with and shall not impede, interfere, or attempt to impede or interfere with the implementation, expansion, or operation of Food Recovery efforts in the City.

B. Option 2: Hauler Involvement in Food Recovery Efforts

1. Option 2a: Hauler Education

Contractor shall create and provide educational outreach material for Tier One and Tier Two Commercial Edible Food Generators in accordance with Section 8.4.G.1.i.

2. Option 2b: Hauler Edible Food Collection Service

Upon request, Contractor shall provide Collection service, or partner with others to provide Collection service, for Edible Food to all Customers that are Tier One Commercial Edible Food Generators, commencing no later than January 1, 2022, and Tier Two Commercial Edible Food Generators, commencing no later than January 1, 2024, in coordination with a City-directed Food Recovery program. Contractor shall partner with appropriate local Food Recovery Organizations and/or Food Recovery Services for the redistribution of Edible Food. Tonnage estimates of Edible Food recovered through these efforts shall be reported in the Contractor's monthly, quarterly, and/or annual reports.

3. Option 2c: Hauler Support with Assessing Capacity Needs

Contractor shall perform quarterly or other frequency examinations of Hauler Routes to identify Commercial Customers that generate Edible Food and estimate the potential quantities of Edible Food that may be recovered and report findings to the City and Food Recovery Organizations and Food Recovery Services insert frequency, such as: monthly, quarterly, annually, etc.

4. Option 2d: Hauler Identification of Tier One and Tier Two Commercial Edible Food Generators

No later than January 1, 2022, Contractor shall identify all Commercial Customers that meet the definition of Tier One and Tier Two Commercial Edible Food Generators and provide a list of such Customers to the City, which shall include: Customer name; service address; contact information; Tier One or Tier Two classification; and, type of business (as it relates to the Tier One and Tier Two Commercial Edible Food Generator definitions). Contractor shall update the list and provide it to the City annually.

8.7 Generator Waiver Program Coordination

A. Types of Generator Waivers

1. General. City may grant waivers described in this Section to Generators

that impact the scope of Contractor's provision of service for those Customers. Waivers issued shall be subject to compliance with SB 1383 Regulatory requirements, pursuant to 14 CCR Section 18984.11, or other requirements specified by the City.

2. **De Minimis Waivers. (Three-, Three-Plus-, and Two-Container Systems Only).** The City may waive a Multi-Family's, Commercial Business', or its Property Owner's obligation to comply with some or all of the Source Separated Recyclable Materials and SSGCOW requirements set forth in this Agreement, SB 1383 Regulations, and Chapter IV of Title 8 of the Municipal Code if the Multi-Family, Commercial Business, or its Property Owner provides documentation or the City has evidence demonstrating one of the following de minimis conditions:
 - a. The Multi-Family's or Commercial Business' total Solid Waste Collection service is two (2) cubic yards or more per week, and SSGCOW or SSBCOW subject to Collection in a Blue Container or Green Container comprises less than twenty (20) gallons per week, per applicable Container, of the Multi-Family's or Commercial Business' total waste; or,
 - b. The Multi-Family's or Commercial Business' total Solid Waste Collection service is less than two (2) cubic yards per week, and SSGCOW or SSBCOW subject to Collection in a Blue Container or Green Container comprises less than ten (10) gallons per week, per applicable Container, of the Multi-Family's or Commercial Business' total waste.
 3. **Physical Space Waivers. (Three-, Three-Plus-, and Two-Container Systems Only)** The City may waive a Multi-Family's, Commercial Business', or its Property Owner's obligation to comply with some or all of the Source Separated Recyclable Materials or SSGCOW Collection service requirements set forth in this Agreement, SB 1383 Regulations, and Chapter IV of Title 8 of the Municipal Code if the Multi-Family, Commercial Business, or its Property Owner provides documentation, or the City has evidence from its staff, Contractor, licensed architect, or licensed engineer demonstrating that the Premises lacks adequate space for Blue Containers and/or Green Containers.
 4. **Collection Frequency Waivers. (Three-, Three-Plus-, and Two-Container Systems Only)** City may allow the Contractor to provide Collection of Blue Containers, Gray Containers, or both once every fourteen (14) days, rather than once per week, for Customers that have been granted a Collection frequency waiver from the City.
- B. **Contractor Waiver Request on Behalf of Generator.** Upon reasonable belief that a Generator may qualify for a de minimis, physical space, or Collection frequency

waiver, Contractor may submit a request to the City to grant a waiver to the Generator, provided that adequate evidence of the de minimis, physical space, or Collection frequency waiver requirements specified in 14 CCR Section 18984.11 is included with the request. City shall review and approve or deny the waiver request. Contractor's request for consideration of a waiver shall include the Generator's name and address, type of Commercial Business or number of Multi-Family units if Customer is a Multi-Family premises, reasons Generator may be eligible for the waiver, and evidence such as, but not limited to: Service Level data, photo documentation, weight records, and technical assistance assessment results.

C. Contractor Review of Generator Waiver Requests.

1. Option 1: Requests Submitted to City with Contractor Review. Generators may submit requests for de minimis waivers, physical space waivers, and Collection frequency waivers to the City. Upon the request of the City, Contractor shall within ten (10) days of receipt of the City's request review the Generator's waiver application and inspect the Generator's Premises to verify the accuracy of the application.
2. Option 2: Requests Submitted to Contractor. Generators may submit requests for de minimis waivers, physical space waivers, and Collection frequency waivers to the Contractor. Contractor shall within ten (10) days review the Generator's waiver application and inspect the Generator's Premises to verify the accuracy of the application. Contractor shall provide documentation of the inspection, including the Contractor's recommendation to approve or deny the waiver request, and send this information to the City within fifteen (15) days of receipt of the Generator's waiver application for the City's review and approval. The City ultimately retains the right to approve or deny any application, regardless of the Contractor's recommendation. Contractor shall report information regarding waivers reviewed on a monthly basis.

D. Contractor Change in Customers' Service Levels. When the City grants a waiver to a Generator, the City shall notify the Contractor within five (5) days of the waiver approval with information on the Customer and any changes to the Service Level or Collection service requirements for the Customer. Contractor shall have ten (10) days to modify the Customer's Service Level and billing statement, as needed.

E. Waiver Reverification

It shall be the responsibility of the Contractor to verify that the Generators with de minimis, physical space constraint, or Collection frequency waivers continue to meet the waiver requirements set forth in this Section. Contractor shall conduct such reverifications of waivers through inspection of each Generator's Premises and review of applicable records at least once every five (5) years for de minimis and physical space constraint waivers, and once every two (2) years for Collection frequency waivers. Contractor shall maintain a record of each waiver verification

and provide a monthly report to the City documenting the waiver reverifications performed and recommendations to the City on those waivers that Contractor concludes are no longer warranted. The City shall make a final determination of the waiver eligibility of Generators.

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

8.8 Service Waiver Program Coordination

A. **Processing Facility Temporary Equipment or Operational Failure Waiver**

1. **Notification to the City.** Contractor, or its Subcontractor (such as a Facility operator), shall notify the City of any unforeseen operational restrictions that have been imposed upon an Approved/Designated Facility by a regulatory agency or any unforeseen equipment or operational failure that will temporarily prevent an Approved/Designated Facility from Processing and recovering Source Separated Recyclable Materials, SSGCOW, or Mixed Waste. Contractor or Subcontractor shall notify the City as soon as possible and no later than forty-eight (48) hours/days from the time of the incident. The notification shall include the following: (i) name of Approved/Designated Facility; (ii) the Recycling and Disposal Reporting System Number of the Approved/Designated Facility; (iii) date the Approved/Designated Facility became unable to Process Source Separated Recyclable Materials, SSGCOW, or Mixed Waste; (iv) description of the operational restrictions that have been imposed upon the Approved/Designated Facility by a regulatory agency or unforeseen equipment failure or operational restriction that occurred; (v) the period of time the Contractor anticipates the temporary inability of the Approved/Designated Facility to Process Source Separated Recyclable Materials, SSGCOW, or Mixed Waste; (vi) Contractor's proposed action plan to deliver materials to an alternative facility for Processing or Contractor's request for waiver to deliver Source Separated Recyclable Materials, SSGCOW, or Mixed Waste to the Approved/Designated Disposal Facility.
2. **Use of alternative facility or Waiver for Disposal of Materials.** Upon notification by Contractor or Subcontractor of an Approved/Designated Facility's inability to Process materials, City shall evaluate the notification and determine if City shall require Contractor to use an alternative facility or allow the Contractor to Transport the Source Separated Recyclable Materials, SSGCOW, or Mixed Waste to the Approved/Designated Disposal Facility for Disposal on a temporary basis for a time period

specified by the City. Upon City's decision, the City shall notify the Contractor of its requirement to use an alternative facility for Processing or to use the Approved Disposal Facility for Disposal, and the period of time that the City will allow the Source Separated Recyclable Materials, SSGCOW, or Mixed Waste to be redirected to the alternative facility or Approved/Designated Disposal Facility. Pursuant to 14 CCR Section 18984.13, the approved Disposal period shall not exceed ninety (90) days from the date the Approved/Designated Facility's Processing restriction or failure commenced. In such case, the Contractor must receive written permission from the City Contract Manager prior to depositing any Discarded Material in a Landfill.

3. **Record Keeping and Reporting.** Contractor shall maintain a record of any Approved/Designated Facility incidents and report this information to the City in.
 - B. **Disaster Waivers.** In the event of a disaster, the City may grant Contractor a waiver of some or all Discarded Materials Collection requirements under this Agreement and 14 CCR, Division 7, Chapter 12, Article 3 in the disaster-affected areas for the duration of the waiver, provided that such waiver has been approved by CalRecycle. Any resulting changes in Collection requirements shall be addressed as a change in scope.
 - C. **Removal of Material from Homeless Encampments and Illegal Disposal Sites.** The Contractor may, but is not required to, separate or recover Organic Waste that Contractor removes from homeless encampments and illegal disposal sites as part of an abatement activity to protect public health and safety. Contractor shall report the amount of Discarded Materials removed for Disposal from homeless encampments and illegal disposal sites.
 - D. **Quarantined Waste.** If approved by the City, Contractor may Dispose of specific types of SSGCOW that are subject to quarantine and meet the requirements described in 14 CCR Section 18984.13(d) for a period of time specified by the City or until City provides notice that the quarantine has been removed and directs Contractor to Transport the SSGCOW to the Approved/Designated Facility(ies) for such material.

Contractor shall maintain records and submit reports regarding compliance agreements for quarantined SSGCOW that are Disposed of pursuant to this subsection.

