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RESIDENTIAL RECYCLING COLLECTION SERVICE CONTRACT

Executed between

City of Oakland

and

[Insert Contractor name]

July 1, 2015

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TABLE OF CONTENTS

Residential Recycling Collection Services Contract

Article 1. DEFINITIONS	2
Article 2. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR	10
Article 3. TERM OF CONTRACT	12
Article 4. CONTRACTOR'S COVENANTS; CITY OPTION TO TERMINATE	12
Article 5. SERVICES PROVIDED BY CONTRACTOR	13
Article 6. SERVICE STANDARDS	14
Article 7. CHARGES AND RATES	21
Article 8. MATERIAL DIVERSION STANDARD	27
Article 9. SFD RECYCLING SERVICES.....	27
Article 10. MFD RECYCLING SERVICES	30
Article 11. COMMERCIAL NON-EXCLUSIVE RECYCLING COLLECTION SERVICE.....	33
Article 12. CITY RECYCLING COLLECTION SERVICE	34
Article 13. COLLECTION ROUTES	36
Article 14. COLLECTION EQUIPMENT.....	37
Article 15. LOCAL OFFICE	39
Article 16. CUSTOMER SERVICE.....	39
Article 17. PUBLIC OUTREACH SERVICES.....	40
Article 18. EMERGENCY SERVICE PROVISIONS.....	42
Article 19. RECORD KEEPING & REPORTING REQUIREMENTS	43
Article 20. NONDISCRIMINATION.....	45
Article 21. SERVICE INQUIRIES AND COMPLAINTS	46
Article 22. QUALITY OF PERFORMANCE OF CONTRACTOR.....	46
Article 23. FRANCHISE FEE AUDIT AND PERFORMANCE REVIEWS	51
Article 24. PERFORMANCE SECURITY	52
Article 25. INSURANCE.....	53
Article 26. INDEMNIFICATION	56
Article 27. DEFENSE OF CONTRACTOR'S RIGHTS	58

Article 28. OBLIGATION TO PROVIDE SERVICE.....	59
Article 29. DEFAULT OF CONTRACT	62
Article 30. MODIFICATIONS TO THE CONTRACT	65
Article 31. LEGAL REPRESENTATION	69
Article 32. FINANCIAL INTEREST.....	69
Article 33. CONTRACTOR'S PERSONNEL.....	69
Article 34. UNACCEPTABLE WASTE.....	70
Article 35. INDEPENDENT CONTRACTOR	70
Article 36. LAWS TO GOVERN	70
Article 37. CONSENT TO JURISDICTION.....	70
Article 38. ASSIGNMENT	71
Article 39. COMPLIANCE WITH LAWS	72
Article 40. PERMITS AND LICENSES	73
Article 41. OWNERSHIP OF WRITTEN MATERIALS.....	73
Article 42. WAIVER.....	73
Article 43. POINT OF CONTACT	73
Article 44. CONFLICT OF INTEREST	73
Article 45. NOTICES	73
Article 46. TRANSITION TO NEXT CONTRACTOR.....	75
Article 47. CONTRACTOR'S RECORDS.....	75
Article 48. ENTIRE CONTRACT	76
Article 49. SEVERABILITY	76
Article 50. RIGHT TO REQUIRE PERFORMANCE.....	76
Article 51. CORPORATE GUARANTY.....	76
Article 52. EMPLOYEE RETENTION REQUIREMENTS.....	76
Article 53. SUBCONTRACTING	77
Article 54. [RESERVED]	77
Article 55. LOCAL HIRE COMPLIANCE	77
Article 56. RELIGIOUS PROHIBITION	77
Article 57. POLITICAL PROHIBITION AND CAMPAIGN CONTRIBUTIONS.....	78

Article 58. BUSINESS TAX CERTIFICATE	78
Article 59. ATTORNEYS FEES	78
Article 60. LIMITATION OF FELONY DISCLOSURE ON JOB APPLICATION	78
Article 61. COMPETITIVE WAGES AND BENEFITS.....	78
Article 62. VALIDITY OF CONTRACTS	79
Article 63. EQUAL BENEFITS ORDINANCE	79
Article 64. LABOR PEACE.....	79
Article 65. AMENDMENT	79
Article 66. ALL PRIOR CONTRACTS SUPERSEDED.....	80
Article 67. HEADINGS	80
Article 68. LEGAL REPRESENTATION	80
Article 69. EXHIBITS.....	80
Article 70. EFFECTIVE DATE.....	80
EXHIBIT 1 MAXIMUM RECYCLING SERVICE RATES.....	83
EXHIBIT 1A MAXIMUM RECYCLING SERVICE RATES – SFD SERVICES	84
EXHIBIT 1A MAXIMUM RECYCLING SERVICE RATES – PER COLLECTED TON.....	85
EXHIBIT 1B MAXIMUM RECYCLING SERVICE RATES – SFD ANCILLARY SERVICES	86
EXHIBIT 1C MAXIMUM RECYCLING SERVICE RATES – MFD ANCILLARY SERVICES	87
EXHIBIT 1D MAXIMUM RECYCLING SERVICE RATES – NON-EXCLUSIVE COMMERCIAL SERVICES	88
EXHIBIT 1E MAXIMUM RECYCLING SERVICE RATES – EMERGENCY SERVICE RATES - EMPLOYEES.....	89
EXHIBIT 1F MAXIMUM RECYCLING SERVICE RATES -- EMERGENCY SERVICE RATES - EQUIPMENT.....	89
EXHIBIT 2 REFUSE RATE INDEX	90
EXHIBIT 3 APPROVED FACILITIES	93
EXHIBIT 4 CITY FACILITIES.....	94
EXHIBIT 5 TRANSITION PLAN.....	95

EXHIBIT 6 COMMUNITY OUTREACH STRATEGY 96

EXHIBIT 7 DIVERSION RECOVERY PLAN 97

EXHIBIT 8 CUSTOMER SERVICE PLAN..... 98

EXHIBIT 9 RECYCLING COLLECTION SERVICE OPERATIONS PLAN 99

EXHIBIT 10 VEHICLE SPECIFICATIONS 100

EXHIBIT 11 CONTAINER SPECIFICATIONS..... 101

EXHIBIT 12 MEMORANDUM OF UNDERSTANDING 102

EXHIBIT 13 LOCAL BUSINESS PRESENCE AND PARTICIPATION
REPORTING FORM..... 103

EXHIBIT 13 A LOCAL BUSINESS PRESENCE AND PARTICIPATION
REQUIREMENTS 104

EXHIBIT 14 EMPLOYEE AND LABOR RELATIONS PLAN 105

EXHIBIT 15 GUARANTY AGREEMENT..... 106

EXHIBIT 16 BUSINESS TAX CERTIFICATE 116

- ATTACHMENT 1 Contract between the CITY of Oakland and Disposal Contractor (To be included after award)
- ATTACHMENT 2 Contract between the CITY of Oakland and Mixed Material & Organics Contractor (To be included after award)
- ATTACHMENT 3 City of Oakland Required Forms (To be included after award)

CITY OF OAKLAND

1
2 This Contract made and entered into [Insert Date] (the Effective Date), by and between the
3 CITY OF OAKLAND, in the state of California, hereinafter referred to as "CITY" and [Insert
4 Contractor Name], a California corporation, hereinafter referred to as "CONTRACTOR."

RECITALS

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

11 WHEREAS, the State of California, through enactment of the California Integrated Waste
12 Management Act of 1989 (California Public Resources Code section 40000, et seq.) also
13 recognizes the important health and safety consideration to long-term planning for local
14 government's adequate Disposal needs. The California Integrated Waste Management Act of
15 1989 declares that the responsibility for management of Solid Waste is a shared responsibility
16 between the state and local governments. The state requires local governments to make
17 adequate provision for at least fifteen (15) years of Garbage Disposal capacity to preserve the
18 health, safety and well-being of the public. The California Integrated Waste Management Act of
19 1989 and Oakland City Charter Article X and Oakland Municipal Code Chapter 8.28 also
20 authorize local governments to enter into exclusive franchise contracts to provide Garbage
21 handling services for the health, safety and wellbeing of its citizens (California Public Resources
22 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 Residential Recyclable 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 the CITY to provide for the Collection and Processing of
42 Recyclable Materials as defined in Article 1 of this Contract;

43 WHEREAS, CITY has entered into Contracts to provide: (i) Mixed Materials and Organics
44 Collection Services; and (ii) Disposal Services within the CITY;

45 WHEREAS, CITY further declares its intent to regulate the maximum rates CONTRACTOR may
46 charge Customers for the Collection, transportation and Processing of Recyclable Materials;

47 WHEREAS, this Contract and the maximum rates CONTRACTOR may charge Customers for
48 such Collection of Recyclable Materials are a product of a multi-year, open and public
49 procurement process, are competitive for the industry based on the substantial array of services
50 provided, and are reasonably related to the cost of providing such services;

51 WHEREAS, the CITY Council has determined through a competitive procurement process for
52 Residential Recycling Collection Services that CONTRACTOR by demonstrated experience,
53 reputation and capacity is qualified to provide for the Collection of Residential Recyclable
54 Materials within the corporate limits of CITY, the transportation of such material to appropriate
55 places for Processing and Recycling and the CITY Council desires that CONTRACTOR be
56 engaged to perform such services on the basis set forth in this Contract;

57 WHEREAS, CONTRACTOR, through its proposal to CITY, has proposed and represented that it
58 has the ability and capacity to provide for the Collection of Recyclable Materials within the
59 corporate limits of the CITY and the transportation of such material to appropriate places for
60 Processing, and Recycling;

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

63 WHEREAS, this Contract has been developed by and is satisfactory to CITY and
64 CONTRACTOR.

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

67 **Article 1. DEFINITIONS**

68 For the purpose of this Residential Recycling Collection Service Contract ("Contract"), the
69 definitions contained in this Article shall apply unless otherwise specifically stated. When not
70 inconsistent with the context, words used in the present tense include the future, words in the
71 plural include the singular and words in the singular include the plural. Use of the masculine
72 gender shall include the feminine gender.

73 1.01 AB 32. The Global Warming Solutions Act, (California Public Safety Code
74 section 38500 et seq.) as amended, including rules and regulations promulgated thereunder as
75 amended, which among other things, sets a greenhouse gas reduction goal by 2020.

76 1.02 AB 341. The California legislation (Stats. 2006, Ch. 476), as it may be amended
77 from time to time, that, among other things, added Chapter 12.8 of Part 3 of Division 30 of the
78 Public Resources Code (commencing with section 42649) imposing mandatory commercial
79 recycling requirements and requirements that each jurisdiction implement an outreach and
80 education program and monitor compliance with the Mandatory Commercial Recycling
81 requirements.

82 1.03 AB 939. The California Integrated Waste Management Act (Public Resources
83 Code section 40000 et seq.), as amended from time to time.

84 1.04 Bin. A watertight metal or plastic Container with a hinged plastic lid and a
85 capacity of between one (1) and seven (7) cubic yards designed or intended to be mechanically
86 dumped into a loader packer type truck, that are approved by CITY and labeled as specified by
87 CITY.

88 1.05 Bulky Goods. Materials such as, but not limited to, stoves, refrigerators, water
89 heaters, washing machines, clothes dryers, small air conditioning units, other large and small
90 household appliances, including appliances containing Freon, furniture, carpets, tires, wood,
91 household items, tires with or without rims, mattresses, clothing, Large Plant Debris, and
92 corrugated cardboard. Bulky Goods do not include items herein defined as Unacceptable
93 Waste or Construction and Demolition Debris.

94 1.06 Cart. A watertight heavy plastic receptacle with a rated capacity of approximately
95 twenty (20), thirty two (32), sixty four (64) or ninety-six (96) gallons, having a hinged tight-fitting
96 lid, and two (2) wheels, that is approved by CITY and is labeled as specified by CITY.

97 1.07 Change in Law. The adoption, promulgation, or modification of any generally
98 applicable and enforceable federal, state, local joint power authority (JPA), or foreign rule, law,
99 regulation, ordinance, order, judgment, decree, permit or administrative agency guidelines
100 (excluding orders, judgments, and decrees specific to a particular facility) duly adopted and
101 promulgated officially in writing for uniform application occurring after January 1, 2013. Change
102 in Law does not include changes initiated by CONTRACTOR. Change in Law shall not include
103 such changes enacted or adopted prior to the due date for RFP proposals, or regulatory
104 changes approved prior to the effective date of this Contract (i.e. chaptered statute or final
105 adoption of regulation).

106 1.08 CITY. The CITY of Oakland, in the state of California, a municipal corporation.

107 1.09 CITY Administrator. The CITY official who is responsible for the day-to-day
108 operations of CITY agencies and departments or his/her designee.

109 1.10 CITY Recycling Collection Service. The Collection of Recyclable Materials from
110 CITY Facilities in the Service Area, the delivery of the Recyclable Materials to a Material
111 Recovery Facility, and the Processing and marketing of the Recyclable Materials.

112 1.11 Collect/Collection. To pick up, transport, and remove Recyclable Materials.

113 1.12 Commercial. A business establishment and/or industrial facility including, but not
114 limited to, governmental, religious and educational facilities.

115 1.13 Commercial Non-exclusive Recycling Collection Service. The Collection of
116 Recyclable Materials from Commercial Service Addresses subscribing to such service in the
117 Service Area, the delivery of the Recyclable Materials to a Material Recovery Facility, and the
118 Processing and marketing of the Recyclable Materials.

119 1.14 Compactor. Any Roll-Off Box or Bin that has a compaction mechanism, whether
120 stationary or mobile.

121 1.15 Competitive Wages and Benefits. Wages and benefits equivalent to or better
122 than collectively bargained contracts in use in Alameda, Contra Costa, San Francisco, Santa
123 Clara and San Mateo Counties.

124 1.16 Construction and Demolition Debris. Materials resulting from construction,
125 remodeling, repair or demolition operations on any house, or residential property, commercial
126 building, pavement or other structure. Construction and Demolition Debris includes but is not
127 limited to rocks, soils, tree remains and other Plant Debris, which results from land clearing or

128 land development operations in preparation for construction.

129 1.17 Container. A Bin, Cart, Roll-Off Box, Compactor or other item approved by CITY
130 for use in containing Recyclable Materials set out for Collection under the terms of this Contract.

131 1.18 Contract or Franchise Contract. This franchise document and all amendments
132 thereto, between CITY and CONTRACTOR, governing the provision of Residential Recycling
133 Collection Services as provided herein, including all exhibits hereto, as it may be amended from
134 time to time.

135 1.19 Contract Manager. The CITY employee(s) designated by the CITY Administrator
136 to act as his/her designee regarding the day-to-day management of this Contract.

137 1.20 Contract Year. Each twelve (12) month period from July 1 to June 30 beginning
138 July 1, 2015.

139 1.21 CONTRACTOR. [Insert CONTRACTOR Name]

140 1.22 Covered Electronic Device or CED. Discarded electronic devices that the
141 California Department of Toxic Substances Control (DTSC) has determined to be a covered
142 electronic device (California Public Resources Code section 42463). CEDs include cathode ray
143 tube (CRT) devices (including televisions and computer monitors); LCD desktop monitors;
144 laptop computers with LCD displays; LCD televisions; plasma televisions; portable DVD players
145 with LCD screens; and other electronic devices as may be added by the DTSC from time to
146 time.

147 1.23 Customer. The Person or Persons who have the legal right to initiate, cancel or
148 make changes to Residential Recycling Collection Services.

149 1.24 Difficult to Serve. A set-out site for Containers which has any of the following
150 features:

151 1.24.1 A grade greater than fifteen (15) percent;

152 1.24.2 An obstructed vertical clearance of less than fifteen (15) feet;

153 1.24.3 A paved, concrete or similar surface over which Containers must be rolled
154 that contains large deep grooves;

155 1.24.4 An unpaved surface over which Containers must be rolled;

156 1.24.5 A turn radius of less than fifty (50) feet; or

157 1.24.6 Is more than one hundred (100) feet from the public road.

158 1.25 Disposal (Dispose). The disposition of Mixed Materials, Garbage and Residue
159 received from CONTRACTOR and CITY at the Disposal Facility under the terms of this
160 Contract, or a) the placement of any materials Collected pursuant to this Contract in landfills,
161 including as "beneficial reuse" as defined by California Code of Regulations Title 27, Chapter 3,
162 Article 1, Section 20686; or (b) disposition to "incinerators" as defined by Alameda County
163 Waste Reduction and Recycling Initiative Charter Amendment (Measure D) SUBSECTION
164 64.150 T.

165 1.26 Disposal Contractor. (Insert Name).

166 1.27 Disposal Facility or Landfill. [Insert Disposal Facility Name] that is owned and
167 operated by the Disposal Contractor or such other facility that is selected by CONTRACTOR
168 and approved by CITY for the Disposal of Recycling Residue that is designed, operated, and
169 legally permitted for the purpose of receiving and Disposing of Recycling Residue.

170 1.28 Divert/Diversion. The avoidance of Disposal at the Disposal Facility or other
171 landfill, or through “transformation” as defined by Public Resources Code section 40201, of any
172 materials Collected pursuant to this Contract, through Processing.

173 1.29 Dwelling Unit. Any individual living unit that includes a kitchen, and a room or
174 suite of rooms, and is designed or occupied as separate living quarters for an individual or
175 group of individuals. Dwelling Units include live/work units, as defined by Oakland Planning
176 Codes section 17.65.160. Dwelling Units do not include work/live units, as defined by Oakland
177 Planning Code section 17.65.150.

178 1.30 E-Waste. Waste that is powered by batteries or electricity, such as computers,
179 telephones, answering machines, radios, stereo equipment, tape players/recorders,
180 phonographs, videocassette players/recorders, compact disc players/recorders, calculators and
181 other items also defined as CEDs.

182 1.31 Fixed Body Vehicle. Any wheeled vehicle that does not rely on a Roll-Off Box or
183 other detachable container to Collect, contain and transport material.

184 1.32 Food Scraps. Raw or cooked vegetable, fruit, grain, fish, and other items,
185 including meat, bones, dairy products, cooking fats, oil or kitchen grease; paper, cardboard and
186 other compostable items that have been contaminated with food, cooking fats, oil or kitchen
187 grease, compostable paper or plastics associated with food preparation or consumption such as
188 paper towels, paper plates, paper cups, tissue, waxed paper and waxed cardboard and other
189 materials designated by CITY that are capable of being composted and that are set out
190 separate from Mixed Materials for Collection as Organic Materials.

191 1.33 Force Majeure. Any acts of God, such as landslides, lightning, fires, storms,
192 floods, pestilence, freezing, and earthquakes; explosions, sabotage, civil disturbances, acts of a
193 public enemy, wars, terrorism, blockades, riots, or other industrial disturbances, eminent
194 domain, condemnation or other taking, or other events of a similar nature, not caused or
195 maintained by CITY or CONTRACTOR, which event is not reasonably within the control of the
196 party claiming the excuse from its obligations due to such event, to the extent such event has a
197 significant and material adverse effect on the ability of a party to perform its obligations
198 thereunder. Force Majeure shall not include power outages, fuel shortages, strikes, work
199 stoppage or slowdown, sickout, lockout, picketing or other concerted job action conducted by or
200 directed at CONTRACTOR or CONTRACTOR’S employees or subcontractors. Force Majeure
201 shall include a Change in Law if such Change in Law prohibits a party’s performance hereunder.
202 Notwithstanding the foregoing, (i) no event shall delivery of Recyclable Materials to a facility
203 shall constitute a Force Majeure under this Contract unless (and then only to the extent) that
204 such event prevents the delivery of or acceptance of Recyclable Materials to or by that facility;
205 (ii) no failure of performance by any subcontractor of CONTRACTOR shall be a Force Majeure
206 unless such failure was itself caused by a Force Majeure; (iii) except as provided herein, no
207 event which merely increases CONTRACTOR’S cost of performance shall be a Force Majeure;
208 and (iv) no event, the effects of which could have been prevented by reasonable precautions,
209 including compliance with agreements and applicable laws, shall be a Force Majeure.

210 1.34 Garbage. All, putrescible and non-putrescible waste, non-recyclable packaging
211 and rubbish attributed to normal activities of a Service Address wherein the Garbage is
212 generated and Collected which is set out for Collection by the Service Recipient. Garbage does
213 not include abandoned automobiles or those items defined herein as Unacceptable Waste.

214 1.35 Guarantor. [Insert Name].

215 1.36 Guaranty. The document contained in Exhibit 15, which is attached to and
216 included in this Contract that is executed by the Guarantor guaranteeing the timely and full
217 performance of CONTRACTOR's obligations.

218 1.37 Generator. A Single Family Dwelling or Multi-Family Dwelling that produces
219 Recyclable Materials.

220 1.38 Gross Receipts. CONTRACTOR revenue collected for the provision of the
221 Residential Recycling Collection Services exclusive of taxes and government fees.

222 1.39 Hazardous Waste. For purposes of this Contract, Hazardous Waste shall include
223 those wastes defined as Hazardous Waste in Oakland Municipal Code section 8.28.010 or as
224 subsequently amended. Section 8.28.010 currently defines Hazardous Waste as any
225 hazardous waste, material, substance or combination of materials which because of its quantity,
226 concentration, or physical, chemical, or infectious characteristics may cause, or significantly
227 contribute to an increase in mortality or an increase in serious irreversible, or incapacitating
228 reversible illness; or may pose a substantial present or potential risk to human health or the
229 environment when improperly treated, stored, transported, Disposed or otherwise managed;
230 and which requires special handling under any present or future federal, state or local law,
231 excluding de minimis quantities of waste of a type and amount normally found in residential
232 Garbage after implementation of programs for the safe Collection, recycling, treatment and
233 Disposal of Household Hazardous Waste in compliance with sections 41500 and 41802 of the
234 California Public Resources Code. "Hazardous Waste" shall include, but not be limited to: (a)
235 substances that are toxic, corrosive, inflammable or ignitable; (b) petroleum products, crude oil
236 (or any fraction thereof) and their derivatives; (c) explosives, asbestos, radioactive materials,
237 toxic substances or related hazardous materials; and (d) substances defined, regulated or listed
238 (directly or by reference) by applicable local, State or federal law as "hazardous substances,"
239 "hazardous materials," "hazardous wastes," "pollutant," "reproductive toxins," "toxic waste," or
240 "toxic substances," or similarly identified as hazardous to human health or the environment,
241 including those so defined in or pursuant to any of the following statutes: (i) the Comprehensive
242 Environmental Response, Compensation and Liability Act (CERCLA) of 1980, 42 USC section
243 9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC section 1802,
244 et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC section 6901 et seq.; (iv) the
245 Clean Water Act, 33 USC section 1251 et seq.; (v) California Health and Safety Code section
246 25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC Section 7901 et seq.;
247 and (vii) California Water Code section 13050; all rules and regulations adopted and
248 promulgated pursuant to such statutes, and future amendments to or recodifications of such
249 statutes, and any regulations adopted pursuant to these statutes after the date of this Contract,
250 as well as any subsequently enacted federal or California statute relating to the use, release or
251 disposal of toxic or hazardous substances, or to the remediation of air, surface waters,
252 groundwater, soil or other media contaminated with such substances; any other hazardous or
253 toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or
254 regulated under any other applicable federal, State or local environmental laws currently
255 existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated
256 biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products. The
257 parties intend that this definition not be limited to any particular statutory or regulatory regime
258 and that it be construed as broadly as possible.

259 1.40 Household Hazardous Waste (HHW). Any Hazardous Waste generated at a
260 SFD or MFD Service Address within the Service Area, including, but not limited to, cleaning
261 products, automotive products, fuel, lubricants, E-Wastes, paints, painting supplies, fluorescent
262 lamps, compact fluorescent lamps, varnishes, solvents, herbicides, pesticides, fertilizers,

263 automobile batteries, household batteries, adhesives, and Universal Waste. Household
264 Hazardous Waste does not include Used Oil or Used Oil Filters, and dry cell household
265 batteries when placed for Collection as set forth in this Contract or as directed by CITY.

266 1.41 Labor Disruption. Labor Disruptions are defined as strikes, slowdowns, sickout,
267 picketing, other concerted job actions, directed at CONTRACTOR, CONTRACTOR's employees
268 or subcontractors, excluding lockouts or stoppages conducted or initiated by CONTRACTOR.

269 1.42 Large Plant Debris. Oversized Plant Debris such as tree trunks, branches or
270 untreated and unpainted wood with a diameter of more than six (6) inches and not more than
271 two (2) feet, or a length of more than four (4) feet and no more than six (6) feet, or weighing not
272 more than seventy-five (75) pounds.

273 1.43 Material Recovery Facility (or MRF). Any facility selected by CONTRACTOR and
274 approved or specifically designated by CITY, designed, operated, and legally permitted for the
275 purpose of receiving and Processing Recyclable Materials, Organic Materials or Mixed
276 Materials.

277 1.44 Maximum Recycling Service Rates. Those per unit rates and ancillary charges
278 that were approved by CITY and are contained in Exhibit 1, which is attached to and included in
279 this Contract.

280 1.45 MFD or Multi-family Dwelling. Any residence with five (5) or more Dwelling Units,
281 including any flat, apartment, condominium, town home, service-enriched housing or other
282 residence, and other Dwelling Units in detached buildings on a single parcel, and excluding a
283 hotel, motel, dormitory, sheltered nursing facility, rooming house, or other such similar facility as
284 determined by CITY.

285 1.46 MFD Recycling Services. MFD Recycling Collection Service and Used Oil
286 Collection Service.

287 1.47 MFD Recycling Collection Service. The Collection of Recyclable Materials from
288 MFD Service Addresses in the Service Area, the delivery of the Recyclable Materials to the
289 MRF and the Processing or marketing of the Recyclable Materials.

290 1.48 Mixed Materials. All materials that are set out by the Service Recipient for
291 Collection by MM&O Collection Contractor, excluding items that are Source Separated. Mixed
292 Materials do not include items defined herein as Unacceptable Waste.

293 1.49 Mixed Materials and Organics (MM&O) Collection Contractor. (Insert Name).

294 1.50 Non-Collection Notice. A form developed and used by CONTRACTOR, as
295 approved by CITY, to notify Service Recipients of the reason for non-collection of materials set
296 out by the Service Recipient for Collection by CONTRACTOR pursuant to this Contract.

297 1.51 Organic Materials ("Organics"). Plant Debris, Food Scraps, compostable food
298 ware, compostable food containers, compostable paper, horse stable matter and other material
299 agreed upon by both parties that is separated for Collection by the MM&O Collection Contractor.

300 1.52 Overage. An amount of material in excess of the capacity of the Container
301 utilized at the Service Address for the set out of such material.

302 1.53 Person. An individual, association, partnership, corporation, joint venture,
303 school, the United States, the State of California, any municipality or other political subdivision
304 thereof, or any other entity whatsoever.

305 1.54 Plant Debris. Any vegetative matter resulting from normal yard and landscaping
306 maintenance or unpainted and untreated wood that is not more than four (4) feet in its longest
307 dimension or more than six (6) inches in diameter or weighs less than seventy five (75) pounds
308 per individual piece and can be handled by two (2) persons. Plant Debris includes palm, yucca
309 and cactus; grass clippings, leaves, pruning, weeds, branches, brush, holiday trees, and other
310 forms of horticultural waste. . Plant Debris must be generated at the Service Address from
311 which the Plant Debris is Collected, except for material generated on property owned or
312 maintained by CITY. Plant Debris does not include items defined herein as Unacceptable
313 Waste.

314 1.55 Processing. An operation or series of operations, whether involving equipment,
315 manual labor, or mechanical or biological processes, that sorts, enhances, upgrades,
316 concentrates, decontaminates, packages or otherwise prepares Recyclable Materials, and
317 returns marketable elements thereof to the economic mainstream in the form of raw material for
318 new, reused, or reconstituted products. Processing begins at the time the Recyclable Materials,
319 are delivered to the Processing facility and ends when the Processed materials are sold or
320 reused, and the Recycling Residue is properly Disposed.

321 1.56 Recycle or Recycled. To Process and market Recyclable Materials in a manner
322 that meets the requirements of the California Integrated Waste Management Act, Public
323 Resources Code section 40000 et seq., for inclusion of the materials in the calculation of
324 Diversion from landfill Disposal for the purposes of the solid waste diversion requirements of the
325 Act. Recycle does not include transformation as described in Public Resources Code section
326 41201, and does not include stockpiling or storage by CONTRACTOR or any other Person.

327 1.57 Recyclable Materials. Those materials designated in this Contract or other
328 materials agreed upon by the parties, for Collection and Recycling under this Contract, which
329 are segregated from Mixed Materials by CITY or residential Service Recipient at the source of
330 Generation. Recyclable Materials include newspaper, mixed paper (including, but not limited to,
331 white and colored paper, magazines, telephone books, chipboard, junk mail, and high grade
332 paper) glass bottles and jars, metal cans (ferrous, non-ferrous, and bi-metal containers,
333 including empty aerosol containers), aluminum foil and trays, milk and juice cartons, soup and
334 juice boxes, all narrow neck rigid plastic containers, non-bottle rigid plastics, corrugated
335 cardboard, and dry cell household batteries when placed in a clear heavy-duty sealed bag and
336 set out for Collection in the manner prescribed herein. CITY and CONTRACTOR may mutually
337 agree to include additional materials or remove materials from this list of Recyclable Materials.

338 1.58 Recycling Residue. Materials remaining after the Processing of Recyclable
339 Materials that are not Diverted.

340 1.59 Recycling Services. Residential Recycling Collection Services, CITY Recycling
341 Collection Service, and Commercial Non-Exclusive Recycling Collection Service.

342 1.60 Residential Recycling Collection Services. SFD Recycling Services, and MFD
343 Recycling Services.

344 1.61 Roll-Off Box. A metal Container of between six (6) and fifty (50) cubic yards that
345 is normally loaded onto a motor vehicle and transported to an appropriate facility. A Roll-Off
346 Box may be open topped or covered, at the discretion of CITY, with or without a compaction
347 unit.

348 1.62 Service Address. The physical location of the property receiving Recycling
349 Services.

- 350 1.63 Service Area. That area within the corporate limits of the City of Oakland.
- 351 1.64 Service Recipient. A Person receiving Recycling Services under the terms of this
352 Contract.
- 353 1.65 SFD Recycling Services. SFD Recycling Collection Service and Used Oil
354 Collection Service.
- 355 1.66 SFD Recycling Collection Service. The Collection of Recyclable Materials from
356 SFD Service Addresses in the Service Area, the delivery of the Recyclable Materials to the MRF
357 and the Processing and marketing of the Recyclable Materials.
- 358 1.67 Single Family Dwelling or SFD. A detached or attached residence containing
359 four (4) or fewer Dwelling Units when each Dwelling Unit is designed or used for occupancy by
360 one (1) or more individuals.
- 361 1.68 Solid Waste. All putrescible and non-putrescible solid, semisolid, and liquid
362 wastes, including Garbage, trash, refuse, paper, Rubbish, ashes, industrial wastes,
363 Construction and Demolition wastes, discarded home and industrial appliances, dewatered,
364 treated, or chemically fixed sewage sludge which is not Hazardous Waste, manure, vegetable
365 or animal solid and semisolid wastes, and other discarded solid and semi-solid wastes as
366 defined in California Public Resources Code section 40191, as that section may be amended
367 from time to time, but does not include Source Separated Recyclable Materials abandoned
368 vehicles and parts thereof, Hazardous Waste or low-level radioactive waste, medical waste,
369 Unacceptable Waste or Plant Debris. Solid Waste may include Recyclable Materials,
370 Compostable Materials, and Construction and Demolition Debris if such materials are not
371 Source Separated from Solid Waste at the site of generation or Collected for Recycling,
372 composting, Processing and marketing.
- 373 1.69 Source Separated Recyclable Materials. All materials that have been
374 segregated from Garbage by or for the Generator at the Service Address at which the materials
375 were generated, for handling in a manner different from that of Garbage.
- 376 1.70 Ton/Tonnage. A unit of measure for weight equivalent to two thousand (2,000)
377 standard pounds where each pound contains sixteen (16) ounces.
- 378 1.71 Universal Waste ("U-Waste"). Materials that the California Department of Toxic
379 Substances Control considers Universal Waste (California Code of Regulations Title 22, Div 4.5,
380 Ch 23), including materials such as batteries, thermostats, lamps, cathode ray tubes,
381 computers, telephones, answering machines, radios, stereo equipment, tape players/recorders,
382 phonographs, video cassette players/recorders, compact disc players/recorders, calculators,
383 some appliances, aerosol cans, fluorescent lamps, and certain mercury-containing devices.
- 384 1.72 Unacceptable Waste. Any and all waste, including but not limited to, Hazardous
385 Waste, and Household Hazardous Waste, the acceptance or handling of which would cause a
386 violation of any permit condition or legal or regulatory requirement, damage or threatened
387 damage to CONTRACTOR's equipment or facilities, or present a substantial endangerment to
388 the health or safety of the public or CONTRACTOR's employees; provided, that de minimis
389 quantities or waste of a type and amount normally found in Garbage or Mixed Materials after
390 implementation of programs for the safe Collection, Processing, treatment, and Disposal of
391 Household Hazardous Waste in compliance with sections 41500 and 41802 of the California
392 Public Resources Code shall not constitute Unacceptable Waste. Unacceptable Waste does
393 not include Used Oil, Used Oil Filters or dry cell household batteries when placed for Collection
394 as set forth in this Contract.

