

ORIGINAL

**MIXED MATERIALS & ORGANICS
COLLECTION SERVICES
CONTRACT**

Executed between

CITY OF OAKLAND

and

**WASTE MANAGEMENT OF ALAMEDA
COUNTY, INC.**

July 1, 2015

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1 **CITY OF OAKLAND**

2 This Contract made and entered into February 20, 2015 (the "Effective Date"), by and between
3 the CITY OF OAKLAND, in the state of California, hereinafter referred to as "CITY" and WASTE
4 MANAGEMENT OF ALAMEDA COUNTY, INC., a California corporation, hereinafter referred to
5 as "CONTRACTOR."

6 **RECITALS**

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

12 WHEREAS, the State, through enactment of the California Integrated Waste Management Act
13 of 1989 (California Public Resources Code section 40000, et seq.) also recognizes the
14 important health and safety consideration to long-term planning for local government's adequate
15 Disposal needs. The California Integrated Waste Management Act of 1989 declares that the
16 responsibility for management of Solid Waste is a shared responsibility between the State and
17 local governments. The State requires local governments to make adequate provision for at
18 least fifteen (15) years of Garbage Disposal capacity to preserve the health, safety and well-
19 being of the public. The California Integrated Waste Management Act of 1989, Oakland City
20 Charter Article X and Oakland Municipal Code Chapter 8.28 also authorize local governments to
21 enter into exclusive franchise contracts to provide Garbage handling services for the health,
22 safety and well being of its citizens (California Public Resources Code section 40059);

23 WHEREAS, pursuant to California Public Resources Code section 40059(a) as may be
24 amended from time to time, as well as Oakland City Charter Article X and Oakland Municipal
25 Code Chapter 8.28, CITY has determined that the public health, safety, and well-being require
26 that an exclusive right be awarded to a qualified CONTRACTOR to provide for the Collection of
27 Mixed Waste and Organic Materials, except for Collection of materials excluded by CITY'S
28 Municipal Code and this Contract, and other services related to meeting the Act's fifty (50)
29 percent Diversion goal and other requirements of the Act;

30 WHEREAS, in 1990 the Alameda County Waste Reduction and Recycling Initiative Charter
31 Amendment established a county-wide solid waste diversion rate goal of seventy-five (75)
32 percent by 2010;

33 WHEREAS, in 2002 the City Council of the City of Oakland passed Resolution No. 77500
34 C.M.S., to adopt a goal of seventy-five (75) percent reduction of waste going to landfills by 2010
35 in support of the Measure D goal, and the implementation date established by the Alameda
36 County Source Reduction and Recycling Board;

37 WHEREAS, in 2006 the City Council of the City of Oakland approved Resolution No. 79774
38 C.M.S. which adopted a Zero Waste Goal by 2020;

39 WHEREAS, in 2006 the City Council of the City of Oakland passed Resolution No. 80286
40 C.M.S., adopting a Zero Waste Strategic Plan;

41 WHEREAS, it is the intent of CITY to provide for the Collection and Processing of certain
42 subsets of Solid Waste defined as Mixed Materials, Garbage, Organic Materials and Bulky
43 Goods in Article 1 of this Contract; WHEREAS, CITY has entered into Contracts to provide: (i)
44 Residential Recycling Collection Services; and (ii) Disposal Services within CITY;

45 WHEREAS, Customers may voluntarily subscribe to and cancel such Collection Services from
46 CONTRACTOR, provided Customer otherwise obtains a permit to self-haul waste in compliance
47 with CITY'S self-haul permit provisions;

48 WHEREAS, CITY further declares its intent to regulate the maximum rates CONTRACTOR may
49 charge Customers for the Collection, transportation, Processing, recycling, composting, and/or
50 Disposal of Mixed Materials, Garbage, and Organic Material;

51 WHEREAS, this Contract and the maximum rates CONTRACTOR may charge Customers for
52 such Collection Services are a product of a multi-year, open and public procurement process,
53 are competitive for the industry based on the substantial array of services provided, and are
54 reasonably related to the cost of providing such services;

55 WHEREAS, the City Council has determined through a competitive procurement process for
56 Mixed Materials and Organics ("MM&O") Collection Services that CONTRACTOR, by
57 demonstrated experience, reputation and capacity, is qualified to provide for the Collection of
58 Mixed Materials, Organic Materials and Bulky Goods within the corporate limits of CITY, the
59 transportation of such material to appropriate places for Processing, Recycling, Composting
60 and/or Disposal; and CITY Council desires that CONTRACTOR be engaged to perform such
61 services on the basis set forth in this Contract;

62 WHEREAS, CONTRACTOR, through its proposal to CITY, has proposed and represented that
63 it has the ability and capacity to provide for the Collection of Mixed Materials, Organic Materials
64 and Bulky Goods within the corporate limits of CITY; the transportation of such material to
65 appropriate places for Processing, Recycling, Composting and/or Disposal; and the Processing
66 of materials;

67 WHEREAS, CITY wishes to engage CONTRACTOR to provide the services specified within this
68 Contract, in accordance with the terms and conditions of this Contract; and

69 WHEREAS, this Contract has been developed by and is satisfactory to CITY and
70 CONTRACTOR.

71 NOW THEREFORE, in consideration of the mutual covenants, conditions and consideration
72 contained herein, CITY and CONTRACTOR hereby agree as hereinafter set forth:

73 **ARTICLE 1. DEFINITIONS**

74 For the purpose of this Mixed Materials and Organics Collection Services Contract ("Contract"),
75 the definitions contained in this Article shall apply unless otherwise specifically stated. When
76 not inconsistent with the context, words used in the present tense include the future, words in
77 the plural include the singular, and words in the singular include the plural. Use of the
78 masculine gender shall include the feminine gender.

79 1.01 AB 32. The Global Warming Solutions Act, (California Public Safety Code
80 section 38500 et seq.) as amended, including rules and regulations promulgated thereunder as

81 amended, which among other things, sets a greenhouse gas reduction goal by 2020.

82 1.02 AB 341. The California legislation (Stats. 2006, Ch. 476), as it may be amended
83 from time to time, that, among other things, added Chapter 12.8 of Part 3 of Division 30 of the
84 Public Resources Code (commencing with section 42649) imposing mandatory commercial
85 recycling requirements and requirements that each jurisdiction implement an outreach and
86 education program and monitor compliance with the Mandatory Commercial Recycling
87 requirements.

88 1.03 AB 939. The California Integrated Waste Management Act (Public Resources
89 Code section 40000 et seq.), as amended from time to time.

90 1.04 Bin. A watertight metal or plastic Container with a hinged plastic lid and a
91 capacity of between one (1) and seven (7) cubic yards, designed or intended to be mechanically
92 dumped into a packer type truck, which is approved by CITY and labeled as specified by CITY.
93 Bins may also include Compactors that are owned or leased by the MFD or Commercial Service
94 Recipient, contingent upon confirmation of compatibility from CONTRACTOR.

95 1.05 Bulky Goods. Materials such as, but not limited to, stoves, refrigerators, water
96 heaters, washing machines, clothes dryers, small air conditioning units, other large and small
97 household appliances, including appliances containing Freon, furniture, carpets, tires, wood,
98 household items, tires with or without rims, mattresses, clothing, Large Plant Debris, and
99 corrugated cardboard. Bulky Goods may also include E-Waste, U-Waste and materials
100 generated from minor home repairs and other similar materials to the extent set forth in
101 Exhibit 14, which is attached to and included in this Contract and as may be amended from time
102 to time. Except for Bulky Goods Collected at CITY Facilities, Bulky Goods must be generated at
103 the Service Address wherein the Bulky Goods are Collected. Bulky Goods do not include items
104 herein defined as Unacceptable Waste or Construction and Demolition Debris, except as
105 defined above.

106 1.06 Cart. A watertight heavy plastic receptacle with a rated capacity of approximately
107 twenty (20), thirty-two (32), sixty-four (64) or ninety-six (96) gallons, having a hinged tight-fitting
108 lid, and two (2) wheels, that is approved by CITY and is labeled as specified by CITY.

109 1.07 Change in Law. The adoption, promulgation, or modification of any generally
110 applicable and enforceable federal, state, local joint power authority (JPA), or foreign rule, law,
111 regulation, ordinance, order, judgment, decree, permit or administrative agency guidelines
112 (excluding orders, judgments, and decrees specific to a particular facility) (collectively, "Laws")
113 duly adopted and promulgated officially in writing for uniform application occurring after
114 January 9, 2013. Change in Law does not include changes initiated by CONTRACTOR.
115 Change in Law shall not include (i) Laws enacted or adopted prior to January 9, 2013, or (ii)
116 Laws particular to the solid waste and recycling collection, hauling, processing and disposal
117 industry that are enacted or finally adopted or approved prior to the effective date of this
118 Contract but initially become effective after such date.

119 1.08 CITY. The City of Oakland, California, a municipal corporation.

120 1.09 City Administrator. The CITY official who is responsible for the day-to-day
121 operations of CITY agencies and departments or his/her designee.

122 1.10 CITY Bulky Goods Collection Service. The Collection of Bulky Goods from CITY
123 Facilities in the Service Area, the delivery of the Bulky Goods to the appropriate facilities, and
124 the Disposal, Processing and marketing of the Bulky Goods.

125 1.11 CITY Collection Services. CITY Mixed Materials Collection Service, CITY
126 Organic Materials Collection Service, CITY Bulky Goods Collection Service, Street Litter
127 Container Collection Service, Temporary Roll-Off Box Collection Service, and CITY Special
128 Event Collection Service.

129 1.12 CITY Facilities. Those CITY properties or locations as set forth in Exhibit 4,
130 which is attached to and included in this Contract and as may be amended.

131 1.13 CITY Mixed Materials Collection Service. The Collection of Mixed Materials from
132 CITY Facilities in the Service Area and either the delivery of the Mixed Materials to the
133 appropriate Mixed Materials Processing Facility, the Processing of the Mixed Materials and the
134 transfer of the Processing Residue to the Disposal Facility or the delivery of the non-processed
135 Mixed Materials to the Disposal Facility.

136 1.14 CITY Organic Materials Collection Service. The Collection of Organic Materials
137 from CITY Facilities in the Service Area, the delivery of the Organic Materials to an Organic
138 Materials Processing Facility, and the Processing and marketing of the Organic Materials.

139 1.15 CITY Special Event Collection Service. The Collection of Garbage, Recyclable
140 Materials, Organic Materials and other materials as appropriate at CITY-sponsored special
141 events.

142 1.16 Collect/Collection. To pick up, transport and Process Discarded Materials.

143 1.17 Collection Services. SFD Collection Services, MFD Collection Services,
144 Commercial Collection Services and CITY Collection Services.

145 1.18 Commercial. A business establishment and/or industrial facility including, but not
146 limited to, governmental, religious and educational facilities.

147 1.19 Commercial Collection Services. Commercial Mixed Materials Collection
148 Service, Commercial Organic Materials Subscription Collection Service, Commercial Non-
149 exclusive Recyclable Materials Collection Service, Temporary Roll-Off Box Collection Service,
150 and Commercial Special Events Collection Service.

151 1.20 Commercial Mixed Materials Collection Service. The Collection of Mixed
152 Materials from Commercial Service Addresses in the Service Area and either the delivery of the
153 Mixed Materials to the appropriate Mixed Materials Processing Facility, the Processing of the
154 Mixed Material and the transfer of the Processing Residue to the Disposal Facility, or the
155 delivery of the non-processed Mixed Materials to the Disposal Facility.

156 1.21 Commercial Non-exclusive Recyclable Materials Collection Service. The
157 Collection of Recyclable Materials from Commercial Service Addresses subscribing to such
158 service in the Service Area, the delivery of the Recyclable Materials to a Material Recovery
159 Facility, and the Processing and marketing of the Recyclable Materials.

160 1.22 Commercial Organic Materials Subscription Collection Service. The Collection of
161 Organic Materials from Commercial Service Addresses in the Service Area subscribing to such
162 service, the delivery of the Organic Materials to an Organic Materials Processing Facility and
163 the Processing and marketing of the Organic Materials.

164 1.23 Commercial Special Events Collection Service. Mixed Materials, Recyclable
165 Materials and Organic Materials Collection, Disposal and processing services at special events
166 such as street festivals.

167 1.24 Community Outreach. Any information (whether written or otherwise) directed by
168 CONTRACTOR to Customers regarding the programs and services provided under this
169 Contract and shall be subject to the prior review and approval of the Contract Manager. The
170 party proposing to make such communication shall make reasonable good faith efforts to
171 consult with the other party to ensure accuracy and consistency with the requirements and spirit
172 of this Contract.

173 1.25 Compactor. Any Roll-Off Box or Bin which has a compaction mechanism,
174 whether stationary or mobile, contingent upon confirmation of compatibility from
175 CONTRACTOR.

176 1.26 Construction and Demolition Debris. Materials resulting from construction,
177 remodeling, repair or demolition operations on any house, or residential property, Commercial
178 building, pavement or other structure. Construction and Demolition Debris includes but is not
179 limited to rocks, soils, tree remains and other Plant Debris which results from land clearing or
180 land development operations in preparation for construction.

181 1.27 Container. A Bin, Cart, Roll-Off Box, Compactor, street litter receptacle or other
182 item approved by CITY for use in containing materials set out for Collection under the terms of
183 this Contract.

184 1.28 Contamination. The inclusion in a Container designated for Source-Separated
185 Organics or Recyclables of Unacceptable Materials of any amount; or materials other than
186 Organics in an Organics Container, or materials other than Recyclables in a Recyclables
187 Container, which render more than ten (10) percent of the contents of the Container materially
188 unsuitable for intended type of Diversion.

189 1.29 Contamination Surcharge. The charge CONTRACTOR may impose on a SFD
190 and MFD Customer for Contamination of an Organic Materials Container or the Recycling
191 Contractor may impose on a Customer for Contamination of a Recycling Container that are
192 approved by CITY and contained in Exhibit 1, as it may be modified.

193 1.30 Contract or Franchise Contract. The written document and all amendments
194 thereto, between CITY and CONTRACTOR, governing the provision of Collection Services as
195 provided herein, including all exhibits hereto, as it may be amended from time to time.

196 1.31 Contract Manager. The CITY employee(s) designated by the City Administrator
197 to act as his/her designee regarding the day to day management of this Contract.

198 1.32 Contract Year. Each twelve (12) month period from July 1 to June 30 beginning
199 July 1, 2015.

- 200 1.33 CONTRACTOR. WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.
- 201 1.34 Covered Electronic Device or CED. Discarded electronic devices that the
202 California Department of Toxic Substances Control ("DTSC") has determined to be a covered
203 electronic device (California Public Resources Code section 42463). CEDs include cathode ray
204 tube (CRT) devices (including televisions and computer monitors), LCD desktop monitors,
205 laptop computers with LCD displays, LCD televisions, plasma televisions, portable DVD players
206 with LCD screens and other electronic devices as may be added by the DTSC from time to time.
- 207 1.35 Customer. The Person or Persons who have the legal right to initiate, cancel or
208 make changes to Collection Services.
- 209 1.36 Difficult to Serve. A set-out site for Containers which has any of the following
210 features:
- 211 1.36.1 A grade greater than fifteen (15) percent;
- 212 1.36.2 An obstructed vertical clearance of less than fifteen (15) feet;
- 213 1.36.3 A paved, concrete or similar surface over which Containers must
214 be rolled that contains large deep grooves;
- 215 1.36.4 An unpaved surface over which Containers must be rolled;
- 216 1.36.5 A turn radius of less than fifty (50) feet; or
- 217 1.36.6 Is more than one hundred (100) feet from the public road.
- 218 1.37 Discarded Material. Garbage, Mixed Materials, Recyclable Materials, Organic
219 Materials or Bulky Goods Generated at a Service Address and placed in a manner and location
220 that is designated for Collection pursuant to this Contract.
- 221 1.38 Disposal/Dispose. The disposition of Mixed Materials, Garbage and Residue
222 received from CONTRACTOR and CITY at the Disposal Facility under the terms of this
223 Contract, or a) the placement of any materials Collected pursuant to this Contract in landfills,
224 including as "beneficial reuse" as defined by California Code of Regulations Title 27, Chapter 3,
225 Article 1, section 20686; or (b) disposition to "incinerators" as defined by Alameda County
226 Waste Reduction and Recycling Initiative Charter Amendment (Measure D) SUBSECTION
227 64.150 T.
- 228 1.39 Disposal Contractor. Waste Management of Alameda County, Inc.
- 229 1.40 Disposal Facility or Landfill. The Altamont Landfill located at 10840 Altamont
230 Pass Road, Livermore, California 94551 that is owned and operated by the Disposal Contractor.
- 231 1.41 Divert/Diversion. The avoidance of Disposal at the Disposal Facility or other
232 landfill, or through "transformation" as defined by Public Resources Code section 40201, of any
233 materials Collected pursuant to this Contract, through Processing.
- 234 1.42 Dwelling Unit. Any individual living unit that includes a kitchen, and a room or
235 suite of rooms, and is designed or occupied as separate living quarters for an individual or

236 group of individuals. Dwelling Units include live/work units, as defined by Oakland Planning
237 Code section 17.65.160. Dwelling Units do not include work/live units, as defined by Oakland
238 Planning Code Section 17.65.150.

239 1.43 EBMUD. The East Bay Municipal Utility District, a public agency that operates a
240 municipal waste water treatment plant in West Oakland.

241 1.44 EBMUD Facility. The "Food Waste Pre-Processing Facility" described in the
242 February 2011 environmental impact report entitled "EBMUD Main Wastewater Treatment Plant
243 Land Use Master Plan", located at or adjacent to the EBMUD municipal waste water treatment
244 plant in West Oakland.

245 1.45 E-Waste. Waste that is powered by batteries or electricity, such as computers,
246 telephones, answering machines, radios, stereo equipment, tape players/recorders,
247 phonographs, videocassette players/recorders, compact disc players/recorders, calculators and
248 other items also defined as CEDs.

249 1.46 Fixed Body Vehicle. Any wheeled vehicle that does not rely on a Roll-Off Box or
250 other detachable container to Collect, contain and transport material.

251 1.47 Food Scraps. Raw or cooked vegetable, fruit, grain, fish, and other items,
252 including meat, bones, dairy products, cooking fats, oil or kitchen grease; paper, cardboard, and
253 other compostable items that have been contaminated with food, cooking fats, oil or kitchen
254 grease; compostable paper or plastics associated with food preparation or consumption such as
255 paper towels, paper plates, paper cups, tissue, waxed paper and waxed cardboard; and other
256 materials agreed upon the parties that are capable of being composted and that are set out
257 separate from Mixed Materials for Collection as Organic Materials.

258 1.48 Force Majeure. Any acts of God, such as landslides, lightning, fires, storms,
259 floods, pestilence, freezing, earthquakes, explosions, sabotage, civil disturbances, acts of a
260 public enemy, wars, terrorism, blockades, riots or other industrial disturbances, eminent domain,
261 condemnation or other taking or other events of a similar nature not caused or maintained by
262 CITY or CONTRACTOR, which event is not reasonably within the control of the party claiming
263 the excuse from its obligations due to such event to the extent such event has a significant and
264 material adverse effect on the ability of a party to perform its obligations thereunder. Force
265 Majeure shall not include power outages, fuel shortages, strikes, work stoppage or slowdown,
266 sickout, lockout, picketing or other concerted job action conducted by or directed at
267 CONTRACTOR or CONTRACTOR'S employees or subcontractors. Force Majeure shall
268 include a Change in Law if such Change in Law prohibits a party's performance hereunder.
269 Notwithstanding the foregoing, (i) no event relating to the Disposal Facility operated by
270 CONTRACTOR or a related party of CONTRACTOR, or the delivery of Garbage, Mixed
271 Materials and/or Residue to a facility shall constitute a Force Majeure under this Contract unless
272 (and then only to the extent) that such event prevents the delivery of or acceptance of Garbage,
273 Mixed Materials and Residues to or by that facility; (ii) no failure of performance by any
274 subcontractor of CONTRACTOR shall be a Force Majeure unless such failure was itself caused
275 by a Force Majeure; (iii) except as provided herein, no event which merely increases
276 CONTRACTOR'S cost of performance shall be a Force Majeure; and (iv) no event, the effects
277 of which could have been prevented by reasonable precautions, including compliance with
278 agreements and applicable laws, shall be a Force Majeure.

279 1.49 Garbage. All, putrescible and non-putrescible waste, non-recyclable packaging

280 and rubbish attributed to normal activities of a Service Address wherein the Garbage is
281 generated and Collected, which is set out for Collection by the Service Recipient. Except for
282 Garbage Collected at CITY Facilities, Garbage must be generated at the Service Address
283 wherein the Garbage is Collected. Garbage does not include abandoned automobiles or those
284 items defined herein as Unacceptable Waste.

285 1.50 Gross Receipts. CONTRACTOR revenue collected from Customers for the
286 provision of the Mixed Materials and Organics Collection Services exclusive of taxes and
287 government fees.

288 1.51 Guarantor. USA Waste of California, Inc.

289 1.52 Guaranty. The document contained in Exhibit 18, which is attached to and
290 included in this Contract that is executed by the Guarantor guaranteeing the timely and full
291 performance of CONTRACTOR'S obligations.

292 1.53 Generator. A Person, Commercial business or any other entity that produces
293 Garbage, Mixed Materials, Organic Materials or Bulky Goods.

294 1.54 Hazardous Waste. For purposes of this Contract, Hazardous Waste shall include
295 those wastes defined as Hazardous Waste in Oakland Municipal Code section 8.28.010 or as
296 subsequently amended. Section 8.28.010 currently defines Hazardous Waste as any
297 hazardous waste, material, substance or combination of materials which because of its quantity,
298 concentration or physical, chemical or infectious characteristics may cause or significantly
299 contribute to an increase in mortality or an increase in serious irreversible or incapacitating
300 reversible illness or may pose a substantial present or potential risk to human health or the
301 environment when improperly treated, stored, transported, Disposed or otherwise managed and
302 which requires special handling under any present or future federal, state or local law excluding
303 *de minimis* quantities of waste of a type and amount normally found in residential Garbage after
304 implementation of programs for the safe Collection, recycling, treatment and Disposal of
305 Household Hazardous Waste in compliance with sections 41500 and 41802 of the California
306 Public Resources Code. Hazardous Waste shall include but not be limited to: (a) substances
307 that are toxic, corrosive, inflammable or ignitable; (b) petroleum products, crude oil (or any
308 fraction thereof) and their derivatives; (c) explosives, asbestos, radioactive materials, toxic
309 substances or related hazardous materials; and (d) substances defined, regulated or listed
310 (directly or by reference) by applicable local, state or federal law as "hazardous substances,"
311 "hazardous materials," "hazardous wastes," "pollutant," "reproductive toxins," "toxic waste" or
312 "toxic substances" or similarly identified as hazardous to human health or the environment,
313 including those so defined in or pursuant to any of the following statutes: (i) the Comprehensive
314 Environmental Response, Compensation and Liability Act ("CERCLA") of 1980, 42 USC section
315 9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC section 1802,
316 et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC section 6901 et seq.; (iv) the
317 Clean Water Act, 33 USC section 1251 et seq.; (v) California Health and Safety Code section
318 25115-25117, 25249.8, 25281 and 25316; (vi) the Clean Air Act, 42 USC section 7901 et seq.;
319 and (vii) California Water Code section 13050. All rules and regulations adopted and
320 promulgated pursuant to such statutes and future amendments to or recodifications of such
321 statutes and any regulations adopted pursuant to these statutes after the date of this Contract,
322 as well as any subsequently enacted federal or California statute relating to the use, release or
323 disposal of toxic or hazardous substances, or to the remediation of air, surface waters,
324 groundwater, soil or other media contaminated with such substances any other hazardous or
325 toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or

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326 regulated under any other applicable federal, state or local environmental laws currently existing
327 or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's
328 ("PCBs"), petroleum, natural gas and synthetic fuel products and by-products. The parties
329 intend that this definition not be limited to any particular statutory or regulatory regime and that it
330 be construed as broadly as possible.

331 1.55 Household Hazardous Waste ("HHW"). Any Hazardous Waste generated at a
332 SFD, MFD or CITY Facility Service Address within the Service Area including but not limited to,
333 cleaning products, automotive products, fuel, lubricants, E-Wastes, paints, painting supplies,
334 fluorescent lamps, compact fluorescent lamps, varnishes, solvents, herbicides, pesticides,
335 fertilizers, automobile batteries, household batteries, adhesives and Universal Waste.

336 1.56 Labor Disruption. Labor Disruptions are defined as strikes, slowdowns, sickout,
337 picketing, other concerted job actions, directed at CONTRACTOR, CONTRACTOR's employees
338 or subcontractors, excluding lockouts or stoppages conducted or initiated by CONTRACTOR.

339 1.57 Large Plant Debris. Oversized Plant Debris such as tree trunks, branches or
340 untreated and unpainted wood with a diameter of more than six (6) inches and not more than
341 two (2) feet, or a length of more than four (4) feet and no more than six (6) feet, or weighing not
342 more than seventy-five (75) pounds.

343 1.58 Material Recovery Facility or MRF. Any facility selected by CONTRACTOR and
344 approved or specifically designated by CITY, designed, operated and legally permitted for the
345 purpose of receiving and Processing Recyclable Materials, Organic Materials or Mixed
346 Materials.

347 1.59 Maximum Service Rates. Maximum MM&O Service Rates and Maximum
348 Recycling Service Rates and the Contamination Surcharge that were approved by CITY and are
349 contained in Exhibit 1 which is attached to and included in this Contract.

350 1.60 Maximum MM&O Service Rates. Those rates and ancillary charges that were
351 approved by CITY for the provision of Collection Services and are contained in Exhibit 1 which
352 is attached to and included in this Contract.

353 1.61 Maximum Recycling Service Rates. Those rates and ancillary charges that were
354 approved by CITY for the collection of Recyclable Materials by the Recycling Contractor and are
355 contained in Exhibit 1 which is attached to and included in this Contract.

356 1.62 Multi-family Dwelling or MFD. Any residence with five (5) or more Dwelling Units,
357 including any flat, apartment, condominium, town home, service-enriched housing or other
358 residence and other Dwelling Units in detached buildings on a single parcel and excluding a
359 hotel, motel, dormitory, sheltered nursing facility, rooming house or other such similar facility as
360 determined by CITY.

361 1.63 MFD Bulky Goods Collection Service. The Collection of Bulky Goods from MFD
362 Service Recipients in the Service Area, the delivery of the Bulky Goods to the appropriate
363 facilities and the Disposal, Processing or marketing of the Bulky Goods.

364 1.64 MFD Collection Services. MFD Mixed Materials Collection Service, MFD
365 Organic Materials Collection Service, Temporary Roll-Off Box Collection Service, and MFD
366 Bulky Goods Collection Service.

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367 1.65 MFD Mixed Materials Collection Service. The Collection of Mixed Materials from
368 MFD Service Addresses in the Service Area and the delivery of the Mixed Materials to the
369 appropriate Mixed Materials Processing Facility, the Processing of the Mixed Materials and the
370 transfer of the Processing Residue to the Disposal Facility.

371 1.66 MFD Organic Materials Collection Service. The Collection of Organic Materials
372 from MFD Service Addresses in the Service Area and the delivery of that Organic Materials to
373 an Organic Materials Processing Facility for Processing.

374 1.67 Mixed Materials. All materials that are set out by the Service Recipient for
375 Collection by CONTRACTOR excluding items that are Source Separated. Mixed Materials do
376 not include items defined herein as Unacceptable Waste.

377 1.68 Mixed Materials Extra Service Tag. A tag approved by CITY and provided by
378 CONTRACTOR which may be purchased for use at SFD and MFD Service Addresses for the
379 Collection of extra Garbage or Mixed Materials.

380 1.69 Mixed Materials Processing Facility. Any MRF or Organics Processing Facility
381 selected by CONTRACTOR and approved by CITY that is designed, operated and legally
382 permitted for the purpose of receiving and Processing Mixed Materials.

383 1.70 Non-Collection Notice. A form developed and used by CONTRACTOR as
384 approved by CITY to notify Service Recipients of the reason for non-collection of materials set
385 out by the Service Recipient for Collection by CONTRACTOR pursuant to this Contract.

386 1.71 Organic Materials ("Organics"). Plant Debris, Food Scraps, compostable food
387 ware, compostable food containers, compostable paper, horse stable matter and other material
388 agreed upon by both parties that are separated for inclusion in the SFD Organic Materials
389 Collection Service, MFD Organic Materials Collection Service, Commercial Organic Materials
390 Subscription Collection Service or CITY Organic Materials Collection Service programs except
391 for Organic Materials Collected at CITY Facilities. Organic Materials must be generated at the
392 Service Address wherein the Organic Materials are Collected. Organic Materials do not include
393 items herein defined as Unacceptable Waste.

394 1.72 Organic Materials Extra Service Tag. A tag approved by CITY and provided by
395 CONTRACTOR which may be purchased for use at Commercial Service Addresses subscribing
396 to Commercial Organic Materials Subscription Collection Service for the Collection of extra
397 Organic Materials.

398 1.73 Organic Materials Processing Facility. Any facility selected by CITY or by
399 CONTRACTOR and approved by CITY, which is designed, operated and legally permitted for
400 the purpose of receiving and Processing Organic Materials or Mixed Materials.

401 1.74 Overage. An amount of material in excess of the capacity of the Container
402 utilized at the Service Address for the set out of such material except where such material is set
403 out through the use of an Extra Service Tag.

404 1.75 Per Dwelling Unit Recycling Rate. The dollar amount effective July 1 each year,
405 which CONTRACTOR invoices and collects from SFD and MFD Customers. The Per Dwelling
406 Unit Recycling Rate may comprise a RR Contractor component and a stabilization component.

407 1.76 Person. An individual, association, partnership, corporation, joint venture,
408 school, the United States, the State of California, any municipality or other political subdivision
409 thereof or any other entity whatsoever.

410 1.77 Plant Debris. Any vegetative matter resulting from normal yard and landscaping
411 maintenance or unpainted and untreated wood that is not more than four (4) feet in its longest
412 dimension or more than six (6) inches in diameter or weighs less than seventy-five (75) pounds
413 per individual piece and can be handled by two (2) persons. Plant Debris includes palm, yucca,
414 cactus, grass clippings, leaves, pruning, weeds, branches, brush, holiday trees and other forms
415 of horticultural waste. Plant Debris must be generated at the Service Address from which the
416 Plant Debris is Collected except for material generated on property owned or maintained by
417 CITY. Plant Debris does not include items defined herein as Unacceptable Waste.

418 1.78 Processing. An operation or series of operations, whether involving equipment,
419 manual labor, or mechanical or biological processes that sorts, enhances, upgrades,
420 concentrates, decontaminates, packages or otherwise prepares Recyclable Materials, Organic
421 Materials, Mixed Materials or Bulky Goods and returns marketable elements thereof to the
422 economic mainstream in the form of raw material for new, reused or reconstituted products.
423 Processing begins at the time the Recyclable Materials, Organic Materials, Bulky Goods or
424 Mixed Materials are delivered to the Processing facility and ends when the finished Processed
425 materials are sold or reused and the Residue is properly Disposed.

426 1.79 Recyclable Materials. Those materials designated in this Contract or other
427 materials agreed upon by parties for Collection and Recycling under this Contract which are
428 segregated from Mixed Materials by the Service Recipient at the source of generation.
429 Recyclable Materials include newspaper, mixed paper (including white and colored paper,
430 magazines, telephone books, chipboard, junk mail and high grade paper), glass containers,
431 metal containers (ferrous, non-ferrous and bi-metal containers including empty aerosol
432 containers), aluminum foil and trays, milk and juice cartons, soup and juice boxes, all narrow
433 neck rigid plastic containers, non-bottle rigid plastics, and corrugated cardboard set out for
434 Collection as required by CITY. CITY and CONTRACTOR may mutually agree to include
435 additional materials or remove materials from this list of Recyclable Materials.

436 1.80 Residential Recycling ("RR") Contractor. California Waste Solutions, Inc.

437 1.81 Residential Recycling Collection Services. Services performed by the RR
438 Contractor for Recyclable Materials at Multi-Family Dwellings and Single Family Dwellings.

439 1.82 Residue. Materials remaining after the Processing of Mixed Materials,
440 Recyclable Materials, Organic Materials or Bulky Goods which cannot reasonably be Diverted.

441 1.83 Roll-Off Box. A metal Container of between six (6) and fifty (50) cubic yards that
442 is normally loaded onto a motor vehicle and transported to an appropriate facility. A Roll-Off
443 Box may be open topped or covered at the discretion of CITY with or without a compaction unit.

444 1.84 Service Address. The physical location of the SFD, MFD, Commercial or CITY
445 property receiving Collection Services.

446 1.85 Service Area. That area within the corporate limits of the City of Oakland.

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447 1.86 Service Recipient. A Person receiving Collection Services at the Service
448 Address under the terms of this Contract.

449 1.87 SFD Collection Services. SFD Mixed Materials Collection Service, SFD Organic
450 Materials Collection Service, Temporary Roll-Off Box Collection Service, and SFD Bulky Goods
451 Collection Service.

452 1.88 SFD Bulky Goods Collection Service. The Collection of Bulky Goods from SFD
453 Service Addresses in the Service Area, the delivery of the Bulky Goods to the appropriate
454 facilities and the Processing marketing and Disposal of the Bulky Goods.

455 1.89 SFD Mixed Materials Collection Service. The Collection of Mixed Materials from
456 SFD Service Addresses in the Service Area and either the delivery of the Mixed Materials to the
457 appropriate Mixed Materials Processing Facility, the Processing of the Mixed Material and the
458 transfer of the Processing Residue to the Disposal Facility or the delivery of the non-processed
459 Mixed Materials to the Disposal Facility.

460 1.90 SFD Organic Materials Collection Service. The Collection of Organic Materials
461 from SFD Service Addresses in the Service Area, and the delivery of the Organic Materials to
462 an Organic Materials Processing Facility for Processing.

463 1.91 Single Family Dwelling or SFD. A detached or attached residence containing
464 four (4) or fewer Dwelling Units when each Dwelling Unit is designed or used for occupancy by
465 one (1) or more individuals.

466 1.92 Solid Waste. All putrescible and non-putrescible solid, semisolid and liquid
467 wastes including Garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, Construction
468 and Demolition Debris, discarded home and industrial appliances, dewatered, treated or
469 chemically fixed sewage sludge which is not Hazardous Waste, manure, vegetable or animal
470 solid and semisolid wastes and other discarded solid and semi-solid wastes as defined in
471 California Public Resources Code section 40191, as that section may be amended from time to
472 time, but does not include Source Separated Recyclable Materials, abandoned vehicles and
473 parts thereof, Hazardous Waste or low-level radioactive waste, medical waste, Unacceptable
474 Waste or Plant Debris. Solid Waste may include Recyclable Materials, Compostable Materials
475 and Construction and Demolition Debris if such materials are not Source Separated from Solid
476 Waste at the site of generation or Collected for Recycling, Composting, Processing and
477 marketing.

478 1.93 Source Separated. Recyclable Materials, Organic Materials and Bulky Goods
479 that have been segregated from Garbage, by or for the Generator at the Service Address at
480 which the materials were generated for Diversion.

481 1.94 Street Litter Container Collection Service. The Collection of Garbage and
482 Recyclable Materials from street litter Containers within the Service Area and the transport and
483 delivery of the Collected materials to the appropriate facility.

484 1.95 Temporary Roll-Off Box Collection Service. The Collection of Discarded
485 Materials from a Service Address, which are generated as a byproduct of activities at that
486 Service Address other than permitted construction or demolition through use of a temporarily
487 placed box and the delivery of those materials to the appropriate facility.

488 1.96 Ton/Tonnage. A unit of measure for weight equivalent to two thousand (2,000)
489 standard pounds where each pound contains sixteen (16) ounces.

490 1.97 Universal Waste ("U-Waste"). Materials that DTSC considers Universal Waste
491 (California Code of Regulations Title 22, Div 4.5, Ch 23), including materials such as batteries,
492 thermostats, lamps, cathode ray tubes, computers, telephones, answering machines, radios,
493 stereo equipment, tape players/recorders, phonographs, video cassette players/recorders,
494 compact disc players/recorders, calculators, some appliances, aerosol cans, fluorescent lamps
495 and certain mercury-containing devices.

496 1.98 Unacceptable Waste. Any and all waste, including but not limited to, Hazardous
497 Waste and Household Hazardous Waste, the acceptance or handling of which would cause a
498 violation of any permit condition or legal or regulatory requirement, damage or threatened
499 damage to CONTRACTOR'S equipment or facilities, or present a substantial endangerment to
500 the health or safety of the public or CONTRACTOR'S employees; provided, that *de minimis*
501 quantities or waste of a type and amount normally found in Garbage or Mixed Materials after
502 implementation of programs for the safe Collection of HHW shall not constitute Unacceptable
503 Waste

504 1.99 Work Day. Any day, Monday through Saturday that is not a holiday as set forth
505 in Section 6.11 of this Contract.

506 **ARTICLE 2. REPRESENTATIONS AND WARRANTIES OF**
507 **CONTRACTOR**

508 CONTRACTOR hereby makes the following representations and warranties for the benefit of
509 CITY as of the date of this Contract.

510 2.01 Corporate Status. CONTRACTOR is a corporation duly organized, validly
511 existing and in good standing under the laws of the State of California. It is qualified to transact
512 business in the State of California and has the corporate power to own its properties and to
513 carry on its business as now owned and operated and as required by this Contract.

514 2.02 Corporate Authorization. CONTRACTOR has full legal right, power and authority
515 to execute, deliver and perform its obligations under this Contract. The Board of Directors of
516 CONTRACTOR (or the shareholders if necessary) has taken all actions required by law, its
517 articles of incorporation, its bylaws or otherwise to authorize the execution and delivery of this
518 Contract. The persons signing this Contract on behalf of CONTRACTOR have authority to do
519 so.

520 2.03 Contract Duly Executed. The Persons signing this Contract on behalf of
521 CONTRACTOR have been authorized by CONTRACTOR to do so, and this Contract has been
522 duly executed and delivered by CONTRACTOR in accordance with the authorization of its
523 Board of Directors or shareholders, if necessary, and constitutes a legal, valid, and binding
524 obligation of CONTRACTOR enforceable against CONTRACTOR in accordance with its terms.

525 2.04 No Conflict with Applicable Law or Other Documents. To the best of
526 CONTRACTOR's knowledge, neither the execution and delivery by CONTRACTOR of this
527 Contract nor the performance by CONTRACTOR of its obligations hereunder:

528 2.04.1 Conflicts with, violates or will result in a violation of any existing
529 applicable law; or

530 2.04.2 Conflicts with, violates or will result in a breach or default under
531 any term or condition of any existing judgment, order or decree of any court, administrative
532 agency or other governmental authority, or of any existing Contract or instrument to which
533 CONTRACTOR is a party, or by which CONTRACTOR or any of Contractor's properties or
534 assets is bound; or

535 2.04.3 Will result in the creation or imposition of any lien, charge, or
536 encumbrance of any nature whatsoever upon any of the properties or assets of
537 CONTRACTOR which will interfere materially with CONTRACTOR'S performance hereunder.

538 2.05 No Litigation. There is no action, suit, proceeding or action at law or equity, or to
539 the best of CONTRACTOR'S knowledge, any investigation before or by any court or
540 governmental entity, pending or threatened against CONTRACTOR or otherwise affecting
541 CONTRACTOR, wherein an unfavorable decision, ruling or finding, in any single case or in the
542 aggregate, would materially adversely affect CONTRACTOR'S performance hereunder, or
543 which in any way would adversely affect the validity or enforceability of this Contract, or which
544 would have a material adverse effect on the financial condition of CONTRACTOR or its parent
545 company.

546 2.06 Financial Ability, Disclosures, No Material Change. CONTRACTOR has
547 sufficient financial resources to perform all aspects of its obligations hereunder.
548 CONTRACTOR has provided CITY with audited financial statements which present fairly, in
549 accordance with generally accepted accounting principles, the financial resources of
550 CONTRACTOR. There has been no material adverse change in CONTRACTOR'S or
551 CONTRACTOR'S parent company's financial circumstances since the date of the most recent
552 financial statements.

553 2.07 Expertise. CONTRACTOR has the expert, professional, and technical capability
554 to perform all of its obligations under this Contract.

555 2.08 CONTRACTOR'S Statements. CONTRACTOR'S proposal and any other
556 supplementary information submitted to CITY that CITY has relied on in negotiations and
557 entering into this Contract, do not: (i) contain any untrue statement of a material fact, or (ii) omit
558 to state a material fact that is necessary in order to make the statements made, in light of the
559 circumstances in which they were made, not misleading.

560 2.09 CONTRACTOR'S Investigation. CONTRACTOR has made an independent
561 investigation (satisfactory to it) of the conditions and circumstances surrounding this Contract
562 and the work to be performed by CONTRACTOR under the Contract, and enters into this
563 Contract on the basis of that independent investigation.

564 2.10 Voluntary Use of Approved Disposal Facility. CONTRACTOR, without constraint
565 and as a free-market business decision in accepting this Contract, agrees to use the Disposal
566 Facility for the purposes of Disposing of all Mixed Materials not delivered to a Mixed Materials
567 Processing Facility and Residue resulting from Processing of Mixed Materials Collected in the
568 Service Area. Such decision by CONTRACTOR in no way constitutes a restraint of trade
569 notwithstanding any Change in Law regarding flow control limitations or any definition thereof.

570

ARTICLE 3. TERM OF CONTRACT

571 3.01 Term. The term of this Contract shall be for a ten (10) year period beginning
572 July 1, 2015, and terminating on June 30, 2025. CITY in its sole discretion shall have the option
573 to extend the Contract for up to two (2) additional five (5) year periods.

574 3.01.1 First Extension. On or about May 1, 2022, CITY in its sole
575 discretion may offer to extend this Contract by five (5) years by notifying CONTRACTOR of its
576 intention to do so in writing.

577 3.01.2 Second Extension. On or about May 1, 2027, CITY in its sole
578 discretion may extend this Contract by five (5) years by notifying CONTRACTOR of its intention
579 to do so in writing.

580 3.01.3 No Right to Extension. Nothing in the foregoing paragraphs or
581 otherwise set forth in this Contract is intended to create a right in favor of CONTRACTOR to
582 obtain either the first or second extension.

583 3.01.4 Prior to any award of either extension, the CITY shall evaluate
584 CONTRACTOR's performance under this Contract during the prior term and evaluate the
585 reasonableness of the cost for service under the terms of the existing Contract including
586 projected costs for disposal during the period of extension.

587 ARTICLE 4. CONTRACTOR'S COVENANTS; CITY OPTION TO 588 TERMINATE

589 4.01 General. CONTRACTOR covenants that it shall obtain and deliver to CITY the
590 document set forth in Section 4.02 below within fifteen (15) days of notification that the Contract
591 has been executed. If such document is not delivered to CITY within the fifteen (15) day
592 notification period, CITY may terminate this Contract with absolutely no continuing financial
593 obligations to CONTRACTOR and may resort to the rights and remedies provided for in Article
594 29 hereof.

595 4.02 Receipt of Performance Security. CONTRACTOR shall provide CITY with, and
596 CITY shall accept if it complies with Article 24, the performance security described in Article 24
597 of this Contract.

598 4.03 Termination. This Contract may be terminated prior to the expiration of its initial
599 term and any extension as may be provided only in accordance with the provisions of this
600 Contract. At the expiration of the term provided for hereunder, or in the event of a termination
601 as allowed under this Contract, CONTRACTOR, at its own expense for a period of up to six (6)
602 months, shall cooperate fully with CITY, as reasonably necessary, to ensure an orderly
603 transition to any and all new service providers, and CITY shall have no continuing obligations to
604 CONTRACTOR other than those expressly provided for under this Contract. CONTRACTOR
605 shall transfer, Process or Dispose of all materials that have been Collected or are in Process
606 under this Contract as of the date of expiration or termination.

607

ARTICLE 5. SERVICES PROVIDED BY CONTRACTOR

608 5.01 Grant of Exclusive Contract. Except as otherwise provided in this Contract,
609 CONTRACTOR is herein granted an exclusive Contract to provide Collection Services, other
610 than Commercial Non-Exclusive Recycling Collection Service, within the Service Area. No
611 other services shall be exclusive to CONTRACTOR.

612 5.02 Limitations to Scope of Exclusive Contract. Nothing in this Contract shall limit the
613 right of any Person to donate or sell his or her Recyclable Materials, Organic Materials or Bulky
614 Goods pursuant to Section 5.03 below.

615 5.03 Collection by Other Persons. Notwithstanding CONTRACTOR'S rights under
616 this Contract as described above and in Section 6.16, the following materials may be Collected
617 by Persons other than CONTRACTOR:

618 5.03.1 Solid Waste which is removed from any premises and which is
619 transported personally by the owner or occupant of such premises (or by his or her employees)
620 to any permitted processing or disposal site;

621 5.03.2 Construction and Demolition Debris that is incidentally removed
622 by a construction or demolition contractor or as part of a total service offered by such company
623 and where the company uses its own equipment and employees;

624 5.03.3 Mixed Materials, Garbage, Organic Materials, Bulky Goods or
625 Recyclable Materials Collected and transported by CITY crews to the Disposal Facility,
626 Materials Recovery Facility, Organic Materials Processing Facility, Mixed Materials Processing
627 Facility or transfer station;

628 5.03.4 Recyclable Materials or Bulky Goods that are Source Separated
629 at any Service Address by the Generator and donated or sold. Recyclable Materials are
630 considered "donated or sold" so long as the Person collecting the Recyclable Materials does
631 not receive a net payment from the Generator (including but not limited to any payment for
632 consulting and/or management fees related to the collection of any waste materials including
633 Recyclable Materials);

634 5.03.5 Beverage containers delivered for Recyclable Materials under the
635 California Beverage Container Recyclable Materials Litter Reduction Act, section 14500, et
636 seq.;

637 5.03.6 Organic Materials removed from a Service Address by a
638 gardening, landscaping or tree trimming service provider as an incidental part of a total service
639 offered by that service provider rather than as a hauling service;

640 5.03.7 Source Separated Recyclable Materials generated by
641 Commercial Service Addresses including but not limited to those collected by a Person under
642 contract to CITY and those collected through private arrangements between the Generator and
643 the collection company, which are recycled at a recycling facility that holds all applicable
644 permits; provided, however, that loads that contain more than ten (10) percent by weight or
645 volume of non-recyclable material shall not be considered Source Separated Recyclable
646 Materials;

647 5.03.8 Discarded Materials removed from a Service Address in a Fixed
648 Body vehicle by a property management, maintenance or cleanup service provider as an
649 incidental part of the total on-property cleanup or maintenance service offered by the service
650 provider rather than as a hauling service;

651 5.03.9 Animal waste and remains from slaughterhouses and butcher
652 shops or grease or vegetable oil waste for use as tallow;

653 5.03.10 Waste vegetable oil used as an alternative fuel;

654 5.03.11 Homogeneous organic by-products such as spent hops or coffee
655 bean chaff which are generated by food product manufacturers and processors delivered to
656 destinations other than solid waste or compost facilities and used as livestock feed;

657 5.03.12 By-products of sewage treatment including sludge, grit and
658 screenings;

659 5.03.13 Hazardous Waste regardless of its source;

660 5.03.14 Bulky Goods removed from a Service Address for a nominal
661 charge by a retailer as an incidental part of a sale of merchandise; and

662 5.03.15 Bulky Goods removed from a Service Address for a nominal
663 charge by a reuse facility or reuse business.

664 5.04 Prohibition. Nothing in Section 5.03 shall allow the Collection, through the use of
665 a Roll-Off Box, of Mixed Materials, Garbage, Organics, Bulky Goods, or SFD, MFD or CITY
666 Recyclable Materials for a fee by a service provider whose primary service is hauling.

667 5.05 Use of Other Persons. CONTRACTOR acknowledges and agrees that CITY
668 may permit other Persons besides CONTRACTOR to Collect any and all types of materials
669 excluded from the scope of this Contract, as set forth above, without seeking or obtaining
670 approval of CONTRACTOR.

671 5.06 Applicable Law. The scope of this Contract shall be interpreted to be consistent
672 with applicable law, now and during the term of the Contract subject to provisions of Article 30.
673 If future judicial interpretations of current law or new laws, regulations, or judicial interpretations
674 limit the ability of CITY to lawfully provide for the scope of services as specifically set forth
675 herein, CONTRACTOR agrees that the scope of the Contract will be limited to those services
676 and materials which may be lawfully provided. In such an event, it shall be the responsibility of
677 CONTRACTOR to minimize the financial impact of such future judicial interpretations or new
678 laws, subject to the other provisions of the Contract.