8.9 Inspection and Enforcement

Contractor Performance of Compliance Reviews

A. **Annual Compliance Reviews**

1. **General.** Contractor shall perform compliance reviews described in this Section commencing January 1, 2023, and at least annually thereafter, unless otherwise noted.
2. **Commercial Generator Compliance Reviews**

Option 1: Applicable for Three-, Three-Plus-, or Two-Container Systems

Contractor shall complete a compliance review of all Multi-Family and Commercial Customers that generate two (2) cubic yards or more per week of Solid Waste, including Organic Waste, to determine their compliance with: (i) Generator requirements under the City's Discarded Materials Collection program; and, (ii) if applicable for the Generator, (if Self-Haul is allowed) Self-Hauling requirements pursuant to 14 CCR Section 18988.3 and Chapter IV of Title 8 of the Municipal Code, including whether a Multi-Family or Commercial Business is complying through Back-Hauling SSGCOW and/or Source Separated Recyclable Materials and/or SSBCOW. The compliance review shall mean a "desk" review of records to determine Customers' compliance with the above requirements and does not necessarily require on-site observation of service; however, the City may request that the Contractor perform an on-site observation of service in addition to or in lieu of the desk review if needed to obtain the required information.

Option 2: Applicable for One-Container System

Contractor shall complete a compliance review of all Multi-Family and Commercial Customers that generate two (2) cubic yards or more per week of Solid Waste, including Organic Waste, to determine their compliance with: (i) Generator requirements under the City's Discarded Materials Collection program, including documenting if the Commercial or Multi-Family Customer is Transporting Discarded Materials to an Approved/Designated High Diversion Organic Waste Processing Facility; and, (ii) if applicable for the Generator, (if Self-Haul is allowed) Self-Hauling requirements pursuant to 14 CCR Section 18988.3 and Chapter IV of Title 8 of the Municipal Code, including whether a Multi-Family or Commercial Business is complying through Back-Hauling Organic Waste.

3. **Annual Hauler Route Review.** (Required for Three-, Three-Plus-, or Two-

-Container Systems) Beginning January 1, 2022 and annually thereafter, the Contractor shall conduct annual Hauler Route reviews of Commercial, Multi-Family, and Single-Family Generators for compliance with the City's Discarded Materials Collection program and Container contamination monitoring. These Hauler Route reviews may be performed concurrently with the contamination monitoring Hauler Route reviews, provided that Contractor documents a reasonable sampling of Generators for which compliance with the City's Discarded Materials Collection program during the Hauler Route review was assessed.

B. **Generator Waiver Inspections.** In accordance with Section 8.8, Contractor shall verify Multi-Family and Commercial Generator de minimis and physical space constraint waivers, if applicable, at least once every five (5) years from the date of issuance of the waiver, and verify Collection frequency waivers at least once every two (2) years from the date of issuance of the waiver.

C. **Compliance Review Process**

1. **Number of Reviews.** The Contractor shall conduct a sufficient number of compliance reviews, Hauler Route reviews, and inspections of Generators, to adequately determine the Generators' overall compliance with SB 1383 Regulations, AB 1826, AB 341, and Chapter IV of Title 8 of the Municipal Code. City reserves the right to require additional inspections, if the City determines that the amount of inspections conducted by the Contractor is insufficient. City may require the Contractor to prioritize inspections of entities that the City determines are more likely to be out of compliance.
2. **Non-Compliant Entities.** From January 1, 2022 through December 31, 2023, when compliance reviews are performed by Contractor pursuant to Section 8.9.A, Contractor shall provide educational materials in response to violations. Contractor shall provide these educational materials to the non-compliant Customers and Generators within thirty (30) days of determination of non-compliance or immediately upon determination of non-compliance if such non-compliance is determined during an inspection or Hauler Route review. Contractor shall document the non-compliant Customers and Generators and the date and type of education materials provided, and shall report such information to the City. Beginning January 1, 2024, the Contractor shall, in addition to providing the education materials described in this subsection, document non-compliant Customers and Generators determined through Contractor's compliance reviews pursuant to Section 9.9.A, and shall report all Customers and Generators with violations of SB 1383 Regulations to the. The City shall be responsible for subsequent enforcement action against the Generators.
3. **Documentation of Inspection Actions.** The Contractor shall generate a written and/or electronic record and maintain documentation for each inspection, Hauler Route review, and compliance review conducted.

8.10 Service Complaints

A. **Documentation of Complaints.**

1. **General.** The Contractor agrees to maintain a computer database log of all oral and written complaints received by Contractor from Customers or other Persons. Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all Customer complaints. Contractor agrees to document and maintain for a period of at least thirty-six (36) months on a form or log all Complaints registered by Customers and Persons. Contractor shall record complaints received related to SB 1383 Regulatory non-compliance in its log in a manner further described in subsection A.2 below.
2. **SB 1383 Regulatory Non-Compliance Complaints.**

For complaints received in which the Person alleges that an entity is in violation of SB 1383 Regulations, Contractor shall document: (i) the complaint as received, (ii) the date the Contractor investigated the complaint, (iii) documentation on the findings of the investigation, (iv) any photographic or other evidence collected during the investigation, and (v) Contractor's recommendation to the City on whether the entity investigated is in violation of SB 1383 Regulations based on Contractor's investigation. Contractor shall provide this information in a brief complaint report to the City for each SB 1383 Regulatory non-compliance complaint within fifteen (15) days of receipt of such complaint, and a quarterly summary report of SB 1383 Regulatory non-compliance complaints.

B. **Investigation of SB 1383 Regulatory Non-Compliance Complaints.** Option B.1: Contractor Investigation of SB1383 Non-Compliance Complaints

1. **Investigation.** Contractor shall commence an investigation, within ninety (90) days or insert shorter timeframe if desired of receiving a complaint, in the following circumstances: (i) upon Contractor receipt of a complaint that an entity may not be compliant with SB 1383 Regulations and if City determines that the allegations against the entity, if true, would constitute a violation of SB 1383 Regulations; and, (ii) upon City request to investigate a complaint received by City, in which City determines that the allegations against the entity, if true, would constitute a violation of SB 1383 Regulations. Contractor is required to investigate complaints against Customers and Generators, but not against Food Recovery Organizations, Food Recovery Services, and other entities regulated by SB 1383 Regulations.

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

- a. Reviewing the Service Level of the entity that may not be compliant with

SB 1383 Regulations;

- b. Reviewing the waiver list to determine if the entity has a valid de minimis, physical space constraint, or Collection frequency waiver;
 - c. Reviewing the Self-Haul registration list to determine if the entity has registered and reviewing the entity's reported Self-Haul information;
 - d. Determining if the entity is located in a Low-Population Area and/or High-Elevation Area;
 - e. Inspecting Premises of the entity identified by the complainant, if warranted; and/or
 - f. Contacting the entity to gather more information, if warranted.
2. **Reporting.** Within fifteen (15) days of completing an investigation of an SB 1383 Regulatory non-compliance complaint, Contractor shall submit an investigation complaint report that documents the investigation performed and recommends to City on whether or not the entity investigated is in violation of SB 1383 Regulations based on the Contractor's investigation. The City shall make a final determination of the allegations against the entity.

B. Investigation of SB 1383 Regulatory Non-Compliance Complaints

Option B.2: City or Third Party Investigation of SB 1383 Regulatory Non-Compliance Complaints

City, or its designee, shall be responsible for investigating complaints received by the City that an entity may not be compliant with SB 1383 Regulations. Within five (5) days of the City's or its agent's request, Contractor shall provide City or its agent with the Customer's then-current Service Level information and other documentation that may be useful in the investigation, such as records of the Customer's two most recent change(s) in Service Level and other Customer service records.

Option 3: Combination Options 1 and 2

**SECTION 9.
MINIMUM STANDARDS FOR CONTRACTOR'S SOLID
WASTE HANDLING SERVICE COLLECTION VEHICLES**

9.1 General

Contractor shall provide vehicles for the Collection of Solid Waste ("Collection Vehicles") that are sufficient in number and capacity to efficiently perform the work required by this

Agreement in strict accordance with its terms. Contractor is expressly obligated to provide such Collection Vehicles and routes as are required to meet the service standards set forth herein. Contractor shall have available on Collection days sufficient back-up vehicles for each type of Collection Vehicle used to respond to complaints and emergencies. Upon or prior to the Effective Date of this Agreement and prior to the start of any extension period of this Agreement pursuant to Section 5, Contractor shall provide City with a report containing the information required under South Coast Air Quality Management District's Rule 1193(d)(7). Notwithstanding anything in this Agreement to the contrary, the vehicles Contractor utilizes solely for delivery of Bins and for pick-up of Bulky Items shall not be considered "Collection Vehicles" for purposes of Section 9.3(A), Section 9.3(B), and Section 9.3(C).

9.2 Air Quality/Fuel Requirements

Contractor's Collection Vehicles shall comply with all rules and regulations of the South Coast Air Quality Management District, the Air Resource Board, and any other regulatory body that may be in effect during the Term of this Agreement, as well as other federal, state and local laws and regulations that may be enacted during the Term of this Agreement. Contractor's Collection Vehicles shall meet or exceed such air quality standards as may be adopted by the forgoing regulatory bodies during the Term. Contractor's Collection Vehicles shall comply with the requirements in the South Coast Air Quality Management District's Rule 1193.

A. **Renewable Natural Gas (RNG) Vehicles**

All Collection vehicles used by Contractor under this Agreement shall be powered by RNG generated by the {insert name of publicly-owned treatment works in-vessel digestion facility} or powered by RNG that is purchased through a wheeling agreement with a party(ies), provided that the wheeling agreement is for purchase of gas derived from Organic Waste that has been diverted from a Landfill and Processed at an in-vessel digestion Facility that is permitted or otherwise authorized by Title 14 of CCR to recover Organic Waste and meets the requirements of 14 CCR Section 18993.1(h). Contractor shall comply with this requirement no later than insert date. Upon City's request, Contractor shall obtain and provide the City with a written certification by an authorized representative of the publicly-owned treatment works or the wheeling agreement service provider certifying that the in-vessel

9.3 Specific Requirements

Each Collection Vehicle utilized by Contractor in the performance of this Agreement shall meet the following minimum standards:

- (A) Each Collection Vehicle must be fueled by Compressed Natural Gas ("CNG").
- (B) Each Collection Vehicle shall be equipped with an on-board methane detection system capable of detecting methane leaks in the cab of the Collection Vehicle.
- (C) Each Collection Vehicle shall be equipped with a tag axle.

(D) Each Collection Vehicle shall be registered with the California Department of Motor Vehicles.

(E) Each Collection Vehicle shall be inspected regularly by Contractor to ensure it meets the requirements of the California Vehicle Code and the California Highway Patrol. Contractor shall provide copies of its Biannual Inspection of Terminal ("BIT") inspection reports to City within 30 days of its receipt of such reports and shall make all records related to its vehicles, including Contractor's maintenance records, available to City upon request by the Director.

(F) Each Collection Vehicle shall be equipped with devices capable of covering every open section of the vehicle in which Solid Waste may be placed and, while operating upon the public rights-of-way, shall be covered so as to prevent any Solid Waste from falling or being blown or otherwise dislodged from the vehicle.