395 1.73 Used Oil. Any oil that has been refined from crude oil or has been synthetically
396 produced, and is no longer useful to the Service Recipient because of extended storage,
397 spillage or contamination with non-hazardous impurities such as dirt or water; or has been used
398 and as a result of such use has been contaminated with non-hazardous physical or chemical
399 impurities. Used Oil must be generated at the Service Address from which the Used Oil is
400 Collected. Used Oil does not include other automotive fluids.

401 1.74 Used Oil Collection Service. The Collection of Used Oil in Used Oil Containers
402 and Used Oil Filters in Used Oil Filter Containers from SFD and MFD Service Addresses in the
403 Service Area and the appropriate disposition of the Used Oil and Used Oil Filters in accordance
404 with the requirements of this Contract.

405 1.75 Used Oil Container. A plain plastic container that is at least four (4) quarts in
406 capacity and leak-proof, has a screw-on lid and a label designating it for use as a Used Oil
407 Container, is approved by CITY, and is provided by CONTRACTOR for the accumulation of
408 Used Oil.

409 1.76 Used Oil Filter. Any oil filter that is no longer useful to the Service Recipient
410 because of extended storage or contamination with non-hazardous impurities such as dirt or
411 water; or has been used and as a result of such use has been contaminated with non-
412 hazardous physical or chemical impurities. Used Oil Filters must be generated at the Service
413 Address from which the Used Oil Filter is Collected.

414 1.77 Used Oil Filter Container. A sealable container that has a label designating it for
415 use as a Used Oil Filter Container, is approved by CITY, and is provided by CONTRACTOR for
416 the accumulation of Used Oil Filters.

417 1.78 Work Day. Any day, Monday through Friday that is not a holiday as set forth in
418 Section 6.10 of this Contract.

419 **Article 2. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR**

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

422 2.01 Corporate Status. CONTRACTOR is a corporation duly organized, validly
423 existing and in good standing under the laws of the State of California. It is qualified to transact
424 business in the State of California and has the corporate power to own its properties and to
425 carry on its business as now owned and operated and as required by this Contract.

426 2.02 Corporate Authorization. CONTRACTOR has full legal right, power and authority
427 to execute, deliver and perform its obligations under this Contract. The Board of Directors of
428 CONTRACTOR (or the shareholders if necessary) has taken all actions required by law, its
429 articles of incorporation, its bylaws or otherwise to authorize the execution and delivery of this
430 Contract. The persons signing this Contract on behalf of CONTRACTOR have authority to do
431 so.

432 2.03 Contract Duly Executed. The Persons signing this Contract on behalf of
433 CONTRACTOR have been authorized by CONTRACTOR to do so, and this Contract has been
434 duly executed and delivered by CONTRACTOR in accordance with the authorization of its
435 Board of Directors or shareholders, if necessary, and constitutes a legal, valid, and binding
436 obligation of CONTRACTOR enforceable against CONTRACTOR in accordance with its terms.

437 2.04 No Conflict With Applicable Law or Other Documents. To the best of
438 CONTRACTOR's knowledge, neither the execution and delivery by CONTRACTOR of this
439 Contract nor the performance by CONTRACTOR of its obligations hereunder:

440 2.04.1 Conflicts with, violates or will result in a violation of any existing applicable
441 law; or

442 2.04.2 Conflicts with, violates or will result in a breach or default under any term
443 or condition of any existing judgment, order or decree of any court, administrative agency or
444 other governmental authority, or of any existing contract, agreement or instrument to which
445 CONTRACTOR is a party, or by which CONTRACTOR or any of CONTRACTOR's properties or
446 assets is bound; or

447 2.04.3 Will result in the creation or imposition of any lien, charge, or
448 encumbrance of any nature whatsoever upon any of the properties or assets of CONTRACTOR
449 which will interfere materially with CONTRACTOR's performance hereunder.

450 2.04.4 No Litigation. There is no action, suit, proceeding or action at law or
451 equity, or to the best of CONTRACTOR's knowledge, any investigation before or by any court or
452 governmental entity, pending or threatened against CONTRACTOR or otherwise affecting
453 CONTRACTOR, wherein an unfavorable decision, ruling or finding, in any single case or in the
454 aggregate, would materially adversely affect CONTRACTOR's performance hereunder, or
455 which in any way would adversely affect the validity or enforceability of this Contract, or which
456 would have a material adverse effect on the financial condition of CONTRACTOR or its parent
457 company.

458 2.05 Financial Ability, Disclosures, No Material Change. CONTRACTOR has
459 sufficient financial resources to perform all aspects of its obligations hereunder.
460 CONTRACTOR has provided CITY with audited financial statements which present fairly, in
461 accordance with generally accepted accounting principles, the financial resources of
462 CONTRACTOR. There has been no material adverse change in CONTRACTOR's or
463 CONTRACTOR's parent company's financial circumstances since the date of the most recent
464 financial statements.

465 2.06 Expertise. CONTRACTOR has the expert, professional, and technical capability
466 to perform all of its obligations under this Contract.

467 2.07 CONTRACTOR's Statements. CONTRACTOR's proposal and any other
468 supplementary information submitted to CITY that CITY has relied on in negotiations and
469 entering into this Contract, do not: (i) contain any untrue statement of a material fact, or (ii) omit
470 to state a material fact that is necessary in order to make the statements made, in light of the
471 circumstances in which they were made, not misleading.

472 2.08 CONTRACTOR's Investigation. CONTRACTOR has made an independent
473 investigation (satisfactory to it) of the conditions and circumstances surrounding this Contract
474 and the work to be performed by CONTRACTOR under the Contract, and enters into this
475 Contract on the basis of that independent investigation.

476 **Article 3. TERM OF CONTRACT**

477 3.01 Term. The term of this Contract shall be for a ten (10) year period beginning
478 July 1, 2015, and terminating on June 30, 2025. CITY shall have an option to extend the
479 Contract for up to two (2) additional five (5) year periods.

480 3.01.1 First Extension. On or about May 1, 2022, CITY, in its sole discretion
481 may offer to extend this Contract by five (5) years by notifying CONTRACTOR of its intention to
482 do so in writing. CONTRACTOR shall respond in writing to CITY within sixty (60) calendar days
483 of receipt of offer from CITY either accepting or rejecting the CITY's first extension offer. In the
484 event CONTRACTOR rejects the offer of extension from CITY, this Contract may be
485 automatically be extended for one (1) year at CITY's option and shall terminate on June 30,
486 2026.

487 3.01.2 Second Extension. In the event CONTRACTOR accepts CITY's first
488 extension offer as set forth in Section 3.01.1, then on or about May 1, 2027, CITY, in its sole
489 discretion may offer to extend this Contract by five (5) years by notifying CONTRACTOR of its
490 intention to do so in writing. CONTRACTOR shall respond in writing to CITY within sixty (60)
491 calendar days of receipt of offer from CITY either accepting or rejecting the CITY's second
492 extension offer. In the event CONTRACTOR rejects the offer of extension from CITY, this
493 Contract may be automatically be extended for one (1) year at CITY's option and shall terminate
494 on June 30, 2031.

495 3.01.3 No Right to Extension. Nothing in the foregoing paragraphs or otherwise
496 set forth in this Contract is intended to create a right in favor of CONTRACTOR to obtain either
497 the first or second extension.

498 **Article 4. CONTRACTOR'S COVENANTS; CITY OPTION TO** 499 **TERMINATE**

500 4.01 General. CONTRACTOR covenants that it shall obtain and deliver to CITY the
501 document set forth in Section 4.02 below and use its best efforts to deliver it on or before
502 June 1, 2015. If such document is not delivered to CITY in satisfactory form by June 15, 2015,
503 CITY may terminate this Contract with absolutely no continuing financial obligations to
504 CONTRACTOR and may resort to the rights and remedies provided for in Article 26 hereof.

505 4.02 Receipt of Performance Security. CONTRACTOR shall provide CITY with, and
506 CITY shall accept if it complies with Article 24, the performance security described in Article 24
507 of this Contract.

508 4.03 Termination. This Contract may be terminated prior to the expiration of its initial
509 term and any extension as may be provided only in accordance with the provisions of this
510 Contract. At the expiration of the term provided for hereunder, or in the event of a termination
511 as allowed under this Contract, CONTRACTOR, at its own expense for a period of up to six (6)
512 months, shall cooperate fully with CITY, as reasonably necessary, to ensure an orderly
513 transition to any and all new service providers, and CITY shall have no continuing obligations to
514 CONTRACTOR other than those expressly provided for under this Contract. CONTRACTOR
515 shall transfer, Process or Dispose of all materials that have been Collected or are in Process
516 under this Contract as of the date of expiration or termination.

517 **Article 5. SERVICES PROVIDED BY CONTRACTOR**

518 5.01 Grant of Exclusive Contract. Except as otherwise provided in this Contract,
519 CONTRACTOR is herein granted an exclusive Contract to provide Recycling Services, other
520 than Commercial Non-exclusive Recycling Collection Service, within the Service Area. No other
521 services shall be exclusive to CONTRACTOR.

522 5.02 Limitations to Scope of Exclusive Contract. Nothing in this Contract shall limit the
523 right of any Person to donate or sell his or her Recyclable Materials. Persons other than
524 CONTRACTOR may pay to collect or collect at no charge such Recyclable Materials. Similarly,
525 nothing in this Contract shall limit the right of any Person to haul the Recyclable Materials he or
526 she Generates to a facility that holds all applicable permits.

527 5.03 Notwithstanding CONTRACTOR's rights under this Contract as described above,
528 and in Section 6.15.1, the following materials may be Collected by Persons other than
529 CONTRACTOR:

530 5.03.1 Recyclable Materials that are removed from Commercial establishments;

531 5.03.2 Construction and Demolition Debris removed from a site that requires a
532 building or demolition permit;

533 5.03.3 Recyclable Materials that are removed from any SFD Service Address or
534 MFD Service Address and transported to a transfer station, Recycling center, or Materials
535 Recovery Facility by the occupant;

536 5.03.4 Recyclable Materials that are Collected and transported by CITY crews to
537 a transfer facility, a Materials Recovery Facility, or such other appropriate processing facility;

538 5.03.5 Recyclable Materials that are Source Separated at any Service Address
539 by the Generator and donated to a Person or sold. Recyclable Materials are considered
540 "donated or sold" so long as the Person collecting the Recyclable Materials does not receive a
541 net payment from the Generator (including but not limited to any payment for consulting and/or
542 management fees related to the collection of any waste materials, including Recyclable
543 Materials);

544 5.03.6 Beverage containers, other than those set out for Collection by
545 Contractor, that are delivered for Recyclable Materials under the California Beverage Container
546 Recyclable Materials Litter Reduction Act, section 14500, et seq.;

547 5.03.7 Recyclable Materials that are removed from a Service Address in a Fixed
548 Body Vehicle by a property management, maintenance or cleanup service company as an
549 incidental part of the total on-property cleanup or maintenance service offered by the company
550 rather than as a hauling service;

551 5.03.8 Recyclable Materials that are removed from a Service Address by the
552 MM&O Contractor as part of the provision of Bulky Goods Collection Service;

553 5.03.9 Recyclable Materials that are removed from a Service Address by a
554 company through the performance of a service that CONTRACTOR has elected not to provide;

555 5.03.10 Materials that CONTRACTOR is not required to Collect and
556 Process under this Contract, as of the effective date of this Contract, which subsequently, in
557 CITY's reasonable judgment, become economically feasible to Recycle. In such event,
558 CONTRACTOR shall have the exclusive right to Collect and process such new Recyclable
559 Materials if CONTRACTOR agrees to do so without any change in Maximum Recycling Service
560 Rates. If CONTRACTOR is unwilling to Collect such new Recyclable Materials at existing
561 Maximum Recycling Service Rates, CITY may provide for Collection and processing of such
562 new Recyclable Materials in any manner it deems appropriate;

563 5.03.11 Recyclable Materials removed from a Service Address for a
564 nominal charge by a retailer as an incidental part of a sale of merchandise; and

565 5.03.12 Recyclable Materials removed from a Service Address for a
566 nominal charge by a reuse facility or reuse business.

567 5.04 Nothing in Section 5.03 shall allow the Collection, through the use of a Roll-Off
568 Box, of SFD, or MFD Recyclable Materials for a fee by a company whose primary service is
569 hauling.

570 5.05 Use of Other Persons. CONTRACTOR acknowledges and agrees that CITY
571 may permit other Persons besides CONTRACTOR to Collect any and all types of materials
572 excluded from the scope of this Contract, as set forth above, without seeking or obtaining
573 approval of CONTRACTOR.

574 5.06 Applicable Law. The scope of this Contract shall be interpreted to be consistent
575 with applicable law, now and during the term of the Contract subject to provisions of Article 30.
576 If future judicial interpretations of current law or new laws, regulations, or judicial interpretations
577 limit the ability of CITY to lawfully provide for the scope of services as specifically set forth
578 herein, CONTRACTOR agrees that the scope of the Contract will be limited to those services
579 and materials which may be lawfully provided. In such an event, it shall be the responsibility of
580 CONTRACTOR to minimize the financial impact of such future judicial interpretations or new
581 laws, subject to the other provisions of the Contract.

582 **Article 6. SERVICE STANDARDS**

583 6.01 Service Standards. CONTRACTOR shall perform all Recycling Services under
584 this Contract in a thorough and professional manner. Subject to Section 29.06, Recycling
585 Services described in this Contract shall be performed regardless of weather conditions or
586 difficulty of Collection.

587 6.02 Hours and Days of Collection. SFD and MFD Recycling Services shall be
588 provided, commencing no earlier than 6:00 a.m. and terminating no later than 6:30 p.m., in
589 accordance with the CITY Municipal Code, Monday through Friday with no service on Saturday
590 (except for holiday service as set forth in Section 6.10 of this Contract in which case normal
591 Collection hours may be utilized) or Sunday. The hours, days, or both of Collection may be
592 extended due to extraordinary circumstances or conditions with the prior written consent of the
593 Contract Manager.

594 6.02.1 Commercial Non-Exclusive Recycling Collection Service and CITY
595 Recycling Collection Service shall be provided Monday through Friday with limited CITY and
596 Commercial Non-Exclusive Recycling Collection Service on Saturday. CONTRACTOR shall
597 endeavor to route collection vehicles in a manner that minimizes noise and traffic impacts during
598 critical periods of the day, including: near residential properties from 6 pm to 6 am, near schools
599 during pick-up and drop-off hours, in merchant districts during normal business hours, and in
600 high traffic areas during peak commute hours. CONTRACTOR shall resolve complaints of
601 noise and traffic impacts caused by CONTRACTOR's activities to the satisfaction of CITY.

602 6.03 Transfer of Loads on Public Streets and Roads. CONTRACTOR is prohibited
603 from transferring loads from one vehicle to another on any public right-of-way unless there is a
604 necessity to do so because of road conditions, mechanical failure, truck fire or accidental
605 damage to a vehicle, without written permission from the Contract Manager.

606 6.04 Manner of Collection. CONTRACTOR shall provide Recycling Services with as
607 little disturbance as reasonably possible and shall leave any Cart or Bin in an upright position,
608 with the lid closed, at the same point it was Collected without obstructing alleys, roadways,

609 driveways, sidewalks or mail boxes. CONTRACTOR will not be responsible for Carts or Bins
610 being moved or open due to weather conditions or other factors beyond its control, such as
611 scavengers. CONTRACTOR shall also lock any Bin and close or lock as appropriate any
612 Container enclosure that it opened or unlocked as part of Recycling Services.

613 6.05 Record of Non-Collection. When any Recyclable Material that is set out for
614 regular or special Collection is not Collected by CONTRACTOR for sufficient reason,
615 CONTRACTOR shall leave a Non-Collection Notice. A copy of any Non-Collection Notice,
616 along with the name and address of the party noticed, shall be delivered to the Contract
617 Manager within twenty-four (24) hours of CITY's request.

618 6.06 Containers.

619 6.06.1 Carts. Carts are to be hot-stamped, embossed or laminated, with a
620 unique identification number and the words "City of Oakland," and in-molded with the type of
621 materials to be Collected (i.e., Recyclable Materials) name and phone number of
622 CONTRACTOR, and instructions for proper usage. In-molding on the Carts shall be on the lids.
623 CONTRACTOR's name shall not be included on the body of Carts. Labeling and graphics of
624 the Carts shall be approved by CITY. Carts shall not contain any type of advertising without the
625 written approval of the Contract Manager.

626 6.06.2 Bins. Bins, including those defined herein as Compactors, are to be
627 marked with a unique identification number, labeled with the type of materials to be Collected
628 (i.e., Recyclable Materials), the size in cubic yards, CONTRACTOR's name and phone number
629 and instructions for proper usage, and be in good working order. Labeling and graphics of the
630 Bins shall be approved by CITY. Used Bins may be utilized providing they are newly painted,
631 properly marked, in good working order and free of rust and holes. CITY retains the right to
632 inspect any such used Bins and direct CONTRACTOR to replace such used Bin if it is deemed
633 to be not acceptable. Bins shall not contain any type of advertising without the written
634 permission and approval of the Contract Manager.

635 6.06.3 Roll-Off Boxes. Roll-Off Boxes, including those defined herein as
636 Compactors, are to be marked with a unique identification number, labeled with the size in cubic
637 yards, CONTRACTOR's name and phone number and instructions for proper usage, be in good
638 working order and at the discretion of CITY have lids. Labeling and graphics of the Roll-Off
639 Boxes shall be approved by CITY. Used Roll-Off Boxes may be utilized, provided they are
640 newly painted, properly marked, in good working order and free of rust and holes. CITY retains
641 the right to inspect any such used Roll-Off Boxes and direct CONTRACTOR to replace such
642 used Roll-Off Box if it is deemed to be not acceptable.

643 6.06.4 Purchase, Distribution and Collection of Carts and Bins. CONTRACTOR
644 shall be responsible for the purchase and distribution of fully assembled and functional Carts
645 and Bins to Service Addresses in the Service Area based on the type and level of service
646 received by each Service Addresses. CONTRACTOR shall also distribute Carts and Bins, as
647 needed, to new Service Addresses during the term of this Contract. The distribution shall be
648 completed no later than the next regularly scheduled Collection day after receipt of notification
649 CITY, the Customer, or the Service Recipient; provided, however, CONTRACTOR must receive
650 the notification at least six (6) Work Days prior to distribution.

651 6.06.4.1 CONTRACTOR shall be responsible for the collection of
652 abandoned, used, discarded, or unwanted Recycling Containers in the Service Area within six
653 (6) Work Days of notification by CITY, a Service Recipient, or a Customer. Recycling

654 Containers shall be repaired or, if repair is not practical, Recycled. This service shall be
655 provided at no additional cost to CITY, Customer or Service Recipient.

656 6.06.5 Repair or Replacement of Carts and Bins. CONTRACTOR shall be
657 responsible for repair or replacement of Carts and Bins and their component parts, including but
658 not limited to, hinged lids, wheels, axles and labels as provided below. CONTRACTOR shall
659 also be responsible for securing replacement of all items covered by manufacturer warranty.

660 6.06.6 Replacement of Carts and Bins Provided Under Previous Contract.

661 6.06.6.1 If CONTRACTOR has, or obtains Carts and Bins provided
662 under previous contract, then in lieu of providing one hundred (100) percent of new Carts and
663 Bins, CONTRACTOR may replace at least twenty (20) percent of the Carts and Bins provided
664 under the previous contract at no cost or inconvenience to the Service Recipient or Customer in
665 the initial Contract Year.

666 6.06.6.2 CONTRACTOR shall be responsible for ongoing
667 replacement of Carts and Bins during the remaining term at a frequency and in amounts to
668 ensure maintenance of adequate serviceability. This continual replacement is estimated to be at
669 a rate of up to three (3) percent per subsequent Contract Year, but in any event shall be
670 sufficient to maintain serviceability.

671 6.06.7 Replacement of Carts and Bins Damaged by CONTRACTOR.
672 CONTRACTOR's employees shall take care to prevent damage to Carts or Bins by
673 unnecessary rough treatment. However, any Cart or Bin damaged by CONTRACTOR shall be
674 replaced or repaired by CONTRACTOR, at CONTRACTOR's expense, no later than the next
675 regularly scheduled Collection day or within six (6) Work Days (whichever is later), at no cost or
676 inconvenience to the Service Recipient or Customer.

677 6.06.8 Replacement of Carts and Bins Due to Normal Wear and Tear. Upon
678 notification to CONTRACTOR by a Service Recipient or Customer of the need for replacement
679 or repair to a Cart(s) or Bin(s) due to normal wear and tear, CONTRACTOR shall replace or
680 repair such Cart(s) or Bin(s) at CONTRACTOR's expense, by the next regularly scheduled
681 Collection day, or within six (6) Work Days (whichever is later) at no cost or inconvenience to
682 the Service Recipient or Customer.

683 6.06.9 Replacement of Carts and Bins Required Through No Fault of
684 CONTRACTOR. Upon notification to CONTRACTOR by CITY or a Service Recipient that the
685 Service Recipient's Recyclable Materials Cart(s), or Bin(s) have been stolen or damaged
686 beyond repair through no fault of CONTRACTOR, CONTRACTOR shall deliver a replacement
687 Cart(s), or Bin(s) to the Service Address no later than the next regularly scheduled Collection
688 day, at no cost, subject to the limitations set forth below, or inconvenience to the Service
689 Recipient or Customer. Notwithstanding the foregoing, in cases where CONTRACTOR can
690 demonstrate that the replacement is due to factors other than CONTRACTOR mishandling or
691 damage, ordinary wear and tear, or third-party theft, CONTRACTOR may invoice the Customer
692 or Service Recipient requesting such a replacement in accordance with the "Cart Replacement"
693 Maximum Service Rate set forth in Exhibit 1 to this Contract or as may be adjusted under the
694 terms of this Contract from time to time. CONTRACTOR shall maintain records documenting all
695 Cart and Bin replacements occurring on a monthly basis.

696 6.06.10 Reporting Requirements for Replacements. No later than July 15,
697 2016, and annually thereafter during the term of this Contract, CONTRACTOR shall provide
698 CITY with an electronic report of Cart and Bin Replacements provided during the preceding
699 Contract Year in a form and format approved by CITY and using software approved by CITY. At

700 a minimum the report shall include the size, type, and number of Bins and Carts replaced and
701 the reason for such replacement based upon one of the following five (5) categories: Missing;
702 Stolen; Damaged; Destroyed; or Normal Wear and Tear. The report shall also include a
703 calculation of the base number for Cart and Bin replacements under Section 6.06.5 for the prior
704 Contract Year and the current Contract Year.

705 6.06.11 Cart or Bin Change. As provided below, upon notification to
706 CONTRACTOR by CITY or a Customer that a change in the size or number of Carts or Bins is
707 required, including a change to provide additional Recyclable Materials capacity
708 CONTRACTOR shall deliver such Carts or Bins to the Service Address by the next regularly
709 scheduled Collection day or within six (6) Work Days (whichever is later).

710 6.06.11.1 Each SFD Service Address shall be entitled to receive one
711 (1) free Recyclable Materials Cart exchange, per Contract Year during the term of this Contract.

712 6.06.11.2 Each MFD Address shall be entitled to receive two (2) free
713 service exchanges, per Contract Year during the term of this Contract. For the purposes of this
714 Section, a service exchange represents the exchange of as few as one (1) and as many as the
715 total number of Carts and Bins provided by CONTRACTOR to the Service Address.

716 6.06.11.3 CONTRACTOR shall be compensated for the cost of those
717 exchanges in excess of the limitations set forth herein per Contract Year, in accordance with the
718 “Cart or Bin Exchange” Maximum Recycling Service Rate as set forth in Exhibit 1 of this
719 Contract.

720 6.06.12 Ownership of Carts. Ownership of Carts shall rest with
721 CONTRACTOR and upon termination of this Contract, CONTRACTOR shall be responsible for
722 removing all Carts in service from the Service Area. In the case of the termination of this
723 Contract prior to the expiration of the initial term or optional extension term, CITY shall have the
724 right to take temporary possession of the Carts and shall retain such possession for a
725 reasonable period until satisfactory arrangements can be made to provide Recycling Services
726 using other equipment (not to exceed five (5) months).. There shall be no monies owing to
727 CONTRACTOR from CITY for such use of the carts. Upon the receipt of written notice from
728 CITY, CONTRACTOR shall submit to the Contract Manager an inventory of Carts, including
729 their locations.

730 6.07 Compactors. Compactor equipment may be owned by the Customer or leased
731 from CONTRACTOR or any other source provided the Compactor Container is compatible with
732 CONTRACTOR’s Collection vehicles.

733 6.08 Annual Inspection and Cleaning of Bins and Roll-Off Boxes. At least once each
734 Contract Year, at no charge to CITY or the Customer, CONTRACTOR shall inspect all
735 CONTRACTOR provided Bins and Roll-Off Boxes at the Service Address and shall replace
736 those Bins or Roll-Off Boxes needing cleaning or repair with clean, undamaged Bins or Roll-Off
737 Boxes, and remove the dirty or damaged Bins or Roll-Off Boxes for cleaning or repair.

738 6.09 Labor and Equipment. CONTRACTOR shall provide and maintain all labor,
739 equipment, tools, facilities, and personnel supervision required for the performance of
740 CONTRACTOR’s obligations under this Contract. CONTRACTOR shall at all times have
741 sufficient backup equipment and labor (subject to Service Resumption protocol) to fulfill
742 CONTRACTOR’s obligations under this Contract. No compensation for CONTRACTOR’s
743 services or for CONTRACTOR’s supply of labor, equipment, tools, facilities or supervision shall
744 be provided or paid to CONTRACTOR by CITY or by any Customer except as expressly
745 provided by this Contract.

746 6.10 Holiday Service. January 1, Thanksgiving Day and December 25 shall be legal
747 holidays. CONTRACTOR shall not be required to provide Recycling Services on the designated
748 holidays. In any week in which one of these holidays falls on a Work Day, and CONTRACTOR
749 elects to not provide Recycling Services, SFD Recycling Services for the holiday and each Work
750 Day thereafter may be delayed one (1) Work Day for the remainder of the week with normally
751 scheduled Friday SFD Recycling Services being performed on Saturday. MFD Recycling
752 Services shall be adjusted as agreed between CONTRACTOR and the Customer but must
753 meet the minimum Collection frequency requirement of one (1) time per week. CONTRACTOR
754 shall notify Service Addresses and CITY at least thirty (30) days in advance of changes to the
755 Collection day because of a holiday schedule.

756 6.11 Processing and Disposal.

757 6.11.1 Permits, Approvals and Compliance with Regulations. CONTRACTOR
758 must assure that all facilities selected by CONTRACTOR shall possess all necessary permits
759 and approvals by local enforcement agencies to be in full compliance with all regulatory
760 agencies to conduct all operations at the approved location. CONTRACTOR shall, upon written
761 request from CITY, arrange for the facilities selected by CONTRACTOR to provide copies of
762 facility permits, notices of violations, inspection areas or concerns, or administrative action to
763 correct deficiencies related to the operation. Failure to provide facility information shall result in
764 the levy of liquidated damages as specified in Article 22 of this Contract and may result in
765 CONTRACTOR being in default under this Contract.

766 6.11.1.1 Regulatory Inquiry. In those instances where
767 CONTRACTOR is required by any law or regulation to submit written or electronic materials
768 related to the provision of Recycling Services under the terms of this Contract to any regulatory
769 agency, CONTRACTOR shall submit copies of such written or electronic materials to CITY
770 simultaneously with CONTRACTOR's submittal to such regulatory agency.

771 6.11.2 Material Recovery Facility. All Recyclable Materials Collected as a result
772 of performing Recycling Services shall be delivered to the Material Recovery Facility (MRF). In
773 the event the MRF is closed on a Work Day, CONTRACTOR shall transport and deliver the
774 Recyclable Materials to such other legally permitted MRF as is approved by CITY. Failure to
775 comply with this provision shall result in the levy of liquidated damages as specified in Article 22
776 of this Contract and may result in CONTRACTOR being in default under this Contract.

777 6.11.3 Used Oil Processing. CONTRACTOR shall Recycle all Used Oil
778 Collected and Used Oil Filters pursuant to this Contract to the extent feasible and shall properly
779 Dispose of all Used Oil and Used Oil Filters that are contaminated or otherwise cannot be
780 Recycled.

781 6.11.3.1 CONTRACTOR shall Recycle the Used Oil and Used Oil
782 Filters only with persons who are authorized by the State of California to Recycle these
783 materials. In the event the Used Oil or Used Oil Filters Collected pursuant to this Contract is
784 contaminated to the extent that the Used Oil or Used Oil Filters require Disposal as a
785 Hazardous Waste, CONTRACTOR shall Dispose of such Used Oil or Used Oil Filters, at
786 CONTRACTOR's own cost and expense in accordance with applicable State and federal law.

787 6.11.3.2 CONTRACTOR shall notify the Contract Manager, by e-
788 mail, of any contamination which renders the Used Oil unacceptable for Recycling or which
789 requires Disposal of the Used Oil or Used Oil Filters as a Hazardous Waste.

790 6.11.4 Segregation of Used Oil. CONTRACTOR shall keep all Used Oil and
791 Used Oil Filters Collected pursuant to this Contract segregated from other materials.

792 6.12 Recycling - Improper Procedure. Except as set forth below, CONTRACTOR
793 shall not be required to Collect Recyclable Materials if the Recyclable Materials are not Source
794 Separated. If Recyclable Materials are contaminated through commingling with Mixed Materials
795 or Organics CONTRACTOR shall, if practical, separate the Mixed Materials or Organics from
796 the Recyclable Materials. The Recyclable Materials shall then be Collected and the Mixed
797 Materials and Organics shall be left in the Mixed Materials Cart or Bin along with a Non-
798 Collection Notice explaining why the Mixed Materials and Organics are not considered
799 Recyclable Materials. However, in the event the Recyclable Materials and Mixed Materials or
800 Organics are commingled to the extent that they cannot easily be separated by CONTRACTOR,
801 or the nature of the Mixed Materials renders the entire Recycling Cart or Bin contaminated,
802 CONTRACTOR will leave the Recycling Cart or Bin un-emptied along with a Non-Collection
803 Notice that contains instructions on the proper procedures for setting out Recyclable Materials.

804 6.13 Inspections. CITY shall have the right to inspect CONTRACTOR's facilities or
805 Collection vehicles and their contents at any time while operating inside or outside CITY.

806 6.14 Commingling of Materials.