679 **ARTICLE 6. SERVICE STANDARDS**

680 6.01 Service Standards. CONTRACTOR shall perform all Collection Services under
681 this Contract in a thorough and professional manner. Subject to Section 29.05, Collection
682 Services described in this Contract shall be performed regardless of weather conditions or
683 difficulty of Collection.

684 6.02 Hours and Days of Collection.

685 6.02.1 SFD and MFD Collection Services shall be provided, commencing
686 no earlier than 6:00 a.m. and terminating no later than 6:30 p.m., in accordance with the City
687 Municipal Code, Monday through Friday with no service on Saturday (except for holiday service
688 as set forth in Section 6.11 of this Contract in which case normal Collection hours may be
689 utilized) or Sunday. The hours, days, or both of Collection may be extended due to
690 extraordinary circumstances or conditions with the prior written consent of the Contract
691 Manager.

692 6.02.2 Commercial Collection Services and CITY Collection Services
693 shall be provided Monday through Saturday with limited Collection Services on Sunday.
694 CONTRACTOR shall endeavor to route collection vehicles in a manner that minimizes noise
695 and traffic impacts during critical periods of the day, including: near residential properties from 6
696 pm to 6 am, near schools during pick-up and drop-off hours, in merchant districts during normal
697 business hours, and in high traffic areas during peak commute hours. CONTRACTOR shall
698 resolve complaints of noise and traffic impacts caused by CONTRACTOR'S activities to the
699 satisfaction of the Contract Manager.

700 6.03 Transfer of Loads on Public Streets and Roads. CONTRACTOR is prohibited
701 from transferring loads from one vehicle to another on any public right-of-way unless there is a
702 necessity to do so because of road conditions, mechanical failure, truck fire or accidental
703 damage to a vehicle without written permission from the Contract Manager.

704 6.04 Manner of Collection. CONTRACTOR shall provide Collection Services with as
705 little disturbance as reasonably possible and shall leave any Cart or Bin in an upright position,
706 with the lid closed, at the same point it was Collected without obstructing alleys, roadways,
707 driveways, sidewalks or mail boxes. CONTRACTOR will not be responsible for Carts or Bins
708 being moved or open due to weather conditions or other factors beyond its control, such as
709 scavengers. CONTRACTOR shall also lock any Bin and close or lock as appropriate any
710 Container enclosure which it opened or unlocked as part of Collection Services.

711 6.05 Record of Non-Collection. When any Discarded Material, or other material set
712 out for regular or special Collection, is not Collected by CONTRACTOR for sufficient reason,
713 CONTRACTOR shall leave a Non-Collection Notice. A copy of any Non-Collection Notice,
714 along with the name and address of the party noticed, shall be delivered to the Contract
715 Manager within twenty-four (24) hours of CITY'S request.

716 6.06 Containers.

717 6.06.1 Carts. Carts are to be hot-stamped, embossed, laminated, or
718 labeled with a unique identification number and the "Oakland Recycles" logo along with the type
719 of materials to be Collected (i.e., Garbage, Organic Materials), name and phone number of
720 CONTRACTOR, and instructions for proper usage or otherwise approved by Contract Manager.
721 In-molding or labels on the Carts shall be on the lids. Labeling and graphics of the Carts shall
722 be approved by the Contract Manager. Carts shall not contain any type of advertising without
723 the written approval of the Contract Manager.

724 6.06.2 Bins. Bins, including those defined herein as Compactors are to
725 be marked with a unique identification number, labeled with the type of materials to be Collected
726 (i.e., Garbage, Organic Materials), the size in cubic yards, CONTRACTOR'S name and phone

727 number and instructions for proper usage and be in good working order. Labeling and graphics
728 of the Bins shall be approved by Contract Manager. Used Bins may be utilized providing they
729 are newly painted, properly marked, in good working order and free of rust and holes. The initial
730 painting, labeling and identification numbering for used bins shall be accomplished by
731 December 31, 2015. CITY retains the right to inspect any such used Bins and direct
732 CONTRACTOR to replace such used Bin if it is deemed to be not acceptable. Bins shall not
733 contain any type of advertising without the written permission and approval of the Contract
734 Manager.

735 6.06.3 Roll-Off Boxes. Roll-Off Boxes, including those defined herein as
736 Compactors are to be marked with a unique identification number, labeled with the size in cubic
737 yards, CONTRACTOR'S name and phone number and instructions for proper usage, be in good
738 working order, and at the discretion of CITY have lids. Labeling and graphics of the Roll-Off
739 Boxes shall be approved by the Contract Manager and may include use of the joint
740 CWS/WMAC/City of Oakland logo. Used Roll-Off Boxes may be utilized, provided they are
741 newly painted, properly marked, in good working order and free of rust and holes. The labeling
742 and identification numbering for used Roll-Off Boxes may be accomplished during the repainting
743 process which shall be completed by December 31, 2015. CITY retains the right to inspect any
744 such used Roll-Off Boxes and direct CONTRACTOR to replace such used Roll-Off Box if it is
745 deemed to be not acceptable.

746 6.06.4 Purchase, Distribution and Collection of Carts and Bins.
747 CONTRACTOR shall be responsible for the purchase and distribution of fully assembled and
748 functional Containers to Service Addresses in the Service Area based on the type and level of
749 service received by each Service Address. CONTRACTOR shall also distribute Containers, as
750 needed, to new Service Addresses during the term of this Contract. The distribution shall be
751 completed no later than the next regularly scheduled Collection day after receipt of notification
752 from CITY, the Customer or the Service Recipient; provided, however, CONTRACTOR must
753 receive the notification at least six (6) Work Days prior to distribution.

754 6.06.4.1 CONTRACTOR shall be responsible for the Collection of
755 abandoned, used, discarded, or unwanted Mixed Materials or Organic Materials Containers in
756 the Service Area within six (6) Work Days of notification by CITY, a Service Recipient, or a
757 Customer. The Containers shall be repaired or, if repair is not practical, Recycled. This service
758 shall be provided at no additional cost to CITY, Customer or Service Recipient.

759 6.06.5 Repair or Replacement of Carts and Bins. CONTRACTOR shall
760 be responsible for repair or replacement of Carts and Bins and their component parts, including
761 but not limited to, hinged lids, wheels, axles and labels, as provided below. CONTRACTOR
762 shall also be responsible for securing replacement of all items covered by manufacturer
763 warranty.

764 6.06.6 Replacement of Carts Provided Under Previous Contract. If
765 CONTRACTOR has, or obtains Carts provided under previous contract, then in lieu of providing
766 one hundred percent of new Carts, CONTRACTOR may replace at least twenty (20) percent of
767 the Carts provided under the previous contract at no cost or inconvenience to the Service
768 Recipient or Customer in the initial Contract Year. In particular, CONTRACTOR shall replace at
769 least the following number of Carts in each category:

Mixed Materials and Organics Collection Services Contract

	Mixed Material Carts	Organics Carts
SFD Service Addresses	19,525 (est.)	19,525 (est.)
MFD Service Addresses	2,000	CONTRACTOR will provide all new Carts
Commercial Service Addresses	400	CONTRACTOR will provide all new Carts to those Customers subscribing to Commercial Organic Materials Collection Service.

770 CONTRACTOR shall be responsible for ongoing replacement of Carts and Bins during the
 771 remaining term at a frequency and in amounts to ensure maintenance of adequate
 772 serviceability. This continual replacement is estimated to be at a rate of up to three percent
 773 (3%) per subsequent Contract Year, but in any event shall be sufficient to maintain
 774 serviceability.

775 6.06.6.1 In those instances where the Residential Recycling
 776 Contractor is temporarily utilizing Recycling Carts that were used by CONTRACTOR under the
 777 previous contract, CONTRACTOR shall be responsible for picking up such Carts from the
 778 Residential Recycling Contractor's facility within forty eight (48) hours of receiving the written
 779 request from the Recycling Contractor indicating that such Carts have been replaced.

780 6.06.7 Replacement of Carts and Bins Damaged by CONTRACTOR.
 781 CONTRACTOR'S employees shall take care to prevent damage to Carts or Bins by
 782 unnecessary rough treatment. However, any Cart or Bin damaged by CONTRACTOR shall be
 783 replaced or repaired by CONTRACTOR, at CONTRACTOR'S expense, no later than the next
 784 regularly scheduled Collection day or within six (6) Work Days (whichever is later), at no cost or
 785 inconvenience to the Service Recipient or Customer.

786 6.06.8 Replacement of Carts and Bins Due to Normal Wear and Tear.
 787 Upon notification to CONTRACTOR by a Service Recipient or Customer of the need for
 788 replacement or repair to a Cart(s) or Bin(s) due to normal wear and tear, CONTRACTOR shall
 789 replace or repair such Cart(s) or Bin(s) at CONTRACTOR'S expense, by the next regularly
 790 scheduled Collection day, or within six (6) Work Days (whichever is later) at no cost or
 791 inconvenience to the Service Recipient or Customer.

792 6.06.9 Replacement of Carts and Bins Required Through No Fault of
 793 CONTRACTOR. Upon notification to CONTRACTOR by CITY or a Service Recipient that the
 794 Service Recipient's Mixed Materials or Organics Cart(s), or Bin(s) have been stolen or
 795 damaged beyond repair through no fault of CONTRACTOR, CONTRACTOR shall deliver a
 796 replacement Cart(s), or Bin(s) to the Service Address no later than the next regularly scheduled
 797 Collection day, or within six (6) Work Days (whichever is later), at no cost, subject to the
 798 limitations set forth below, or inconvenience to the Service Recipient or Customer.
 799 Notwithstanding the foregoing, in cases where CONTRACTOR can demonstrate that the
 800 replacement is due to factors other than CONTRACTOR mishandling or damage, ordinary
 801 wear and tear, or third-party theft, CONTRACTOR may invoice the Customer or Service
 802 Recipient requesting such a replacement in accordance with the "Cart Replacement" Maximum
 803 Service Rate set forth in Exhibit 1 to this Contract or as may be adjusted under the terms of this
 804 Contract from time to time. CONTRACTOR shall maintain records documenting all Cart and

805 Bin replacements occurring on a monthly basis.

806 6.06.10 Reporting Requirements for Replacements. No later than
807 July 15, 2016 and annually thereafter during the term of this Contract, CONTRACTOR shall
808 provide CITY with an electronic report of Cart and Bin Replacements provided during the
809 preceding Contract Year in a form and format approved by CITY and using software approved
810 by CITY. At a minimum, the report shall include the size, type, and number of Bins and Carts
811 replaced and the reason for such replacement based upon one of the following five (5)
812 categories: Missing; Stolen; Damaged; Destroyed; or Normal Wear and Tear. The report shall
813 also include a calculation of the base number for Cart and Bin replacements under Section
814 6.06.6 for the prior Contract Year and the current Contract Year.

815 6.06.11 Cart or Bin Change. As provided below, upon notification to
816 CONTRACTOR by CITY or a Customer that a change in the size or number of Carts or Bins is
817 required, including a change to provide additional Mixed Materials or Organics capacity
818 CONTRACTOR shall deliver such Carts or Bins to the Service Address by the next regularly
819 scheduled Collection day or within six (6) Work Days (whichever is later).

820 6.06.11.1 Each SFD Service Address shall be entitled to receive two
821 (2) free Mixed Materials Cart exchanges (meaning an increased or decreased Cart size) and
822 two (2) free Organic Materials Cart exchanges during the initial Contract Year, and once every
823 year thereafter during the term of this Contract.

824 6.06.11.2 Each MFD Service Address shall be entitled to receive two
825 (2) free service exchanges in the first Contract Year. Beginning on July 1, 2016, each MFD
826 Service Address shall be entitled to receive one (1) free service exchange per Contract Year
827 during the term of this Contract. For the purposes of this Section, a service exchange
828 represents the exchange of as few as one (1) and as many as the total number of Carts and
829 Bins provided by CONTRACTOR to the Service Address.

830 6.06.11.3 Each CITY Facility shall be entitled to receive one (1) free
831 service exchange per Contract Year during the term of this Contract. For the purposes of this
832 Section, a service exchange represents the exchange of as few as one (1) and as many as the
833 total number of Carts and Bins provided by CONTRACTOR to CITY Facility.

834 6.06.11.4 CONTRACTOR shall be compensated for the cost of those
835 exchanges in excess of the limitations set forth herein per Contract Year, in accordance with the
836 "Cart or Bin Exchange" Maximum Service Rate as set forth in Exhibit 1 of this Contract.

837 6.06.12 Ownership of Carts. Ownership of Carts shall rest with
838 CONTRACTOR and upon termination of this Contract CONTRACTOR shall be responsible for
839 removing all Carts in service from the Service Area. In the case of the termination of this
840 Contract prior to the expiration of the initial term or optional extension term, CITY shall have the
841 right to take temporary possession of the Carts and shall retain such possession for a
842 reasonable period until satisfactory arrangements can be made to provide Collection Services
843 using other equipment (not to exceed five (5) months). There shall be no monies owing to
844 CONTRACTOR from CITY for such use of the carts. Upon the receipt of written notice from
845 CITY, CONTRACTOR shall submit to the Contract Manager an inventory of Carts, including
846 their locations.

847 6.06.13 Ownership of Bins. Ownership of Bins shall rest with

848 CONTRACTOR and upon termination of this Contract CONTRACTOR shall be responsible for
849 removing all Bins in service from the Service Area. In the case of the termination of this
850 Contract prior to the expiration of the initial term or optional extension term, CITY shall have the
851 right to take temporary possession of the Bins and shall retain such possession until
852 satisfactory arrangements can be made to provide Collection Services using other equipment
853 (not to exceed five (5) months). There shall be no monies owing to CONTRACTOR from CITY
854 for such use of the Bins. Upon the receipt of written notice from CITY, CONTRACTOR shall
855 submit to the Contract Manager an inventory of Bins, including their locations.

856 6.06.14 Ownership of Roll-Off Boxes. Ownership of Roll-Off Boxes shall
857 rest with CONTRACTOR and upon termination of this Contract CONTRACTOR shall be
858 responsible for removing all Roll-Off Boxes in service from the Service Area. In the case of this
859 termination of the Contract prior to the expiration of the initial term or optional extension term
860 due to the default of CONTRACTOR as set forth in Article 29 of this Contract, CITY shall have
861 the right to take temporary possession of the Roll-Off Boxes and shall retain such possession
862 until satisfactory arrangements can be made to provide Collection Services using other
863 equipment (not to exceed three (3) months). There shall be no monies owing to
864 CONTRACTOR from CITY for such use of the Roll-Off Boxes.

865 6.07 Compactors. Compactor equipment may be owned by the Customer or leased
866 from CONTRACTOR or any other source provided the Compactor Container is compatible with
867 CONTRACTOR'S Collection vehicles.

868 6.08 Annual Inspection and Cleaning of Bins and Roll-Off Boxes. At least once each
869 Contract Year, at no charge to CITY or the Customer, CONTRACTOR shall inspect all
870 CONTRACTOR provided Bins and Roll-Off Boxes at the Service Address and shall replace
871 those Bins or Roll-Off Boxes needing cleaning or repair, with clean, undamaged Bins or Roll-Off
872 Boxes, and remove the dirty or damaged Bins or Roll-Off Boxes for cleaning or repair.

873 6.09 Extra Service Tags. CONTRACTOR shall make Mixed Materials Extra Service
874 Tags readily available to SFD and MFD Service Addresses at a minimum through the mail, at
875 CONTRACTOR'S office at 172 98th Avenue, Oakland, CA 94603 and at other retail locations as
876 determined by CONTRACTOR. CONTRACTOR shall maintain a sufficient inventory of Mixed
877 Materials and Organic Materials Extra Service Tags to accommodate Collection of requests
878 from Service Recipients. Mixed Materials Extra Service Tags and Organic Materials Extra
879 Service Tags sold by CONTRACTOR shall be priced in accordance with the Maximum Service
880 Rates set forth in Exhibit 1.

881 6.10 Labor and Equipment. CONTRACTOR shall provide and maintain all labor,
882 equipment, tools, facilities, and personnel supervision required for the performance of
883 CONTRACTOR'S obligations under this Contract. CONTRACTOR shall at all times have
884 sufficient backup equipment and labor (subject to Service Resumption Protocol) to fulfill
885 CONTRACTOR'S obligations under this Contract. No compensation for CONTRACTOR'S
886 services or for CONTRACTOR'S supply of labor, equipment, tools, facilities or supervision shall
887 be provided or paid to CONTRACTOR by CITY or by any Customer except as expressly
888 provided by this Contract.

889 6.11 Holiday Service. January 1, Thanksgiving Day, and December 25th shall be
890 designated legal holidays. CONTRACTOR shall not be required to provide Collection Services
891 on the designated holidays. In any week in which one of these holidays falls on a Work Day,
892 and CONTRACTOR elects to not provide Collection Services, SFD Collection Services for the

893 holiday and each Work Day thereafter may be delayed one (1) Work Day for the remainder of
894 the week with normally scheduled Collection Services being performed on the next Work Day.
895 MFD, Commercial and CITY Collection Services shall be adjusted as agreed between
896 CONTRACTOR and the Customer but must meet the minimum frequency requirement of one
897 (1) time per week. CONTRACTOR shall notify Service Addresses and CITY at least thirty (30)
898 calendar days in advance of changes to the Collection day because of a holiday schedule.

899 6.12 Processing and Disposal.

900 6.12.1 Compliance with Regulations. All materials Collected under this
901 Contract shall be delivered to facilities that comply with the Department of Resources
902 Recycling and Recovery regulations.

903 6.12.1.1 Regulatory Inquiry. In those instances where
904 CONTRACTOR is required by any law or regulation to submit written or electronic materials
905 related to the provision of Collection Services under the terms of this Contract to any regulatory
906 agency, CONTRACTOR shall submit copies of such written or electronic materials to CITY
907 simultaneously with CONTRACTOR'S submittal to such regulatory agency.

908 6.12.2 Permits and Approvals. CONTRACTOR must assure that all
909 facilities selected by CONTRACTOR shall possess all necessary permits and approvals by
910 local enforcement agencies to be in full compliance with all regulatory agencies to conduct all
911 operations at the approved location. CONTRACTOR shall, upon written request from CITY,
912 arrange for the facilities selected by CONTRACTOR to provide copies of facility permits,
913 notices of violations, inspection areas or concerns, or administrative action to correct
914 deficiencies related to the operation. Failure to provide facility information shall result in the
915 levy of liquidated damages as specified in Article 22 of this Contract and may result in
916 CONTRACTOR being in default under this Contract.

917 6.12.3 Disposal and Mixed Materials Processing Facilities. Except as
918 set forth below, all Mixed Materials Collected as a result of performing Collection Services shall
919 be transported to the Disposal Facility or the Mixed Materials Processing Facility. In the event
920 the Facility being utilized by CONTRACTOR is closed on a Work Day, CONTRACTOR shall
921 transport and deliver the Mixed Materials to such other legally permitted Disposal Facility or
922 Mixed Materials Processing Facility as is approved by CITY. Failure to comply with this
923 provision shall result in the levy of liquidated damages as specified in Article 22 of this Contract
924 and may result in CONTRACTOR being in default under this Contract.

925 6.12.4 Organic Materials Processing Facility. CONTRACTOR shall
926 ensure that all Organic Materials Collected pursuant to this Contract are delivered to an
927 approved Organic Materials Processing Facility. All Commercial Organic Materials Collected
928 pursuant to Section 11.05 shall be delivered to the EBMUD Facility. In the event that (1)
929 CONTRACTOR is excused from its obligation to enter into a subcontract with EBMUD pursuant
930 to Section 11.06 or 26.14.3; (2) the EBMUD Subcontract is terminated; or (3) the facility is
931 closed on a Work Day or other interim basis, CONTRACTOR shall transport and deliver the
932 Organic Materials to such other legally permitted facility selected by CONTRACTOR and
933 approved by CITY. Failure to comply with this provision shall result in the levy of liquidated
934 damages as specified in Article 22 of this Contract and may result in CONTRACTOR being in
935 default under this Contract.

936 6.13 Inspections. CITY shall have the right to inspect CONTRACTOR'S facilities or

937 Collection vehicles and their contents at any time while operating inside or outside the Service
938 Area.

939 6.14 Commingling of Materials.

940 6.14.1 Mixed Materials, and Organic Materials. Except as provided in
941 Section 28.03.11, Mixed Materials and Organic Materials that have been Source Separated
942 and set out for Collection shall not be commingled by CONTRACTOR prior to delivery to a
943 transfer facility, the Disposal Facility, the Mixed Materials Processing Facility, MRF or Organics
944 Processing Facility as appropriate without the express prior written authorization of the
945 Contract Manager and such authorization shall not be unreasonably withheld.

946 6.14.2 Mixed Materials and Organic Materials Collection.
947 CONTRACTOR may Collect Mixed Materials or Organic Materials Collected pursuant to this
948 Contract together with other material Collected by CONTRACTOR inside or outside the Service
949 Area with the authorization of the Contract Manager (unless an emergency or similar
950 occurrence makes it impractical to obtain such permission) and such authorization shall not be
951 unreasonably withheld. CONTRACTOR shall report Mixed Materials and Organic Materials
952 Tons Collected pursuant to this Contract excluding other Mixed Materials or Organic Materials
953 Collected by CONTRACTOR, using a methodology approved by the Contract Manager.

954 6.14.3 Material Separation. Except for those materials Collected as part
955 of the provision of SFD, MFD or City Bulky Goods Collection Services, Mixed Materials,
956 Organic Materials, Recyclable Materials and Bulky Goods shall not be mixed together in
957 CONTRACTOR'S Collection equipment. Each category of material Collected shall be kept
958 separated according to type or classification.

959 6.15 Spillage and Litter. CONTRACTOR shall not litter premises in the process of
960 providing Collection Services or while its vehicles are on the road. CONTRACTOR shall
961 transport all materials Collected under the terms of this Contract in such a manner as to prevent
962 the spilling or blowing of such materials from CONTRACTOR'S vehicle. CONTRACTOR shall
963 exercise all reasonable care and diligence in providing Collection Services so as to prevent
964 spilling or dropping of Discarded Materials and shall immediately, at the time of occurrence,
965 clean up such spilled or dropped materials in accordance with the "Spill Response Plan"
966 approved by CITY in Exhibit 10 which is attached to and included in this Contract.
967 CONTRACTOR shall commence clean up any spillage or litter by end of Work Day upon notice
968 from the CITY.

969 6.15.1 Litter Cleanup. CONTRACTOR is required to clean up
970 reasonable amounts and types of litter around the area of the Container, whether or not
971 CONTRACTOR has caused the litter. In the event of more than one (1) instance in any six (6)
972 month period, not caused by CONTRACTOR, requiring CONTRACTOR to clean up litter
973 around the Containers at a specific Service Address, CONTRACTOR shall make reasonable
974 efforts to contact the Service Recipient and work with the Service Recipient to resolve the litter
975 problem. In the event the litter problem cannot be resolved CONTRACTOR may bill such
976 Customer in accordance with the appropriate Mixed Material Overage Maximum Service Rate
977 as set forth in Exhibit 1 to this Contract.

978 6.15.2 Street Litter Containers. Except for Bulky Goods and/or
979 Unacceptable Waste, CONTRACTOR is required to clean up litter in and around street litter
980 Containers regardless of whether CONTRACTOR has caused the litter, and regardless of

981 whether the amount of litter is considered excessive. Should CONTRACTOR discover the
982 presence of Bulky Goods or Unacceptable Waste, and/or if a specific street litter Container has
983 excessive amounts of litter during four (4) consecutive cleanups, CONTRACTOR shall
984 immediately notify CITY. Upon notification, CITY shall determine the process for removing the
985 Bulky Goods, Unacceptable Waste and/or excessive amounts of litter, including characterizing
986 the pickup as one of CONTRACTOR's required illegal dumping pickups. CITY and
987 CONTRACTOR shall also meet and confer to discuss whether additional steps are necessary
988 to mitigate excessive litter.

989 6.15.3 Overage Cleanup. CONTRACTOR is required to Collect
990 Discarded Materials, including materials not contained in bags with affixed Mixed Materials or
991 Organics Excess Service Tags, placed for Collection in excess of the capacity of the Container.
992 CONTRACTOR shall be compensated for Collection of Overages not contained in bags with
993 affixed Mixed Materials or Organics Excess Service Tags in accordance with the "Overage"
994 Maximum Service Rate set forth in Exhibit 1 to this Contract.

995 6.15.4 Damage to Public Streets. In the event where damage to public
996 streets within CITY is caused by a hydraulic oil spill from CONTRACTOR'S vehicle, or a
997 vehicle load fire that is dumped onto the street for containment purposes, CONTRACTOR shall
998 be responsible for all repairs to return the street to the same condition it was in prior to the spill
999 or fire. CONTRACTOR shall also be responsible for all clean-up activities related to the spill or
1000 fire. Repairs and clean-up shall be performed in a manner satisfactory to the Contract
1001 Manager and at no cost to CITY.

1002 6.15.5 Oil, Other Vehicle Fluid Spills or Vehicle Load Fires. In the event
1003 of a vehicle fluid spill from CONTRACTOR'S vehicle or vehicle load fire, CONTRACTOR shall
1004 immediately respond in the manner as set forth in the "Spill Response Plan" approved by CITY
1005 in Exhibit 10 of this Contract.

1006 6.16 Ownership of Materials.

1007 6.16.1 Title to Mixed Materials, Organic Materials, Recyclable Materials
1008 and Bulky Goods shall pass to CONTRACTOR at such time as said materials are placed in a
1009 Container and set out for Collection, or for those materials that are not required to be placed in
1010 a Container, at the time the materials are set out for Collection.

1011 6.16.2 Title to other materials Collected as part of other Collection
1012 Services offered by CONTRACTOR under the terms of this Contract shall pass to
1013 CONTRACTOR at the time the material is placed in a Container utilized by CONTRACTOR for
1014 Collection or at a CITY approved Drop-off site; provided, however, title to Unacceptable Waste
1015 shall remain with the Generator unless expressly accepted by CONTRACTOR.

1016 6.17 Hazardous Waste. Except regarding services provided outside the scope of this
1017 Contract, under no circumstances shall CONTRACTOR'S employees knowingly Collect
1018 Hazardous Waste, or knowingly remove in an unsafe manner Hazardous Waste, from a
1019 Collection Container. If CONTRACTOR determines that material placed in any Container for
1020 Collection is Hazardous Waste, or other material that may not legally be accepted at the
1021 Disposal Facility or one of the Processing facilities, or presents a hazard to CONTRACTOR'S
1022 employees, CONTRACTOR shall have the right to refuse to accept such material. The
1023 Generator shall be contacted by CONTRACTOR and requested to arrange for proper Disposal.
1024 If the Generator cannot be reached immediately, CONTRACTOR shall, before leaving the

1025 premises, leave a Non-Collection Notice that indicates the reason for refusing to Collect the
1026 material and submit an incident report to Contract Manager.

1027 6.17.1 If Hazardous Waste is found in a Collection Container that poses
1028 an imminent danger to people property, or the environment, CONTRACTOR shall immediately
1029 call 911 to notify the City of Oakland Fire Department. CONTRACTOR shall immediately notify
1030 CITY of any Hazardous Waste that has been identified, and submit an incident report to
1031 Contract Manager.

1032 6.17.2 If Hazardous Waste is identified at the time of delivery to the
1033 Disposal Facility, or a Processing facility and the Generator cannot be identified,
1034 CONTRACTOR shall be solely responsible for handling and arranging transport and disposition
1035 of the Hazardous Waste.

1036 6.18 Regulations and Record Keeping. CONTRACTOR shall comply with emergency
1037 notification procedures required by applicable laws and regulatory requirements. All records
1038 required by regulations shall be maintained at CONTRACTOR'S facility. These records shall
1039 include waste manifests, waste inventories, waste characterization records, inspection records,
1040 incident reports and training records.

1041 6.19 Transition. CONTRACTOR understands and agrees that the time between the
1042 formal Contract signing and July 1, 2015, is intended to provide CONTRACTOR with ample and
1043 sufficient time to, among other things, order equipment, prepare necessary routing schedules
1044 and route maps, obtain any permits and licenses, establish/build facilities and begin the public
1045 awareness campaign as part of CONTRACTOR'S transition program as specified in Exhibit 6,
1046 which is attached to and included in this Contract.

1047 6.20 Property Damage. CONTRACTOR shall be responsible for the repair of any
1048 damages to public or private property caused by CONTRACTOR during the provision of
1049 Collection Services or if repair is not adequate, the replacement of such public or private
1050 property.

1051 **ARTICLE 7. CHARGES AND RATES**

1052 7.01 General. CONTRACTOR shall perform all services required by this Contract in
1053 consideration of the right to bill and collect, from Customers for whom Collection Services are
1054 provided, the Maximum MM&O Service Rates as set forth in Exhibit 1 and as may be adjusted
1055 under the terms of this Contract. CITY does not guarantee collection of such Maximum MM&O
1056 Service Rates. CONTRACTOR shall not look to CITY for payment of any sums under this
1057 Contract, and CITY has no obligation to pay CONTRACTOR any public funds under this
1058 Contract except as specified in Section 12.07, and Article 18. Nothing in this paragraph is
1059 intended to alter the parties' obligations under Articles 26 and 28.

1060 7.01.1 Rates are Comprehensive Compensation. The Maximum MM&O
1061 Service Rates, as set forth in Exhibit 1 and as may be adjusted under the terms of this
1062 Contract, shall be the full, entire and complete compensation due to CONTRACTOR for
1063 furnishing all labor, materials, equipment, supplies and other things necessary to perform all
1064 the services required by this Contract in the manner and at the times prescribed. The
1065 Maximum MM&O Service Rates include, without limitation, all costs for the items mentioned in
1066 the preceding sentence and also for all taxes, franchise fees, insurance, bonds, overhead,
1067 profit and all other costs necessary to perform all the services required by this Contract in the

1068 manner and at the times prescribed. Except as provided in Section 30.01, the Maximum
1069 MM&O Service Rates include all costs associated with complying with all current federal and
1070 State statutes, and CITY and County ordinances concerning public health, safety and
1071 environmental issues and all laws, regulations, rules, orders, judgments, degrees, permits,
1072 approvals, or other requirement of any governmental agency having jurisdiction over the
1073 services provided by CONTRACTOR under the terms of this Contract, including any current
1074 provisions that become effective on or which require compliance by a date after the effective
1075 date of this Contract. Except as expressly provided in this Contract, CONTRACTOR shall not
1076 request or seek other or further compensation for or in connection with its performance of
1077 services under this Contract.

1078 7.01.2 Annual Rate Adjustment. On July 1, 2016, and each July 1
1079 thereafter during the term of the Contract (each an "Adjustment Date"), the Maximum MM&O
1080 Service Rates shall be adjusted by an "Annual Rate Adjustment." The Annual Rate Adjustment
1081 will include the Refuse Rate Index adjustment (Section 7.16.2 and Exhibit 2), and adjustments
1082 due to changes in Franchise Fees (Section 7.01.3) and changes in Government Fees (Section
1083 7.01.4). In addition the Maximum MM&O Service Rates shall also be adjusted due to the
1084 special adjustments set forth in Section 7.17.

1085 7.01.3 Changes in Franchise Fees. The Maximum MM&O Service
1086 Rates shall be adjusted as of July 1, 2016, and annually thereafter (the "Adjustment Date"), to
1087 fully capture CONTRACTOR's increased costs based on new or increased Franchise Fees
1088 implemented or to be implemented since the previous Adjustment Date (or July 1, 2015
1089 regarding the July 1, 2016 adjustment).

1090 7.01.3.1 This Franchise Fee adjustment will be calculated prior to
1091 the upcoming July 1 Adjustment Date as follows:

1092 7.01.3.1.1. Determine item weight of Franchise Fees:

1093 Total Franchise Fees for the previous calendar year ended
1094 December 31 / (Total Allowable Expenses for all Cost Categories under the MM&O Contract for
1095 previous calendar year ending December 31).

1096 7.01.3.1.2. Multiply the result of 7.01.3.1.1 by the percentage
1097 change in the annual average of the Franchise Fee cost indicator (Series ID: cuura422sa0
1098 Consumer Price Index, All Urban Consumers, All Items, San Francisco-San Jose-Oakland, CA)
1099 as set forth in Section 2 of Exhibit 2 to this Contract to determine the Franchise Fee percentage
1100 adjustment.

1101 7.01.3.1.3. Add 7.01.3.1.2 to the MM&O RRI adjustment (along
1102 with Government Fee adjustments, if any) to arrive at the Annual Rate Adjustment. For
1103 purposes of clarity, the Franchise Fee adjustment and two (2) Government Fee adjustments are
1104 not included in the MM&O RRI adjustment, but are added to the MM&O RRI adjustment to
1105 arrive at the Annual Rate Adjustment. As such, these three (3) adjustments are not subject to
1106 the caps as provided in Section 7.16.2.1.3 of the Contract.

1107 7.01.4 Changes in Government Fees. Prior to July 1, 2015, Maximum
1108 MM&O Service Rates will be adjusted to capture new and increased Government Fees/Taxes
1109 which have been implemented or adopted since July 1, 2014 and will become effective no later
1110 than July 1, 2015.

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1111 7.01.4.1 The Maximum MM&O Service Rates shall be adjusted on
1112 each Adjustment Date to fully capture CONTRACTOR's increased costs based on new or
1113 increased Government Fees implemented or to be implemented since the previous Adjustment
1114 Date (or July 1, 2015 regarding the July 1, 2016 adjustment). For purposes of this Section,
1115 "Government Fees" are surcharges, fees, assessments, taxes (non-income), licenses and other
1116 amounts payable to federal, state or local authorities in relation to CONTRACTOR's
1117 performance hereunder. Specifically, Government Fees include, but are not limited to, those
1118 fees listed in Tables 2 and 3 of Exhibit 2 to this Contract.

1119 7.01.4.2 The two (2) Government Fees/Taxes adjustments will be
1120 calculated prior to the upcoming July 1 Adjustment Date as follows:

1121 7.01.4.2.1. Determine item weight of each Government
1122 Fees/Taxes Cost Category:

1123 (Total Government Fees/Taxes for previous calendar year ending December 31) / (Total
1124 Allowable Expenses for all Cost Categories under MM&O Contract for previous calendar
1125 year ending December 31))

1126 7.01.4.2.2. Determine percent change of each Government
1127 Fees/Taxes Cost Category for upcoming July 1 – June 30 period:

1128 ((Total Government Fees/Taxes (on per Ton basis) for upcoming July 1 –
1129 June 30) - (Total Government Fees/Taxes (on a per Ton basis) for the just
1130 completed July 1 – June 30)) / (Total Government Fees/Taxes (on a per Ton
1131 basis) for the just completed July 1 – June 30)

1132 7.01.4.2.3. Multiply the result of 7.01.4.2.1 by the result of
1133 7.01.4.2.2 to determine the weighted percentage change of each Government Fees/Taxes Cost
1134 Category.

1135 7.01.4.2.4. Add the result of 7.01.4.2.3 to the MM&O RRI
1136 adjustment (along with Franchise Fee adjustments, if any) to arrive at the Annual Rate
1137 Adjustment.

1138 7.01.4.3 Retroactive Adjustment. In the event of a new
1139 Government Fee/Tax, or a change in an existing Government Fee/Tax, which becomes
1140 effective at some time other than July 1 of any year, CONTRACTOR shall be compensated for
1141 such change through the inclusion of a "Retroactive Adjustment" in the next Annual Rate
1142 Adjustment. However, in the event that the Government Fee/Tax is imposed by CITY, a rate
1143 adjustment shall occur at the time such fee becomes effective. CITY and CONTRACTOR agree
1144 that the "Retroactive Adjustment" shall be an amount needed to compensate CONTRACTOR
1145 for increases in Government Fees/Taxes paid during the period from the inception of the fee
1146 increase through the subsequent June 30 and shall not include interest, overhead or any other
1147 costs of any type. The "Retroactive Adjustment" shall only be included in the rate structure for
1148 twelve (12) months or that period necessary to allow CONTRACTOR to recover all retroactive
1149 amounts, if less than twelve (12) months, and shall be removed prior to calculating the rates to
1150 be set as of the subsequent July 1. However, no governmental fees or charges to which
1151 CONTRACTOR agrees contractually or negotiates shall be passed through to Customers
1152 unless agreed to in writing by CITY. For purposes of clarity, the Retroactive Adjustment shall
1153 not be subject to the caps set forth in Section 7.16.2.1.3.

1154 7.01.5 Payment of Governmental Fees. CONTRACTOR shall pay, when
1155 and as due, any and all governmental fees to the appropriate federal, State, regional, or local
1156 governmental entities that levied the fees, and shall provide CITY with proof of such payments
1157 promptly upon request.

1158 7.02 CONTRACTOR Billing. CONTRACTOR shall be responsible for the billing and
1159 collection of payments for all Collection Services. The rates charged by CONTRACTOR to
1160 Customers for the provision of Collection Services shall not exceed the Maximum MM&O
1161 Service Rates authorized by CITY and attached in Exhibit 1 to this Contract and as adjusted
1162 under the terms of this Contract. CITY shall approve the format and text for all Customer bills
1163 and notices. Billing errors identified by CONTRACTOR or Customer shall be corrected within
1164 two (2) business days. Customers who notified CONTRACTOR of billing errors shall either be
1165 provided with a statement credit or sent a revised bill within three (3) business days after the
1166 error is corrected. CONTRACTOR shall use the mailing address provided by the Customer.

1167 7.03 CONTRACTOR as Billing Agent. CONTRACTOR shall Collect Maximum
1168 Recycling Service Rates as billing agent for services provided to Customers by CITY'S
1169 Residential Recycling Contractor, as set forth in greater detail below in Sections 7.04 and 7.05.
1170 CONTRACTOR shall base its billings for Residential Recycling Collection Services on the
1171 Maximum Recycling Service Rates as set forth in Exhibit 1 and Customer information
1172 exchanged and agreed by CONTRACTOR, the Residential Recycling Contractor and/or CITY
1173 as appropriate.

1174 7.04 Production of SFD Customer Invoices. Unless otherwise set forth in the
1175 Memorandum of Understanding, appended as Exhibit 15, CONTRACTOR shall invoice SFD
1176 Customers for SFD Collection Services and Residential Recycling Collection Services in
1177 advance of service, on a quarterly basis beginning July 1, 2015. The invoice may also contain
1178 other charges required to be invoiced by governmental agencies within Alameda County. The
1179 invoice shall be remitted to the Customer no earlier than the first day of the period for which the
1180 service is being billed. CONTRACTOR shall invoice SFD Customers for Contamination
1181 Surcharges (as provided in Sections 7.04.3 and 7.04.4 for such surcharges that relate to
1182 Residential Recycling Collection Services) on a quarterly basis beginning October 1, 2015 for
1183 those Contamination Surcharges earned in the prior quarter. The invoices shall be produced in
1184 a form and format that is approved by CITY.

1185 7.04.1 SFD Maximum MM&O Service Rates. The SFD Maximum
1186 MM&O Service Rates shall be as set forth in Exhibit 1 to this Contract and include all costs of
1187 providing Collection Services including Processing, Disposal and franchise fee costs. The SFD
1188 Maximum Recycling Service Rate shall be a flat maximum Per Dwelling Unit rate as provided
1189 by CITY.

1190 7.04.2 SFD Recurring Ancillary Service Charges and Invoices. No less
1191 than fifteen (15) calendar days before the first day of each quarterly billing period beginning on
1192 July 1, 2015, the Residential Recycling Contractor may provide to CONTRACTOR information
1193 regarding recurring ancillary charges that it will incur in the upcoming quarter in accordance
1194 with Exhibit 15. Such information shall be in the form and format required by Exhibit 15 and
1195 include, at a minimum, the Customer name, Service Address and billing address along with a
1196 specific description of each ancillary charge. To the extent such information is received in a
1197 timely manner and contains the necessary information in the required form and format
1198 CONTRACTOR shall include those ancillary charges in the invoices prepared for the upcoming
1199 billing cycle. In the event the ancillary service information is not received in a timely manner or

1200 the information is not provided in the form and format required by Exhibit 15, CONTRACTOR
1201 shall notify CITY and the Residential Recycling Contractor of the timing or format
1202 discrepancies, and CONTRACTOR shall not be required to include the ancillary charges in the
1203 invoices prepared for the upcoming billing cycle. The Residential Recycling Contractor may
1204 not provide the information for invoicing later than fifteen (15) days before the first day of the
1205 immediately subsequent billing cycle (relative to the billing cycle for which the charges were
1206 incurred) or correct any format discrepancies later than the same date. If the Residential
1207 Recycling Contractor meets this deadline, then CONTRACTOR shall be required to include
1208 such ancillary charges in the invoices prepared for that immediately subsequent billing cycle.

1209 7.04.3 SFD and MFD Contamination Surcharge and Non-Recurring
1210 Ancillary Charge Invoices. No less than fifteen (15) calendar days before the first day of each
1211 quarter (for SFD Customers) or month (for MFD Customers) beginning on October 1, 2015 for
1212 SFD Customers and August 1, 2015 for MFD Customers, the Residential Recycling Contractor
1213 may provide to CONTRACTOR information regarding SFD and MFD Contamination
1214 Surcharges and non-recurring ancillary charges incurred during the prior billing period,
1215 provided that all such Contamination Surcharges shall have been assessed in accordance with
1216 the contract between CITY and RR Contractor. The information shall be provided in the form
1217 and format approved by CITY. To the extent such information is received in a timely manner
1218 and contains the necessary information in the required form and format, CONTRACTOR shall
1219 include those Contamination Surcharges and non-recurring ancillary charges in Customer
1220 invoices prepared for the upcoming quarter or month, as applicable, for both SFD and MFD
1221 Customers, as set forth in greater detail in Section 7.04.4. In the event the information is not
1222 received in a timely manner or the information is not provided in the required form and format,
1223 CONTRACTOR shall notify CITY and the Residential Recycling Contractor of the timing or
1224 format discrepancies. CONTRACTOR shall not be required to include the Contamination
1225 Surcharges and/or non-recurring ancillary charges in the invoices prepared for the upcoming
1226 billing cycle, but shall be required to include the Contamination Surcharges and/or non-
1227 recurring ancillary charges in the invoices prepared for the subsequent billing cycle, provided
1228 that any format discrepancies are corrected.

1229 7.04.3.1 As a condition of CONTRACTOR performing billing and
1230 payment processing services for RR Contractor for Contamination Surcharges and/or non-
1231 recurring ancillary charges for Residential Recycling Collection Service, RR Contractor shall
1232 reimburse CONTRACTOR for all reasonable billing, accounting, and administrative costs
1233 incurred by CONTRACTOR that are associated with preparing and mailing SFD and MFD
1234 Customer invoices and receiving payment from such Customers, on behalf of RR Contractor.
1235 Such costs may include, but not be limited to, recordkeeping, invoicing, credit card fees,
1236 printing, and postage. CONTRACTOR and RR Contractor shall agree to a process for
1237 reimbursement in Exhibit 15. If RR Contractor fails to timely reimburse CONTRACTOR,
1238 CONTRACTOR shall reconcile such reimbursable costs pursuant to Section 7.14.2. RR
1239 Contractor may, at any time, provide written notice to CONTRACTOR and CITY, directing
1240 CONTRACTOR to cease performance of Customer billing and payment processing services for
1241 Contamination Surcharges or non-recurring ancillary charges. Such notice shall specify a date
1242 upon which CONTRACTOR's obligation hereunder shall terminate.

1243 7.04.4 Enforcement of Recycling Contractor Contamination Surcharges
1244 and Non-Recurring Ancillary Charges. RR Contractor Contamination Surcharges and non-
1245 recurring ancillary charges will be billed by CONTRACTOR in arrears as a separate invoice in
1246 the regular billing cycle to SFD and MFD Customers. RR Contractor will be paid for
1247 Contamination Surcharges and non-recurring ancillary charges upon receipt of payment for

1248 those charges by the MMO CONTRACTOR. CONTRACTOR may, but shall not be under any
1249 obligation to, place the logo of RR Contractor on any such separate invoice for Contamination
1250 Surcharges and non-recurring ancillary charges, provided that CONTRACTOR shall not make
1251 any use of RR Contractor's logo that would be inconsistent with any trademark or service mark
1252 rights of RR Contractor. Such separate invoice shall indicate that the charge(s) are assessed
1253 by RR Contractor and shall provide the telephone number of RR Contractor. CONTRACTOR
1254 shall maintain a separate Customer account from that used for regular Residential Recycling
1255 Collection Service for the purposes of RR Contractor Contamination Surcharges and non-
1256 recurring ancillary charges. CONTRACTOR shall monthly provide RR Contractor with a
1257 statement of the accounts receivable balance for Contamination Surcharges and non-recurring
1258 ancillary charges and payments received from Customers therefor in the preceding calendar
1259 month. SFD and MFD Customers may pay such separate invoices using any payment method
1260 or location available to such Customers for payment of regular invoices for Collection Services
1261 and Residential Recycling Collection Services. CONTRACTOR shall not be responsible for
1262 any collection activities with regard to Contamination Surcharges and charges for non-recurring
1263 ancillary services other than to notify promptly RR Contractor of nonpayment of those charges.
1264 CITY and CONTRACTOR hereby acknowledge and agree that when CONTRACTOR is
1265 contacted by Customers regarding Contamination Surcharges or non-recurring ancillary
1266 charges for Residential Recycling Collection Services, CONTRACTOR's communication with
1267 any such Customer shall be limited to informing the Customer of the contact information for RR
1268 Contractor.

1269 7.05 Production of MFD Customer Invoices. CONTRACTOR shall invoice MFD
1270 Customers for MFD Collection Services and MFD Recycling Collection Services in advance, not
1271 less than monthly beginning July 1, 2015. The invoice shall be remitted to the Customer no
1272 earlier than the first day of the period for which the service is being billed. CONTRACTOR shall
1273 invoice MFD Customers for Contamination Surcharges on MFD Collection Services on a
1274 monthly basis beginning August 1, 2015, for those Contamination Surcharges earned in prior
1275 months. The invoice shall be produced in a form and format that is approved by CITY.

1276 7.05.1 MFD Maximum MM&O Service Rates. The MFD Maximum
1277 MM&O Service Rates shall be as set forth in Exhibit 1 to this Contract and include all costs of
1278 providing Collection Services including Processing, Disposal and franchise fee costs. The
1279 MFD Maximum Recycling Service Rates shall be a flat maximum Per Dwelling Unit rate as
1280 provided by CITY.

1281 7.05.2 MFD Recurring Ancillary Service Invoices. No less than fifteen
1282 (15) calendar days before the first day of each billing period beginning with the August 1, 2015
1283 billing period, the Residential Recycling Contractor may provide to CONTRACTOR information
1284 regarding MFD recurring ancillary charges that it may have incurred or which will be incurred in
1285 the upcoming month. The recurring ancillary service information is to be produced in the form
1286 and format approved by CITY and include, at a minimum, the Customer name, Service
1287 Address and billing address along with a specific description of each ancillary charge. To the
1288 extent the information is received in a timely manner and contains the necessary information in
1289 the required form and format CONTRACTOR shall include those ancillary charges in the MFD
1290 Customer invoices prepared for the upcoming billing cycle. In the event the ancillary service
1291 information is not received in a timely manner or the information is not provided in the required
1292 form and format, CONTRACTOR shall notify the Contract Manager and the Residential
1293 Recycling Contractor of the timing or format discrepancies, and CONTRACTOR shall not be
1294 required to include the ancillary charges in the invoices prepared for the upcoming billing cycle.
1295 The Residential Recycling Contractor may not provide the information for invoicing later than

1296 fifteen (15) days before the first day of the immediately subsequent billing cycle (relative to the
1297 billing cycle for which the charges were incurred) or correct any format discrepancies later than
1298 the same date. If the Residential Recycling Contractor meets this deadline, then
1299 CONTRACTOR shall be required to include such ancillary charges in the invoices prepared for
1300 that immediately subsequent billing cycle. CITY and CONTRACTOR hereby acknowledge and
1301 agree that Contamination Surcharges and non-recurring ancillary charges for MFD Residential
1302 Recycling Collection Services are addressed under Sections 7.04.3 and 7.04.4.

1303 7.06 Production of Commercial Customer Invoices. CONTRACTOR shall invoice
1304 Commercial Customers for Commercial Collection Services, either in advance or in arrears but
1305 no less than twelve (12) times per year. Invoices shall be remitted no earlier than the first day of
1306 the month for which the service is being billed. The invoice shall be produced in a form and
1307 format that is approved by CITY. The Commercial invoice shall include at a minimum, a
1308 Collection rate which shall be based on Container size and frequency of Collection and include
1309 all costs of providing Collection Services including Processing, Disposal and franchise fee costs.