(G) Each Collection Vehicle shall be continuously maintained so as to both: (1) meet the highest industry standards with regards to efforts to prevent liquid from leaking and to the degree possible ensure each Collection Vehicle is "watertight" and "leak-proof" and, (2) at all times comply with the provisions of all laws and regulations including the Vehicle Code and any applicable NPDES permit, with regard to materials leaking from Collection Vehicles. Contractor shall be responsible to promptly clean any spillage or Solid Waste that leaks or otherwise escapes the vehicle.

(H) As frequently as determined necessary by the Director, each Collection Vehicle shall be painted, shall have routine body work performed, and shall be cleaned, so that such vehicles do not become unsightly, as determined by the Director. Each vehicle shall be painted with Contractor's colors and identifying information as required herein.

(I) Contractor's name, local or toll free telephone number, and a vehicle number shall be visibly printed or painted in letters not less than five (5) inches in height so as to be legible on both sides of each Collection Vehicle. Any other information or signage printed, painted, or displayed on Contractor's Collection Vehicles, when such Vehicles are providing Collection services within City Limits, shall be subject to approval by City.

(J) Each Collection Vehicle shall be maintained in a clean and sanitary condition both inside and out.

(K) Each Collection Vehicle shall carry a broom, shovel, and operable fire extinguisher, and shall be equipped with a communication device sufficient to allow the driver to communicate directly with Contractor's dispatcher and/or main office.

(L) Each Collection Vehicle shall be kept in good repair and working order, and shall be equipped with appropriate safety equipment, including any new safety related technologies that become standard in the waste industry, and at a minimum shall have a video monitor based back-up system, or its equivalent. Contractor shall keep a sufficient supply of replacement parts and equipment on hand to ensure adequate vehicle

maintenance and timely and continuous performance of the services contemplated by this Agreement.

(M) Contractor shall inspect each Collection Vehicle daily to ensure that all equipment is operating properly. Collection Vehicles which are not operating properly shall be removed from service until repaired and operating properly. Contractor shall perform all scheduled maintenance functions upon Collection Vehicles in accordance with the manufacturer's specifications and schedule. Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Contractor shall keep accurate records of all Collection Vehicle maintenance and repair, recorded according to date and mileage, including signed verifications that repairs and maintenance have been properly performed, and shall make such records available to City upon request.

(N) No Collection Vehicle shall be utilized if it is leaking brake, hydraulic, or other fluids, and Contractor shall clean up any leaks or spills from its vehicles per the NPDES permits in effect at the time. No fluids shall be washed into storm drains at any time. All NPDES dry-cleaning measures shall be complied with. All Collection Vehicles must be equipped with absorbent for such cleanup efforts.

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

(P) Contractor shall utilize Collection Vehicles of a size, weight, nature, and type so as to not be unreasonably intrusive on the community with respect to noise, emissions, maneuverability, safety, and other factors and to avoid or minimize pavement damage and wear and tear of the street or adjacent properties, as approved by the Director.

(Q) Contractor shall not load Collection Vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local laws or regulations.

(R) Noise levels of equipment used for Collection shall not exceed 75db (seventy-five decibels) when measured at a distance of twenty-five (25) feet from the vehicle, five (5) feet from the ground; provided, however, in the event there is any conflict with this section and the noises levels permitted under the City's Municipal Code, as such may be amended from time to time, the provisions in the City's Municipal Code shall apply. Contractor shall submit to City, upon City's request, a certificate of Collection Vehicle noise level testing, by an independent testing entity, for any Collection Vehicle. Nothing in this Agreement shall be construed as granting Contractor any rights or waivers to violate any Applicable Laws.

(S) At the start of the Term, all Collection Vehicles shall be less than two (2) years old, unless otherwise approved by the City Contract Manager. It is the intent that the

Collection Vehicles placed into service at the start of the Term shall continue to be used throughout the Term. Contractor may, however, at any time during the Term replace the Collection Vehicles currently in use with newer Collection Vehicles.

(T) All Collection Vehicles used by Contractor to perform Collection services under this Agreement shall be equipped with on-board routing systems capable of tracking vehicle miles traveled (VMT). VMT systems must be capable of generating reports as requested by City. In addition, all Collection Vehicles shall, at a minimum, be equipped with a global positioning system (GPS) and Contractor shall be able to provide evidence of the route location of each Collection Vehicle throughout each service day. City, in its sole discretion, may grant Contractor a waiver of this requirement due to the unavailability of equipment or delays in manufacture; evidence of such unavailability or delay shall be used by City to determine the period for which the waiver shall apply.

(U) All Collection Vehicles used by Contractor to perform Collection services under this Agreement shall be equipped with "right-hand" monitoring/safety equipment to aid drivers in identifying pedestrians and bikers near the collection vehicle.

9.4 Costs of Operation and Damages

Contractor shall be responsible for any costs incurred in connection with ensuring all Collection Vehicles comply with all Applicable Laws, including without limitation any such laws and regulations that may now exist or hereinafter be adopted relating to noise, fuels, emission standards, or weight limits.

9.5 City Inspection

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

9.6 Correction of Defects and Removal of Vehicles from Use within City

Contractor agrees to immediately remove from service, and replace or repair, to the City's satisfaction, any Collection Vehicle which City determines to be of unsightly appearance, unsafe, unsanitary, leaking, out of compliance with any law or regulation or this Agreement, or otherwise in an unsatisfactory operating condition; and any such vehicle shall not be returned to service until the Director gives his written consent for its return.

SECTION 10. CONTRACTOR'S SOLID WASTE HANDLING SERVICE PERSONNEL

10.1 Uniforms

Each of Contractor's Collection employees shall wear a clean uniform bearing Contractor's name. Uniforms must be well maintained and in good condition.

10.2 Identification of Employees

Contractor shall provide identification badges, cards or similar devices, for all of its employees, and all authorized subcontractors, who may make personal contact with residents of the City. City may require Contractor to notify Customers yearly, or more frequently if determined necessary by City, of the form of said identification.

10.3 Employee List

Contractor shall provide a list of current employees and authorized subcontractors to City upon request.

10.4 Driver's License

Each employee operating a vehicle as part of his or her duties shall, at all times, carry a valid operator's license for the type of vehicle he or she is operating.

10.5 Screening of Field Employees

Contractor shall make reasonable efforts to determine if its employees working in the field (i.e., drivers of Collection Vehicles, and employees otherwise involved in Collection at Customer Premises) have been convicted of a felony, and shall identify any such employees known to it to City. City shall have the ability to require that any employee so identified by Contractor not work in the field within City.

10.6 [intentionally omitted]

10.7 Training and Legal Compliance

Contractor shall provide operating and safety training that meets minimum Occupational Safety and Health Administration ("OSHA") standards for all personnel, and shall comply with all laws and regulations applicable to its employees and personnel. Contractor shall periodically train employees on all the specific requirements of this Agreement applicable to the employee's effective performance of his or her duties. Not less than once per calendar year, Contractor shall be required to submit to City a copy of the training material and record documentation demonstrating the "Agreement-specific" training has occurred. In addition, Contractor shall require that all new employees with duties related to this Agreement receive the above "Agreement-specific" training as part of the orientation process, and Contractor shall provide documentation to City demonstrating said training has occurred.

10.8 Customer Service

10.8.1 Office Hours

Contractor shall maintain a local office, within the City, for communication with the public that at a minimum will be open from 8:00 a.m. to 5:00 p.m. Monday through Friday, holidays excepted. At least one responsible and qualified representative of Contractor, capable of communicating in English and Spanish, shall be present and available during all times that an

office is required to be open as noted above (“Office Hours”), for personal communication with the public regarding Billings (including the acceptance of in person Bill payments), complaints, customer service inquiries, etc. and a similarly qualified person shall be available for communication with the public by phone during any times other than Office Hours when Collection is occurring.

10.8.2 Telephone Customer Service Requirements

10.8.2.1 Toll Free Number

Contractor shall maintain a toll free telephone number that rings at an office at all times during Office Hours. Both English and Spanish speaking personnel will be available during Office Hours to assist Customers with telephonic inquiries. Contractor shall have the ability (through the use of outside resources or otherwise) to communicate with Customers who only speak Spanish, Korean, Mandarin Chinese, or Tagalog to ensure their inquiries, questions, complaints and other matters are dealt with in a reasonably timely fashion. All such personnel shall be polite and responsive, and shall be sufficiently knowledgeable, and have the authority to respond and/or advise Customers seeking assistance. Contractor’s telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days. Contractor shall provide City with a 24-hour emergency telephone number to a live person, not voice-mail.

10.8.2.2 Call Responsiveness

Contractor shall make reasonable attempts to answer all phone calls within five (5) rings. If a call has been placed on hold for three (3) minutes, the caller will either be switched to a message center which shall be responsible to obtain the caller’s address and phone number, or a Customer service representative will obtain the Customer’s address and a number at which the call can be returned. Contractor shall make at least three (3) attempts within the next twenty-four (24) hour period to return the call, with the first such attempt not more than one (1) hour after the caller leaves the message. If Contractor is unsuccessful in contacting the Customer after following this procedure, it shall send a letter to the caller indicating its efforts.

10.8.3 Complaint Documentation

All service complaints shall be directed to Contractor. Contractor shall log all complaints received and said log shall include the date and time the complaint was received, the name, address and telephone number of the complaining party, a description of the complaint, the name of the employee recording the complaint and the action taken by Contractor to respond to and remedy the complaint. All written Customer complaints and inquiries shall be date-stamped when received. All complaints shall be initially responded to within one (1) business day (Monday through Friday) of receipt. Contractor shall log action taken to respond to and remedy the complaint. Daily logs of complaints shall be retained for a minimum of twenty-four (24) months. All Customer service records and logs kept by Contractor shall be available to City upon request. City shall, at any time during regular Office Hours, have access to Contractor’s Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints. Contractor shall provide to City on a monthly, quarterly, and

annual basis, a complaint log, in a form satisfactory to the City, that includes all of the complaints logged pursuant to this Section, the complainant and the resolution.

10.8.4 Resolution of Customer Complaints

Disputes between Contractor and its Customers regarding the services provided in accordance with this Agreement may be resolved by the City. The City's decision shall be final and binding. Intervention by the City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Contractor. Nothing in this Section is intended to affect the remedies of third parties against Contractor.

10.8.5 Government Liaison

Contractor shall designate in writing a "Government Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Customer complaints. City shall have the right to approve Contractor's choice for a liaison. It is anticipated that the Government Liaison will regularly attend City meetings related to Contractor's performance of the Agreement and City events involving community outreach programs.

SECTION 11. CONTRACTOR'S CONSIDERATION

In addition to any other consideration set forth herein, as part of its consideration for entering this Agreement, and for the non-exclusive franchise, right and privilege to provide Solid Waste Handling Services within City as specified herein Contractor shall provide the following:

11.1 Annual Compliance Monitoring & Franchise Support Fee

Concurrently with the execution of this Agreement, and annually thereafter on or before June 1st, Contractor shall pay to City a proportionate share of the total One Hundred and Twenty Thousand Dollars (\$120,000.00) herein established to reimburse the City for its SB 1383 compliance costs, AB 939 compliance costs, and the costs for activities related to oversight and enforcement of all Agreement terms. The Contractor's proportionate share will be calculated on its relative gross receipts from franchise service during the previous fiscal year. The Contractor will report its gross receipts to the City via quarterly franchise fee statements and provide access to their accounting records to the City for verification purposes.