807 6.14.1 Other Materials. Except as provided in Section 28.03, CONTRACTOR
808 shall not at any time commingle Recyclable Materials Collected pursuant to this Contract, with
809 any other material Collected by CONTRACTOR inside or outside CITY prior to delivery to the
810 MRF without the express prior written authorization of the Contract Manager and such
811 authorization shall not be unreasonably withheld.

812 6.14.2 Recyclable Materials. CONTRACTOR may not commingle Recyclable
813 Materials Collected pursuant to this Contract, with other recyclable material Collected by
814 CONTRACTOR outside CITY prior to delivery to the MRF without the express prior written
815 authorization of the Contract Manager and such authorization shall not be unreasonably
816 withheld. However, if permission is given, CONTRACTOR must allocate tons among the cities
817 based on the methodology set forth in Exhibit [].

818 6.14.3 Spillage and Litter. CONTRACTOR shall not litter premises in the
819 process of providing Recycling Services or while its vehicles are on the road. CONTRACTOR
820 shall transport all materials Collected under the terms of this Contract in such a manner as to
821 prevent the spilling or blowing of such materials from CONTRACTOR's vehicle.
822 CONTRACTOR shall exercise all reasonable care and diligence in providing Recycling Services
823 so as to prevent spilling or dropping of Recycling Materials and shall immediately, at the time of
824 occurrence, clean up such spilled or dropped materials in accordance with the "Spill Response
825 Plan" approved by CITY in Exhibit 9, which is attached to and included in this Contract.
826 CONTRACTOR shall commence clean up any spillage or litter by end of the Work Day upon
827 notice from the Contract Manager.

828 6.14.4 Litter Cleanup. CONTRACTOR is required to clean up reasonable
829 amounts and types of litter around the area of the Recycling Container, whether or not
830 CONTRACTOR has caused the litter. In the event of more than one (1) instance in any six (6)
831 month period, not caused by CONTRACTOR, requiring CONTRACTOR to clean up litter around
832 the Recycling Container(s) of a specific Service Address, CONTRACTOR shall make
833 reasonable efforts to contact the Service Recipient and work with the Service Recipient to
834 resolve the litter problem. In the event the litter problem cannot be resolved CONTRACTOR
835 may bill such Customer a litter cleanup surcharge as set forth in Exhibit 1.

836 6.14.5 Damage to Public Streets. In the event where damage to public streets
837 within CITY is caused by a hydraulic oil spill from CONTRACTOR's vehicle, or a vehicle load

838 fire that is dumped onto the street for containment purposes, CONTRACTOR shall be
839 responsible for all repairs to return the street to the same condition it was in prior to the spill or
840 fire. CONTRACTOR shall also be responsible for all clean-up activities related to the spill or
841 fire. Repairs and clean-up shall be performed in a manner satisfactory to the Contract Manager
842 and at no cost to CITY.

843 6.14.6 Oil, Other Vehicle Fluid Spills or Vehicle Load Fires. In the event of a
844 vehicle fluid spill from CONTRACTOR's vehicle or vehicle load fire CONTRACTOR shall
845 immediately respond in the manner as set forth in the "Spill Response Plan" approved by CITY
846 in Exhibit 9 of this Contract.

847 6.15 Ownership of Materials.

848 6.15.1 Title to Recyclable Materials Collected under the terms of this Contract
849 shall pass to CONTRACTOR at such time as said materials are placed in a Container and set
850 out for Collection, or for those materials that are not required to be Containerized, at the time
851 the materials are set out for Collection.

852 6.15.2 Title to Used Oil and Used Oil Filters Collected under the terms of this
853 Contract shall pass to CONTRACTOR at such time as said materials are placed in a Used Oil or
854 Used Oil Filter Container, as appropriate and set out for Collection.

855 6.16 Hazardous Waste. Except regarding services provided outside the scope of this
856 Contract, under no circumstances shall CONTRACTOR's employees knowingly Collect
857 Hazardous Waste, or knowingly remove unsafe or poorly containerized Hazardous Waste, from
858 a Recycling Container. If CONTRACTOR determines that material placed in any Container for
859 Collection is Hazardous Waste, or other material that may not legally be accepted at the MRF,
860 or presents a hazard to CONTRACTOR's employees, CONTRACTOR shall have the right to
861 refuse to accept such material. The Generator shall be contacted by CONTRACTOR and
862 requested to arrange for proper Disposal. If the Generator cannot be reached immediately,
863 CONTRACTOR shall, before leaving the premises, leave a Non-Collection Notice that indicates
864 the reason for refusing to Collect the material and submit an incident report to Contract
865 Manager.

866 6.16.1 If Hazardous Waste is found in a Recycling Container that poses an
867 imminent danger to people, property, or environment, CONTRACTOR shall immediately call
868 911 to notify the City of Oakland Fire Department. CONTRACTOR shall immediately notify
869 CITY of any Hazardous Waste that has been identified and submit an incident report to Contract
870 Manager.

871 6.16.2 If Hazardous Waste is identified at the time of delivery to the MRF and the
872 Generator cannot be identified, CONTRACTOR shall be solely responsible for handling and
873 arranging transport and disposition of the Hazardous Waste.

874 6.17 Regulations and Record Keeping. CONTRACTOR shall comply with emergency
875 notification procedures required by applicable laws and regulatory requirements. All records
876 required by regulations shall be maintained at CONTRACTOR's facility. These records shall
877 include waste manifests, waste inventories, waste characterization records, inspection records,
878 incident reports and training records.

879 6.18 Transition. CONTRACTOR understands and agrees that the time between the
880 formal Contract signing and July 1, 2015, is intended to provide CONTRACTOR with ample and
881 sufficient time to, among other things, order equipment, prepare necessary routing schedules
882 and route maps, obtain any permits and licenses, establish/build facilities, and begin the public

883 awareness campaign as part of CONTRACTOR's transition program as specified in Exhibit 5
884 which is attached to and included in this Contract. CONTRACTOR shall be responsible for the
885 provision of all Recycling Services beginning July 1, 2015.

886 6.19 Property Damage. CONTRACTOR shall be responsible for the repair or
887 replacement, if repair is not adequate, of any damages to public or private property caused by
888 CONTRACTOR during the provision of Recycling Services.

889 **Article 7. CHARGES AND RATES**

890 7.01 General. CONTRACTOR shall perform all services required by this Contract in
891 consideration of the right to bill and collect, from CITY's MM&O Contractor, the Maximum
892 Recycling Service Rates as set forth in Exhibit 1, and as may be adjusted under the terms of
893 this Contract. CITY does not guarantee collection of such Maximum Recycling Service Rates.
894 Except as set forth in Sections 7.03.3 and 7.03.4 below, CONTRACTOR shall not look to CITY
895 for payment of any sums under this Contract. CITY has no obligation to pay CONTRACTOR
896 any public funds under this Contract, except as set forth in Articles 7 and 18. Nothing in this
897 paragraph is intended to alter the parties' obligations under Articles 26 and 28.

898 7.01.1 Rates are Comprehensive Compensation. The Maximum Recycling
899 Service Rates, as set forth in Exhibit 1 and as may be adjusted under the terms of this Contract,
900 shall be the full, entire and complete compensation due to CONTRACTOR for furnishing all
901 labor, materials, equipment, supplies and other things necessary to perform all the services
902 required by this Contract in the manner and at the times prescribed. The Maximum Recycling
903 Service Rates include, without limitation, all costs for the items mentioned in the preceding
904 sentence and also for all taxes, franchise fees, insurance, bonds, overhead, profit and all other
905 costs necessary to perform all the services required by this Contract in the manner and at the
906 times prescribed. The Maximum Recycling Service Rates include all costs associated with
907 complying with all current federal and State statutes, and CITY and County ordinances
908 concerning public health, safety and environmental issues and all laws, regulations, rules,
909 orders, judgments, degrees, permits, approvals, or other requirement of any governmental
910 agency having jurisdiction over the services provided by CONTRACTOR under the terms of this
911 Contract, including any current provisions that become effective on or which require compliance
912 by a date after the effective date of this Contract.

913 7.01.2 Annual Rate Adjustment. On July 1, 2016, and each July 1 thereafter
914 during the term of the Contract (each an "Adjustment Date"), the Maximum Service Rates
915 shall be adjusted by an "Annual Rate Adjustment." The Annual Rate Adjustment will include
916 the Refuse Rate Index adjustment (Section 7.06.2 and Exhibit 2), and adjustments due to
917 changes in Franchise Fees (Section 7.01.3) and Changes in Government Fees (Section
918 7.01.4).

919 7.01.3 Changes in Franchise Fees. The Maximum Service Rates shall be
920 adjusted as of July 1, 2016, and annually thereafter (the "Adjustment Date"), to fully capture
921 CONTRACTOR's increased costs based on new or increased Franchise Fees implemented or
922 to be implemented since the previous Adjustment Date (or July 1, 2015 regarding the July 1,
923 2016 adjustment).

924 7.01.3.1 This Franchise Fee adjustment will be calculated prior to
925 the upcoming July 1 Adjustment Date as follows:

926 7.01.3.1.1 Determine item weight of Franchise Fees:

927 Total Franchise Fees for the previous calendar year ended
928 December 31 / (Total Allowable Expenses for all Cost Categories under RR Contract for
929 previous calendar year ending December 31).

930 7.01.3.1.2. Multiply the result of 7.01.3.1.1 by the percentage change in the
931 annual average of the Franchise Fee cost indicator (Series ID:
932 cuura422sa0 Consumer Price Index, All Urban Consumers, All Items,
933 San Francisco-San Jose-Oakland, CA) as set forth in Section 2 of Exhibit
934 2 to this Contract to determine the Franchise Fee percentage
935 adjustment.

936 7.01.3.1.3. Add 7.01.3.1.2 to the RR RRI adjustment (along with Government
937 Fee adjustments, if any) to arrive at the Annual Rate Adjustment.¹

938 7.01.4 Changes in Government Fees. On July 1, 2015, Maximum Service
939 Rates will be adjusted to capture new and increased Government Fees/Taxes (collection,
940 processing and disposal) since January 1, 2013.

941 7.01.4.1 The Maximum Service Rates shall be adjusted on each
942 Adjustment Date to fully capture CONTRACTOR's increased costs based on new or increased
943 Government Fees (collection, processing and disposal) implemented or to be implemented
944 since the previous Adjustment Date (or July 1, 2015 regarding the July 1, 2016 adjustment).
945 For purposes of this Section, "Government Fees" are surcharges, fees, assessments, taxes
946 (non-income), licenses, and other amounts payable to federal, state or local authorities in
947 relation to CONTRACTOR's performance hereunder. Specifically, Government Fees include,
948 but are not limited to, (to be inserted based on award).

949 7.01.4.2 The Government Fees/Taxes adjustments will be
950 calculated prior to the upcoming July 1 Adjustment Date as follows:

951 7.01.4.2.1. Determine item weight of each Government Fees/Taxes Cost
952 Category:

953 (Total Government Fees/Taxes for previous calendar year ending December 31) / (Total
954 Allowable Expenses for all Cost Categories under RR Contract for previous calendar
955 year ending December 31))

956 7.01.4.2.2. Determine percent change of each Government Fees/Taxes Cost
957 Category for upcoming July 1 – June 30 period:

958 ((Total Government Fees/Taxes (on per ton basis) for upcoming July 1 – June 30) -
959 (Total Government Fees/Taxes (on a per ton basis) for the just completed July 1 –
960 June 30)) / (Total Government Fees/Taxes (on a per ton basis) for the just completed
961 July 1 – June 30)

962 7.01.4.2.3. Multiply the result of 7.01.4.2.1 by the result of 7.01.4.2.2 to
963 determine the weighted percentage change of each Government
964 Fees/Taxes Cost Category.

¹ For purposes of clarity, the Franchise Fee adjustment and the Government Fee adjustments are not included in the RR RRI adjustment, but are added to the RR RRI adjustment to arrive at the Annual Rate Adjustment. As such, these adjustments are not subject to the caps as provided in Section 7.16.2.1.2 of the Contract.

965 7.01.4.2.4. Add 7.01.4.2.3 to the RR RRI adjustment (along with Franchise
966 Fee adjustments, if any) to arrive at the Annual Rate Adjustment.

967 7.01.4.3 In the event of a new Government Fee/Tax, or a change in
968 an existing Government Fee/Tax, which becomes effective at some time other than July 1 of
969 any year, CONTRACTOR shall be compensated for such change through the inclusion of a
970 "Retroactive Element" in the next Annual Rate Adjustment. However, in the event that the
971 Government Fee/Tax is imposed by CITY, a rate adjustment shall occur at the time such fee
972 becomes effective. CITY and CONTRACTOR agree that the "Retroactive Element" shall be an
973 amount needed to compensate CONTRACTOR for increases in Government Fees/Taxes paid
974 during the period from the inception of the fee increase through the subsequent June 30 and
975 shall not include interest, overhead, or any other costs of any type. The "Retroactive Element"
976 shall only be included in the rate structure for twelve (12) months or that period necessary to
977 allow CONTRACTOR to recover all retroactive amounts, if less than twelve (12) months, and
978 shall be removed prior to calculating the rates to be set as of the subsequent July 1. However,
979 no governmental fees or charges to which CONTRACTOR agrees contractually or negotiates
980 shall be passed through to Customers unless agreed to in writing by CITY.

981 7.01.5 Payment of Governmental Fees. CONTRACTOR shall pay, when and
982 as due, any and all governmental fees to the appropriate federal, State, regional, or local
983 governmental entities that levied the fees, and shall provide CITY with proof of such payments
984 promptly upon request.

985 7.02 CONTRACTOR Invoices. CONTRACTOR shall be responsible for the
986 preparation and submittal of monthly invoices to the MM&O Contractor for all Residential
987 Recycling Services in accordance with the terms and conditions of the Memorandum of
988 Understanding between CONTRACTOR, CITY and the MM&O Contractor as set forth in Exhibit
989 12, which is attached to and included in this Contract.

990 7.02.1 Recycling Invoice. CONTRACTOR shall prepare a monthly Recycling
991 invoice, in the form and format set forth in Exhibit 12, for submittal to the MM&O Contractor and
992 CITY no later than five (5) calendar days after the end of each monthly billing cycle, beginning
993 with the monthly billing cycle ending July 31, 2015. The invoice shall be based on the Maximum
994 Recycling Service Rates as set forth in Exhibit 1, and the number of SFD and MFD Dwelling
995 Units as set forth in Exhibit [to be determined] and as may be adjusted from time to time in the
996 manner set forth in the Memorandum of Understanding (Exhibit 12).

997 7.02.2 SFD Ancillary Services Invoice. CONTRACTOR shall prepare a bi-
998 monthly ancillary services invoice, in the form and format set forth in Exhibit 12, for submittal to
999 the MM&O Contractor and CITY no later than fifteen (15) calendar days before the first day of
1000 each bi-monthly cycle beginning with the bi-monthly billing cycle that starts on September 1,
1001 2015. The invoice shall be based on ancillary services provided in the preceding bi-monthly
1002 billing cycle and the Maximum Recycling Service Rates for ancillary services as set forth in
1003 Exhibit 1. The SFD ancillary service invoice is to be produced in the form and format approved
1004 by CITY and include, at a minimum, the Customer name, Service Address and billing address, if
1005 different, along with a specific description of each ancillary service provided and the associated
1006 charge.

1007 7.02.3 MFD Ancillary Services Invoice. CONTRACTOR shall prepare a monthly
1008 MFD ancillary services invoice, in the form and format set forth in Exhibit 12, for submittal to the
1009 MM&O Contractor and CITY no later than fifteen (15) calendar days before the first day of each
1010 monthly period cycle beginning with the monthly billing cycle that starts on August 1, 2015. The
1011 invoice shall be based on ancillary services provided in the preceding monthly billing cycle and

1012 the Maximum Recycling Service Rates for ancillary services as set forth in Exhibit 1. The MFD
1013 ancillary service invoice is to be produced in the form and format approved by CITY and include,
1014 at a minimum, the Customer name, Service Address and billing address, if different, along with
1015 a specific description of each ancillary service provided and the associated charge.

1016 7.03 Authorization of Payment by CITY. In accordance with the terms and conditions
1017 of the Memorandum of Understanding between CONTRACTOR, CITY and the MM&O
1018 Contractor as set forth in Exhibit 12 to this Contract, CITY shall provide payment authorization
1019 to the MM&O Contractor prior to the payment of each monthly Recycling invoice to
1020 CONTRACTOR.

1021 7.03.1 Timing of Monthly Recycling Invoice Payment. In the event CITY
1022 provides the MM&O Contractor with payment authorization as set forth in Section 7.03, no later
1023 than twenty (20) calendar days from the date the monthly Recycling invoice was submitted to
1024 MM&O Contractor, CONTRACTOR shall be entitled to payment of its monthly Recycling invoice
1025 no later than thirty (30) calendar days from the date the monthly Recycling invoice was
1026 submitted to MM&O Contractor. In the event CITY does not provide the MM&O Contractor with
1027 payment authorization as set forth in Section 7.03, within twenty (20) calendar days from the
1028 date the monthly Recycling invoice was submitted to MM&O Contractor, CONTRACTOR shall
1029 be entitled to payment of its monthly Recycling invoice within ten (10) calendar days of receipt
1030 by the MM&O Contractor of such payment authorization from CITY.

1031 7.03.2 Timing of Payment of Ancillary Service Charges. CONTRACTOR shall
1032 be entitled to payment from the MM&O Contractor of those ancillary service charges included in
1033 the SFD and MFD ancillary services invoices provided for in Sections 7.02.2 and 7.02.3 only to
1034 the extent such ancillary service charges are collected by the MM&O Contractor.
1035 CONTRACTOR shall be entitled to such payment no later than ten (10) calendar days following
1036 the month in which the ancillary service charges were collected and such payment shall be
1037 accompanied by a remittance form in the format approved by CITY and include at a minimum
1038 the Customer name and billing address along with a specific description of each ancillary
1039 service charge and the date invoiced.

1040 7.03.3 Non-Payment of Monthly Recycling Invoice. In the event CONTRACTOR
1041 does not receive payment from the MM&O Contractor of monthly Recycling invoices that have
1042 been approved by CITY in the time and manner set forth in Section 7.03.1, CONTRACTOR
1043 shall notify CITY in writing of such lack of payment. Within five (5) Work Days of receiving such
1044 written notification from CONTRACTOR, CITY shall draw such funds as are necessary from
1045 MM&O Contractor letter of credit to pay CONTRACTOR. Payment made under the terms of this
1046 Section 7.03.3 shall be made by CITY to CONTRACTOR within ten (10) calendar days of
1047 receipt of the funds from the letter of credit by CITY.

1048 7.03.4 Non-Payment of Ancillary Service Charges. In the event CONTRACTOR
1049 does not receive payment from the MM&O Contractor of ancillary service charges that have
1050 been collected by the MM&O Contractor in the time and manner set forth in Section 7.03.2,
1051 CONTRACTOR shall notify CITY in writing of such lack of payment. Within ten (10) Work Days
1052 of receiving written notification of such non-payment from CONTRACTOR, CITY shall meet with
1053 the MM&O Contractor to attempt resolve the issues. At CITY's sole discretion, CITY may draw
1054 such funds as are necessary from MM&O Contractor letter of credit to pay CONTRACTOR.
1055 Payment made under the terms of this Section 7.03.4 shall be made by CITY to CONTRACTOR
1056 within ten (10) days of receipt of the funds from the letter of credit by CITY.

1057 7.04 Production of Commercial Customer Invoices. CONTRACTOR shall invoice
1058 Commercial Customers for Commercial Non-Exclusive Recycling Service, in arrears but no less

1059 than twelve (12) times per year. Invoices shall be remitted no earlier than the first day of the
1060 month following the month for which the service is being billed. The invoice shall be produced
1061 in a form and format that is approved by CITY. The Commercial Recycling invoice shall be
1062 based on Container size and frequency of Collection and not exceed the Maximum Recycling
1063 Service Rates for the provision of Commercial Non-Exclusive Recycling Services as set forth in
1064 Exhibit 1 to this Contract.

1065 7.05 CONTRACTOR's Maximum Recycling Service Rates. Maximum Recycling
1066 Service Rates shall consist of those rates set forth in Exhibit 1, which include all costs of
1067 providing Residential Recycling Collection Services including but not limited to Collection,
1068 Processing, Disposal, and franchise fee costs, and such other charges as may be added by
1069 CITY during the term of this Contract. CONTRACTOR shall not be entitled to any
1070 compensation that is not listed in Exhibit 1. On or after July 1, 2015, and each subsequent
1071 July 1, CONTRACTOR's Maximum Recycling Service Rates shall be adjusted as follows:

1072 7.06 Adjustments to Maximum Recycling Service Rates.

1073 7.06.1 Annual Adjustment to Maximum Recycling Service Rates Prior to Start of
1074 Recycling Services. In order to provide some mitigation for changes in inflation between the
1075 time that the Maximum Recycling Service Rates were proposed and the time when Recycling
1076 Services will commence, the Maximum Recycling Service Rates as set forth in Exhibit 1 to this
1077 Contract shall be adjusted on July 1, 2015 by the annual change in the Consumer Price Index –
1078 All Urban Consumers, Series ID cuura422sa0, Not Seasonally adjusted, San Francisco-
1079 Oakland-San Jose, CA between the prior calendar year, 2014 and the previous prior calendar
1080 year, 2013.

1081 7.06.2 Annual Adjustment to Maximum Recycling Service Rates after Start of
1082 Recycling Services. On each Adjustment Date, the Maximum Service Rates as set forth in
1083 Exhibit 1 shall be adjusted by an Annual Rate Adjustment, which will include a RRI adjustment,
1084 pursuant to this Section 7.16.2. and Exhibit 2 to this Contract, as well as Franchise Fee and
1085 Government Fee/Tax adjustments. The RRI adjustment is calculated independently of the
1086 Franchise Fee and Government Fee/Tax adjustments.

1087 7.06.2.1 On the Adjustment Date during the term of this Contract,
1088 the Maximum Service Rates set forth in Exhibit 1 shall be adjusted by a RRI adjustment
1089 pursuant to this Section 7.16.2.1 and Exhibit 2 to this Contract.

1090 7.06.2.1.1. Cost Category Weight. Contractor will calculate the total of all
1091 Allowable Expenses (as defined in Exhibit 2) for each Cost Category
1092 (also defined in Exhibit 2) for the period of July 1, 2015 through
1093 December 31, 2015. Each Cost Category will then be assigned an "item
1094 weight" based on the proportionate share of its Allowable Expenses total
1095 to the total of all Allowable Expenses for all Cost Categories. For
1096 example, if the Allowable Expenses of the Diesel Fuel Cost Category
1097 total One Hundred Dollars (\$100), and the Allowable Expenses within all
1098 Cost Categories is Two Thousand Dollars (\$2,000), then the Diesel Fuel
1099 Cost Category's item weight will be five (5) percent. The Cost
1100 Categories shall be reweighed every year based on allowable expenses
1101 thereafter from January 1 through December 31.

1102 7.06.2.1.2. Annual Rate Adjustment Calculation. The RRI adjustment (a
1103 component of the Annual Rate Adjustment) shall be the lower of: (i) six
1104 (6) percent, or (ii) the sum of the weighted percentage change (based on

1105 the total of all Cost Categories) in the Cost Indicators of Cost Categories
1106 1 - 7 (each described in Exhibit 2)² from the previous review date to the
1107 current review date. For Cost Category Items 2 (Diesel Fuel), 3 (CNG
1108 Fuel), 4 (Vehicle Replacement), 5 (Vehicle Maintenance), and all but the
1109 Union Labor Cost Category of Item 6 (Processing) and Item 7 (All Other),
1110 the current review year is the most recent calendar year ended
1111 December 31. For Cost Category Item 1 (RR Union Labor), and the
1112 Union Labor Cost Category of Item 6 (Processing), the current review
1113 date is July 1 of the current year. See Exhibit 2.

1114 7.06.2.1.3. The weighted percentage change in the Cost Indicator of a Cost
1115 Category may be either positive or negative. There shall be no limit on
1116 Annual Rate Adjustments, but an RRI adjustment shall not be greater
1117 than six (6) percent in any individual year (except the final year of the
1118 original Contract term and the final year of any extension Contract terms
1119 when it may not be greater than eight (8) percent) or lower than Negative
1120 5 (-5) percent. In any year that the RRI adjustment calculation is more
1121 than six (6) percent, the amount above six (6) percent and up to eight (8)
1122 percent shall be carried-forward to successive RRI adjustments under
1123 this Contract until applied or the Contract terminates. RRI adjustments in
1124 any year in excess of eight (8) percent shall not be carried forward to any
1125 future year. With regard to the July 1, 2024, RRI adjustment, carried-
1126 forward RRI adjustment amounts that had not been recouped in previous
1127 RRI adjustments due to the six (6) percent cap shall be recouped to the
1128 extent they do not exceed eight (8) percent. With regard to the July 1,
1129 2029, RRI adjustment, carried-forward RRI adjustment amounts that had
1130 not been recouped in 2025, 2026, 2027 or 2028 RRI adjustments due to
1131 the six (6) percent cap shall be recouped to the extent they do not
1132 exceed eight (8) percent. With regard to the July 1, 2034, RRI
1133 adjustment, carried-forward RRI adjustment amounts that had not been
1134 recouped in 2030, 2031, 2032 or 2033 RRI adjustments due to the six (6)
1135 percent cap shall be recouped to the extent they do not exceed eight (8)
1136 percent.

1137 7.06.2.1.4. Should CONTRACTOR agree to labor increases with Local 70
1138 that exceed the labor increase allowable under the 2009 CBA
1139 (“differential”), those differential amounts shall not be included in the RRI
1140 adjustment (i.e., as a CONTRACTOR cost for purposes of calculating a
1141 percent change of the MM&O Union Labor Cost Category). However,
1142 such differential amounts shall be recovered by CONTRACTOR in
1143 Annual Rate Adjustments by applying them to the Maximum Service
1144 Rates in equal installments over a three (3) year period, including the

² Categories 8 (Government Fees/Taxes – Processing), 9 (Government Fees/Taxes – Collection), and 10 (Franchise Fees) will be used for purposes of weighting the RRI Cost Categories, but they will not be included in the RRI calculation. Instead, they will be added to the RRI calculation.

1145 year in which the differential is first incurred. For example, if the
1146 weighted differential between the 2009 CBA and a subsequent CBA is
1147 three tenths (0.3) percent, then the current Annual Rate Adjustment
1148 would be increased by one tenth (0.1) percent and the two (2)
1149 subsequent Annual Rate Adjustments by one tenth (0.1) percent. For
1150 purposes of clarity, recovery of the differential amounts shall not be
1151 subject to any cap under this section.

1152
1153 7.06.2.2 In any year that the Annual Rate Adjustment is a negative
1154 number, CITY may, at its sole discretion, chose to postpone the implementation of the
1155 adjustment for one (1) year. In that event the current year rate would remain the same and the
1156 subsequent year rate would be calculated by first, applying the negative Annual Rate
1157 Adjustment to the current rate and then applying the subsequent years Annual Rate Adjustment
1158 to that rate. For example if the Year X rate was \$100.00 and the Year X+1 Maximum Recycling
1159 Service Rate adjustment was -2.2% and the Year X+2 Annual Rate Adjustment was +2.2% and
1160 CITY chose to not apply the negative Annual Rate Adjustment in Year X+1 then the rate in Year
1161 X+1 would be \$100.00 and the rate in Year X+2 would be \$99.95 ($\$100.00 \times -2.2\% = \97.80 x
1162 $2.2\% = \$99.95$).

1163 7.07 Financial Information. On or before March 1, 2016, and annually thereafter
1164 during the term of this Contract, CONTRACTOR shall deliver to CITY financial information for
1165 the specific services performed under this Contract for the preceding calendar year. Such
1166 financial information shall be in the format as set forth in Exhibit 2, or as may be further revised
1167 by CITY from time to time. If CONTRACTOR fails to submit the financial information in the
1168 required format by March 1, it is agreed that CONTRACTOR shall be deemed to have waived
1169 the RRI adjustment for the next billing period and if the delayed submission exceeds three (3)
1170 months then the increase will be delayed for a second billing period.

1171 7.08 Recyclable Materials Collected Data. On or before March 1, 2017, and annually
1172 thereafter during the term of this Contract, CONTRACTOR shall deliver to CITY data for Tons of
1173 Recyclable Materials Collected during the preceding calendar year from SFD and MFD Service
1174 Addresses under the terms of this Contract in the format specified by CITY. If CONTRACTOR
1175 fails to submit the Recyclable Materials Tonnage data in the required format by March 1, it is
1176 agreed that CONTRACTOR shall be deemed to have waived the entire annual RRI adjustment
1177 to the Maximum Recycling Service Rates for that year.

1178 7.09 Rate Adjustments. Annual Maximum Recycling Service Rate adjustments shall
1179 be made only in units of one cent (\$0.01). Fractions of less than one cent (\$0.01) shall not be
1180 considered in making adjustments. The indices used in calculating the RRI shall be rounded at
1181 four (4) decimal places for the adjustment calculations.

1182 7.10 Notification. As of May 15, 2016, and annually thereafter during the term of this
1183 Contract, the Contract Manager shall notify CONTRACTOR of the Maximum Recycling Service
1184 rate adjustments to take place on July 1 of that same calendar year.

1185 7.11 Adjustments Due to Changes in Law. CONTRACTOR agrees that no
1186 extraordinary adjustment shall occur or rate adjustment be provided except as set forth in
1187 Article 30.

1188 7.12 CONTRACTOR's Payments to CITY. CONTRACTOR shall make payment to
1189 CITY of a negotiated franchise fee, and such other fees as may be specified in this Contract.

1190 7.12.1 Franchise Fee. The franchise fee for the fiscal year July 1, 2015
1191 through June 30, 2016, shall be the initial franchise fee of Three Million Dollars (\$3,000,000)
1192 adjusted by the annual change in the Consumer Price Index – All Urban Consumers, Series ID
1193 cuura422sa0, Not Seasonally adjusted, San Francisco-Oakland-San Jose, CA for the prior
1194 calendar year, January 1, 2014, through December 31, 2014. The franchise fee for the next
1195 fiscal year and each subsequent fiscal year shall be adjusted annually by the percentage
1196 change in the annual average of the Franchise Fee cost indicator (Series ID: cuura422sa0
1197 Consumer Price Index, All urban Consumers, All Items, San Francisco-San Jose-Oakland, CA)
1198 as set forth in Section 2 of Exhibit 2 to this Contract except that in no year shall the franchise
1199 fee adjustment be less than zero (0) percent. The franchise fee for each fiscal year shall be
1200 divided into twelve (12) equal payments, and paid monthly no later than the twentieth (20th)
1201 calendar day of each month for the preceding month except that the first franchise fee payment
1202 will be due no later than August 15, 2015.

1203 7.12.2 Proposal Development and Cost Reimbursement Fee. No later than
1204 thirty (30) calendar days after the execution of this Contract by CITY and CONTRACTOR,
1205 CONTRACTOR shall submit a proposal development and cost reimbursement fee to CITY in
1206 the amount of Five Hundred Thousand Dollars (\$500,000).

1207 7.12.3 [Reserved]

1208 7.12.4 Other Fees. CITY may set such other fees as it deems necessary.
1209 However, CONTRACTOR shall not be responsible for remitting such other fees to CITY until
1210 such time as the Maximum Recycling Service Rates as set forth in Exhibit 1 have been adjusted
1211 to include such other fees.

1212 7.12.5 Acceptance of Payment. No acceptance by CITY of any payment shall
1213 be construed as an accord that the amount is in-fact the correct amount, nor shall such
1214 acceptance of payment be construed as a release of any claim CITY may have against
1215 CONTRACTOR for any additional sums payable under the provisions of this Contract. All
1216 amounts paid shall be subject to independent audit and recalculation by CITY. If, after the
1217 audit, such recalculation indicates an underpayment CONTRACTOR shall pay to CITY the
1218 amount of the underpayment and shall reimburse CITY for all reasonable costs and expenses
1219 incurred in connection with the audit and recalculation within ten (10) Work Days of receipt of
1220 written notice from CITY that such is the case. If, after audit, such recompilation indicates an
1221 overpayment, CITY shall notify CONTRACTOR in writing of the amount of the overpayment,
1222 less costs and expenses incurred in connection with the audit and recalculation.
1223 CONTRACTOR may offset the amounts next due following receipt of such notice by the amount
1224 specified therein.