1310 7.07 Invoices for Temporary Roll-Off Boxes. Customers utilizing temporary Roll-Off
1311 Boxes shall be invoiced in arrears of the provision of service although a deposit may be required
1312 in advance.

1313 7.08 Partial Month Service. If, during a month, a Customer is added to or deleted
1314 from CONTRACTOR'S Service Area, CONTRACTOR'S billing (including that on behalf of RR
1315 Contractor pursuant to this Article 7) shall be pro-rated based on the service rate established in
1316 Exhibit 1 divided by four (4), and multiplied by the number of actual weeks in the month that
1317 service was provided to the Customer. CONTRACTOR shall refund Customers who terminate
1318 service any pre-paid amount.

1319 7.09 Customer Self Haul. On or before July 15, 2015 and annually thereafter during
1320 the term of this Contract, CITY shall provide CONTRACTOR with an electronic list of those
1321 Service Addresses that have obtained a self-haul permit. Beginning August 15, 2015 and
1322 monthly thereafter during the term of this Contract, CITY shall provide an electronic update of
1323 any additional Service Addresses that have obtained a self-haul permit.

1324 7.10 CITY Provided Billing Inserts. CITY may provide educational and other material
1325 to CONTRACTOR for inclusion in the invoices provided by CONTRACTOR to SFD, MFD and
1326 Commercial Customers as set forth in Article 17.

1327 7.11 Methods of Payment. CONTRACTOR shall provide the means for Customers to
1328 pay bills through the following methods: cash, checks, credit cards, internet payment service or
1329 automatic withdrawal from bank account. On-line (E-Pay) bill methods shall be password
1330 protected and comply with federal regulations protecting the privacy of Customer credit
1331 information. CONTRACTOR shall provide evidence of such security certifications and advise
1332 CITY of CONTRACTOR'S security measures implemented for on-line payment.

1333 7.12 Delinquent Service Accounts.

1334 7.12.1 SFD invoices shall be delinquent when they are unpaid on the
1335 forty-fifth (45th) day of the quarterly billing cycle. CONTRACTOR may charge late fees as set
1336 forth in Section 7.13.1 and take such action as is legally available to collect or cause collection
1337 of past due amounts, including requesting permission of CITY to terminate Collection Services
1338 in accordance with the process set forth below.

1339 7.12.2 MFD invoices shall be delinquent when they are unpaid on the
1340 last day of the monthly billing cycle. CONTRACTOR may charge late fees as set forth in
1341 Section 7.13.1 and take such action as is legally available to collect or cause collection of past
1342 due amounts, including requesting permission of CITY to terminate Collection Services in
1343 accordance with the process set forth below.

1344 7.12.3 Commercial invoices shall be delinquent when they are unpaid
1345 on the last day of the monthly billing cycle. CONTRACTOR may charge late fees as set forth
1346 in Section 7.13.1 and take such action as is legally available to collect or cause collection of
1347 past due amounts, including requesting permission of CITY to terminate Collection Services in
1348 accordance with the process set forth below.

1349 7.13 Delinquent Service Account Termination Process. CONTRACTOR may
1350 implement the following service termination process for SFD, MFD and Commercial Customers
1351 whose accounts are delinquent.

1352 7.13.1 CONTRACTOR may charge a delinquent Customer a late fee
1353 which is the greater of Five Dollars (\$5.00) or one and one half (1.5) percent per month (not
1354 compounded). CONTRACTOR may take such action as is legally available to collect or cause
1355 collection of such past due amounts.

1356 7.13.2 CONTRACTOR may issue a delinquency notice at any point after
1357 the account becomes delinquent. Sections 7.13.2.1 through 7.13.12 outline processes
1358 regarding notification and cure of such delinquencies and associated issues, including without
1359 limitation regarding notification and collection of delinquencies, termination of service, and
1360 CITY's option to subscribe to service on behalf of delinquent SFD and MFD property owners to
1361 whom CONTRACTOR has terminated service and to impose special assessments against
1362 delinquent properties to recover the costs of such service. With respect to the timelines related
1363 to the delinquency notices and hearings set forth in Sections 7.13.2.1 through 7.13.12, CITY
1364 reserves the right to modify the timelines by written policy adopted by the City Administrator, or
1365 his or her designee, after consultation with CONTRACTOR.

1366 7.13.2.1 Delinquency notice will be sent to the property owner and
1367 billing address.

1368 7.13.2.2 Delinquency notice will include information on hearing
1369 scheduled approximately fifteen (15) calendar days after date of the notice to dispute the non-
1370 payment.

1371 7.13.2.3 Delinquency notice will specify that failure to pay the bill
1372 may result in termination of service and that CITY will deem lack of service to be a nuisance.

1373 7.13.2.4 For SFD and MFD Customers, delinquency notice will
1374 further provide that CITY may, in order to abate the nuisance, subscribe on behalf of the
1375 property owner at the property owner's expense beginning with the next billing cycle and impose
1376 as special assessment against the property on which the nuisance is maintained.

1377 7.13.3 CONTRACTOR, subject to its compliance with the requirements
1378 of Section 7.13, has the right to terminate service if the bill remains unpaid on the forty-fifth
1379 (45th) day after issuing the delinquency notice.

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1380 7.13.4 CONTRACTOR and CITY will hold hearing concerning
1381 delinquent bills on the date specified in the delinquency notice (typically the sixtieth (60th) day
1382 of the billing cycle).

1383 7.13.5 Following the hearing (typically the sixty-first (61st) day of the
1384 billing cycle), CONTRACTOR, on CITY'S behalf, will send final delinquency notice to property
1385 owner, billing address, and Service Address for the accounts with a past due balance notifying
1386 them that service will be terminated by CONTRACTOR on the ninetieth (90th) day of the billing,
1387 if CONTRACTOR does not receive payment, and that CITY may declare the failure to maintain
1388 service for the property a nuisance. For SFD and MFD Customers, the final delinquency notice
1389 shall further provided that CITY may (a) subscribe to service on the property owner's behalf at
1390 the property owner's expense to abate the nuisance; and (b) impose a special assessment on
1391 the property for the costs associated with abating the nuisance.

1392 7.13.6 No sooner than the first day of the next billing cycle,
1393 CONTRACTOR shall provide CITY a list of properties (Service Addresses) to which it will stop
1394 service for non-payment. The list is to be produced in the form and format approved by CITY
1395 and include, at a minimum, the Customer name, Service Address and billing address,
1396 assessor's parcel number (APN), Customer service level (i.e., number and size of Containers,
1397 frequency of Collection), and Customer billing rate for the next billing cycle.

1398 7.13.7 The next business day following its receipt of the list described in
1399 Section 7.13.6, or as soon as reasonably practicable thereafter, CITY will elect, with respect to
1400 SFD and MFD Service Addresses only, whether to declare the conditions on the property to be
1401 a nuisance and subscribe to service on behalf of property owner at the property owner's
1402 expense to abate nuisance.

1403 7.13.8 Approximately ten (10) days following its election under Section
1404 7.13.7, CITY will confirm status of delinquent accounts with CONTRACTOR and, for those
1405 properties for which CITY has subscribed on behalf of the property owner, imposes a special
1406 assessment on those properties that are still delinquent. CITY will provide notice to property
1407 owner (as determined from County Assessor's or Recorder's records) by certified mail.

1408 7.13.9 Upon receipt of proceeds from the special assessment, CITY will
1409 forward the portion of the special assessment attributable to CONTRACTOR billing to
1410 CONTRACTOR. CITY'S financial liability to CONTRACTOR for payment for services rendered
1411 when CITY declares a nuisance and subscribes on behalf of the property owner is limited to
1412 the proceeds of such special assessments.

1413 7.13.10 CONTRACTOR can require that in order to reestablish service
1414 the Customer must pay any past-due amounts. However, CONTRACTOR shall not be
1415 required to address any outstanding assessment before resuming service, but CONTRACTOR
1416 shall promptly notify CITY of the initiation of service.

1417 7.13.11 CONTRACTOR may require a credit card, or at the discretion of
1418 the Service Recipient, a deposit equal to one billing cycle's payment, be maintained on file for
1419 any Customer whose account went into ninety (90) day delinquency.

1420 7.13.12 CITY will continue to subscribe on Customer's behalf and impose
1421 special assessments for each billing cycle until it is notified by CONTRACTOR that Customer
1422 has cleared delinquent account with CONTRACTOR and subscribed to service. Throughout

1423 the period in which CITY has subscribed on behalf of the property owner, CONTRACTOR shall
1424 bill CITY and send a copy of such bill to the property owner and the last known billing address
1425 for the Customer. The bill shall indicate that CONTRACTOR has terminated service as a result
1426 of Customer's non-payment, that as a result CITY has declared the property a nuisance due to
1427 the Customer's failure to maintain service, that CITY has subscribed to service on behalf of the
1428 property owner at the property owner's expense to abate the nuisance, and that CITY will
1429 impose a special assessment for the costs of abating the nuisance, and that the Customer may
1430 avoid the imposition of further special assessments by paying its delinquent balances with
1431 CONTRACTOR and reinstating its account.

1432 7.14 CONTRACTOR'S Payment to Residential Recycling Contractor.

1433 7.14.1 Residential Recycling Contractor Payment. CONTRACTOR
1434 shall, on or before the tenth (10th) day of each calendar month, make payment to the
1435 Residential Recycling Contractor for Residential Recycling Collection Services rendered by the
1436 Residential Recycling Contractor in the preceding calendar month based upon the number of
1437 SFD and MFD Dwelling Units for which CONTRACTOR has invoiced to SFD and MFD
1438 Customers in accordance with Sections 7.04 and 7.05, respectively, as adjusted pursuant to
1439 Section 7.14.2. Such services and payment shall be based on Customer information
1440 exchanged and agreed pursuant to Section 7.03, in the form and format set forth in Exhibit 15,
1441 with such payments commencing on August 10, 2015. CONTRACTOR shall make payment to
1442 the Residential Recycling Contractor based on the number of Dwelling Units consistent with
1443 Sections 9.01.1.1 and 10.02.4 of this Contract, and for which Mixed Material Collection
1444 Services are rendered and billed. Nothing herein prevents CONTRACTOR and the Residential
1445 Recycling Contractor from making alternative invoice and payment arrangements for SFD and
1446 MFD Residential Recycling Collection Services in Exhibit 15.

1447 7.14.2 True-Up. Exhibit 15 shall provide for regular true-ups of
1448 Customer information provided by the Residential Recycling Contractor to the CONTRACTOR
1449 and the payments by the CONTRACTOR to the Residential Recycling Contractor within a
1450 reasonable period of time following the end of each monthly billing period for MFD Customers
1451 and the end of each quarterly billing period for SFD Customers (but in any event each such
1452 true-up shall be concluded in advance of Customer billing for the next billing period) to reflect
1453 new starts, cancellations, refunds, credits, adjustments and pro-rated billings not fully captured
1454 in the current or any previous billing cycle.

1455 7.14.3 Timing of Payment. CONTRACTOR shall provide payment to
1456 Residential Recycling Contractor for all undisputed amounts for Residential Recycling
1457 Collection Services in accordance with the terms and conditions of the Memorandum of
1458 Understanding between CONTRACTOR, CITY and the Residential Recycling Contractor as set
1459 forth in Exhibit 15 to this Contract. CONTRACTOR shall promptly provide written notice to RR
1460 Contractor as soon as CONTRACTOR is aware of disputed amounts with respect to any such
1461 payment.

1462 7.14.4 Non-Payment of Residential Recycling Contractor. In the event
1463 CONTRACTOR does not provide payment to Residential Recycling Contractor in the time and
1464 manner set forth in Exhibit 15, CONTRACTOR shall be liable for liquidated damages as set
1465 forth in Article 22 of this Contract in addition to any other remedies available under this
1466 Contract.

1467 7.14.5 Security for Payment to RR Contractor. In order to allow CITY to
1468 insure timely payment to the Residential Recycling Contractor of amounts not reasonably
1469 disputed by CONTRACTOR, CONTRACTOR and CITY shall, together with a bank as provided
1470 below, enter into an escrow agreement that requires CONTRACTOR to deposit into escrow an
1471 amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) (the "RR Payment
1472 Escrow Agreement").

1473 7.14.5.1 The bank that is party to the RR Payment Escrow
1474 Agreement must be a FDIC insured banking institution chartered to do business in the State of
1475 California as selected by CONTRACTOR (the "Escrow Bank"). The RR Payment Escrow
1476 Agreement shall be structured so that, in the event funds are drawn by CITY, CONTRACTOR
1477 shall restore the balance of One Million Five Hundred Thousand Dollars (\$1,500,000) within two
1478 (2) Work Days. The RR Payment Escrow Agreement shall further provide that (a) all fees and
1479 expenses of the Escrow Bank shall be timely paid by CONTRACTOR; (b) all earnings on funds
1480 deposited into escrow shall be for the account of CONTRACTOR; (c) the funds deposited into
1481 escrow shall be invested only in U.S. Treasury securities, bond and money market funds
1482 comprised substantially of U.S. Treasury securities or other instruments with similar levels of
1483 risk; (d) CONTRACTOR may terminate the RR Payment Escrow Agreement and cause all
1484 remaining escrowed funds to be released to CONTRACTOR on or after July 1, 2025; (e) any
1485 indemnification required by the Escrow Bank as a condition of it entering into the RR Payment
1486 Escrow Agreement shall be borne severally but not jointly by CONTRACTOR and CITY; and (f)
1487 the terms and conditions set forth below in this Section 7.14.5 with respect to withdrawal
1488 conditions and disputes shall be incorporated into the RR Payment Escrow Agreement to the
1489 extent reasonably necessary to protect the rights of CONTRACTOR and CITY. Not later than
1490 forty-five (45) days following the date of execution of this Contract, the CITY and
1491 CONTRACTOR shall complete negotiations of the form of RR Payment Escrow Agreement with
1492 the Escrow Bank. Not later than July 1, 2015, CONTRACTOR shall deposit into escrow under
1493 the RR Payment Escrow Agreement the sum of One Million Five Hundred Thousand Dollars
1494 (\$1,500,000.00).

1495 7.14.5.2 Not later than seven (7) Work Days before CITY may
1496 submit a withdrawal request to the Escrow Bank, CITY shall deliver written notice to
1497 CONTRACTOR stating the amount CITY intends to withdraw. CITY may not request any
1498 withdrawal unless the claimed amount exceeds ten (10) percent of the average monthly
1499 payments by CONTRACTOR to RR Contractor. CITY may proceed to submit a withdrawal
1500 request if CONTRACTOR does not timely deliver a written notice to CITY disputing the
1501 withdrawal request as provided in the immediately following sentence. CONTRACTOR may
1502 dispute the withdrawal request by delivering to CITY, within five (5) Work Days following
1503 CONTRACTOR's receipt of the notice from CITY, a written notice stating the amount that
1504 CONTRACTOR disputes and promptly paying any undisputed portion to RR Contractor. Such
1505 written notice of dispute from CONTRACTOR shall commence dispute resolution between
1506 CONTRACTOR and the RR Contractor in accordance with Article 54, subject to modification as
1507 provided below in Section 7.14.5.3.

1508 7.14.5.3 CONTRACTOR and the RR Contractor shall have an
1509 informal meet and confer period of seven (7) Work Days. If the dispute is not informally
1510 resolved, then the parties shall agree to binding arbitration procedures as generally set forth in
1511 Section 54.01.3; provided, however, that Section 54.01.3.4 shall have no applicability to
1512 disputes related to the RR Payment Escrow Agreement or otherwise under this Section.
1513 Notwithstanding Section 54.01.3.2, the parties may agree to other expedited procedures for
1514 completing binding arbitration within ninety (90) days. Failure to agree upon such procedures

1515 will cause the parties to proceed pursuant to the then-current JAMS Streamlined Arbitration
1516 Rules. During the pendency of dispute resolution, CITY may not submit a withdrawal request to
1517 the Escrow Bank. If CONTRACTOR has not made payment to the RR Contractor of amounts
1518 determined to be owed as a result of written agreement between the parties following informal
1519 meet-and-confer or as an award of the arbitrator pursuant to Section 54.01.3 within five (5)
1520 Work Days of such agreement or award, CITY may submit to the Escrow Bank a withdrawal
1521 request for such amounts. CITY shall cause RR Contractor to agree to substantially similar
1522 arbitration requirements under the Residential Recycling Contract.

1523 7.14.5.4 In the event CONTRACTOR withholds payment of the RR
1524 Contractor's entire monthly bill or a substantial portion thereof ("substantial" shall mean no less
1525 than Four Hundred Thousand Dollars (\$400,000.00)) and CITY reasonably determines, after
1526 reviewing all information provided CITY by CONTRACTOR and the RR Contractor, such
1527 withholding by CONTRACTOR is not justified, then CITY may submit a withdrawal request to
1528 the Escrow Bank of the amount withheld and submit such payment to the RR Contractor, after
1529 first providing five (5) Work Days' notice to both CONTRACTOR and the RR Contractor of
1530 CITY's determination. If, after withdrawal by the CITY, final resolution of the dispute under
1531 Section 7.14.5.3 affirms CONTRACTOR's withholding of payment, or a portion thereof, to the
1532 RR Contractor, then CONTRACTOR shall be entitled to recapture the final agreed-upon or
1533 arbitrated amount of the payment withdrawn from the Escrow Bank as well as any legal interest
1534 thereon. The RR Contractor may either reimburse CONTRACTOR such amounts or
1535 CONTRACTOR may deduct such amounts from its subsequent monthly payment(s) to the RR
1536 Contractor.

1537 7.15 Maximum Service Rates. Maximum Service Rates shall consist of a Maximum
1538 MMO Service Rate, which includes all costs of providing Collection Services including but not
1539 limited to Collection, Processing, Disposal, and franchise fee costs, and such other charges as
1540 may be added by CITY during the term of this Contract and a Maximum Recycling Service Rate
1541 and a Contamination Surcharge as approved by CITY. CONTRACTOR shall not be entitled to
1542 any compensation that is not listed in Exhibit 1. On or after July 1, 2015, and each subsequent
1543 July 1, CONTRACTOR'S Maximum MM&O Service Rates shall be adjusted as set forth in the
1544 next Section below.

1545 7.16 Annual Rate Adjustments.

1546 7.16.1 Annual Adjustment to Maximum Service Rates Prior to Start of
1547 Collection Services. The Maximum Collection Service Rates as set forth in Exhibit 1 to this
1548 Contract shall be adjusted prior to July 1, 2015 as set forth in Section 7.01.4.

1549 7.16.2 Annual Adjustment to Maximum MM&O Service Rates after Start
1550 of Collection Services. On each Adjustment Date, the Maximum MM&O Service Rates as set
1551 forth in Exhibit 1 shall be adjusted by an Annual Rate Adjustment, which will include a RRI
1552 adjustment, pursuant to this Section 7.16.2. and Exhibit 2 to this Contract, as well as Franchise
1553 Fee and Government Fee/Tax adjustments and the special adjustments provided for in Section
1554 7.17. The RRI adjustment is calculated independently of the Franchise Fee and Government
1555 Fee/Tax adjustments. The Contamination Surcharge set forth in Exhibit 1 shall not receive an
1556 Annual Rate Adjustment.

1557 7.16.2.1 Annual Rate Adjustment. On the Adjustment Date during
1558 the term of this Contract, the Maximum MM&O Service Rates set forth in Exhibit 1 shall be
1559 adjusted by a RRI adjustment pursuant to this Section 7.16.2.1 and Exhibit 2 to this Contract.

1560 7.16.2.1.1. Cost Category Weight. Contractor will calculate the
1561 total of all Allowable Expenses (as defined in Exhibit 2) for each Cost Category (also defined in
1562 Exhibit 2) for the period of July 1, 2015 through December 31, 2015. Each Cost Category will
1563 then be assigned an "item weight" based on the proportionate share of its Allowable Expenses
1564 total to the total of all Allowable Expenses for all Cost Categories. For example, if the Allowable
1565 Expenses of the Diesel Fuel Cost Category total One Hundred Dollars (\$100) and the Allowable
1566 Expenses within all Cost Categories is Two Thousand Dollars (\$2,000), then the Diesel Fuel
1567 Cost Category's item weight will be five (5) percent. The Cost Categories shall be reweighed
1568 every year based on allowable expenses thereafter from January 1 through December 31.

1569 7.16.2.1.2. Annual Rate Adjustment Calculation. The RRI
1570 adjustment (a component of the Annual Rate Adjustment) shall be the lower of: (i) six (6)
1571 percent, or (ii) the sum of the weighted percentage change (based on the total of all Cost
1572 Categories) in the Cost Indicators of Cost Categories 1 - 8 (each described in Exhibit 2) from
1573 the previous review date to the current review date. For Cost Category Items 2 (Diesel Fuel), 3
1574 (CNG Fuel), 4 (Vehicle Replacement), 5 (Vehicle Maintenance), and all but the Union Labor
1575 Cost Category of Items 6 (Davis Street Processing) and 7 (Disposal) and 8 (All Other), the
1576 current review year is the most recent calendar year ended December 31. For Cost Category
1577 Item 1 (MM&O Union Labor), and the Union Labor Cost Category of Items 6 (Davis Street
1578 Processing) and 7 (Disposal), the current review date is July 1 of the current year. For
1579 purposes of clarification the parties agree and understand that Categories 9 (Government
1580 Fees/Taxes – Disposal), 10 (Government Fees/Taxes – Processing), and 11 (Franchise Fees)
1581 will be used for purposes of weighting the RRI Cost Categories, but they will not be included in
1582 the RRI calculation. Instead, they will be added to the RRI calculation.

1583 7.16.2.1.3. The weighted percentage change in the Cost
1584 Indicator of a Cost Category may be either positive or negative. There shall be no limit on
1585 Annual Rate Adjustments, but an RRI adjustment shall not be greater than six (6) percent in any
1586 individual year (except the final year of the original Contract term and the final year of any
1587 extension Contract terms when it may not be greater than eight (8) percent) or lower than
1588 negative 5 (-5) percent. In any year that the RRI adjustment calculation is more than six (6)
1589 percent, the amount above six (6) percent and up to eight (8) percent shall be carried-forward to
1590 successive RRI adjustments under this Contract until applied or the Contract terminates. RRI
1591 adjustments in any year in excess of eight (8) percent shall not be carried forward to any future
1592 year. With regard to the July 1, 2024, RRI adjustment, carried-forward RRI adjustment amounts
1593 that had not been recouped in previous RRI adjustments due to the six (6) percent cap shall be
1594 recouped to the extent they do not exceed eight (8) percent. With regard to the July 1, 2029,
1595 RRI adjustment, carried-forward RRI adjustment amounts that had not been recouped in 2025,
1596 2026, 2027 or 2028 RRI adjustments due to the six (6) percent cap shall be recouped to the
1597 extent they do not exceed eight (8) percent. With regard to the July 1, 2034, RRI adjustment,
1598 carried-forward RRI adjustment amounts that had not been recouped in 2030, 2031, 2032 or
1599 2033 RRI adjustments due to the six (6) percent cap shall be recouped to the extent they do not
1600 exceed eight (8) percent.

1601 7.16.2.1.4. Differential Adjustment. Should CONTRACTOR
1602 agree to labor increases with Local 70 that exceed the labor increase allowable under the 2009
1603 CBA ("differential"), those differential amounts shall not be included in the RRI adjustment (i.e.,
1604 as a CONTRACTOR cost for purposes of calculating a percent change of the MM&O Union
1605 Labor Cost Category). However, such differential amounts shall be recovered by
1606 CONTRACTOR in Annual Rate Adjustments by applying them to the Maximum MM&O Service
1607 Rates in equal installments ("Differential Adjustments") over a three (3) year period, including

1608 the year in which the differential is first incurred. For example, if the weighted differential
1609 between the 2009 CBA and a subsequent CBA is three tenths (0.3) percent, then the current
1610 Annual Rate Adjustment would be increased by one tenth (0.1) percent and the two (2)
1611 subsequent Annual Rate Adjustments by one tenth (0.1) percent. For purposes of clarity,
1612 recovery of the differential amounts shall not be subject to any cap under this Section.

1613 7.16.2.2 Diversion Adjustment. Beginning with the July 1, 2017,
1614 rate adjustment, the Diversion adjustment shall be applied to all RRI adjustments. Except for
1615 those instances as set forth in Section 7.16.2.4 when the reciprocal of the Diversion adjustment
1616 is required to be used, the Diversion adjustment shall be the lesser of one hundred (100)
1617 percent or the percentage calculated by dividing the Diversion rate achieved by CONTRACTOR
1618 in the calendar year immediately preceding the effective date of the rate adjustment, by the
1619 minimum annual Diversion requirement for that calendar year, pursuant to Article 8 of this
1620 Contract and as set forth in Exhibit 8, which is attached to and included in this Contract. The
1621 Diversion rate achieved by CONTRACTOR each calendar year will be calculated using Table B
1622 of Exhibit 8. In the event the Diversion adjustment is less than one hundred (100) percent, the
1623 adjustment shall only be effective for one (1) year and shall be removed prior to calculating the
1624 subsequent year's rate adjustment as set forth in Section 7.16.2.1 above.

1625 7.16.2.3 In any year that the RRI adjustment results in a positive
1626 number, the RRI Adjustment shall be adjusted by multiplying the RRI adjustment by the
1627 Diversion adjustment.

1628 7.16.2.4 In any year that the RRI adjustment results in a negative
1629 number, RRI Adjustment shall be adjusted by multiplying the RRI adjustment by the reciprocal
1630 of the Diversion adjustment. For example if the Diversion adjustment was ninety-five (95)
1631 percent, the reciprocal of the Diversion adjustment would be calculated by dividing one hundred
1632 (100) percent by ninety-five (95) percent. ($100.00\% / 95\% = 105.26\%$).

1633 7.16.2.5 In any year that the Annual Rate Adjustment is a negative
1634 number, CITY may, at its sole discretion, choose to postpone the implementation of the
1635 adjustment for one (1) year. In that event the current year rate would remain the same and the
1636 subsequent year rate would be calculated by first, applying the negative Annual Rate
1637 Adjustment to the current rate and then applying the subsequent years Annual Rate Adjustment
1638 to that rate. For example if the Year X rate was \$100.00 and the Year X+1 Annual Rate
1639 Adjustment was -2.2% and the Year X+2 Annual Rate Adjustment was +2.2% and CITY chose
1640 to not apply the negative Annual Rate Adjustment in Year X+1 then the rate in Year X+1 would
1641 be \$100.00 and the rate in Year X+2 would be \$99.95 ($\$100.00 \times -2.2\% = \$97.80 \times 2.2\% =$
1642 $\$99.95$).

1643 7.16.2.6 In any year that CITY chooses to postpone the
1644 implementation of a negative Annual Rate Adjustment for one (1) year, CONTRACTOR shall
1645 retain those excess funds that it collects as a result of the Maximum Service Rates not being
1646 reduced for that year in the Recycling stability account as set forth in Section 7.19.1 below for
1647 use in such manner as may be directed by the Contract Manager. An accounting of the funds
1648 shall be provided to the Contract Manager by the fifteenth (15th) day of each month after the
1649 month in which the funds are collected and shall be accompanied by such documentation as
1650 may be requested by CITY.

1651 7.17 Special Adjustments.

1652 7.17.1 Special Prior Year CPI Adjustments. For the second and third
1653 years of the Contract the Annual Rate Adjustment shall include an additional percentage
1654 increase per year, over and above the Annual Rate Adjustment percentage amounts calculated
1655 above. This adjustment will be added to the Annual Rate Adjustment, for the July 1, 2016, and
1656 July 1, 2017 rate adjustments in the manner set forth in Section 3.8 of Exhibit 2 to this
1657 Contract. These special prior year CPI adjustments shall not be restricted by the six (6)
1658 percent or eight (8) percent upper limitations set forth in Section 7.16.2.1.3. The increases
1659 shall not be a part of the base Maximum MM&O Service Rates as set forth in Exhibit 1 to this
1660 Contract for succeeding RRI calculations after Year 3 and instead shall be removed from the
1661 base Maximum MM&O Service Rates prior to calculating the Year 4 Maximum MM&O Service
1662 Rates in the manner set forth in Tables 6A and 6B of Section 3.8 of Exhibit 2 to this Contract.
1663 For purposes of this calculation, the adjustment will be based on the percentage change in the
1664 annual average of the CPI for the calendar years 2013 and 2014. For purposes of clarity, the
1665 Special CPI Adjustment shall be applied to the rates in Exhibit 1 as specified on Exhibits 1A
1666 through 1G.

1667 7.17.2 Special 1.5% Adjustment. For the second through the fifth years
1668 of the Contract, the Annual Rate Adjustment shall include an additional 1.5% increase per year,
1669 over and above the amounts calculated above (four 1.5% increases). This adjustment will be
1670 added to the Annual Rate Adjustment, for the July 1, 2016, July 1, 2017, July 1, 2018 and July
1671 1, 2019 rate adjustments in the manner set forth in Section 3.8 of Exhibit 2 to this Contract.
1672 This special 1.5% adjustment shall not be restricted by the six (6) percent or eight (8) percent
1673 upper limitations set forth in Section 7.16.2.1.3. The increases shall be a part of appropriate
1674 base Maximum MM&O Service Rates as set forth in Exhibit 1 to this Contract for succeeding
1675 RRI calculations. For purposes of clarity, the Special 1.5% Adjustment shall be applied to the
1676 rates in Exhibit 1 as specified on Exhibits 1A through 1D and 1G.

1677 7.17.3 Special Local 6 Adjustment. For the second through the fifth
1678 years of the Contract, the Annual Rate Adjustment shall include an additional Local 6
1679 Adjustment as follows. July 1, 2016 an additional .82%, July 1, 2017 an additional .89%, July
1680 1, 2018 an additional .96% and July 1, 2019 an additional 1.03%. These adjustments will be
1681 added to the Annual Rate Adjustment, for the July 1, 2016, July 1, 2017, July 1, 2018 and July
1682 1, 2019 rate adjustments in the manner set forth in Section 3.8 of Exhibit 2 to this Contract.
1683 These increases shall be over and above the amounts calculated above. This special Local 6
1684 adjustment shall not be restricted by the six (6) percent or eight (8) percent upper limitations
1685 set forth in Section 7.16.2.1.3. The increases shall be a part of the appropriate base Maximum
1686 MM&O Service Rates as set forth in Exhibit 1 to this Contract for succeeding RRI calculations.
1687 For purposes of clarity, the Special Local 6 Adjustment shall be applied to the rates in Exhibit 1
1688 as specified on Exhibits 1A through 1D and 1G.

1689 7.18 Required Information.

1690 7.18.1 Financial Information. On or before March 1, 2016, or such later
1691 time as may be agreed to between CITY and CONTRACTOR and annually thereafter during
1692 the term of this Contract, CONTRACTOR shall deliver to CITY financial information for the
1693 specific services performed under this Contract for the preceding calendar year. Such financial
1694 information shall be in the format as set forth in Exhibit 2, or as may be further revised by CITY
1695 from time to time. If CONTRACTOR fails to submit the financial information in the required
1696 format by March 1, or such later time as may be agreed to between CITY and CONTRACTOR
1697 it is agreed that CONTRACTOR shall be deemed to have waived the RRI adjustment for the
1698 next billing period and if the delayed submission exceeds three (3) months then the increase

1699 will be delayed for a second billing period.

1700 7.18.2 Diversion Data. On or before March 1, 2017, and annually
1701 thereafter during the term of this Contract, CONTRACTOR shall deliver to CITY Diversion data
1702 for the specific services performed under this Contract in the format specified by CITY. If
1703 CONTRACTOR fails to submit the Diversion data in the required format by March 1,
1704 CONTRACTOR may be subject to daily liquidated damages pursuant to Article 22.

1705 7.18.3 Adjustments. Annual Maximum MM&O Service Rate
1706 adjustments shall be made only in units of one cent (\$0.01). Fractions of less than one cent
1707 (\$0.01) shall not be considered in making adjustments. The indices shall be rounded at four
1708 (4) decimal places for the adjustment calculations.

1709 7.18.4 If CONTRACTOR'S failure to submit the financial information
1710 required under Section 7.18.1 is the result of extraordinary or unusual circumstances as
1711 demonstrated by CONTRACTOR to the reasonable satisfaction of the Contract Manager,
1712 CITY, at its reasonable discretion, may consider the request for the annual Maximum Service
1713 Rate adjustment.

1714 7.18.5 As of May 15, 2016, and annually thereafter during the term of
1715 this Contract, the Contract Manager shall notify CONTRACTOR of the Maximum Service Rate
1716 adjustment to the affected service rates to take place on the subsequent July 1.

1717 7.18.6 Adjustments Due to Changes in Law. CONTRACTOR agrees
1718 that no extraordinary adjustment shall occur or rate adjustment be provided except as set forth
1719 in Article 30 and Sections 28.01 and 28.02.

1720 7.18.7 CONTRACTOR'S Payments to CITY. CONTRACTOR shall
1721 make payment to CITY of a negotiated franchise fee, and such other fees as may be specified
1722 in this Contract.

1723 7.18.8 Franchise Fee. The franchise fee for the fiscal year July 1, 2015,
1724 through June 30, 2016, shall be the initial franchise fee of Twenty-five Million Thirty-four
1725 Thousand Dollars (\$25,034,000). The franchise fee for the next fiscal year and each
1726 subsequent fiscal year shall be adjusted annually by the percentage change in the annual
1727 average of the Franchise Fee cost indicator (Series ID: cuura422sa0 Consumer Price Index, All
1728 urban Consumers, All Items, San Francisco-San Jose-Oakland, CA) as set forth in Section 2 of
1729 Exhibit 2 to this Contract except that in no year shall the franchise fee adjustment be less than
1730 zero (0) percent. Notwithstanding the foregoing, no adjustment shall be implemented for a
1731 particular fiscal year if CONTRACTOR's Gross Receipts for the prior calendar year were less
1732 than the calendar year previous to that, but not including any calendar years prior to July 1,
1733 2015. Such determination of whether or not CONTRACTOR's Gross Receipts for the prior
1734 calendar year were less than the calendar year previous to that shall be based on the results of
1735 a Gross Receipts review to be performed by a qualified firm under contract to CITY. CITY shall
1736 have the final responsibility and discretion for the selection of the firm but shall seek and
1737 consider comments and recommendations from CONTRACTOR. CONTRACTOR shall be
1738 responsible for, and shall upon request by CITY promptly pay, the cost of the review up to a
1739 maximum of Twenty-five Thousand Dollars (\$25,000), adjusted annually by the annual CPI
1740 cost indicator (Series ID: cuura422sa0 Consumer Price Index, All Urban Consumers, All Items,
1741 San Francisco-San Jose-Oakland, CA) as set forth in Exhibit 2. The franchise fee for each
1742 fiscal year shall be divided into twelve (12) equal payments, and paid monthly no later than the

1743 twentieth (20th) day of each month for the preceding month except that the first franchise fee
1744 payment will be due no later than August 15, 2015.

1745 7.18.9 Proposal Development and Cost Reimbursement Fee. No later
1746 than thirty (30) calendar days after the execution of this Contract by CITY and CONTRACTOR,
1747 CONTRACTOR shall submit proposal development and cost reimbursement fee to CITY in the
1748 amount of Seven Hundred Fifty Thousand Dollars (\$750,000).

1749 7.18.10 Other Fees. CITY may set such other fees as it deems
1750 necessary. However, CONTRACTOR shall not be responsible for remitting such other fees to
1751 CITY until such time as the Maximum MM&O Service Rates as set forth in Exhibit 1 have been
1752 adjusted to include such other fees.

1753 7.18.11 Acceptance of Payment. No acceptance by CITY of any
1754 payment shall be construed as an accord agreement or concession that the amount is in-fact
1755 the correct amount, nor shall such acceptance of payment be construed as a release of any
1756 claim CITY may have against CONTRACTOR for any additional sums payable under the
1757 provisions of this Contract. All amounts paid shall be subject to independent audit and
1758 recalculation by CITY. If, after the audit, such recalculation indicates an underpayment
1759 CONTRACTOR shall pay to CITY the amount of the underpayment and shall reimburse CITY
1760 for all reasonable costs and expenses incurred in connection with the audit and recalculation
1761 within ten (10) Work Days of receipt of written notice from CITY that such is the case. If, after
1762 audit, such recompilation indicates an overpayment, CITY shall notify CONTRACTOR in writing
1763 of the amount of the overpayment, less costs and expenses incurred in connection with the
1764 audit and recalculation. CONTRACTOR may offset the amounts next due following receipt of
1765 such notice by the amount specified therein.

1766 7.19 Stability Funds.

1767 7.19.1 Recycling Stability Funds. Recycling stability funds represent the
1768 stabilization component of the Maximum Recycling Service Rates, that may be included at the
1769 sole discretion of CITY, and to the extent included in the SFD and MFD Maximum Recycling
1770 Service Rates, are collected by CONTRACTOR for use in stabilizing recycling billing
1771 fluctuations or to make up for shortfalls experienced by CONTRACTOR, when required
1772 payments to the RR Contractor exceed the RR Contractor Component of the Maximum
1773 Recycling Service Rate funds collected over any calendar year. Recycling stability funds shall
1774 be maintained by CONTRACTOR in a separate interest bearing account, whose interest
1775 accrues to the account. Recycling stability funds may only be used at the direction of CITY.

1776 7.19.1.1 SFD Recycling stability funds are calculated by multiplying
1777 the stabilization component of the SFD Maximum Recycling Service Rate by the total number of
1778 SFD Dwelling Units associated with each of the invoices that were collected during each month.

1779 7.19.1.2 MFD Recycling stability funds are calculated by multiplying
1780 the stabilization component of the MFD Recycling Service Rate by the total number of MFD
1781 Dwelling Units associated with each of the invoices that were collected during each month.

1782 7.19.1.3 SFD and MFD Recycling stability fund account balances
1783 shall be reported to the Contract Manager no later than the tenth (10th) day of each month
1784 beginning in August of 2015 and monthly thereafter during the term of this Contract.

1785 7.20 Billing Records. CONTRACTOR shall keep records, electronically or paper, of all
1786 billing documents and Customer account records, including but not limited to, invoices, receipts,
1787 and collection notices, each in chronological order, for a period of three (3) years after the date
1788 of receipt or issuance.

1789 7.21 CITY Access to Customer Account and Service Information. Within a reasonable
1790 time after the commencement of the Collection Services, CONTRACTOR and CITY shall
1791 determine a means by which the following information shall be electronically provided to CITY
1792 via a live computer link or some other format acceptable to CITY: (i) all routing information from
1793 route audits to include name and address of Customer, Service Recipient and route number; (ii)
1794 records of daily Collection, Disposal, and Processing figures; (iii) names and addresses of
1795 Customers, Service Recipients and account classification (i.e., SFD, MFD, Commercial, Roll-Off
1796 Box), and service level (i.e., number and size of Containers, frequency of Collection); (iv) notes
1797 on location of Carts and Bins at Service Addresses; (v) record of missed pickups; and (vi)
1798 customer service log. Upon expiration or termination of this Contract, CITY shall have the
1799 immediate and permanent right to access and copy all such information contained in
1800 CONTRACTOR'S customer account and service information system relevant to this Contract.

1801 7.22 Collection Services Census Data. On or before July 15, 2016 and annually
1802 thereafter during the term of this Contract, CONTRACTOR shall deliver to CITY, Collection
1803 Services census data for all Service Addresses as of the preceding July 1. This information
1804 shall be delivered electronically in a format approved by CITY, using software approved by
1805 CITY.

1806 7.22.1 Census data for SFD Service Addresses shall consist of a list of
1807 SFD Service Recipients receiving, SFD Collection Services during the previous month and
1808 include at a minimum: (i) Service Recipient name and Service Address; (ii) name and address
1809 of Customer if different from Service Recipient and Service Address; and (iii) service level,
1810 separately for Mixed Materials and Organics (i.e., number and size of Containers, and
1811 frequency of Collection).

1812 7.22.2 Census data for MFD and Commercial Service Addresses shall
1813 consist of the number of Service Recipients receiving MFD or Commercial Collection Services
1814 during the preceding month. The census data shall be segregated by Customer type, and
1815 include at a minimum: (i) Service Recipient name and Service Address; (ii) name and address
1816 of Customer if different from Service Recipient and Service Address; and (iii) service level,
1817 separately for Mixed Materials and Organics (i.e., number and size of Containers, and
1818 frequency of Collection).

1819 **ARTICLE 8. DIVERSION REQUIREMENTS**

1820 8.01 Minimum Annual Diversion Requirements. CONTRACTOR shall achieve
1821 minimum annual Diversion requirements beginning with calendar year 2016 as set forth in Part
1822 1 of Table A of Exhibit 8 to this Contract, or such other Diversion requirements as may be set in
1823 accordance with the provisions of Article 30 of this Contract. Except as provided in Section
1824 8.01.1 and Sections 11.06.2.2 through 11.06.2.3, annual Diversion rates shall be calculated for
1825 each calendar year using Table B of Exhibit 8, and the methodology in Exhibit 20, beginning
1826 with calendar year 2016.

1827 8.01.1 CITY waives CONTRACTOR's Minimum Annual Diversion
1828 Requirement of 45.69% for the calendar year 2018, and will allow a Minimum Annual Diversion

1829 Requirement of 42.93% for the calendar year 2018, a difference of 2.76%, provided that
1830 CONTRACTOR increases the Minimum Annual Diversion Requirements in calendar years
1831 2019, 2020 and 2021 by 0.92% in each of those years, a total of 2.76%, so that the Minimum
1832 Annual Diversion Requirement in 2019 shall be 53.99%, 2020 shall be 57.30%, and 2021 shall
1833 be 58.59%.

1834 8.01.2 If CONTRACTOR achieves greater than 42.93% Diversion in
1835 2018, it may apply the amount in excess of 42.93%--up to 45.69%, a difference of up to 2.76%--
1836 -to shortfalls in its achievement of the Minimum Annual Diversion Requirements in 2019, 2020
1837 and 2021, as cited in Section 8.01.1. such that the total amount applied to all shortfalls in 2019,
1838 2020 and 2021 shall be equal to the amount in excess of 42.93% and not exceed 2.76%.

1839 8.02 Failure to Meet Minimum Annual Diversion Requirements. CONTRACTOR'S
1840 failure to meet the minimum annual Diversion requirement set forth in Part 1 of Table A of
1841 Exhibit 8 shall result in a Diversion adjustment being applied to Maximum Service Rate
1842 adjustments as specified in Section 7.16.2.2 of this Contract.

1843 8.03 Minimum Diversion Requirement for Contract Extension. CONTRACTOR shall
1844 meet a minimum Diversion requirement of forty (40) percent in calendar year 2022, calculated
1845 as set forth in Section 8.01 of this Contract. Meeting the 2022 minimum Diversion requirement
1846 will be a significant factor in CITY's decision, at its sole discretion, to offer the Contract
1847 extension set forth in Section 3.01.1 of this Contract or terminate this Contract no later than
1848 June 30, 2025.

1849 8.04 Annual Diversion Requirements for Contract Extension(s). By March 31, 2023,
1850 CONTRACTOR shall provide to CITY Part 2 of Table A of Exhibit 8 to this Contract by entering
1851 annual Diversion requirements for Contract Years ending June 30, 2026, June 30, 2027,
1852 June 30, 2028, June 30, 2029 and June 30, 3030. Should CONTRACTOR receive a Contract
1853 extension for such years as set forth in Article 3 of this Contract, the proposed annual Diversion
1854 requirements shall be incorporated into Exhibit 8 of the Contract extension.

1855 8.05 If the initial five (5)-year extension had been granted and CONTRACTOR seeks
1856 a second five (5)-year extension, by March 31, 2028, CONTRACTOR shall provide to CITY Part
1857 2 of Table A of Exhibit 8 to this Contract by entering annual Diversion requirements for Contract
1858 Years ending June 30, 2031, June 30, 2032, June 30, 2033, June 30, 2034, and June 30, 2035.
1859 Should CONTRACTOR receive a Contract extension(s) for such years as set forth in Article 3 of
1860 this Contract, the proposed annual Diversion requirements shall be incorporated into Exhibit 8 of
1861 the Contract extension

1862 8.06 CONTRACTOR shall use a statistically significant method approved by CITY to
1863 calculate the Tonnage of finished Processed material, net of Residue, attributable to material
1864 Collected under this Contract. CONTRACTOR shall use a statistically significant method
1865 approved by CITY, attached as Exhibit 20, to calculate the Tonnage of Residue attributable to
1866 material Collected under this Contract. Processed Mixed Materials, Organic Materials and
1867 Recyclable Materials departing a Mixed Materials, Organic Materials or Recyclable Materials
1868 Processing Facility (e.g., CONTRACTOR's Davis Street facilities) for processes other than
1869 Disposal will be calculated as Diverted.

1870 **ARTICLE 9. SFD COLLECTION SERVICES**

1871 9.01 SFD Collection Services. These services shall be governed by the following
1872 terms and conditions.

1873 9.01.1 Size and Frequency of Service. CONTRACTOR shall offer Mixed
1874 Materials Carts in 20, 32, 64 and 96 gallon nominal Cart sizes, with the default Cart size being
1875 32 gallons. CONTRACTOR shall offer Organic Materials Carts in 20, 32, 64 and 96 gallon
1876 nominal Cart sizes, with the default Cart size being 64 gallons. The size of the Cart shall be
1877 selected by the SFD Customer. Service Recipients receiving Backyard Collection Service as
1878 set forth in Sections 9.01.4, 9.01.5, 9.01.6, or 9.01.7 below may set out their Mixed Materials or
1879 Organic Materials in their own can. Except as set forth in Sections 9.04 through 9.06, SFD
1880 Collection Services shall be provided one (1) time per week on a scheduled route basis. SFD
1881 Collection Services shall be scheduled so that a SFD Service Address receives SFD Mixed
1882 Materials Collection Service and SFD Organic Materials Collection Service on the same Work
1883 Day.

1884 9.01.1.1 Minimum Capacity. CONTRACTOR shall provide Mixed
1885 Materials Container sizes and with Collection frequencies such that the total weekly capacity of
1886 Mixed Materials Collection Service is equal to the number of Dwelling Units in the SFD
1887 multiplied by twenty (20) gallons. The size and number of the Container(s) and the frequency
1888 (above the minimum) of Collection shall be determined by the SFD Customer. However, the
1889 size and frequency shall be sufficient to meet the minimum capacity set forth in this Section
1890 9.01.1.1 and to provide that no Mixed Materials need be placed outside the appropriate
1891 Container on a regular basis. CONTRACTOR shall make commercially reasonable efforts to
1892 update and maintain an accurate count of Dwelling Units in all SFD, including but not limited to
1893 using available parcel data information, site surveys, and other methods, so that SFD are
1894 provided and billed for no less than the minimum capacity Mixed Materials Collection Service.

1895 9.01.1.2 Overages. CONTRACTOR shall be required to Collect all
1896 Overages of Mixed Materials Carts that are set out for Collection regardless of whether the
1897 Overages are properly contained in bags affixed with an Extra Service Tag. CONTRACTOR
1898 may be compensated for the Collection of such Overages if the Overages are not properly
1899 contained in bags affixed with an Extra Service Tag, and Contractor obtains and retains pictorial
1900 evidence of such Overages. Compensation shall be provided in accordance with the approved
1901 "Overage" Maximum Service Rate set forth in Exhibit 1 or as may be adjusted under the terms
1902 of this Contract.

1903 9.01.1.3 Multiple Overages. In the case of repeated Overages of
1904 Mixed Materials Carts, CONTRACTOR may send written notification to the SFD Customer that
1905 includes dates of observed Overages, any previous notifications, photographic documentation
1906 of said Overages and an offer to arrange for an appropriate change in Cart size and/or
1907 Collection frequency. Should Overages persist after three (3) notifications and CONTRACTOR
1908 is unable to reach an agreement with the SFD Customer regarding an appropriate change in
1909 Cart size and/or frequency of Collection, CONTRACTOR may impose such service level
1910 increase as is needed to avoid the Overages and notify the SFD Customer and Contract
1911 Manager in writing. The SFD Customer may petition CITY regarding any change in Cart size
1912 and/or Collection frequency. Should three (3) months elapse with no Overage recurrence taking
1913 place following the change in service, the Overage problem shall be considered resolved.