This \$120,000 annual Compliance Monitoring & Franchise Support Fee will be adjusted annually based upon the change in the Consumer Price Index (CPI) as measured by the Anaheim-Long Beach-Los Angeles data series for All Consumers. On or before May 1st of each year, the City will provide each Contractor with the amount of the adjusted Compliance Monitoring & Franchise Support Fee for its proportionate share responsibility.

11.2 Franchise Fee

Contractor shall pay to City, a Franchise Fee equal to sixteen percent (16%) of Contractor's annual Gross Receipts each year, or portion thereof, throughout the Term of this Agreement. Said Franchise Fee shall be paid to City on a calendar quarterly basis no later than thirty (30) days after

the end of each calendar quarter. The amount of each payment shall be equal to sixteen percent (16%) of Contractor's Gross Receipts in the calendar quarter preceding the date payment was due. The Franchise Fee due hereunder shall apply to Gross Receipts of Contractor collected after the expiration of the Term hereof relating to Contractor's performance during the Term hereof. Franchise Fees shall be accompanied by a statement certified by an officer of Contractor attesting to the accuracy of the amounts paid, and setting forth the basis for their calculation in a manner acceptable to City.

SECTION 12. CHARGE FOR LATE PAYMENTS

In the event Contractor fails to timely make any of the payments provided for in this Agreement, including, but not limited to, reimbursements, Franchise Fees, payments of funds collected in connection with billing services, Contractor shall pay to City, as additional consideration, a sum of money equal to five percent (5%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment including, but not limited to, the cost of administering, accounting for, and collecting said delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving the revenue. In addition, any amounts not paid to City by Contractor within thirty (30) days of the due date shall be subject to interest in the amount of one and one-half percent (1.5%) per month, or any portion thereof, that the amount due remains past due.

SECTION 13. CONTRACTOR'S COMPENSATION, BILLING SERVICES AND SYSTEMS

13.1 Compensation; Billing

Contractor shall provide services pursuant to this Agreement at rates it sets, charges to, and collects from Customers and Responsible Customers. Contractor shall provide all Customers, or Responsible Customers, where applicable, with itemized Bills, detailing charges for all services, including charges for late payments, as well as the period of service to which the Bill applies. Contractor acknowledges that it, and not Customers nor Responsible Customers, is to pay a Franchise Fee and the other fees noted herein to City as consideration for this Agreement. Accordingly, Contractor's Bills shall not include separate itemization of a "Franchise Fee" or other similar designation relating to fees which Contractor is required to pay to City.

Billings may be made on a monthly basis for all Customers and Responsible Customers. Premises ordering service after the first of the month or canceling service prior to the end of the month shall be charged on a prorated per-pickup basis.

A. General Billing Requirements.

1. **Contractor Responsible.** Contractor shall bill all Customers and be solely responsible for collecting payment from Customers. Billing shall be performed on the basis of services rendered and this Agreement shall create no obligation on the part of any Person on the sole basis of the Ownership

of property. Contractor shall be responsible for collecting bad debt.

2. **Bill Inserts.** Contractor shall include bill inserts in accordance with Section 8.4.
 3. **Records.** Contractor shall maintain copies of all billings and receipts, each in chronological order, for the Term of this Agreement, for inspection and verification by the City Contract Manager at any reasonable time but in no case more than seven (7) calendar days after receiving a request to do so.
- B. **Rates for Waivers.** Contractor shall establish Rates for any Customers that have been granted de minimis, physical space constraint, Collection frequency, low population, elevation, disaster, and/or emergency waivers pursuant to Sections 8.7 and 8.8. Contractor shall ensure that accurate records are maintained for such waivers and Customers are billed properly.
- C. **Application of Contamination Surcharges.** In accordance with Section 8.3.1.C.4, the Contractor is required to assess contamination Processing fees on Customers with repeated occurrences of excess contamination. Any contamination Processing fees to be assessed for a Customer shall be included and itemized on the Customer's invoice for the billing period in which the Contractor notified the Customer of the assessment of the contamination Processing fee.
- D. **Universal Enrollment Process.** City requires that Generators are enrolled in Collection services pursuant to Chapter IV of Title 8 of the Municipal Code. Contractor shall assist the City in ensuring that the enrollment of Generators occurs in a timely and efficient manner. City and Contractor shall cooperatively develop and agree to a process no later than insert date.

Contractor shall maintain records and provide reports necessary for the City to verify the City-wide enrollment of Generators.

13.1.1 Suspension of Service Due to Non-Payment

Contractor may discontinue service to any Customer, or Responsible Customer, where applicable, as set forth in this Section. Customers or Responsible Customers who have not remitted required payments within sixty (60) days after the date of Billing shall be notified on forms approved by the Director. Said forms shall contain a statement that services may be discontinued fifteen (15) days from the date of the notice if payment is not made before that time. If payment is not made by the expiration of said fifteen (15) day period, Contractor must contact City and advise of the delinquency and may discontinue service to that Customer or Responsible Customer, forty-eight (48) hours thereafter with City's prior written consent. Contractor shall resume Solid Waste Collection on the next regularly scheduled Collection day for any Customer or Responsible Customer whose service is discontinued upon receipt of payment of delinquent fees and any related service restart charges, or at such sooner time as directed to do so by City. Contractor may not charge for service during any period in which service was suspended. Any delinquent fees or service charges to be imposed in connection with delinquent accounts shall be set by Contractor

and be subject to Director approval. A deposit may be required of accounts which have been discontinued for non-payment prior to re-instituting service at such accounts. Notwithstanding the above, in the event of a Billing dispute and/or to avoid negatively impacting public health or safety, Contractor shall not suspend service to any Customer or Responsible Customer without the City's prior written consent, and shall continue to provide service to any Customer or Responsible Customer if directed to do so by City without regard to the status of said Customer's or Responsible Customer's account.

13.2 Minimum Requirements for Billing Statements

Bills shall be prepared and provided in a manner that adequately presents the services rendered in an easy to understand and verifiable format. The format of Contractor's Bills must be approved by City prior to the commencement of Solid Waste Collection services under this Agreement. City reserves the right to require changes to the Bill format during the Term of this Agreement. In addition to any other pertinent data, Billing statements mailed by Contractor shall be printed to contain the following information, and the language contemplated for compliance with this requirement shall be subject to the Director's approval:

(A) A "statement date" indicating the date the Bill is generated and mailed.

(B) A notice to Customers or Responsible Customers that payments are due within thirty (30) days of the statement date, an advisement that the Customer's or Responsible Customer's account will become delinquent if payment is not received by the 60th day following the statement date, an advisement of the date and time by which payments must be received in order to avoid delinquent fees (i.e., 4:00 p.m. on the 75th day following the statement date), and a notification of the amount of fees that will be imposed and the potential for service interruptions if payments are not received by the specified date and time.

(C) An advisement to Customers and Responsible Customers that payment can be made in the following manner:

(1) by mailing payment to Contractor at such address as Contractor may designate;

(2) by automatic withdrawal from a checking account;

(3) by major credit card on-line (i.e., via the Internet); or

(4) in person at Contractor's local office pursuant to Section 10.8.1 by cash, check, credit card or other acceptable forms of payment.

(D) An advisement that inquiries relating to Solid Waste Collection should be directed to Contractor, including an address, phone number and internet site, for such inquiries.

13.3 Billing System

13.3.1 Computerization of Account Information

Contractor shall provide and maintain, at its expense, computer equipment sufficient to operate pertinent computer programs and otherwise provide the services required by this Section. Contractor shall create, at its own expense, computer programs sufficient to operate a computerized billing system, permanently maintain all account records and otherwise meet the requirements of this Section.

13.3.2 Minimum Computer Programming Requirements

In addition to any other requirements set forth herein, the programs created by Contractor to operate and maintain the billing system shall at a minimum be able to perform the following functions:

(A) create a permanent record of any adjustment to a Customer's or Responsible Customer's account;

(B) work in connection with a backup system such that all Customer and Responsible Customer account data and records are protected from a computer failure and permanently preserved on not less than a daily basis; and

(C) allow Customers or Responsible Customers to make payments on-line (i.e., via the Internet) by a major credit card, automatic withdrawal from a checking account, mail, cash or other acceptable forms of payment.

13.3.3 Billing Inquiries

All Billing inquiries shall be entered into the computerized billing system. Contractor's computer programs shall keep a permanent record of all Billing inquiries and all adjustments to Customer's or Responsible Customer's Bills resulting therefrom.

13.4 Payment, Accounting Systems

13.4.1 Collection and Processing of Payments

13.4.1.1 Accounting and Deposit of Funds

All payments received by Contractor shall be appropriately credited to Customer and Responsible Customer accounts, deposited in a bank account and accounted for in a businesslike manner utilizing generally accepted accounting principles. To facilitate audits and record keeping Contractor shall make all withdrawals from its bank accounts by check, ACH debit/credit or wire, regardless of whether the withdrawal is to provide funds to City, Contractor, or any permissible subcontractor of Contractor.

13.4.1.2 Allocation of Funds

With respect to payments received from each Customer or Responsible Customer, unless a Customer or Responsible Customer specifically directs a different allocation, funds shall be allocated first to outstanding charges for Solid Waste Collection, from oldest to most recent charges, then to any related delinquency fees or service charges, and lastly to other administrative charges, up to the amount of any outstanding balance. Any overpayment shall be credited to future Bills in the same sequence, or returned to Customers or Responsible Customers as appropriate.

SECTION 14. FAITHFUL PERFORMANCE

14.1 Surety

Contemporaneously with execution of this Agreement, as security for Contractor's faithful performance of all obligations of this Agreement, Contractor shall provide a surety mechanism (the "Surety") as more fully defined below in the amount of Sixty-Thousand Dollars (\$60,000.00). The Surety may be comprised of either a performance bond, cash bond or an irrevocable letter of credit, or a combination of both. If a letter of credit is utilized to satisfy some or all of the Surety requirement, it shall be drawn upon a financial institution with an office within one hundred (100) miles of City, and otherwise in a form acceptable to the City Attorney. The performance bond, if any, shall be issued by a duly authorized corporate surety company authorized to do business in California, and in a form acceptable to the City Attorney. If a cash bond is utilized, it shall conform to the requirements of Section 14.2, below. The cost of the Surety shall be the sole responsibility of Contractor. The Surety shall be released within thirty (30) days after both (i) the expiration of the Term of this Agreement; and (ii) Contractor's satisfactory performance of all obligations hereunder.

14.1.1 Forfeiture of Surety

In the event Contractor shall for any reason become unable to, or fail in any way to, perform as required by this Agreement, City may declare a portion or all of the Surety, as may be necessary to recompense and make whole the City, forfeited to the City. Upon partial or full forfeiture of the Surety, Contractor shall restore the Surety to its original amount within thirty (30) days of the City's notice to do so. Failure to restore the Surety to its full amount within thirty (30) days shall be a material breach of this Agreement.