1225 7.13 Billing Records. CONTRACTOR shall keep records, electronic or paper, of all
1226 billing documents and Customer account records, including but not limited to, invoices, receipts,
1227 and collection notices, each in chronological order, for a period of three (3) years after the date
1228 of receipt or issuance.

1229 7.14 CITY Access to Customer Account and Service Information. Within a reasonable
1230 time after the commencement of the Collection Services, CONTRACTOR and CITY shall
1231 determine a means by which the following information shall be electronically provided to CITY
1232 via a live computer link or some other format acceptable to CITY: (i) all routing information from
1233 route audits to include name and address of Customer, Service Recipient and route number; (ii)
1234 records of daily Collection, Recycling Residue Disposal, and Processing figures; (iii) account
1235 classification (i.e., SFD, MFD, Commercial, Roll-Off Box), and service level (i.e., number and
1236 size of Containers, frequency of Collection); (iv) notes on location of Carts and Bins at Service

1237 Addresses; (v) record of missed pickups; and (vi) customer service log. Upon expiration or
1238 termination of this Contract, CITY shall have the immediate and permanent right to access and
1239 copy all such information contained in CONTRACTOR's customer account and service
1240 information system relevant to this Contract.

1241 7.15 Recycling Service Census Data. On or before July 15, 2016, and annually
1242 thereafter during the term of this Contract, CONTRACTOR shall deliver to CITY, Recycling
1243 Service census data for all Service Addresses as of the preceding July 1. This information shall
1244 be delivered electronically in a format approved by CITY, using software approved by CITY.

1245 7.15.1 Census data for SFD Service Addresses shall consist of a list of SFD
1246 Service Recipients receiving, SFD Recycling Service during the previous month and include at a
1247 minimum: (i) Service Recipient name and Service Address; (ii) name and address of Customer
1248 if different from Service Recipient and Service Address; and (iii) service level (i.e., number and
1249 size of Containers, and frequency of Collection).

1250 7.15.2 Census data for MFD, and Commercial Service Addresses shall consist
1251 of the number of Service Recipients receiving MFD Recycling Services, or Commercial Non-
1252 Exclusive Recycling Service during the preceding month. The census data shall be segregated
1253 by Customer type, and include at a minimum: (i) Service Recipient name and Service Address;
1254 (ii) name and address of Customer if different from Service Recipient and Service Address; and
1255 (iii) service level (i.e., number and size of Containers, and frequency of Collection).

1256 **Article 8. MATERIAL DIVERSION STANDARD**

1257 8.01 Material Diversion Standard. Beginning with calendar year 2016 and annually
1258 thereafter, CONTRACTOR shall Divert a minimum of [to be inserted] percent of all material
1259 Collected under the terms of this Contract. The standard shall represent the percentage of the
1260 actual amount of Tonnage Collected under the terms of this Contract that is Diverted in each
1261 calendar year. CONTRACTOR shall document compliance with this standard as follows.
1262 [Methodology to be inserted based on that proposed by CONTRACTOR as amended and
1263 accepted by CITY.]

1264 8.02 Failure to Meet Material Diversion Standard. CONTRACTOR's failure to meet
1265 the minimum Diversion standards set forth in Section 8.01 in any calendar year may result in the
1266 imposition of liquidated damages.

1267 8.02.1 Compliance with Material Diversion Standard. On or before February 15,
1268 2016, and annually thereafter during the term of this Contract, CONTRACTOR shall submit a
1269 Material Diversion Standard Compliance Report to CITY. The report shall present the following
1270 information for the preceding full or partial calendar year:

1271 8.02.1.1 The number of Tons of material Collected under the terms
1272 of this Contract by CONTRACTOR, (which should agree to the number of Tons invoiced to the
1273 MM& Contractor by CONTRACTOR for that period);

1274 8.02.1.2 The number of Tons of material Collected under the terms
1275 of this Contract by CONTRACTOR that have been Diverted (calculated in accordance with the
1276 provisions of Exhibit 7;

1277 8.02.1.3 The minimum material Diversion Tons, (calculated by
1278 multiplying the Tons of material Collected from Section 8.02.1.1 and the minimum Diversion
1279 standard percentage from Section 8.01); and

1280 8.02.1.4 The number of over Diverted or under Diverted Tons,
1281 (calculated by subtracting minimum material Diverted Tons from Section 8.02.1.3 from the
1282 Diverted Tons from Section 8.02.1.2.

1283 8.03 Failure to Meet Material Diversion Standard in Consecutive Years. In the event
1284 CONTRACTOR fails to meet the minimum Diversion standard set forth in Section 8.01 for three
1285 (3) consecutive calendar years CITY, at its sole discretion, may chose not to offer the Contract
1286 extension set forth in Section 3.01.1 of this Contract, and this Contract shall terminate no later
1287 than June 30, 2025.

1288 **Article 9. SFD RECYCLING SERVICES**

1289 9.01 SFD Recycling Services. These services shall be governed by the following
1290 terms and conditions:

1291 9.01.1 Size and Frequency of Service. CONTRACTOR shall offer Recycling
1292 Carts in 20, 32, 64 and 96 gallon nominal Cart sizes, with the default Cart size being 64 gallons.
1293 The size of the Cart shall be selected by the SFD Service Recipient or Customer. SFD
1294 Recycling Services shall be provided one (1) time per week on a scheduled route basis. SFD
1295 Recycling Services shall be scheduled so that the service is provided to a Service Address on
1296 the same Work Day as the Mixed Material and Organics Collection Contractor Collects the
1297 Mixed Materials.

1298 9.01.2 Manner of Collection. CONTRACTOR shall provide SFD Recycling
1299 Services with as little disturbance as possible. Except in the case of backyard SFD Recycling
1300 Services, CONTRACTOR shall leave any Recycling Cart in an upright position, with the lid
1301 closed, and replacement Used Oil Containers and Used Oil Filter Containers on the curb or at
1302 the edge of street pavement for streets without curbs, without obstructing alleys, roadways,
1303 driveways, sidewalks or mail boxes In the case of backyard SFD Recycling Services,
1304 CONTRACTOR shall remove the Recycling Container and Used Oil and Used Oil Filter
1305 Containers from the back or side of the Service Address (or from such other location as agreed
1306 to by CONTRACTOR and the Service Recipient), shall empty the contents into the Collection
1307 vehicle, and shall return the Recycling Container and replacement Used Oil and Used Oil Filter
1308 Containers to the location from which they were removed.

1309 9.01.3 Curbside SFD Recycling Services. Curbside SFD Recycling Services
1310 shall be provided where Recyclable Materials and Used Oil and Used Oil Filter Containers are
1311 placed within three (3) feet of the curb, or at edge of street pavement for streets without curbs.

1312 9.01.4 Premium Backyard SFD Recycling Services. CONTRACTOR shall
1313 provide premium backyard Collection of Recyclable Materials and Used Oil and Used Oil Filters
1314 to a SFD Service Address if requested by the SFD Customer for their convenience.
1315 CONTRACTOR shall be compensated for such services at the approved Maximum Recycling
1316 Service Rates provided in Exhibit 1 for premium backyard SFD Recycling Services.

1317 9.01.5 Exempt Backyard SFD Recycling Services. Notwithstanding any term or
1318 definition set forth in this Contract, CONTRACTOR shall provide exempt backyard SFD
1319 Recycling Services to SFD Service Addresses whose occupants meet the requirements for the
1320 exemption programs set forth below in Sections 9.01.6 through 9.01.8 and, based on
1321 information provided by CITY to CONTRACTOR, those Service Addresses receiving such
1322 service from the prior Collection Contractor. CONTRACTOR shall provide exempt SFD
1323 backyard Recycling Services to SFD Service Addresses at no additional charge to CITY or the
1324 SFD Customer.

1325 9.01.6 Frail Senior Exemption Program. CONTRACTOR shall provide exempt
1326 backyard SFD Recycling Services to SFD Service Addresses whose occupants demonstrate
1327 that they meet the requirements set forth in this Section 9.01.6 through the submission of a
1328 complete application requesting this exemption along with all required documentation and
1329 certifications. Services shall begin on the next regularly scheduled Collection day of the Service
1330 Address after CONTRACTOR's receipt of the completed application. No additional monies shall
1331 be due to CONTRACTOR for the provision of exempt backyard SFD Recycling Services.

1332 9.01.6.1 Applicant must be sixty (60) years of age or older.

1333 9.01.6.2 Applicant must be the owner of record or primary renter.

1334 9.01.6.3 The Dwelling Unit must be solely occupied by the
1335 applicant, unless all other occupants meet the requirements of frail senior exemption program
1336 as set forth in this Section 9.01.6, the disability exemption program as set forth in Section 9.01.7
1337 or are under the age of twelve (12) years old.

1338 9.01.6.4 Applicant must provide a signed statement from a
1339 registered Doctor of Medicine (M.D.) stating that bringing the wheeled Containers to curbside
1340 creates an undue physical hardship on the applicant.

1341 9.01.7 Disability Exemption Program. CONTRACTOR shall provide exempt
1342 backyard SFD Recycling Services to SFD Service Addresses whose occupants demonstrate
1343 that they meet the requirements set forth in this Section 9.01.7 through the submission of a
1344 complete application requesting this exemption along with all required documentation and
1345 certifications. Services shall begin on the next regularly scheduled Collection day of the Service
1346 Address after CONTRACTOR's receipt of the completed application. No additional monies shall
1347 be due to CONTRACTOR for the provision of exempt backyard SFD Recycling Services.

1348 9.01.7.1 Applicant must be the owner of record or primary renter.

1349 9.01.7.2 The Dwelling Unit must be solely occupied by the
1350 applicant, unless all other occupants meet the requirements of frail senior exemption program
1351 as set forth in Section 9.01.6, the disability exemption program as set forth in this Section 9.01.7
1352 or are under the age of twelve (12) years old.

1353 9.01.7.3 Applicant must provide proof that is acceptable to
1354 CONTRACTOR of long term or permanent physical disability which may include; 1) a signed
1355 statement from a registered Doctor of Medicine (M.D.); 2) proof or registration as a disabled
1356 driver as determined by the Department of Motor Vehicles; or 3) documentation of grant of
1357 permanent disability status by the State of California.

1358 9.01.7.4 Curbside Placement Exemption. CONTRACTOR may
1359 petition CITY for the provision of exempt backyard SFD Recycling Services from SFD Service
1360 Addresses other than as required by Sections 9.01.6 and 9.01.7.

1361 9.01.8 Collection Day. CONTRACTOR shall provide exempt backyard SFD
1362 Recycling Services on the same Work Day that curbside SFD Recycling Services Collection
1363 would otherwise be provided to the Service Address.

1364 9.02 SFD Recycling Services. These services will be governed by the following
1365 additional terms and conditions:

1366 9.02.1 Containerized Recyclable Materials. CONTRACTOR shall provide SFD
1367 Recycling Services to all SFD Service Addresses in the Service Area whose Recyclable
1368 Materials are properly containerized in Recycling Containers, except as set forth in Section

1369 9.02.2 below, regardless of whether the lid is fully closed, where the Containers have been
1370 placed within three (3) feet of the curb, paved surface of the public roadway, closest accessible
1371 roadway, or other such location agreed to by CONTRACTOR and Service Recipient, which will
1372 provide safe and efficient accessibility to CONTRACTOR's Collection crew and vehicle.

1373 9.02.2 Collection of Recyclable Materials Overages. CONTRACTOR shall also
1374 be required to Collect all Recyclable Materials Overages that are set out for Collection beside
1375 the Recycling Container in an additional container, bag, box or bundle, or in the case of
1376 corrugated cardboard, in pieces not exceeding three (3) feet by three (3) feet, placed beside the
1377 Recycling Container. CONTRACTOR may Collect corrugated cardboard exceeding three (3)
1378 feet by three (3) feet or may leave the oversized material uncollected along with a Non-
1379 Collection Notice that contains instructions on the proper procedures for setting out corrugated
1380 cardboard.

1381 9.02.2.1 Additional Recyclable Materials Capacity. Upon
1382 notification to CONTRACTOR by CITY, a Customer or a Service Recipient that additional
1383 Recyclable Materials capacity is requested in the form of a larger Container or an additional
1384 Container, CONTRACTOR shall deliver such Recyclable Materials Containers as are needed to
1385 meet the capacity requirements of the Service Address no later than the next regularly
1386 scheduled Collection day. CONTRACTOR shall not receive additional compensation for the
1387 Collection of larger Recyclable Materials Containers. However, CONTRACTOR shall receive
1388 additional compensation for the Collection of additional Recyclable Materials Containers in
1389 accordance with the approved Maximum Recycling Service Rates as provided in Exhibit 1 or as
1390 may be adjusted under the terms of this Contract.

1391 9.02.3 Materials Recovery Facility. All Recyclable Materials Collected as a
1392 result of performing SFD Recycling Services shall be transported and delivered to the Materials
1393 Recovery Facility.

1394 **Article 10. MFD RECYCLING SERVICES**

1395 10.01 MFD Recycling Services. These services shall be governed by the following
1396 terms and conditions:

1397 10.01.1 Manner of Collection. CONTRACTOR shall provide MFD
1398 Recycling Services with as little disturbance as possible and shall leave any Container in an
1399 upright position, with the lid closed, at the same point it was Collected without obstructing alleys,
1400 roadways, driveways, sidewalks or mail boxes. CONTRACTOR shall close or lock, as
1401 appropriate, Containers and Container enclosures that were opened by CONTRACTOR as part
1402 of the Collection process.

1403 10.01.2 Accessibility. CONTRACTOR shall Collect all Recyclable
1404 Materials Containers, and Used Oil and Used Oil Filter Containers as are readily accessible to
1405 CONTRACTOR's crew and vehicles and not blocked. However, CONTRACTOR shall provide
1406 "push services" and "key services" as necessary during the provision of MFD Recycling
1407 Services. Push services shall include, but not be limited to, dismounting from the Collection
1408 vehicle, moving the Bins or Carts from their storage location for Collection and returning the
1409 Bins or Carts to their storage location. Push services may include unlocking and relocking the
1410 Bin or enclosure. Key services shall include the provision of a master lock and key by
1411 CONTRACTOR to the Service address for the convenience of CONTRACTOR.
1412 CONTRACTOR shall be compensated for providing "push services" and/or "key services" in

1413 accordance with the approved Maximum Recycling Service Rates as provided in Exhibit 1 or as
1414 may be adjusted in accordance with the terms of this Contract.

1415 10.01.3 Difficult to Serve. If CONTRACTOR determines that the set-out
1416 location for Carts, Bins or Used Oil and Used Oil Filter Containers is Difficult to Serve,
1417 CONTRACTOR shall contact the MFD Customer to discuss a change in the set out location. In
1418 the event a new set out location is not agreed to between the CONTRACTOR and MFD
1419 Customer, then CONTRACTOR shall be compensated for providing Difficult to Serve MFD
1420 Recycling Collection Services in accordance with the approved Maximum Recycling Service
1421 Rates as provided in Exhibit 1 or as may be adjusted in accordance with the terms of this
1422 Contract.

1423 10.02 MFD Recycling Collection Service. This service will be governed by the following
1424 additional terms and conditions:

1425 10.02.1 Containerized Recyclable Materials. CONTRACTOR shall
1426 provide MFD Recycling Services to all MFD Service Addresses in the Service Area where the
1427 Recyclable Materials are properly containerized in Carts or Bins, except as set forth in Section
1428 10.02.5 regardless of whether the lid is fully closed, where the Carts or Bins are accessible as
1429 set forth in Section 10.01.2 above.

1430 10.02.2 Service Frequency. CONTRACTOR shall provide MFD Recycling
1431 Services once per week on a scheduled route basis. However, in those instances where the
1432 scheduled Collection day falls on a holiday as set forth in Section 6.10 herein, the Collection day
1433 may be adjusted in a manner agreed to between the MFD Service Recipient and
1434 CONTRACTOR as long as service is received one (1) time per week.

1435 10.02.2.1 CONTRACTOR shall respond to requests for service
1436 utilizing Roll-Off Boxes within two (2) Work Days of the request from the MFD Customer.

1437 10.02.3 Container Sizes. CONTRACTOR shall offer Recyclable Materials
1438 Containers in 20, 32, 64 and 96 gallon nominal Cart sizes and in 1, 1.5 2, 3, 4, 6 and 7 cubic
1439 yard Bins. CONTRACTOR shall offer Roll-Off Boxes in 10, 20, 30 and 40 cubic yard sizes with
1440 lids.

1441 10.02.4 Minimum Capacity. CONTRACTOR shall provide Recyclable
1442 Materials Container sizes as requested by the MFD Customer such that the total weekly
1443 capacity of Recycling Collection Services is sufficient ensure that no Recyclable Materials,
1444 except as set forth in Section 10.02.5 need be placed outside the Recyclable Materials
1445 Container on a regular basis.

1446 10.02.5 Collection of Recyclable Materials Overages. CONTRACTOR
1447 shall also be required to Collect all Recyclable Materials Overages that are set out for Collection
1448 beside the Recycling Container in an additional container, or in the case of corrugated
1449 cardboard, in pieces not exceeding three (3) feet by three (3) feet, placed beside the Recycling
1450 Container. CONTRACTOR may Collect corrugated cardboard exceeding three (3) feet by three
1451 (3) feet or may leave the oversized material uncollected along with a Non-Collection Notice that
1452 contains instructions on the proper procedures for setting out corrugated cardboard.

1453 10.02.6 Multiple Overages. In the case of repeated Overages of
1454 Recyclable Materials, except corrugated cardboard, CONTRACTOR may send written
1455 notification to the MFD Customer that includes dates of observed Overages, any previous
1456 notifications, photographic documentation of said Overages and an offer to arrange for an
1457 appropriate change in Bin or Cart size, and/or Collection frequency. Should Overages persist

1458 after three (3) notifications and CONTRACTOR is unable to reach an agreement with the MFD
1459 Customer regarding an appropriate change in Bin or Cart size and/or frequency of Collection,
1460 CONTRACTOR may impose such service level increase as is needed to avoid the Overages
1461 and notify the MFD Customer and Contract Manager in writing. The MFD Customer may
1462 petition CITY regarding any change in Bin or Cart size and/or Collection frequency. Should
1463 three (3) months elapse with no Overage recurrence taking place following the change in
1464 service the Overage problem shall be considered resolved.

1465 10.02.7 Additional Recyclable Materials Capacity.

1466 10.02.7.1 Increase in Container Size. Upon notification to
1467 CONTRACTOR by CITY or a Customer that additional Recyclable Materials capacity is
1468 requested in the form of a larger Container or an additional Container, CONTRACTOR shall
1469 deliver such Recyclable Materials Containers as are needed to meet the capacity requirements
1470 of the Service Address no later than the next regularly scheduled Collection day.
1471 CONTRACTOR shall not receive additional compensation for the provision or Collection of
1472 larger or additional Recyclable Materials Containers.

1473 10.02.7.2 Increase in Collection Frequency. Customers may obtain
1474 additional Recyclable Material capacity through the subscription of Collection frequency in
1475 excess of the default frequency of one (1) time per week. CONTRACTOR shall be
1476 compensated for providing MFD Recycling Collection Services in excess of one (1) time per
1477 week in accordance with the approved "Excess Frequency" Maximum Recycling Service Rate
1478 as provided in Exhibit 1 or as may be adjusted under the terms of this Contract.

1479 10.02.8 Materials Recovery Facility. All Recyclable Materials Collected as
1480 a result of performing MFD Recycling Services shall be delivered to the Materials Recovery
1481 Facility.

1482 10.03 Used Oil Collection Service. CONTRACTOR shall perform Used Oil Collection
1483 Service in accordance with the following terms and conditions:

1484 10.03.1 Conditions of Service. CONTRACTOR shall provide Used Oil
1485 Collection Service to all MFD Service Addresses in the Service Area utilizing Used Oil
1486 Containers for the accumulation and set-out of Used Oil, and Used Oil Filter Containers for the
1487 accumulation and set out of Used Oil Filters where the Used Oil Containers and Used Oil Filter
1488 Containers have been placed in a collection box at a location agreed to by CONTRACTOR and
1489 the MFD Customer, that will provide safe and efficient accessibility to CONTRACTOR's
1490 collection crew and vehicle.

1491 10.03.2 Non-Collection. CONTRACTOR shall not be required to Collect
1492 material placed in Used Oil Containers or Used Oil Filter Containers unless the material is Used
1493 Oil or Used Oil Filters. In the event of non-collection, CONTRACTOR shall affix to the Used Oil
1494 Container or Used Oil Filter Container a Non-Collection Notice explaining why Collection was
1495 not made. If non-collection is because the material placed in the Used Oil Container or the
1496 Used Oil Filter Container was identified by CONTRACTOR as a Hazardous Waste, prior to
1497 leaving the Service Unit CONTRACTOR shall notify the CITY of Oakland Fire Department of the
1498 non-collection. CONTRACTOR shall immediately notify CITY of any Hazardous Waste that has
1499 been identified, and submit an incident report to Contract Manager. If non-collection is because
1500 the Used Oil or Used Oil Filter was placed in an improper container, CONTRACTOR shall also
1501 leave Used Oil Containers or Used Oil Filter Containers in a number sufficient to contain the
1502 uncollected Used Oil (but not exceeding five (5) quarts per Dwelling Unit) or Used Oil Filters (but
1503 not exceeding one (1) Used Oil Filter per Dwelling Unit) along with the Non-Collection Notice.

1504 10.03.3 Spillage. CONTRACTOR shall carry oil absorbent material on all
1505 Used Oil Collection vehicles and shall cleanup any Used Oil that spills during Collection, which
1506 has leaked from the Used Oil or Used Oil Filter Container, or which spills or leaks during the
1507 time the Used Oil or Used Oil Filter is in the Collection vehicle.

1508 10.03.4 Used Oil Containers and Used Oil Filter Containers. No later than
1509 the next regularly scheduled Collection day after receipt of a verbal request from CITY or a MFD
1510 Customer, CONTRACTOR shall, at CONTRACTOR's sole cost and expense, provide the MFD
1511 Customer or management of the MFD Service Address with a sufficient number of collection
1512 boxes for the storage of Used Oil and Used Oil Filters. Each collection box shall contain six (6)
1513 Used Oil Containers, three (3) Used Oil Filter Containers and one (1) oil funnel.

1514 10.03.4.1 At the time CONTRACTOR Collects Used Oil from an MFD
1515 Service Address, CONTRACTOR shall, at CONTRACTOR's sole cost and expense, leave at
1516 the Service Address one (1) Used Oil Container for each Used Oil Container Collected and one
1517 (1) Used Oil Filter Container for each Used Oil Filter Container Collected. CONTRACTOR shall
1518 keep the outside of all Used Oil Containers and Used Oil Filter Containers clean and may re-use
1519 the containers until the condition of the container makes it inappropriate for re-use.

1520 **Article 11. COMMERCIAL NON-EXCLUSIVE RECYCLING** 1521 **COLLECTION SERVICE**

1522 11.01 Commercial Non-Exclusive Recycling Collection Service. CONTRACTOR may
1523 provide Commercial Non-Exclusive Recycling Collection Service as a competitor in the
1524 commercial recycling open market pursuant to separate agreements with Customers. These
1525 services are provided in the open market are not within the scope of this Contract. All expenses
1526 related to Recyclable Materials Processing and marketing to potential Commercial Non-
1527 Exclusive Recycling Collection Service Customers will be the sole responsibility of
1528 CONTRACTOR. However, CONTRACTOR shall make recycling services available for
1529 commercial customers that seek service under this Contract and might otherwise not have
1530 recycling services available to them. These services will be governed by the following terms
1531 and conditions.

1532 11.01.1 Containerized Recyclable Materials. CONTRACTOR shall
1533 provide Commercial Non-Exclusive Recycling Collection Service to all Commercial Service
1534 Addresses in the Service Area requesting such service, where the Recyclable Materials are
1535 properly containerized in Recyclable Materials Carts, Bins or Roll-Off Boxes regardless of
1536 whether the lid is fully closed, where the Carts, Bins or Roll-Off Boxes are accessible as set
1537 forth in Section 11.01.3. CONTRACTOR shall be compensated for the provision of Commercial
1538 Non-Exclusive Recycling Collection Service in accordance with the Maximum Recycling Service
1539 Rates set forth in Exhibit 1 to this Contract.

1540 11.01.2 Manner of Collection. CONTRACTOR shall provide Commercial
1541 Non-Exclusive Recycling Collection Service with as little disturbance as possible and shall leave
1542 any Container in an upright position, with the lid closed, at the same point it was Collected
1543 without obstructing alleys, roadways, driveways, sidewalks or mail boxes. CONTRACTOR shall
1544 close or lock, as appropriate, Containers and Container enclosures that were opened by
1545 CONTRACTOR as part of the Collection process.

1546 11.01.3 Accessibility. CONTRACTOR shall Collect those Commercial
1547 Non-Exclusive Recycling Collection Service Containers that are readily accessible to
1548 CONTRACTOR's crew and vehicles and not blocked. However, CONTRACTOR shall provide

1549 “push services” and “lock services” as necessary during the provision of Commercial Non-
1550 Exclusive Recycling Collection Service. Push services shall include, but not be limited to,
1551 dismounting from the Collection vehicle, moving the Bins or Carts from their storage location for
1552 Collection and returning the Bins or Carts to their storage location. Push services may include
1553 unlocking and relocking the Bin or enclosure. Key services shall include the provision of a
1554 master lock and key by CONTRACTOR to the Service Address for the convenience of
1555 CONTRACTOR. CONTRACTOR shall be compensated for providing “push services” and/or
1556 “key services” in accordance with the approved Maximum Recycling Service Rates as provided
1557 in Exhibit 1 or as may be adjusted in accordance with the terms of this Contract.

1558 11.01.4 Difficult to Serve. If CONTRACTOR determines that the set-out
1559 location for Carts, Bins or Roll-Off Boxes is Difficult to Serve, CONTRACTOR shall contact the
1560 Commercial Customer to discuss a change in the set out location. In the event a new set out
1561 location is not agreed to between the CONTRACTOR and Commercial Customer, then
1562 CONTRACTOR shall be compensated for providing Difficult to Serve Collection Services in
1563 accordance with the approved Maximum Recycling Service Rates as provided in Exhibit 1 or as
1564 may be adjusted in accordance with the terms of this Contract.

1565 11.01.5 Service Frequency. CONTRACTOR shall provide Commercial
1566 Non-Exclusive Recycling Collection Service at least weekly. However, in those instances where
1567 the scheduled Collection day falls on a holiday as set forth in Section 6.10 herein, the Collection
1568 day may be adjusted in a manner agreed to between the Commercial Service Recipient and
1569 CONTRACTOR as long as service is received a minimum of one (1) time per week.

1570 11.01.5.1 CONTRACTOR shall respond to requests for service
1571 utilizing Roll-Off Boxes within two (2) Work Days of the request from the Commercial Customer.

1572 11.01.6 Container Sizes. CONTRACTOR shall offer Recyclable Materials
1573 Containers in 20, 32, 64 and 96 gallon nominal Cart sizes and in 1, 1.5 2, 3, 4, 6 and 7 cubic
1574 yard Bins. CONTRACTOR shall offer Roll-Off Boxes in 10, 20, 30 and 40 cubic yard sizes with
1575 lids.

1576 11.01.7 Minimum Capacity. CONTRACTOR shall provide Recyclable
1577 Materials Container sizes as requested by the Commercial Customer such that the total weekly
1578 capacity of Recycling Collection Service is sufficient ensure that no Recyclable Materials,
1579 except as set forth in Section 11.01.8 need be placed outside the Recyclable Materials
1580 Container on a regular basis.

1581 11.01.8 Collection of Recyclable Materials Overages. CONTRACTOR
1582 shall also be required to Collect all corrugated cardboard, in pieces not exceeding three (3) feet
1583 by three (3) feet, placed beside the Recycling Container. CONTRACTOR may Collect
1584 corrugated cardboard exceeding three (3) feet by three (3) feet or may leave the oversized
1585 material uncollected along with a Non-Collection Notice that contains instructions on the proper
1586 procedures for setting out corrugated cardboard.

1587 11.01.9 Multiple Overages. In the case of repeated Overages of
1588 Recyclable Materials, except corrugated cardboard, CONTRACTOR may send written
1589 notification to the MFD Customer that includes dates of observed Overages, any previous
1590 notifications, photographic documentation of said Overages and an offer to arrange for an
1591 appropriate change in Bin or Cart size, and/or Collection frequency. Should Overages persist
1592 after three (3) notifications and CONTRACTOR is unable to reach an agreement with the
1593 Commercial Customer regarding an appropriate change in Bin or Cart size and/or frequency of
1594 Collection, CONTRACTOR may impose such service level increase as is needed to avoid the

1595 Overages and notify the Commercial Customer and Contract Manager in writing. The
1596 Commercial Customer may petition CITY regarding any change in Bin or Cart size and/or
1597 Collection frequency. Should three (3) months elapse with no Overage recurrence taking place
1598 following the change in service the Overage problem shall be considered resolved.

1599 11.01.10 Materials Recovery Facility. All Recyclable Materials Collected as
1600 a result of performing Commercial Non-Exclusive Recycling Collection Service shall be
1601 delivered to a fully permitted Materials Recovery Facility(MRF) as designated by
1602 CONTRACTOR and approved by CITY. In the event the MRF is closed on a Work Day,
1603 CONTRACTOR shall transport and deliver the Recyclable Materials to such other legally
1604 permitted MRF as is approved by CITY. Failure to comply with this provision shall result in the
1605 levy of liquidated damages as specified in Article 22 of this Contract and may result in
1606 CONTRACTOR being in default under this Contract.

1607 **Article 12. CITY RECYCLING COLLECTION SERVICE**

1608 12.01 CITY Recycling Collection Service. CONTRACTOR has offered to donate the
1609 following service as corporate good will:

1610 12.01.1 Conditions of Service. CONTRACTOR shall provide CITY
1611 Collection Services to all CITY Facilities existing in the Service Area as of the effective date of
1612 the Contract where Mixed Materials and Organic Materials are properly containerized in Bins,
1613 Carts, or Roll-Off Boxes regardless of whether the lid is closed, and where the Bins, Carts, or
1614 Roll-Off Boxes are accessible as set forth in Section 12.01.4. All such Mixed Materials and
1615 Organic Materials must be generated on City Facilities or on property maintained by CITY. To
1616 the extent the number of CITY Facilities being serviced by CONTRACTOR increases
1617 disproportionately to the reasonably expected growth in CITY Collection Services provided
1618 during the term of the Contract, the parties agree to meet and confer in good faith to discuss
1619 appropriate service levels as well as compensation for additional services. If the parties are
1620 unable to agree upon the appropriate amount of compensation, the parties shall resolve their
1621 disagreement through the dispute resolution process as set forth in Section 30.02.

1622 12.01.2 Containerized Recyclable Materials. CONTRACTOR shall
1623 provide CITY Recycling Collection Service to all CITY Facilities in the Service Area where the
1624 Recyclable Materials are properly containerized in Recyclable Materials Carts, Bins or Roll-Off
1625 Boxes regardless of whether the lid is fully closed, where the Carts, Bins or Roll-Off Boxes are
1626 accessible as set forth in Section 12.01.3. CONTRACTOR shall not be compensated for the
1627 provision of CITY Recycling Collection Service in as set forth in Section 12.01.

1628 12.01.3 Manner of Collection. CONTRACTOR shall provide CITY
1629 Recycling Collection Service with as little disturbance as possible and shall leave any Container
1630 in an upright position, with the lid closed, at the same point it was Collected without obstructing
1631 alleys, roadways, driveways, sidewalks or mail boxes. CONTRACTOR shall close or lock, as
1632 appropriate, Containers and Container enclosures that were opened by CONTRACTOR as part
1633 of the Collection process.