1914 9.01.2 Manner of Collection. CONTRACTOR shall provide SFD Collection
1915 Services with as little disturbance as possible. Except in the case of backyard Collection
1916 Services CONTRACTOR shall leave any Cart in an upright position, with the lid closed, at the
1917 point of collection without obstructing alleys, roadways, driveways, sidewalks or mail boxes. In
1918 the case of Backyard Collection Service, CONTRACTOR shall remove the Containers from the
1919 back or side of the Service Address (or from such other location as agreed to by

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1920 CONTRACTOR and the Service Recipient), shall empty the contents into the collection vehicle
1921 and shall return the Containers to the location from which they were removed. CONTRACTOR
1922 will not be responsible for Carts or Bins being moved or open due to weather conditions or
1923 other factors beyond its control, such as scavengers.

1924 9.01.3 Curbside Collection Service. SFD Curbside Collection Service shall be
1925 provided where Mixed Materials and Organic Materials are placed within three (3) feet of the
1926 curb, or at edge of street pavement for streets without curbs.

1927 9.01.4 Premium Backyard Collection Service. CONTRACTOR shall provide
1928 premium backyard Collection of Mixed Materials and Organic Materials to a SFD Service
1929 Address if requested by the SFD Customer for their convenience. CONTRACTOR shall be
1930 compensated for such services at the approved Maximum Service Rates provided in Exhibit 1
1931 for premium backyard Collection Service.

1932 9.01.5 Exempt Backyard Collection Service. Notwithstanding any term or
1933 definition set forth in this Contract, CONTRACTOR shall provide exempt backyard Collection of
1934 Mixed Materials, and Organic Materials to SFD Service Addresses whose occupants meet the
1935 requirements for the exemption programs set forth below in Sections 9.01.6 through 9.01.8
1936 and, based on information provided by CITY to CONTRACTOR, those Service Addresses
1937 receiving such service from the prior Collection Contractor. CONTRACTOR shall provide
1938 exempt backyard Collection of Mixed Materials, and Organic Materials to SFD Service
1939 Addresses at no additional charge to CITY or SFD Customer.

1940 9.01.6 Frail Senior Exemption Program. CONTRACTOR shall provide exempt
1941 backyard Collection of Mixed Materials and Organic Materials to SFD Service Addresses
1942 whose occupants demonstrate that they meet the requirements set forth in this Section 9.01.6
1943 through the submission of a complete application requesting this exemption along with all
1944 required documentation and certifications. Services shall begin on the next regularly
1945 scheduled Collection day of the Service Address after CONTRACTOR'S receipt of the
1946 completed application. No additional monies shall be due to CONTRACTOR for the exempt
1947 backyard Collection of Mixed Materials, and Organic Materials.

1948 9.01.6.1 Applicant must be sixty (60) years of age or older.

1949 9.01.6.2 Applicant must be the owner of record or primary renter.

1950 9.01.6.3 The Dwelling Unit must be solely occupied by the
1951 applicant, unless all other occupants meet the requirements of frail senior exemption program
1952 as set forth in this Section 9.01.6, the disability exemption program as set forth in Section
1953 9.01.7, or are under the age of twelve (12) years old.

1954 9.01.6.4 Applicant must provide a signed statement from a
1955 registered Doctor of Medicine (M.D.) stating that bringing the wheeled Containers to curbside
1956 creates an undue physical hardship on the applicant.

1957 9.01.7 Disability Exemption Program. CONTRACTOR shall provide exempt
1958 backyard Collection of Mixed Materials, and Organic Materials to SFD Service Addresses
1959 whose occupants demonstrate that they meet the requirements set forth in this Section 9.01.7
1960 through the submission of a complete application requesting this exemption along with all
1961 required documentation and certifications. Services shall begin on the next regularly

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1962 scheduled Collection day of the Service Address after CONTRACTOR'S receipt of the
1963 completed application. No additional monies shall be due to CONTRACTOR for the exempt
1964 backyard Collection of Mixed Materials, and Organic Materials.

1965 9.01.7.1 Applicant must be the owner of record or primary renter.

1966 9.01.7.2 The Dwelling Unit must be solely occupied by the
1967 applicant, unless all other occupants meet the requirements of frail senior exemption program
1968 as set forth in Section 9.01.6, the disability exemption program as set forth in this Section
1969 9.01.7, or are under the age of twelve (12) years old.

1970 9.01.7.3 Applicant must provide proof that is acceptable to
1971 CONTRACTOR of long term or permanent physical disability, which may include; 1) a signed
1972 statement from a registered Doctor of Medicine (M.D.); 2) proof or registration as a disabled
1973 driver as determined by the Department of Motor Vehicles; or 3) documentation of grant of
1974 permanent disability status by the State of California.

1975 9.01.8 Curbside Placement Exemption. CONTRACTOR may petition CITY for
1976 exempt backyard Collection of Mixed Materials and Organic Materials from SFD Service
1977 Recipients other than as required by Sections 9.01.6 and 9.01.7

1978 9.01.9 Collection Day. CONTRACTOR shall provide exempt backyard
1979 Collection of Mixed Materials and Organic Materials on the same Work Day that curbside
1980 Collection Service would otherwise be provided to the Service Address.

1981 9.02 SFD Mixed Materials Collection Service. This service will be governed by the
1982 following additional terms and conditions:

1983 9.02.1 Containerized Mixed Materials. CONTRACTOR shall provide SFD Mixed
1984 Materials Collection Service to all SFD Service Addresses in the Service Area whose Mixed
1985 Materials are properly placed into a Mixed Materials Containers, except as set forth in Section
1986 9.01.1.2 above, regardless of whether or not the lid is fully closed, where the Containers have
1987 been placed within three (3) feet of the curb, paved surface of the public roadway, closest
1988 accessible roadway, or other such location agreed to by CONTRACTOR and Service Recipient
1989 which will provide safe and efficient accessibility to CONTRACTOR'S Collection crew and
1990 vehicle.

1991 9.02.2 Disposal Facility or Mixed Materials Processing Facility. All Mixed
1992 Materials Collected as a result of performing SFD Mixed Materials Collection Services shall be
1993 transported and delivered to the Disposal Facility or Mixed Materials Processing Facility.

1994 9.02.3 Residue From Mixed Materials Processing. An amount of Residue equal
1995 to the Residue generated as a result of Processing the Mixed Material Collected during the
1996 performance of SFD Mixed Materials Collection Services under the terms of this Contract shall
1997 be delivered to the Disposal Facility.

1998 9.02.4 Additional Mixed Materials Capacity. Upon notification to CONTRACTOR
1999 by CITY or a SFD Customer that additional Mixed Materials capacity is requested,
2000 CONTRACTOR shall deliver such Mixed Materials Carts as are needed to meet the capacity
2001 requirements of the Service Address by the next regularly scheduled Collection day or within
2002 six (6) Work Days (whichever is later). CONTRACTOR may be compensated for the cost of

2003 providing additional Mixed Material capacity in accordance with the approved Maximum
2004 Service Rate as provided in Exhibit 1 or as may be adjusted under the terms of this Contract.

2005 9.02.5 Contaminated Material. In the event the RR Contractor determines that
2006 the Recycling Container contains Contamination, the RR Contractor shall have the right to
2007 Collect such contaminated material and to provide the applicable SFD Customer with a
2008 Contamination Surcharge invoice in the manner set forth in Section 7.04.3. CONTRACTOR
2009 shall not be responsible to RR Contractor if the SFD Customer fails to pay the Contamination
2010 Surcharge.

2011 9.03 SFD Organic Materials Collection Service. This service will be governed by the
2012 following additional terms and conditions.

2013 9.03.1 Containerized Organic Materials. CONTRACTOR shall provide SFD
2014 Organic Materials Collection Service to all SFD Service Addresses in the Service Area whose
2015 Organic Materials, except as set forth in Sections 9.03.2, 9.04 and 9.05, are properly placed in
2016 Organic Materials Containers, regardless of whether or not the lid is fully closed where the
2017 Containers have been placed within three (3) feet of the curb, paved surface of the public
2018 roadway, closest accessible roadway, or other such location agreed to by CONTRACTOR and
2019 Service Recipient, that will provide safe and efficient accessibility to CONTRACTOR'S
2020 Collection crew and vehicle.

2021 9.03.2 Organic Materials in Excess of Container Capacity. SFD Service
2022 Recipients may set out unlimited additional Organic Materials each week in recyclable 32-
2023 gallon paper gardening bags, in bundles, or in Service Recipient's container, provided it meets
2024 the requirements of Oakland Municipal Code Section 8.28.140. No bag, bundle or container
2025 may exceed seventy five (75) pounds in weight. Branches and unpainted/untreated wood may
2026 not exceed four (4) feet in length or six (6) inches in diameter. CONTRACTOR may limit the
2027 amount of Organic Materials to be Collected from a SFD Service Address to sixty four (64)
2028 gallons per week if it is able to show to the satisfaction of CITY that the Service Recipient is
2029 setting out Organic Materials generated from a location other than the Service Address.

2030 9.03.2.1 In the event excess Organic Materials are set out in a
2031 plastic bag, CONTRACTOR may Collect the Organics as Mixed Materials Overage and invoice
2032 the SFD Customer at the Mixed Materials Overage Maximum Service Rate as set forth in
2033 Exhibit 1 to this Contract.

2034 9.03.2.2 CONTRACTOR shall not be required to Collect excess
2035 Organic Materials that are not set out in compliance with Section 9.03.2. In the event of non-
2036 collection CONTRACTOR shall deliver a Non-Collection Notice to the Service Address, which
2037 explains why Collection was not made and how the item(s) may be properly set out, and shall
2038 maintain a copy of such notice during the term of this Contract.

2039 9.03.3 Organic Materials Processing Services. Except for Organic Materials
2040 Residue, or as otherwise provided in this Contract, CONTRACTOR shall ensure that all
2041 Organic Materials Collected pursuant to this Contract are Diverted.

2042 9.03.4 Organic Materials Processing Facility. Except as expressly provided in
2043 this Contract, CONTRACTOR shall deliver all Collected Organic Materials to a fully permitted
2044 Organic Materials Processing Facility or a properly permitted transfer station. CONTRACTOR
2045 shall transfer or deliver all Organic Material to the Covered Aerated Static Pile (CASP)
2046 composting facility at the Altamont Landfill located at 10840 Altamont Pass Road, Livermore,

2047 California once the facility is in operation. CONTRACTOR shall promptly construct and accept
2048 materials at the CASP Facility at Altamont Landfill by December 13, 2016. CONTRACTOR
2049 shall employ all reasonable efforts to obtain needed governmental approvals to meet this
2050 agreed upon completion date. Prior to operation of the Altamont CASP Facility,
2051 CONTRACTOR will deliver Organic Materials to CONTRACTOR's CASP Facility at Redwood
2052 Landfill in Marin County. The parties may agree to modify the designated Organic Materials
2053 Processing Facility or address disposition of any portion of Organic materials that may be
2054 unsuitable for processing at the CASP. All expenses related to Organic Materials Collection
2055 and marketing will be the sole responsibility of CONTRACTOR.

2056 9.03.5 Additional Organic Materials Capacity. Upon notification to
2057 CONTRACTOR by CITY or a SFD Customer that additional Organic Materials Cart capacity is
2058 requested in the form of a larger Cart or an additional Cart, CONTRACTOR shall deliver such
2059 Organic Materials Carts as are needed to meet the capacity requirements of the Service
2060 Address by the next regularly scheduled Collection day or within six (6) Work Days (whichever
2061 is later). CONTRACTOR shall not receive additional compensation for the Collection of a
2062 larger Organic Materials Cart. However CONTRACTOR may be compensated for the
2063 Collection of more than one (1) Organic Materials Cart in accordance with the approved
2064 Maximum Service Rate as provided in Exhibit 1 or as may be adjusted under the terms of this
2065 Contract.

2066 9.03.6 Contamination of Organic Materials. CONTRACTOR shall retain
2067 the right to temporarily reduce capacity of, or levy a Contamination Surcharge on, Organic
2068 Materials Collection Service to SFD Service Addresses subject to the Contamination Reduction
2069 Plan attached to this Contract as Exhibit 11.

2070 9.04 Curbside Holiday Tree Collection. CONTRACTOR shall Collect Holiday trees
2071 from all SFD Service Addresses as part of the SFD Organic Materials Collection Service when
2072 such trees are in lengths of four (4) feet or less and are set out at the curb. CONTRACTOR
2073 shall provide this service beginning on the first Work Day after December 25th through the end
2074 of the second full work week in January or dates approved by CITY.

2075 9.04.1 Contaminated Holiday Trees. Holiday trees that are flocked or contain
2076 tinsel or other decorations or are attached to a tree stand may be delivered to the Disposal
2077 Facility at the discretion of CONTRACTOR.

2078 9.05 Bulky Goods Collection Service. This service will be governed by the terms and
2079 conditions set forth in Exhibit 14 and such changes to that Exhibit as may be agreed to between
2080 CITY and CONTRACTOR.

2081 9.05.1 Annual Changes to Bulky Goods Collection Service Requirements.
2082 Beginning with Bulky Goods Collection Service for Contract Year July 1, 2016, through June 30,
2083 2017 and annually thereafter during the term of this Contract, CITY and CONTRACTOR may
2084 mutually agree to changes in the Bulky Goods Collection Service program. Such mutually
2085 agreed to changes shall be documented through the revision of Exhibit 14 to this Contract and
2086 the revised Exhibit 14 shall be signed by authorized representatives of CITY and
2087 CONTRACTOR.

2088 9.06 Temporary Roll-Off Box Collection Service. CONTRACTOR shall provide
2089 Temporary Roll-Off Collection Service to all SFD Customers in the Service Area subscribing to
2090 such service. CONTRACTOR shall respond to requests for service within two (2) Work Days of

2091 receipt of the request. CONTRACTOR shall be compensated for such services in accordance
2092 with the Maximum Service Rates as set forth in Exhibit 1 to this Contract as may be adjusted in
2093 accordance with the terms of this Contract.

2094 **ARTICLE 10. MFD COLLECTION SERVICES**

2095 10.01 MFD Collection Services. These services shall be governed by the following
2096 terms and conditions.

2097 10.01.1 Manner of Collection. CONTRACTOR shall provide MFD
2098 Collection Service with as little disturbance as possible and shall leave any Container in an
2099 upright position, with the lid closed, at the same point it was Collected without obstructing
2100 alleys, roadways, driveways, sidewalks or mail boxes. CONTRACTOR shall close or lock, as
2101 appropriate, Containers and Container enclosures that were opened by CONTRACTOR as part
2102 of the Collection process. CONTRACTOR will not be responsible for Carts or Bins being
2103 moved or open due to weather conditions or other factors beyond its control, such as
2104 scavengers.

2105 10.01.2 Collection Location. The default MFD Collection location shall be
2106 designated areas within the property confines, and in compliance with any applicable City
2107 codes and ordinances, unless with consent of the building owner/manager Collection may be
2108 from an alternate location, including at the curb.

2109 10.01.3 Accessibility. CONTRACTOR shall Collect all Mixed Materials
2110 and Organic Materials Containers that are readily accessible to CONTRACTOR'S crew and
2111 vehicles and not blocked. However, CONTRACTOR shall provide "push services" and "key
2112 services" as necessary during the provision of MFD Collection Services. Push services shall
2113 include, but not be limited to, dismounting from the Collection vehicle, moving the Bins or Carts
2114 from their storage location for Collection and returning the Bins or Carts to their storage
2115 location. Push services may include unlocking and relocking the Bin or enclosure Key
2116 services shall include the provision of a master lock and key by CONTRACTOR to the Service
2117 Address for the convenience of CONTRACTOR. CONTRACTOR shall be compensated for
2118 providing "push services" and or "key services" in accordance with the approved Maximum
2119 Service Rates as provided in Exhibit 1 or as may be adjusted in accordance with the terms of
2120 this Contract.

2121 10.01.4 Difficult to Serve. If CONTRACTOR determines that the set-out
2122 location for Carts or Bins is Difficult to Serve, CONTRACTOR may contact the MFD Customer
2123 to discuss a change in the set-out location. In the event a new set out location is not agreed to
2124 between the CONTRACTOR and MFD Customer, then CONTRACTOR may be compensated
2125 for providing Difficult to Serve Collection Services in accordance with any applicable Ancillary
2126 and "Difficult to Serve" charges set forth in the Maximum Service Rates approved by CITY.

2127 10.02 MFD Mixed Materials Collection Service.

2128 10.02.1 Containerized Mixed Materials. CONTRACTOR shall provide
2129 MFD Mixed Materials Collection Service to all MFD Service Addresses in the Service Area
2130 where the Mixed Materials are properly placed in Mixed Materials Carts or Bins, except as set
2131 forth in Sections 10.02.5, 10.04 or 10.05 regardless of whether or not the lid is fully closed.

2132 10.02.2 Service Frequency. CONTRACTOR shall provide MFD Mixed

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2133 Materials Collection Service at least weekly. However, in those instances where the scheduled
2134 Collection day falls on a holiday as set forth in Section 6.11 herein, the Collection day may be
2135 adjusted in a manner agreed to between the MFD Service Recipient and CONTRACTOR as
2136 long as service is received a minimum of one (1) time per week.

2137 10.02.2.1 CONTRACTOR shall respond to requests for service
2138 utilizing Roll-Off Boxes within two (2) Work Days of the request from the MFD Customer.

2139 10.02.3 Container Sizes. CONTRACTOR shall offer Mixed Materials
2140 Containers in 20, 32, 64 and 96 gallon nominal Cart sizes and in 1, 1.5, 2, 3, 4, 6 and cubic
2141 yard Bins. CONTRACTOR shall offer Roll-Off Boxes in 6, 14, 20, 30 and 40 cubic yard sizes
2142 with lids.

2143 10.02.4 Minimum Capacity. CONTRACTOR shall provide Mixed
2144 Materials Container sizes and with Collection frequencies such that the total weekly capacity of
2145 Mixed Materials Collection Service is equal to the number of Dwelling Units in the MFD
2146 multiplied by twenty (20) gallons. The size and number of the Container(s) and the frequency
2147 (above the minimum) of Collection shall be determined by the MFD Customer. However, the
2148 size and frequency shall be sufficient to meet the minimum capacity set forth in this Section
2149 10.02.4 and to provide that no Mixed Materials need be placed outside the appropriate
2150 Container on a regular basis. CONTRACTOR shall make commercially reasonable efforts to
2151 update and maintain an accurate count of Dwelling Units in all MFD, including but not limited to
2152 using available parcel data information, site surveys, and other methods, so that MFD are
2153 provided and billed for no less than the minimum capacity Mixed Materials Collection Service.

2154 10.02.4.1 For purposes of calculating minimum capacity in cubic
2155 yards under Section 10.02.4, the minimum gallons (calculated by multiplying the number of
2156 Dwelling Units in the MFD times twenty (20) gallons) shall be divided by two hundred (200) and
2157 the result calculated to the first decimal place. In those instances where the result does not
2158 equal a specific Container size offered by CONTRACTOR, the results shall be rounded to the
2159 nearest Container size, in accordance with the examples set forth below.

2160 10.02.4.2 For example, if a MFD is composed of twelve (12) Dwelling
2161 Units then the minimum capacity would be calculated as two hundred forty (240) gallons, (12
2162 Dwelling Units x 20 gallons per Dwelling Unit), which is equivalent to 1.2 cubic yards (240
2163 gallons /200 gallons per cubic yard = 1.2 cubic yards), and rounded down to 1 cubic yard.

2164 10.02.4.3 For example, if a MFD is composed of fifteen (15) Dwelling
2165 Units then the minimum capacity would be calculated as three hundred (300) gallons, (15
2166 Dwelling Units x 20 gallons per Dwelling Unit) which is equivalent to 1.5 cubic yard (300 gallons
2167 /200 gallons per cubic yard = 1.5 cubic yards). Since CONTRACTOR offers a 1.5 cubic yard
2168 Bin rounding is not necessary.

2169 10.02.4.4 For example, if a MFD is composed of twenty five (25)
2170 Dwelling Units then the minimum capacity would be calculated as five hundred (500) gallons,
2171 (25 Dwelling Units x 20 gallons per Dwelling Unit) which is equivalent to 2.5 cubic yard (500
2172 gallons /200 gallons per cubic yard = 2.5 cubic yards), rounded up to 3 cubic yards.

2173 10.02.5 Collection of Mixed Materials Overage. CONTRACTOR shall be
2174 required to Collect all Mixed Materials Overage that are set out for Collection regardless of
2175 whether or not the Mixed Materials Overages are properly contained in a bag affixed with an

2176 Extra Service Tag. CONTRACTOR shall not be entitled to additional compensation for the
2177 Collection Mixed Materials Overages unless such Overages are not contained in bags with
2178 affixed Extra Service Tags in which case CONTRACTOR shall obtain and retain pictorial
2179 evidence of such Overages and may be compensated for the Collection of such Overages in
2180 accordance with the approved "Overage" Maximum Service Rate as provided in Exhibit 1 or as
2181 may be adjusted under the terms of this Contract.

2182 10.02.6 Multiple Overages. In the case of repeated Overages of Mixed
2183 Materials CONTRACTOR may send written notification to the MFD Customer that includes
2184 dates of observed Overages, any previous notifications, photographic documentation of said
2185 Overages, and an offer to arrange for an appropriate change in Bin or Cart size, and /or
2186 Collection frequency. Should Overages persist after three (3) notifications and CONTRACTOR
2187 is unable to reach an agreement with the MFD Customer regarding an appropriate change in
2188 Bin or Cart size and/or frequency of Collection, CONTRACTOR may impose such service level
2189 increase as is needed to avoid the Overages and notify the MFD Customer and Contract
2190 Manager in writing. The MFD Customer may petition CITY regarding any change in Bin or Cart
2191 size and/or Collection frequency. Should three (3) months elapse with no Overage recurrence
2192 taking place following the change in service the Overage problem shall be considered resolved.

2193 10.02.7 Additional Mixed Materials Capacity. Upon notification to
2194 CONTRACTOR by CITY or a MFD Customer that additional Mixed Materials capacity is
2195 requested, CONTRACTOR shall deliver such Mixed Materials Containers as are needed to
2196 meet the capacity requirements of the Service Address by the next regularly scheduled
2197 Collection day or within six (6) Work Days (whichever is later). CONTRACTOR may be
2198 compensated for the cost of providing additional Mixed Materials capacity in accordance with
2199 the approved Maximum Service Rates as provided in Exhibit 1 or as may be adjusted under
2200 the terms of this Contract.

2201 10.02.8 Mixed Materials Processing Facility. All Mixed Materials
2202 Collected as a result of performing MFD Mixed Material Collection Service shall be delivered to
2203 the Mixed Materials Processing Facility.

2204 10.02.8.1 CONTRACTOR shall promptly construct and accept Mixed
2205 Materials at the Mixed Materials Recovery Facility (MMRF, also known as "Integrated Waste
2206 Processing Facility") by January 1, 2019. CONTRACTOR shall employ all reasonable efforts to
2207 obtain needed governmental approvals to meet this agreed upon completion date. Prior to
2208 operation of the MMRF, CONTRACTOR shall deliver Mixed Materials to CONTRACTOR's Dry
2209 MRF Facility at Davis Street, or other Mixed Materials Processing Facility approved by CITY.
2210 All expenses related to Mixed Materials Collection, Processing and marketing will be the sole
2211 responsibility of CONTRACTOR.

2212 10.02.9 Residue from Mixed Materials Processing. An amount of
2213 Residue equal to the Residue generated as a result of Processing the Mixed Material Collected
2214 during the performance of MFD Mixed Materials Collection Service under the terms of this
2215 Contract shall be delivered to the Disposal Facility.

2216 10.02.10 Contaminated Material. In the event the RR Contractor
2217 determines that a Recycling Container contains Contamination, the RR Contractor shall have
2218 the right to Collect such contaminated material and to provide the applicable MFD Customer
2219 with a Contamination Surcharge invoice as set forth in Section 7.04.3. CONTRACTOR shall
2220 not be responsible to RR Contractor if the MFD Customer fails to pay the Contamination

2221 Surcharge.

2222 10.03 MFD Organic Materials Collection Service. This service will be governed by the
2223 following terms and conditions:

2224 10.03.1 Organic Materials Containers. CONTRACTOR shall provide a
2225 minimum of one (1) Organic Materials Container to each MFD Customer according to the
2226 capacity requirements set forth in Section 10.03.4. CONTRACTOR shall provide MFD Organic
2227 Materials Collection Service to all MFD Customers in the Service Area whose Organic
2228 Materials are properly placed in Organic Materials Carts or Bins, except as set forth in Sections
2229 10.03.5, 10.04, and 10.05, regardless of whether the lids are closed.

2230 10.03.2 Service Frequency. CONTRACTOR shall provide MFD Organic
2231 Materials Collection Service one (1) time per week. However, in those instances where the
2232 scheduled Collection day falls on a holiday as set forth in Section 6.11 herein, the Collection
2233 day may be adjusted in a manner agreed to between the Service Recipient and
2234 CONTRACTOR as long as service is received a minimum of one (1) time per week.

2235 10.03.3 Container Sizes. Except as set forth in Section 10.03.6
2236 CONTRACTOR shall provide Organic Materials Containers in 32, and 64 gallon nominal Cart
2237 sizes.

2238 10.03.4 Minimum Capacity. At a minimum, CONTRACTOR shall provide
2239 one (1) 32 gallon Organic Materials Cart to any MFD of twelve (12) or fewer Dwelling Units,
2240 and one (1) 64 gallon Organic Materials Cart to any MFD of thirteen or (13) more Dwelling
2241 Units.

2242 10.03.5 Collection of Organic Materials Overages. CONTRACTOR shall
2243 be required to Collect all Organic Materials that are set out for Collection regardless of whether
2244 or not the Organic Materials are contained in an Organic Materials Cart. CONTRACTOR shall
2245 be entitled to additional compensation for the Collection of Organic Materials Overages in
2246 accordance with the approved "Overage" Maximum Service Rates as provided in Exhibit 1 or
2247 as may be adjusted under the terms of this Contract.

2248 10.03.6 Additional Organic Materials Capacity. Upon notification to
2249 CONTRACTOR by CITY or a Customer that additional Organic Materials capacity is requested,
2250 CONTRACTOR shall deliver such Organic Materials Containers as are needed to meet the
2251 capacity requirements of the Service Address by the next regularly scheduled Collection day or
2252 within six (6) Work Days (whichever is later). CONTRACTOR must provide additional
2253 Container capacity if requested by the MFD Customer.

2254 10.03.7 Contamination of Organic Materials. CONTRACTOR shall retain
2255 the right to temporarily reduce capacity of, or levy a Contamination Surcharge on, Organic
2256 Materials Collection Service to Service Addresses subject to the Contamination Reduction Plan
2257 attached to this Contract as Exhibit 11.

2258 10.03.8 Organic Materials Processing Facility. Except as expressly
2259 provided in this Contract, CONTRACTOR shall deliver all Collected Organic Materials to a fully
2260 permitted Organic Materials Processing Facility or a properly permitted transfer station.
2261 CONTRACTOR shall transfer or deliver all Organic Material to the Covered Aerated Static Pile
2262 (CASP) composting facility at the Altamont Landfill located at 10840 Altamont Pass Road,

2263 Livermore, California once the facility is in operation. CONTRACTOR shall promptly construct
2264 and accept materials at the CASP Facility at Altamont Landfill by December 13, 2016.
2265 CONTRACTOR shall employ all reasonable efforts to obtain needed governmental approvals
2266 to meet this agreed upon completion date. Prior to operation of the Altamont CASP Facility,
2267 CONTRACTOR will deliver Organic Materials to CONTRACTOR's CASP Facility at Redwood
2268 Landfill in Marin County. The parties may agree to modify the designated Organic Materials
2269 Processing Facility or address disposition of any portion of Organic materials that may be
2270 unsuitable for processing at the CASP. All expenses related to Organic Materials Collection
2271 and marketing will be the sole responsibility of CONTRACTOR.

2272 10.03.9 Organic Materials Processing Services. Except for Organic
2273 Materials Residue or as otherwise provided in Article 30 of this Contract, CONTRACTOR shall
2274 ensure that all Organic Materials Collected pursuant to this Contract are Diverted.

2275 10.04 Holiday Tree Collection. CONTRACTOR shall collect holiday trees from all MFD
2276 Customers in the manner set forth in Exhibit 10 to this Contract. CONTRACTOR shall provide
2277 this service beginning on the first Work Day after December 25th through the end of the second
2278 full work week in January or dates approved by CITY.

2279 10.04.1 Contaminated Holiday Trees. Holiday trees that are flocked or
2280 contain tinsel or other decorations or are attached to a tree stand may be delivered to the
2281 Disposal Facility at the discretion of CONTRACTOR.

2282 10.05 Bulky Goods Collection Service. This service will be governed by the terms and
2283 conditions set forth in Exhibit 14 and such changes to that Exhibit as may be agreed to between
2284 CITY and CONTRACTOR.

2285 10.05.1 Annual Changes to Bulky Goods Collection Service
2286 Requirements. Beginning with Contract Year July 1, 2016, through June 30, 2017 and
2287 annually thereafter during the term of this Contract, CITY and CONTRACTOR may mutually
2288 agree to changes in the Bulky Goods Collection Service program. Such mutually agreed to
2289 changes shall be documented through the revision of Exhibit 14 to this Contract and the
2290 revised Exhibit 14 shall be signed by authorized representatives of CITY and CONTRACTOR.

2291 10.06 Temporary Roll-Off Box Collection Service. CONTRACTOR shall provide
2292 Temporary Roll-Off Collection Service to all MFD Customers in the Service Area subscribing to
2293 such service. CONTRACTOR shall respond to requests for service within two (2) Work Days of
2294 receipt of the request. CONTRACTOR shall be compensated for such services in accordance
2295 with the Maximum Service Rates as set forth in Exhibit 1 to this Contractor as may be adjusted
2296 in accordance with the terms of this Contract.

2297 **ARTICLE 11. COMMERCIAL COLLECTION SERVICES**

2298 11.01 Commercial Collection Services. These services will be governed by the
2299 following terms and conditions.

2300 11.01.1 Size and Frequency of Service. CONTRACTOR shall offer
2301 Mixed Materials Carts and Organic Materials Carts in 20, 32, 64 and 96 gallon nominal Cart
2302 sizes. CONTRACTOR shall offer Mixed Materials and Organic Materials Bins in 1, 1.5 2, 3, 4,
2303 6 and 7 cubic yard sizes. CONTRACTOR shall offer Mixed Materials and Organic Materials
2304 Roll-Off Boxes in 6, 14, 20, 30 and 40 cubic yard sizes with lids. However, in those instances

2305 where the scheduled Collection day falls on a holiday as set forth in Section 6.11 herein, the
2306 Collection day may be adjusted in a manner agreed to between the Commercial Customer and
2307 CONTRACTOR as long as service is received a minimum of one (1) time per week. The size
2308 of the Container and the frequency (above the minimum) of Collection shall be determined
2309 between the Commercial Customer and CONTRACTOR. However, size and frequency shall
2310 be sufficient to provide that no Mixed Materials or Organic Materials need be placed outside
2311 the Container on a regular basis. CONTRACTOR shall respond to requests for services
2312 utilizing Roll-Off Boxes within two (2) Work Days of the request from the Commercial
2313 Customer. Commercial Customers may use a Compactor they own or lease provided that the
2314 Customer is completely responsible for its proper maintenance and that such Compactor shall
2315 be of a type that can be serviced by CONTRACTOR'S equipment.

2316 11.01.2 Manner of Collection. CONTRACTOR shall provide Commercial
2317 Collection Services with as little disturbance as possible and shall leave any Container in an
2318 upright position, with the lid closed, at the same point it was Collected without obstructing
2319 alleys, roadways, driveways, sidewalks or mail boxes. CONTRACTOR shall close or lock, as
2320 appropriate, Containers and Container enclosures that were opened by CONTRACTOR as part
2321 of the Collection process. CONTRACTOR will not be responsible for Carts or Bins being
2322 moved or open due to weather conditions or other factors beyond its control, such as
2323 scavengers

2324 11.01.3 Accessibility. CONTRACTOR shall Collect all Mixed Materials
2325 and Organic Materials Containers that are readily accessible to CONTRACTOR'S crew and
2326 vehicles and not blocked. However, CONTRACTOR shall provide "push services" and "key
2327 services" as necessary during the provision of Commercial Collection Services. Push services
2328 shall include, but not be limited to, dismounting from the Collection vehicle, moving the Bins or
2329 Carts from their storage location for Collection and returning the Bins or Carts to their storage
2330 location. Push services may include unlocking and relocking the Bin or enclosure. Key
2331 services shall include the provision of a master lock and key by CONTRACTOR to the Service
2332 address for the convenience of CONTRACTOR. CONTRACTOR shall be compensated for
2333 providing "push services" and or "key services" in accordance with the approved Maximum
2334 Service Rates as provided in Exhibit 1 or as may be adjusted in accordance with the terms of
2335 this Contract.

2336 11.01.4 Difficult to Serve. If CONTRACTOR determines that the set-out
2337 location for Carts or Bins is Difficult to Serve, CONTRACTOR may contact the MFD Customer
2338 to discuss a change in the set-out location. In the event a new set out location is not agreed to
2339 between the CONTRACTOR and MFD Customer, then CONTRACTOR may be compensated
2340 for providing Difficult to Serve Collection Services in accordance with any applicable Ancillary
2341 and "Difficult to Serve" charges set forth in the Maximum Service Rates approved by CITY

2342 11.01.5 Multiple Overages. In the case of repeated Overages of Mixed
2343 Materials or Organic Materials, CONTRACTOR may send written notification to the
2344 Commercial Customer that includes dates of observed Overages, any previous notifications,
2345 photographic documentation of said Overages and an offer to arrange for an appropriate
2346 change in Bin or Cart size, and/or Collection frequency. Should Overages persist after three
2347 (3) notifications and CONTRACTOR is unable to reach an agreement with the Commercial
2348 Customer regarding an appropriate change in Bin or Cart size and/or frequency of Collection,
2349 CONTRACTOR may impose such service level increase as is needed to avoid the Overages
2350 and notify the Commercial Customer and Contract Manager in writing. The Commercial
2351 Customer may petition CITY regarding any change in Bin or Cart size and/or Collection

2352 frequency. Should three (3) months elapse with no Overage recurrence taking place following
2353 the change in service the Overage problem shall be considered resolved.

2354 11.02 Commercial Mixed Materials Collection Service. This service will be governed by
2355 the following additional terms and conditions.

2356 11.02.1 Containerized Mixed Materials. CONTRACTOR shall provide
2357 Commercial Mixed Materials Collection Service to all Commercial Service Addresses in the
2358 Service Area where Mixed Materials are properly placed in Mixed Materials Containers,
2359 regardless of whether the lid is fully closed, where the Containers are accessible as set forth in
2360 Section 11.01.3 above.

2361 11.02.2 Collection of Mixed Materials Overage. CONTRACTOR shall
2362 also be required to Collect all Mixed Materials Overages that are set out for Collection
2363 regardless of whether or not the Mixed Materials Overages are properly contained in a
2364 Container. CONTRACTOR shall obtain and retain pictorial evidence of such Overages and
2365 may be compensated for the Collection of such Overages in accordance with the approved
2366 "Overage" Maximum Service Rate as provided in Exhibit 1 or as may be adjusted under the
2367 terms of this Contract.

2368 11.02.3 Disposal and Mixed Materials Processing Facilities. All Mixed
2369 Materials Collected as a result of performing Commercial Mixed Materials Collection Services
2370 shall be transported and delivered to the Disposal Facility or the Mixed Materials Processing
2371 Facility.

2372 11.02.4 Residue From Mixed Materials Processing. An amount of
2373 Residue equal to the Residue generated as a result of Processing the Mixed Materials
2374 Collected during the performance of Commercial Mixed Materials Collection Services under the
2375 terms of this Contract shall be delivered to the Disposal Facility.

2376 11.03 Additional Mixed Materials Capacity. Upon notification to CONTRACTOR by
2377 CITY or a Commercial Customer that additional Mixed Materials capacity is requested,
2378 CONTRACTOR shall deliver such Mixed Materials Containers as are needed to meet the
2379 capacity requirements of the Service Address by the next regularly scheduled Collection Day, or
2380 within six (6) Work Days (whichever is later). CONTRACTOR may be compensated for the cost
2381 of providing additional Mixed Materials capacity in accordance with the approved "Mixed
2382 Materials Collection" Maximum Service Rates provided in Exhibit 1 or as may be adjusted under
2383 the terms of this Contract.

2384 11.04 Commercial Non-Exclusive Recyclable Materials Collection Service. This service
2385 will be governed by the following additional terms and conditions.

2386 11.04.1 Separate Agreements. CONTRACTOR may provide Commercial
2387 Non-Exclusive Recyclable Materials Collection Service pursuant to separate agreements with
2388 Customers, and subject to related sections of the Oakland Municipal Code.

2389 11.04.2 Material Recovery Facility. All Recyclable Materials Collected as
2390 a result of performing Commercial Non-Exclusive Recyclable Materials Collection Service shall
2391 be delivered to a properly permitted material recovery facility. All expenses related to
2392 Recyclable Materials Processing and marketing will be the sole responsibility of
2393 CONTRACTOR.

Mixed Materials and Organics Collection Services Contract

2394 11.04.3 Non-Franchised Commercial Recycling Services.
2395 CONTRACTOR may include Recyclable Materials Collected as a result of providing
2396 Commercial Non-Exclusive Recyclable Materials Collection Service in the annual calculation of
2397 Diversion per section 8.01.

2398 11.05 Commercial Organic Materials Subscription Collection Service. This service will
2399 be governed by the following terms and conditions.

2400 11.05.1 Containerized Organic Materials. CONTRACTOR shall provide
2401 Commercial Organic Materials Subscription Collection Service to all Commercial Customers in
2402 the Service Area that subscribe to such service and whose Organic Materials are properly
2403 placed in Organic Materials Carts or Bins, regardless of whether the lids are closed, where the
2404 Organic Materials Containers are accessible as set forth in Section 11.01.3. CONTRACTOR
2405 may be compensated for Commercial Organic Materials Collection Service in accordance with
2406 the approved "Commercial Organic Materials Collection" Maximum Service Rates as provided
2407 in Exhibit 1.

2408 11.05.2 Civicorps. Except as otherwise provided in this Section 11.05,
2409 Civicorps shall provide Organic Materials Collection to Commercial Customers that subscribe
2410 to the Commercial Organic Materials Subscription Collection Service CONTRACTOR and
2411 Civicorps may mutually agree, subject to CITY approval, to allow CONTRACTOR to provide
2412 some Collection of Commercial Organic Materials.

2413 11.05.2.1 Subcontract with Civicorps. CONTRACTOR shall enter
2414 into a ten (10)-year subcontract with Civicorps ("Civicorps Subcontract") to provide Collection of
2415 Commercial Organic Materials that are limited to Food Scraps. The CITY shall be entitled to
2416 review and approve the Civicorps Subcontract. The Civicorps Subcontract shall include the
2417 following provisions:

2418 11.05.2.1.1. That Collection of Commercial Organic Materials
2419 begin July 1, 2015. Civicorps shall provide notice by March 31, 2015 to CONTRACTOR and
2420 CITY that Civicorps will or will not be able to provide Collection of Commercial Organic
2421 Materials, by July 1, 2015. If Civicorps cannot provide such Collection by July 1, 2015, then
2422 Civicorps and CONTRACTOR shall immediately meet and confer to develop a remedial plan,
2423 subject to approval by CITY, to promptly address the potential delay.

2424 11.05.2.1.2. That all services provided by Civicorps under the
2425 Civicorps Subcontract meet Contract requirements including but not limited to those addressing
2426 equipment, performance, local hire, indemnity, insurance and other commercial provisions. The
2427 Civicorps Subcontract shall provide for rates to be paid by CONTRACTOR to Civicorps that
2428 reflect customary commercial practice in the waste collection industry and are reasonably
2429 comparable to those of commercial haulers providing only collection services (e.g., no billing,
2430 customer communication or processing). The Civicorps Subcontract will provide tiered
2431 remedies for poor performance, including pass through of Liquidated Damages, material default
2432 remedies, potential modification of scope and will include insurance provisions providing
2433 coverage acceptable to CITY. Provisions for potential modification of scope or termination shall
2434 require CITY approval, which will not be unreasonably withheld.

2435 11.05.2.1.3. That the Civicorps Subcontract address issues of
2436 breach, default and termination in a manner that is generally consistent with the provision of
2437 Article 29 of this Contract and Article 11 of the Disposal Services Contract between the CITY
2438 and CONTRACTOR. The provisions shall include language to address repetitive compliance

2439 issues such as those addressed in Section 29.01.4 of this Contract.

2440 11.05.2.1.4. That a process for fees to be paid by
2441 CONTRACTOR to Civicorps for Collection of Commercial Organic Materials by Civicorps is
2442 established. CONTRACTOR understands and agrees that the costs for Collection of
2443 Commercial Organic Materials is an integral part of the RRI set forth in Exhibit 2 to this Contract.
2444 As such, regardless of the actual cost and the change in the charge for Collection and
2445 Processing of Commercial Organic Materials, Commercial Organic Materials Subscription
2446 Collection Service Maximum Service Rates shall only be adjusted as set forth in Article 7 and
2447 Exhibit 2 to this Contract.

2448 11.05.2.1.5. That Civicorps utilize a truck driver apprentice
2449 program to train and graduate commercially licensed drivers qualified for hire by
2450 CONTRACTOR or other entity needing commercially licensed drivers. Civicorps shall be
2451 allowed to display its training program messaging on its Collection vehicles, in addition to the
2452 vehicle signage and painting requirements of Contract Section 14.08.

2453 11.05.2.1.6. That Civicorps shall make all reasonable efforts to
2454 (i) reduce Contamination of Commercial Organic Materials and (ii) ensure that Commercial
2455 Organic Materials Collected are Source Separated.

2456 11.05.2.1.7. Contract requirements in Article 24 shall pass
2457 through to Civicorps, with the exception that the Performance Bond amount shall be fixed at an
2458 amount to be agreed upon by CONTRACTOR and Civicorps, subject to CITY approval.
2459 Similarly, certain of the other commercial requirements set forth in this Contract may be
2460 adjusted as may be required to properly reflect the magnitude and scope of the Civicorps
2461 Subcontract, subject to CITY approval.

2462 11.05.2.2 In the event that Civicorps fails or refuses to agree to
2463 include terms which materially address the provisions required by this Section 11.05.2 in the
2464 Civicorps Subcontract, CONTRACTOR shall be excused from its obligation to enter into the
2465 subcontract with Civicorps.

2466 11.05.3 Collection of Organic Materials Overages. CONTRACTOR and
2467 Civicorps shall be required to Collect all Organic Materials that are set out for Collection
2468 regardless of whether or not the Organic Materials are properly contained in a Container.
2469 CONTRACTOR shall obtain and retain pictorial evidence of such Overages and may be
2470 compensated for the Collection of such Overages in accordance with the approved "Overage"
2471 Maximum Service Rate as provided in Exhibit 1 or as may be adjusted under the terms of this
2472 Contract.

2473 11.05.4 Diversion of Organic Materials. Except for Organic Materials
2474 Residue, or as otherwise provided in this Contract, CONTRACTOR shall ensure that all
2475 Organic Materials Collected pursuant to this Contract are Diverted.

2476 11.06 Organic Materials Processing Facility. Except as expressly provided in this
2477 Contract, CONTRACTOR and/or Civicorps shall deliver all Collected Organic Materials to a fully
2478 permitted Organic Materials Processing Facility or a properly permitted transfer station. All
2479 expenses related to Organic Materials Collection and marketing will be the sole responsibility of
2480 CONTRACTOR.

2481 11.06.1 EBMUD Subcontract. CONTRACTOR shall enter into a ten (10)-

2482 year subcontract ("EBMUD Subcontract") with EBMUD that shall provide for the Processing
2483 and Diversion of Commercial Organic Materials Collected pursuant to this Article. The CITY
2484 shall be entitled to review and approve the EBMUD Subcontract. The EBMUD Subcontract
2485 shall also include the following provisions:

2486 11.06.1.1 EBMUD Facility. The EBMUD Subcontract shall require
2487 EBMUD to place the EBMUD Facility into full operation so as to be able, on or before July 1,
2488 2016, to accept, provide Processing of and Divert all Commercial Organic Materials Collected
2489 pursuant to Section 11.05.2, or a portion thereof as mutually agreed upon by CONTRACTOR
2490 and EBMUD and approved by CITY, and comply with the requirements of this Contract. The
2491 EBMUD Facility shall, on or before July 1, 2016, have a minimum permitted capacity equal to or
2492 exceeding the amount of all Commercial Organic Materials Collected by Civicorps and/or
2493 CONTRACTOR pursuant to Section 11.05.2. If CONTRACTOR and EBMUD mutually agree
2494 that only a portion of such Commercial Organic Materials Collected by CONTRACTOR or
2495 Civicorps are to be delivered to the EBMUD Facility, then CONTRACTOR shall direct the
2496 remaining Commercial Organic Materials to CONTRACTOR's Davis Street Transfer Station or
2497 an alternative Organic Materials Processing Facility that is fully permitted, subject to CITY's
2498 approval. All expenses related to Organic Materials Processing and marketing including any
2499 transfer and transportation costs, shall be the sole responsibility of CONTRACTOR.

2500 11.06.1.2 Notice. EBMUD must provide notice by January 31, 2016,
2501 to CONTRACTOR and CITY, that the EBMUD Facility will or will not be fully constructed,
2502 permitted and able to accept and provide Processing of all Commercial Organic Materials or the
2503 agreed-upon portion of those materials, by July 1, 2016. The notice shall provide sufficient
2504 detail and backup information to demonstrate that the planning, permitting, contracting and
2505 construction of the EBMUD Facility is progressing in a manner to reasonably ensure the
2506 EBMUD Facility will be in operation and able to accept and provide Processing of all or an
2507 agreed upon portion of the Commercial Organic Materials on July 1, 2016. If (i) EBMUD does
2508 not provide a notice confirming that the EBMUD Facility will be able to accept and provide
2509 Processing of the material as of July 1, 2016, (ii) or the information provided in the notice does
2510 not reasonably demonstrate that EBMUD will complete construction and so that the EBMUD
2511 Facility can accept and provide Processing of Commercial Organic Materials not later than
2512 July 1, 2016, the CONTRACTOR shall have the right to immediately convene a meet and confer
2513 with EBMUD to address the apparent deficiencies in the notice and/or the potential delay in
2514 operation. EBMUD and CONTRACTOR shall develop a remedial plan to promptly address the
2515 potential delay, which plan must be approved by the CITY in its sole and absolute discretion.
2516 Such remedial plan shall include a firm outside date by which the EBMUD Facility shall be fully
2517 constructed, permitted and able to accept and provide Processing of all Commercial Organic
2518 Materials delivered by CONTRACTOR or Civicorps. If the EBMUD Facility is not fully
2519 constructed, permitted or able to accept and provide Processing of all Commercial Organic
2520 Materials as of such outside date, the Subcontract shall be subject to default and termination
2521 without any additional cure period, absent performance otherwise being excused under this
2522 Contract or the EBMUD Subcontract provisions. The remedial plan shall include intermediate
2523 milestones and scheduled dates for achievement thereof sufficient to provide reasonable
2524 certainty of achievement of full operation by the outside date. The remedial plan may also
2525 include obligations to immediately meet and confer with CITY and CONTRACTOR to discuss
2526 options, if milestones are not being met which may include termination of the EBMUD
2527 Subcontract in advance of the outside date.

2528 11.06.1.3 Temporary Facility. EBMUD shall arrange for an
2529 alternative, temporary Organic Materials Processing Facility for the period of July 1, 2015,

2530 through July 1, 2016, and for any temporary inability of the EBMUD Facility to accept and
2531 provide Processing of all Commercial Organic Materials Collected pursuant to this Contract due
2532 to planned or unplanned disruptions to operations after July 1, 2016. Any such alternative,
2533 temporary Organic Materials Processing Facility, or transfer site for delivery to same, may not
2534 be located more than approximately fifteen (15) air miles from the site of the EBMUD Facility.
2535 The EBMUD Subcontract shall require that the alternative, temporary Organic Materials
2536 Processing Facility or facilities are permitted and able to accept, provide Processing of and
2537 Divert all Commercial Organic Materials, or the portion of Commercial Organic Materials,
2538 Collected pursuant to this Contract, in either case in compliance with Section 11.05.4 of this
2539 Contract and all laws, and shall be subject to CITY's approval. The EBMUD Subcontract shall
2540 require that all additional costs, expenses or liabilities to the CITY or CONTRACTOR and
2541 reasonably attributable to (i) CONTRACTOR and/or Civicorps being required to use a temporary
2542 Organic Materials Processing Facility under the provisions of this section or (ii) the non-
2543 compliance of any of the EBMUD Facility or any alternative, temporary Organic Materials
2544 Processing Facility arranged by EBMUD pursuant to the provisions of this section, shall be the
2545 sole responsibility of EBMUD.