14.1.2 Use of Surety by City

Notwithstanding any provision hereof to the contrary, thirty (30) days following City providing Contractor with written notice of its failure to pay City any amount owing under this Agreement, either the letter of credit or performance bond comprising the Surety may be utilized by City for purposes including, but not limited to: (1) Payment of sums due under the terms of this Agreement which Contractor has failed to timely pay to City; and (2) Reimbursement of costs borne by City to correct violations of this Agreement not corrected by Contractor.

14.2 Requirements for Cash Bond

A Cash Bond in the amount of Sixty-Thousand Dollars (\$60,000.00) may be comprised of either a cash deposit or an irrevocable letter of credit, or a combination of both. If a letter of credit is utilized to satisfy some or all of the Cash Bond requirement, it shall be drawn upon a financial institution with an office within one hundred (100) miles of City, and otherwise in a form acceptable to the City Attorney. The cash deposit, if any, shall be deposited in an interest-bearing account at a financial institution with an office within one hundred (100) miles of City that is acceptable to the City Attorney. All interest on a cash deposit, if any, shall accrue to Contractor. Any costs associated with the Cash Bond shall be the sole responsibility of Contractor. The Cash Bond shall be released within thirty (30) days after both (i) the expiration of the Term of this Agreement; and (ii) Contractor's satisfactory performance of all obligations hereunder.

14.2.1 Forfeiture of Cash Bond

In the event Contractor shall for any reason become unable to, or fail in any way to, perform as required by this Agreement, City may declare a portion or all of the Cash Bond, as may be necessary to recompense and make whole the City, forfeited to the City. Upon partial or full forfeiture of the Cash Bond, Contractor shall restore the Cash Bond to its original amount within thirty (30) days of the City's notice to do so. Failure to restore the Cash Bond to its full amount within thirty (30) days shall be a material breach of this Agreement.

14.2.2 Use of Cash Bond by City

Notwithstanding any provision hereof to the contrary, thirty (30) days following City providing Contractor with written notice of its failure to pay City any amount owing under this Agreement, either the letter of credit or cash deposit comprising the Cash Bond may be utilized by City for purposes including, but not limited to: (1) Payment of sums due under the terms of this Agreement which Contractor has failed to timely pay to City; and (2) Reimbursement of costs borne by City to correct violations of this Agreement not corrected by Contractor.

14.3 Replacement Letter of Credit

City may draw upon the entire letter of credit (if any) utilized to meet Contractor's obligations pertaining to the Surety and Cash Bond, and convert it to a cash deposit, if Contractor fails to cause the letter of credit to be extended or replaced with another satisfactory letter of credit no later than sixty (60) days prior to its expiration.

SECTION 15. INSURANCE COVERAGE

Contractor shall procure and maintain during the entire Term of this Agreement the following types of insurance, and shall maintain the following minimum levels of coverage, which shall apply to any claims which may arise from or in connection with Contractor's performance hereunder or the actions or inactions of any of Contractor's officers, agents, representatives, employees, or subcontractors in connection with Contractor's performance. The insurance requirements hereunder in no way limit Contractor's various defense and indemnification obligations, or any other obligations as set forth herein.

15.1 Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The most recent editions of Insurance Services Office Commercial General Liability coverage (“occurrence” form CG 00 01).
2. The most recent editions of Insurance Services Office form number CA 00 01 1013 or CA 00 20 1013 covering Automobile Liability, code 1 “any auto”.
3. Workers’ Compensation insurance as required by the Labor Code of the State of California and Employers’ Liability insurance.

15.2 Minimum Limits of Insurance

Contractor shall maintain in force for the Term of this Agreement limits no less than:

15.2.1 Commercial General Liability

Ten Million Dollars (\$10,000,000.00) limit aggregate and Five Million Dollars (\$5,000,000.00) limit per occurrence for bodily injury, personal injury and property damage. Such limits can be achieved through a combination of primary and excess liability policies.

15.2.2 Automobile Liability

Ten Million Dollars (\$10,000,000.00) combined limit per accident for bodily injury and property damage. Such limits can be achieved through a combination of primary and excess liability policies.

15.2.3 Workers’ Compensation and Employers Liability

Workers’ compensation statutory limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000.00) per accident.

15.3 Deductibles and Self-Insured Retentions

All deductibles or self-insured retentions (i) shall be for the account of Contractor and paid entirely by Contractor without contribution from City.

15.4 Other Insurance Provisions

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

15.4.1 General Liability

City and its elected and appointed officials, officers, employees, agents and volunteers shall be named as additional insureds via blanket-form endorsements in connection with liability arising out of activities performed by or on behalf of Contractor; Premises owned, leased or used by Contractor. The coverage shall contain no special limitations on the scope of protection afforded

to City or its elected and appointed officials, officers, employees, agents and volunteers. As respects the liabilities assumed by Contractor under this Agreement, Contractor's insurance coverage shall be the primary insurance for the City and its elected and appointed officials, officers, employees, agents and volunteers in connection with the above enumerated categories. Any insurance or self-insurance maintained by City or its elected and appointed officials, officers, employees, agents and volunteers shall be in excess of Contractor's insurance and shall not contribute with it. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to City or its elected and appointed officials, officers, employees, agents and volunteers. Coverage shall state that Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

15.4.2 Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against City and its elected and appointed officials, officers, employees, agents and volunteers for losses arising from work performed by Contractor for City. A blanket-form Waiver of Subrogation Endorsement must be issued to City by the insurer.

15.4.3 Environmental Pollution Control Insurance

Contractor shall maintain either an endorsement to its general liability policy, or a separate policy of insurance covering environmental pollution and contamination that names the City as an additional insured via blanket-form endorsement. Said coverage shall be in the amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, and One Million Dollars (\$1,000,000.00) in the aggregate, and shall substantially comply with all other provisions set forth in Section 15.4.1.

15.4.4 All Coverages

Except for Worker's Compensation, each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice has been given to City. Additionally, Contractor agrees that it will not suspend, void or reduce in coverage or limits each insurance policy required by this clause without notice to the City.

15.5 Acceptability of Insurers

The insurance policies required by this Section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better, unless otherwise approved by the Director.

15.6 Verification of Coverage

Contractor shall furnish City with certificates of insurance and with original blanket-form endorsements affecting coverage required by this Section. The endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The

certificate shall be signed by a person authorized to evidence coverage on behalf of the insurer. The certificates and endorsements are to be on forms provided by or acceptable to City and are to be received and approved by City before work commences.

15.7 Loss or Reduction in Insurance

In the event that Contractor fails to retain or maintain insurance with the scope and amounts of coverage required hereunder, City shall have the right, but not the obligation to either terminate this Agreement, or obtain insurance coverage as required herein on behalf of Contractor and utilize funds from the Initial Surety and/or Agreement Surety defined in Section 14 to pay the cost of providing such coverage.

SECTION 16. ASSIGNMENT, SUBLETTING, AND TRANSFER; REQUIREMENTS AND LIMITATIONS

16.1 General

Contractor shall not assign any portion of or all of its rights, nor delegate, subcontract or otherwise transfer any portion of or all of its obligations under this Agreement (collectively referred to as an "Assignment") to any other Person without the prior approval by the City Council. The City Council has unfettered discretion to approve or deny such an Assignment. The City Council's exercise of its absolute and sole discretion may include City Council review and approval of any Assignment terms, including, but not limited to, insurance obligations, indemnification language, bonding requirements, and any and all other terms the City Council may in its unfettered discretion require. Any such Assignment made without the approval by the City Council shall be void and the attempted Assignment shall constitute a material breach of this Agreement.

16.2 Assignment to be Broadly Interpreted

For purposes of this Section, the term "Assignment" shall be given the broadest possible interpretation, and shall include, but not be limited to: (i) a sale, exchange or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of any membership interest of Contractor to a third party; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Contractor; (iv) any assignment by operation of law, including those resulting from mergers or acquisitions by or of Contractor or any of its Affiliates, insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding; (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Contractor; and (vi) Contractor's subcontracting of only a portion of its rights and obligations under this Agreement (e.g., the In-Home Bulky Item Collection service).

16.3 Nature of Agreement – Personal to Contractor

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

16.4 Procedure for Consideration of Assignment

If Contractor requests City's consideration of and consent to an Assignment, the City Council may deny, approve or conditionally approve such request in its sole and absolute discretion. Under no circumstances shall City be obliged to consider any proposed Assignment if Contractor is in default at any time during the period of consideration. Should the City consent to any Assignment request, such Assignment shall not take effect until all conditions relating to the City's approval have been met. Any request for an Assignment shall be made in a manner to be prescribed by the Director, and no request by Contractor for consent to an Assignment need be considered by City unless and until Contractor has met (or with respect to matters that would only occur upon completion of the Assignment if approved, made reasonable assurances that it will meet) the following requirements:

(A) Contractor shall undertake to pay City its reasonable direct and indirect expenses, including administrative, investigative, consulting, and attorneys' fees and costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such Assignment (collectively the "Administrative Assignment Fee"). An advance non-refundable payment in an amount to be determined by the Director towards the Administrative Assignment Fee shall be paid to the City prior to City's consideration of any Assignment request, although Contractor shall be responsible to pay all costs incurred by City in considering a request for Assignment, including those in excess of the aforesaid deposit amount, regardless of whether City consents to the Assignment.

(B) If requested to do so, Contractor shall furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years.

(C) Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, state or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with state, federal or local laws, including the Environmental Laws and that the assignee has provided City

with a complete list of such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Solid Waste management practices in accordance with sound Solid Waste management practices in full compliance with all federal, state and local laws regulating the Collection and disposal of Solid Waste including Hazardous Substances; and, (v) of any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

(D) The proposed assignee shall execute an agreement assuming all of Contractor's rights and liabilities under this Agreement.

SECTION 17. REVIEW OF SERVICES AND PERFORMANCE

17.1 Performance Hearing

(A) Commencing in or about January 2023, and on a biennial basis thereafter, City may hold a hearing to review Contractor's Solid Waste Collection efforts, source reduction, processing and other diversion services and overall performance under this Agreement (the "Solid Waste Services and Performance Review Hearing"). The purpose of the Solid Waste Services and Performance Review Hearing is to measure Contractor's compliance with Agreement terms and relevant Municipal Code sections governing the provision of franchised service.

(B) In addition to the Solid Waste Services and Performance Review Hearings City may hold in accordance with the immediately preceding paragraph, if the number of Customer complaints regarding Contractor's Solid Waste Collection are deemed by City to be excessive or the nature of to be significant, City may, at any time (subject to the paragraph immediately below), hold a Solid Waste Services and Performance Review Hearing.

(C) City shall notify Contractor of its intent to hold a Solid Waste Services and Performance Review Hearing at least ninety (90) days in advance thereof. The notice will indicate whether the hearing will occur before City staff, the City Council, or such other body as the City may designate in the notice. Forty-five (45) days after receiving notice from City of a Solid Waste Services and Performance Review Hearing, Contractor shall submit a report to City which contains City-requested information and such information as the Contractor wishes to have considered.