1634 12.01.4 Accessibility. CONTRACTOR shall Collect those CITY Recyclable
1635 Materials Containers that are readily accessible to CONTRACTOR's crew and vehicles and not
1636 blocked. However, CONTRACTOR shall provide "push services" and "lock services" as
1637 necessary during the provision of CITY Recycling Collection Service. Push services shall
1638 include, but not be limited to, dismounting from the Collection vehicle, moving the Bins or Carts
1639 from their storage location for Collection and returning the Bins or Carts to their storage location.

1640 Push services may include unlocking and relocking the Bin or enclosure. Key services shall
1641 include the provision of a master lock and key by CONTRACTOR to the Service Address for the
1642 convenience of CONTRACTOR. CONTRACTOR shall not be compensated for providing “push
1643 services” and or “key services.”

1644 12.01.5 Difficult to Serve. If CONTRACTOR determines that the set-out
1645 location for Carts, Bins or Roll-Off Boxes is Difficult to Serve, CONTRACTOR shall contact the
1646 CITY Customer to discuss a change in the set out location.

1647 12.01.6 Service Frequency. CONTRACTOR shall provide CITY Recycling
1648 Collection Service at least weekly. However, in those instances where the scheduled Collection
1649 day falls on a holiday as set forth in Section 6.10 herein, the Collection day may be adjusted in a
1650 manner agreed to between the Commercial Service Recipient and CONTRACTOR as long as
1651 service is received a minimum of one (1) time per week.

1652 12.01.6.1 CONTRACTOR shall respond to requests for service
1653 utilizing Roll-Off Boxes within two (2) Work Days of the request from the MFD Customer.

1654 12.01.7 Container Sizes. CONTRACTOR shall offer Recyclable Materials
1655 Containers in 20, 32, 64 and 96 gallon nominal Cart sizes and in 1, 1.5 2, 3, 4, 6 and 7 cubic
1656 yard Bins. CONTRACTOR shall offer Roll-Off Boxes in 10, 20, 30 and 40 cubic yard sizes with
1657 lids.

1658 12.01.8 Minimum Capacity. CONTRACTOR shall provide Recyclable
1659 Materials Container sizes as requested by the Commercial Customer such that the total weekly
1660 capacity of Recycling Service is sufficient ensure that no Recyclable Materials, except as set
1661 forth in Section 12.01.8 need be placed outside the Recyclable Materials Container on a regular
1662 basis.

1663 12.01.9 Collection of Recyclable Materials Overages. CONTRACTOR
1664 shall also be required to Collect all corrugated cardboard, in pieces not exceeding three (3) feet
1665 by three (3) feet, placed beside the Recycling Container. CONTRACTOR may Collect
1666 corrugated cardboard exceeding three (3) feet by three (3) feet or may leave the oversized
1667 material uncollected along with a Non-Collection Notice that contains instructions on the proper
1668 procedures for setting out corrugated cardboard.

1669 12.01.10 Multiple Overages. In the case of repeated Overages of
1670 Recyclable Materials, except corrugated cardboard, CONTRACTOR may send written
1671 notification to the Commercial Customer that includes dates of observed Overages, any
1672 previous notifications, photographic documentation of said Overages and an offer to arrange for
1673 an appropriate change in Bin or Cart size, and/or Collection frequency. Should Overages
1674 persist after three (3) notifications and CONTRACTOR is unable to reach an agreement with the
1675 Commercial Customer regarding an appropriate change in Bin or Cart size and/or frequency of
1676 Collection, CONTRACTOR may impose such service level increase as is needed to avoid the
1677 Overages and notify the Commercial Customer and Contract Manager in writing. The
1678 Commercial Customer may petition CITY regarding any change in Bin or Cart size and/or
1679 Collection frequency. Should three (3) months elapse with no Overage recurrence taking place
1680 following the change in service the Overage problem shall be considered resolved.

1681 12.01.11 Materials Recovery Facility. All Recyclable Materials Collected as
1682 a result of performing CITY Recycling Collection Service shall be delivered to the Materials
1683 Recovery Facility.

1684

Article 13. COLLECTION ROUTES

1685 13.01 Collection Routes. Within five (5) Work Days of receipt of a request from CITY,
1686 CONTRACTOR shall provide CITY with maps precisely defining Collection routes, and the
1687 travel routes to the Collection routes, together with the days and the times at which Collection
1688 shall regularly commence.

1689 13.02 Subsequent Collection Route Changes. In the event a Collection route change
1690 will change the Collection day for a Service Address, CONTRACTOR shall meet with the
1691 MM&O Contractor to coordinate the route changes so that SFD Recycling Services are provided
1692 to each Service Address on the same day as SFD Mixed Material Collection Services. Once
1693 the route changes have been coordinated between CONTRACTOR and the MM&O Contractor,
1694 CONTRACTOR shall notify those Service Addresses and the Contract Manager in writing of the
1695 Collection route changes, but not less than thirty (30) days before the proposed date of
1696 implementation. CONTRACTOR shall not change Collection days if that change would result in
1697 a Service Address receiving SFD Recycling Services on a different day as SFD Mixed Material
1698 Collection Services.

1699 13.03 Route Map Update. CONTRACTOR shall revise the Customer route maps to
1700 show the addition of Customers added due to construction/occupancy and shall provide such
1701 revised maps to the Contract Manager upon request.

1702 13.04 CONTRACTOR Audit of Routes. In addition to any other auditing requirements
1703 under this Contract, CONTRACTOR shall perform a comprehensive audit of SFD, and MFD
1704 Customer Routes every full or partial three (3) calendar years, and submit to CITY a written
1705 report on the results of that audit, no later than thirty (30) calendar days after completion of the
1706 audit. The report should include the testing protocols, and the details of the route audit findings
1707 along with recommendations, if any, on how CONTRACTOR will modify the current system to
1708 correct any errors noted during the audit. If CITY requests, CONTRACTOR shall cooperate
1709 fully with CITY to allow CITY to verify the accuracy of CONTRACTOR's route audit report.

1710 13.05 Coordination with Street Sweeping. CITY AND CONTRACTOR acknowledge
1711 that CONTRACTOR may have to modify Collection days to accommodate CITY's street
1712 sweeping schedule.

1713

Article 14. COLLECTION EQUIPMENT

1714 14.01 General Provisions. All equipment used by CONTRACTOR in the performance
1715 of Recycling Service under this Contract shall be of a high quality. At the start of this Contract,
1716 all route Collection vehicles utilized by CONTRACTOR pursuant to this Contract shall be new
1717 2014/2015 manufactured vehicles as specified in Exhibit 10 which is attached to and included in
1718 this Contract. The vehicles shall be designed and operated so as to prevent Collected materials
1719 from escaping from the vehicles. Hoppers shall be closed on top and on all sides with
1720 screening material to prevent Collected materials from leaking, blowing or falling from the
1721 vehicles. All trucks and Containers shall be watertight and shall be operated so that liquids do
1722 not spill during Collection or in transit. [this section may change depending on the award]

1723 14.02 Vehicle Registration, Licensing and Inspection. On or before July 1, 2015, and
1724 upon request by CITY thereafter during the term of this Contract, CONTRACTOR shall submit
1725 documentation to the Contract Manager to verify that each of CONTRACTOR's Collection
1726 vehicles is in compliance with all registration, licensing and inspection requirements of the
1727 California Highway Patrol, the California Department of Motor Vehicles, and any other

1728 applicable laws or regulations. CONTRACTOR shall not use any vehicle that is not in
1729 compliance with applicable registration, licensing and inspection requirements to perform
1730 Recycling Services. Each vehicle shall comply, at all times, with all applicable statutes, laws or
1731 ordinances of any public agency.

1732 14.03 Clean Air Vehicles. During the term of this Contract, to the extent required by
1733 law, CONTRACTOR shall provide its Collection vehicles to be in full compliance with local,
1734 State and federal clean air requirements that were enacted or scheduled to be enacted,
1735 including, but not limited to, the California Air Resources Board Heavy Duty Engine Standards
1736 as currently proposed to be contained in CCR Title 13, section 2020 et seq.; the Federal EPA's
1737 Highway Diesel Fuel Sulfur regulations and any other applicable air pollution control.

1738 14.04 Global Positioning Systems (GPS). CONTRACTOR shall provide all route
1739 Collection vehicles equipped with fully functioning on-board GPS with direct and real-time
1740 linkages to CONTRACTOR's Customer service system.

1741 14.05 Vehicle Noise Level. All Collection operations shall be conducted as quietly as
1742 possible and must comply with U.S. EPA noise emission regulations currently codified at 40
1743 CFR Part 205, California Vehicle Code section 27207, and other applicable State, County, and
1744 CITY noise control regulations.

1745 14.06 Safety Equipment. All Collection equipment used by CONTRACTOR shall have
1746 appropriate safety markings including, but not limited to, highway lighting, flashing and warning
1747 lights, clearance lights, and warning flags. All such safety markings shall be in accordance with
1748 the requirements of the California Vehicle Code, as may be amended from time to time. All
1749 Collection vehicles shall be equipped with audible back-up warning devices.

1750 14.07 Vehicle Signage and Painting. Collection vehicles shall have signage in letters of
1751 contrasting color, at a size approved by CITY, on each side and the rear of each vehicle that
1752 clearly states that the Collection vehicle is servicing the CITY of Oakland provides
1753 CONTRACTOR's name, CONTRACTOR's Customer service telephone number, CITY's
1754 Oakland Recycles logo and the number of the vehicle. CONTRACTOR shall repaint all vehicles
1755 (including vehicles striping) during the term of this Contract on a frequency as necessary to
1756 maintain a positive public image as reasonably determined by the Contract Manager.

1757 14.08 Collection Vehicle Education Requirements. All new Collection vehicles shall
1758 include space for outdoor poster advertising to be utilized by CITY. No advertising shall be
1759 permitted other than the name and corporate logo of CONTRACTOR except promotional
1760 advertisement of the Recyclable Materials and Organic Materials programs.

1761 14.09 Bin, Compactor and Roll-Off Box Signage, Painting, and Cleaning. All metal
1762 Bins, Compactors or Roll-Off Boxes furnished by CONTRACTOR shall be either painted or
1763 galvanized. All Bins, Compactors or Roll-Off Boxes shall display CONTRACTOR'S name,
1764 CONTRACTOR'S toll free customer service telephone number, and shall be kept in a clean and
1765 sanitary condition. Each Bin, Compactor or Roll-Off Box shall include a description of the type
1766 of material to be placed in the Container and shall be painted in a color and manner, acceptable
1767 to CITY, which is unique to that type of material. Such Bins, Compactors or Roll-Off Boxes as
1768 are provided by CONTRACTOR shall be steam cleaned and repainted by CONTRACTOR as
1769 frequently as necessary, but no more often than one (1) time per quarter, so as to maintain
1770 them in a sanitary condition. However, no more often than one (1) time per quarter, upon
1771 receipt of notification (from CITY or Customer) by CONTRACTOR of graffiti on a Bin,
1772 Compactor or Roll-Off Box, CONTRACTOR shall clean or replace such Bin, Compactor or Roll-
1773 Off Box within five (5) Work Days. Instances of CONTRACTOR cleaning, repainting or

1774 replacement exceeding the quarterly limits set forth above are subject to CONTRACTOR fees,
1775 as provided in Exhibit 1.

1776 14.10 Vehicle Maintenance. CONTRACTOR shall maintain Collection vehicles in a
1777 clean condition and in good repair at all times and ensure that no Collected materials, oil,
1778 grease or other substances will blow, fall out, escape or leak out of the vehicle, with the
1779 exceptions of vehicle emission. All parts and systems of the Collection vehicles shall operate
1780 properly and be maintained in a condition satisfactory to CITY. CONTRACTOR shall wash all
1781 Collection vehicles at least once a week. All washings shall be conducted in a manner that
1782 conforms to the BMP Guidelines for Non-Point Source Pollutants in the publication entitled
1783 Storm Water Best Management Practices Handbook for Industrial Commercial published by the
1784 California Storm Water Quality Association (CASQA).

1785 14.10.1 Maintenance Log. CONTRACTOR shall maintain a maintenance
1786 log for all Collection vehicles. The log shall at all times be accessible to CITY for physical
1787 inspection upon request of Contract Manager, and shall show, at a minimum, each vehicles'
1788 CONTRACTOR assigned identification number, date purchased or initial lease, dates of
1789 performance of routine maintenance, dates of performance of any additional maintenance, and
1790 description of additional maintenance performed.

1791 14.11 Equipment Inventory. On or before July 1, 2015, and annually thereafter,
1792 CONTRACTOR shall provide to CITY an inventory of Collection vehicles and major equipment
1793 used by CONTRACTOR for Collection or transportation and performance of services under this
1794 Contract. The inventory shall indicate each Collection vehicle by CONTRACTOR assigned
1795 identification number, DMV license number, the age of the chassis and body, type of fuel used,
1796 the type and capacity of each vehicle, the number of vehicles by type, the date of acquisition,
1797 the decibel rating and the maintenance status. CONTRACTOR shall submit to the Contract
1798 Manager, either by web, cloud e-mail, an updated inventory annually to CITY or more often at
1799 the request of the Contract Manager. Each vehicle inventory shall be accompanied by a
1800 certification signed by CONTRACTOR that all Collection vehicles meet the requirements of this
1801 Contract.

1802 14.12 Reserve Equipment. CONTRACTOR shall have available to it, at all times,
1803 reserve Collection equipment that can be put into service and operation within one (1) hour of
1804 any breakdown. Such reserve equipment shall correspond in size and capacity to the
1805 equipment used by CONTRACTOR to perform the contractual duties.

1806 14.13 Covering of Loads. All loads not in covered body trucks shall be tarped or
1807 restrained to prevent spilling.

1808 14.14 Weight Restrictions. CONTRACTOR shall not load vehicles in excess of the
1809 manufacturer's recommendations or limitations imposed by federal, State or local weight
1810 restrictions on vehicles. CONTRACTOR acknowledges that CITY may document compliance
1811 with this provision of the Contract through review of scale tickets and records of the Disposal
1812 and Processing Facilities.

1813 **Article 15. LOCAL OFFICE**

1814 15.01 Oakland Office. During the term of this Contract CONTRACTOR shall maintain
1815 an office in the Service Area. CONTRACTOR's office shall provide toll-free telephone access to
1816 CITY residents, and shall be located where Customers can make service requests or inquire in
1817 person. The office shall be open and staffed from 8:00 am to 6:00 pm on Work Days. The
1818 office shall have a responsible person in charge who is familiar with the specific Recycling

1819 Services provided by CONTRACTOR to CITY. CONTRACTOR shall equip the office with a
1820 direct terminal connection to the customer service system operated at CONTRACTOR's call
1821 center.

1822 **Article 16. CUSTOMER SERVICE**

1823 16.01 Customer Service Program. CONTRACTOR shall develop, implement and
1824 maintain a Customer Service Program approved by CITY to ensure that all services provided
1825 under this Contract are high quality. CONTRACTOR's Customer Service Plan is attached as
1826 Exhibit 8 of this Contract.

1827 16.02 CONTRACTOR's Customer Center and Telephone and Email Access. [NOTE:
1828 If the Council allows the customer center to be outside of Alameda County, then this language
1829 will be replaced.] CONTRACTOR shall maintain a Customer center located in Alameda County
1830 that provides toll-free telephone and email access to residents and businesses of CITY, and is
1831 staffed by trained and experienced Customer Service Representatives (CSRs). Such Customer
1832 center shall have responsible persons in charge during Collection hours, and shall be open 8:00
1833 a.m. to 6:00 p.m. on regularly scheduled Work Days (Monday through Friday) and when SFD or
1834 MFD Recycling Services are scheduled to be provided on Saturday; and be staffed with a
1835 sufficient number of CSRs and equipped with sufficient telephone and email capacity such that:

1836 16.02.1 Up to ten (10) incoming calls can be received at one time;

1837 16.02.2 Customer or Service Recipient calls received during normal
1838 business hours are answered by system within five (5) rings;

1839 16.02.3 Average Speed to Answer for Residential Customer calls shall be
1840 three (3) minutes or less based on a weekly average. Speed to Answer is the time commencing
1841 when a caller is placed in a queue (immediately after a caller hears CONTRACTOR recorded
1842 messages and makes a choice from the phone tree) and ending when a live agent picks up the
1843 call;

1844 16.02.4 During any on-hold waiting time and when the call center is
1845 closed, Customers or Service Recipients are offered the option to leave a voice message;

1846 16.02.5 Any call "on-hold" in excess of one and one half (1.5) minutes
1847 shall have the option to remain "on-hold" or to be switched to a message center where the
1848 Customer can leave a message.

1849 16.02.6 Customer or Service Recipient voice messages are returned in
1850 the order received and left by 6:00 p.m. Pacific time at latest by the close of the Work Day
1851 following the day the voice message is received; and

1852 16.02.7 Customer or Service Recipient emails are responded to in the
1853 order received and left by 6:00 p.m. Pacific time at latest by the close of the Work Day following
1854 the day the email is received.

1855 16.03 Telephone Access From the MM&O Contractor. CONTRACTOR shall provide a
1856 local telephone number that allows callers to be automatically transferred from the MM&O
1857 Contractor, as appropriate. It shall be CONTRACTOR's responsibility to ensure that transferred
1858 callers experience no changes in volume or clarity from that associated with direct calls to the
1859 MM&O CONTRACTOR.

1860 16.04 Multilingual/TDD Service. CONTRACTOR's call center shall at all times during
1861 the normal business hours set forth in Section 16.02 maintain the capability of responding to

1862 telephone calls in English, Chinese (Cantonese), Vietnamese, Spanish, and such other
1863 languages as reasonably may be directed by CITY in accordance with its Equal Access
1864 Program requirements. CONTRACTOR shall at all times maintain the capability of responding
1865 to telephone calls through Telecommunications Device for the Deaf (TDD) Services.

1866 16.05 Website. CONTRACTOR shall develop and maintain a state-of-the-art website
1867 dedicated to services provided in CITY, which is accessible by the public. The website shall
1868 include answers to frequently asked questions, rates for Residential Recycling Collection
1869 Services, listing and description of Residential Recycling Collection Services schedules and
1870 maps, and other related topics. The site shall have a link to CITY's website and a link to the
1871 MM&O Collection Contractor's website. CONTRACTOR shall arrange for CITY's website to
1872 include an e-mail link to CONTRACTOR and a link to CONTRACTOR's website.
1873 CONTRACTOR's website shall provide the public the ability to e-mail comments inquiries and
1874 request services or service changes to CONTRACTOR.

1875 **Article 17. PUBLIC OUTREACH SERVICES**

1876 17.01 Community Outreach Services. CONTRACTOR shall be required to implement,
1877 at its own expense, CONTRACTOR's Community Outreach Strategy, which is attached as
1878 Exhibit 6 to this Contract. The Community Outreach Strategy will provide an overview of
1879 CONTRACTOR's plans to engage the community in full use of the Collection Services and the
1880 Diversion goals of the Contract.

1881 17.01.1 Transitional Outreach Plan. CONTRACTOR shall prepare and
1882 implement, at its own expense, a transitional outreach plan consisting of a community outreach
1883 campaign that makes aware and fully informs SFD and MFD Customers of the Residential
1884 Recycling Collection Services, highlighting changes to the current services, relevant to the
1885 Customer experience, which will occur through execution of the Contract. The transitional
1886 outreach plan will be consistent with and informed by the CONTRACTOR's Community
1887 Outreach Strategy as set forth in Exhibit 6. The transitional outreach plan will be implemented
1888 beginning January 2015, or with execution of the Contract, whichever is later. The Transitional
1889 Plan will cover all CONTRACTOR's community outreach services in calendar year 2015. The
1890 budget for the Transitional Plan shall be not more than five-hundred thousand dollars
1891 (\$500,000).

1892 17.02 Annual Outreach Plan. CONTRACTOR, at its own expense, shall prepare,
1893 submit and implement an annual outreach plan that is consistent with and informed by
1894 CONTRACTOR's Community Outreach Strategy as set forth in Exhibit 6. CONTRACTOR shall
1895 submit the initial annual outreach plan for CITY approval no later than September 1, 2015, and
1896 subsequent annual outreach plans no later than September 1 each calendar year thereafter.
1897 CITY shall review and respond to the proposal within forty five (45) days. Implementation of the
1898 annual outreach plan would begin on January 1 of each year. The annual outreach plan must
1899 include specific steps designed to increase Diversion and Customer participation in the
1900 Residential Recycling Collection Services, and measure the effectiveness of these efforts. The
1901 annual outreach plan should target specific materials, or demographic or service sectors where
1902 improvements can be maximized. Outreach targets should be based on measured trends and
1903 patterns in recycling and disposal activities, participation, and tonnages by service sector, within
1904 the Service Area and within identified Service Area localities, as indicated by information
1905 obtained by both the Contract Manager and CONTRACTOR's staff.

1906 17.03 Community Outreach Budget. CONTRACTOR shall be required to allocate or
1907 spend not more than Five Hundred Thousand Dollars (\$500,000) in the first calendar year of the

1908 contract, to implement the transitional outreach plan, and not more than Two-hundred Fifty
1909 Thousand Dollars (\$250,000) per calendar year thereafter to implement the annual outreach
1910 plan. All such expenditures require prior approval from CITY unless included in outreach plan.
1911 CITY and CONTRACTOR may mutually agree to perform joint Public Outreach activities using
1912 all or some of the annual Public Outreach budget. Public relations activity costs cannot be
1913 applied to the Public Outreach budget. At the end of the calendar year, any funds in the
1914 approved annual outreach budget that remain unspent shall be carried forward to the following
1915 calendar year. However, in the event CONTRACTOR has unspent funds at the end of three (3)
1916 consecutive calendar years, the unspent funds shall be retained by CONTRACTOR and
1917 deposited in a separate interest bearing Rate Stability Funds account, whose interest accrues to
1918 the account. These rate stability funds may only be used at the direction of CITY. Rate stability
1919 fund account balances, including balances of zero (0) shall be reported to the Contract Manager
1920 no later than the tenth (10th) day of February beginning in February of 2016 and annually
1921 thereafter during the term of this Contract.

1922 17.04 Community Outreach Professional Services. CONTRACTOR will engage the
1923 services of a professional firm or firms that specialize in community outreach, marketing, public
1924 relations and graphic design, that preferably are based in Oakland or the Bay Area. Such firms
1925 shall possess a minimum five (5) years' experience in marketing, communications and/or
1926 community outreach, including two years' experience conducting outreach in a city comparable
1927 to Oakland in size and complexity; and knowledge of outreach best practices, such as
1928 community-based social marketing.

1929 17.05 CITY Approval Required. All marketing, messaging or other mass
1930 communications, including but not limited to print, outdoor media, broadcast, web-based, e-mail,
1931 and telephone voice messages, directed to Customers or Service Recipients, must be approved
1932 by the Contract Manager prior to execution or delivery to the Customer or Service Recipient,
1933 regardless of whether these communications relate to the Collection Services. All public
1934 relations, press and community outreach activities that involve the Collection Services, or that
1935 are targeted to the Service Recipients or Customers, must have prior written approval from the
1936 Contract Manager, whether or not they are being paid for from the Community Outreach budget.
1937 CONTRACTOR shall not perform any work on Community Outreach materials or activities
1938 without prior written approval from the Contract Manager. All materials shall be submitted in
1939 writing for review and approval. Written authorization by the Contract Manager is required prior
1940 to final production of any Community Outreach materials. [National marketing efforts by
1941 corporate affiliates of CONTRACTOR are outside the scope of this Article 17; however, any
1942 national efforts which are to be targeted directly to Oakland or East Bay customers shall require
1943 reasonable prior notification to CITY.]

1944 17.06 Outreach Production Requirements. CONTRACTOR shall utilize designers,
1945 printers and mail houses located within the Service Area for the design, development, printing
1946 and mailing of all community outreach materials related to this Contract, unless otherwise
1947 approved by Contract Manager. In addition, unless Contract Manager has granted an exception
1948 in writing, the Community Outreach materials shall:

1949 17.06.1 be printed on one hundred (100) percent recycled paper with at
1950 least fifty (50) post-consumer recycled content using soy based (or other non-toxic) inks;

1951 17.06.2 include the CITY's Oakland Recycles logo and the CITY's
1952 recycling hotline phone number;

1953 17.06.3 include four (4) languages whenever possible and/or needed; and

1954 17.06.4 be made accessible to those with disabilities, in accordance with
1955 all applicable federal, state and local laws and regulations.

1956 17.07 Copyrights. At CONTRACTOR's sole expense. CONTRACTOR shall execute
1957 appropriate documents to assign to CITY either a copyright to works created pursuant to this
1958 Article 17, or a license limited for the term of the Contract for use of such works, if so requested
1959 by CITY. CONTRACTOR shall provide space in CONTRACTOR's printed public outreach
1960 materials, for CITY to include announcements, community information, articles and
1961 photographs.

1962 17.08 News Media Relations. CITY shall oversee all press activities including press
1963 releases, press conferences, press kits, press packets and general press inquiries regarding the
1964 Program. CONTRACTOR shall notify the Contract Manager by e-mail or phone of all requests
1965 for news media interviews related to the Collection Services program within twenty-four (24)
1966 hours of CONTRACTOR's receipt of the request. Before responding to any news media
1967 inquiries involving controversial issues or any issues likely to affect participation or Customer
1968 perception of services, CONTRACTOR will discuss CONTRACTOR's proposed response with
1969 the Contract Manager. However, notwithstanding anything to the contrary in this Section 17.08,
1970 there may be instances of unannounced media visits where CONTRACTOR responses would
1971 be beneficial, in CONTRACTOR's reasonable judgment. In such cases, CONTRACTOR will not
1972 be obligated to obtain CITY consent to media communication, but will summarize such
1973 communication to CITY as soon as practicable. Copies of draft news releases or proposed
1974 trade journal articles shall be submitted to CITY for prior review and approval at least five (5)
1975 Work Days in advance of release. Copies of articles resulting from media interviews or news
1976 releases shall be provided to CITY within five (5) Work Days after publication.

1977 **Article 18. EMERGENCY SERVICE PROVISIONS**

1978 18.01 Emergency Services. CONTRACTOR shall provide emergency services (i.e.,
1979 special collections, transport, processing,) at CITY's request in the event of a declared local,
1980 state or federal state of emergency, major accidents, disruptions or natural calamities.
1981 CONTRACTOR shall be capable of providing emergency services within twenty-four (24) hours
1982 of notification by CITY, or as soon thereafter as is reasonably practical in light of the
1983 circumstances. An emergency contact number shall be accessible during the term of this
1984 Contract twenty-four hours per day for the Contract Manager or other CITY Administrator to
1985 contract CONTRACTOR. CONTRACTOR shall receive additional compensation, above the
1986 normal compensation contained in this Contract, to cover the costs of rental equipment,
1987 additional personnel, overtime hours and other documented expenses based on the Maximum
1988 Recycling Service Rates set forth in Exhibit 1 to this Contract provided CONTRACTOR has first
1989 secured written authorization and approval from CITY through the CITY Administrator.

1990 18.02 In the event of an emergency as set forth above, the Contract Manager may
1991 grant CONTRACTOR a variance from regular routes and schedules. As soon as practicable
1992 after such event, CONTRACTOR shall advise the Contract Manager when it is anticipated that
1993 normal routes and schedules can be resumed. The Contract Manager shall make an effort
1994 through the local news media to inform the public when regular services may be resumed.

1995 **Article 19. RECORD KEEPING & REPORTING REQUIREMENTS**

1996 19.01 Record Keeping.

1997 19.01.1 Accounting Records. CONTRACTOR shall maintain full, complete and
1998 separate financial, statistical and accounting records, pertaining to cash, billing, and provisions
1999 of all Recycling Services provided under this Contract, prepared on an accrual basis in
2000 accordance with generally accepted accounting principles. Such records shall be subject to
2001 audit and inspection. Gross Receipts derived from provision of the Recycling Services shall be
2002 recorded as revenues in the accounts of CONTRACTOR. These records shall be separate and
2003 segregated from other records maintained by CONTRACTOR for the provision of other services
2004 outside the scope of this Contract as may be provided by CONTRACTOR. CONTRACTOR
2005 shall maintain and preserve all cash, billing and Disposal records for a period of not less than
2006 five (5) years following the close of each of CONTRACTOR's fiscal years.

2007 19.01.2 CONTRACTOR Payments to CITY. CONTRACTOR shall maintain
2008 records of all payments made to CITY for all items listed in Section 7.12.

2009 19.01.3 Tonnage Records. CONTRACTOR shall maintain records of the
2010 incoming and outgoing quantities of Recyclable Materials Collected, processed, composted,
2011 purchased, sold, donated or given for no compensation and Recycling Residue Disposed under
2012 the terms of this Contract.

2013 19.01.4 Records. CONTRACTOR shall maintain all other records relevant to
2014 the provision of Residential Collection Services under this Contract. After a meet and confer if
2015 CONTRACTOR so requests, CONTRACTOR shall maintain such additional records as
2016 reasonably required by CITY and agreed to by CONTRACTOR.

2017 19.01.4.1 CONTRACTOR shall maintain a relational database that
2018 includes data from all required reports for the term of this Contract, and provide CITY with
2019 access to the database. Database shall be flexible to accommodate changing needs and
2020 conditions over the term of this Contract.

2021 19.02 Reporting Requirements. Monthly Reports shall be delivered to CITY no later
2022 than fifteen (15) calendar days after the end of the prior month. Quarterly reports shall be
2023 delivered to CITY no later than twenty (20) calendar days after the end of the reporting quarter.
2024 Annual reports shall be delivered to the CITY no later than thirty (30) days after the end of each
2025 preceding calendar year. Monthly, quarterly and annual reports shall be provided electronically
2026 in forms and formats acceptable to CITY.

2027 19.02.1 Monthly Reports. CONTRACTOR shall provide reports that
2028 include the following each month and year to date:

2029 19.02.1.1 Collection Service Account Data. Number of SFD and
2030 MFD buildings and units served; number of Commercial and CITY facilities served. Number of
2031 containers in service by SFD, MFD Commercial and CITY facilities, by container size, and by
2032 container service location (e.g., Curbside or Premium Backyard service and Ancillary service).
2033 Number of Non-Collection Notices issued by SFD, MFD Commercial and CITY facilities and by
2034 reason for non-collection.

2035 19.02.1.2 Collected Tonnage Data. Tonnage for all materials
2036 Collected by SFD, MFD, Commercial and CITY facilities. Used Oil Containers and Used Oil
2037 Filters Containers Collected shall be reported by item count.

2038 19.02.1.3 Processed Materials Data. Tonnage of each material
2039 produced through the Processing of Collected materials at CONTRACTOR's Processing
2040 Facility, e.g., old corrugated containers, old newspaper, mixed paper, glass and various plastic
2041 and metal commodity grades. CONTRACTOR shall use a statistically significant method
2042 approved by CITY to calculate the tonnage of finished Processed material, net of Recycling
2043 Residue, attributable to material Collected under this Contract.

2044 19.02.1.4 Recycling Residue Tonnage Data. Tonnage for all
2045 Recycling Residue from Processing of Collected materials. CONTRACTOR shall use a
2046 statistically significant method approved by CITY to calculate the tonnage of Recycling Residue
2047 attributable to material Collected under this Contract.

2048 19.02.1.5 Customer Service Data. List of Customer contacts, e.g.,
2049 phone calls or electronic communications, including Customer name, Service Address, and by
2050 date and topic.

2051 19.02.1.6 Local Hire Requirement Update. CONTRACTOR shall
2052 provide monthly updates on its compliance with Local Hire Requirements in Article 55 of this
2053 Contract.

2054 19.02.2 Quarterly Reports. CONTRACTOR shall provide the following
2055 information each quarter:

2056 19.02.2.1 Processing Facility Recycling Residue Rate.
2057 CONTRACTOR shall use a statistically significant method approved by CITY to calculate the
2058 Recycling Residue rate for all material received by, Processed at and shipped from the MRF.