2546 11.06.1.4 The EBMUD Subcontract shall include, without limitation,
2547 the provisions for defense and indemnity of CITY by EBMUD, as generally provided in Section
2548 26.14 of this Contract. This Provision for the defense and indemnity of the CITY by EBMUD
2549 shall be a condition to the CITY's execution of the Contract.

2550 11.06.1.5 The requirement for CONTRACTOR to deliver
2551 Commercial Organic Materials to the EBMUD Facility may be excused at the discretion of the
2552 CITY if the Processing and Diversion of Commercial Organic Materials at that facility does not
2553 conform to the Alameda County Waste Management Authority (ACWMA) Mandatory Recycling
2554 Ordinance 2012-01 ("MRO"), including but not limited to the disposition of the residual digestate,
2555 as per the EBMUD letter to ACWMA dated June 13, 2014, as Exhibit 21, or as may be further
2556 required by ACWMA. CITY and ACWMA shall have the right to make such inspections of the
2557 EBMUD Facility, and records, as necessary to validate conformance with the MRO and Exhibit
2558 21. In the event the EBMUD Facility fails to conform with the MRO and Exhibit 21, EBMUD,
2559 CONTRACTOR, and CITY shall promptly meet and confer to address EBMUD's noncompliance
2560 and, to the extent reasonably curable, develop a schedule to cure such noncompliance.
2561 Continued failure of the EBMUD Facility to conform with the MRO and Exhibit 21 shall constitute
2562 a breach and potential default of the EBMUD Subcontract. If this breach and default results in
2563 termination of the EBMUD Subcontract, CONTRACTOR will be excused from any obligation to
2564 deliver Commercial Organic Materials to EBMUD.

2565 11.06.1.6 The EBMUD Subcontract shall include provisions that
2566 determine per Ton fees for the delivery of Commercial Organic Materials to the EBMUD Facility
2567 as of July 1, 2015. For unprocessed Commercial Organic Materials Collected by
2568 CONTRACTOR or Civicorps as a result of performing Commercial Organic Materials
2569 Subscription Collection Services, fees shall not exceed \$96 per Ton, for amounts less than or
2570 equal to 50 Tons per day. To the extent greater than 50 Tons of Commercial Organic Materials
2571 are Collected by CONTRACTOR or Civicorps on any day, CONTRACTOR may deliver the
2572 excess Tons to the EBMUD Facility as either unprocessed or pre-processed Commercial
2573 Organic Materials. The fee for any Commercial Organic Materials pre-processed to pass
2574 through a 2" screen will be \$46 per Ton, escalated as set forth below. Notwithstanding the
2575 foregoing, Commercial Organic Materials delivered directly from the generator of such materials
2576 and which require no pre-processing prior to use in a digester shall be invoiced at the \$46 per
2577 Ton rate regardless of the aggregate Tonnage delivered by CONTRACTOR or Civicorps on any

2578 day. The foregoing fees of \$96 and \$46 per Ton shall not increase during the first ten (10)
2579 years of this Contract pursuant to any methodology that exceeds the all urban CPI. (Series ID:
2580 cuura422sa0 Consumer Price Index, All urban Consumers, All Items, San Francisco-San Jose-
2581 Oakland, CA.) Any increases shall be further subject to the Cap limitations imposed on
2582 CONTRACTOR in Article 7. Nothing herein prevents EBMUD and CONTRACTOR from
2583 agreeing to different terms in the EBMUD Subcontract.

2584 11.06.1.7 The EBMUD Subcontract shall include provisions to
2585 require that the fees payable by CONTRACTOR to EBMUD for Services performed in each
2586 month shall be reduced (offset) by fifty (50) percent of the value of REC sales receipts of
2587 EBMUD attributable to electric energy generated from digested Commercial Organic Materials
2588 delivered by CONTRACTOR or Civicorps to EBMUD. CONTRACTOR shall pass through the
2589 full value of all REC offsets to those Commercial Customers subscribing to Commercial Organic
2590 Materials Collection Service.

2591 11.06.1.8 The EBMUD Subcontract shall address issues of breach,
2592 default and termination in a manner that is generally consistent with the provisions of Article 29
2593 of this Contract and Article 11 of the Disposal Services Contract between the CITY and
2594 CONTRACTOR. The provisions shall include language to address repetitive compliance issues
2595 such as addressed in Section 29.01.4 of this Contract.

2596 11.06.1.9 The EBMUD Subcontract shall also provide EBMUD with
2597 commercially reasonable remedies in the event the Commercial Organic Materials delivered to
2598 the EBMUD Facility contain significantly greater than ten (10) percent of material that cannot be
2599 Diverted, and which causes substantial interference with the operations of the EBMUD Facility.

2600 11.06.1.10 The EBMUD Subcontract shall not include terms providing
2601 a right to terminate by CONTRACTOR or EBMUD other than for uncured or incurable breach by
2602 the other party. Any terms providing for the potential of early termination by either party shall
2603 include provisions for interim processing of Commercial Organic Materials and address
2604 commercial principles such as notice, legal excuse and mitigation of damages. Early
2605 termination of the EBMUD Subcontract, for any cause by either party or by mutual agreement
2606 shall be subject to CITY approval.

2607 11.06.1.11 The EBMUD Subcontract shall not require any more
2608 stringent Contamination standard with respect to Commercial Organic Materials delivered to the
2609 EBMUD Facility or an alternate, temporary Organic Materials Processing Facility than
2610 CONTRACTOR may impose on Commercial Customers subscribing to Commercial Organic
2611 Materials Subscription Collection Service under this Contract. The EBMUD Subcontract shall
2612 require that the EBMUD Facility accept all materials delivered by CONTRACTOR or Civicorps in
2613 accordance with this Contract and provide Processing of and Divert all Food Scraps, including
2614 items referenced in Section 1.47 that are compostable but may not be suitable for digestion at
2615 the EBMUD municipal waste water facility, and Recyclable Materials that may be included in
2616 Commercial Organic Materials. CONTRACTOR shall cause Civicorps to make all reasonable
2617 efforts to (i) reduce Contamination of Commercial Organic Materials and (ii) ensure that
2618 Commercial Organic Materials Collected are Source Separated. The EBMUD Subcontract shall
2619 require EBMUD to hire a qualified third party, subject to CITY approval, to perform material
2620 characterization studies of the Commercial Organic Materials delivered under the EBMUD
2621 Subcontract to determine the amount of material that cannot be Diverted. These studies shall
2622 quantify the material that cannot be Diverted on an annual basis, effective each calendar year of
2623 the EBMUD Subcontract year starting from and after the commencement of acceptance and

2624 Processing of Commercial Organic Materials at the EBMUD Facility. EBMUD shall be
2625 responsible for all costs associated with the performance of these studies.

2626 11.06.1.12 Diversion. The EBMUD Subcontract shall require EBMUD
2627 to produce a monthly report on the Diversion of Commercial Organic Materials delivered to the
2628 EBMUD Facility pursuant to the Subcontract. The report shall include tonnage data for:
2629 Commercial Organic Materials received; the portion of that material recovered for digestion; the
2630 portion of that material recovered and shipped for composting; the portion of that material
2631 recovered and shipped for recycling; and the portion of that material recovered and shipped for
2632 Disposal. EBMUD shall provide copies of the monthly report to both CONTRACTOR and CITY.
2633 Such monthly reporting shall begin on July 1, 2016 or at such time the EBMUD Facility begins
2634 accepting and Processing Commercial Organic Materials pursuant to the EBMUD Subcontract.
2635 Effective three (3) months after reporting begins, in the event that three (3) successive monthly
2636 reports indicate that EBMUD has materially failed to achieve substantial Diversion of the
2637 Commercial Organic Materials received, the EBMUD Subcontract shall require EBMUD to meet
2638 and confer with CITY and CONTRACTOR within thirty (30) calendar days to discuss a process
2639 for improving Diversion performance. Should EBMUD continue to materially fail to improve its
2640 Diversion performance, such failure shall be deemed an incurable breach subject to termination
2641 of the EBMUD Subcontract.

2642 11.06.2 For purposes of calculating the Minimum Annual Diversion
2643 Requirements, Diversion of Commercial Organic Materials delivered under the EBMUD
2644 Subcontract shall be calculated as follows:

2645 11.06.2.1 During the period of July 1, 2015 through July 1, 2016 and
2646 any extension of the period preceding the completion of and commencement of acceptance and
2647 Processing of Commercial Organic Materials at the EBMUD Facility, all Commercial Organic
2648 Materials delivered to an alternative, temporary Organic Materials Processing Facility per
2649 Section 11.06.1.3 shall be deemed one hundred (100) percent Diverted.

2650 11.06.2.2 Upon commencement of acceptance and Processing of
2651 Commercial Organic Materials at the EBMUD Facility CONTRACTOR's Diversion shall be
2652 deemed as follows:

2653 11.06.2.2.1. In any calendar year that the material
2654 characterization study shows that ninety (90) percent to one hundred (100) percent of the
2655 Commercial Organic Materials delivered to the EBMUD Facility can be Diverted, then
2656 CONTRACTOR's Diversion in that year shall be deemed equal to that percentage, regardless of
2657 EBMUD's actual Diversion performance.

2658 11.06.2.2.2. In any calendar year that the material
2659 characterization study shows less than ninety (90) percent of the Commercial Organic Materials
2660 delivered to the EBMUD Facility can be Diverted, then CONTRACTOR's Diversion in that year
2661 shall be deemed ninety (90) percent and regardless of EBMUD's actual Diversion performance.
2662 In such circumstance CITY and CONTRACTOR shall meet and confer to develop a
2663 commercially reasonable plan for CONTRACTOR to achieve ninety (90) percent. Should such
2664 circumstance occur in three (3) consecutive years, CITY reserves the right to make a
2665 reasonable adjustment to CONTRACTOR's deemed Diversion of Commercial Organic Materials
2666 delivered to the EBMUD Facility.

2667 11.06.2.3 In the event that CONTRACTOR is excused from its
2668 obligation to enter into the EBMUD Subcontract pursuant to this Section 11.06 or Section

2669 26.14.3 or the EBMUD Subcontract is terminated, for any reason, and results in the necessity of
2670 CONTRACTOR to secure an alternative Commercial Organic Material Processing Facility under
2671 this Contract, in order to address a reasonable transition period to an acceptable alternative
2672 facility, which shall not to exceed twenty-four (24) months, the process, standards and
2673 requirements set forth in above Section 11.06.2.2 shall be applied during such transition period,
2674 in which case CONTRACTOR shall hire a qualified third party, subject to CITY approval, to
2675 perform material characterization studies of the Commercial Organic Materials delivered under
2676 the EBMUD Subcontract to determine the amount of material that cannot be Diverted. These
2677 studies shall quantify the material that cannot be Diverted on an annual basis, effective during
2678 the transition period addressed in this Section.

2679 11.06.3 In the event CITY determines that EBMUD has failed or refused
2680 to agree to include terms which materially address the provisions required by Section 11.06 of
2681 this Contract in the EBMUD Subcontract, then CONTRACTOR shall be excused from its
2682 obligation to enter into the EBMUD Subcontract.

2683 11.06.4 In the event that the requirement to deliver Commercial Organic
2684 Materials to the EBMUD Facility is excused under any provision in Section 11.06 of this
2685 Contract, CONTRACTOR and Civicorps shall direct the Commercial Organic Materials to
2686 CONTRACTOR's Davis Street Transfer Station or an alternative Organic Materials Processing
2687 Facility that is fully permitted, subject to CITY's approval.

2688 11.06.5 CONTRACTOR further understands and agrees that the cost of
2689 processing Commercial Organic Materials are an integral part of the Processing RRI set forth
2690 in Exhibit 2 to this Contract. As such, regardless of the change in the per Ton charge for
2691 delivery of Commercial Organic Materials to the EBMUD Facility, Commercial Organic
2692 Materials Subscription Collection Service Maximum Service Rates shall not be adjusted other
2693 than as set forth in Article 7 and Exhibit 2 to this Contract.

2694 11.07 Additional Organic Materials Capacity. Upon notification to CONTRACTOR by
2695 CITY or a Commercial Customer that additional Organic Materials Capacity is requested,
2696 CONTRACTOR shall deliver such Organic Materials Containers as are needed to meet the
2697 capacity requirements of the Service Address by the next regularly scheduled Collection day, or
2698 within six (6) Work Days (whichever is later). CONTRACTOR shall be compensated for the cost
2699 of providing additional Organic Materials Containers in accordance with the approved
2700 "Commercial Organic Materials Collection" Maximum Service Rate provided in Exhibit 1 or as
2701 may be adjusted under the terms of this Contract.

2702 11.08 Reduction or Discontinuation of Service. CONTRACTOR shall retain the right to
2703 reduce capacity or discontinue provision of Organic Materials Subscription Collection Services
2704 to Commercial Customers under the following circumstances:

2705 11.08.1 The Organic Materials Cart or Bin is found to be contaminated
2706 through the inclusion of more than ten (10) percent of materials that are not Organic Materials
2707 as defined herein more than four (4) times in any twelve (12) month period. Upon a finding a
2708 fourth instance of such contamination in any twelve (12) month period, CONTRACTOR shall
2709 notify the Commercial Customer in writing that an additional violation of the Contamination
2710 requirements of the program will result in the discontinuation of service.

2711 11.09 Commercial Special Events Collection Service. CONTRACTOR shall offer Mixed
2712 Materials, Recyclable Materials and Organic Materials Collection, Disposal and processing
2713 services at special events in accordance with the approved "Special Events Collection"
2714 Maximum Service Rates provided in Exhibit 1 or as may be adjusted under the terms of this

2715 Contract. Such services shall include the delivery and pickup of Containers. CONTRACTOR
2716 will deliver Containers the day before the event and pick up Containers the day following the
2717 event, unless arranged otherwise with Customer. If the event is on a weekend or Collection
2718 holiday, CONTRACTOR will deliver Containers the last Work Day before the event and pick up
2719 Containers the first Work Day following the event, unless arranged otherwise with Customer.

2720 11.10 Temporary Roll-Off Box Collection Service. CONTRACTOR shall provide
2721 Temporary Roll-Off Collection Service to all Commercial Customers in the Service Area
2722 subscribing to such service. CONTRACTOR shall respond to requests for service within two (2)
2723 Work Days of receipt of the request. CONTRACTOR shall be compensated for such services in
2724 accordance with the Maximum Service Rates as set forth in Exhibit 1 to this Contract as may be
2725 adjusted in accordance with the terms of this Contract.

2726 **ARTICLE 12. CITY COLLECTION SERVICES**

2727 12.01 CITY Collection Services. CONTRACTOR has offered to donate the following
2728 services as corporate good will:

2729 12.01.1 Conditions of Service. CONTRACTOR shall provide CITY
2730 Collection Services to all CITY Facilities existing in the Service Area as of the effective date of
2731 the Contract where Mixed Materials and Organic Materials are properly placed in Bins, Carts,
2732 or Roll-Off Boxes regardless of whether the lid is closed, and where the Bins, Carts, or Roll-Off
2733 Boxes are accessible as set forth in Section 12.01.4. All such Mixed Materials and Organic
2734 Materials must be generated on City Facilities or on property maintained by CITY. To the
2735 extent the number of CITY Facilities being serviced by CONTRACTOR increases
2736 disproportionately to the reasonably expected growth in CITY Collection Services provided
2737 during the term of the Contract, the parties agree to meet and confer in good faith to discuss
2738 appropriate service levels as well as compensation for additional services. If the parties are
2739 unable to agree upon the appropriate amount of compensation, the parties shall resolve their
2740 disagreement through the dispute resolution process as set forth in Article 54.

2741 12.01.2 Size and Frequency of Service. CONTRACTOR shall offer
2742 Mixed Materials Carts in 20, 32, 64 and 96 gallon nominal Cart sizes, and Organic Materials
2743 Carts in 20, 32, 64 or 96 gallon nominal Cart sizes. CONTRACTOR shall offer Mixed Materials
2744 and Organic Materials Bins in 1, 1.5, 2, 3, 4, 6 and 7 cubic yard sizes. CONTRACTOR shall
2745 offer Mixed Materials and Organic Materials Roll-Off Boxes in 6, 14, 20, 30 and 40 cubic yard
2746 sizes with lids (if desired by CITY). Except for those services that utilize Roll-Off Boxes for
2747 Collection, each service shall be provided at least once every week on a scheduled route
2748 basis. However, in those instances where the scheduled Collection day falls on a holiday as
2749 set forth in Section 6.11 herein, or on a CITY holiday or business closure day, the Collection
2750 day may be adjusted in a manner agreed to between CITY and CONTRACTOR as long as
2751 service is received a minimum of one (1) time per week. The size of the Container and the
2752 frequency (above the minimum) of Collection shall be determined between CITY and
2753 CONTRACTOR. However, size and frequency shall be sufficient to provide that no Mixed
2754 Materials or Organic Materials need be placed outside the Container on a regular basis. For
2755 those services utilizing Roll-Off Boxes for Collection, the frequency of Collection shall be on a
2756 regular or irregular basis as determined solely by the needs of CITY.

2757 12.01.3 Manner of Collection. CONTRACTOR shall provide CITY
2758 Collection Services with as little disturbance as possible and shall leave any Container an
2759 upright position, with the lid secure, at the same point it was Collected without obstructing

2760 alleys, roadways, driveways, sidewalks or other public areas. CONTRACTOR shall close or
2761 lock, as appropriate, Container enclosures that were opened by CONTRACTOR as part of the
2762 Collection process.

2763 12.01.4 Accessibility. CONTRACTOR shall Collect all Mixed Materials
2764 and Organic Materials Containers that are readily accessible to CONTRACTOR'S crew and
2765 vehicles and not blocked. However, CONTRACTOR shall provide "push services" and "key
2766 services" as necessary during the provision of CITY Collection Services. Push services shall
2767 include, but not be limited to, dismounting from the Collection vehicle, moving the Bins or Carts
2768 from their storage location for Collection and returning the Bins or Carts to their storage
2769 location. Push services may include unlocking and relocking the Bin or enclosure Key
2770 services shall include the provision of a master lock and key by CONTRACTOR to the Service
2771 Address for the convenience of CONTRACTOR. CONTRACTOR shall not be compensated for
2772 providing "push services" and or "key services" to CITY.

2773 12.01.4.1 Notification. CONTRACTOR shall notify CITY daily, by e-
2774 mail, of all situations that prevent or hinder Collection from any CITY Facility, unless otherwise
2775 directed by CITY.

2776 12.02 Street Litter Container Service. During the term of this Contract, CONTRACTOR
2777 shall Collect and maintain those street litter Containers as are set forth in Exhibit 4 to this
2778 Contract. CITY may modify Exhibit 4 as needed, by providing written notice to CONTRACTOR,
2779 but such modification shall not increase the number of street litter Containers by more than ten
2780 (10) per Contract Year. This service shall include daily emptying of street litter Containers
2781 including liners and enclosures, and removal of debris atop or around Container, on Monday
2782 through Friday, and monitoring and emptying of Containers on Saturday and Sunday, as
2783 directed by CITY.

2784 12.02.1 CONTRACTOR shall be responsible for repairing and
2785 maintaining all street litter Containers, including liners, doors, locks, and any other attached
2786 hardware or mechanisms. Maintenance includes graffiti removal and/or paint-over. Repair to
2787 damaged Containers, including removal or paint-over of graffiti, must be completed made
2788 within six (6) Work Days of notice from CITY. If CITY requests that more than ten (10) litter
2789 containers be repaired or replaced during any week, CONTRACTOR and CITY shall meet to
2790 agree on repair schedules.

2791 12.02.2 CONTRACTOR shall be responsible for providing new street litter
2792 Containers as needed, replacing irreparably damaged Containers, and maintaining an
2793 adequate Container inventory. New street litter Containers shall have separate Garbage and
2794 Recyclable Materials capacity integrated into the Container and shall be approved by the
2795 Contract Manager. CONTRACTOR shall replace damaged Containers, and place new
2796 Containers requested by CITY within six (6) Work Days of CITY request.

2797 12.02.3 CONTRACTOR shall take ownership of CITY street litter
2798 Containers owned by CITY upon implementation of Contract (July 1, 2015). CONTRACTOR
2799 shall be responsible for Recycling, Disposal or sale of surplus or damaged street litter
2800 Containers. At end of Contract, CITY may exercise option to take ownership of any street litter
2801 Containers then in use.

2802 12.02.4 CONTRACTOR shall also be responsible for Collection from
2803 those street litter Containers placed in conformance with CITY standards by Business

2804 Improvement Districts and Community Benefit Districts if notified by CITY. CITY shall provide
2805 CONTRACTOR thirty (30) day notice of such additions to the Collection list and limit such
2806 additions to no more than twenty (20) per calendar year.

2807 12.02.5 CONTRACTOR may petition CITY to remove street litter
2808 containers from problematic or underutilized locations.

2809 12.03 City Council and Mayor Roll-Off Boxes. CONTRACTOR shall provide delivery
2810 and Collection Services for Roll-Off Boxes requested by CITY Council and Mayor for use in the
2811 Service Area. CONTRACTOR shall allocate twelve (12) 20-cubic yard Roll-Off boxes to each of
2812 the eight (8) Council offices and the Mayor, for a total of up to one hundred eight (108) twenty-
2813 cubic yard Roll-Off Boxes each calendar year. Any unused portion of this allocation shall carry
2814 forward to succeeding calendar years, up to a maximum of twenty four (24) additional 20-cubic
2815 yard Roll-Off Boxes that must be provided in any one (1) calendar year. Such services shall be
2816 provided in such a manner that all Collection, Processing and Disposal needs, and related staff
2817 support and public education materials for the event are adequately and properly provided for
2818 by CONTRACTOR.

2819 12.03.1 CONTRACTOR is responsible for managing requests for Roll-Off
2820 Boxes from the offices of CITY Council and Mayor, and for monitoring the allocation and use of
2821 the Roll-Off Boxes. CONTRACTOR shall provide CITY a monthly report that shows the
2822 allocation of Roll-Off Boxes by office, including allocations that were carried forward, and use
2823 to-date for the current calendar year.

2824 12.03.2 CONTRACTOR shall, in response to the written request of the
2825 offices of the City Council or Mayor, deliver and Collect Roll-Off Boxes for use in City Council
2826 and Mayor Roll-Off Box events. The appropriate office of the City Council or Mayor shall notify
2827 CONTRACTOR in writing not less than ten (10) calendar days prior to the date of the need for
2828 the Roll-Off Box. The notice to CONTRACTOR shall specify the date of delivery and Collection
2829 of the Roll-Off Box(es), the location(s) for delivery and the number of the Roll-Off Boxes to be
2830 delivered. CONTRACTOR shall remove the Roll-Off Box no later than the end of the first Work
2831 Day following the event day. CONTRACTOR shall transport and deliver the Collected
2832 materials to a facility as is appropriate for the disposition of the materials and approved by the
2833 Contract Manager.

2834 12.04 CITY Sponsored Events. CONTRACTOR shall deliver and collect up to thirty
2835 (30) Roll-Off Boxes per calendar year in support of CITY sponsored events, as requested by the
2836 Contract Manager. At such events where CONTRACTOR provides Roll-Off Boxes,
2837 CONTRACTOR shall also provide Carts for CITY'S temporary use if requested by the Contract
2838 Manager. CITY may designate Roll-Off Boxes for Mixed Materials, Recyclable Materials or
2839 Organic Materials Collection. CITY shall empty Carts prior to removal by CONTRACTOR.
2840 CONTRACTOR shall remove Roll-Off Boxes and Carts no later than the end of the first Work
2841 Day following the event day. CONTRACTOR shall transport and deliver the Collected materials
2842 to a facility as is appropriate for the disposition of the materials, and as approved by the
2843 Contract Manager.

2844 12.05 CITY-Approved Adopt-a-Spot Mixed Material and Organics Services.
2845 CONTRACTOR shall provide up to One Hundred Fifty (150) 64-gallon Mixed Material or
2846 Organics Carts to CITY Adopt A Spot volunteers for use in cleaning and greening public spaces
2847 in Oakland. CITY shall provide CONTRACTOR with authorized list of Adopt A Spot volunteer
2848 Service Recipients annually. CONTRACTOR shall provide service to such Carts when they are

2849 set out for Collection with Service Recipient's other Containers. CONTRACTOR shall provide
2850 Mixed Material or Organic Carts and services at no additional cost to Customers, Service
2851 Recipients or CITY.

2852 12.06 Temporary Roll-Off Box Collection Service. CONTRACTOR shall provide
2853 Temporary Roll-Off Collection Service to all CITY Facilities in the Service Area requesting such
2854 service at no charge to CITY. CONTRACTOR shall respond to requests for service within two
2855 (2) Work Days of receipt of the request.

2856 12.07 CITY Delivered Materials. CONTRACTOR shall accept up to seven thousand
2857 five hundred (7,500) Tons of material (the "Tonnage allowance") during the period July 1, 2015
2858 through December 31, 2015 at no charge to CITY. Beginning calendar year 2016, and each
2859 subsequent calendar year, the Tonnage allowance shall be fifteen-thousand (15,000) Tons. In
2860 any calendar year, CITY shall be allowed to deliver dirt and debris, Garbage, Recyclable
2861 Materials, Organic Materials and Bulky Goods above the Tonnage allowance, but not more than
2862 the unused Tonnage allowance from the prior two (2) calendar years, at no charge to CITY.
2863 Source Separated Recyclable Materials delivered to CONTRACTOR'S facilities shall not count
2864 toward the Tonnage allowance established pursuant to this Section. CITY shall make
2865 reasonable efforts to deliver materials properly separated to facilitate processing where feasible
2866 such as with park landscaping green waste. CONTRACTOR shall be compensated for those
2867 Tons that exceed the Tonnage allowance for any calendar year, except as otherwise provided in
2868 this Section. Such compensation shall be based on the per Ton fee for Disposal at the Disposal
2869 Facility.

2870 12.08 Illegal Dumping Notification and Collection. CONTRACTOR shall direct its
2871 Collection vehicle drivers to note (i) the addresses of any premises at which the driver observes
2872 that Garbage, Mixed Materials, Recyclable Materials, and/or Organic Materials Material is
2873 accumulating; and (ii) the address, or other location description, at which Garbage, Mixed
2874 Materials, Recyclable Materials, and/or Organic Materials has been dumped in an apparently
2875 unauthorized manner. CONTRACTOR shall deliver the address or description to CITY within
2876 three (3) Work Days of such observation. CONTRACTOR shall also provide Collection services
2877 at up to thirty (30) locations per Work Day of up to three (3) cubic yards of such illegally dumped
2878 materials per location provided, however, CONTRACTOR shall not be required to collect
2879 materials not safely accessible by Collection vehicles and/or personnel.

2880 12.09 Provision of Compost. CONTRACTOR shall provide up to five hundred (500)
2881 cubic yards per Contract Year of premium quality compost or other soil amendment or mulch
2882 products delivered to locations in the Service Area and in amounts as directed by the Contract
2883 Manager. Should CITY require greater amounts of these products than five hundred (500)
2884 cubic yards per Contract Year CONTRACTOR shall provide such at a preferential price. For
2885 deliveries of twenty (20) cubic yards or less, CITY must schedule the delivery at least three (3)
2886 days in advance. For deliveries over twenty (20) cubic yards, delivery dates are subject to
2887 CONTRACTOR's available inventory.

2888 12.10 Disposal and Processing Facilities.

2889 12.10.1 Mixed Materials Processing Facility and Disposal Facility. All
2890 Mixed Materials Collected as a result of CITY Collection Services shall be transported and
2891 delivered to the Disposal Facility or the Mixed Materials Processing Facility.

2892 12.10.1.1 Residue From Mixed Materials Processing. An amount of

2893 Residue equal to the Residue generated as a result of Processing the Mixed Materials Collected
2894 during the performance of CITY Mixed Material Collection Service under the terms of this
2895 Contract shall be delivered to the Disposal Facility.

2896 12.10.2 Organic Materials Processing Facility. All Organic Materials
2897 Collected as a result of performing CITY Collection Services shall be delivered to the Organic
2898 Materials Processing Facility. All expenses related to Organic Materials Processing and
2899 marketing will be the sole responsibility of CONTRACTOR.

2900 12.10.3 Residue From Organic Materials Processing. An amount of
2901 Residue equal to the Residue generated as a result of Processing the Organic Materials
2902 Collected during the performance of CITY Organic Material Collection Service under the terms
2903 of this Contract shall be delivered to the Disposal Facility.

2904 12.11 Modification of CITY Collection Services. CITY may from time to time direct
2905 modifications of CITY Collection Services. Any such modification which materially increases or
2906 decreases the cost of CONTRACTOR providing CITY Collection Services shall be handled
2907 pursuant to the procedures set forth in Article 30.

2908 **ARTICLE 13. COLLECTION ROUTES**

2909 13.01 Collection Routes. Within five (5) Work Days of receipt of a request from CITY,
2910 CONTRACTOR shall provide CITY with maps precisely defining Collection routes, and the
2911 travel routes to the Collection routes, together with the days and the times at which Collection
2912 shall regularly commence.

2913 13.02 Subsequent Collection Route Changes. In the event a Residential Collection
2914 route change will change the Collection day of ten (10) percent or more of the Service
2915 Addresses on that route, CONTRACTOR shall provide a written plan, which is subject City
2916 approval, not less than sixty (60) days before the proposed date of implementation.
2917 CONTRACTOR shall coordinate implementation of route changes with the Residential
2918 Recycling Contractor and shall notify affected Service Addresses of the Collection route
2919 changes in the manner set forth in Exhibit 15 to this Contract.

2920 13.02.1 In the event a Residential Collection route change will change the
2921 Collection day of less than ten (10) percent of the Service Addresses on that route,
2922 CONTRACTOR shall provide written notification to the affected Service Addresses and the
2923 Contract Manager not less than two (2) weeks prior to the new Collection day. CONTRACTOR
2924 shall coordinate implementation of route changes with the Residential Recycling Contractor in
2925 the manner set forth in Exhibit 15 to this Contract.

2926 13.03 Route Map Update. CONTRACTOR shall revise the Customer route maps to
2927 show the addition of Customers added due to construction / occupancy and shall provide such
2928 revised maps to the Contract Manager upon request.

2929 13.04 CONTRACTOR Audit of Routes. In addition to any other auditing requirements
2930 under this Contract, CONTRACTOR shall perform a comprehensive audit of SFD, MFD and
2931 Commercial Customer Routes every full or partial three (3) calendar years, and submit to CITY
2932 a written report on the results of that audit, no later than thirty (30) calendar days after
2933 completion of the audit. The report should include the testing protocols, and the details of the
2934 route audit findings along with recommendations, if any, on how CONTRACTOR will modify the

2935 current system to correct any errors noted during the audit. If CITY requests, CONTRACTOR
2936 shall cooperate fully with CITY to allow CITY to verify the accuracy of CONTRACTOR'S route
2937 audit report.

2938 13.05 Coordination with Street Sweeping. CITY AND CONTRACTOR acknowledge
2939 that CONTRACTOR may have to modify Collection days to accommodate CITY's street
2940 sweeping schedule.

2941 **ARTICLE 14. COLLECTION EQUIPMENT**

2942 14.01 General Provisions. All equipment used by CONTRACTOR in the performance
2943 of Collection Services under this Contract shall be of a high quality. The vehicles shall be
2944 designed and operated so as to prevent Collected materials from escaping from the vehicles.
2945 Hoppers shall be closed on top and on all sides with screening material to prevent Collected
2946 materials from leaking, blowing or falling from the vehicles. All trucks and Containers shall be
2947 watertight and shall be operated so that liquids do not spill during Collection or in transit.

2948 14.02 Vehicle Registration, Licensing and Inspection. On or before July 1, 2015 and
2949 upon request by CITY thereafter during the term of this Contract, CONTRACTOR shall submit
2950 documentation to the Contract Manager to verify that each of CONTRACTOR'S Collection
2951 vehicles is in compliance with all registration, licensing and inspection requirements of the
2952 California Highway Patrol, the California Department of Motor Vehicles, and any other
2953 applicable laws or regulations. CONTRACTOR shall not use any vehicle that is not in
2954 compliance with applicable registration, licensing and inspection requirements to perform
2955 Collection Services. Each vehicle shall comply, at all times, with all applicable statutes, laws or
2956 ordinances of any public agency.

2957 14.03 Clean Air Vehicles. During the term of this Contract, to the extent required by
2958 law, CONTRACTOR shall provide its Collection vehicles to be in full compliance with local,
2959 State and federal clean air requirements that were enacted or scheduled to be enacted,
2960 including, but not limited to, the California Air Resources Board Heavy Duty Engine Standards
2961 as currently proposed to be contained in CCR Title 13, Section 2020 et seq.; the Federal EPA's
2962 Highway Diesel Fuel Sulfur regulations and any other applicable air pollution control.

2963 14.04 Bulky Goods. Vehicles used for Collection of Bulky Goods containing Freon or
2964 other gases shall not use compactor mechanisms or mechanical handling equipment that may
2965 release Freon or other gases from pressurized appliances.

2966 14.05 Global Positioning Systems (GPS). CONTRACTOR shall provide all route
2967 Collection vehicles equipped with fully functioning on-board GPS with direct and real-time
2968 linkages to CONTRACTOR'S Customer service system.

2969 14.06 Vehicle Noise Level. All Collection operations shall be conducted as quietly as
2970 possible and must comply with U.S. EPA noise emission regulations currently codified at 40
2971 CFR Part 205, California Vehicle Code Section 27207, and other applicable State, County, and
2972 CITY noise control regulations.

2973 14.07 Safety Equipment. All Collection equipment used by CONTRACTOR shall have
2974 appropriate safety markings including, but not limited to, highway lighting, flashing and warning
2975 lights, clearance lights, and warning flags. All such safety markings shall be in accordance with
2976 the requirements of the California Vehicle Code, as may be amended from time to time. All

2977 Collection vehicles shall be equipped with audible back-up warning devices.

2978 14.08 Vehicle Signage and Painting. Collection vehicles shall have signage in letters of
2979 contrasting color on each side and the rear of each vehicle that clearly states that the Collection
2980 vehicle is servicing the City of Oakland, provides CONTRACTOR'S name, CONTRACTOR'S
2981 Customer service telephone number and other signage approved by CITY. CONTRACTOR
2982 shall repaint all vehicles (including vehicles striping) during the term of this Contract on a
2983 frequency as necessary to maintain a positive public image as reasonably determined by CITY.

2984 14.09 Collection Vehicle Education Requirements. All new Collection vehicles shall
2985 include space for outdoor poster advertising to be utilized by CITY. No advertising shall be
2986 permitted other than the name and corporate logo of CONTRACTOR except promotional
2987 advertisement of the Recyclable Materials and Organic Materials programs.

2988 14.10 Bin, Compactor and Roll-Off Box Signage, Painting, and Cleaning. All metal
2989 Bins, Compactors or Roll-Off Boxes furnished by CONTRACTOR shall be either painted or
2990 galvanized. All Bins, Compactors or Roll-Off Boxes shall display CONTRACTOR'S name,
2991 CONTRACTOR'S toll free customer service telephone number, and shall be kept in a clean and
2992 sanitary condition. Each Bin, Compactor or Roll-Off Box shall include a description of the type
2993 of material to be placed in the Container and shall be painted in a color and manner, acceptable
2994 to CITY, which is unique to that type of material. Such Bins, Compactors or Roll-Off Boxes as
2995 are provided by CONTRACTOR shall be steam cleaned and repainted by CONTRACTOR as
2996 frequently as necessary, but no more often than one (1) time per quarter, so as to maintain
2997 them in a sanitary condition. However, no more often than one (1) time per quarter, upon
2998 receipt of notification (from CITY or Customer) by CONTRACTOR of graffiti on a Bin,
2999 Compactor or Roll-Off Box, CONTRACTOR shall clean or replace such Bin, Compactor or Roll-
3000 Off Box within five (5) Work Days. Instances of CONTRACTOR cleaning, repainting or
3001 replacement exceeding the quarterly limits set forth above are subject to CONTRACTOR fees,
3002 as provided in Exhibit 1.

3003 14.11 Vehicle Maintenance. CONTRACTOR shall maintain Collection vehicles in a
3004 clean condition and in good repair at all times and ensure that no Collected materials, oil,
3005 grease or other substances will blow, fall out, escape or leak out of the vehicle, with the
3006 exceptions of vehicle emission. All parts and systems of the Collection vehicles shall operate
3007 properly and be maintained in a condition satisfactory to CITY. CONTRACTOR shall wash all
3008 Collection vehicles at least once a week. All washings shall be conducted in a manner that
3009 conforms to the BMP Guidelines for Non-Point Source Pollutants in the publication entitled
3010 Storm Water Best Management Practices Handbook for Industrial Commercial published by the
3011 California Storm Water Quality Association (CASQA).

3012 14.12 Maintenance Log. CONTRACTOR shall maintain a maintenance log for all
3013 Collection vehicles. The log shall at all times be accessible to CITY for physical inspection upon
3014 request of Contract Manager, and shall show, at a minimum, each vehicles' CONTRACTOR
3015 assigned identification number, date purchased or initial lease, dates of performance of routine
3016 maintenance, dates of performance of any additional maintenance, and description of additional
3017 maintenance performed.

3018 14.13 Equipment Inventory. On or before July 1, 2015, and annually thereafter,
3019 CONTRACTOR shall provide to CITY an inventory of Collection vehicles and major equipment
3020 used by CONTRACTOR for Collection or transportation and performance of services under this
3021 Contract. The inventory shall indicate each Collection vehicle by CONTRACTOR-assigned

3064 have responsible persons in charge during Collection hours, and shall be open 8:00 a.m. to 6:00
3065 p.m. on regularly scheduled Work Days (Monday through Friday) and when SFD or MFD
3066 Collection Services are scheduled to be provided on Saturday; and be staffed with a sufficient
3067 number of CSRs and equipped with sufficient telephone and email capacity to address the
3068 expected call volume received. Provisions satisfactory to CITY for addressing call volume in
3069 excess of expected levels and after hour calls and messages shall be provided.

3070 16.02.1 Up to ten (10) incoming calls can be received at one time;

3071 16.02.2 Customer or Service Recipient calls received during normal
3072 business hours are answered by system within five (5) rings;

3073 16.02.3 Average Speed to Answer for Residential Customer calls shall be
3074 three (3) minutes or less based on a weekly average. Speed to Answer is the time
3075 commencing when a caller is placed in a queue (immediately after a caller hears
3076 CONTRACTOR recorded messages and makes a choice from the phone tree) and ending
3077 when a live agent picks up the call;

3078 16.02.4 During any on-hold waiting time and when the call center is
3079 closed, Customers or Service Recipients are offered the option to leave a voice message;

3080 16.02.5 Any call "on-hold" in excess of one and one half (1.5) minutes
3081 shall have the option to remain "on-hold" or to be switched to a message center where the
3082 Customer can leave a message;

3083 16.02.6 Customer or Service Recipient voice messages are returned in
3084 the order received and if left by 6:00 p.m. Pacific time at latest by the close of the Work Day
3085 following the day the voice message is received; and

3086 16.02.7 Customer or Service Recipient mails are responded to in the
3087 order received and if left by 6:00 p.m. Pacific time at latest by the close of the Work Day
3088 following the day the email is received.

3089 16.03 Telephone Access to the Residential Recycling Contractor. CONTRACTOR
3090 shall provide a local telephone number that allows callers to be automatically transferred to the
3091 Residential Recycling Contractor, as appropriate. It shall be CONTRACTOR'S responsibility to
3092 ensure that transferred callers experience no changes in volume or clarity from that associated
3093 with direct calls to CONTRACTOR. The Residential Recycling Contractor shall reasonably
3094 determine the appropriate volume for call transfers.

3095 16.04 Multilingual/TDD Service. CONTRACTOR'S call center shall at all times during
3096 the normal business hours set forth in Section 16.02 maintain the capability of responding to
3097 telephone calls in English, Chinese (Cantonese), Vietnamese, Spanish, and such other
3098 languages as reasonably may be directed by CITY in accordance with its Equal Access
3099 Program requirements. CONTRACTOR shall at all times maintain the capability of responding
3100 to telephone calls through Telecommunications Device for the Deaf (TDD) Services.

3101 16.05 Website. CONTRACTOR shall develop and maintain a state-of-the-art website
3102 dedicated to services provided in CITY, which is accessible by the public. The website shall
3103 include answers to frequently asked questions, rates for Collection Services, listing and
3104 description of Mixed Materials, Recyclable Materials and Organic Materials, Collection Service

3105 schedules and maps, and other related topics. However, the website is not required to provide
3106 a description of Commercial Non-Exclusive Recyclable Materials. The website shall also have a
3107 link to CITY'S website and a link to the Recyclable Materials Collection Contractor's website.
3108 CONTRACTOR shall arrange for CITY'S website to include an e-mail link to CONTRACTOR
3109 and a link to CONTRACTOR'S website. CONTRACTOR'S website shall provide the public the
3110 ability to e-mail comments inquiries and request services or service changes to CONTRACTOR.

3111 **ARTICLE 17. COMMUNITY OUTREACH SERVICES**

3112 17.01 Community Outreach Services. CONTRACTOR shall be required to implement,
3113 at its own expense, CONTRACTOR'S Community Outreach Strategy set forth in Exhibit 7 to this
3114 Contract. The Community Outreach Strategy will provide an overview of the Contractor's plans
3115 to engage the community in full use of the Collection Services and the Diversion goals of the
3116 Contract.

3117 17.01.1 Transitional Outreach Plan. CONTRACTOR shall prepare and
3118 implement, at its own expense, a transitional outreach plan consisting of a community outreach
3119 campaign that makes aware and fully informs SFD, MFD and Commercial Customers of the
3120 Collection Services, highlighting changes to the current services, relevant to the Customer
3121 experience, which will occur through execution of the Contract. The transitional outreach plan
3122 will be consistent with and informed by CONTRACTOR'S Community Outreach Strategy as set
3123 forth in Exhibit 7. The transitional outreach plan will be implemented beginning January 2015,
3124 or with execution of the Contract, whichever is later. The transitional plan will cover all
3125 CONTRACTOR'S community outreach services in calendar year 2015. The budget for the
3126 transitional plan shall be not more than One Million Dollars (\$1,000,000).

3127 17.01.2 Annual Outreach Plan. CONTRACTOR, at its own expense,
3128 shall prepare, submit and implement an annual outreach plan that is consistent with and
3129 informed by CONTRACTOR'S Community Outreach Strategy as set forth in Exhibit 7.
3130 CONTRACTOR shall submit the initial annual outreach plan for CITY approval no later than
3131 September 1, 2015, and subsequent annual outreach plans no later than September 1 each
3132 year thereafter. CITY shall review and respond to the proposal within forty five (45) days.
3133 Implementation of the annual outreach plan would begin on January 1 of each year. The
3134 annual outreach plan must include specific steps designed to increase Diversion and Customer
3135 participation in the Collection Services, and measure the effectiveness of these efforts. The
3136 annual outreach plan should target specific materials or demographic or service sectors where
3137 improvements can be maximized. Outreach targets should be based on measured trends and
3138 patterns in recycling and disposal activities, participation, and tonnages by service sector,
3139 within the Service Area and within identified Service Area localities, as indicated by information
3140 obtained by both the Contract Manager and CONTRACTOR'S staff.

3141 17.01.3 Community Outreach Budget. CONTRACTOR shall be required
3142 to allocate or spend no more than One Million Dollars (\$1,000,000) in the first calendar year of
3143 the Contract, to implement the transitional outreach plan, and not more than Five Hundred
3144 Thousand Dollars (\$500,000) per calendar year thereafter to implement the annual outreach
3145 plan. All such expenditures require prior approval from CITY unless included in outreach plan.
3146 CITY and CONTRACTOR may mutually agree to perform joint Public Outreach activities using
3147 all or some of the annual Public Outreach budget. Public relations activity costs cannot be
3148 applied to the Public Outreach budget. At the end of the calendar year, any funds in the
3149 approved annual outreach budget that remain unspent shall be carried forward to the following
3150 calendar year. However, in the event CONTRACTOR has unspent funds at the end of three

3151 (3) consecutive calendar years, the unspent funds shall be deposited in the Rate Stabilization
3152 Fund.

3153 17.01.4 Community Outreach Professional Services. Contractor will
3154 engage the services of a professional firm or firms that specialize in community outreach,
3155 marketing, public relations and graphic design that preferably are based in Oakland or the Bay
3156 Area. Such firms shall possess a minimum five (5) years' experience in marketing,
3157 communications and/or community outreach, including two (2) years' experience conducting
3158 outreach in a city comparable to Oakland in size and complexity; and knowledge of outreach
3159 best practices, such as community-based social marketing.

3160 17.02 CITY Approval Required. All marketing, messaging or other mass
3161 communications, including but not limited to print, outdoor media, broadcast, web-based, e-mail,
3162 and telephone voice messages, directed to Customers or Service Recipients, must be approved
3163 by the Contract Manager prior to execution or delivery to the Customer or Service Recipient,
3164 regardless of whether these communications relate to the Collection Services. All public
3165 relations, press and community outreach activities that involve the Collection Services, or that
3166 are targeted to the Service Recipients or Customers, must have prior written approval from the
3167 Contract Manager, whether or not they are being paid for from the Community Outreach budget.
3168 CONTRACTOR shall not perform any work on Community Outreach materials or activities
3169 without prior written approval from the Contract Manager. All materials shall be submitted in
3170 writing for review and approval. Written authorization by the Contract Manager is required prior
3171 to final production of any Community Outreach materials. National marketing efforts by
3172 corporate affiliates of CONTRACTOR are outside the scope of this Article 17; however, any
3173 national efforts which are to be targeted directly to Oakland or East Bay customers shall require
3174 reasonable prior notification to the Contract Manager.

3175 17.03 Outreach Production Requirements. CONTRACTOR shall utilize designers,
3176 printers and mail houses located within the Service Area for the design, development, printing
3177 and mailing of all community outreach materials related to this Contract, unless otherwise
3178 approved by Contract Manager. In addition, unless Contract Manager has granted an exception
3179 in writing, the Community Outreach materials shall:

3180 17.03.1 Be printed on one hundred (100) percent recycled paper with at
3181 least fifty (50) percent post-consumer recycled content using soy based (or other non-toxic)
3182 inks;

3183 17.03.2 Include CITY'S Oakland Recycles logo and CITY'S recycling
3184 hotline phone number;

3185 17.03.3 Include four (4) languages whenever possible and/or needed;
3186 and

3187 17.03.4 Be made accessible to those with disabilities, in accordance with
3188 all applicable federal, state and local laws and regulations.

3189 17.04 Copyrights. At CONTRACTOR'S sole expense, CONTRACTOR shall execute
3190 appropriate documents to assign to CITY either a copyright to works created pursuant to this
3191 Article 17, or a license limited for the term of the Contract for use of such works, if so requested
3192 by CITY. CONTRACTOR shall provide space in CONTRACTOR'S printed public outreach
3193 materials, for CITY to include announcements, community information, articles and

3194 photographs.

3195 17.05 Annual Collection Service Notice. Each full or partial calendar year during the
3196 term of this Contract, CONTRACTOR shall publish and distribute separate notices to all SFD
3197 Customers and Service Recipients regarding the SFD Collection Service, to all MFD Customers
3198 and Service Recipients regarding MFD Collection Service, and to all Commercial Customers
3199 regarding Commercial Collection Service. To the extent appropriate, based on the category of
3200 Customer receiving the notice, it shall contain at a minimum: definitions of the materials to be
3201 Collected, procedures for setting out the materials, Collection and Disposal options for
3202 unacceptable materials such as Hazardous Waste, maps of the Service Area indicating the day
3203 of the week that Collection Service will be provided, and CONTRACTOR Customer service
3204 phone number, email address and website address. The notice shall be provided in English,
3205 Spanish, Vietnamese and Chinese (Cantonese) and such other languages as reasonably may
3206 be directed by CITY in accordance with its Equal Access Program requirements, and shall be
3207 distributed by CONTRACTOR no later than June 1, 2015 for the first partial calendar year and
3208 by November 15, 2016 and annually thereafter for the remaining term of the Contract.