(D) The reports required by this Agreement regarding Customer complaints shall be used as one basis for review of Contractor's performance, and Contractor may submit other relevant performance information and reports for consideration at the Solid Waste Services and Performance Review Hearing. In addition to the above, City may request Contractor to submit any other specific information relating to its performance for consideration at the Solid Waste Services and Performance Review Hearing, and any Customer may submit comments or complaints during or before the Hearing, either orally

or in writing. Contractor shall be present at and participate in the Solid Waste Services and Performance Review Hearing.

SECTION 18.
CITY'S REMEDIES; DEFAULT AND TERMINATION

18.1 Notice of Default

If the Director determines that Contractor has defaulted in the performance of any obligation hereunder, or that Contractor's performance pursuant to this Agreement with respect to such matters has not been in conformity with reasonable industry standards which are obtained in similar cities in Southern California, the provisions of this Agreement, the requirements of the Municipal Code, the requirements of CalRecycle, including, but not limited to, requirements for source reduction and recycling or any other applicable federal, state, or local law or regulation, including but not limited to the laws governing transfer, storage, or disposal of special wastes, or hazardous wastes, the Director may provide written notice to Contractor of such default. The Director may, in such written notice, set a reasonable time within which correction of such default shall be made. Unless a longer or shorter time is otherwise specified by the Director, a reasonable time for correction shall be thirty (30) days from the date such written notice is given.

18.2 Failure to Cure

If Contractor fails to correct, to the satisfaction of the Director, all deficiencies contained in the written notice thereof within the specified time, or if it is not reasonably possible to correct such deficiencies within the specified time, and Contractor fails to commence to correct or remedy such deficiencies within the specified time and diligently effect such correction or remedy thereafter, then the Director may refer the matter to the City Council for review, or review the matter himself/herself.

18.3 Review by Director

If the Director reviews the matter and determines that Contractor has failed to properly or adequately cure any default set forth above, the Director, in the exercise of his/her discretion, may terminate this Agreement, or take such other action as he/she deems appropriate to pursue any remedy available to City. A decision or order of the Director shall be final and binding on Contractor unless Contractor files a "Notice of Appeal" with the City Clerk within five (5) business days of the date the notice of the Director's decision is given. The Director shall schedule any appeal for consideration by the City Council at the next feasible regular City Council Meeting following the date a Notice of Appeal is given to City.

18.4 City Council Review

In the event an appeal of a decision of the Director is filed, or if the Director refers the matter to the City Council without rendering a decision, the City Council shall set the matter for consideration before the City Council as an agenda item at either a regular, adjourned regular, or special meeting. In reviewing the matter, the City Council may consider any information reported by the Director regarding the deficiencies, and shall give Contractor, or its representatives and any other interested person, a reasonable opportunity to be heard. The City Council shall determine

whether Contractor has failed to properly or adequately perform as set forth above, and if so whether to terminate the Agreement, or to pursue any other remedy available to City.

18.5 Performance During Reviews

Contractor's performance under this Agreement is not excused during any period of time when its performance is under review as set forth above, including at any time prior to a final decision as to whether such performance is deficient.

18.6 Termination without Right to Cure

The above right of termination as a result of Contractor's failure to timely cure any deficiency is in addition to City's right to terminate this Agreement without affording Contractor an opportunity to cure in circumstances where Contractor is determined by City to have materially breached this Agreement. City shall thus be afforded the right to terminate this Agreement in the event of any material breach hereof by Contractor without affording Contractor the right to cure as a result of any action, inaction or circumstance which is a legally defined material breach, or is defined herein as a material breach, and/or under any of the following circumstances which are hereby specifically defined as material breaches:

- (A) If Contractor practices, or attempts to practice, any fraud upon City.
- (B) If Contractor becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.
- (C) If Contractor willfully violates any orders or rulings of any regulatory body having jurisdiction over Contractor relative to this Agreement. So long as City's rights are not prejudiced during the pendency of any challenge to such orders or rulings by Contractor, Contractor may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no material breach of this Agreement shall be deemed to have occurred until a final ruling has been rendered.
- (D) If Contractor ceases to provide Solid Waste Handling Services, including Collection of Solid Waste and/or Recyclable Material, as required under this Agreement over all or any portion of the Franchise Area for a period of seven (7) days or more, for any reason not specified as a force majeure event hereunder.
- (E) If Contractor fails to materially comply with any insurance or indemnification requirement set forth in this Agreement.
- (F) If City is required to pay any fine or penalty, which is not paid on its behalf by Contractor or which Contractor fails, refuses, neglects or is unable to pay or indemnify City against, relating to any diversion or other requirement of AB 939 and/or SB 1383.
- (G) If Contractor, Contractor's shareholders, Contractor's directors, or any senior management level employee of Contractor (defined for purposes of this provision as any representative of Contractor who regularly is in communication with or regularly has contact with any member of the City Council or Director, or any of Contractor's

employees who communicate with any City Department Head or City employee with decision making authority on matters related to the performance of the Agreement) is convicted of a Criminal Matter (as defined herein). For purposes of this Section the term Criminal Matter refers to any felony or misdemeanor offense having any relationship to either Solid Waste Handling Services or public corruption (including, without limitation, bribery, conflict of interest related allegations, vote selling, or any similar type charges).

**SECTION 19.
CONTRACTOR'S REMEDIES; ADMINISTRATIVE HEARING**

19.1 Administrative Hearing

Should Contractor contend that City is in breach of any aspect of this Agreement, it shall give notice to the Director requesting an administrative hearing on the allegation. The hearing shall occur as soon as reasonably possible, or on such date as mutually agreed by the Parties, and shall be held before an impartial hearing officer to be determined by the Director. The hearing officer shall make an advisory ruling on Contractor's allegations, and suggest a remedy if a breach by City is determined to exist. The hearing officer's ruling and recommendations shall become final and binding if the parties so agree in writing within thirty (30) days of the date notice of the decision is given to both parties. Otherwise, the hearing officer's ruling shall have no further force or effect.

19.2 Other Remedies; Claims

Contractor shall be entitled to all available remedies in law or equity for City's breach of this Agreement; provided, however, Contractor shall not file or otherwise commence any action against City, in law or equity, in any court, until after an administrative hearing as set forth above has been completed, and the above noted thirty (30) day period to accept the hearing officer's decision has passed, or either City or Contractor has given timely written notice to the other that it will not accept the hearing officer's decision.

19.3 Actions for Damages

As a prerequisite to the filing and maintenance of any action for damages by Contractor against City arising out of this Agreement, Contractor shall present a claim to City, as required by Government Code Section 910 et seq., within thirty (30) days of the date of the occurrence giving rise to the claim for damages.

**SECTION 20.
RIGHTS OF CITY TO PERFORM DURING EMERGENCY**

20.1 Provision of Service

Should Contractor, for any reason whatsoever, refuse or be unable to provide Solid Waste Handling Services for a period of more than forty-eight (48) hours, and if as a result thereof, Solid Waste should accumulate in City to such an extent or in such a manner that the Director finds that such accumulation endangers or menaces the public health, safety, or welfare, City shall have the right, upon twelve (12) hours prior written notice to Contractor, during the period of such

emergency, to temporarily take possession of any or all equipment and facilities of Contractor previously used in providing Collection, transportation, and disposal of Solid Waste and provide, through its own forces or otherwise, Solid Waste Handling Services which Contractor otherwise would be obligated to provide pursuant to this Agreement. Contractor agrees that in such event it shall fully cooperate with City to affect such a transfer of possession for City's use.

20.2 Possession of Equipment

Contractor agrees, that in the event of circumstances described in Section 20.1 above, City may take temporary possession of and use all of said equipment and facilities without paying Contractor any rental or other charge. Upon Contractor giving City notice that it is able to resume its normal responsibilities under this Agreement City shall relinquish possession of all of the above mentioned property to Contractor.

20.3 Exclusions from Right to Possession of Equipment without Compensation

Specifically excluded from the circumstances in which City may possess and utilize Contractor's equipment without compensation are circumstances in which Contractor fails or refuses to provide Solid Waste Handling Services hereunder for any reason which is not a force majeure event as defined herein.

SECTION 21. PRIVACY

Contractor shall strictly observe and protect the privacy rights of Customers. Information identifying individual Customers or the composition or contents of a Customer's Solid Waste stream, or any of the billing information pertaining to any Customers, shall not be revealed to any person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, ordinance, or regulation of a governmental agency having jurisdiction, or upon valid authorization of the Customer. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies or waste audits which may be required by AB 939 or this Agreement. Contractor shall not market or distribute, outside the normal course of its business, mailing lists with the names and addresses of Customers. The rights afforded Customers pursuant to this Section shall be in addition to any other privacy right afforded Customers pursuant to federal or state law.

SECTION 22. REPORTS AND ADVERSE INFORMATION

The Parties acknowledge that City will require reporting at various intervals by which information important to City can be compiled and analyzed. Throughout the Term, the Parties agree to work together to address City's needs with respect to the information to be contained in reports prepared by Contractor. The following is intended as a starting point in order to have established an objective baseline for reporting, but the frequency and content of the reports set forth below may be changed by agreement of the Parties; provided any such change is approved by the Director in writing. Quarterly reports shall be submitted within twenty (20) calendar days after the end of the calendar quarter.

22.1 Quarterly Reports

At a minimum, Contractor shall report the following to City on a quarterly basis:

AB 939 and SB 1383 compliance activities and various data for City-compliance measurement, monitoring, enforcement, and State reporting in the form and format established by the City; and

Reports on Gross Receipts and Franchise Fees due and payable to the City, in the form and format established by the City.

22.2 Format of Reports

Each quarterly report shall be submitted to City, addressed to the Director or his or her designee. Records related to performance of this Agreement shall be maintained by Contractor in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. The format of each report shall be approved by City. Contractor agrees to submit all reports to e-mail addresses designated by City in an electronic format approved by the City, compatible with City's software/computers at no additional charge.

22.3 Adverse Information

(A) Contractor shall provide City two (2) copies of all reports and other material adversely affecting this Agreement submitted by Contractor to the United States Environmental Protection Agency, CalRecycle, the California Regional Water Quality Control Board, and any other federal, state, regional, or local regulatory agency. Copies shall be submitted to City simultaneously with Contractor's filing of such matters with said agencies. Contractor's routine correspondence to said agencies need not be automatically submitted to City, but shall be made available to City upon written request.

(B) Contractor shall submit to City copies of all pleadings, applications, notifications, communications, and documents of any kind submitted by Contractor to, as well as copies of all decisions, correspondence, and actions by, any federal, state, and local courts, regulatory agencies, and other government bodies relating in any manner to Contractor's performance of services pursuant to this Agreement. To the degree authorized by law, any confidential data exempt from public disclosure shall be retained in confidence by City and its authorized agents and shall not be made available for public inspection.