2059 19.02.2.2 Public Outreach and Information Activities. Report on all
2060 public outreach and information activities undertaken during the period, including distribution of
2061 outreach materials and other promotional activities.

2062 19.02.2.3 Processing and Marketing Activities. Report on Recyclable
2063 Materials Processing and marketing issues or conditions, if any, occurring during the previous
2064 quarter.

2065 19.02.2.4 Customer Service Activities. Report on customer service
2066 and Call Center issues or conditions, if any, occurring during the previous quarter.

2067 19.02.2.5 Operational Issues and Activities. Report on significant
2068 changes in Collection Service or Processing operations, instances of property damage or
2069 accidents, scavenging, or other operational issues.

2070 19.03 Annual Reports. CONTRACTOR shall provide the following data and information
2071 each year:

2072 19.03.1 Customer Data. List of all Customers serviced under this Contract
2073 including and sortable by SFD, MFD Commercial and CITY facilities, Customer name, Service
2074 Address (street number, street name, Zip Code), type of service (e.g., Curbside or Premium
2075 Backyard service, and Ancillary service), number of Containers and Container size.

2076 19.03.2 [Reserved]

2077 19.03.3 Local Hire Requirement Annual Report. CONTRACTOR shall provide
2078 an annual report on its compliance with Local Hire Requirements in Article (55) of this Contract

2079 19.03.4 Gross Receipts. CONTRACTOR shall provide a summary of the prior
2080 year's Gross Receipts received.

2081 19.03.5 Equipment Inventory. Updated complete inventory of Collection
2082 vehicles used pursuant to this Contract, by vehicle chassis identification number, vehicle body
2083 identification number, license number and model year.

2084 19.03.6 Business Tax Certificate. Copy of current business tax certificate.

2085 19.03.7 Annual Cart and Bin Replacement Reports pursuant to Section 6.06.10
2086 of this Contract.

2087 19.04 Additional Reporting and Access to Information.

2088 19.04.1 CONTRACTOR shall provide CITY with any additional data and
2089 information requested by CITY that is maintained by, or readily available to, CONTRACTOR
2090 and that is specifically related to the Collection Services. Such reports shall be provided within
2091 a reasonable time following the request.

2092 19.04.2 CONTRACTOR shall provide CITY with CONTRACTOR's Call
2093 Center records as requested by CITY, and which are required pursuant to other provisions of
2094 this Contract.

2095 19.04.3 CONTRACTOR shall provide a large wall map of the Service Area
2096 that shows Collection day of service for SFD and MFD routes. CONTRACTOR shall provide an
2097 updated map whenever route changes include a change to day of service.

2098 19.04.4 CONTRACTOR shall provide CITY with Collection Route
2099 information as requested by CITY, as may reasonably be provided. Such information to be
2100 provided within a reasonable time following the request.

2101 19.05 GPS Reports. CONTRACTOR shall provide CITY with CONTRACTOR's
2102 Collection vehicle global positioning system (GPS) reports as requested by CITY, as may
2103 reasonably be provided.

2104 19.06 Nothing in this Article 19, or elsewhere in this Contract, shall be construed to
2105 require CONTRACTOR to provide cost (other than the weight of costs for purposes of
2106 calculating RRI) or profit information.

2107 **Article 20. NONDISCRIMINATION**

2108 20.01 Nondiscrimination. In the performance of all work and services under this
2109 Contract, CONTRACTOR shall not discriminate against any person on the basis of such
2110 person's race, color, religion/religious creed, sex/gender, pregnancy, marital status, age,
2111 national origin/ancestry, physical and/or mental disability, medical condition, sexual orientation,
2112 gender identity, military or veteran status, or status in any other group protected by federal,
2113 State or local law. CONTRACTOR shall comply with all applicable local, State and federal laws
2114 and regulations regarding nondiscrimination, including those prohibiting discrimination in
2115 employment.

2116 **Article 21. SERVICE INQUIRIES AND COMPLAINTS**

2117 21.01 CONTRACTOR's Customer Service. All Customer and Service Recipient
2118 inquiries and complaints about the Services shall be directed to CONTRACTOR. A
2119 representative of CONTRACTOR shall be available to receive the inquiries and complaints
2120 during normal business hours. All service inquiries and requests will be handled by
2121 CONTRACTOR in a prompt, courteous and efficient manner. In the case of a dispute between

2122 CONTRACTOR and a Customer, the matter may be reviewed and a decision made by the
2123 Contract Manager.

2124 21.02 Customer Service System. CONTRACTOR will utilize an automated Customer
2125 service system to maintain a record of all inquiries and complaints in a manner prescribed by
2126 CITY. In addition thereto, CONTRACTOR shall maintain, at CONTRACTOR's place of
2127 business, an automated Customer service system, listing all Customer service requests,
2128 complaints and CONTRACTOR notices. Said system shall contain the names and addresses of
2129 parties involved, date of such service request, complaint or noticing, nature of same, and the
2130 date and manner of disposition of each case. Such system shall be kept so that it may
2131 conveniently be inspected by representatives of CITY upon request.

2132 21.03 Response Requirements. For those complaints related to missed Collections
2133 that are received by 12:00 noon on a Work Day, CONTRACTOR will return to the Customer
2134 address and Collect the missed Carts or Bins by 12:00 noon on the following Work Day. For
2135 those complaints related to missed Collections that are received after 12:00 noon on a Work
2136 Day, CONTRACTOR shall have until the end of the following Work Day to resolve the
2137 complaint. For those complaints or service requests related to Carts or Bins for new
2138 Customers, or repair, replacement or exchange of Carts or Bins, the appropriate Articles of this
2139 Contract shall apply.

2140 21.04 Missed Collections. CONTRACTOR agrees that it is in the best interest of CITY
2141 that all Recyclable Materials be Collected on the scheduled Collection day. Accordingly, missed
2142 Collections will normally be Collected as set forth herein regardless of the reason that the
2143 Collection was missed. However, in the event a Service Address reports missed Residential
2144 Recycling Collection Services more than two (2) times in any consecutive two (2) month period
2145 the Contract Manager will work with CONTRACTOR to determine an appropriate resolution to
2146 that situation. In the event CONTRACTOR believes any complaint to be without merit,
2147 CONTRACTOR shall notify the Contract Manager, by e-mail. The Contract Manager will
2148 investigate all disputed complaints and render a decision.

2149 **Article 22. QUALITY OF PERFORMANCE OF CONTRACTOR**

2150 22.01 Intent. CONTRACTOR acknowledges and agrees that one of CITY's primary
2151 goals in entering into this Contract is to ensure that Recycling Services are of the highest
2152 caliber, that Service Recipient and Customer satisfaction remains at the highest level, that
2153 maximum Diversion levels are achieved, and that materials Collected are put to the highest and
2154 best use to the extent feasible.

2155 22.02 Contract Compliance Coordinator. CONTRACTOR will provide for a full-time
2156 Contract Compliance Coordinator dedicated to CITY. The Contract Compliance Coordinator
2157 shall be responsible for monitoring CONTRACTOR's programs and services and assisting CITY
2158 in maintaining full contractual compliance at all times during the term of the Contract. These
2159 duties shall include but not be limited to issues related to new and existing Customer needs,
2160 public education, routing and customer service. The Contract compliance Coordinator shall
2161 meet monthly with CITY staff to provide updates on all areas of service as needed.

2162 22.03 Services Manager. CONTRACTOR shall designate a manager to be in charge of
2163 the Recycling Services within the Service Area. The manager shall have the authority and
2164 knowledge to direct CONTRACTOR resources as need to resolve matters of concern to CITY.
2165 The Services Manager, or designee shall be available to the Contract Manager through the use
2166 of a mobile telephone at all times that CONTRACTOR is providing Recycling Services.

2167 22.04 Liquidated Damages. The parties further acknowledge that consistent and
 2168 reliable Collection Service is of utmost importance to CITY and that CITY has considered and
 2169 relied on CONTRACTOR's representations as to its quality of service commitment in awarding
 2170 the Contract to it. The parties further recognize that some quantified standards of performance
 2171 are necessary and appropriate to ensure consistent and reliable service and performance. The
 2172 parties further recognize that if CONTRACTOR fails to achieve the performance standards, or
 2173 fails to submit required documents in a timely manner, CITY, and CITY'S residents and
 2174 businesses will suffer damages and that it is and will be impractical and extremely difficult to
 2175 ascertain and determine the exact amount of damages. Therefore, without prejudice to CITY's
 2176 right to treat such non-performance as an event of default under Article 27, the parties agree
 2177 that the liquidated damages amount defined in this Article represent reasonable estimates of the
 2178 amount of such damages considering all of the circumstances existing on the effective date of
 2179 this Contract, including the relationship of the sums to the range of harm to CITY, Service
 2180 Recipients and the community as a whole that reasonably could be anticipated and the
 2181 anticipation that proof of actual damages would be costly or impractical. In placing their initials
 2182 at the places provided, each party specifically confirms the accuracy of the statements made
 2183 above and the fact that each party has had ample opportunity to consult with legal counsel and
 2184 obtain an explanation of the liquidated damage provisions at the time that the Contract was
 2185 made.

2186 CITY Initial Here _____ CONTRACTOR Initial Here _____

2187 22.04.1 CONTRACTOR agrees to pay (as liquidated damages and not as penalty) the
 2188 following amounts:

1	Failure to timely submit or make available to CITY documents and reports required under the provisions of this Contract (Various Sections).	\$100 per incident per day
2	Failure to provide accurate billing services as required in Article 7.	\$100 per incident per day
3	Failure to remit the Franchise Fee and other payments to CITY by the 15th of each month (Section 7.12).	\$250.00 per incident per day
4	Failure to maintain the insurance provisions in the manner set out in this Contract (Article 25).	\$500.00 per incident per day
5	Failure to provide timely transition documents or meet transition requirements (Section 6.19).	\$300 per item per day
7	Failure to notify CITY daily of all situations that prevent or hinder Collection from any CITY Facility, unless otherwise directed by CITY (Section 12.01.4).	\$100.00 per day
8	Failure to Collect or otherwise recover materials that are set out for Collection, including materials that have been rejected but where a Non-Collection Notice was not provided.(Articles 9, 10, 11 and 12).	\$150 per incident per day

9	<p>Missed or incomplete 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 (Articles 9, 10, 11 and 12).</p>	<p>\$50 per incident \$250 per incident \$500 per incident \$1,000 per incident</p>
10	<p>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.</p>	<p>\$150 per incident per day</p>
11	<p>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).</p>	<p>\$300 per incident</p>
12	<p>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.</p>	<p>\$150.00 per incident per day</p>
13	<p>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.</p>	<p>\$50.00 per incident</p>
14	<p>Customer on-hold wait time, based on a weekly average that is:</p> <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 <p>(Section 16.02.3)</p>	<p>\$1,000 per week \$2,000 per week \$3,000 per week</p>
15	<p>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, provided it is received by 6:00 pm. (Section 16.02.6 and 16.02.7).</p>	<p>\$150.00 per incident per day</p>
16	<p>Failure to begin Collection service within seven (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 program within the time required by Section 6.06.4, which exceeds 20 such failures per calendar quarter.</p>	<p>\$150.00 per incident per day</p>
17	<p>Failure to maintain Collection vehicles pursuant to Article 14.</p>	<p>\$150 per incident per day</p>

18	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 (Sections 6.06.1, 6.06.2, 6.06.3, 14.09).	\$150 per incident per day
19	Failure to meet vehicle noise requirements (Section 14.05).	\$100 per incident per day
21	Commingling Recyclable Materials with other material types, or CITY materials with materials collected in another city prior to delivery to the designated processing facility, except as permitted in the Contract (Section 6.14).	\$500 per incident
22	Failure to ensure that a vehicle operator is properly licensed (Section 33.01.4).	\$500 per incident per day
23	Failure to maintain office and call center hours as required by this Contract (Section 15.01).	\$100 per incident per day
24	Failure to maintain Collection hours and days as required by this Contract (Section 6.02).	\$250 per incident per day
25	Failure to have CONTRACTOR personnel in proper uniform (Section 33.01.3).	\$250 per incident per day
26	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 26.12).	\$500 per incident
27	Changing the Collection day of ten (10) percent or more of the residential Service Addresses without proper authorization by the Contract Manager and proper notification to the Service Addresses, (Section 13.02), or to a day different than Mixed Material Collection.	\$5,000 per route per incident
28	Failure to provide adequate primary and alternate capacity to accept and process Recyclable Materials (Sections 6.11.2, 6.11.3 and 6.11.4).	\$500 per day
29	Failure to respond timely to CITY requests for services or information (Various Sections).	\$150 per incident
30	Disposal of Recyclable Materials in any Disposal Facility without first obtaining the required permission of CITY (Sections 6.11.4 and 6.11.5).	\$1,000 per load
31	Failure to deliver any Collected materials to CITY approved Materials Recovery Facility, except as otherwise expressly provided in this Contract (Sections 6.11.2, 6.11.3, and 6.11.4).	\$5,000 per load
32	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 12.01.2).	\$1,000 for each route not completed

33	Transferring loads on CITY streets except as otherwise expressly provided in this Contract (Section 6.03).	\$150.00 per incident
36	Failure to conduct route audits and report results to CITY in a timely manner (Section 13.04).	\$150.00 per audit per day
37	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
38	Failure to comply with the public outreach standards in the manner set out in this Contract (Article 17).	\$150.00 per incident per day
39	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
40	Failure to comply with 50% local hire preference for Oakland residents provision for new employees (Article 55).	\$5,000 per position annually
44	Failure to comply with worker retention requirements. Article 52.	

2189 22.05 Liquidated damages shall apply to service disruptions caused by a
2190 CONTRACTOR-initiated lockout or similar CONTRACTOR-initiated work stoppage.

2191 22.06 Procedure for Review of Liquidated Damages. Before assessing liquidated
2192 damages pursuant to Items 1, 5, 19, 26, 28, 29, 33, 36, 38, 39, 40 and 44 of this Article 22, the
2193 CITY and CONTRACTOR shall meet and confer regarding these specific areas of substandard
2194 performance. If, despite such meeting, incidents of the type(s) addressed at the meeting
2195 continue to occur, the CITY may proceed to assess liquidated damages as provided above.
2196 The Contract Manager may assess liquidated damages pursuant to this Article 22 on a monthly
2197 basis. However, liquidated damages may only be assessed if CONTRACTOR is notified of the
2198 event within sixty (60) days of the City's knowledge of its occurrence. Prior to assessing
2199 liquidated damages, CITY shall give the CONTRACTOR written notice of its intention to do so
2200 ("Notice of Assessment"). The notice shall include a description of the event of non-
2201 performance. The CONTRACTOR may review and make copies (at its own expense) of all
2202 non-confidential information in the CITY's possession relating to the event of non-performance.
2203 During the first 90 days of the Contract, the CITY agrees not to assess liquidated damages due
2204 to challenges which may occur during implementation of the new Contract. If in the future there
2205 shall be an implementation period required to commence a new level or type of service, the
2206 CITY and CONTRACTOR agree to discuss a similar suspension of liquidated damages for a
2207 specified period of time.

2208 22.06.1 The assessment shall become final unless, within thirty (30) calendar
2209 days of the date of the notice of assessment, CONTRACTOR provides a written request for a
2210 meeting with the Contract Manager to present evidence that the assessment should not be
2211 made.

2212 22.06.2 The Contract Manager shall schedule a meeting between
2213 CONTRACTOR and the CITY Administrator or the CITY Administrator's designee as soon as
2214 reasonably possible after timely receipt of CONTRACTOR's request.

2215 22.06.3 The CITY Administrator or the CITY Administrator's designee shall
2216 review CONTRACTOR's evidence and render a decision sustaining or reversing the liquidated
2217 damages as soon as reasonably possible after the meeting. Written notice of the decision shall
2218 be provided to CONTRACTOR.

2219 22.06.4 In the event CONTRACTOR does not submit a written request for a
2220 meeting within thirty (30) calendar days of the date of the Notice of Assessment, the Contract
2221 Manager's determination shall be final and CONTRACTOR shall submit payment to CITY no
2222 later than fifteen (15) calendar days following final determination. Or at the sole option of CITY,
2223 if monies are owed to CONTRACTOR, CITY may deduct the liquidated damages from the letter
2224 of credit required by Section 22.06 of this Contract.

2225 22.06.5 CITY's assessment or Collection of liquidated damages shall not
2226 prevent CITY from exercising any other right or remedy, including the right to terminate this
2227 Contract, for CONTRACTOR's failure to perform the work and services in the manner set forth
2228 in this Contract.

2229 **Article 23. FRANCHISE FEE AUDIT AND PERFORMANCE REVIEWS**

2230 23.01 Franchise Fee Audit and Performance Review.

2231 23.01.1 Selection and Cost. CITY may conduct two (2) franchise fee audit
2232 and performance reviews ("review") of CONTRACTOR's performance during the initial term of
2233 this Contract. The review will be performed by a qualified firm under contract to CITY. CITY
2234 shall have the final responsibility for the selection of the firm but shall seek and accept
2235 comments and recommendations from CONTRACTOR. CONTRACTOR shall be responsible
2236 for the cost of the reviews up to a maximum of Seventy Five Thousand Dollars (\$75,000) per
2237 review.

2238 23.01.2 Purpose. The review shall be designed to meet the following
2239 objectives:

2240 23.01.2.1 Verify that Customer billing rates for ancillary services
2241 have been properly calculated and they correspond to the level of service received by the
2242 Customer.

2243 23.01.2.2 Verify that Franchise Fees, and other fees required under
2244 this Contract have been properly calculated and paid to CITY.

2245 23.01.2.3 Verify CONTRACTOR's compliance with the reporting
2246 requirements and performance standards of this Contract.

2247 23.01.2.4 Verify the Diversion recovery percentages reported by
2248 CONTRACTOR.

2249 23.01.3 CONTRACTOR's Cooperation. CONTRACTOR shall cooperate fully
2250 with the review and provide all requested data otherwise required to be provided under this
2251 Contract, including certain operational data, financial data and other data requested by CITY
2252 within thirty (30) Work Days. Failure of CONTRACTOR to cooperate or provide the requested
2253 documents in the required time shall be considered an event of default.

2254 23.02 CITY Requested Program Review. CITY reserves the right to require
2255 CONTRACTOR to periodically conduct reviews of the SFD, MFD and CITY Recycling Collection
2256 Service programs to assess performance indicators, including but not limited to: average
2257 volume of Recyclable Materials per setout per Service Address and per Dwelling Unit, SFD and
2258 MFD Recycling Service participation levels, contamination levels, etc. Prior to the program
2259 review, CITY and CONTRACTOR shall meet to discuss the purpose of the review and the
2260 method, scope, time frame for completion and data to be provided by CONTRACTOR.
2261 CONTRACTOR shall then prepare and submit to the Contract Manager a written program
2262 review plan for review and approval. The Contract Manager shall review and, to the extent
2263 necessary at the sole discretion of CITY, modify the program review plan, and return it to
2264 CONTRACTOR for implementation.

2265 23.03 Cooperation with Other Program Reviews. If CITY wants to Collect program
2266 data, perform field work, conduct route audits to investigate Customer participation levels and
2267 setout volumes and/or evaluate and monitor program results related to Recyclable Materials
2268 Collected in CITY by CONTRACTOR, CONTRACTOR shall cooperate with CITY or its agent(s),
2269 including StopWaste.Org. CONTRACTOR shall also cooperate with any material generation or
2270 characterization studies conducted by CITY or its agent(s).

2271 **Article 24. PERFORMANCE SECURITY**

2272 24.01 Performance Bond. A performance bond must be furnished by CONTRACTOR
2273 within fifteen (15) calendar days of notification to CONTRACTOR that that the Contract has
2274 been executed. CONTRACTOR shall furnish to CITY, and keep current, a performance bond in
2275 a form and with language that is acceptable to CITY, for the faithful performance of this Contract
2276 and all obligations arising hereunder in an amount of Three Million Dollars (\$3,000,000).

2277 24.02 Renewal. Beginning July 1, 2016, and each April 1 thereafter, CONTRACTOR
2278 shall have the performance bond renewed annually and executed by a surety company that is
2279 acceptable to CITY; an admitted surety company licensed to do business in the State of
2280 California; has an "A:VII" or better rating by A. M. Best or Standard and Poor's; and is included
2281 on the list of surety companies approved by the Treasurer of the United States.

2282 24.03 Letter of Credit. As an alternative to the performance bond required by Section
2283 24.01, at CITY's option, CONTRACTOR may deposit with CITY an irrevocable letter of credit in
2284 an amount as set forth in Section 24.01. If allowed, the letter of credit must be issued by an
2285 FDIC insured banking institution chartered to do business in the state of California, consistent
2286 with the Uniform Customs and Practice for Documentary Credits, then current revision or similar
2287 uniform convention approved by CITY in CITY's name, and be callable at the discretion of CITY.
2288 Nothing in this Article shall, in any way, obligate CITY to accept a letter of credit in lieu of the
2289 performance bond.

2290 **Article 25. INSURANCE**

2291 25.01 Insurance Policies. CONTRACTOR shall secure and maintain throughout the
2292 term of this Contract, at CONTRACTOR's own cost and expense, insurance against claims for

2293 injuries to persons or damages to property, which may arise from or in connection with
2294 CONTRACTOR's performance of work or services under this Contract. CONTRACTOR's
2295 performance of work or services shall include performance by CONTRACTOR's employees,
2296 agents, representatives and subcontractors.

2297 25.02 Minimum Scope of Insurance. Insurance coverage shall be at least this broad:

2298 25.02.1 Commercial General Liability: Insurance Services Office (ISO)
2299 Occurrence Form CG 0001 or, if approved by CITY, Claims Made Form No. CG0 0002.
2300 Automobile Liability: Insurance Services Office Form No. CA 0001, code 1 "any auto."

2301 25.02.2 Workers' Compensation Insurance as required by the state of
2302 California and Employers Liability Insurance.

2303 25.02.3 Hazardous Waste and Environmental Impairment Liability
2304 Insurance.

2305 25.02.4 Crime Insurance for Employee Theft.

2306 25.03 Minimum Limits of Insurance. CONTRACTOR shall maintain insurance limits no
2307 less than:

2308 25.03.1 Commercial General Liability. Three Million Dollars (\$3,000,000)
2309 each occurrence , including products and completed operations coverage.

2310 25.03.1.1 Coverage afforded on behalf of the CITY,
2311 Councilmembers, directors, officers, agents, employees and volunteers shall be primary
2312 insurance, but only as respects the services provided by CONTRACTOR under this Contract.
2313 Any other insurance available to the City, Councilmembers, directors, officers, agents,
2314 employees and volunteers under any other policies shall be excess insurance (over the
2315 insurance required by this Contract).

2316 25.03.2 Automobile Liability. Three Million Dollars (\$3,000,000) combined
2317 single limit per accident for bodily injury and property damage.

2318 25.03.3 Workers' Compensation and Employers Liability. Workers'
2319 Compensation insurance as required by the state of California, with statutory limits and
2320 Employers Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each
2321 accident, Two Million Dollars (\$2,000,000) policy limit bodily injury by disease, and Two Million
2322 Dollars (\$2,000,000) each employee bodily injury by disease.

2323 25.03.4 Hazardous Waste and Environmental Impairment Liability. Three
2324 Million Dollars (\$3,000,000) each occurrence covering liability arising from the release of waste
2325 materials and/or irritants, contaminants or pollutants. Hazardous Waste and Environmental
2326 Impairment Liability will include coverage for all operations of CONTRACTOR, and include all
2327 owned landfills or waste disposal sites and transfer stations. If coverage is on a Claims Made
2328 basis, the retroactive date must be shown, and must be before the date of the Contract or the
2329 beginning of Contract work. Insurance must be maintained and evidence of insurance must be
2330 provided for at least five (5) years after completion of the Contract of work. If coverage is
2331 cancelled or non-renewed, and not replaced with another claims-made policy form with a
2332 retroactive date prior to the contract effective date, CONTRACTOR must purchase "extended
2333 reporting" coverage for a minimum of five (5) years after completion of work. CITY, its
2334 Councilmembers, directors, officers, agents, employees and volunteers are to be covered as
2335 additional insureds with respect to liability arising from the release of waste materials and/or
2336 irritants, contaminants or pollutants. Such coverage shall, if commercially available without

2337 involvement of CITY, automatically broaden in its form of coverage to include legislated
2338 changes in the definition of waste material and/or irritants, contaminants or pollutants.

2339 25.03.5 Crime Insurance for Employee Theft. Five Hundred Thousand
2340 Dollars (\$500,000) per loss coverage.

2341 25.04 Deductibles and Self-Insured Retention. Any deductibles or self-insured
2342 retention shall be for the account of CONTRACTOR and shall be paid entirely by
2343 CONTRACTOR without any contribution from CITY.

2344 25.05 Endorsements. The liability policies are to contain, or be endorsed to contain,
2345 the following provisions:

2346 25.05.1 CITY, its Councilmembers, directors, officers, employees, agents
2347 and volunteers are to be covered as additional insureds with respect to liability arising out of
2348 automobiles owned, leased, hired or borrowed by or on behalf of CONTRACTOR; products and
2349 completed operations of CONTRACTOR; liability arising out of work or operations performed by
2350 or on behalf of CONTRACTOR, including material parts or equipment furnished in connection
2351 with such work or operations; and with respect to Hazardous Waste, Pollution and/or
2352 Environmental Impairment Liability.

2353 25.05.2 CONTRACTOR's insurance coverage shall be primary insurance
2354 as respects CITY, its officers, officials, employees, agents and volunteers, but only as respects
2355 the services provided by CONTRACTOR under this Contract. Any insurance or self-insurance
2356 maintained by CITY, its officers, officials, employees, agents or volunteers shall be excess of
2357 CONTRACTOR's insurance and shall not contribute with it.

2358 25.05.3 CONTRACTOR's insurance shall apply separately to each insured
2359 against whom claim is made or suit is brought, except with respect to the limits of the insurer's
2360 liability.

2361 25.05.4 The limits of insurance are the minimum required limits and if
2362 CONTRACTOR maintains higher limits, CITY shall be entitled to coverage for the higher limits
2363 maintained by CONTRACTOR.

2364 25.05.5 The Automobile Liability policy shall be endorsed to delete the
2365 Pollution and/or the Asbestos exclusion, or documentation that CONTRACTOR carries
2366 environmental pollution liability coverage for solid waste transported by CONTRACTOR. The
2367 Automobile Liability policy shall also be endorsed to add the Motor Carrier act endorsement
2368 (MCS-90) TL 1005, TL 1007 and /or other endorsements required by federal or state authorities.

2369 25.06 Waiver of Subrogation. CONTRACTOR hereby agrees to waive subrogation
2370 which any insurer of CONTRACTOR may acquire from CONTRACTOR by virtue of the payment
2371 of any loss. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect
2372 this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver
2373 of subrogation in favor of CITY for all work performed by CONTRACTOR, its employees, agents
2374 and subcontractors.

2375 25.07 Cancellation. Each insurance policy required by this clause shall be occurrence-
2376 based or an alternate form as approved by CITY and endorsed to state that coverage shall not
2377 cancelled by either party, except after sixty (60) days' prior written notice has been given to
2378 CITY. CONTRACTOR shall provide at least sixty (60) days' written notice to CITY, by certified
2379 mail, return receipt requested, of any insurance policy required hereunder being suspended,
2380 voided, or reduced in coverage or limits. Any failure to comply with reporting provisions of the

2381 policies shall not affect CONTRACTOR's obligations to CITY, its officers, officials, employees,
2382 agents or volunteers.

2383 25.08 Any failure to comply with reporting provisions of the policies shall not affect
2384 CONTRACTOR's obligations to CITY, its officers, officials, employees, agents or volunteers.

2385 25.09 Claims Made Coverage. If General Liability or Hazardous Waste and
2386 Environmental Impairment Liability coverage is written on a claims-made from:

2387 25.09.1 The "Retro Date" must be shown, and must be before the date of
2388 the contract or the beginning of contract work.

2389 25.09.2 Insurance must be maintained and evidence of insurance must be
2390 provided for at least five (5) years after completion of the contract of work.

2391 25.09.3 If coverage is canceled or non-renewed, and not replaced with
2392 another claims-made policy form with a "Retro Date" prior to the contract effective date,
2393 CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years
2394 after completion of contract work.

2395 25.09.4 A copy of the claims reporting requirements must be submitted to
2396 CITY for review.

2397 25.10 Acceptability of Insurers. Insurance is to be placed with insurers admitted to
2398 transact business in California with a current A.M. Best's rating of no less than A:VII. If pollution
2399 and/or Environmental Impairment and/or errors and omission coverage are not available from
2400 an admitted" insurer, the coverage may be written with CITY's permission, by a non-admitted
2401 insurance company. A Non-admitted company should have an A.M. Best's rating of A:X or
2402 higher.

2403 25.11 Verification of Coverage. CONTRACTOR shall furnish CITY with original
2404 certificates and amendatory endorsements effecting coverage required by this clause. All
2405 certificates and endorsements are to be received and approved by CITY before work
2406 commences. However, failure to obtain the required documents prior to the work beginning
2407 shall not waive CONTRACTOR's obligation to provide them. CITY reserves the right to require
2408 complete copies of all required insurance policies, including endorsements required by these
2409 specifications, at any time. Such documents shall remain confidential.

2410 25.12 Subcontractors. CONTRACTOR shall include all subcontractors as insureds
2411 under its policies or require and verify that all subcontractors maintain insurance meeting all the
2412 requirements of this contract. Proof of insurance shall be mailed to the following address or any
2413 subsequent address as may be directed in writing by CITY.

2414 Contract Manager
2415 Environmental Services Division, PWA
2416 250 Frank Ogawa Plaza, Suite 5301
2417 Oakland, CA 94612

2418 25.13 Modification of Insurance Requirements. The insurance requirements provided
2419 in this Contract may be modified or waived by CITY, in writing, upon the request of
2420 CONTRACTOR if CITY determines such modification or waiver is in the best interest of CITY
2421 considering all relevant factors, including exposure to CITY.

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Article 26. INDEMNIFICATION

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

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26.02 Contractor Indemnity Regarding City Approvals. To the maximum extent permitted by law, CONTRACTOR shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the CITY, the Oakland City Council, and their respective agents, officers, employees and volunteers (hereafter collectively called "City Parties") from any liability, damages, claim, judgment, loss (direct or indirect) action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the CITY to set aside, void or annul this Agreement or any City Approvals approved concurrently herewith or any Subsequent Approval or the implementation of the same based upon an allegation that the CITY shall have failed to comply with the California Environmental Quality Act. The CITY may elect, in its sole discretion, to participate in the defense of said Action, and CONTRACTOR shall reimburse the CITY for its reasonable legal costs and attorneys' fees. CONTRACTOR shall not be obligated to reimburse CITY for attorneys' fees paid to outside counsel in such defense.

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

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26.03 Contractor Cooperation. In the event there is a legal challenge by a third party to the City's award of this Contract, CONTRACTOR agrees to cooperate with the CITY in the defense of such a challenge to the extent CITY's and CONTRACTOR's respective legal positions are not in conflict. As a condition of the acceptance of the award of this Contract, CONTRACTOR agrees to waive any claims it may have against the CITY pertaining to any

2469 issues arising from and/or related to the Zero Waste Services procurement process regarding
2470 the Contract award.

2471 26.04 CONTRACTOR's Obligation Not Excused. CONTRACTOR's obligation to
2472 defend, hold harmless, and indemnify shall not be excused because of CONTRACTOR's
2473 inability to evaluate liability or because CONTRACTOR evaluates liability and determines that
2474 CONTRACTOR is not liable to the claimant. CONTRACTOR must respond within thirty (30)
2475 days to the tender of a claim for defense and indemnity by CITY, unless this time has been
2476 extended by CITY. If CONTRACTOR fails to accept or reject a tender of defense and indemnity
2477 within thirty (30) days, in addition to any other remedy authorized by law, so much of any money
2478 due CONTRACTOR by virtue of this Contract as shall reasonably be considered necessary by
2479 CITY, may be retained by CITY as an offset against its costs and damages until final disposition
2480 has been made or the claim or suit for damages, or until CONTRACTOR accepts or rejects the
2481 tender of defense, whichever occurs first.