3209 17.06 Bill Inserts. CITY may provide educational and other material to CONTRACTOR
3210 for inclusion in the invoices provided by CONTRACTOR to SFD, MFD and Commercial
3211 Customers for Collection Services. CONTRACTOR shall not charge CITY for the inclusion of
3212 up to three (3) 8 ½" by 11" pages per billing. To the extent CITY provides the insert material in
3213 an electronic format, CONTRACTOR shall ensure that such materials are delivered or made
3214 available to Customers utilizing electronic billing options provided by CONTRACTOR. In the
3215 case of bill inserts developed jointly by CITY and CONTRACTOR, the cost of bill insert
3216 development and production shall be allocated to the annual community outreach budget.

3217 17.07 Bulky Goods Collection Service. Outreach requirements for the Bulky Goods
3218 Collection Service program include an annual announcement sent to all residential Service
3219 Addresses, a mid-year reminder notice to all service addresses, and an appointment
3220 confirmation notice sent to Service Recipients following the scheduling of an appointment.
3221 These materials are described in the Bulky Services Agreement, attached as Exhibit 14, which
3222 may be modified as needed by agreement of CONTRACTOR and CITY.

3223 17.08 CONTRACTOR'S Website. CONTRACTOR shall maintain a website that uses
3224 graphics and statistics illustrating CITY progress toward becoming a Zero Waste Community,
3225 and provides resources the community can use to support Zero Waste and Sustainability
3226 efforts, the Collection Services and other programs as requested by CITY. CITY shall review
3227 and approve CONTRACTOR'S website content that is related to this Contract.

3228 17.09 News Media Relations. CITY shall oversee all press activities including press
3229 releases, press conferences, press kits, press packets and general press inquiries regarding the
3230 Program. CONTRACTOR shall notify the Contract Manager by e-mail or phone of all requests
3231 for news media interviews related to the Collection Services program within twenty-four (24)
3232 hours of CONTRACTOR'S receipt of the request. Before responding to any news media
3233 inquiries involving controversial issues or any issues likely to affect participation or Customer
3234 perception of services, CONTRACTOR will discuss CONTRACTOR'S proposed response with
3235 the Contract Manager. However, notwithstanding anything to the contrary in this Section 17.09,
3236 there may be instances of unannounced media visits where CONTRACTOR responses would
3237 be beneficial, in CONTRACTOR's reasonable judgment. In such cases, CONTRACTOR will not
3238 be obligated to obtain CITY consent to media communication, but will summarize such
3239 communication to CITY as soon as practicable. Copies of draft news releases or proposed

3240 trade journal articles shall be submitted to CITY for prior review and approval at least five (5)
3241 Work Days in advance of release. Copies of articles resulting from media interviews or news
3242 releases shall be provided to CITY within five (5) Work Days after publication.

3243 17.10 Compost for CITY Residents. CONTRACTOR shall make available a total of
3244 eighty (80) cubic yards per calendar year of pre-bagged compost for distribution to Oakland
3245 residents at two (2) annual compost give-back events within the jurisdictional limits of CITY
3246 during each of the first two (2) years of the Contract. CONTRACTOR shall work with CITY to
3247 determine the dates and locations of the give-back events.

3248 17.10.1 CONTRACTOR shall be responsible for all aspects related to
3249 planning, managing and staffing of the compost give-back event. Residents shall be required
3250 to show proof of residency to receive the compost product. No later than ten (10) Work Days
3251 following the compost give-back event, CONTRACTOR shall submit to CITY a written report
3252 identifying the number of residents who accepted materials; the number of bags given away;
3253 the total Tonnage of material given away; a summary of feedback and suggestions provided by
3254 residents; and any suggestions CONTRACTOR proposes for the next compost give-back
3255 event(s).

3256 **ARTICLE 18. EMERGENCY SERVICE PROVISIONS**

3257 18.01 Emergency Services. CONTRACTOR shall provide emergency services (i.e.,
3258 special collections, transport, processing,) at CITY'S request in the event of a declared local,
3259 State or federal state of emergency, major accidents, disruptions or natural calamities.
3260 CONTRACTOR shall be capable of providing emergency services within twenty-four (24) hours
3261 of notification by CITY, or as soon thereafter as is reasonably practical in light of the
3262 circumstances. An emergency contact person designated by CONTRACTOR shall be
3263 accessible during the term of this Contract twenty-four (24) hours per day for the Contract
3264 Manager or other CITY Administrator designee to contact CONTRACTOR. CONTRACTOR
3265 shall receive additional compensation, above the normal compensation contained in this
3266 Contract, to cover the costs of rental equipment, additional personnel, overtime hours and other
3267 documented expenses based on the rates set forth in Exhibit 1 to this Contract provided
3268 CONTRACTOR has first secured written authorization and approval from CITY through the City
3269 Administrator.

3270 18.02 In the event of an emergency as set forth above, the CITY may grant
3271 CONTRACTOR a variance from regular routes and schedules. As soon as practicable after
3272 such event, CONTRACTOR shall advise the CITY when it is anticipated that normal routes and
3273 schedules can be resumed. The CITY shall make an effort through the local news media to
3274 inform the public when regular services may be resumed.

3275 **ARTICLE 19. RECORD KEEPING & REPORTING REQUIREMENTS**

3276 19.01 Record Keeping.

3277 19.01.1 Accounting Records. CONTRACTOR shall maintain full,
3278 complete and separate financial, statistical and accounting records, pertaining to cash and
3279 billing, and provision of all Collection Services provided under this Contract, prepared on an
3280 accrual basis in accordance with generally accepted accounting principles. Such records shall
3281 be subject to audit and inspection by CITY. Gross Receipts derived from provision of the
3282 Collection Services shall be recorded as revenues in the accounts of CONTRACTOR. These

Mixed Materials and Organics Collection Services Contract

3283 records shall be separate and segregated from other records maintained by CONTRACTOR
3284 for services outside the scope of this Contract as may be provided by CONTRACTOR.
3285 CONTRACTOR shall maintain and preserve all cash, billing and Disposal records for a period
3286 of not less than five (5) years following the close of each of CONTRACTOR'S fiscal years.

3287 19.01.2 CONTRACTOR Payments to CITY. CONTRACTOR shall
3288 maintain records of all payments made to CITY for all items listed in Section 7.18.7, 7.18.8,
3289 7.18.9, and 7.18.10.

3290 19.01.3 Tonnage Records. CONTRACTOR shall maintain records of the
3291 incoming and outgoing quantities, measured in pounds, of (i) Mixed Materials, Recyclable
3292 Materials, and Organics Material, and Bulky Materials Collected, Processed, composted, and
3293 Disposed under the terms of this Contract, and (ii) Recyclable Materials and Organic Materials,
3294 by material type, sold, donated or given for no compensation, and Residue Disposed.

3295 19.01.4 Records. CONTRACTOR shall maintain all other records
3296 relevant to the provision of Collection Services under this Contract. After a meet and confer if
3297 CONTRACTOR so requests, CONTRACTOR shall maintain such additional records as
3298 reasonably required by CITY and agreed to by CONTRACTOR.

3299 19.01.4.1 CONTRACTOR shall maintain a relational database that
3300 includes data from all required reports for the term of this Contract, and provide CITY with
3301 access to the database. Database shall be flexible to accommodate changing needs and
3302 conditions over the term of this Contract.

3303 19.02 Reporting Requirements. Monthly reports shall be delivered to CITY no later
3304 than fifteen (15) calendar days after the end of the prior month. Quarterly reports shall be
3305 delivered to CITY no later than twenty (20) calendar days after the end of the reporting quarter.
3306 Annual reports shall be delivered to CITY no later than thirty (30) days after the end of each
3307 preceding calendar year. Monthly, quarterly and annual reports shall be provided electronically
3308 in forms and formats acceptable to CITY.

3309 19.02.1 Monthly Reports. CONTRACTOR shall provide reports that
3310 include the following data for each month and year to date.

3311 19.02.1.1 Collection Service Account Data. Number of SFD and
3312 MFD buildings and units served; number of Commercial and CITY accounts served. Number of
3313 containers in service by Collection Service type, container size, and material type (e.g., Mixed
3314 Materials, Organic Materials), and container service location (e.g., curbside placement,
3315 Premium Backyard, Exempt Backyard). Number of Non-Collection Notices issued by Collection
3316 Service type and by reason for non-collection.

3317 19.02.1.2 Collected Tonnage Data. Tonnage for all materials
3318 Collected, by Collection Service type and by material type, e.g., Mixed Material, Organic
3319 Materials. Bulky Goods Collection Service, including Collected tonnage, bulky goods item
3320 counts, and other data and information per Exhibit 14 of this Contract. Tonnage for all materials
3321 delivered to the transfer facility by CITY vehicles and Tonnage and pull data for CITY Roll-Off
3322 Boxes serviced by CONTRACTOR.

3323 19.02.1.3 Processed Tonnage Data. Tonnage for all Collected
3324 materials that are delivered to Processing facilities by Collection Service type, and by

3325 Processing facilities.

3326 19.02.1.4 Processed Materials Data. Tonnage of each material
3327 produced through the Processing of Collected materials at CONTRACTOR's Processing
3328 Facility, e.g., finished compost, old corrugated containers, mixed paper and other recycled
3329 commodity grades, feedstock for biomass or refuse derived fuel, and energy products derived
3330 from CONTRACTOR's Processing of Organic materials (should CONTRACTOR produce such
3331 energy products). CONTRACTOR shall use a statistically significant method approved by CITY
3332 to calculate the Tonnage of finished Processed material, net of Residue, attributable to material
3333 Collected under this Contract.

3334 19.02.1.5 Disposal Tonnage Data. Tonnage for all materials
3335 Collected that are transferred to the Disposal Facility without Processing, by Collection Service
3336 type. Tonnage for all Residue from Processing of Collected materials, by processing facility.
3337 CONTRACTOR shall use a statistically significant method approved by CITY to calculate the
3338 Tonnage of Residue attributable to material Collected under this Contract.

3339 19.02.1.6 Customer Service Data. Number of Customer and Service
3340 Recipient contacts, e.g., phone calls or electronic communications, by date, Collection Service
3341 type, and topic including but not limited to the topics listed.

3342 19.02.1.7 Local Hire Requirement Update. CONTRACTOR shall
3343 provide monthly updates on its compliance with Local Hire Requirements in Article 55 of this
3344 Contract.

3345 19.02.1.8 Roll-Off Box Report. CONTRACTOR shall provide a City
3346 Council and Mayor Roll-Off Box report that shows the allocation of Roll-Off Boxes by office,
3347 including allocations that were carried forward, and use to-date for the then current calendar
3348 year in compliance with Section 12.03.1.

3349 19.02.2 Quarterly Reports. CONTRACTOR shall provide the following
3350 information each quarter:

3351 19.02.2.1 Public Outreach and Information Activities. Report on all
3352 public outreach and information activities undertaken during the period, including distribution of
3353 outreach materials and other promotional activities.

3354 19.02.2.2 Processing and Marketing Activities. Report on Recyclable
3355 Materials and Organic Materials Processing and marketing issues or conditions, if any,
3356 occurring during the previous quarter.

3357 19.02.2.3 Customer Service Activities. Report on customer service
3358 and Call Center issues or conditions, if any, occurring during the previous quarter.

3359 19.02.2.4 Operational Issues and Activities. Report on significant
3360 changes in Collection Service or Processing operations, instances of property damage or
3361 accidents, scavenging, or other operational issues.

3362 19.03 Annual Reports. CONTRACTOR shall provide the following data and information
3363 each year.

Mixed Materials and Organics Collection Services Contract

- 3364 19.03.1.1 Customer and Collection Services Data. List of all
3365 Customers serviced under this Contract including and sortable by Collection Service type,
3366 Customer name, Service Address (street number, street name, Zip Code), number of
3367 Containers billed for by Collection Service type, Container size, and material type, e.g., Mixed
3368 Material, Organic Material.
- 3369 19.03.1.2 [reserved]
- 3370 19.03.1.3 Local Hire Requirement Annual Report. CONTRACTOR
3371 shall provide an annual report on its compliance with Local Hire Requirements in Article 55 of
3372 this Contract.
- 3373 19.03.1.4 Gross Receipts. CONTRACTOR shall provide a summary
3374 of the prior year's Gross Receipts received, by Collection Service type.
- 3375 19.03.1.5 Equipment Inventory. Updated complete inventory of
3376 Collection vehicles used pursuant to this Contract, by vehicle chassis identification number,
3377 vehicle body identification number, license number and model year.
- 3378 19.03.1.6 Business Tax Certificate. Copy of current business tax
3379 certificate.
- 3380 19.04 Additional Reporting and Access to Information.
- 3381 19.04.1 CONTRACTOR shall provide CITY with any additional data and
3382 information requested by CITY that is maintained by, or readily available to, CONTRACTOR
3383 and that is specifically related to the Collection Services. Such reports shall be provided within
3384 a reasonable time following the request.
- 3385 19.04.2 CONTRACTOR shall provide CITY with CONTRACTOR's Call
3386 Center records as requested by CITY and which are required pursuant to other provisions of
3387 this Contract.
- 3388 19.04.3 CONTRACTOR shall provide a large wall map of the Service
3389 Area that shows Collection day of service for SFD and MFD routes. CONTRACTOR shall
3390 provide an updated map whenever route changes include a change to day of service.
- 3391 19.04.4 CONTRACTOR shall provide CITY with Collection Route
3392 information as requested by CITY, as may reasonably be provided. Such information to be
3393 provided within a reasonable time following the request.
- 3394 19.04.5 CONTRACTOR shall provide CITY with CONTRACTOR's
3395 Collection vehicle global positioning system (GPS) reports as requested by CITY, as may
3396 reasonably be provided.
- 3397 19.05 Except as provided in Article 30, nothing in this Article 19, or elsewhere in this
3398 Contract, shall be construed to require CONTRACTOR to provide cost (other than the weight of
3399 costs for purposes of calculating RRI) or profit information.
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ARTICLE 20. NONDISCRIMINATION

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20.01 Nondiscrimination. In the performance of all work and services under this Contract, CONTRACTOR shall not discriminate against any person on the basis of such person's race, color, religion/religious creed, sex/gender, pregnancy, marital status, age, national origin/ancestry, physical and/or mental disability, medical condition, sexual orientation, gender identity, military or veteran status, or status in any other group protected by federal, State or local law. CONTRACTOR shall comply with all applicable local, state and federal laws and regulations regarding nondiscrimination, including those prohibiting discrimination in employment.

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ARTICLE 21. SERVICE INQUIRIES AND COMPLAINTS

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21.01 CONTRACTOR'S Customer Service. All Customer and Service Recipient inquiries and complaints about the Services shall be directed to CONTRACTOR. A representative of CONTRACTOR shall be available to receive the inquiries and complaints during normal business hours. All service inquiries and requests will be handled by CONTRACTOR in a prompt, courteous, and efficient manner. In the case of a dispute between CONTRACTOR and a Customer, the matter may be reviewed and a decision made by the Contract Manager.

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21.01.1 Customer Service System. CONTRACTOR will utilize an automated Customer service system to maintain a record of all inquiries and complaints in a manner prescribed by CITY. In addition thereto, CONTRACTOR shall maintain, at CONTRACTOR'S place of business, an automated Customer service system, listing all Customer service requests, complaints and CONTRACTOR notices. Said system shall contain the names and addresses of parties involved, date of such service request, complaint or noticing, nature of same, and the date and manner of disposition of each case. Such system shall be kept so that it may conveniently be inspected by representatives of CITY upon request.

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21.01.2 Response Requirements. For those complaints related to missed Collections that are received by 12:00 noon on a Work Day, CONTRACTOR will return to the Customer address and Collect the missed Carts or Bins by 12:00 noon on the following Work Day. For those complaints related to missed Collections that are received after 12:00 noon on a Work Day, CONTRACTOR shall have until the end of the following Work Day to resolve the complaint. For those complaints or service requests related to Carts or Bins for new Customers, or repair, replacement or exchange of Carts or Bins, the appropriate Articles of this Contract shall apply.

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21.01.3 Missed Collections. CONTRACTOR agrees that it is in the best interest of CITY that all Mixed Materials, Recyclable Materials, Organic Materials and Bulky Goods be Collected on the scheduled Collection day. Accordingly, missed Collections will normally be Collected as set forth herein regardless of the reason that the Collection was missed. However, in the event a Service Address reports missed Collection Services more than two (2) times in any consecutive two (2) month period the Contract Manager will work with CONTRACTOR to determine an appropriate resolution to that situation. In the event CONTRACTOR believes any complaint to be without merit, CONTRACTOR shall notify the Contract Manager, by e-mail. The Contract Manager will investigate all disputed complaints and render a decision.

3444 **ARTICLE 22. QUALITY OF PERFORMANCE OF CONTRACTOR**

3445 22.01 Intent. CONTRACTOR acknowledges and agrees that one of CITY'S primary
3446 goals in entering into this Contract is to ensure that the Collection Services are of the highest
3447 caliber, that Service Recipient and Customer satisfaction remains at the highest level, that
3448 maximum Diversion levels are achieved, and that materials Collected are put to the highest and
3449 best use to the extent feasible.

3450 22.02 Contract Compliance Coordinator. CONTRACTOR will provide for a full-time
3451 Contract Compliance Coordinator dedicated to CITY. The Contract Compliance Coordinator
3452 shall be responsible for monitoring CONTRACTOR'S programs and services and assisting CITY
3453 in maintaining full contractual compliance at all times during the term of the Contract. These
3454 duties shall include but not be limited to issues related to new and existing Customer needs,
3455 public education, routing, and customer service. The Contract compliance Coordinator shall
3456 meet monthly with CITY staff to provide updates on all areas of service as needed.

3457 22.03 Services Manager. CONTRACTOR shall designate a Services Manager to be in
3458 charge of the Collection Services within the Service Area. The Services Manager shall have the
3459 authority and knowledge to direct CONTRACTOR resources as need to resolve matters of
3460 concern to CITY. The Services Manager or designee shall be available to the Contract
3461 Manager through the use of a mobile telephone at all times that CONTRACTOR is providing
3462 Collection Services.

3463 22.04 Liquidated Damages. The parties further acknowledge that consistent and
3464 reliable Collection Services are of utmost importance to CITY, and that CITY has considered
3465 and relied on CONTRACTOR'S representations as to its quality of service commitment in
3466 awarding the Contract. The parties further recognize that some quantified standards of
3467 performance are necessary and appropriate to ensure consistent and reliable service and
3468 performance. The parties further recognize that if CONTRACTOR fails to achieve the
3469 performance standards, or fails to submit required documents in a timely manner, CITY, and
3470 CITY'S residents and businesses will suffer damages and that it is and will be impractical and
3471 extremely difficult to ascertain and determine the exact amount of damages. Therefore, without
3472 prejudice to CITY'S right to treat such non-performance as an event of default under Article 29,
3473 the parties agree that the liquidated damages amount defined in this Article represent
3474 reasonable estimates of the amount of such damages considering all of the circumstances
3475 existing on the effective date of this Contract, including the relationship of the sums to the range
3476 of harm to CITY, Customers, Service Recipients, and the community as a whole. which
3477 reasonably could be anticipated, and the anticipation that proof of actual damages would be
3478 costly or impractical. In placing their initials at the places provided, each party specifically
3479 confirms the accuracy of the statements made above and the fact that each party has had
3480 ample opportunity to consult with legal counsel and obtain an explanation of the liquidated
3481 damage provisions at the time that the Contract was made.

3482 CITY (Initial Here)  CONTRACTOR (Initial Here) _____

3483 CONTRACTOR agrees to pay (as liquidated damages and not as penalty) the following
3484 amounts:

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ARTICLE 22. QUALITY OF PERFORMANCE OF CONTRACTOR

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22.01 Intent. CONTRACTOR acknowledges and agrees that one of CITY'S primary goals in entering into this Contract is to ensure that the Collection Services are of the highest caliber, that Service Recipient and Customer satisfaction remains at the highest level, that maximum Diversion levels are achieved, and that materials Collected are put to the highest and best use to the extent feasible.

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22.02 Contract Compliance Coordinator. CONTRACTOR will provide for a full-time Contract Compliance Coordinator dedicated to CITY. The Contract Compliance Coordinator shall be responsible for monitoring CONTRACTOR'S programs and services and assisting CITY in maintaining full contractual compliance at all times during the term of the Contract. These duties shall include but not be limited to issues related to new and existing Customer needs, public education, routing, and customer service. The Contract compliance Coordinator shall meet monthly with CITY staff to provide updates on all areas of service as needed.

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22.03 Services Manager. CONTRACTOR shall designate a Services Manager to be in charge of the Collection Services within the Service Area. The Services Manager shall have the authority and knowledge to direct CONTRACTOR resources as need to resolve matters of concern to CITY. The Services Manager or designee shall be available to the Contract Manager through the use of a mobile telephone at all times that CONTRACTOR is providing Collection Services.

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22.04 Liquidated Damages. The parties further acknowledge that consistent and reliable Collection Services are of utmost importance to CITY, and that CITY has considered and relied on CONTRACTOR'S representations as to its quality of service commitment in awarding the Contract. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if CONTRACTOR fails to achieve the performance standards, or fails to submit required documents in a timely manner, CITY, and CITY'S residents and businesses will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages. Therefore, without prejudice to CITY'S right to treat such non-performance as an event of default under Article 29, the parties agree that the liquidated damages amount defined in this Article represent reasonable estimates of the amount of such damages considering all of the circumstances existing on the effective date of this Contract, including the relationship of the sums to the range of harm to CITY, Customers, Service Recipients, and the community as a whole, which reasonably could be anticipated, and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Contract was made.

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CITY (Initial Here) _____

CONTRACTOR (Initial Here) _____

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

Mixed Materials and Organics Collection Services Contract

1	Failure to timely submit or make available to CITY documents and reports as required under the provisions of this Contract (Various Sections).	\$100 per incident per day
2	Failure to correct identified billing errors as required in (Article 7).	\$10 per incident per billing cycle capped at \$100,000 per billing cycle
3	Failure to pay the amount due to the Residential Recycling Contractor within the time period set forth herein. (Section 7.14).	\$1,000 per incident per day
4	Failure to remit the Franchise Fee and other payments to CITY as set forth in Section 7.18 herein.	\$500 per incident per day
5	Failure to provide timely transition documents or meet transition requirements (Section 6.19).	\$300 per item per day
6	Failure to notify CITY daily of all situations that prevent or hinder Collection from any CITY Facility, unless otherwise directed by CITY (Article 12).	\$100 per day
7	Failure to Collect or otherwise recover within the time set forth in Section 21.01.2 materials that are set out for Collection including materials that have been rejected but where a Non-Collection Notice was not provided which exceeds one (1) such failures per 1,000 services per service category (e.g., Mixed Materials, Organics) per service sector (SFD, MFD, Commercial) per month, or which exceeds twenty-five (25) such failures per 1,000 services per month for Bulky.	\$150 per incident per day
8	Failure to service, repair, maintain or replace street litter Containers (as provided in Section 12.02) which exceeds 5 such failures per week.	\$50 per incident per day
9	Missed or incomplete SFD Residential Collection at the same Service address for: Two consecutive scheduled Collections Three of six scheduled Collections Eight Collections in six months Twelve Collections in twelve months (Article 9).	\$50 per incident \$250 per incident \$500 per incident \$1,000 per incident

Mixed Materials and Organics Collection Services Contract

10	Failure to repair or replace, deliver, remove or exchange damaged, missing or abandoned Carts or Bins within the time required by this Contract (Sections 6.06.4 through 6.06.9.) which exceeds 10 such failures per week.	\$150 per incident per day
11	Failure to commence clean-up of spills, leaks, or litter caused by CONTRACTOR by end of Work Day, upon notification from CITY (Section 6.15).	\$300 per incident
12	Failure to properly return empty Carts or Bins to the point of Collection, upright with lids closed and locks secured, as required by Section 6.04, which exceeds 50 such failures per month.	\$150 per incident per day
13	Failure to answer a Customer call within five (5) rings (Section 16.02.2). Answer" includes any method of picking up Customer calls, including recorded greetings.	\$50 per incident
14	Customer on-hold wait time, based on a weekly average that is: <ul style="list-style-type: none"> • Greater than three minutes and up to four minutes • Greater than four minutes and up to five minutes • Over five minutes (Section 16.02.3).	\$1,000 per week \$2,000 per week \$3,000 per week
15	Failure to return a Customer voice message or respond to a Customer e-mail by the close of the Work Day following the day the voice message or e-mail is received (Section 16.02.6) provided it is received by 6:00 p.m.	\$150 per incident per day
16	Failure to make Extra Service Tags available to Customers in the manner set out by this Contract (Section 6.09).	\$150 per incident per day
17	Failure to begin Collection Service within 7 work days for a new Customer account, or receipt of an application for premium backyard Collection, exempt backyard Collection programs or the curbside placement exemption within the time required herein which exceeds 20 such failures per calendar quarter.	\$150 per incident per day
18	Failure to provide delivery of compost within the times required by (Section 12.09).	\$150 per incident per day
19	Failure to maintain Collection vehicles pursuant to Article 14.	\$150 per incident per day

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20	Failure to mark and label Carts, Bins and Roll-Off Boxes; to inspect, clean and maintain metal Bins, Compactors or Roll-Off Boxes in a clean and sanitary manner which exceeds 100 such failures annually (Section 6.06.1, 6.06.2, 6.06.3, and 14.10).	\$150 per incident per day
21	Failure to meet vehicle noise requirements (Section 14.06).	\$100 per incident per day
22	Commingling Mixed Materials, Organic Materials, or Recyclable Materials with other material types prior to delivery to the designated processing facility, except as permitted in the Contract (Section 6.14).	\$500 per incident
23	Failure to ensure that a vehicle operator is properly licensed (Section 33.01.4).	\$500 per incident per day
24	Failure to maintain office and call center hours as required by this Contract (Section 15.01).	\$100 per incident per day
25	Failure to maintain Collection hours and days as required by this Contract (Section 6.02).	\$250 per incident per day
26	Failure to have CONTRACTOR personnel in proper uniform (Section 33.01.3).	\$250 per incident per day
27	Failure to repair damage or compensate CITY for damage to CITY property, including all City structures, public roadways and sidewalks caused by CONTRACTOR or its personnel (Section 26.13).	\$500 per incident
28	Changing Collection day of ten (10) percent or more of the Service Addresses on a Residential Route without proper authorization by the Contract Manager and proper notification to the Service Addresses (Section 13.02).	\$5,000 per route per incident
29	Failure to provide adequate primary and alternate capacity to accept and process Mixed Materials, or Organic Materials (Sections 6.12.3, and 6.12.4).	\$500 per day
30	Failure to provide a transfer station or Processing facility for City Delivered Materials (Section 12.07).	\$500 per day
31	Failure to respond timely to CITY requests for services or information (Article 30).	\$150 per incident
32	Disposal of Recyclable Materials or Organic Materials in the Disposal Facility without first obtaining the required permission of CITY (Sections 6.12.4).	\$1,000 per load

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33	Failure to deliver any Collected materials to CITY approved Disposal Facility, Mixed Materials Processing Facility, or Organic Materials Processing Facility, as appropriate, except as otherwise expressly provided in this Contract (Sections 6.12.3, 6.12.4, and Exhibit 14 Section K.1.).	\$5,000 per load
34	Failure or neglect to complete at least ninety percent (90%) of each route on the regular scheduled Collection day (Sections 9.01.2, 10.01.1, 11.01.2 and 12.01.3).	\$1,000 for each route not completed
35	Transferring loads on CITY streets except as otherwise expressly provided in this Contract (Section 6.03).	\$150 per incident
36	Failure to provide Customers the payment methods for billings in the manner set out in this Contract (Section 7.11).	\$150 per incident per day
37	Failure to provide Mayor and City Council Roll-Off Box within 10 calendar days of a request by the Mayor or Council Office (Section 12.03.2).	\$150 per incident per day
38	Changing the Collection day of less than ten (10) percent of the Service Addresses on a Residential Collection route without proper notification to Service Addresses and Contract Manager, as appropriate (Section 13.02.1).	\$500 per route per day
39	Failure to conduct route audits and report results to CITY in a timely manner (Section 13.04).	\$150 per audit per day
40	Failure to maintain the capability of responding to telephone calls in English, Chinese (Cantonese), Vietnamese, Spanish, and such other languages as reasonably may be directed by CITY and TDD Services at all times (Section 16.04).	\$150.00 per day
41	Failure to comply with the public outreach standards in the manner set out in Sections 17.01.2 – 17.09.	\$150.00 per incident per day for time-related standards \$5,000 per incident for other standards not time-related

42	Exclusive of and not in addition to or duplicative of other specific Liquidated Damages listed herein, the failure to cure non-compliance with the provisions of this Contract in the manner and time set forth in the Contract (Various Sections).	\$150.00 per incident per day
43	Failure to comply with 50% local hire preference for Oakland residents provision for new employees (Article 55) herein.	\$5,000 per position annually
44	Failure to comply with worker retention requirements (Article 52)	\$5,000 per position

3485 22.05 Liquidated damages shall apply to service disruptions caused by a
 3486 CONTRACTOR-initiated lockout or similar CONTRACTOR-initiated work stoppage.

3487 22.06 Procedure for Review of Liquidated Damages. Before assessing liquidated
 3488 damages pursuant to Items 1, 5, 21, 27, 29, 30, 31, 35, 39, 41, 42, 43, and 44 of this Article 22,
 3489 CITY and CONTRACTOR shall meet and confer regarding these specific areas of substandard
 3490 performance. If, despite such meeting, incidents of the type(s) addressed at the meeting
 3491 continue to occur, CITY may proceed to assess liquidated damages as provided above. The
 3492 CITY may assess liquidated damages pursuant to this Article 22 on a monthly basis. However,
 3493 liquidated damages may only be assessed if CONTRACTOR is notified of the event within sixty
 3494 (60) days of CITY's knowledge of its occurrence. Prior to assessing liquidated damages, CITY
 3495 shall give the CONTRACTOR written notice of its intention to do so ("Notice of Assessment").
 3496 The notice shall include a description of the event of non-performance. The CONTRACTOR
 3497 may review and make copies (at its own expense) of all non-confidential information in CITY's
 3498 possession relating to the event of non-performance. During the first ninety (90) calendar days
 3499 of the Contract, CITY agrees not to assess liquidated damages due to challenges which may
 3500 occur during implementation of the new Contract. If in the future there shall be an
 3501 implementation period required to commence a new level or type of service, CITY and
 3502 CONTRACTOR agree to discuss a similar suspension of liquidated damages for a specified
 3503 period of time.

3504 22.06.1 The assessment shall become final unless, within thirty (30)
 3505 calendar days of the date of the Notice of Assessment, CONTRACTOR provides a written
 3506 request for a meeting with the CITY to present evidence that the assessment should not be
 3507 made.

3508 22.06.2 The Contract Manager shall schedule a meeting between
 3509 CONTRACTOR and City Administrator or the City Administrator's designee as soon as
 3510 reasonably possible after timely receipt of CONTRACTOR'S request.

3511 22.06.3 The City Administrator or the City Administrator's designee shall
 3512 review CONTRACTOR'S evidence and render a decision sustaining or reversing the liquidated
 3513 damages as soon as reasonably possible after the meeting. Written notice of the decision shall
 3514 be provided to CONTRACTOR.

3515 22.06.4 In the event CONTRACTOR does not submit a written request for
 3516 a meeting within thirty (30) calendar days of the date of the Notice of Assessment, the Contract

3517 Manager's determination shall be final and CONTRACTOR shall submit payment to CITY no
3518 later than fifteen (15) calendar days following final determination.

3519 22.06.5 CITY'S assessment or Collection of liquidated damages shall not
3520 prevent CITY from exercising any other right or remedy, including the right to terminate this
3521 Contract, for CONTRACTOR'S failure to perform the work and services in the manner set forth
3522 in this Contract.

3523 **ARTICLE 23. BILLING AUDIT AND PERFORMANCE REVIEWS**

3524 23.01 Billing Audit and Performance Review.

3525 23.01.1 Selection and Cost. CITY may conduct two (2) billing audit and
3526 performance reviews ("review") of CONTRACTOR'S performance during the initial term of this
3527 Contract. The review will be performed by a qualified firm under contract to CITY. CITY shall
3528 have the final responsibility for the selection of the firm but shall seek and accept comments
3529 and recommendations from CONTRACTOR. CONTRACTOR shall be responsible for the cost
3530 of the reviews up to a maximum of One Hundred Fifty Thousand Dollars (\$150,000) per review.

3531 23.01.2 Purpose. The review shall be designed to meet the following
3532 objectives.

3533 23.01.2.1 Verify that Customer billing rates have been properly
3534 calculated and they correspond to the level of service received by the Customer.

3535 23.01.2.2 Verify that franchise fees, and other charges required
3536 under this Contract have been properly calculated and paid to CITY.

3537 23.01.2.3 Verify CONTRACTOR'S compliance with the reporting
3538 requirements and performance standards of the Collection Services Contract.

3539 23.01.2.4 Verify the Diversion percentages reported by
3540 CONTRACTOR.

3541 23.01.3 CONTRACTOR'S Cooperation. CONTRACTOR shall cooperate
3542 fully with the review and provide all requested data otherwise required to be provided under
3543 this Contract, including certain operational data, financial data and other data requested by
3544 CITY within thirty (30) calendar days. Failure of CONTRACTOR to cooperate or provide the
3545 requested documents in the required time shall be considered an event of default.

3546 23.02 CITY Requested Program Review. CITY reserves the right to require
3547 CONTRACTOR to periodically conduct reviews of the SFD, MFD, Commercial, and CITY
3548 Collection Services programs to assess performance indicators, including but not limited to:
3549 average volume of Recyclable Materials per setout per Service Address, average volume of
3550 Organic Materials per setout per Service Address, Collection Services participation levels,
3551 contamination levels, etc. Prior to the program review, CITY and CONTRACTOR shall meet to
3552 discuss the purpose of the review and the method, scope, time frame for completion and data to
3553 be provided by CONTRACTOR. CONTRACTOR shall then prepare and submit to the Contract
3554 Manager a written program review plan for review and approval. The Contract Manager shall
3555 review and, to the extent necessary at the sole discretion of CITY, modify the program review
3556 plan, and return it to CONTRACTOR for implementation.

3557 23.03 Cooperation with Other Program Reviews. If CITY wants to collect program
3558 data, perform field work, conduct route audits to investigate Service Recipient participation
3559 levels and setout volumes and/or evaluate and monitor program results related to Mixed
3560 Materials, Garbage, Recyclable Materials and Organic Materials Collected in the Service Area
3561 by CONTRACTOR, CONTRACTOR shall cooperate with CITY or its agent(s), including
3562 StopWaste.Org. CONTRACTOR shall also cooperate with any waste generation studies
3563 conducted by CITY or its agent(s).

3564 23.04 Waste Generation and Characterization Studies. CONTRACTOR acknowledges
3565 that CITY must perform waste generation and characterization studies periodically to comply
3566 with AB 32, AB 341 and AB 939 requirements. CONTRACTOR agrees to participate and
3567 cooperate with CITY and its agents, including StopWaste.Org and to perform studies and data
3568 Collection exercises, as needed, to determine weights, volumes and composition of materials
3569 generated, Disposed, transformed, Diverted or otherwise processed to comply with AB 32, AB
3570 341 and AB 939.

3571 **ARTICLE 24. PERFORMANCE SECURITY**

3572 24.01 Performance Bond. A performance bond must be furnished by CONTRACTOR
3573 within fifteen (15) calendar days of notification to CONTRACTOR that that the Contract has
3574 been executed. CONTRACTOR shall furnish to CITY, and keep current, a performance bond in
3575 a form and with language that is acceptable to CITY, for the faithful performance of this Contract
3576 and all obligations arising hereunder in an amount of Seven Million Dollars (\$7,000,000).

3577 24.02 Renewal. Beginning July 1, 2016, and each April 1 thereafter, CONTRACTOR
3578 shall have the performance bond renewed annually and executed by a surety company that is
3579 acceptable to CITY; an admitted surety company licensed to do business in the State of
3580 California; has an "A:VII" or better rating by A. M. Best or Standard and Poor's; and is included
3581 on the list of surety companies approved by the Treasurer of the United States.

3582 24.03 Letter of Credit. As an alternative to the performance bond required by Section
3583 24.01, at CITY'S option, CONTRACTOR may deposit with CITY an irrevocable letter of credit in
3584 an amount as set forth in Section 24.01. If allowed, the letter of credit must be issued by an
3585 FDIC insured banking institution chartered to do business in the state of California, consistent
3586 with the Uniform Customs and Practice for Documentary Credits, then current revision or similar
3587 uniform convention approved by CITY in CITY'S name, and be callable at the discretion of
3588 CITY. Nothing in this Article shall, in any way, obligate CITY to accept a letter of credit in lieu of
3589 the performance bond.

3590 **ARTICLE 25. INSURANCE**

3591 25.01 Insurance Policies. CONTRACTOR shall secure and maintain throughout the
3592 term of this Contract, at CONTRACTOR's own cost and expense, insurance against claims for
3593 injuries to persons or damages to property, which may arise from or in connection with
3594 CONTRACTOR'S performance of work or services under this Contract. CONTRACTOR'S
3595 performance of work or services shall include performance by CONTRACTOR'S employees,
3596 agents, representatives and subcontractors.

3597 25.02 Minimum Scope of Insurance. Insurance coverage shall be at least this broad:

3598 25.02.1 Commercial General Liability: Insurance Services Office (ISO)

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- 3599 Occurrence Form CG 0001 or, if approved by CITY, Claims Made Form No. CG0 0002.
3600 Automobile Liability: Insurance Services Office Form No. CA 0001, code 1 "any auto."
- 3601 25.02.2 Workers' Compensation Insurance as required by the State of
3602 California and Employers Liability Insurance.
- 3603 25.02.3 Hazardous Waste and Environmental Impairment Liability
3604 Insurance.
- 3605 25.02.4 Crime Insurance for Employee Dishonesty.
- 3606 25.03 Minimum Limits of Insurance. CONTRACTOR shall maintain insurance limits no
3607 less than:
- 3608 25.03.1 Commercial General Liability: Twenty Million Dollars
3609 (\$20,000,000) each occurrence, including products and completed operations coverage.
- 3610 25.03.1.1 Coverage afforded on behalf of CITY, Councilmembers,
3611 directors, officers, agents, employees and volunteers shall be primary insurance, but only as
3612 respects the services provided by CONTRACTOR under this Contract. Any other insurance
3613 available to CITY, Councilmembers, directors, officers, agents, employees and volunteers under
3614 any other policies shall be excess insurance (over the insurance required by this Contract).
- 3615 25.03.2 Automobile Liability: Ten Million Dollars (\$10,000,000) combined
3616 single limit per accident for bodily injury and property damage.
- 3617 25.03.3 Workers' Compensation and Employers Liability: Workers'
3618 Compensation insurance as required by the State of California, with statutory limits, and
3619 Employers Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each
3620 accident, Two Million Dollars (\$2,000,000) policy limit bodily injury by disease, and Two Million
3621 Dollars (\$2,000,000) each employee bodily injury by disease.
- 3622 25.03.4 Hazardous Waste and Environmental Impairment Liability: Ten
3623 Million Dollars (\$10,000,000.00) each occurrence covering liability arising from the release of
3624 waste materials and/or irritants, contaminants or pollutants. Hazardous Waste and
3625 Environmental Impairment Liability will include coverage for all operations of CONTRACTOR,
3626 and include all owned, landfills or waste disposal sites and transfer stations. If coverage is on
3627 a Claims Made basis, the retroactive date must be shown, and must be before the date of the
3628 Contract or the beginning of Contract work. Insurance must be maintained and evidence of
3629 insurance must be provided for at least five (5) years after completion of the Contract of work.
3630 If coverage is cancelled or non-renewed, and not replaced with another claims made policy
3631 form with a retroactive date prior to the contract effective date, CONTRACTOR must purchase
3632 "extended reporting" coverage for a minimum of five (5) years after completion of work. CITY,
3633 its Councilmembers, directors, officers, agents, employees and volunteers are to be covered as
3634 additional insureds with respect to liability arising from the release of waste materials and/or
3635 irritants, contaminants or pollutants. Such coverage shall, if commercially available without
3636 involvement of CITY, automatically broaden in its form of coverage to include legislated
3637 changes in the definition of waste material and/or irritants, contaminants or pollutants.
- 3638 25.03.5 Crime Insurance for Employee Dishonesty. Five Hundred
3639 Thousand Dollars (\$500,000) per occurrence.

3640 25.04 Deductibles and Self-Insured Retention. Any deductibles or self-insured
3641 retention shall be for the account of CONTRACTOR and shall be paid entirely by
3642 CONTRACTOR without any contribution from CITY.

3643 25.05 Endorsements. The liability policies are to contain, or be endorsed to contain,
3644 the following provisions:

3645 25.05.1 CITY, its Councilmembers, directors, officers, employees, agents
3646 and volunteers are to be covered as additional insureds with respect to liability arising out of
3647 automobiles owned, leased, hired or borrowed by or on behalf of CONTRACTOR; products
3648 and completed operations of CONTRACTOR; liability arising out of work or operations
3649 performed by or on behalf of CONTRACTOR, including material parts or equipment furnished
3650 in connection with such work or operations; and with respect to Hazardous Waste, Pollution
3651 and/or Environmental Impairment Liability.

3652 25.05.2 CONTRACTOR'S insurance coverage shall be primary insurance
3653 as respects CITY, its officers, officials, employees, agents and volunteers but only as respects
3654 the services provided by CONTRACTOR under this Contract. Any insurance or self-insurance
3655 maintained by CITY, its officers, officials, employees, agents or volunteers shall be excess of
3656 CONTRACTOR'S insurance and shall not contribute with it.

3657 25.05.3 CONTRACTOR'S insurance shall apply separately to each
3658 insured against whom claim is made or suit is brought, except with respect to the limits of the
3659 insurer's liability.

3660 25.05.4 The limits of insurance are the minimum required limits and if
3661 CONTRACTOR maintains higher limits, CITY shall be entitled to coverage for the higher limits
3662 maintained by CONTRACTOR.

3663 25.05.5 The Automobile Liability policy shall be endorsed to delete the
3664 Pollution and/or the Asbestos exclusion, or documentation that CONTRACTOR carries
3665 environmental pollution liability coverage for solid waste transported by CONTRACTOR. The
3666 Automobile Liability policy shall also be endorsed to add the Motor Carrier Act endorsement
3667 (MCS-90) TL 1005, TL 1007 and /or other endorsements required by federal or state
3668 authorities.

3669 25.06 Waiver of Subrogation. CONTRACTOR hereby agrees to waive subrogation
3670 which any insurer of CONTRACTOR may acquire from CONTRACTOR by virtue of the payment
3671 of any loss. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect
3672 this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver
3673 of subrogation in favor of CITY for all work performed by CONTRACTOR, its employees, agents
3674 and subcontractors.

3675 25.07 Cancellation. Each insurance policy required by this clause shall be occurrence-
3676 based except Pollution/Environmental Impairment which may be written on a claims made basis
3677 and each insurance policy, except Workers' Compensation, shall be endorsed to state that
3678 coverage shall not be cancelled by either party, except after sixty (60) days' prior written notice
3679 has been given to CITY. CONTRACTOR shall provide at least sixty (60) days' written notice to
3680 CITY, by certified mail, return receipt requested, of any insurance policy required hereunder
3681 being suspended, voided, or reduced in coverage or limits. Any failure to comply with reporting
3682 provisions of the policies shall not affect CONTRACTOR'S obligations to CITY, its officers,

3683 officials, employees, agents or volunteers.

3684 25.08 Claims Made Coverage. If General Liability or Hazardous Waste and
3685 Environmental Impairment Liability coverage is written on a claims-made from:

3686 25.08.1 The "Retro Date" must be shown, and must be before the date of
3687 the Contract or the beginning of Contract work.

3688 25.08.2 Insurance must be maintained and evidence of insurance must
3689 be provided for at least five (5) years after completion of the Contract of work.

3690 25.08.3 If coverage is canceled or non-renewed, and not replaced with
3691 another claims-made policy form with a "Retro Date" prior to the Contract effective date,
3692 CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years
3693 after completion of Contract work.

3694 25.08.4 CITY reserves the right to request a copy of the claims reporting
3695 requirements.

3696 25.09 Acceptability of Insurers. Insurance is to be placed with insurers admitted to
3697 transact business in California with a current A.M. Best's rating of no less than A:VII. If pollution
3698 and/or Environmental Impairment and/or errors and omission coverage are not available from
3699 an admitted" insurer, the coverage may be written with CITY's permission, by a non-admitted
3700 insurance company. A Non-admitted company should have an A.M. Best's rating of A:X or
3701 higher.

3702 25.10 Verification of Coverage. CONTRACTOR shall furnish CITY with original
3703 certificates and amendatory endorsements effecting coverage required by this clause. All
3704 certificates and endorsements are to be received and approved by CITY before work
3705 commences. However, failure to obtain the required documents prior to the work beginning
3706 shall not waive CONTRACTOR'S obligation to provide them. CITY reserves the right to require
3707 complete copies of all required insurance policies, including endorsements required by these
3708 specifications, at any time. Such documents shall remain confidential.

3709 25.11 Subcontractors. CONTRACTOR shall include all subcontractors as insureds
3710 under its policies or require and verify that all subcontractors maintain insurance meeting all the
3711 requirements of this Contract.

3712 25.11.1 Proof of insurance shall be mailed to the following address or any
3713 subsequent address as may be directed in writing by CITY.

3714 Contract Manager
3715 Environmental Services Division, OPW
3716 CITY OF OAKLAND
3717 250 Frank Ogawa Plaza, Suite 5301
3718 Oakland, CA 94612

3719 25.12 Modification of Insurance Requirements. The insurance requirements provided
3720 in this Contract may be modified or waived by CITY, in writing, upon the request of
3721 CONTRACTOR if CITY determines such modification or waiver is in the best interest of CITY
3722 considering all relevant factors, including exposure to CITY.

3723

ARTICLE 26. INDEMNIFICATION

3724 26.01 Indemnification of CITY. CONTRACTOR shall defend, with counsel acceptable
3725 to CITY, indemnify and hold harmless, to the fullest extent allowed by law, CITY, its officers,
3726 officials, employees, volunteers agents and assignees (indemnitees), from and against any and
3727 all loss, liability, penalties, forfeitures, claims, demands, actions, proceedings or suits, in law or
3728 in equity, of every kind and description, (including, but not limited to, injury to and death of any
3729 person and damage to property, or for contribution or indemnity claimed by third parties) arising
3730 or resulting from or in any way connected with: (i) the operation of CONTRACTOR, its agents,
3731 employees, contractors, and/or subcontractors (with the exception of Civicorps and EBMUD), in
3732 exercising the privileges granted to it by this Contract; (ii) the failure of CONTRACTOR, its
3733 agents, employees, contractors, and/or subcontractors (with the exception of Civicorps and
3734 EBMUD) to comply in all respects with the provisions and requirements of this Contract,
3735 applicable laws, ordinances and regulations, and/or applicable permits and licenses; and (iii) the
3736 acts of CONTRACTOR, its agents, employees, contractors, and/or subcontractors (with the
3737 exception of Civicorps and EBMUD) in performing services under this Contract for which strict
3738 liability is imposed by law. The foregoing indemnity shall apply regardless of whether such loss,
3739 liability, penalty, forfeiture, claim, action, suit injury, death or damage is also caused in part by
3740 any of the indemnitees' negligence. Notwithstanding anything to the contrary in this Contract,
3741 the indemnity obligations of CONTRACTOR shall not in any way extend to indemnifying and/or
3742 defending CITY or any other indemnitees for any claim, liability, damages, liens, penalties, or
3743 any costs or obligations whatsoever arising from, or related to, CITY's setting of rates or fees
3744 under this Contract or in connection with Proposition 218, Article XIIC and Article XIID of the
3745 California Constitution.

3746 26.02 Contractor Indemnity Regarding City Approvals. To the maximum extent
3747 permitted by law, CONTRACTOR shall defend (with counsel reasonably acceptable to CITY),
3748 indemnify, and hold harmless CITY, the Oakland City Council, and their respective agents,
3749 officers, employees and volunteers (hereafter collectively called "City Parties") from any liability,
3750 damages, claim, judgment, loss (direct or indirect) action, causes of action, or proceeding
3751 (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff
3752 time, expenses or costs) (collectively called "Action") against CITY to set aside, void or annul
3753 this Agreement or any City Approvals approved concurrently herewith or any Subsequent
3754 Approval or the implementation of the same based upon an allegation that CITY shall have
3755 failed to comply with the California Environmental Quality Act. CITY may elect, in its sole
3756 discretion, to participate in the defense of said Action, and CONTRACTOR shall reimburse
3757 CITY for its reasonable legal costs and attorneys' fees. In the event that any Action is based
3758 upon allegations that would trigger EBMUD's obligation to indemnify any City Parties pursuant
3759 to Section 26.14, CONTRACTOR shall have no obligation to defend, indemnify or hold harmless
3760 the City Parties with respect to such Action.