(C) Contractor shall submit to City such other information or reports in such forms and at such times as City may reasonably request or require.

(D) All reports and records required under this or any other Section hereof shall be furnished at the sole expense of Contractor.

22.4 Disaster Plan

Within ninety (90) days of the Effective Date, Contractor shall prepare a draft disaster debris cleanup implementation plan that sets forth procedures for collection of debris following a

major disaster such as an earthquake, mudslide, storm, flood, fire, terrorist attack, riot, civil disturbance or other similar event. The disaster plan shall address priorities for cleanup at critical facilities, procedures for reimbursement for costs, describe communication plans, list key contact persons, and provide maps showing proposed sites for stockpiling of disaster debris that cannot be transported to the landfill. Contractor shall coordinate the plan with City's emergency service teams and private parties, as necessary. The draft plan shall be presented to the Director for consideration and approval. The final plan shall be distributed to those employees of Contractor and City and private parties who would have a role in implementing such plan in the event of a disaster.

In addition to the disaster debris cleanup implementation plan, Contractor shall: (1) assist City in the event of a major disaster by providing Collection Vehicles and drivers normally assigned to City at rates consistent with those charged to Contractor's customers; and (2) upon request and at no additional charge, provide to City at City Hall or other locations designated by the Director, up to ten (10) Bins and/or Rolloff Boxes, with the quantity and size to be designated by City, for use as emergency containers to store emergency materials and supplies.

22.5 Failure to Report

The refusal of Contractor to file any of the reports required, or the inclusion of any materially false or misleading statement or representation made knowingly by Contractor in such report shall be deemed a material breach of the Agreement, and shall subject Contractor to all remedies, legal or equitable, which are available to City under this Agreement or otherwise.

SECTION 23. IDENTIFICATION OF CONTRACTOR

Contractor has agreed to provide the City Contract Manager with the name the Contractor wishes to identify itself to the public as the specific organization that shall provide all services under this Agreement. Unless otherwise approved in writing by City, this name shall be used for all correspondence, Billing statements, directory listings, references, signs, and vehicle and Container identification.

SECTION 24. CITY'S FLOW CONTROL OPTION/COUNTY AGREEMENT

24.1 Flow Control Option

City shall have the absolute ability to choose the location for the delivery and/or disposal of all Solid Waste (including Recyclable Material, Organic Waste, Green Waste, and construction and demolition waste) Collected pursuant to this Agreement (hereinafter City's "Flow Control Option"). Contractor expressly consents to City's ability to direct the location for disposal of Solid Waste hereunder, and waives any and all rights to challenge City's ability to do so, including without limitation any rights under the Commerce Clause of the United States Constitution. As of the Effective Date, City shall be deemed to have exercised its Flow Control Option so as to require delivery of all Solid Waste Collected hereunder to the Orange County landfill system in a manner consistent with its obligations under the County Agreement (including, without limitation, its obligations related to Solid Waste that is delivered to a processing/transfer facility prior to being

delivered to a landfill for disposal), and Contractor has agreed to handle all Solid Waste Collected hereunder in a manner consistent with City's exercise of its Flow Control Option as noted above. City shall be deemed to have further exercised its Flow Control Option so as to require processing of all source-separated Organic Waste at a properly permitted facility located in Orange County. At any time during the Term of this Agreement the Director may notify Contractor in writing that City no longer desires to exercise its Flow Control Option. In the event City so notifies Contractor of its desire to cease exercising its Flow Control Option, Contractor shall have the absolute discretion to utilize any disposal facility, transfer station, recycling facility, material recovery facility, landfill, or other facility of its choosing to retain, recycle, process, and dispose of Solid Waste generated within the City, provided the use of such facility by Contractor enables it to meet all other requirements of this Agreement.

24.2 County Agreement

Contractor expressly acknowledges its awareness of the County Agreement which has been adopted and entered into by City. Moreover, Contractor acknowledges that it has had an opportunity to review the County Agreement, and is aware of the provisions thereof that require all Solid Waste collected in the City Limits to be disposed of in the Orange County landfill system. Contractor further acknowledges that the County of Orange is an intended third party beneficiary of Contractor's obligations relating in any way to the disposal of Solid Waste pursuant to this Agreement and the County Agreement. Contractor hereby adopts as its obligations hereunder such provisions of the County Agreement that require action or inaction by it as City's Solid Waste franchisee. Contractor represents and warrants that it can and will perform its duties in connection with this Agreement in such a manner as to ensure that City does not breach the terms of the County Agreement as a result of Contractor's actions or inaction. In the event City advises Contractor in writing that the County Agreement has been terminated, or that it no longer wishes to exercise its Flow Control Option in a manner consistent with the County Agreement, then Contractor's obligations pursuant to this paragraph shall be terminated.

SECTION 25. INDEMNIFICATION

25.1 General

(A) Contractor hereby agrees to and shall defend, with counsel of City's choosing, indemnify and hold harmless City, its elected and appointed officials, officers, employees, agents, and volunteers (collectively the "Indemnities"), at Contractor's sole expense, from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description (including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) arising out of, resulting from, and/or in any way connected with this Agreement including, but not limited to: (1) the negligence or willful misconduct of Contractor, its officers, employees, agents, and/or subcontractors in performing services under this Agreement; (2) the failure of Contractor, its officers, employees, agents, and/or subcontractors to comply in all respects with the provisions of this Agreement, all Applicable Laws (including, without limitation, the Environmental Laws), ordinances and regulations, and/or applicable permits and licenses; (3) the acts of

Contractor, its officers, employees, agents, and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws); and (4) any challenge to the award of, or any provisions of this Agreement (including any claim that the application of any provision hereof violates any provision of the California Constitution). The foregoing defense, indemnity and hold harmless provisions shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of Indemnities' negligence, but shall not extend to matters resulting from Indemnities' sole negligence or willful misconduct.

(B) Contractor, upon demand of City, made by and through the City Attorney, shall protect City and appear in and defend City and its elected officials, officers, employees and agents, in any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the definitions of "Solid Waste" or "Recyclable Material," the scope of the rights granted herein, conflicts between the rights granted herein and rights asserted by other Persons, or the limits of City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or any other federal or state laws to provide Collection services in the City.

(C) The provisions of this Section shall not terminate or expire, shall be given the broadest possible interpretation, and shall survive the expiration or earlier termination of this Agreement.

25.2 Hazardous Substances Indemnification

(A) Without regard to any insurance coverage or requirements, and without limiting the above general indemnification obligation in any way, Contractor specifically agrees to and shall, to the maximum extent permitted by law, defend, with counsel of City's choosing, reimburse, indemnify, and hold City and its past and present officers, elected and appointed officials, employees, consultants and agents (hereinafter "Indemnified Parties") harmless from and against any and all claims, actions, liabilities, damages, demands, judgments, losses, costs, liens, expenses, suits, actions, attorneys' fees, consultant fees, penalties and any and all other losses, damages, fees and expenses of whatever kind or nature ("Claims") (including but not limited to response costs, investigative costs, assessment costs, monitoring costs, treatment costs, cleanup costs, removal costs, remediation costs, and similar costs, damages and expenses) that arise out of or are alleged to arise out of or in any way relate to any action, inaction or omission of Contractor that:

(1) results in any demand, claim, notice, order, or lawsuit, asserting that any Indemnified Party is liable, responsible or in any way obligated to investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise cleanup, any Hazardous Contaminant (as defined herein); or

(2) relates to material Collected, Transported, Recycled, Processed, treated or disposed of by Contractor.

(B) Contractor's obligations pursuant to this Section shall apply, without limitation, to:

(1) any Claims brought pursuant to or based on the provisions of the Environmental Laws, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., the Carpenter-Presley-Tanner Hazardous Substances Account Act (California Health & Safety Code Sections 25300 et seq.), the California Hazardous Waste Control Laws (California Health and Safety Code Sections 25100 et seq.), the California Porter-Cologne Act (California Water Code Section 13000 et seq.), and any and all amendments and regulations thereto, and any other federal, state, regional or local environmental statutory or regulatory provision;

(2) any Claims based on or arising out of or alleged to be arising out of the ownership, use, lease, sale, design, construction, maintenance or operation by Contractor of any facility;

(3) any Claims based on or arising out of or alleged to be arising out of the marketing, sale, distribution, storage, transportation, disposal, processing or use of any materials recovered by Contractor; and

(4) any Claims based on or arising out of or alleged to be arising out of any breach of any express or implied warranty, representation or covenant arising out of or in connection with this Agreement.

(C) The foregoing indemnity and defense obligations shall apply irrespective of the negligence or willful misconduct of Contractor or any Affiliate of Contractor.

(D) For purposes of this Agreement, the term "Hazardous Contaminant" shall mean any "hazardous material," as that term is defined under California Health & Safety Code Section 25501(n); any "hazardous substance," as that term is defined herein or under California Health & Safety Code Sections 25281(h), 25501(n), 25501.1 and under Title 42, Section 9601(14) of the United States Code; any "hazardous waste," as that term is defined herein and under Title 42, Section 6903(5) of the United States Code and under California Health & Safety Code Section 25501(n); any chemical which the Governor has identified as a chemical known to the State to cause cancer or reproductive toxicity pursuant to California Health & Safety Code Section 25249.8; any crude oil or refined or unrefined petroleum product or any fraction or derivative thereof; and any asbestos or asbestos-containing material. The term "Hazardous Contaminant" shall also include any and all amendments to the above-referenced statutory and regulatory provisions made before or after the date of execution of this Agreement.

(E) The provisions of this Section shall not terminate or expire, shall be given the broadest possible interpretation, and shall survive the expiration or earlier termination of this Agreement.

(F) With regard to any claim covered by this provision arising from the delivery of Solid Waste to the Orange County landfill system pursuant to the terms of the County Agreement, the indemnity provisions hereof are intended to be supplemental to any indemnification obligations owed to the City by the County of Orange pursuant to the County Agreement.

SECTION 26.
CONTRACTOR'S BOOKS AND RECORDS; AUDITS

26.1 Maintenance and Inspection of Records

Contractor shall maintain all records relating to the services provided hereunder, including but not limited to Customer lists, billing records, accounts payable records, maps, AB 939 and/or SB 1383 compliance records, records reflecting the number of refuse, recycling and organics routes and route hours by service category (such as multi-family, commercial, roll-off, and special services), records demonstrating facilities, equipment and personnel used to perform services, records reflecting the number of refuse, recycling and organics Containers in service by frequency of Collection for each customer group (such as multi-family, commercial, roll-off); records reflecting the number of roll-off box pulls, and such other documents and materials which reasonably relate to Contractor's compliance with the provisions of this Agreement (the "Records"), for the full Term of this Agreement, and an additional period thereafter of not less than three (3) years, or any longer period required by law. City shall have the right, upon five (5) business days advance notice, to inspect the Records. Such Records shall be made available to City at Contractor's regular place of business, but in no event outside the County of Orange. Prior to destruction of records relating to the services provided pursuant to this Agreement, Contractor shall provide copies or originals of such records to City.