2482 With respect to third party claims against CONTRACTOR, CONTRACTOR waives any and all
2483 rights of any type to express or implied indemnity against the Indemnities.

2484 26.05 Hazardous Substances Indemnification. CONTRACTOR shall indemnify, defend
2485 with counsel acceptable to CITY, protect and hold harmless CITY, its officers, officials,
2486 employees, agents, assigns and any successor or successors to CITY's interest from and
2487 against all claims, damages (including but not limited to special, consequential, natural
2488 resources and punitive damages) injuries, hazardous materials response mediation and
2489 removal costs, losses, demands, liens, liabilities, causes of action, suits, legal or administrative
2490 proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and
2491 expenses (including but not limited to attorney's and expert witness fees and costs incurred in
2492 connection with defending against any of the foregoing or enforcing this indemnity) of any kind
2493 whatsoever paid, incurred or suffered by, or asserted against CITY or its officers, officials,
2494 employees, agents, assigns, or contactors arising from or attributable to acts or omissions of
2495 CONTRACTOR, or its agents, including but not limited to any repair, cleanup or detoxification,
2496 or preparation and implementation of any removal, remedial, response, closure and post-
2497 closure or other plan (regardless of whether undertaken due to governmental action) concerning
2498 any hazardous substance or hazardous wastes at any place where CONTRACTOR transports,
2499 stores, or Disposes of Mixed Materials pursuant to this Contract. The foregoing indemnity is
2500 intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. section
2501 9607(c) and California Health and Safety Code section 25364, to defend insure, protect, hold
2502 harmless and indemnify CITY from liability.

2503 26.05.1 This provision is in addition to all other provisions in this Contract
2504 and is intended to survive the end of the term of this Contract. CONTRACTOR's Guaranty shall
2505 extend to the indemnification obligation hereunder.

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2507 26.06 Maximum Service Rates.

2508 26.06.1 Consistent with the limitations provided by Public Resources Code
2509 section 40059.2 and the obligations of CONTRACTOR set forth above, the following provisions
2510 are intended to address issues of defense and acceptance of the tender of defense and
2511 indemnity by CITY in the event that CITY and/or CONTRACTOR are named in any lawsuit (a)
2512 challenging the CITY's setting of Maximum Service Rates for Collection Services under this
2513 Contract, (b) impacting the ability of CONTRACTOR to collect or retain up to the Maximum
2514 Service Rates for Collection Services, and/or (c) in connection with the application of the

2515 California Constitution to the imposition, payment, or collection of Maximum Service Rates and
2516 charges for services provided by CONTRACTOR under this Contract ("Maximum Service Rates
2517 Lawsuit").

2518 26.06.2 In the event of a Maximum Service Rates Lawsuit, CITY shall
2519 actively defend such lawsuit, and CONTRACTOR agrees to cooperate with CITY to the extent
2520 practical and/or necessary. CONTRACTOR and CITY further agree to toll, during the pendency
2521 of any Maximum Service Rates Lawsuit, all cross claims against each other which are
2522 inconsistent with the Contract, including, but not limited to the tolling of any claim filed under the
2523 California Government Code. CONTRACTOR shall have no obligation to defend any lawsuit
2524 based on the Maximum Service Rates or that otherwise addresses any portion of the rates
2525 proposed by CONTRACTOR or the award of the Contract by CITY. In the event said lawsuit
2526 results in the reduction or elimination of any portion of the proposed rates by CONTRACTOR,
2527 the remedies set forth in the provisions below shall apply.

2528 26.06.3 Nothing in this Section is intended to imply that any action of CITY
2529 or CONTRACTOR with regard to adoption, imposition or collection of Maximum Service Rates
2530 is violative of any laws, regulations or Constitutional provisions. These provisions are merely
2531 intended as a statement of an agreed upon process for defense and allocation of risks between
2532 CITY and CONTRACTOR in the event of a Maximum Service Rates Lawsuit, regardless of the
2533 merit or lack of merit of any of the claims set forth therein.

2534 26.07 Environmental Indemnification. CONTRACTOR shall indemnify, defend with
2535 counsel acceptable to CITY, and hold harmless, at CONTRACTOR's sole cost and expense,
2536 CITY, its City Council, officers, officials, employees, volunteers and agents, and the Collection
2537 Contractor (collectively, "Indemnitees") from and against any and all claims, damages, injuries,
2538 costs (including and without limit any and all response, remediation and removal costs), losses,
2539 demands, debts, liens, liabilities, causes of action suits, legal or administrative proceedings,
2540 interest, fines, charges, penalties, and expenses (including reasonable attorneys' and expert
2541 witness fees, expenditures for investigation and remediation) and costs of any kind whatsoever,
2542 paid, imposed upon, incurred, or suffered by or asserted against any of the Indemnitees by any
2543 lawsuit brought or threatened, settlement reached, or government hearing, investigation, inquiry,
2544 proceeding, or order relating to, or arising from, directly or indirectly, CONTRACTOR's alleged
2545 failure or actual failure to comply with the environmental laws and regulations. This
2546 indemnification will not extend to environmental claims to the extent they are caused by the sole
2547 or joint or contributory negligence or intentional misconduct or omission of CITY, its officers,
2548 employees or agents, or the Collection Contractor(s).

2549 26.07.1 This provision is in addition to all other provisions in this Contract
2550 and is intended to survive the end of the term of this Contract. CONTRACTOR's Guaranty shall
2551 extend to the indemnification obligation hereunder.

2552 26.08 Separate Counsel. CITY may elect to have separate legal counsel from
2553 CONTRACTOR at any time at its sole discretion, and in such case CONTRACTOR will pay one-
2554 half (1/2) of all fees and costs and charges for such separate legal counsel.

2555 26.09 Consideration. It is specifically understood and agreed that the consideration
2556 inuring to CONTRACTOR for the execution of this Contract consists of the promises, payments,
2557 covenants, rights and responsibilities contained in this Contract.

2558 26.10 Obligation. The execution of this Contract by CONTRACTOR shall obligate
2559 CONTRACTOR to comply with the foregoing indemnification provisions; however, the collateral

2560 obligation of providing insurance must also be fully complied with as set forth in Article 25
2561 above.

2562 26.11 Subcontractors. CONTRACTOR shall require all subcontractors to enter into an
2563 Contract containing the provisions set forth Sections 26.01, 26.02, 26.03, 26.04, 26.05, 26.06,
2564 26.07, and Article 25 in its entirety and in the preceding subsection in which Contract the
2565 subcontractor fully indemnifies CITY in accordance with this Contract.

2566 26.12 Exception. Notwithstanding Sections 26.01, 26.02 and 26.03, CONTRACTOR's
2567 obligation to indemnify, hold harmless and defend CITY, its officers and employees pursuant to
2568 this Article 26 shall not extend to any loss, liability, penalty, claim, damage, action or suit to the
2569 extent caused by or based on the acts or omissions constituting willful misconduct or active
2570 negligence on the part of CITY or any other indemnitee. This section is not intended to modify
2571 in any way the parties' respective rights and obligations under Section 26.06.

2572 26.13 Damage by CONTRACTOR. If CONTRACTOR's employees or subcontractors
2573 cause any injury, damage or loss to CITY property, including but not limited to CITY streets or
2574 curbs, CONTRACTOR shall reimburse CITY for CITY's cost of repairing such injury, damage or
2575 loss. Such reimbursement is not in derogation of any right of CITY to be indemnified by
2576 CONTRACTOR for any such injury, damage or loss. With the prior written approval of CITY,
2577 CONTRACTOR may repair the damage at CONTRACTOR's sole cost and expense.

2578 **Article 27. DEFENSE OF CONTRACTOR'S RIGHTS**

2579 27.01 When either CITY or CONTRACTOR determines in their reasonable discretion
2580 that there are infringements of CONTRACTOR's rights under this Contract, CITY shall take all
2581 commercially reasonable actions necessary to prevent the infringement, including legal actions.
2582 If requested by CITY, CONTRACTOR shall, with counsel reasonably acceptable to CITY,
2583 assume the prosecution necessary to enforce such rights, and, shall defend, with counsel
2584 reasonably approved by the CITY, indemnify and hold harmless CITY, its employees and
2585 officials, against any and all claims arising out of CITY's performance under this Article 27.
2586 CITY will fully cooperate with CONTRACTOR in prosecuting and defending CONTRACTOR's
2587 exclusive Contract rights. CONTRACTOR shall reimburse CITY within thirty (30) days of receipt
2588 of an invoice, for all actual, reasonable costs associated with defense of Contract rights
2589 (including, but not limited to, CITY staff and CITY Attorney time, including applicable CITY
2590 overhead allocations, and outside consultants, including attorney fees and costs).

2591 27.02 CITY and CONTRACTOR believe that it is in the best interests of CITY to ensure
2592 that Residential Recyclable Materials are not collected by third parties in violation of the City's
2593 Municipal Code and CONTRACTOR's exclusive rights under this Agreement and that all
2594 appropriate steps should be taken within the parties' power to eliminate the occurrence of such
2595 violations within CITY. Accordingly, the CITY shall consider, in its discretion, revisions to the
2596 Municipal Code, in sufficient time for them to become effective on or before July 1, 2015, that, to
2597 the extent permitted by law, would make unlawful the placement of containers and/or provision
2598 of services for the collection of Recyclable Materials within CITY that are not authorized by the
2599 CITY and that would, among other things, would authorize CITY to impound such containers
2600 after notice to the violator. The proposed revisions shall give the City Administrator the ability to
2601 delegate the authority to impound such containers to CONTRACTOR. In the event such
2602 revisions are adopted, the City Administrator may delegate such authority to CONTRACTOR in
2603 such circumstances he or she deems appropriate, consistent with the first sentence of this
2604 section. Any actions taken by CONTRACTOR pursuant to the delegation shall be at
2605 CONTRACTOR's sole risk.

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Article 28. OBLIGATION TO PROVIDE SERVICE

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

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28.02 Specifically, with reference to any Maximum Service Rates Lawsuit as defined in Section 26.04, such legal actions shall not be considered a change in law or force majeure event excusing CONTRACTOR's performance, except as otherwise excused as set forth below.

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

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

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28.02.1.2 CONTRACTOR shall provide basic Collection Services. For the purposes of this Article 28, basic Collection Services are those minimum services necessary to ensure compliance with AB 939 as agreed to by and between CITY and CONTRACTOR. In the event CITY and CONTRACTOR are unable to agree on basic Collection Services within a period not to exceed two weeks from that date on which a court of competent jurisdiction or other regulatory agency with authority reduces Maximum Service Rates, CONTRACTOR shall have the authority to make adjustments in services to mitigate against any revenue impacts resulting from a Maximum Service Rates lawsuit. CITY shall continue to provide nuisance abatement and may also take other urgency actions as necessary to facilitate CONTRACTOR's continuation of basic Collection Services and ability to obtain compensation from Customers therefor. The intent of this provision is to ensure that CONTRACTOR continues to receive compensation, including its rate of return, consistent with that specified in the Contract for the level of services provided. If certain services are reduced and/or eliminated as a result of a Maximum Service Rates Lawsuit, the CITY agrees that during the term of the elimination of said services it shall not contract with any other company or party to provide these services and will contract only with CONTRACTOR to restore said services either during or after the conclusion of the Maximum Service Rates Lawsuit. If CITY finds it necessary to procure eliminated services, it shall do so from CONTRACTOR at commercially reasonable rates.

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28.02.1.3 CONTRACTOR shall, in coordination with CITY, reduce its charges to Customers in an amount corresponding to any CITY fee or charge set aside, invalidated, or stayed by such court, regulatory agency, or otherwise agreed to.

2652 CONTRACTOR's reduced charges, to the extent they correspond to the Maximum Service
2653 Rates allowed under this Contract minus any such fee or charge set aside, are intended to
2654 generate revenue to CONTRACTOR not less than CONTRACTOR's anticipated return on
2655 investment for the applicable calendar year. CONTRACTOR shall thereafter not be required to
2656 remit the amount of any disallowed fee or charge, provided it is not collected from Customers.

2657 28.02.1.4 CONTRACTOR shall not be obligated to refund Customers
2658 for any amount of previously collected fees or charges later set aside or invalidated by a court.
2659 CONTRACTOR and CITY deem the Maximum Service Rates to fix the actual reasonable cost
2660 of service to Customers as these rates and the escalation methodology set forth in this Contract
2661 are the result of a multi-year open competition for the CITY's franchise Recycling Services. Any
2662 CITY fees or charges set aside by any court or the CITY during the pendency of any Maximum
2663 Service Rates Lawsuit shall, to the extent they are collected from Customers, be paid into an
2664 escrow account established by the CITY, which shall be made available for use pursuant to
2665 order of the court, or in the absence of such order to address CONTRACTOR's losses, if any,
2666 consistent with CITY's obligations set forth below.

2667 28.02.2 If by virtue of an order by a court of competent jurisdiction, an
2668 order issued by a regulatory agency with authority, or pursuant to or an agreement between
2669 petitioner/plaintiff and CITY that affects all or a portion of the Maximum Service Rates, and this
2670 results in a loss to CONTRACTOR not otherwise recovered through a temporary reduction in
2671 services, CITY shall implement, with CONTRACTOR's consent, methods to recapture any
2672 losses that CONTRACTOR sustained under this Article 28. Such methods may include an
2673 adjustment in future Maximum Service Rates, a reduction in, or adjustment to, services and/or
2674 other obligations under the Contract, or such other lawful methods which may be agreed to by
2675 CITY and CONTRACTOR. Any method selected shall be designed to produce revenues that
2676 ensure CONTRACTOR fully recoups any and all demonstrated losses within no more than two
2677 years from that date on which Maximum Service Rates were reduced (or within two years
2678 following the trial court's determination in the event of a Maximum Service Rates Lawsuit), or,
2679 by the termination date of said Contract if less than two (2) years remain on the Term.
2680 CONTRACTOR shall have the right to terminate the Contract upon twelve (12) months written
2681 notice after the two (2) year period for recoupment of CONTRACTOR losses has expired, in the
2682 event CONTRACTOR has not been made whole for the demonstrated losses and no
2683 satisfactory agreement to address this shortfall has been reached between CONTRACTOR and
2684 CITY.

2685 28.02.3 Nothing herein is intended to imply that California Constitution
2686 Articles XIII(C) or (D) apply to the Maximum Service Rates provided for under this Contract.
2687 The foregoing paragraphs are merely intended as a contractual allocation of risks in the event of
2688 an unanticipated event affecting the ability to impose or collect Maximum Service Rates.

2689 28.03 Service Resumption Protocol (Labor Disruptions). In the event of a Labor
2690 Disruption whereby employees of CONTRACTOR do not perform work for CONTRACTOR at
2691 normally anticipated levels or efficiency which affects the ability of the CONTRACTOR to
2692 provide Recycling Services in accordance with this Contract, CONTRACTOR shall comply with
2693 the following provisions, and only for the periods set forth below:

2694 28.03.1 From the outset of any Labor Disruption, CONTRACTOR shall
2695 take all commercially reasonable actions to minimize disruptions to Recycling Services.

2696 28.03.2 In conjunction with the execution of this Agreement, attached
2697 hereto as Exhibit 14 is CONTRACTOR's General Contingency Plan to address
2698 CONTRACTOR's program to best provide continued service during a Labor Disruption that may

2699 significantly interfere with CONTRACTOR's ability to provide Recycling Services. From time to
2700 time during the term of this Agreement, CONTRACTOR and CITY shall meet to discuss whether
2701 modifications and updates to the General Contingency Plan are needed.

2702 28.03.3 CONTRACTOR will bring in alternate work forces within ten (10)
2703 Work Days of the commencement of a Labor Disruption for the purpose of providing Recycling
2704 Services in accordance with this Contract and to implement the General Contingency Plan. In
2705 the event CONTRACTOR's alternate work force is unable to provide Recycling Services in
2706 accordance with the schedules, volumes and routing set forth in this Contract, or the
2707 schedules, volumes and routing in the General Contingency Plan, CITY shall have the right,
2708 but not the obligation, to bring in outside forces to provide Recycling Services which are not
2709 being provided by CONTRACTOR and charge CONTRACTOR for the reasonable direct and
2710 indirect expenses (including administrative and overhead) incurred by CITY in this regard.

2711 28.03.4 If after fifteen (15) days from the commencement of a Labor
2712 Disruption there is a continuing CONTRACTOR failure to materially perform the services set
2713 forth in Section 28.03.3 above, such failure to perform shall be considered a default under
2714 Section 29.01.9 and CITY may cancel this Contract. In such an event, CITY shall not waive
2715 its right to seek damages from CONTRACTOR for any increase in cost of Collection incurred
2716 by CITY as a result of the breach of this Agreement by CONTRACTOR and the consequential
2717 election by CITY to cancel the Contract and move forward with alternate collection
2718 alternatives.

2719 28.03.5 If CONTRACTOR fails to meet the obligations as set forth in
2720 Section 28.03.3 above within ten (10) Work Days of the Labor Disruption, then CITY may
2721 begin to impose liquidated damages for such failure no earlier than twelve (12) Work Days
2722 after CONTRACTOR provides notice of the Labor Disruption to CITY, subject to the limitations
2723 in 28.03.6.

2724 28.03.6 The following limitations shall also apply with regard to application
2725 of liquidated damages:

2726 28.03.6.1 A claim for liquidated damages may not be sought unless
2727 the Labor Disruption is caused by a dispute between CONTRACTOR, and CONTRACTOR's
2728 employees, including the employees employed by CONTRACTOR at facilities covered by this
2729 Contract.

2730 28.03.6.2 In the event the application of the liquidated damage is
2731 conditioned upon CONTRACTOR's failure to complete a certain percentage of a task, that
2732 percentage shall be multiplied by eighty (80) percent.

2733 28.03.6.3 In the event the application of the liquidated damage is
2734 conditioned upon the number of times CONTRACTOR fails to perform or incorrectly performs a
2735 task, that number shall be divided by eighty (80) percent and rounded up to the nearest whole
2736 number.

2737 28.03.6.4 In the event the application of the liquidated damage is
2738 conditioned upon a single occurrence, the amount of the liquidated damage shall be multiplied
2739 by eighty (80) percent and rounded up to the nearest whole number.

2740 **Article 29. DEFAULT OF CONTRACT**

2741 29.01 CITY Termination.

2742 29.01.1 CONTRACTOR Events of Default. The following shall be
2743 CONTRACTOR Events of Default, following which CITY may cancel this Contract, except as
2744 otherwise provided below in this Article, by giving CONTRACTOR thirty (30) calendar days
2745 advance written notice, to be served as provided in Article 45:

2746 29.01.2 CONTRACTOR shall take the benefit of any present or future
2747 insolvency statute, or shall make a general assignment for the benefit of creditors, or file a
2748 voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its
2749 reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or
2750 under any other law or statute of the United States or any state thereof, or consent to the
2751 appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

2752 29.01.3 By order or decree of a Court, CONTRACTOR shall be adjudged
2753 bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of
2754 the stockholders of CONTRACTOR, seeking its reorganization or the readjustment of its
2755 indebtedness under the Federal bankruptcy laws or under any law or statute of the United
2756 States or of any state thereof, provided that if any such judgment or order is stayed or vacated
2757 within sixty (60) calendar days after the entry thereof, any notice of default shall be and become
2758 null, void and of no effect; unless such stayed judgment or order is reinstated in which case,
2759 said default shall be deemed immediate; or

2760 29.01.4 By, or pursuant to, or under the authority of any legislative act,
2761 resolution or rule or any order or decree of any Court or governmental board, agency or officer
2762 having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or
2763 substantially all of the property of CONTRACTOR, and such possession or control shall
2764 continue in effect for a period of sixty (60) calendar days; or

2765 29.01.5 CONTRACTOR has failed or refused to pay in a timely manner
2766 the liquidated damages or any other monies due CITY and said default is not cured within thirty
2767 (30) calendar days of receipt of written notice by CITY to do so; or

2768 29.01.6 CONTRACTOR has allowed any final judgment, in favor of CITY,
2769 for the payment of money to stand against it unsatisfied and said default is not cured within
2770 thirty (30) calendar days of receipt of written notice by CITY to do so; or

2771 29.01.7 In the event that the monies due CITY under Section 29.01.5
2772 above or an unsatisfied final judgment under Section 29.01.6 above is the subject of a judicial
2773 proceeding, CITY may, at its option call the Performance Bond, or hold CONTRACTOR in
2774 default of this Contract. All bonds shall be in the form acceptable to the CITY Attorney; or

2775 29.01.8 In the event that CONTRACTOR substantially fails to implement
2776 the Diversion recovery plan in Exhibit 7, CITY may, at its option call the Guaranty or assess
2777 liquidated damages for each Work Day that the diversion plan goals are not met, or hold
2778 CONTRACTOR in default of this Contract; or

2779 29.01.9 CONTRACTOR has failed to materially perform the services set
2780 forth in Section 28.03.3 above; or

2781 29.01.10 Except in the event of a Labor Disruption, CONTRACTOR has
2782 failed or refused to perform or observe the terms, conditions or covenants in this Contract not
2783 otherwise addressed in this Section 29.01, the service levels prescribed herein, or any of the
2784 rules and regulations promulgated by CITY pursuant thereto or has wrongfully failed or refused
2785 to comply with the instructions of the Contract Manager relative thereto; provided that said
2786 default is not cured within thirty (30) calendar days of receipt of written notice from CITY to do

2787 so, or if by reason of the nature of such default, the same cannot be remedied within thirty (30)
2788 calendar days following receipt by CONTRACTOR of written demand from CITY to do so,
2789 CONTRACTOR fails to commence the remedy of such default within said thirty (30) calendar
2790 days following such written notice or having so commenced shall fail thereafter to continue with
2791 diligence the curing thereof. In any dispute concerning failure to remedy or diligence in pursuing
2792 a cure, CONTRACTOR shall have the burden of proof to demonstrate (a) that the default cannot
2793 be cured within thirty (30) calendar days, and (b) that it is proceeding with diligence to cure said
2794 default, and such default will be cured within a reasonable period of time. For purposes of
2795 clarity, this Section 29.01.9 shall not apply where the failure to perform is caused by a Force
2796 Majeure event or if this Section conflicts with Article 28.

2797 29.01.11 In the event that the Contract is terminated, CONTRACTOR shall
2798 furnish CITY with immediate access to all of its business records related to its Customer and
2799 billing accounts for Recycling Services.

2800 29.01.12 Repetitive Compliance Issues. Notwithstanding CONTRACTOR's
2801 timely cure of previous breaches, in the event that CONTRACTOR's record of performance
2802 shows that it has regularly and frequently failed to meet a particular material Contract obligation,
2803 despite written notices from CITY and beyond what is common by industry standards, CITY and
2804 CONTRACTOR agree to meet and confer, in good faith, regarding operational changes
2805 necessary to resolve the issue. If the parties cannot agree on necessary operational changes,
2806 then the matter will be mediated pursuant to Section 30.02.1. Once the operational changes
2807 have been agreed upon, CONTRACTOR shall be responsible for their implementation.

2808 29.02 Violations. Notwithstanding the foregoing and as supplemental and additional
2809 means of termination of this Contract under this Article, in the event that CONTRACTOR's
2810 record of performance shows that CONTRACTOR has repetitive compliance issues as
2811 described in Section 29.01.11 above, regardless of whether CONTRACTOR has corrected each
2812 individual condition of default, CITY in its commercially reasonable discretion, considering
2813 industry standards, determines that CONTRACTOR shall be deemed a "habitual violator", in
2814 which case CONTRACTOR shall be deemed to have waived the right to any further notice or
2815 grace period to correct, and all of said defaults shall be considered cumulative and collectively
2816 shall constitute a condition of irredeemable default. CITY shall thereupon issue CONTRACTOR
2817 a final warning citing the circumstances therefore, and any single default by CONTRACTOR of
2818 whatever nature, subsequent to the occurrence of the last of said cumulative defaults, shall be
2819 grounds for immediate termination of the Contract. A history of liquidated damages imposed
2820 pursuant to Article 22 may be used as a basis for deeming CONTRACTOR to be a habitual
2821 violator; provided they meet the materiality requirement above; however, any failure to have
2822 imposed liquidated damages where applicable shall not prevent use of CONTRACTOR's
2823 underlying failures from consideration for determining a habitual violator. In the event of any
2824 such subsequent default, CITY may terminate this Contract upon giving of final written notice to
2825 CONTRACTOR, such cancellation to be effective upon the date specified in CITY's written
2826 notice to CONTRACTOR, and all contractual fees due hereunder plus any and all charges and
2827 interest shall be payable to said date, and CONTRACTOR shall have no further rights
2828 hereunder. Immediately upon the specified date in such final notice CONTRACTOR shall
2829 proceed to cease any further performance under this Contract.

2830 29.03 Effective Date. In the event of the aforesaid events specified above, and except
2831 as otherwise provided in said subsections, termination shall be effective upon the date specified
2832 in CITY's written notice to CONTRACTOR and upon said date this Contract shall be deemed
2833 immediately terminated and upon such termination all liability of CITY under this Contract to
2834 CONTRACTOR shall cease, and CITY shall have the right to call the performance bond and

2835 shall be free to negotiate with other contractors for the operation of the herein specified
2836 services. CONTRACTOR for failure to perform shall reimburse CITY all direct and indirect costs
2837 of providing interim Recycling Services.

2838 29.04 Immediate Termination. CITY may terminate this Contract immediately upon
2839 written notice to CONTRACTOR in the event CONTRACTOR fails to provide and maintain the
2840 performance bond as required by this Contract, or if CONTRACTOR fails to obtain or maintain
2841 insurance policies endorsements as required by this Contract, or if CONTRACTOR fails to
2842 provide the proof of insurance as required by this Contract, or if CONTRACTOR offers or gives
2843 any gift prohibited by CITY administrative policy.

2844 29.05 CONTRACTOR Termination.

2845 29.05.1 CITY Events of Default. The following shall be CITY Events of
2846 Default, following which the CONTRACTOR may cancel this Contract (except as otherwise
2847 provided below in this Article) by giving CITY thirty (30) calendar days advance written notice, to
2848 be served as provided in Article 45:

2849 29.05.2 CITY has allowed any final judgment, in favor of CONTRACTOR,
2850 for the payment of money to stand against it unsatisfied and said default is not cured within
2851 ninety (90) calendar days of receipt of written notice from CONTRACTOR to do so; or

2852 29.05.3 CITY has failed or refused to perform or observe the terms,
2853 conditions or covenants in this Contract not otherwise addressed in this Section 29.03; provided
2854 that said breach is not cured within thirty (30) calendar days of receipt of written notice from
2855 CONTRACTOR to do so, or if by reason of the nature of such breach, the same cannot be
2856 remedied within thirty (30) calendar days following receipt by CITY of written demand from
2857 CONTRACTOR to do so, CITY fails to commence the remedy of such breach within said thirty
2858 (30) calendar days following such written notice or having so commenced shall fail thereafter to
2859 continue with diligence the curing thereof. In any dispute concerning failure to remedy or
2860 diligence in pursuing a cure, CITY shall have the burden of proof to demonstrate (a) that the
2861 breach cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with
2862 diligence to cure said breach, and such breach will be cured within a reasonable period of time.
2863 In the event that CITY fails to cure any breach pursuant to this provision, CONTRACTOR shall
2864 have the right to terminate this Contract. CONTRACTOR shall provide written notice of
2865 termination to CITY upon CITY's failure to cure and this Contract shall terminate one (1) year
2866 after service of such notice.

2867 29.06 Termination Cumulative. A party's right to terminate this Contract is cumulative
2868 to any other rights and remedies provided by law or by this Contract.

2869 29.07 Force Majeure. The parties shall be excused from performing their respective
2870 obligations under this Contract in the event they are prevented from so performing by reason of
2871 Force Majeure.

2872 **Article 30. MODIFICATIONS TO THE CONTRACT**

2873 30.01 Contract Modifications and Changes in Law. CITY and CONTRACTOR
2874 understand and agree that the California Legislature has the authority to make comprehensive
2875 changes in Recyclable Materials management legislation and that these and other changes in
2876 law in the future that mandate certain actions or programs for counties or municipalities may
2877 require changes or modifications in some of the terms, conditions or obligations under this
2878 Contract. CONTRACTOR agrees that the terms and provisions of CITY's Municipal Code, as it

2879 now exists or as it may be amended in the future, shall apply to all of the provisions of this
2880 Contract and the Customers of CONTRACTOR located within the Service Area, provided,
2881 however, that CITY will not amend CITY's Municipal Code in a way that is inconsistent with the
2882 Contract unless compelled to do so by federal or State law. In the event any Change in Law,
2883 modifications to CITY's Municipal Code, or directed changes by CITY materially alters the
2884 obligations of CONTRACTOR, then the affected compensation as established under this
2885 Contract shall be adjusted. Nothing contained in this Contract shall require any party to perform
2886 any act or function contrary to law. CITY and CONTRACTOR agree to enter into good faith
2887 negotiations regarding modifications to this Contract, which may be required in order to
2888 implement changes in the interest of the public welfare or due to Change in Law. When such
2889 modifications are made to this Contract, CITY and CONTRACTOR shall negotiate in good faith
2890 a reasonable and appropriate compensation adjustment for any increase or decrease in the
2891 services or other obligations required of CONTRACTOR due to any modification in the Contract
2892 under this Section 30.01. CITY and CONTRACTOR shall not unreasonably withhold agreement
2893 to such compensation adjustment.

2894 30.01.1 Compensation Adjustments. In the event of a Change in Law or
2895 regulations of any governmental agency that will require additional or different services to be
2896 provided by CONTRACTOR or that require CONTRACTOR to pay additional government fees
2897 which are not otherwise covered by this Contract, CONTRACTOR shall provide CITY with a
2898 written rate increase request for additional compensation to CONTRACTOR based on such
2899 additional or different services. The rate increase request shall include but not be limited to the
2900 information set forth in Sections 30.04.1 through 30.04.9 below. If the proposed rate increase
2901 exceeds five (5) percent and CITY does not agree with such rate increase, CITY, in addition to
2902 negotiating with CONTRACTOR, may submit the matter to non-binding mediation as set forth in
2903 Section 30.02.1. However, no governmental fees or changes to which CONTRACTOR agrees
2904 contractually or negotiates shall be passed through to customers unless agreed to in writing by
2905 CITY.

2906 30.02 Dispute Resolution. Except for a CONTRACTOR Default under Article 29, and
2907 except as provided below in Section 30.02.3, should any dispute arise under this Contract,
2908 including but not limited to the performance and obligations of the parties, or service or
2909 compensation changes, such disputes shall be resolved by the following procedures:

2910 30.02.1 The parties shall resolve their disputes informally to the maximum
2911 extent possible and shall attempt to resolve such disputes in a cooperative and mutually
2912 satisfactory manner. Either party shall give the other written notice of such dispute, and also
2913 provide written notice to the Contract Manager. The Contract Manager shall then schedule a
2914 meeting between CONTRACTOR and the CITY Administrator or the CITY Administrator's
2915 designee as soon as reasonably possible. In the event such dispute cannot be resolved by the
2916 parties themselves within thirty (30) days of their first meeting, either party may propose the
2917 appointment of a mediator. The parties shall agree on a mediator within 30 days of either
2918 party's request for mediation.

2919 30.02.2 Mediation. If the disputing parties cannot informally resolve the
2920 dispute, they shall attempt to resolve such dispute through non-binding mediation for a period
2921 not to exceed ninety (90) days from the date of their last informal meeting, absent a written
2922 agreement to extend the time of non-binding mediation.

2923 30.02.2.1 The party desiring mediation shall give written notice
2924 thereof to the other party to this Contract, specifying the dispute to be mediated.