3761 26.02.1 Within ten (10) calendar days of the filing of any Action as
3762 specified in the preceding paragraph, CONTRACTOR shall execute a Joint Defense Letter
3763 Agreement with CITY, acceptable to the Office of the City Attorney, which memorializes the
3764 above obligations. These obligations and the Joint Defense Letter of Agreement shall survive
3765 termination, extinguishment, or invalidation of CITY Approval or any Subsequent Approval
3766 requested by CONTRACTOR. Failure to timely execute the Letter Agreement does not relieve
3767 the CONTRACTOR of any of the obligations contained in this Section or other requirements or
3768 Conditions of Approval that may be imposed by CITY.

3769 26.03 Contractor Cooperation. In the event there is a legal challenge by a third party to

3770 CITY's award of the MM&O Contract, CONTRACTOR agrees to cooperate with CITY in the
3771 defense of such a challenge to the extent CITY's and CONTRACTOR's respective legal
3772 positions are not in conflict. As a condition of the acceptance of the award of the MM&O
3773 Contract, CONTRACTOR agrees to waive any claims it may have against CITY pertaining to
3774 any issues arising from and/or related to the Zero Waste Services procurement process
3775 regarding the MM&O Contract award.

3776 26.04 CONTRACTOR'S Obligation Not Excused. CONTRACTOR'S obligation to
3777 defend, hold harmless, and indemnify shall not be excused because of CONTRACTOR'S
3778 inability to evaluate liability or because CONTRACTOR evaluates liability and determines that
3779 CONTRACTOR is not liable to the claimant. CONTRACTOR must respond within thirty (30)
3780 days to the tender of a claim for defense and indemnity by CITY, unless this time has been
3781 extended by CITY. If CONTRACTOR fails to accept or reject a tender of defense and indemnity
3782 within thirty (30) days, in addition to any other remedy authorized by law, so much of any money
3783 due CONTRACTOR by virtue of this Contract as shall reasonably be considered necessary by
3784 CITY, may be retained by CITY as an offset against its costs and damages until final disposition
3785 has been made or the claim or suit for damages, or until CONTRACTOR accepts or rejects the
3786 tender of defense, whichever occurs first. With respect to third party claims against
3787 CONTRACTOR, CONTRACTOR waives any and all rights of any type to express or implied
3788 indemnity against the indemnitees.

3789 26.05 Hazardous Substances Indemnification. CONTRACTOR shall indemnify, defend
3790 with counsel acceptable to CITY, protect and hold harmless CITY, its officers, officials,
3791 employees, agents, assigns and any successor or successors to CITY'S interest from and
3792 against all claims, damages (including but not limited to special, consequential, natural
3793 resources and punitive damages) injuries, hazardous materials response mediation and
3794 removal costs, losses, demands, liens, liabilities, causes of action, suits, legal or administrative
3795 proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and
3796 expenses (including but not limited to attorney's and expert witness fees and costs incurred in
3797 connection with defending against any of the foregoing or enforcing this indemnity) of any kind
3798 whatsoever paid, incurred or suffered by, or asserted against CITY or its officers, officials,
3799 employees, agents, assigns, or contactors arising from or attributable to acts or omissions of
3800 CONTRACTOR, or its agents, including but not limited to any repair, cleanup or detoxification,
3801 or preparation and implementation of any removal, remedial, response, closure and post-
3802 closure or other plan (regardless of whether undertaken due to governmental action) concerning
3803 any hazardous substance or hazardous wastes at any place where CONTRACTOR transports,
3804 stores, or Disposes of Mixed Materials pursuant to this Contract. The foregoing indemnity is
3805 intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. section
3806 9607(c) and California Health and Safety Code section 25364, to defend insure, protect, hold
3807 harmless and indemnify CITY from liability.

3808 26.05.1 This provision is in addition to all other provisions in this Contract
3809 and is intended to survive the end of the term of this Contract. CONTRACTOR'S Guaranty
3810 shall extend to the indemnification obligation hereunder.

3811 26.06 Maximum Service Rates.

3812 26.06.1 Consistent with the limitations provided by Public Resources
3813 Code section 40059.2 and the obligations of CONTRACTOR set forth above, the following
3814 provisions are intended to address issues of defense and acceptance of the tender of defense
3815 and indemnity by CITY in the event that CITY and/or CONTRACTOR are named in any lawsuit

3816 (a) challenging CITY's setting of Maximum Service Rates for Collection Services under this
3817 Contract, (b) impacting the ability of CONTRACTOR to collect or retain up to the Maximum
3818 Service Rates for Collection Services, and/or (c) in connection with the application of the
3819 California Constitution to the imposition, payment, or collection of Maximum Service Rates and
3820 charges for services provided by CONTRACTOR under this Contract ("Maximum Service
3821 Rates Lawsuit").

3822 26.06.2 In the event of a Maximum Service Rates Lawsuit, CITY shall
3823 actively defend such lawsuit, and CONTRACTOR agrees to cooperate with CITY to the extent
3824 practical and/or necessary. CONTRACTOR and CITY further agree to toll, during the
3825 pendency of any Maximum Service Rates Lawsuit, all cross claims against each other which
3826 are inconsistent with the Contract, including, but not limited to the tolling of any claim filed
3827 under the California Government Code. CONTRACTOR shall have no obligation to defend any
3828 lawsuit based on the Maximum Service Rates or that otherwise addresses any portion of the
3829 rates proposed by CONTRACTOR or the award of the Contract by CITY. In the event said
3830 lawsuit results in the reduction or elimination of any portion of the proposed rates by
3831 CONTRACTOR, the remedies set forth in the provisions below shall apply.

3832 26.06.3 Nothing in this Section is intended to imply that any action of
3833 CITY or CONTRACTOR with regard to adoption, imposition or collection of Maximum Service
3834 Rates is violative of any laws, regulations or Constitutional provisions. These provisions are
3835 merely intended as a statement of an agreed upon process for defense and allocation of risks
3836 between CITY and CONTRACTOR in the event of a Maximum Service Rates Lawsuit,
3837 regardless of the merit or lack of merit of any of the claims set forth therein.

3838 26.07 Environmental Indemnification. CONTRACTOR shall indemnify, defend with
3839 counsel acceptable to CITY, and hold harmless, at CONTRACTOR'S sole cost and expense,
3840 CITY, its City Council, officers, officials, employees, volunteers and agents, and the Collection
3841 Contractor (collectively, "Indemnitees") from and against any and all claims, damages, injuries,
3842 costs (including and without limit any and all response, remediation and removal costs), losses,
3843 demands, debts, liens, liabilities, causes of action suits, legal or administrative proceedings,
3844 interest, fines, charges, penalties, and expenses (including reasonable attorneys' and expert
3845 witness fees, expenditures for investigation and remediation) and costs of any kind whatsoever,
3846 paid, imposed upon, incurred, or suffered by or asserted against any of the Indemnitees by any
3847 lawsuit brought or threatened, settlement reached, or government hearing, investigation, inquiry,
3848 proceeding, or order relating to, or arising from, directly or indirectly, CONTRACTOR'S alleged
3849 failure or actual failure to comply with the environmental laws and regulations. This
3850 indemnification will not extend to environmental claims to the extent they are caused by the sole
3851 or joint or contributory negligence or intentional misconduct or omission of CITY, its officers,
3852 employees or agents, or the Collection Contractor(s).

3853 26.07.1 This provision is in addition to all other provisions in this Contract
3854 and is intended to survive the end of the term of this Contract. CONTRACTOR'S Guaranty
3855 shall extend to the indemnification obligation hereunder.

3856 26.08 Separate Counsel. CITY may elect to have separate legal counsel from
3857 CONTRACTOR at any time at its sole discretion, and in such case CONTRACTOR will pay one-
3858 half (1/2) of all fees and costs and charges for such separate legal counsel.

3859 26.09 Consideration. It is specifically understood and agreed that the consideration
3860 inuring to CONTRACTOR for the execution of this Contract consists of the promises, payments,

3861 covenants, rights and responsibilities contained in this Contract.

3862 26.10 Obligation. The execution of this Contract by CONTRACTOR shall obligate
3863 CONTRACTOR to comply with the foregoing indemnification provisions; however, the collateral
3864 obligation of providing insurance must also be fully complied with as set forth in Article 25
3865 above.

3866 26.11 Subcontractors. CONTRACTOR shall require all subcontractors to enter into a
3867 contract containing the provisions set forth Sections 26.01, 26.02, 26.03, 26.04, 26.05, 26.06,
3868 26.07, and Article 25 in its entirety and in the preceding subsection in which contract the
3869 subcontractor fully indemnifies CITY in accordance with this Contract.

3870 26.12 Exception. Notwithstanding Sections 26.01, 26.02 and 26.03, CONTRACTOR'S
3871 obligation to indemnify, hold harmless and defend CITY, its officers and employees pursuant to
3872 this Article 26 shall not extend to any loss, liability, penalty, claim, damage, action or suit to the
3873 extent caused by or based on the acts or omissions constituting willful misconduct or active
3874 negligence on the part of CITY or any other indemnitee. This Section is not intended to modify
3875 in any way the parties' respective rights and obligations under Section 26.05.

3876 26.13 Damage by CONTRACTOR. If CONTRACTOR's employees or subcontractors
3877 (with the exception of Civicorps and EBMUD) cause any injury, damage or loss to CITY
3878 property, including but not limited to CITY streets or curbs, CONTRACTOR shall reimburse
3879 CITY for CITY'S cost of repairing such injury, damage or loss. Such reimbursement is not in
3880 derogation of any right of CITY to be indemnified by CONTRACTOR for any such injury,
3881 damage or loss. With the prior written approval of CITY, CONTRACTOR may repair the
3882 damage at CONTRACTOR'S sole cost and expense.

3883 26.14 CONTRACTOR To Require Indemnification Of City By EBMUD.

3884 In the EBMUD Subcontract, CONTRACTOR shall include and require from EBMUD a
3885 provision providing for and requiring the indemnification and defense of the CITY by EBMUD,
3886 enforceable by the CITY as third party beneficiary, substantially as follows:

3887 To the maximum extent permitted by law, EBMUD shall defend (with counsel reasonably
3888 acceptable to the City), indemnify, and hold harmless the City, the Oakland City Council, and its
3889 respective agents, officers, employees and volunteers from any liability, damages, claim,
3890 judgment, loss (direct or indirect), action, cause of action, or proceeding (including legal costs,
3891 attorneys' fees, expert witness or consultant fees, City Attorney and staff time, expenses or
3892 costs) against the City to set aside, void or annul the Subcontract, any other City or EBMUD
3893 approvals or decisions of the Subcontract, and/or any subsequent approval or the
3894 implementation of the Subcontract (collectively called "Action"), but only if the Action is based
3895 upon an allegation of any or all the following:

3896 (a) that EBMUD or the City shall have failed to comply with any law, ordinance or
3897 regulation, including without limitation, the California Environmental Quality Act ("CEQA"), or any
3898 entitlement, permit or authorization, relating to, arising from or in any manner connected with the
3899 Subcontract;

3900 (b) that EBMUD or the City shall have failed to comply with any law, ordinance or
3901 regulation, including without limitation, CEQA, or any entitlement, permit or authorization,
3902 relating to, arising from or in any manner connected with the City's inclusion of EBMUD in its
3903 Award of Franchise for Mixed Materials and Organics Collection Services, as described in the

3904 September 30, 2014 Notice of Determination/Exemption, as it may be further amended, revised
3905 or superseded, filed with the appropriate agencies pursuant to CEQA ("NOD/E");

3906 (c) that EBMUD or the City shall have failed to comply with any law, ordinance or
3907 regulation, including without limitation, CEQA, or any entitlement, permit or authorization,
3908 relating to, arising from or in any manner connected with the implementation, in whole or in part,
3909 of the East Bay Municipal Utility District (EBMUD) Main Waste Water Treatment Plant
3910 (MWWTP) Land Use Master Plan for Organic-Rich Materials Preprocessing, as described in the
3911 NOD/E;

3912 (d) that EBMUD or the City shall have failed to comply with any law, ordinance or
3913 regulation, including without limitation, CEQA, or any entitlement, permit or authorization, to the
3914 extent related to and/or resulting from the use, operation, expansion, condition, status and/or
3915 performance of the EBMUD MWWTP, including without limitation the Pre-Processing and/or
3916 Processing Facility;

3917 (e) that Waste Management of Alameda County, Inc.'s award to EBMUD of the
3918 Subcontract or the City's Award of Franchise for Mixed Materials and Organics Collection
3919 Services, as described in the NOD/E, resulted in whole or in part from any false or misleading
3920 representation or warranty of EBMUD contained in the Subcontract or otherwise; and/or

3921 (f) that Waste Management of Alameda County, Inc.'s award to EBMUD of the
3922 Subcontract or the City's Award of Franchise for Mixed Materials and Organics Collection
3923 Services, as described in the NOD/E, creates, causes or contributes to the creation, in whole or
3924 in part, of a nuisance of any kind, public or private.

3925 The City may elect, in its sole discretion, to participate in the defense of said Action, and
3926 EBMUD shall fully reimburse the City for its reasonable legal costs and attorneys' fees. Within
3927 ten (10) calendar days of the filing of any Action as specified in the preceding paragraph,
3928 EBMUD shall execute a Joint Defense Letter Agreement with the City, in form and substance
3929 reasonably acceptable to the City, which memorializes the above obligations. These obligations
3930 and the Joint Defense Letter Agreement shall survive termination, extinguishment, or
3931 invalidation of the city approval or any subsequent approval requested by EBMUD. Failure to
3932 timely execute the Joint Defense Letter Agreement does not relieve EBMUD of any of the
3933 obligations, requirements or conditions of approval that may be imposed.

3934 If an Action giving rise to EBMUD's obligations to defend, indemnify and hold harmless is
3935 alleged or contained in within a lawsuit or proceeding that also alleges or contains allegations,
3936 claims, or causes of action other than the Action giving rise to EBMUD's obligations, then
3937 EBMUD's obligations to defend, indemnify and hold harmless shall apply only to the Action
3938 giving rise to EBMUD's obligations and not to the other allegations, claims or causes of action
3939 within the lawsuit or proceeding and shall be proportionally limited in extent.

3940 26.14.1 The EBMUD Subcontract shall also include the following
3941 language: "The City's right to a defense is triggered and due immediately upon City's tender of
3942 the defense and indemnity to EBMUD. In the event EBMUD disputes whether it has an
3943 obligation to defend, indemnify and hold the City harmless under the provisions of the EBMUD
3944 Subcontract set forth in this Section, EBMUD nevertheless shall defend the City as required
3945 under this Section, subject to a reservation of rights to reimbursement."

3946 26.14.2 The EBMUD Subcontract shall also include reasonable general
3947 indemnity provisions as are customary to commercial contracting for the waste processing
3948 industry and other reasonable protections in favor of CONTRACTOR to address the

3949 responsibilities of EBMUD in development, siting, approval and operation of the EBMUD Facility
3950 and the inclusion of by CITY of the requirement for CONTRACTOR to subcontract with EBMUD.

3951 26.14.3 In the event EBMUD fails or refuses to agree to include the
3952 indemnity and defense provisions required by this Section 26.14 in the Subcontract,
3953 CONTRACTOR shall be excused from its obligation to enter into the subcontract with EBMUD.

3954

3955

ARTICLE 27. DEFENSE OF CONTRACTOR'S RIGHTS

3956 27.01 When either CITY or CONTRACTOR determines in their reasonable discretion
3957 that there are infringements of CONTRACTOR's rights under this Contract, CITY shall take all
3958 commercially reasonable actions necessary to prevent the infringement, including legal actions.
3959 If requested by CITY, CONTRACTOR shall, with counsel reasonably acceptable to CITY,
3960 assume the prosecution necessary to enforce such rights, and, shall defend, with counsel
3961 reasonably approved by CITY, indemnify and hold harmless CITY, its employees and officials,
3962 against any and all claims arising out of CITY'S performance under this Article 27. CITY will
3963 fully cooperate with CONTRACTOR in prosecuting and defending CONTRACTOR'S exclusive
3964 Contract rights. CONTRACTOR shall reimburse CITY within thirty (30) days of receipt of an
3965 invoice, for all actual, reasonable costs associated with defense of Contract rights (including, but
3966 not limited to, CITY staff and CITY Attorney time, including applicable CITY overhead
3967 allocations, and outside consultants, including attorney fees and costs).

3968 27.02 CITY and CONTRACTOR believe that it is in the best interests of CITY to ensure
3969 that Mixed Materials and Organics are not collected by third parties in violation of CITY's
3970 Municipal Code and CONTRACTOR's exclusive rights under this Contract and that all
3971 appropriate steps should be taken within the parties' power to eliminate the occurrence of such
3972 violations within CITY. Accordingly, CITY shall consider, in its discretion, revisions to the
3973 Municipal Code, in sufficient time for them to become effective on or before July 1, 2015, that to
3974 the extent permitted by law, would make unlawful the placement of containers and/or provision
3975 of services for the collection of Mixed Materials or Organics within CITY that are not authorized
3976 by CITY and would, among other things, authorize CITY to impound such containers after notice
3977 to the violator. The proposed revisions shall give the City Administrator the ability to delegate
3978 the authority to impound such containers to CONTRACTOR. In the event such revisions are
3979 adopted, the City Administrator will delegate such authority to CONTRACTOR in such
3980 circumstances he or she deems appropriate, consistent with the first sentence of this Section.
3981 Any actions taken by CONTRACTOR pursuant to the delegation shall be at CONTRACTOR'S
3982 sole risk.

3983

ARTICLE 28. OBLIGATION TO PROVIDE SERVICE

3984 28.01 CITY and CONTRACTOR agree, as more fully set forth in the Recitals to this
3985 Contract, that proper Collection of Mixed Materials and Organic Materials is fundamental to the
3986 protection of the public health, safety and the well-being of the residents of CITY. CITY'S
3987 responsibility for ensuring the adequacy of these sanitation services in part provides the
3988 justification for the granting of an exclusive franchise to CONTRACTOR. This exclusive grant
3989 creates an obligation, subject to the terms and conditions of the Contract, that Collection
3990 Services are continued to be provided even under difficult or adverse circumstances, such as
3991 but not limited to, natural disaster, labor unrest, and any period where legal actions impact the
3992 effectiveness of portions of this Contract.

Mixed Materials and Organics Collection Services Contract

3993 28.02 Specifically, with reference to any Maximum Service Rates Lawsuit as defined in
3994 Section 26.06.1, such legal actions shall not be considered a Change in Law or Force Majeure
3995 event excusing CONTRACTOR'S performance, except as otherwise excused as set forth
3996 below.

3997 28.02.1 During the pendency of any such litigation, and in the event a court of
3998 competent jurisdiction or other regulatory agency sets aside, invalidates or stays all or a portion
3999 of the Maximum Service Rates, then CITY and CONTRACTOR agree to undertake the
4000 following:

4001 28.02.1.1 CITY and CONTRACTOR agree to immediately meet and
4002 confer to negotiate in good faith any modifications to CONTRACTOR's obligations under this
4003 Contract to ensure provision of basic Collection Services and enable CONTRACTOR to
4004 continue to bill and collect for the ongoing cost of services, including its return on capital and
4005 costs of operations. Nothing in this Contract, including those provisions relating to CITY's
4006 regulation of Maximum Service Rates, shall be read to limit CONTRACTOR's right to bill and
4007 collect for the cost of continuing provision of Collection Service.

4008 28.02.1.2 CONTRACTOR shall provide basic Collection Services.
4009 For the purposes of this Article 28, basic Collection Services are those minimum services
4010 necessary to protect human health and the environment within CITY as agreed to by and
4011 between CITY and CONTRACTOR. In the event CITY and CONTRACTOR are unable to agree
4012 on basic Collection Services within a period not to exceed two (2) weeks from that date on
4013 which a court of competent jurisdiction or other regulatory agency with authority reduces
4014 Maximum Service Rates, CONTRACTOR shall have the authority to make adjustments in
4015 services to mitigate against any revenue impacts resulting from a Maximum Service Rates
4016 lawsuit. CONTRACTOR shall also have the right to implement all lawful "self-help" actions in
4017 order to receive payment for providing basic Collection Services. CITY shall continue to provide
4018 nuisance abatement and may also take other urgency actions as necessary to facilitate
4019 CONTRACTOR'S continuation of basic Collection Services and ability to obtain compensation
4020 from Customers therefor. The intent of this provision is to ensure that CONTRACTOR
4021 continues to receive compensation, including its rate of return, consistent with that specified in
4022 the Contract for the level of services provided. If certain services are reduced and/or eliminated
4023 as a result of a Maximum Service Rates Lawsuit, CITY agrees that during the term of the
4024 elimination of said services it shall not contract with any other company or party to provide these
4025 services and will contract only with CONTRACTOR to restore said services either during or after
4026 the conclusion of the Maximum Service Rates Lawsuit. If CITY finds it necessary to procure
4027 eliminated services, it shall do so from CONTRACTOR at commercially reasonable rates.

4028 28.02.1.3 In connection with providing basic Collection Services,
4029 CONTRACTOR shall continue to charge Customers for the cost of providing such services.
4030 CONTRACTOR shall, in coordination with CITY, reduce its charges to Customers in an amount
4031 corresponding to any CITY fee or charge set aside, invalidated, or stayed by such court,
4032 regulatory agency, or otherwise agreed to. CONTRACTOR's reduced charges, to the extent
4033 they correspond to the Maximum Service Rates allowed under this Contract minus any such fee
4034 or charge set aside, are intended to generate revenue to CONTRACTOR not less than
4035 CONTRACTOR'S anticipated return on investment for the applicable calendar year.
4036 CONTRACTOR shall thereafter not be required to remit the amount of any disallowed fee or
4037 charge, provided it is not collected from Customers.

4038 28.02.1.4 CONTRACTOR shall not be obligated to refund Customers

4039 for any amount of previously collected fees or charges later set aside or invalidated by a court.
4040 CONTRACTOR and CITY deem the Maximum Service Rates to fix the actual reasonable cost
4041 of service to Customers as these rates and the escalation methodology set forth in this Contract
4042 are the result of a multi-year open competition for CITY's franchise Collection Services. Any
4043 CITY fees or charges set aside by any court or CITY during the pendency of any Maximum
4044 Service Rates Lawsuit shall, to the extent they are collected from Customers, be paid into an
4045 escrow account established by CITY, which shall be made available for use pursuant to order of
4046 the court, or in the absence of such order to address CONTRACTOR's losses, if any, consistent
4047 with CITY's obligations set forth below.

4048 28.02.2 If by virtue of an order by a court of competent jurisdiction, an
4049 order issued by a regulatory agency with authority, or pursuant to or an agreement between
4050 petitioner/plaintiff and CITY that affects all or a portion of the Maximum Service Rates, and this
4051 results in a loss to CONTRACTOR not otherwise recovered through a temporary reduction in
4052 services, CITY shall implement, with CONTRACTOR's consent, methods to recapture any
4053 losses that CONTRACTOR sustained under this Article 28. Such methods may include an
4054 adjustment in future Maximum Service Rates, a reduction in, or adjustment to, services and/or
4055 other obligations under the Contract, or such other lawful methods which may be agreed to by
4056 CITY and CONTRACTOR. Any method selected shall be designed to produce revenues that
4057 ensure CONTRACTOR fully recoups any and all demonstrated losses within no more than two
4058 (2) years from that date on which Maximum Service Rates were reduced (or within two (2)
4059 years following the trial court's determination in the event of a Maximum Service Rates
4060 Lawsuit), or, by the termination date of said Contract if less than two (2) years remain on the
4061 Term. CONTRACTOR shall have the right to terminate the Contract upon twelve (12) months
4062 written notice after the two (2) year period for recoupment of CONTRACTOR losses has
4063 expired, in the event CONTRACTOR has not been made whole for the demonstrated losses
4064 and no satisfactory agreement to address this shortfall has been reached between
4065 CONTRACTOR and CITY.

4066 28.02.3 Nothing herein is intended to imply that California Constitution
4067 Articles XIII(C) or (D) apply to the Maximum Service Rates provided for under this Contract.
4068 The foregoing paragraphs are merely intended as a contractual allocation of risks in the event
4069 of an unanticipated event affecting the ability to impose or collect Maximum Service Rates.
4070 Furthermore, nothing herein is intended to abrogate CONTRACTOR's rights under Sections
4071 7.12 and 7.13.

4072 28.03 Service Resumption Protocol (Labor Disruptions). In the event of a Labor
4073 Disruption whereby employees of CONTRACTOR do not perform work for CONTRACTOR at
4074 normally anticipated levels or efficiency which affects the ability of the CONTRACTOR to
4075 provide Collection Services in accordance with this Contract, CONTRACTOR shall comply with
4076 the following provisions, and only for the periods set forth below:

4077 28.03.1 In conjunction with the execution of this Contract CONTRACTOR
4078 shall develop and provide a General Contingency Plan to address CONTRACTOR's program
4079 to best provide continued service during a Labor Disruption that may significantly interfere with
4080 CONTRACTOR's ability to provide Collection Services. The Contingency Plan shall be
4081 provided to CITY sufficiently in advance for review and acceptance prior to July 1, 2015. From
4082 time to time during the term of this Contract, CONTRACTOR and CITY shall meet to discuss
4083 whether modifications and updates to the General Contingency Plan are needed.

4084 28.03.2 Within two (2) hours of notification to CONTRACTOR by labor

4085 that a Labor Disruption has been authorized, CONTRACTOR shall notify the Public Works
4086 Director and Contract Manager by telephone and or electronic communication and follow up
4087 with confirmation to the CITY Administrator within twelve (12) hours of such notice.

4088 28.03.3 From the outset of any Labor Disruption, CONTRACTOR shall
4089 take all commercially reasonable actions to minimize disruptions to service, focusing initially on
4090 the Collection of putrescible waste to protect public health and safety.

4091 28.03.4 Within three (3) Work Days of notice of a Labor Disruption, if
4092 CONTRACTOR is not providing Collection Services in accordance with normal scheduled pick-
4093 ups, CONTRACTOR shall meet with CITY to develop any agreed upon modifications to the
4094 General Contingency Plan which may be required to successfully carry out the plan's
4095 objectives.

4096 28.03.5 CONTRACTOR will bring in alternate work forces within three (3)
4097 Work Days of the commencement of a Labor Disruption for the purpose of providing Essential
4098 Collection Services (i.e., collection of putrescible waste as needed and at least once per week
4099 from public facilities, such as hospitals, airports, ports and certain government facilities, where
4100 a failure to so collect would impede critical public services) in accordance with this Contract
4101 and to implement the General Contingency Plan. In this regard, it is recognized that
4102 CONTRACTOR would not be able to provide CITY with priority over other priority type services
4103 required in governmental jurisdictions receiving services from CONTRACTOR and likewise
4104 affected by such Labor Disruption, but other such jurisdictional limits are not to receive priority
4105 with regard to Essential Collection Services over CITY.

4106 28.03.6 In addition to providing Essential Collection Services within three
4107 (3) Work Days of a Labor Disruption, within ten (10) Work Days of a Labor Disruption,
4108 CONTRACTOR shall bring in an alternative work force to provide Basic Collection Services
4109 (i.e. residential and commercial garbage and organics) in accordance with the typical collection
4110 intervals (i.e. weekly, twice weekly) as set forth in this Contract, unless the schedules and
4111 volumes set forth in the General Contingency Plan, as modified with the agreement of CITY,
4112 alter the above. In this regard, CITY is not to receive priority over other governmental
4113 jurisdictions receiving services from CONTRACTOR and likewise affected by such strike, but
4114 other such jurisdictional limits are not to receive priority over CITY with regard to the
4115 promptness and/or quality of service provided to CITY.

4116 28.03.7 Within twelve (12) Work Days of a Labor Disruption,
4117 CONTRACTOR shall provide Bulky Waste Service and provide for active cleanup of any
4118 accumulated waste which has been set out for collection and not properly picked up during the
4119 Labor Disruption. These services shall be in addition to the provision of Essential Collection
4120 Services and Basic Collection Services; however failure to do so shall not be a material breach
4121 of this Protocol.

4122 28.03.8 In the event CONTRACTOR'S alternate work force is unable to
4123 provide Collection Services in accordance with the schedules, volumes and routing set forth in
4124 this Contract, or the schedules, volumes and routing in the General Contingency Plan, CITY
4125 shall have the right, but not the obligation, to bring in outside forces to provide Collection
4126 Services which are not being provided by CONTRACTOR and charge CONTRACTOR for the
4127 reasonable direct and indirect expenses (including administrative and overhead) incurred by
4128 CITY in this regard.

4129 28.03.9 In the event CITY retains its own forces to provide full or partial
4130 Collection Service in accordance with Section 28.03.8 above, CONTRACTOR agrees that the
4131 materials Collected by those forces can be taken directly from CITY to the landfill of
4132 CONTRACTOR at Altamont, California in the event the Davis Street Transfer Station owned by
4133 CONTRACTOR is not operational. In the event neither the CONTRACTOR's Davis Street
4134 Transfer Station nor Altamont Landfill are operational during the period of such Labor
4135 Disruption, CONTRACTOR agrees that the materials Collected by those forces retained by
4136 CITY can be taken directly from CITY to such other landfill and/or transfer station as selected
4137 by CITY.

4138 28.03.10 If after thirty (30) days from the commencement of a Labor
4139 Disruption there is a continuing CONTRACTOR failure to materially perform the services set
4140 forth in this Section, such failure to perform shall be considered a default under Section 29.01
4141 and CITY may cancel this Contract. In such an event, CITY shall not waive its right to seek
4142 damages from CONTRACTOR for any increase in cost of Collection incurred by CITY as a
4143 result of the breach of this Contract by CONTRACTOR and the consequential election by CITY
4144 to cancel the Contract and move forward with alternate collection alternatives.

4145 28.03.11 CONTRACTOR may not be able to ensure that Organic Materials
4146 are Source Separated from Mixed Materials. Therefore, for the purposes of a Labor Disruption
4147 only, CONTRACTOR may commingle Organic Materials and Mixed Materials during Collection,
4148 and CONTRACTOR shall take commercially reasonable actions to prevent the commingled
4149 Organic Materials from being delivered to any Disposal Facility.

4150 28.03.12 Liquidated Damages for Labor Disruptions.

4151 28.03.12.1 If CONTRACTOR fails to provide Essential Collection
4152 Services within three (3) Work Days of the Labor Disruption or Basic Collection Services within
4153 ten (10) Work Days of the Labor Disruption, then CITY may begin to impose liquidated damages
4154 under Section 22.04 for such failure, no earlier than five (5) Work Days for Essential Collection
4155 Services or fifteen (15) Work Days for Basic Collection Services, after CONTRACTOR provides
4156 notice of the Labor Disruption to CITY, subject to the limitations in 28.03.13.

4157 28.03.12.2 If CONTRACTOR fails to provide any other services,
4158 including, but not limited to, Bulky Waste Services within twelve (12) Work Days of any Labor
4159 Disruption, then CITY may begin to impose liquidated damages under Section 22.04 for such
4160 failure, no earlier than fifteen (15) Work Days after CONTRACTOR provides notice of the Labor
4161 Disruption to CITY, subject to the limitations in 28.03.13.

4162 28.03.13 A claim for liquidated damages may not be sought unless the
4163 Labor Disruption is caused by a dispute between CONTRACTOR and the employees
4164 employed at facilities covered by this Contract. The following limitations shall also apply with
4165 regard to application of liquidated damages:

4166 28.03.13.1 In the event the application of the liquidated damage is
4167 conditioned upon CONTRACTOR's failure to complete a certain percentage of a task, that
4168 percentage shall be multiplied by eighty percent (80%).

4169 28.03.13.2 In the event the application of the liquidated damage is
4170 conditioned upon the number of times CONTRACTOR fails to perform or incorrectly performs a
4171 task, that number shall be divided by eighty percent (80%) and rounded up to the nearest whole

4172 number.

4173 28.03.13.3 In the event the application of the liquidated damage is
4174 conditioned upon a single occurrence, the amount of the liquidated damage shall be multiplied
4175 by eighty percent (80%) and rounded up to the nearest whole number.

4176 **ARTICLE 29. DEFAULT OF CONTRACT**

4177 29.01 CITY Termination.

4178 29.01.1 CONTRACTOR Events of Default. The following shall be
4179 CONTRACTOR Events of Default, following which CITY may cancel this Contract (except as
4180 otherwise provided below in this Article), by giving CONTRACTOR thirty (30) calendar days
4181 advance written notice, to be served as provided in Article 45:

4182 29.01.1.1 CONTRACTOR shall take the benefit of any present or
4183 future insolvency statute, or shall make a general assignment for the benefit of creditors, or file
4184 a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its
4185 reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or
4186 under any other law or statute of the United States or any state thereof, or consent to the
4187 appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

4188 29.01.1.2 By order or decree of a Court, CONTRACTOR shall be
4189 adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or
4190 by any of the stockholders of CONTRACTOR, seeking its reorganization or the readjustment of
4191 its indebtedness under the Federal bankruptcy laws or under any law or statute of the United
4192 States or of any state thereof, provided that if any such judgment or order is stayed or vacated
4193 within sixty (60) calendar days after the entry thereof, any notice of default shall be and become
4194 null, void and of no effect; unless such stayed judgment or order is reinstated in which case,
4195 said default shall be deemed immediate; or

4196 29.01.1.3 By, or pursuant to, or under the authority of any legislative
4197 act, resolution or rule or any order or decree of any Court or governmental board, agency or
4198 officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all
4199 or substantially all of the property of CONTRACTOR, and such possession or control shall
4200 continue in effect for a period of sixty (60) calendar days; or

4201 29.01.1.4 CONTRACTOR has failed or refused to pay in a timely
4202 manner the liquidated damages or any other monies due CITY and said failure is not cured
4203 within thirty (30) calendar days of receipt of written notice from CITY to do so; or

4204 29.01.1.5 CONTRACTOR has allowed any final judgment, in favor of
4205 CITY, for the payment of money to stand against it unsatisfied and said default is not cured
4206 within thirty (30) calendar days of receipt of written notice from CITY to do so; or

4207 29.01.1.6 CONTRACTOR has failed or refused to perform or
4208 observe the terms, conditions or covenants in this Contract not otherwise addressed in this
4209 Section 29.01, the service levels prescribed herein, or any of the rules and regulations
4210 promulgated by CITY pursuant thereto or has wrongfully failed or refused to comply with the
4211 instructions of the Contract Manager relative thereto; provided that said default is not cured
4212 within thirty (30) calendar days of receipt of written notice from CITY to do so, or if by reason of

4213 the nature of such default, the same cannot be remedied within thirty (30) calendar days
4214 following receipt by CONTRACTOR of written demand from CITY to do so, CONTRACTOR fails
4215 to commence the remedy of such default within said thirty (30) calendar days following such
4216 written notice or having so commenced shall fail thereafter to continue with diligence the curing
4217 thereof. In any dispute concerning failure to remedy or diligence in pursuing a cure,
4218 CONTRACTOR shall have the burden of proof to demonstrate (a) that the default cannot be
4219 cured within thirty (30) calendar days, and (b) that it is proceeding with diligence to cure said
4220 default, and such default will be cured within a reasonable period of time.

4221 29.01.1.7 Except in the event of a Labor Disruption, CONTRACTOR
4222 has failed or refused to provide Essential Collection Services for a period of three (3)
4223 consecutive Work Days, on the fourth (4th) Work Day CITY may secure CONTRACTOR'S
4224 equipment, records and other property used or useful in providing Collection Services under this
4225 Contract in order to provide interim Essential Collection Services until such time as the matter is
4226 resolved and CONTRACTOR is again able to perform pursuant to this Contract; provided,
4227 however, if CONTRACTOR is unable for any reason or cause to resume performance at the
4228 end of thirty (30) calendar days all liability of CITY under this Contract to CONTRACTOR shall
4229 cease and this Contract may be deemed terminated by CITY, and CITY shall retain equipment,
4230 records and other property used in providing Collection Services on an interim basis until CITY
4231 has made other suitable arrangements for the provision of Collection Services, which may
4232 include award of the Contract to another contractor. Notwithstanding any other provision in this
4233 Contract to the contrary, CITY'S right to take interim possession of, or make use of, any of
4234 CONTRACTOR'S equipment, including, without limitation, vehicles, Carts, Bins and Containers,
4235 shall not allow CITY to assign ownership of such vehicles, Carts, Bins and Containers to
4236 another contractor and CITY acknowledges that CONTRACTOR'S lender has a security interest
4237 in such equipment. For purposes of clarity, this Section 29.01.1.7 shall not apply where the
4238 failure to perform is caused by a Force Majeure event; or

4239 29.01.1.8 In the event of a Labor Disruption, CONTRACTOR has
4240 failed to meet the obligations by the time periods set forth in Section 28.03; or

4241 29.01.1.9 CONTRACTOR has failed or refused to remit payment to
4242 the Residential Recycling Contractor in accordance with the requirements of Section 7.14 and
4243 the Memorandum of Understanding (Exhibit 15) successively for three (3) months or longer.

4244 29.01.2 In the event that CONTRACTOR'S annual Diversion percentage
4245 for any calendar year, as calculated on Table B to Exhibit 8 of this Contract, is more than five
4246 (5) percentage points lower than the minimum annual Diversion requirement for that calendar
4247 year as set forth in Table A to Exhibit 8 of this Contract, CITY and CONTRACTOR shall meet
4248 and confer to implement a corrective action plan for CONTRACTOR to achieve compliance.
4249 Failure to meet the agreed-upon corrective action plan may result in liquidated damages not to
4250 exceed One Hundred Fifty Dollars (\$150.00) for each Work Day until compliance is met.

4251 29.01.3 In the event that the Contract is terminated, CONTRACTOR shall
4252 furnish CITY with immediate access to all of its business records related to its Customer and
4253 billing accounts for Collection Services.

4254 29.01.4 Repetitive Compliance Issues. Notwithstanding
4255 CONTRACTOR's timely cure of previous breaches, in the event that CONTRACTOR'S record
4256 of performance shows that it has regularly and frequently failed to meet a particular material
4257 Contract obligation, despite written notices from CITY and beyond what is common by industry

4258 standards, CITY and CONTRACTOR agree to meet and confer, in good faith, regarding
4259 operational changes necessary to resolve the issue. If the parties cannot agree on necessary
4260 operational changes, then the matter will be mediated pursuant to Article 54. Once the
4261 operational changes have been agreed upon, CONTRACTOR shall be responsible for their
4262 implementation.

4263 29.02 Effective Date. In the event of the aforesaid events specified above, and except
4264 as otherwise provided in said subsections, termination shall be effective upon the date specified
4265 in CITY'S written notice to CONTRACTOR and upon said date this Contract shall be deemed
4266 immediately terminated and upon such termination all liability of CITY under this Contract to
4267 CONTRACTOR shall cease, and CITY shall have the right to call the performance bond and
4268 shall be free to negotiate with other contractors for the operation of the herein specified
4269 services. CONTRACTOR for failure to perform shall reimburse CITY all direct and indirect costs
4270 of providing interim Collection Services.

4271 29.02.1 Immediate Termination. CITY may terminate this Contract
4272 immediately upon written notice to CONTRACTOR (provided CITY has first given
4273 CONTRACTOR written notice of breach and ten (10) Work Days to cure) in the event
4274 CONTRACTOR fails to provide and maintain the performance bond as required by this
4275 Contract, or if CONTRACTOR fails to obtain or maintain insurance policies endorsements as
4276 required by this Contract, or if CONTRACTOR fails to provide the proof of insurance as
4277 required by this Contract, or if CONTRACTOR offers or gives any gift prohibited by CITY
4278 administrative policy.

4279 29.03 CONTRACTOR Termination.

4280 29.03.1 CITY Events of Default. The following shall be CITY Events of
4281 Default, following which the CONTRACTOR may cancel this Contract (except as otherwise
4282 provided below in this Article) by giving CITY thirty (30) calendar days advance written notice,
4283 to be served as provided in Article 45:

4284 29.03.1.1 CITY has allowed any final judgment, in favor of
4285 CONTRACTOR, for the payment of money to stand against it unsatisfied and said default is not
4286 cured within ninety (90) calendar days of receipt of written notice from CONTRACTOR to do so;
4287 or

4288 29.03.1.2 CITY has failed or refused to perform or observe the terms,
4289 conditions or covenants in this Contract not otherwise addressed in this Section 29.03; provided
4290 that said breach is not cured within thirty (30) calendar days of receipt of written notice from
4291 CONTRACTOR to do so, or if by reason of the nature of such breach, the same cannot be
4292 remedied within thirty (30) calendar days following receipt by CITY of written demand from
4293 CONTRACTOR to do so, CITY fails to commence the remedy of such breach within said thirty
4294 (30) calendar days following such written notice or having so commenced shall fail thereafter to
4295 continue with diligence the curing thereof. In any dispute concerning failure to remedy or
4296 diligence in pursuing a cure, CITY shall have the burden of proof to demonstrate (a) that the
4297 breach cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with
4298 diligence to cure said breach, and such breach will be cured within a reasonable period of time.
4299 In the event that CITY fails to cure any breach pursuant to this provision, CONTRACTOR shall
4300 have the right to terminate this Contract. CONTRACTOR shall provide written notice of
4301 termination to CITY upon CITY's failure to cure and this Contract shall terminate one (1) year
4302 after service of such notice.

4303 29.04 Termination Cumulative. A party's right to terminate this Contract is cumulative
4304 to any other rights and remedies provided by law or by this Contract.

4305 29.05 Force Majeure. The parties shall be excused from performing their respective
4306 obligations under this Contract in the event they are prevented from so performing by reason of
4307 Force Majeure.

4308 **ARTICLE 30. CONTRACT MODIFICATIONS, CHANGES IN SCOPE**

4309 30.01 Contract Modifications and Changes in Law.

4310 30.01.1 Contract Modifications. CITY and CONTRACTOR understand
4311 and agree that during the term of the Contract, modifications may be required to address
4312 material changes in circumstances requiring modifications in some of the terms, conditions or
4313 obligations under this Contract in order to continue provision of the services envisioned under
4314 this Contract or to implement new or different services deemed by the CITY to be necessary in
4315 order to meet its Zero Waste goals. Should the EBMUD Subcontract referenced in Section
4316 11.06 not be executed or later terminated, which may require the selection of an Organic
4317 Materials Processing Facility other than the EBMUD Facility, then CITY and CONTRACTOR
4318 agree that such selection constitutes a contract modification subject to this Article 30.

4319 30.01.2 Changes in the Law. CITY and CONTRACTOR also understand
4320 and agree that the California Legislature has the authority to make comprehensive changes in
4321 Mixed Materials, Garbage, Recyclable Materials, or Organic Materials management legislation
4322 and that these and other changes in law in the future that mandate certain actions or programs
4323 for counties or municipalities may require changes or modifications in some of the terms,
4324 conditions or obligations under this Contract. CONTRACTOR agrees that the terms and
4325 provisions of CITY'S Municipal Code, as it now exists or as it may be amended in the future,
4326 shall apply to all of the provisions of this Contract and the Customers of CONTRACTOR
4327 located within the Service Area, provided, however, that CITY will not amend CITY'S Municipal
4328 Code in a way that is inconsistent with the Contract unless compelled to do so by federal or
4329 State law. In the event any Change in Law, modifications to CITY'S Municipal Code, or
4330 directed changes by CITY materially alters the obligations of CONTRACTOR, then the affected
4331 compensation as established under this Contract shall be adjusted. Nothing contained in this
4332 Contract shall require any party to perform any act or function contrary to law.

4333 30.01.3 Compensation Adjustments. CITY and CONTRACTOR agree to
4334 enter into good faith negotiations regarding modifications to this Contract, which may be
4335 required in order to implement changes in the interest of the public welfare, or due to necessity
4336 occasioned by a material change in contractual circumstances, CITY directed changes in
4337 scope, or due to Change in Law. Changes may also be directed by CITY pursuant to Section
4338 30.02 below. When such modifications are made to this Contract, CITY and CONTRACTOR
4339 shall negotiate in good faith a reasonable and appropriate compensation adjustment for any
4340 increase or decrease in the services or other obligations required of CONTRACTOR due to any
4341 modification in the Contract under this Section 30.01. In the event of a Change in Law or
4342 regulations of any governmental agency that will require additional or different services to be
4343 provided by CONTRACTOR which are not otherwise covered by this Contract, CONTRACTOR
4344 shall provide CITY with a written rate increase request for additional compensation to
4345 CONTRACTOR based on such additional or different services. CITY and CONTRACTOR shall
4346 not unreasonably withhold agreement to such compensation adjustment. The rate increase
4347 request shall include but not be limited to the information set forth in Sections 30.02.4.1

4348 through 30.02.4.9 below. If the proposed rate increase exceeds five (5) percent and CITY
4349 does not agree with such rate increase, CITY, in addition to negotiating with CONTRACTOR
4350 may submit the matter to non-binding mediation as set forth in Article 54.

4351 30.02 Changes in Required Services within the Scope. CITY may direct changes in the
4352 services required under the scope of this Contract, including the addition of pilot programs and
4353 innovative services that may entail new Collection methods or requirements for Customers and
4354 Service Recipients, the deletion of existing services, and the modification of the manner in
4355 which existing services are performed. However, no changes in services shall be construed so
4356 as to impair the exclusive rights of CONTRACTOR granted hereunder. CITY'S authority to
4357 delete existing services shall not be in derogation of CONTRACTOR'S exclusive Contract
4358 rights, i.e., if CITY elects to discontinue a service that is within the scope of this Contract, CITY
4359 shall not allow a third party to perform it. CONTRACTOR shall promptly and cooperatively
4360 comply with such directions and the rates shall be adjusted as costs/losses are incurred,
4361 pursuant to the procedures set forth in this Section, to fairly and fully reflect the additional costs
4362 and lost revenue (including but not limited to the recovery by CONTRACTOR of all costs and
4363 revenue losses associated with stranded assets and/or unrecovered capital), or cost reduction,
4364 associated with the directed change(s) in required services, but not for the preparation of
4365 CONTRACTOR'S proposal to perform such services.

4366 30.02.1 All sums that appear in this Section 30.02 are expressed in July 2015
4367 dollars and shall be adjusted beginning July 1, 2016 and annually thereafter during the
4368 Contract's term, by the same percentage as the percentage used to adjust the Maximum
4369 Collection Services Rates for that fiscal year as set forth in Section 7.16, except that in no year
4370 shall the adjustment be less than zero (0) percent

4371 30.02.2 Implementing Changes in Service of \$250,000 or Less. If changes in
4372 service will cumulatively affect CONTRACTOR's costs by Two Hundred Fifty Thousand Dollars
4373 (\$250,000) or less over the term of the Contract, then CONTRACTOR is not required to submit
4374 a proposal under Section 30.02.4 and shall implement the changes in accordance with a
4375 schedule directed by the Contract Manager. CITY shall determine the amount by which the
4376 rates should be adjusted. If the parties do not agree on the rate adjustment amount,
4377 CONTRACTOR may challenge the adequacy of the rates pursuant to Article 54.

4378 30.02.3 Implementing Changes in Service Greater than \$250,000. If
4379 changes in service will cumulatively affect CONTRACTOR's costs by greater than Two
4380 Hundred Fifty Thousand Dollars (\$250,000) over the term of the Contract, then CONTRACTOR
4381 shall submit a proposal to perform such services pursuant to Section 30.02.4 below. CITY
4382 shall consider CONTRACTOR'S proposal and shall determine the amount by which the rates
4383 should be adjusted. CONTRACTOR shall implement the changes in accordance with the
4384 schedule directed by CITY, regardless of whether the parties agree on the rate adjustment
4385 amount. If the parties do not agree on the rate adjustment amount, CONTRACTOR may
4386 challenge the adequacy of the rates pursuant to Article 54.