26.2 CERCLA Defense Records

City views the ability to defend against the Comprehensive Environmental Response, Compensation and Liability Act and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be matters of concern. Contractor shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) for not less than five (5) years following the termination of this Agreement, and agrees to notify City's Director, City Clerk and City Attorney before destroying such records thereafter. At any time, including after the expiration of the Term hereof, Contractor shall provide copies of such records to City upon request. The requirements of this Section shall survive the expiration or early termination of this Agreement.

26.3 Ongoing Compliance Review

City intends review Contractor's performance on an ongoing basis to ensure compliance with the terms and provisions of this Agreement. At a minimum, City intends to have internal staff or outside consultants review Contractor's performance to ensure ongoing compliance with the terms hereof, including, but not limited to, the payment of required fees, performance of the

services stated herein, implementation of programs required under the Agreement, Contractor's maintenance and upkeep of records, and compliance with all Applicable Laws. Contractor shall provide any and all information reasonably requested by City in connection with its efforts to ensure compliance with the terms hereof, regardless of whether such information is specifically otherwise called out herein as an item that Contractor is required to maintain and provide to City.

26.4 Audits

26.4.1 Examination of Services

From time to time, anticipated to occur as a result of reports and other submittals required by this Agreement, City may request Contractor to make available any or all of its records related to performance hereunder available to an independent auditor or examiner, to be selected by the City, for auditing and examination purposes (a "Discretionary Audit"). The first Discretionary Audit shall be performed in 2023 and shall be based on Contractor's reports and records through the first quarter of 2023. The scope of the Discretionary Audit and auditor or examiner will be determined by City and the scope may include, but is not limited to, compliance with terms of this Agreement, Customer service levels and Billing, fee payments, Gross Receipts, tonnage, and verification of diversion rates. Except as otherwise provided herein, City shall bear the cost of any Discretionary Audit. Should any Discretionary Audit reveal an underpayment of any Franchise Fee required pursuant to this Agreement, the amount of such underpayment shall become due and payable to City not later than fifteen (15) days after written notice of such underpayment is sent to Contractor by City, complete with any additional late charges as set forth herein. If a Discretionary Audit reveals inaccuracies or inconsistencies in more than five percent (5%) of all Customer accounts, either with Contractor's operations or billing systems, or an underpayment of Franchise Fees of more than three percent (3%), Contractor shall bear the entire cost of such Discretionary Audit.

26.4.2 Route Audit

Contractor shall complete an audit at its expense of its Collection routes for all Customers at Residential and Commercial Premises at such times as may be requested by City; provided, however, that while City may request that such an audit occur at any time, it may not request such audits at Contractor's expense more than once every five (5) years during the Term. The timing of such audits is at the City's discretion and may be required to be timed with the issuance of a request for proposals for a new agreement. The route audit, at minimum, shall consist of an independent physical observation by Person(s) other than the route driver or route supervisor of each Customer in the City. The route audit shall include, as a minimum, the following information for each account:

- Route Number;
- Truck Number;
- Account Name;
- Account Number;

-
- Account service address;
 - Service Level per Billing System (quantity, size, frequency);
 - Service Level per Routing System;
 - Observed Containers (quantity, type and size);
 - Serial number (or other coding if acceptable to the Director) identifying each Cart and its associated service address;
 - Bin condition;
 - Proper signage; and
 - Graffiti.

Within thirty (30) days after the completion of the route audit, Contractor shall submit to City a report summarizing the results thereof which shall include:

- Identification of the routes;
- Truck numbers;
- Number of accounts, by route and in total;
- Number of Containers (broken down by type) per service address, per route and total number of Containers;
- Types of exceptions observed;
- Number of exceptions by type;
- Total monthly Billing, pre-audit;
- Total monthly Billing, post-audit (subsequent to corrections of identified exceptions);
- Percentage of the number of accounts with errors to the total number of accounts served; and
- Percentage of the “net” change in monthly Billing as a result of the audit to the total pre-audit monthly Billing.

The report shall include a description of the procedures followed to complete the audit, and shall include the names and titles of those supervising the route audits and the name and titles of those performing the observations. Additionally, the report shall include a description of the pre-audit training of the route auditors, particularly if temporary personnel are used. The report shall also

include a description of the changes and Contractor's plans to resolve any exceptions. The route audit data and results of the audit shall be available for review by the City or its representative.

SECTION 27. TRANSITION OBLIGATIONS

At the end of the Term, or in the event this Agreement is terminated for cause prior to the end of the Term, Contractor shall cooperate fully with City and any subsequent solid waste enterprise it designates to assure a smooth transition of services. Contractor's cooperation shall include, but not be limited to, providing route lists, billing information and other operating records needed to service all premises covered by this Agreement. The failure to cooperate with City following termination shall be conclusively presumed to be grounds for specific performance of this covenant and/or other equitable relief necessary to enforce this covenant.

Contractor shall provide any new solid waste enterprise with all keys, security codes and remote controls used to access garages, gates and bin enclosures. Contractor shall be responsible for coordinating transfer immediately after its final collection activities, so as to not disrupt services, including coordinating with the new solid waste enterprise on the removal of Contractor's Containers and the delivery of the new solid waste enterprise's Containers. Contractor shall provide City with detailed route sheets containing service names and addresses, billing names and addresses, monthly rate and service levels (number and size of Containers and pickup days) at least 90 days prior to the transition date, provide an updated list two weeks before the transition, and a final updated list with any changes the day before the transition. Contractor shall provide means of access to the new solid waste enterprise at least one (1) full business day prior to its first day of collection, and within sufficient time so as to not impede in any way the new solid waste enterprise from easily servicing all Containers.

SECTION 28. GENERAL PROVISIONS

28.1 Force Majeure

Contractor shall not be in default under this Agreement in the event that its ability to provide Solid Waste Handling Services or Temporary Services, in compliance with its obligation to do so hereunder, is temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrections, strikes or other labor disturbances lasting five (5) days or less, explosion, natural disasters such as floods, earthquakes, landslides, fires, pandemics, epidemics, and the threat thereof or "other catastrophic events" which are beyond the reasonable control of Contractor. The term "other catastrophic events" does not include: (i) the financial inability of Contractor to perform; (ii) failure of Contractor to obtain any necessary permits or licenses from other governmental agencies; (iii) the failure to obtain the right, or the loss of the right, to use the facilities of any public utility where such failure is due in substantial part to the acts or omissions of Contractor; or (iv) strikes or other labor disturbances lasting longer than five (5) days.

28.2 Independent Contractor

Contractor is and shall be acting at all times as an independent contractor and not as an employee of City. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Contractor shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Contractor and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Contractor shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor further agrees to indemnify and hold City harmless from any failure of Contractor to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

28.3 Pavement Damage

Contractor shall be responsible for the cost of repair of any extraordinary damage to the public streets and streets, whether or not paved, located within the City resulting from Contractor's providing the services required hereunder.

28.4 Property Damage

Any physical damage caused by the acts or omissions of employees, agents, or subcontractors of Contractor to private or public property shall be promptly repaired or replaced at Contractor's expense.

28.5 Right of Entry

Contractor shall not have the right, until Contractor receives permission from the property owner, to enter or drive on any private street, court, place, easement, or other private property for the purpose of providing Temporary Services and/or Solid Waste Handling Services pursuant to this Agreement.

28.6 Law to Govern; Venue

The laws of the State of California shall govern this Agreement. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of Orange and venue in federal trial courts shall lie exclusively in the Central District of California.

28.7 Amendment

This Agreement is intended to carry out City's obligations to comply with the provisions of AB 939 and SB 1383, as implemented by regulations of CalRecycle, as they from time to time may be amended. In the event that, after the Effective Date of this Agreement, AB 939 and/or SB 1383 is amended, or other state or federal laws or regulations are enacted and prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Except as otherwise expressly stated herein, no other amendment of this Agreement shall be valid unless it is in writing and duly executed by the parties.

28.8 Notices

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or sent by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To City: City of Costa Mesa
 Attn: Public Services Director
 77 Fair Drive
 Costa Mesa, CA 92626

To Contractor: Ware Disposal, Inc.
 Attn: Judith Helaine Ware, President
 1035 E. 4th St.
 Santa Ana, CA 92701

or to such other address as either party may from time to time designate by notice to the other given in accordance with this Section. Notice shall be deemed given on the date served if served personally between the hours of 8:00 a.m. to 5:00 p.m. on any regular business day for City's business offices. If mailed, notice shall be deemed given three (3) business days from the date such notice is deposited in the United States mail in the manner prescribed above.

28.9 Savings Clause

If any non-material provision of this Agreement is for any reason held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Agreement.

28.10 Joint Drafting

The Parties have participated jointly in the negotiation and drafting of this Agreement and have had an adequate opportunity to review each and every provision of the Agreement and submit the same to counsel or other consultants for review and comment. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the Parties and in accordance with its fair meaning. There shall

be no presumption or burden of proof favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

28.11 Attorneys' Fees and Litigation Costs

In the event either Party brings any action or proceeding to enforce or interpret the terms or provisions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable attorneys' fees and other litigation costs and expenses, including without limitation expert witness fees, consultant fees and costs. Without limiting its scope in any way, this provision is expressly intended to, and shall, apply to fees and costs incurred in any appeal.

28.12 City's Authorized Agent

Notwithstanding anything contained herein to the contrary, and excepting amendments hereto and such actions set forth herein specifically calling for City Council action or approval, the Director is designated as the City's authorized agent to take any action with regard to any matter, or enforce any right, set forth herein requiring action by the City.

28.13 Integrated Agreement

This Agreement contains the entire integrated agreement and understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, promises, proposals, and agreements between the Parties, whether written or oral. The Parties acknowledge this document has been executed with the consent and upon the advice of counsel. Each of the Parties acknowledges that no party or agent or attorney of any other party has made any promise, representation, or warranty, express or implied, not contained in this Agreement, to induce the other party to execute this instrument.

28.14 Section Headings

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

28.15 Compliance with Law

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost, comply with all Applicable Laws, including the laws and regulations of the United States, the State of California, the provisions of the Municipal Code, and any federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended.

28.16 No Third Party Beneficiaries

Except as otherwise provided for in this Agreement, nothing in this Agreement, whether expressed or implied, is intended to confer any rights on any persons other than the parties to the Agreement and their representatives, successors, and permitted assigns.

28.17 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

28.18 Corporate Authority

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

“Contractor”

WARE DISPOSAL, INC.

Dated: 11/29/2021

By: 
Jay Ware, General Manager

“City”

CITY OF COSTA MESA

Dated: 1/14/22

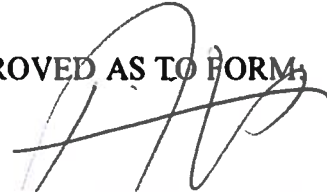
By: 
Lori Ann Farrell Harrison, City Manager

ATTEST:

By: 
Brenda Green, City Clerk



APPROVED AS TO FORM:

By:  ACA
Kimberly Hall Barlow, City Attorney