4387
4388 30.02.4 Service Proposal. Within sixty (60) calendar days of receipt of a
4389 request for a service change from CITY under Section 30.02.3, CONTRACTOR shall submit a
4390 proposal to provide such service. At a minimum, the proposal shall contain a complete
4391 description of the following:

4392 30.02.4.1 Collection methodology to be employed (equipment,

Mixed Materials and Organics Collection Services Contract

4393 manpower, etc.);

4394 30.02.4.2 Equipment to be utilized, including equipment to be
4395 purchased (vehicle number, types, capacity, age, etc.);

4396 30.02.4.3 Labor requirements (number of employees by
4397 classification);

4398 30.02.4.4 Type of Carts or Bins to be utilized;

4399 30.02.4.5 Provision for program publicity, outreach, and marketing;

4400 30.02.4.6 Five (5) year projection of the financial results of the
4401 program's operations in an operating statement format including documentation of the key
4402 assumptions underlying the projections and the support for those assumptions, giving full effect
4403 to the savings or costs to existing services;

4404 30.02.4.7 Advantages and disadvantages of the change;

4405 30.02.4.8 A recommendation as to whether the change should be
4406 implemented; and

4407 30.02.4.9 An implementation schedule.

4408 30.03 Services Outside of Scope. CITY may request CONTRACTOR to submit a
4409 proposal to provide new services outside of the scope of this Contract. If CONTRACTOR either
4410 refuses to provide the new services or the parties are unable to agree on the terms and
4411 conditions of such services within one hundred twenty (120) days from the date when CITY first
4412 requests a proposal from CONTRACTOR, CONTRACTOR acknowledges and agrees that CITY
4413 may permit other persons or companies besides CONTRACTOR to perform those services
4414 outside of the scope of this Contract.

4415 30.04 New Technology. In the event that technological advancements in the
4416 Collection, transportation, Processing, handling or Disposal of Mixed Materials, Recyclable
4417 Materials, and/or Organic Materials are made, and which if implemented alone or in conjunction
4418 with another technology would cumulatively reduce the initial rates established by this Contract
4419 by approximately ten (10) percent or more, CONTRACTOR shall so notify the Contract
4420 Manager, and CITY may require CONTRACTOR to utilize or implement said new technology
4421 and new rates shall be mutually agreed upon and established. CONTRACTOR shall retain the
4422 ability to propose changes to CITY in its Mixed Materials and Organic Materials Collection
4423 Service for the purpose of maximizing efficiency. Said changes will not be implemented without
4424 the prior written approval of CITY.

4425 30.05 Monitoring and Evaluation. If CITY requests, CONTRACTOR shall meet with
4426 CITY to describe the progress of each new program and other service issues. If applicable,
4427 CONTRACTOR shall document the results of the new programs on a monthly basis, including
4428 at a minimum the Tonnage Diverted by material type, the end use or processor of the Diverted
4429 materials, the cost per Ton for transporting and Processing each type of material, and other
4430 such information requested by CONTRACTOR and/or CITY necessary to evaluate the
4431 performance of each program.

4432 30.05.1 At each meeting, CITY and CONTRACTOR shall have the
4433 opportunity to discuss revisions to the program. CITY shall have the right to terminate a
4434 program if, in CITY'S sole discretion, CONTRACTOR is not cost effectively achieving the
4435 program's goals and objectives. Prior to such termination, CITY shall meet and confer with
4436 CONTRACTOR for a period of up to ninety (90) calendar days to resolve CITY'S concerns.

4437 30.06 For clarification, any adjustment to the Maximum Service Rates under this Article
4438 30 is calculated separately from Annual Rate Adjustments and are not subject to a cap.

4439 30.07 Changes in Materials. In the event the quantity, composition or quality of the
4440 Mixed Materials and/or Organic Materials Collected under the terms of this Contract is shown to
4441 the reasonable satisfaction of CITY to have substantially changed from what it was at the
4442 inception of this Contract, such that CONTRACTOR'S costs and/or ability to achieve the annual
4443 Diversion requirements as set forth in Article 8 are materially affected, the parties shall negotiate
4444 in good faith (a) a reasonable and appropriate modification to those annual Diversion
4445 requirements, and/or (b) adjustments to CONTRACTOR's compensation if modifications to the
4446 annual Diversion requirements are not desired by CITY or do not adequately compensate
4447 CONTRACTOR. CITY and CONTRACTOR shall not unreasonably withhold agreement to such
4448 modifications.

4449 30.08 Changes in Recycling Commodities Markets. In the event of a material change
4450 in a recyclable or organic material commodity market (e.g., a market becomes unavailable or
4451 economically non-viable), and such event affects the ability of CONTRACTOR to comply with
4452 the provisions of Article 8 or significantly increases CONTRACTOR's costs, CITY or
4453 CONTRACTOR may request that the parties enter into good faith negotiations regarding
4454 modifications to this Contract in order to provide CONTRACTOR relief from such material
4455 change. For purposes of this Section, reasonably foreseeable fluctuations in the market price of
4456 recyclable or organic materials will not be deemed material changes in such commodity market.
4457 CITY and CONTRACTOR agree to negotiate in good faith a reasonable modification to the
4458 provisions of Article 8 (e.g., disposal of a material instead of Diversion) and/or adjustments to
4459 CONTRACTOR's compensation if Article 8 modifications are not desired by CITY or do not
4460 adequately compensate CONTRACTOR for the material market change. CITY and
4461 CONTRACTOR shall not unreasonably withhold agreement to such modification.

4462 **ARTICLE 31. LEGAL REPRESENTATION**

4463 31.01 Acknowledgement. It is acknowledged that each party was, or had the
4464 opportunity to be, represented by counsel in the preparation of and contributed equally to the
4465 terms and conditions of this Contract and, accordingly, the rule that a contract or Contract shall
4466 be interpreted strictly against the party preparing the same shall not apply herein due to the joint
4467 contributions of both parties.

4468 **ARTICLE 32. FINANCIAL INTEREST**

4469 32.01 Representation. CONTRACTOR warrants and represents that no elected official,
4470 officer, agent or employee of CITY has a financial interest, directly or indirectly, in this Contract
4471 or the compensation to be paid under it and, further, that no CITY employee who acts in CITY
4472 as a "purchasing agent" as defined in the appropriate Section of California Statutes, nor any
4473 elected or appointed officer of CITY, nor any spouse or child of such purchasing agent,
4474 employee or elected or appointed officer, is a partner, officer, director or proprietor of
4475 CONTRACTOR and, further, that no such CITY employee, purchasing agent, CITY elected or

4476 appointed officer, or the spouse or child of any of them, alone or in combination, has a material
4477 interest in CONTRACTOR. Material interest means direct or indirect ownership of more than
4478 five (5) percent of the total assets or capital stock of CONTRACTOR.

4479 **ARTICLE 33. CONTRACTOR'S PERSONNEL**

4480 33.01 Personnel Requirements. CONTRACTOR shall employ and assign qualified
4481 personnel to perform all services set forth herein. CONTRACTOR shall be responsible for
4482 ensuring that its employees comply with all applicable laws and regulations and meet all federal,
4483 State and local requirements related to their employment and position.

4484 33.01.1 CITY may request the transfer of any employee of
4485 CONTRACTOR who materially violates any provision hereof, or who is wanton, negligent, or
4486 discourteous in the performance of his duties.

4487 33.01.2 CONTRACTOR shall not permit its employees to demand or
4488 solicit, directly or indirectly, any additional compensation or gratuity from Customers or Service
4489 Recipients for the provision of Collection Services under the terms of this Contract.

4490 33.01.3 CONTRACTOR'S field operations personnel shall be required to
4491 wear a clean uniform shirt bearing CONTRACTOR'S name. CONTRACTOR'S employees,
4492 who normally come into direct contact with the public, including drivers, shall bear some means
4493 of individual photographic identification such as a name tag or identification card.

4494 33.01.4 Each driver of a Collection vehicle shall at all times carry a valid
4495 California driver's license and all other required licenses for the type of vehicle that is being
4496 operated.

4497 33.01.5 Each driver of a Collection vehicle shall at all times comply with
4498 all applicable State and federal laws, regulations and requirements.

4499 33.01.6 CONTRACTOR'S employees, officers, and agents shall at no
4500 time be allowed to identify themselves or in any way represent themselves as being employees
4501 of CITY.

4502 33.01.7 CONTRACTOR'S name and the Customer Service telephone
4503 number shall be properly displayed on all Collection vehicles.

4504 **ARTICLE 34. UNACCEPTABLE WASTE**

4505 34.01 CONTRACTOR shall not be required to Collect, transport or deliver for Disposal,
4506 Unacceptable Waste, but may offer such services. All such Collection, transport and delivery
4507 for Disposal of Unacceptable Waste is not regulated under this Contract, but if provided by
4508 CONTRACTOR shall be in strict compliance with all federal, state and local laws and
4509 regulations.

4510 **ARTICLE 35. INDEPENDENT CONTRACTOR**

4511 35.01 In the performance of services pursuant to this Contract, CONTRACTOR shall be
4512 an independent contractor and not an officer, agent, servant or employee of CITY.
4513 CONTRACTOR shall have exclusive control of the details of the services and work performed

4514 and over all persons performing such services and work. CONTRACTOR shall be solely
4515 responsible for the acts and omissions of its officers, agents, employees, contractors and
4516 subcontractors, if any. Neither CONTRACTOR nor its officers, employees, agents, contractors
4517 or subcontractors shall obtain any right to retirement benefits, Workers Compensation benefits,
4518 or any other benefits that accrue, to CITY employees and CONTRACTOR expressly waives any
4519 claim it may have or acquire to such benefits.

4520 **ARTICLE 36. LAWS TO GOVERN**

4521 36.01 The law of the state of California shall govern the rights, obligations, duties and
4522 liabilities of CITY and CONTRACTOR under this Contract and shall govern the interpretation of
4523 this Contract.

4524 **ARTICLE 37. CONSENT TO JURISDICTION**

4525 37.01 The parties agree that any litigation between CITY and CONTRACTOR
4526 concerning or arising out of this Contract shall be filed and maintained exclusively in the
4527 municipal or superior courts of Alameda County, state of California, or in the United States
4528 Court for the Northern District of California to the fullest extent permissible by law. Each party
4529 consents to service of process in any manner authorized by California law.

4530 **ARTICLE 38. ASSIGNMENT**

4531 38.01 CITY Right to Terminate in Event of Assignment. CONTRACTOR
4532 acknowledges that this Contract involves rendering a vital service to CITY'S residents and
4533 businesses, and that CITY has selected CONTRACTOR to perform the services specified
4534 herein based on (1) CONTRACTOR'S experience, skill and reputation for conducting its
4535 operations in a safe, effective and responsible fashion, at all times in keeping with applicable
4536 environmental laws, regulations and best management practices for the provision of Collection
4537 Services and (2) CONTRACTOR'S financial resources to maintain the required equipment and
4538 to support its indemnity obligations to CITY under this Contract. CITY has relied on each of
4539 these factors, among others, in choosing CONTRACTOR to perform the services to be
4540 rendered by CONTRACTOR under this Contract. Any assignment by CONTRACTOR, either
4541 directly or indirectly, in whole or in part, of its rights or any interest it may have in this Contract
4542 including any transfer of its stock or assets to a third party shall give CITY, in its sole discretion,
4543 the basis for terminating this Contract in whole or in part upon the giving of a thirty (30) day
4544 written notice to CONTRACTOR. In the event such notice of termination is given as authorized
4545 by this Article, CONTRACTOR shall continue, for up to six (6) months following notice of
4546 termination, to provide any or all of the services it is obligated to perform under this Contract if
4547 requested by CITY in writing. CITY's right to terminate the Contract in whole or in part shall
4548 expire unless exercised within sixty (60) days of receiving written notice from CONTRACTOR as
4549 provided herein of an assignment by CONTRACTOR. "Assignment" or "Assign" as used in this
4550 Contract shall include, but not be limited to, (i) a sale, exchange or other transfer of substantially
4551 all of CONTRACTOR'S assets dedicated to any or all of the services to be provided under this
4552 Contract to a third party (ii) a sale, exchange or other transfer of outstanding common stock of
4553 CONTRACTOR to a third party provided said sale, exchange or transfer results in a change of
4554 control of CONTRACTOR or any sale, exchange or transfer of the common stock of
4555 CONTRACTOR which results in the effective transfer of control of substantially all of
4556 CONTRACTOR'S assets dedicated to any or all of the services to be provided under this
4557 Contract to a third party; (iii) any dissolution, reorganization, consolidation, merger, re-

4558 capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow
4559 arrangement, liquidation or other transaction to which results in a change of ownership or
4560 control of CONTRACTOR; (iv) any assignment by operation of law, including insolvency or
4561 bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution
4562 being levied against this Contract, appointment of a receiver taking possession of
4563 CONTRACTOR'S property, or transfer occurring in the event of a probate proceeding; and (v)
4564 any combination of the foregoing (whether or not in related or contemporaneous transactions)
4565 which has the effect of any such transfer or change of ownership, or change of control of
4566 CONTRACTOR, or substantially all of the assets used for providing any of the services under
4567 this Contract to a third party. For purposes of this Contract, an "assignment" shall not include a
4568 sale, transfer or exchange with USA Waste of California, Inc. or any of its subsidiaries,
4569 successors or assigns, provided such affiliated entity has financial capabilities and
4570 management, available locally, equal to or greater than CONTRACTOR.

4571 38.02 Procedure for CITY Evaluation of Proposed Assignment. If CONTRACTOR
4572 requests CITY'S consideration of and consent to an assignment, CONTRACTOR shall meet the
4573 following preliminary requirements:

4574 38.02.1 CONTRACTOR shall pay CITY its reasonable expenses for
4575 attorney's fees, consultant's fees and investigation costs necessary to investigate the suitability
4576 of any proposed assignee, and to review and finalize any documentation required as a
4577 condition for approving any such assignment;

4578 38.02.2 CONTRACTOR shall furnish CITY with audited financial
4579 statements of the proposed assignee's operations for the immediately preceding three (3)
4580 operating years; and

4581 38.02.3 CONTRACTOR shall furnish CITY with satisfactory proof that: (1)
4582 the proposed assignee has at least ten (10) years of experience providing Collection Services
4583 on a scale equal to or exceeding the scale of operations conducted by CONTRACTOR under
4584 this Contract; (2) in the last five (5) years, the proposed assignee has not suffered any
4585 significant citations or other censure from any federal, State or local agency having jurisdiction
4586 over its Collection Services operations due to any significant failure to comply with State,
4587 federal or local environmental laws and the assignee has provided CITY with a complete list of
4588 such citations and censures; (3) the proposed assignee has at all times conducted its
4589 operations in an environmentally safe and conscientious fashion; (4) the proposed assignee
4590 conducts its Collection Services operation practices in accordance with sound management
4591 practices in full compliance with all federal, State and local laws regulating the provision of
4592 Collection Services; and, (5) of any other information required by CITY to ensure the proposed
4593 assignee can fulfill the terms of this Contract in a timely, safe and effective manner.

4594 38.03 CONTRACTOR Default. Under no circumstances shall CITY be obliged to
4595 consider any proposed assignment if CONTRACTOR is in default at any time during the period
4596 of consideration.

4597 38.04 CITY Discretion to Accept or Reject Assignment. CITY, in its sole discretion,
4598 may accept, reject or conditionally accept the proposed assignment. If CITY accepts a partial
4599 assignment, the corporate guaranty provided in Section 1.52 and Exhibit 18 and the
4600 performance security provided in Article 24 shall remain in effect unless CITY in its sole
4601 discretion consents to adequate substitutes by the assignee or to a novation, and absent a
4602 novation CONTRACTOR shall not be released from liability under this Contract.

4603 38.05 Subcontractor. The use of a subcontractor to perform services under this
4604 Contract shall not constitute delegation of CONTRACTOR'S duties provided that
4605 CONTRACTOR has received prior written authorization from CITY to subcontract such services
4606 and the Contract Manager has approved a subcontractor who will perform such services.
4607 CONTRACTOR shall be responsible for directing the work of CONTRACTOR'S subcontractors
4608 and any compensation due or payable to CONTRACTOR'S subcontractor shall be the sole
4609 responsibility of CONTRACTOR. CITY shall have the right to require the removal of any
4610 approved subcontractor for reasonable cause.

4611 **ARTICLE 39. COMPLIANCE WITH LAWS**

4612 39.01 In the performance of this Contract, CONTRACTOR shall comply with all
4613 applicable laws, regulations, ordinances and codes of the federal, state and local governments,
4614 including without limitation the Municipal Code of the City of Oakland.

4615 39.02 CITY shall provide written notice to CONTRACTOR of any planned amendment
4616 of CITY ordinances that would affect the performance of CONTRACTOR'S services or
4617 obligations pursuant to this Contract, in which case Section 30.01 would apply if there is an
4618 effect on CONTRACTOR'S costs or ability to provide Contract services. Such notice shall be
4619 provided at least thirty (30) calendar days prior to the City Council's approval of such an
4620 amendment.

4621 **ARTICLE 40. PERMITS AND LICENSES**

4622 40.01 CONTRACTOR shall obtain, at its own expense, all permits and licenses
4623 required by law or ordinance and maintain same in full force and effect throughout the term of
4624 this Contract. CONTRACTOR shall provide proof of such permits, licenses or approvals and
4625 shall demonstrate compliance with the terms and conditions of such permits, licenses and
4626 approvals upon the request of the Contract Manager.

4627 **ARTICLE 41. OWNERSHIP OF WRITTEN MATERIALS**

4628 41.01 All reports, documents, brochures, public education materials, and other written,
4629 printed, electronic or photographic materials developed by CITY or CONTRACTOR for CITY as
4630 required by this Contract, whether developed directly or indirectly by CITY or CONTRACTOR
4631 shall be and shall remain the property of CITY without limitation or restrictions on the use of
4632 such materials by CITY. CONTRACTOR shall not use such materials in connection with any
4633 project not connected with this Contract without the prior written consent of the Contract
4634 Manager. This Article 41 does not apply to ideas or concepts described in such materials and
4635 does not apply to the format of such materials.

4636 **ARTICLE 42. WAIVER**

4637 42.01 Waiver by CITY or CONTRACTOR of any breach for violation of any term
4638 covenant or condition of this Contract shall not be deemed to be a waiver of any other term,
4639 covenant or condition or any subsequent breach or violation of the same or of any other term,
4640 covenant or condition. The subsequent acceptance by CITY of any fee, tax, or any other
4641 monies, which may become due from CONTRACTOR to CITY shall not be deemed to be a
4642 waiver by CITY of any breach for violation of any term, covenant or condition of this Contract.

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ARTICLE 43. POINT OF CONTACT

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43.01 The day-to-day dealings between CONTRACTOR and CITY shall be between CONTRACTOR and the Contract Manager.

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ARTICLE 44. CONFLICT OF INTEREST

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44.01 CONTRACTOR covenants and declares it has no conflicts of interest that would in any manner impair or affect CONTRACTOR'S ability to perform under this Contract.

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ARTICLE 45. NOTICES

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45.01 Except as provided herein, whenever either party desires to give notice to the other, it must be given by written notice by registered or certified mail, or by other methods designated for next day delivery with proof of receipt, addressed to the party for whom it is intended, at the place last specified and to the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective persons and places for giving of notice:

4656

As to the CITY:

4657

City Administrator

4658

Office of the City Administrator

4659

CITY OF OAKLAND

4660

One Frank Ogawa Plaza, 3rd Floor

4661

Oakland, CA 94612

4662

Telephone: (510) 238-3301

4663

E-mail: cityadministrator@oaklandnet.com

4664

With copies to:

4665

Director of Public Works

4666

Oakland Public Works Department

4667

CITY OF OAKLAND

4668

250 Frank Ogawa Plaza, Suite 4314

4669

Oakland, CA 94612

4670

Telephone: (510) 238-4470

4671

E-mail: blevin@oaklandnet.com

4672

City Attorney

4673

Office of the City Attorney

4674

CITY OF OAKLAND

4675

One Frank Ogawa Plaza, 6th Floor

4676

Oakland, CA 94612

4677

Telephone: (510) 238-3601

4678

E-mail: info@oaklandcityattorney.org

4679

Director of Finance and Management

4680

Finance and Management Agency

4681

CITY OF OAKLAND

4682

150 Frank Ogawa Plaza, Suite 5215

4683 Oakland, CA 94612
4684 Telephone: (510) 238-2220
4685 E-mail: kkasaine@oaklandnet.com

4686 As to CONTRACTOR:
4687 Area Vice President
4688 WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.
4689 172 98th Avenue
4690 Oakland, CA 94603
4691 Email: bskolnic@wm.com

4692 With copies to:
4693 Contract Compliance
4694 WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.
4695 172 98th Avenue
4696 Oakland, CA 94603
4697 Email: RParnes@wm.com

4698 Assistant General Counsel
4699 WASTE MANAGEMENT
4700 222 S. Mill Avenue, Suite 333
4701 Tempe, AZ 85281

4702 General Counsel
4703 WASTE MANAGEMENT
4704 1001 Fannin Street, Suite 4000
4705 Houston, TX 77002

4706 45.02 Notices shall be effective when received at the address as specified above.
4707 Changes in the respective address to which such notice is to be directed may be made by
4708 written notice with a courtesy copy provided by email. The original of items that are transmitted
4709 by email must also be mailed as required herein.

4710 **ARTICLE 46. TRANSITION TO NEXT CONTRACTOR**

4711 46.01 In the event CONTRACTOR is not awarded a Contract extension to continue to
4712 provide Collection Services following the expiration or upon early termination of this Contract,
4713 CONTRACTOR shall cooperate fully with CITY and any subsequent contractors to assure a
4714 smooth transition of services described in this Contract. Such cooperation shall include but not
4715 be limited to transfer of computer data, files and tapes; providing routing information, route
4716 maps, vehicle fleet information, and list of Customers; providing a complete inventory of all
4717 Carts and Bins; providing adequate labor and equipment to complete performance of all
4718 Collection Services required under this Contract; coordinating Collection of materials set out in
4719 new Containers if new Containers are provided for a subsequent Contract and providing other
4720 reports and data required by this Contract.

4721

ARTICLE 47. CONTRACTOR'S RECORDS

4722 47.01 CONTRACTOR shall maintain any and all letters, books of account, invoices,
4723 vouchers, canceled checks, and other records or documents evidencing or relating to charges
4724 for services or expenditures and disbursements charged to Customers for a minimum period of
4725 five (5) years, or for any longer period required by law, from the date of final payment to
4726 CONTRACTOR pursuant to this Contract.

4727 47.02 CONTRACTOR shall maintain all documents and records, that demonstrate
4728 performance under this Contract for a minimum period of five (5) years, or for any longer period
4729 required by law, from the date of termination or completion of this Contract.

4730 47.03 Any records or documents required to be maintained pursuant to this Contract
4731 shall be made available for inspection or audit, at any time during regular business hours, upon
4732 written request by the Contract Manager, the City Attorney, City Auditor, City Administrator, or a
4733 designated representative of any of these officers. Copies of such documents shall be provided
4734 to CITY for inspection at CITY offices when it is practical to do so. Otherwise, unless an
4735 alternative site is mutually agreed upon, the records shall be available at CONTRACTOR'S
4736 address indicated for receipt of notices in this Contract.

4737 47.04 Where CITY has reason to believe that such records or documents may be lost
4738 or discarded due to the dissolution, disbandment or termination of CONTRACTOR'S business,
4739 CITY may, by written request or demand of any of the above named officers, require that
4740 custody of the records be given to CITY and that the records and documents be maintained in
4741 CITY Hall. Access to such records and documents shall be granted to any party authorized by
4742 CONTRACTOR, CONTRACTOR'S representatives, or CONTRACTOR'S successor-in-interest.

4743

ARTICLE 48. ENTIRE CONTRACT

4744 48.01 This Contract and the Exhibits attached hereto constitute the entire Contract and
4745 understanding between the parties hereto, and it shall not be considered modified, altered,
4746 changed or amended in any respect unless in writing and signed by the parties hereto.

4747

ARTICLE 49. SEVERABILITY

4748 49.01 If any provision of this Contract or the application of it to any person or situation
4749 shall to any extent be held invalid or unenforceable, the remainder of this Contract and the
4750 application of such provisions to persons or situations other than those as to which it shall have
4751 been held invalid or unenforceable, shall not be affected, shall continue in full force and effect,
4752 and shall be enforced to the fullest extent permitted by law.

4753

ARTICLE 50. RIGHT TO REQUIRE PERFORMANCE

4754 50.01 The failure of either party at any time to require performance by the other of any
4755 provision hereof shall in no way affect the right thereafter to enforce same. Nor shall waiver by
4756 a party of any breach of any provision hereof be taken or held to be a waiver of any succeeding
4757 breach of such provision or as a waiver of any provision itself.

4758

ARTICLE 51. CORPORATE GUARANTY

4759 51.01 In addition to the performance security required in Article 24, CONTRACTOR is
4760 required to obtain a Guaranty, and Guarantor has agreed to guarantee CONTRACTOR'S
4761 performance of this Contract, including CONTRACTOR'S indemnification obligations hereunder
4762 pursuant to a Guaranty in substantially the form attached as Exhibit 18. The Guaranty is being
4763 provided concurrently with CONTRACTOR'S execution of this Contract.

4764

ARTICLE 52. EMPLOYEE RETENTION REQUIREMENTS

4765 52.01 CONTRACTOR acknowledges that if and when Collection Services are
4766 transferred to CONTRACTOR, as the successful proposer, that workers who perform services
4767 for CITY'S current Contractor (if different from CONTRACTOR) may be displaced from their
4768 employment. CONTRACTOR represents and warrants that it shall offer employment to all
4769 qualified displaced workers who have been employed by the current Contractor for at least one
4770 hundred twenty (120) calendar days prior to July 1, 2015, provided that CONTRACTOR shall
4771 not be required to create additional positions that CONTRACTOR does not need nor to lay-off
4772 or discharge CONTRACTOR'S employees in order to employ qualified displaced workers. A
4773 qualified displaced worker includes non-management workers of the current Contractor who
4774 have been employed, in a full-time paid status, for at least one hundred twenty (120) calendar
4775 days prior to July 1, 2015 and who would otherwise be laid-off. CONTRACTOR is prohibited
4776 from discharging any qualified displaced workers for at least ninety (90) calendar days after
4777 July 1, 2015 except for cause. After the initial ninety (90) calendar days, the continued
4778 employment of qualified displaced workers will be under the terms and conditions established
4779 for all of CONTRACTOR'S workers in the particular job classification. CONTRACTOR shall
4780 submit displaced worker hiring status reports to the Contract Manager on the last working day of
4781 October 2015 and on the last working day of June 2016.

4782

ARTICLE 53. SUBCONTRACTING

4783 53.01 CONTRACTOR shall not engage any subcontractors to perform any of the
4784 services required of it under this Contract without the prior written approval of CITY.
4785 CONTRACTOR shall notify CITY no later than ninety (90) days prior to the date on which it
4786 proposes to enter into a subcontract, providing CITY with all information it requests with respect
4787 to the proposed subcontractor. CITY may approve or reject any proposed subcontract and/or
4788 subcontractor in its sole discretion if the proposed subcontract replaces essential services to be
4789 performed by CONTRACTOR pursuant to Article 9, Article 10, Article 11, and Article 12 of this
4790 Contract. CITY'S consent to a subcontract and/or subcontractor shall not be unreasonably
4791 withheld as to other aspects of this Contract that are not deemed to involve essential services to
4792 CITY. CONTRACTOR acknowledges that CITY has directed CONTRACTOR to enter into
4793 subcontracts with Civicorps and EBMUD for performance of certain services hereunder.

4794

ARTICLE 54. DISPUTE RESOLUTION

4795 54.01 Except for a CONTRACTOR Default under Article 29, and except as provided
4796 below in Section 54.01.3, should any dispute arise under this Contract, including but not limited
4797 to the performance and obligations of the parties, or service or compensation changes, such
4798 disputes shall be resolved by the following procedures:

4799 54.01.1 The parties shall resolve their disputes informally to the maximum

4800 extent possible and shall attempt to resolve such disputes in a cooperative and mutually
4801 satisfactory manner. Either party shall give the other written notice of such dispute, and also
4802 provide written notice to the Contract Manager. The Contract Manager shall then schedule a
4803 meeting between CONTRACTOR and the City Administrator or the City Administrator's
4804 designee as soon as reasonably possible. In the event such dispute cannot be resolved by the
4805 parties themselves within thirty (30) days of their first meeting, either party may propose the
4806 appointment of a mediator. The parties shall agree on a mediator within 30 days of either
4807 party's request for mediation.

4808 54.01.2 Mediation. If the disputing parties cannot informally resolve the
4809 dispute, they shall attempt to resolve such dispute through non-binding mediation for a period
4810 not to exceed ninety (90) days from the date of their last informal meeting, absent a written
4811 agreement to extend the time of non-binding mediation.

4812 54.01.2.1 The party desiring mediation shall give written notice
4813 thereof to the other party to this Contract, specifying the dispute to be mediated.

4814 54.01.2.2 The mediation shall be held at Oakland, California, or at
4815 such other location as may be mutually agreed among the parties. The mediation shall be
4816 conducted and a mediator chosen pursuant to the rules of JAMS Mediation Rules.

4817 54.01.2.3 At least ten (10) days before the date of the mediation,
4818 each side shall provide the mediator with a statement of its position and copies of all supporting
4819 documents. Each party shall send to the mediation a person who has authority to bind the
4820 party. If a subsequent dispute will involve third parties, such as insurers or subcontractors, they
4821 shall also be asked to participate in the mediation.

4822 54.01.2.4 Should mediation be unsuccessful, and if the dispute does
4823 not concern valuation items for which binding arbitration is required in Section 54.01.3, then a
4824 party may commence an adversarial proceeding before any court of competent jurisdiction in
4825 the County of Alameda. Disputes that concern valuation items defined in Section 54.01.3, shall
4826 proceed with binding arbitration procedures as set forth below.

4827 54.01.3 Binding Arbitration. This Section only applies to disputes over
4828 "Valuation Items," which are defined herein as disputes over a specific amount of money or
4829 compensation that is due or owed by either party, and the dispute arises under one of the
4830 following provisions of this Contract: Articles 7 and 8 and Sections 12.01.1, 17.01.3, 18.01,
4831 30.01, 30.02, 30.07, and 30.08. Except as provided in Section 54.01.3.1 below, disputes
4832 relating to Valuation Items shall be referred to binding arbitration upon mutual written approval
4833 of the disputing parties. If the disputing parties do not mutually agree in writing to binding
4834 arbitration, a party may commence an adversarial proceeding before any court of competent
4835 jurisdiction in the County of Alameda.

4836 54.01.3.1 Valuation Items in Section 7.12 and Section 7.13 and its
4837 subsections are not subject to and are excluded from, mandatory binding arbitration
4838 requirements in this Contract.

4839 54.01.3.2 Binding arbitration proceedings shall be in accordance with
4840 California Code of Civil Procedure section 1280 et seq., the then-current JAMS Streamlined
4841 Arbitration Rules, and the terms of Section 54.01.3, and its subsections. In the event of any
4842 inconsistency, the terms of Section 54.01.3, and its subsections shall control. The arbitration

4843 shall be administered by JAMS and conducted in the County of Alameda. If the parties are
4844 unable to select an arbitrator within twenty (20) days after delivering written notice requesting
4845 arbitration, JAMS shall select a qualified arbitrator from its panel. If JAMS is unwilling or unable
4846 to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause,
4847 the parties may mutually designate another arbitration organization with similar procedures to
4848 serve as the provider of arbitration. If the parties cannot agree on the arbitration organization,
4849 the Presiding Judge of the Alameda County Superior Court shall designate such an organization
4850 upon the petition of either party.

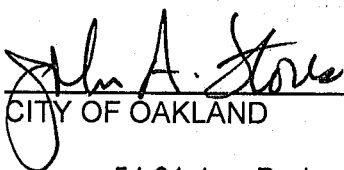
4851 54.01.3.3 The arbitrator shall be independent of and unaffiliated with,
4852 each party and shall not ever have been an employee of either party, under contract with either
4853 party in the past five (5) years or acted as an arbitrator for such party within the past five (5)
4854 years.

4855 54.01.3.4 Within twenty (20) days after initiation of the arbitration, if
4856 not previously done so under the terms of this Contract, the parties shall each submit to each
4857 other and the arbitrator their respective relevant value for the item subject to the valuation
4858 dispute, with such supporting information as is reasonably necessary to support such suggested
4859 value. If the two (2) valuations so submitted differ by less than or equal to ten percent (10%) of
4860 the higher of the two (2), the average of the two (2) shall become the agreed upon amount for
4861 purposes of this Contract and the arbitration shall not be continued. If the two (2) valuations
4862 differ by more than ten percent (10%) of the higher of the two (2), then the arbitrator shall make
4863 a determination of the relevant value and submit such determination to both the parties. This
4864 third valuation will then be averaged with the closer of the two (2) previous valuations and the
4865 result shall be the relevant value. In no event shall the resolution of a valuation dispute result in
4866 a valuation higher than that which was set forth by CONTRACTOR (e.g., an impact of a
4867 "material" disclosure or a higher tip fee adjustment). The final arbitrated value shall be binding
4868 on the parties.

4869 54.01.3.5 The arbitrator shall have the authority and power to award
4870 costs, including attorneys' fees and costs to the prevailing party. Unless otherwise awarded by
4871 the arbitrator, the parties shall evenly split the cost of any arbitration under this Article.

4872 54.01.3.6 By agreeing to binding arbitration, the parties irrevocably
4873 and voluntarily waive any right they may have to a trial by jury to the extent permitted by law.

4874 Acknowledgement of waiver of rights by trial by jury if proceeding with binding
4875 arbitration pursuant to Section 54.01.3, of this Contract.

4876 
4877 CITY OF OAKLAND

CONTRACTOR

4878 54.01.4 During the pendency of any dispute under this Article, all applicable
4879 time periods directly related to the dispute, including but not limited to the filing of a
4880 Government Code Claim, shall be tolled until its resolution; provided, however, that no tolling
4881 shall apply to any matters other than those directly related to the dispute, and such tolling shall
4882 not entitle a party to breach, default, or fail to perform its obligations under this Contract.

4883 **ARTICLE 55. LOCAL HIRE COMPLIANCE**

4843 shall be administered by JAMS and conducted in the County of Alameda. If the parties are
4844 unable to select an arbitrator within twenty (20) days after delivering written notice requesting
4845 arbitration, JAMS shall select a qualified arbitrator from its panel. If JAMS is unwilling or unable
4846 to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause,
4847 the parties may mutually designate another arbitration organization with similar procedures to
4848 serve as the provider of arbitration. If the parties cannot agree on the arbitration organization,
4849 the Presiding Judge of the Alameda County Superior Court shall designate such an organization
4850 upon the petition of either party.

4851 54.01.3.3 The arbitrator shall be independent of and unaffiliated with,
4852 each party and shall not ever have been an employee of either party, under contract with either
4853 party in the past five (5) years or acted as an arbitrator for such party within the past five (5)
4854 years.

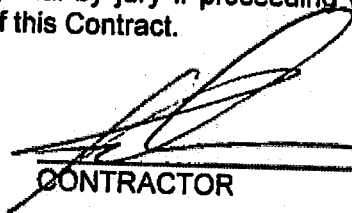
4855 54.01.3.4 Within twenty (20) days after initiation of the arbitration, if
4856 not previously done so under the terms of this Contract, the parties shall each submit to each
4857 other and the arbitrator their respective relevant value for the item subject to the valuation
4858 dispute, with such supporting information as is reasonably necessary to support such suggested
4859 value. If the two (2) valuations so submitted differ by less than or equal to ten percent (10%) of
4860 the higher of the two (2), the average of the two (2) shall become the agreed upon amount for
4861 purposes of this Contract and the arbitration shall not be continued. If the two (2) valuations
4862 differ by more than ten percent (10%) of the higher of the two (2), then the arbitrator shall make
4863 a determination of the relevant value and submit such determination to both the parties. This
4864 third valuation will then be averaged with the closer of the two (2) previous valuations and the
4865 result shall be the relevant value. In no event shall the resolution of a valuation dispute result in
4866 a valuation higher than that which was set forth by CONTRACTOR (e.g., an impact of a
4867 "material" disclosure or a higher tip fee adjustment). The final arbitrated value shall be binding
4868 on the parties.

4869 54.01.3.5 The arbitrator shall have the authority and power to award
4870 costs, including attorneys' fees and costs to the prevailing party. Unless otherwise awarded by
4871 the arbitrator, the parties shall evenly split the cost of any arbitration under this Article.

4872 54.01.3.6 By agreeing to binding arbitration, the parties irrevocably
4873 and voluntarily waive any right they may have to a trial by jury to the extent permitted by law.

4874 Acknowledgement of waiver of rights by trial by jury if proceeding with binding
4875 arbitration pursuant to Section 54.01.3, of this Contract.

4876
4877 _____
CITY OF OAKLAND



CONTRACTOR

4878 54.01.4 During the pendency of any dispute under this Article, all applicable
4879 time periods directly related to the dispute, including but not limited to the filing of a
4880 Government Code Claim, shall be tolled until its resolution; provided, however, that no tolling
4881 shall apply to any matters other than those directly related to the dispute, and such tolling shall
4882 not entitle a party to breach, default, or fail to perform its obligations under this Contract.

4883 **ARTICLE 55. LOCAL HIRE COMPLIANCE**

4884 55.01 CONTRACTOR represents and warrants that at least fifty (50) percent of all new
4885 hires in their workforce will be Oakland residents (i.e., for every two (2) new hires, one (1) will be
4886 a resident of Oakland). A compliance baseline will be determined on October 1, 2015. The
4887 baseline calculation will be total number of full-time equivalent employees with a verified
4888 Oakland address assigned to this Contract divided by the total number of full-time equivalent
4889 employees assigned to this Contract. CONTRACTOR shall provide documentation for the
4890 number of employees used in the baseline and employees that are used in the calculation as
4891 Oakland residents. Compliance with this Section 55.01 is subject to requirements of
4892 CONTRACTOR collective bargaining agreements.

4893 55.02 Beginning November 2015, CONTRACTOR will provide a monthly report in
4894 accordance with Section 19.02.1.7 showing the total number of employees hired in the previous
4895 month and of those employees hired, the city of residence of those new employees. CITY will
4896 calculate annually the percent of new hires that are Oakland residents. Failure to comply with
4897 Section 55.01 hiring requirements may result in liquidated damages per Article 22. CITY may
4898 put CONTRACTOR on a corrective action plan to achieve compliance with Section 55.01.
4899 Failure to meet the corrective action plan may result in CITY not extending the Contract per
4900 Article 3.

4901 55.03 CONTRACTOR may provide documentation of employees that are Oakland
4902 residents that do not work on this Contract for CITY's consideration. CITY, at its sole discretion,
4903 may choose to use the number of Oakland residents that are employees of CONTRACTOR that
4904 do not work on this Contract in the annual calculation for compliance with this Article.

4905 **ARTICLE 56. RELIGIOUS PROHIBITION**

4906 56.01 There shall be no religious worship, instruction, or proselytization as part of, or in
4907 connection with, the performance of this Contract.

4908 **ARTICLE 57. POLITICAL PROHIBITION AND CAMPAIGN** 4909 **CONTRIBUTIONS**

4910 57.01 This Contract is subject to the City of Oakland Campaign Reform Act of Chapter
4911 3.12 of the Oakland Municipal Code and its implementing regulations. The Campaign Reform
4912 Act prohibits contractors that are doing business or seeking to do business with CITY from
4913 making campaign contributions to Oakland candidates between commencement of negotiations
4914 and either one hundred eighty (180) days after completion of, or termination of, Contract
4915 negotiations. CONTRACTOR has signed and dated an Acknowledgment of Campaign
4916 Contribution Limits Schedule O attached hereto and incorporated herein as Attachment 3.

4917 **ARTICLE 58. BUSINESS TAX CERTIFICATE**

4918 58.01 CONTRACTOR shall obtain and provide proof of a valid CITY business tax
4919 certificate. Said business tax certificate will be valid prior to and to the conclusion of this
4920 Contract. A copy of the business tax certificate for 2015 is attached hereto and incorporated
4921 herein as Exhibit 19. A copy of subsequent business tax certificates shall be sequentially
4922 numbered and attached hereto.

4923 **ARTICLE 59. ATTORNEYS FEES**

4924 59.01 In any dispute between the parties, whether or not resulting in litigation or any
4925 appeal therefrom, the prevailing party shall be entitled to recover from the other party all
4926 reasonable costs, including, without limitation, reasonable attorneys' fees. "Prevailing parties"
4927 shall include without limitation (i) a party who dismisses an action in exchange for sums
4928 allegedly due such party; (ii) the party which received performance from the other party of an
4929 alleged breach of a covenant or a desired remedy where such performance is substantially
4930 equal to the relief sought in an action; or (iii) the party determined to be the prevailing party by a
4931 court of law.

4932 **ARTICLE 60. LIMITATION OF FELONY DISCLOSURE ON JOB**
4933 **APPLICATION**

4934 60.01 CONTRACTOR is required to exclude from the initial job application, any
4935 requirement of the applicant to disclose felony history as long as it complies with governing
4936 laws.

4937 **ARTICLE 61. COMPETITIVE WAGES AND BENEFITS**

4938 61.01 Living Wage Requirements. CONTRACTOR shall comply with CITY Living
4939 Wage Ordinance Chapter 2.28 of the Oakland Municipal Code and its implementing regulations.
4940 The Ordinance requires among other things, submission of the Declaration of Compliance
4941 attached and incorporated herein as Attachment 3. All of the provisions of Section 61.01, or any
4942 part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver
4943 is explicitly set forth in such agreement in clear and unambiguous terms.

4944 61.02 Competitive Wages and Benefits. CONTRACTOR shall pay Competitive Wages
4945 and Benefits defined as the wages and benefits under collectively bargained contracts in use in
4946 Alameda County. CONTRACTOR shall provide CITY evidence of compliance with this
4947 provision at CITY'S request.

4948 61.03 CONTRACTOR shall provide CITY ninety (90) day notice for expiration any of
4949 CONTRACTOR'S collectively bargained contracts. CONTRACTOR shall timely notice CITY
4950 should other issues arise with CONTRACTOR'S collectively bargained contracts.

4951 **ARTICLE 62. VALIDITY OF CONTRACTS**

4952 62.01 This Contract shall not be binding or of any force or effect until signed by the City
4953 Administrator or his or her designee and approved as to form and legality by the City Attorney or
4954 his or her designee.

4955 **ARTICLE 63. EQUAL BENEFITS ORDINANCE**

4956 63.01 This Contract is subject to the Equal Benefits Ordinance of Chapter 2.232.010 of
4957 the Oakland Municipal Code and its implementing regulations. Entities which enter into a
4958 "contract" with CITY for an amount of Twenty-five Thousand Dollars (\$25,000.00) or more for
4959 public works or improvements to be performed, or for goods or services to be purchased or
4960 grants to be provided at the expense of CITY or to be paid out of moneys deposited in the
4961 treasury or out of trust moneys under the control of or collected by CITY; and Entities which
4962 enter into a "property contract" pursuant to Section 2.23.020(D) with CITY in an amount of
4963 Twenty-five Thousand Dollars (\$25,000.00) or more for the exclusive use or occupancy (1) of

4964 real property owned or controlled by CITY or (2) of real property owned by others for CITY's use
4965 or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.

4966 63.02 The Ordinance shall only apply to those portions of CONTRACTOR'S
4967 operations that occur (1) within the CITY; (2) on real property outside Oakland if the property is
4968 owned by CITY or if CITY has a right to occupy the property, and if CONTRACTOR'S presence
4969 at that location is connected to a contract with CITY; and (3) elsewhere in the United States
4970 where work related to a City contract is being performed. The requirements of this Section shall
4971 not apply to subcontracts or subcontractors of any contract or contractor. The Equal Benefits
4972 Ordinance requires among other things, submission of Schedule N-1, the Equal Benefits-
4973 Declaration of Nondiscrimination, incorporated herein.

4974 **ARTICLE 64. LABOR PEACE**

4975 64.01 General. CITY has determined that the level of vulnerability of the proposed
4976 Contract to labor disputes is sufficient to warrant that labor peace is essential to the property
4977 interests of CITY. Therefore, CONTRACTOR shall at all times comply with the provisions of
4978 CONTRACTOR'S Employee Labor Relations Plan set forth in Exhibit 17 to this Contract.

4979 **ARTICLE 65. AMENDMENT**

4980 65.01 No modification, amendment, or supplement to this Contract will be binding on
4981 the parties unless it is made in writing, duly authorized by CONTRACTOR and CITY, and
4982 signed by both parties.

4983 **ARTICLE 66. ALL PRIOR CONTRACTS SUPERSEDED**

4984 66.01 This document incorporates and includes all prior negotiations, correspondence,
4985 conversations, agreements and understandings applicable to the matters contained in this
4986 Contract and the parties agree that there are no commitments, agreements or understandings
4987 concerning the subject matter of this Contract that are not contained in this document or in the
4988 Disposal Services Contract or the Residential Recycling Services Contract which are being
4989 executed simultaneously with this document. Accordingly, it is agreed that no deviation from the
4990 terms of this Contract shall be predicated upon any prior representations or agreements,
4991 whether oral or written.

4992 **ARTICLE 67. HEADINGS**

4993 67.01 Headings in this document are for convenience of reference only and are not to
4994 be considered in any interpretation of this Contract.

4995 **ARTICLE 68. LEGAL REPRESENTATION**

4996 68.01 Each of the parties has received the advice of legal counsel prior to signing this
4997 Contract. The parties agree no provision or provisions may be subject to any rule of
4998 construction based upon any party being considered the party "drafting" this Contract.

4999 **ARTICLE 69. EXHIBITS**

5000 69.01 Each Exhibit referred to in this Contract forms an essential part of this Contract.

5001 Each such Exhibit is a part of this Contract and each is incorporated by this reference. In the
5002 event that any conflict exists between the language of this Contract and that contained in an
5003 Exhibit, the Contract language shall take precedence.

5004 **ARTICLE 70. EFFECTIVE DATE**

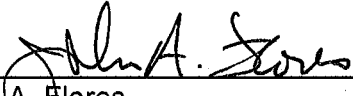
5005 70.01 This Contract shall become effective at such time as it is properly executed by
5006 CITY and CONTRACTOR and CONTRACTOR shall begin Collection Services, as covered
5007 herein, as of July 1, 2015.

5008 **ARTICLE 71. COUNTERPARTS**

5009 This Contract may be executed in counterparts with each counterpart being interpreted as an
5010 original, and all of which, taken together, shall constitute one and the same instrument. IN
5011 WITNESS WHEREOF, CITY and CONTRACTOR have executed this Contract on the day and
5012 year first written above.

5013 CITY OF OAKLAND
5014

WASTE MANAGEMENT OF ALAMEDA
COUNTY, INC.

5015 By: 
5016 John A. Flores
5017 Interim City Administrator

By: _____
Barry Skolnick
President

5018 2-20-2015
5019 Date

Date

5020 _____
5021 City of Oakland Business License Number

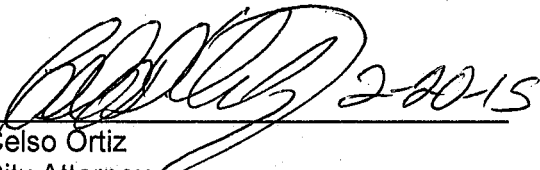
5022 **The foregoing Contract has been reviewed and approval is recommended:**

5023 Ordinance No. 13258 C.M.S.

5024 Approved by City Council

5025

5026 APPROVED AS TO FORM:

5027  2-20-15
5028 Celso Ortiz
5029 City Attorney

Date

5001 Each such Exhibit is a part of this Contract and each is incorporated by this reference. In the
5002 event that any conflict exists between the language of this Contract and that contained in an
5003 Exhibit, the Contract language shall take precedence.

5004 **ARTICLE 70. EFFECTIVE DATE**

5005 70.01 This Contract shall become effective at such time as it is properly executed by
5006 CITY and CONTRACTOR and CONTRACTOR shall begin Collection Services, as covered
5007 herein, as of July 1, 2015.


5008 **ARTICLE 71. COUNTERPARTS**

5009 This Contract may be executed in counterparts with each counterpart being interpreted as an
5010 original, and all of which, taken together, shall constitute one and the same instrument. IN
5011 WITNESS WHEREOF, CITY and CONTRACTOR have executed this Contract on the day and
5012 year first written above.

5013 CITY OF OAKLAND
5014

WASTE MANAGEMENT OF ALAMEDA
COUNTY, INC.

5015 By: _____
5016 John A. Flores
5017 Interim City Administrator

By: 

Barry Skolnick
President

5018 _____
5019 Date

Date 2/20/2015

5020 _____
5021

133566⁰⁹
City of Oakland Business License Number

5022 The foregoing Contract has been reviewed and approval is recommended:

5023 Ordinance No. 13258 C.M.S.

5024 Approved by City Council

5025

5026 APPROVED AS TO FORM:

5027 _____
5028 Celso Ortiz
5029 City Attorney

Date