2925 30.02.2.2 The mediation shall be held at Oakland, California, or at
2926 such other location as may be mutually agreed among the parties. The mediation shall be
2927 conducted and a mediator chosen pursuant to the rules of JAMS Mediation Rules.

2928 30.02.2.3 At least ten (10) days before the date of the mediation,
2929 each side shall provide the mediator with a statement of its position and copies of all supporting
2930 documents. Each party shall send to the mediation a person who has authority to bind the
2931 party. If a subsequent dispute will involve third parties, such as insurers or subcontractors, they
2932 shall also be asked to participate in the mediation.

2933 30.02.2.4 Should mediation be unsuccessful, and if the dispute does
2934 not concern valuation items for which binding arbitration is required in Section 30.02.3, then a
2935 party may commence an adversarial proceeding before any court of competent jurisdiction in
2936 the County of Alameda. Disputes that concern valuation items defined in Section 30.02.3 shall
2937 proceed with binding arbitration procedures as set forth below.

2938 30.02.3 Binding Arbitration. This Section only applies to disputes over
2939 "Valuation Items," which are defined herein as disputes over a specific amount of money or
2940 compensation that is due or owed by either party, and the dispute arises under one of the
2941 following provisions of this Contract: Articles 7 and 8 and Sections 17.03, 18.01, 30.01, and
2942 30.03. Disputes relating to Valuation Items shall be referred to binding arbitration upon mutual
2943 written approval of the disputing parties. If the disputing parties do not mutually agree in writing
2944 to binding arbitration, a party may commence an adversarial proceeding before any court of
2945 competent jurisdiction in the county of Alameda.

2946 30.02.3.2 Binding arbitration proceedings shall be in accordance with
2947 California Code of Civil Procedure section 1280 et seq., the then-current JAMS Streamlined
2948 Arbitration Rules, and the terms of section 30.02.3 and its subsections. In the event of any
2949 inconsistency, the terms of section 30.02.3 and its subsections shall control. The arbitration
2950 shall be administered by JAMS and conducted in the County of Alameda. If the parties are
2951 unable to select an arbitrator within twenty (20) days after delivering written notice requesting
2952 arbitration, JAMS shall select a qualified arbitrator from its panel. If JAMS is unwilling or unable
2953 to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause,
2954 the parties may mutually designate another arbitration organization with similar procedures to
2955 serve as the provider of arbitration. If the parties cannot agree on the arbitration organization,
2956 the Presiding Judge of the Alameda County Superior Court shall designate such an organization
2957 upon the petition of either party.

2958 30.02.3.3 The arbitrator shall be independent of, and unaffiliated
2959 with, each party and shall not ever have been an employee of either party, under contract with
2960 either party in the past five (5) years or acted as an arbitrator for such party within the past five
2961 (5) years.

2962 30.02.3.4 Within twenty (20) days after initiation of the arbitration, if
2963 not previously done so under the terms of this Contract, the parties shall each submit to each
2964 other and the arbitrator their respective relevant value for the item subject to the valuation
2965 dispute, with such supporting information as is reasonably necessary to support such suggested
2966 value. If the two (2) valuations so submitted differ by less than or equal to ten (10) percent of
2967 the higher of the two, the average of the two shall become the agreed upon amount for
2968 purposes of this Contract and the arbitration shall not be continued. If the two valuations differ
2969 by more than ten (10) percent of the higher of the two, then the arbitrator shall make a
2970 determination of the relevant value and submit such determination to both the parties. This third
2971 valuation will then be averaged with the closer of the two previous valuations and the result shall

2972 be the relevant value. In no event shall the resolution of a valuation dispute result in a valuation
2973 higher than that which was set forth by Contractor (e.g., a impact of a "material" disclosure or a
2974 higher tip fee adjustment). The final arbitrated value shall be binding on the parties.

2975 30.02.3.5 The arbitrator shall have the authority and power to award
2976 costs, including attorneys' fees and costs to the prevailing party. Unless otherwise awarded by
2977 the arbitrator, the parties shall evenly split the cost of any arbitration under this Article.

2978 30.02.3.6 By agreeing to binding arbitration, the parties irrevocably
2979 and voluntarily waive any right they may have to a trial by jury to the extent permitted by law.

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Acknowledgement of waiver of rights by trial by jury if proceeding with binding arbitration pursuant to Section 30.02.3 of this Contract.

CITY OF OAKLAND

CONTRACTOR

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2991 30.03 Changes in Required Services within the Scope. CITY may direct changes in the
2992 services required under the scope of this Contract, including the addition of pilot programs and
2993 innovative services that may entail new Collection methods or requirements for Customers and
2994 Service Recipients, the deletion of existing services, and the modification of the manner in
2995 which existing services are performed. However, no changes in services shall be construed so
2996 as to impair the exclusive rights of CONTRACTOR granted hereunder. CITY's authority to
2997 delete existing services is not in derogation of CONTRACTOR's exclusive Contract rights, i.e., if
2998 CITY elects to discontinue a service that is within the scope of the under this Section, CITY shall
2999 not allow a third party to perform it. CONTRACTOR shall promptly and cooperatively comply
3000 with such directions and the rates shall be adjusted, pursuant to the procedures set forth in this
3001 Section, to fairly and fully reflect the additional costs, or cost reduction, associated with the
3002 directed change(s) in required services, but not for the preparation of CONTRACTOR's
3003 proposal to perform such services.

3004 30.03.1 All sums that appear in this Section 30.03 are expressed in
3005 July 2015 dollars and shall be adjusted beginning July 1, 2016, and annually thereafter during
3006 the Contract's term, by the same percentage as the percentage used to adjust the Maximum
3007 Collection Services Rates for that fiscal year as set forth in Section 7.16, except that in no year
3008 shall the adjustment be less than zero (0) percent.

3009 30.03.2 Implementing Changes in Service. CONTRACTOR shall submit a
3010 proposal to perform such services pursuant to Section 30.03.4 below. CITY shall consider
3011 CONTRACTOR's proposal and shall determine the amount by which the rates should be
3012 adjusted. CONTRACTOR shall implement the changes in accordance with the schedule
3013 directed by CITY, regardless of whether the parties agree on the rate adjustment amount. If the
3014 parties do not agree on the rate adjustment amount, CONTRACTOR may challenge the
3015 adequacy of the rates pursuant to Section 30.02 above.

3016 30.03.3 Service Proposal. Within sixty (60) calendar days of receipt of a
3017 request for a service change from CITY under Section 30.03.3, CONTRACTOR shall submit a
3018 proposal to provide such service. At a minimum, the proposal shall contain a complete
3019 description of the following:

3020 30.03.3.1 Collection methodology to be employed (equipment,
3021 manpower, etc.);

3022 30.03.3.2 Equipment to be utilized, including equipment to be
3023 purchased (vehicle number, types, capacity, age, etc.);

3024 30.03.3.3 Labor requirements (number of employees by
3025 classification);

3026 30.03.3.4 Type of Carts or Bins to be utilized;

3027 30.03.3.5 Provision for program publicity, outreach, and marketing;

3028 30.03.3.6 Five (5) year projection of the financial results of the
3029 program's operations in an operating statement format including documentation of the key
3030 assumptions underlying the projections and the support for those assumptions, giving full effect
3031 to the savings or costs to existing services;

3032 30.03.3.7 Advantages and disadvantages of the change;

3033 30.03.3.8 A recommendation as to whether the change should be
3034 implemented; and

3035 30.03.3.9 An implementation schedule.

3036 30.04 Services Outside of Scope. CITY may request CONTRACTOR to submit a
3037 proposal to provide new services outside of the scope of this Contract. If CONTRACTOR either
3038 refuses to provide the new services or the parties are unable to agree on the terms and
3039 conditions of such services within one hundred twenty (120) days from the date when CITY first
3040 requests a proposal from CONTRACTOR, CONTRACTOR acknowledges and agrees that CITY
3041 may permit other persons or companies besides CONTRACTOR to perform those services
3042 outside of the scope of this Contract.

3043 30.05 New Technology. In the event that technological advancements in the
3044 Collection, transportation, Processing, or handling of Recyclable Materials are made, and which
3045 if implemented alone or in conjunction with another technology would cumulatively reduce the
3046 initial rates established by this Contract by approximately ten (10) percent or more,
3047 CONTRACTOR shall so notify CITY, and CITY may require CONTRACTOR to utilize or
3048 implement said new technology and new rates shall be mutually agreed upon and established.
3049 CONTRACTOR shall retain the ability to propose changes to CITY in its Residential Recycling
3050 Collection Services for the purpose of maximizing efficiency. Said changes will not be
3051 implemented without the written

3052 30.06 Monitoring and Evaluation. If CITY requests, CONTRACTOR shall meet with
3053 CITY to describe the progress of each new program and other service issues. If applicable,
3054 CONTRACTOR shall document the results of the new programs on a monthly basis, including
3055 at a minimum the Tonnage Diverted by material type, the end use or processor of the Diverted
3056 materials, the cost per Ton for transporting and Processing each type of material, and other
3057 such information requested by CONTRACTOR and/or CITY necessary to evaluate the
3058 performance of each program.

3059 30.06.1 At each meeting, CITY and CONTRACTOR shall have the
3060 opportunity to discuss revisions to the program. CITY shall have the right to terminate a
3061 program if, in CITY's sole discretion, CONTRACTOR is not cost effectively achieving the
3062 program's goals and objectives. Prior to such termination, CITY shall meet and confer with
3063 CONTRACTOR for a period of up to ninety (90) calendar days to resolve CITY's concerns.
3064 Thereafter, CITY may utilize a third party to perform these services if CITY reasonably believes
3065 the third party can improve on CONTRACTOR's performance and/or cost. Notwithstanding
3066 these changes, CONTRACTOR shall continue the program during the ninety (90) calendar day
3067 period and, thereafter, until the third party takes over the program.

3068 **Article 31. LEGAL REPRESENTATION**

3069 31.01 Acknowledgements. It is acknowledged that each party was, or had the
3070 opportunity to be, represented by counsel in the preparation of and contributed equally to the
3071 terms and conditions of this Contract and, accordingly, the rule that a contract or Contract shall
3072 be interpreted strictly against the party preparing the same shall not apply herein due to the joint
3073 contributions of both parties.

3074 **Article 32. FINANCIAL INTEREST**

3075 32.01 Representation. CONTRACTOR warrants and represents that no elected official,
3076 officer, agent or employee of CITY has a financial interest, directly or indirectly, in this Contract
3077 or the compensation to be paid under it and, further, that no CITY employee who acts in CITY
3078 as a "purchasing agent" as defined in the appropriate section of California Statutes, nor any
3079 elected or appointed officer of CITY, nor any spouse or child of such purchasing agent,
3080 employee or elected or appointed officer, is a partner, officer, director or proprietor of
3081 CONTRACTOR and, further, that no such CITY employee, purchasing agent, CITY elected or
3082 appointed officer, or the spouse or child of any of them, alone or in combination, has a material
3083 interest in CONTRACTOR. Material interest means direct or indirect ownership of more than
3084 five (5) percent of the total assets or capital stock of CONTRACTOR.

3085 **Article 33. CONTRACTOR'S PERSONNEL**

3086 33.01 Personnel Requirements. CONTRACTOR shall employ and assign qualified
3087 personnel to perform all services set forth herein. CONTRACTOR shall be responsible for
3088 ensuring that its employees comply with all applicable laws and regulations and meet all federal,
3089 State and local requirements related to their employment and position.

3090 33.01.1 CITY may request the transfer of any employee of
3091 CONTRACTOR who materially violates any provision hereof, or who is wanton, negligent, or
3092 discourteous in the performance of his duties.

3093 33.01.2 CONTRACTOR shall not permit its employees to demand or
3094 solicit, directly or indirectly, any additional compensation or gratuity from Customers or Service
3095 Recipients for the provision of Collection Services under the terms of this Contract.

3096 33.01.3 CONTRACTOR's field operations personnel shall be required to
3097 wear a clean uniform shirt bearing CONTRACTOR's name. CONTRACTOR's employees, who
3098 normally come into direct contact with the public, including drivers, shall bear some means of
3099 individual photographic identification such as a name tag or identification card.

3100 33.01.4 Each driver of a Collection vehicle shall at all times carry a valid
3101 California driver's license and all other required licenses for the type of vehicle that is being
3102 operated.

3103 33.01.5 Each driver of a Collection vehicle shall at all times comply with all
3104 applicable state and federal laws, regulations and requirements.

3105 33.01.6 CONTRACTOR's employees, officers and agents shall at no time
3106 be allowed to identify themselves or in any way represent themselves as being employees of
3107 CITY.

3108 33.01.7 CONTRACTOR's name and the Customer Service telephone
3109 number shall be properly displayed on all Collection vehicles.

3110 **Article 34. UNACCEPTABLE WASTE**

3111 34.01 CONTRACTOR shall not be required to Collect, transport or deliver for Disposal,
3112 Unacceptable Waste, but may offer such services. All such Collection, transport and delivery
3113 for Disposal of Unacceptable Waste is not regulated under this Contract, but if provided by
3114 CONTRACTOR shall be in strict compliance with all federal, State and local laws and
3115 regulations.

3116 **Article 35. INDEPENDENT CONTRACTOR**

3117 35.01 In the performance of services pursuant to this Contract, CONTRACTOR shall be
3118 an independent contractor and not an officer, agent, servant or employee of CITY.
3119 CONTRACTOR shall have exclusive control of the details of the services and work performed
3120 and over all persons performing such services and work. CONTRACTOR shall be solely
3121 responsible for the acts and omissions of its officers, agents, employees, contractors and
3122 subcontractors, if any. Neither CONTRACTOR nor its officers, employees, agents, contractors
3123 or subcontractors shall obtain any right to retirement benefits, Workers Compensation benefits,
3124 or any other compensation or benefits, which accrue, to CITY employees and CONTRACTOR
3125 expressly waives any claim it may have or acquire to such compensation or benefits.

3126 **Article 36. LAWS TO GOVERN**

3127 36.01 The laws of the state of California shall govern the rights, obligations, duties and
3128 liabilities of CITY and CONTRACTOR under this Contract and shall govern the interpretation of
3129 this Contract.

3130 **Article 37. CONSENT TO JURISDICTION**

3131 37.01 The parties agree that any litigation between CITY and CONTRACTOR
3132 concerning or arising out of this Contract shall be filed and maintained exclusively in the
3133 municipal or superior Courts of Alameda County, state of California, or in the United States
3134 Court for the Northern District of California to the fullest extent permissible by law. Each party
3135 consents to service of process in any manner authorized by California law.

3136 **Article 38. ASSIGNMENT**

3137 38.01 CITY's Right to Terminate in Event of Assignment. CONTRACTOR
3138 acknowledges that this Contract involves rendering a vital service to CITY's residents and

3139 businesses, and that CITY has selected CONTRACTOR to perform the services specified
3140 herein based on (1) CONTRACTOR's experience, skill and reputation for conducting its
3141 operations in a safe, effective and responsible fashion, at all times in keeping with applicable
3142 environmental laws, regulations and best management practices for the provision of Recycling
3143 Services and (2) CONTRACTOR's financial resources to maintain the required equipment and
3144 to support its indemnity obligations to CITY under this Contract. CITY has relied on each of
3145 these factors, among others, in choosing CONTRACTOR to perform the services to be
3146 rendered by CONTRACTOR under this Contract. Any assignment by CONTRACTOR, either
3147 directly or indirectly, in whole or in part, of its rights or any interest it may have in this Contract
3148 including any transfer of its stock or assets to a third party shall give CITY, in its sole discretion,
3149 the basis for terminating this Contract in whole or in part upon the giving of a thirty (30) day
3150 written notice to CONTRACTOR. In the event such notice of termination is given as authorized
3151 by this Article, CONTRACTOR shall continue, for up to six (6) months following notice of
3152 termination, to provide any or all of the services it is obligated to perform under this Contract if
3153 requested by CITY in writing. CITY's right to terminate the Contract in whole or in part shall
3154 expire unless exercised within sixty (60) days of receiving written notice from CONTRACTOR as
3155 provided herein of an assignment by CONTRACTOR. "Assignment" or "Assign" as used in this
3156 Contract shall include, but not be limited to, (i) a sale, exchange or other transfer of substantially
3157 all of CONTRACTOR's assets dedicated to any or all of the services to be provided under this
3158 Contract to a third party (ii) a sale, exchange or other transfer of outstanding common stock of
3159 CONTRACTOR to a third party provided said sale, exchange or transfer results in a change of
3160 control of CONTRACTOR or any sale, exchange or transfer of the common stock of
3161 CONTRACTOR which results in the effective transfer of control of substantially all of
3162 CONTRACTOR's assets dedicated to any or all of the services to be provided under this
3163 Contract to a third party; (iii) any dissolution, reorganization, consolidation, merger, re-
3164 capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow
3165 arrangement, liquidation or other transaction to which results in a change of ownership or
3166 control of CONTRACTOR; (iv) any assignment by operation of law, including insolvency or
3167 bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution
3168 being levied against this Contract, appointment of a receiver taking possession of
3169 CONTRACTOR's property, or transfer occurring in the event of a probate proceeding; and (v)
3170 any combination of the foregoing (whether or not in related or contemporaneous transactions)
3171 which has the effect of any such transfer or change of ownership, or change of control of
3172 CONTRACTOR, or substantially all of the assets used for providing any of the services under
3173 this Contract to a third party. [For purposes of this Contract, an "assignment" shall not include a
3174 sale, transfer or exchange with [insert company] or any of its subsidiaries, successors or
3175 assigns, provided such affiliated entity has financial capabilities and management, available
3176 locally, equal to or greater than CONTRACTOR.]

3177 38.02 Procedure for CITY Evaluation of Proposed Assignment. If CONTRACTOR
3178 requests CITY's consideration of and consent to an assignment, CONTRACTOR shall meet the
3179 following preliminary requirements:

3180 38.02.1 CONTRACTOR shall pay CITY its reasonable expenses for
3181 attorney's fees, consultant's fees and investigation costs necessary to investigate the suitability
3182 of any proposed assignee, and to review and finalize any documentation required as a condition
3183 for approving any such assignment;

3184 38.02.2 CONTRACTOR shall furnish CITY with audited financial
3185 statements of the proposed assignee's operations for the immediately preceding three (3)
3186 operating years;

3187 38.02.3 CONTRACTOR shall furnish CITY with satisfactory proof that: (1)
3188 the proposed assignee has at least ten (10) years of experience providing Residential Recycling
3189 Collection Services on a scale equal to or exceeding the scale of operations conducted by
3190 CONTRACTOR under this Contract; (2) in the last five (5) years, the proposed assignee has not
3191 suffered any significant citations or other censure from any federal, State or local agency having
3192 jurisdiction over its Residential Recycling Collection Services operations due to any significant
3193 failure to comply with State, federal or local environmental laws and the assignee has provided
3194 CITY with a complete list of such citations and censures; (3) the proposed assignee has at all
3195 times conducted its operations in an environmentally safe and conscientious fashion; (4) the
3196 proposed assignee conducts its Residential Recycling Collection Services operation practices in
3197 accordance with sound management practices in full compliance with all federal, State and local
3198 laws regulating the provision of Residential Recycling Collection Services; and, (5) of any other
3199 information required by CITY to ensure the proposed assignee can fulfill the terms of this
3200 Contract in a timely, safe and effective manner.

3201 38.03 CONTRACTOR Defaults. Under no circumstances shall CITY be obliged to
3202 consider any proposed assignment if CONTRACTOR is in default at any time during the period
3203 of consideration.

3204 38.04 CITY Discretion to Accept or Reject Assignment. CITY, in its sole discretion,
3205 may accept, reject or conditionally accept the proposed assignment. If CITY accepts a partial
3206 assignment, the corporate Guaranty provided in Section 1.36 and Exhibit 15 and the
3207 performance security provided in Article 24 shall remain in effect unless CITY in its sole
3208 discretion consents to adequate substitutes by the assignee or to a novation, and absent a
3209 novation CONTRACTOR shall not be released from liability under this Contract.

3210 38.05 Subcontractor. The use of a subcontractor to perform services under this
3211 Contract shall not constitute delegation of CONTRACTOR's duties provided that
3212 CONTRACTOR has received prior written authorization from CITY to subcontract such services
3213 and the Contract Manager has approved a subcontractor who will perform such services.
3214 CONTRACTOR shall be responsible for directing the work of CONTRACTOR's subcontractors
3215 and any compensation due or payable to CONTRACTOR's subcontractor shall be the sole
3216 responsibility of CONTRACTOR. CITY shall have the right to require the removal of any
3217 approved subcontractor for reasonable cause.

3218 **Article 39. COMPLIANCE WITH LAWS**

3219 39.01 In the performance of this Contract, CONTRACTOR shall comply with all
3220 applicable laws, regulations, ordinances and codes of the federal, state and local governments,
3221 including without limitation the Municipal Code of the City of Oakland.

3222 39.02 CITY shall provide written notice to CONTRACTOR of any planned amendment
3223 of the CITY Municipal Code that would affect the performance of CONTRACTOR's services or
3224 obligations pursuant to this Contract, in which case Section 30.01 would apply if there is an
3225 effect on CONTRACTOR's costs or ability to provide contract services. Such notice shall be
3226 provided at least thirty (30) calendar days prior to the CITY Council's approval of such an
3227 amendment.

3228 **Article 40. PERMITS AND LICENSES**

3229 40.01 CONTRACTOR shall obtain, at its own expense, all permits and licenses
3230 required by law or ordinance and maintain same in full force and effect throughout the term of

3231 this Contract. CONTRACTOR shall provide proof of such permits, licenses or approvals and
3232 shall demonstrate compliance with the terms and conditions of such permits, licenses and
3233 approvals upon the request of the Contract Manager.

3234 **Article 41. OWNERSHIP OF WRITTEN MATERIALS**

3235 41.01 All reports, documents, brochures, public education materials, and other written,
3236 printed, electronic or photographic materials developed by CITY or CONTRACTOR for the CITY
3237 as required by this Contract, whether developed directly or indirectly by CITY or CONTRACTOR
3238 shall be and shall remain the property of CITY without limitation or restrictions on the use of
3239 such materials by CITY. CONTRACTOR shall not use such materials in connection with any
3240 project not connected with this Contract without the prior written consent of the Contract
3241 Manager. This Article 41 does not apply to ideas or concepts described in such materials and
3242 does not apply to the format of such materials.

3243 **Article 42. WAIVER**

3244 42.01 Waiver by CITY or CONTRACTOR of any breach for violation of any term
3245 covenant or condition of this Contract shall not be deemed to be a waiver of any other term,
3246 covenant or condition or any subsequent breach or violation of the same or of any other term,
3247 covenant or condition. The subsequent acceptance by CITY of any fee, tax, or any other
3248 monies, which may become due from CONTRACTOR to CITY shall not be deemed to be a
3249 waiver by CITY of any breach for violation of any term, covenant or condition of this Contract.

3250 **Article 43. POINT OF CONTACT**

3251 43.01 The day-to-day dealings between CONTRACTOR and CITY shall be between
3252 CONTRACTOR and the Contract Manager.

3253 **Article 44. CONFLICT OF INTEREST**

3254 44.01 CONTRACTOR covenants and declares it has no conflicts of interest that would
3255 in any manner impair or affect CONTRACTOR's ability to perform under this Contract.

3256 **Article 45. NOTICES**

3257 45.01 Except as provided herein, whenever either party desires to give notice to the
3258 other, it must be given by written notice by registered or certified mail, or by other methods
3259 designated for next day delivery with proof of receipt, addressed to the party for whom it is
3260 intended, at the place last specified and to the place for giving of notice in compliance with the
3261 provisions of this paragraph. For the present, the parties designate the following as the
3262 respective persons and places for giving of notice:

3263 As to CITY:
3264 City Administrator
3265 Office of the City Administrator
3266 CITY OF OAKLAND
3267 One Frank Ogawa Plaza, Third Floor
3268 Oakland, CA 94612
3269 Telephone: 510-238-3301

3270 E-mail: cityadministrator@oaklandnet.com

3271

3272 With copies to:

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3274 Director of Public Works

3275 Public Works Agency

3276 CITY OF OAKLAND

3277 250 Frank Ogawa Plaza, Suite 4314

3278 Oakland, CA 94612

3279 Telephone: 238-4470

3280 E-mail: blevin@oaklandnet.com

3281

3282 City Attorney

3283 Office of the City Attorney

3284 CITY OF OAKLAND

3285 One Frank Ogawa Plaza, Sixth Floor

3286 Oakland, CA 94612

3287 Telephone: (510) 238-3601

3288 E-mail: info@oaklandcityattorney.org

3289

3290 Director of Finance and Management

3291 Finance and Management Agency

3292 City of Oakland

3293 150 Frank Ogawa Plaza, Suite 5215

3294 Oakland, CA 94612

3295 Telephone: (510) 238-2220

3296 E-mail: sjohnson@oaklandnet.com

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3298 As to CONTRACTOR:

3299 [Title]

3300 [Company]

3301 [Street Address]

3302 [City, State, Zip]

3303 Telephone: (xxx) xxx-xxxx

3304 E-mail: xxx@xxx.xxx

3305 and

3306 [Title]

3307 [Company]

3308 [Street Address]

3309 [City, State, Zip]

3310 Telephone: (xxx) xxx-xxxx

3311 E-mail: xxx@xxx.xxx

3312 45.02 Notices shall be effective when received at the address as specified above.

3313 Changes in the respective address to which such notice is to be directed may be made by

3314 written notice with a courtesy copy provided by email. The original of items that are transmitted

3315 by email must also be mailed as required herein.

3316 45.03 Notice by CITY to CONTRACTOR of a Collection or other Customer problem or
3317 complaint may be given to CONTRACTOR orally by telephone at CONTRACTOR's local office
3318 with confirmation sent as required above by the end of the Work Day.

3319 **Article 46. TRANSITION TO NEXT CONTRACTOR**

3320 46.01 In the event CONTRACTOR is not awarded a Contract extension to continue to
3321 provide Recycling Services following the expiration or upon early termination of this Contract,
3322 CONTRACTOR shall cooperate fully with CITY and any subsequent contractors to assure a
3323 smooth transition of services described in this Contract. Such cooperation shall include but not
3324 be limited to transfer of computer data, files and tapes; providing routing information, route
3325 maps, vehicle fleet information, and list of Customers; providing a complete inventory of all
3326 Carts and Bins; providing adequate labor and equipment to complete performance of all
3327 Recycling Services required under this Contract coordinating Collection of materials set out in
3328 new Containers if new Containers are provided for a subsequent Contract and providing other
3329 reports and data required by this Contract.

3330 **Article 47. CONTRACTOR'S RECORDS**

3331 47.01 CONTRACTOR shall maintain any and all letters, books of account, invoices,
3332 vouchers, canceled checks, and other records or documents evidencing or relating to charges
3333 for services or expenditures and disbursements charged to Customers for a minimum period of
3334 five (5) years, or for any longer period required by law, from the date of final payment to
3335 CONTRACTOR pursuant to this Contract.

3336 47.02 CONTRACTOR shall maintain all documents and records, which demonstrate
3337 performance under this Contract for a minimum period of five (5) years, or for any longer period
3338 required by law, from the date of termination or completion of this Contract.

3339 47.03 Any records or documents required to be maintained pursuant to this Contract
3340 shall be made available for inspection or audit, at any time during regular business hours, upon
3341 written request by the Contract Manager, the CITY Attorney, CITY Auditor, CITY Manager or a
3342 designated representative of any of these officers. Copies of such documents shall be provided
3343 to CITY for inspection at CITY offices when it is practical to do so. Otherwise, unless an
3344 alternative site is mutually agreed upon, the records shall be available at CONTRACTOR's
3345 address indicated for receipt of notices in this Contract.

3346 47.04 Where CITY has reason to believe that such records or documents may be lost
3347 or discarded due to the dissolution, disbandment or termination of CONTRACTOR's business,
3348 CITY may, by written request or demand of any of the above named officers, require that
3349 custody of the records be given to CITY and that the records and documents be maintained in
3350 CITY Hall. Access to such records and documents shall be granted to any party authorized by
3351 CONTRACTOR, CONTRACTOR's representatives or CONTRACTOR's successor-in-interest.

3352 **Article 48. ENTIRE CONTRACT**

3353 48.01 This Contract and the Exhibits attached hereto constitute the entire Contract and
3354 understanding between the parties hereto, and it shall not be considered modified, altered,
3355 changed or amended in any respect unless in writing and signed by the parties hereto.

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Article 49. SEVERABILITY

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49.01 If any provision of this Contract or the application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Contract and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

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Article 50. RIGHT TO REQUIRE PERFORMANCE

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50.01 The failure of either party at any time to require performance by the other of any provision hereof shall in no way affect the right thereafter to enforce same. Nor shall waiver by a party of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

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Article 51. CORPORATE GUARANTY

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51.01 In addition to the performance security required in Article 24, CONTRACTOR is required to obtain a Guaranty, and Guarantor has agreed to guarantee CONTRACTOR's performance of this Contract, including CONTRACTOR's indemnification obligations hereunder pursuant to a Guaranty in substantially the form attached as Exhibit 15. The Guaranty is being provided concurrently with CONTRACTOR's execution of this Contract.

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Article 52. EMPLOYEE RETENTION REQUIREMENTS

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52.01 CONTRACTOR acknowledges that if and when Recycling Services are transferred to CONTRACTOR, as the successful proposer, that workers who perform services for CITY's current Contractor (if different from CONTRACTOR) may be displaced from their employment. CONTRACTOR represents and warrants that it shall offer employment to all qualified displaced workers who have been employed by the current Contractor for at least one hundred twenty (120) calendar days prior to July 1, 2015, provided that CONTRACTOR shall not be required to create additional positions that CONTRACTOR does not need nor to lay-off or discharge CONTRACTOR's employees in order to employ qualified displaced workers. A qualified displaced worker includes non-management workers of the current Contractor who have been employed, in a full-time paid status, for at least one hundred twenty (120) calendar days prior to July 1, 2015, and who would otherwise be laid-off. CONTRACTOR is prohibited from discharging any qualified displaced workers for at least ninety (90) calendar days after July 1, 2015, except for cause. After the initial ninety (90) calendar days, the continued employment of qualified displaced workers will be under the terms and conditions established for all of CONTRACTOR's workers in the particular job classification. CONTRACTOR shall submit displaced worker hiring status reports to the Contract Manager on the last working day of October 2015 and on the last working day of June 2016.

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Article 53. SUBCONTRACTING

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53.01 CONTRACTOR shall not engage any subcontractors to perform any of the services required of it under this Contract without the prior written approval of CITY. CONTRACTOR shall notify CITY no later than ninety (90) days prior to the date on which it proposes to enter into a subcontract, providing CITY with all information it requests with respect to the proposed subcontractor. CITY may approve or reject any proposed subcontract and/or subcontractor in its sole discretion if the proposed subcontract replaces essential services to be

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3398 performed by CONTRACTOR pursuant to Article 9, Article 10, Article 11 and Article 12 of this
3399 Contract. CITY's consent to a subcontract and/or subcontractor shall not be unreasonably
3400 withheld as to other aspects of this Contract that are not deemed to involve essential services to
3401 CITY.

3402 **Article 54. [RESERVED]**

3403 **Article 55. LOCAL HIRE COMPLIANCE**

3404 55.01 CONTRACTOR represents and warrants that at least fifty (50) percent of all new
3405 hires in their workforce will be Oakland residents (i.e., for every two (2) new hires, one (1) will be
3406 a resident of Oakland). A compliance baseline will be determined on October 1, 2015. The
3407 baseline calculation will be total number of full-time equivalent employees with a verified
3408 Oakland address assigned to this Contract divided by the total number of full-time equivalent
3409 employees assigned to this Contract. CONTRACTOR shall provide documentation for the
3410 number of employees used in the baseline and employees that are used in the calculation as
3411 Oakland residents. Compliance with this Section 55.01 is subject to requirements of
3412 CONTRACTOR collective bargaining agreements.

3413 55.02 Beginning November 2015, CONTRACTOR will provide a monthly report in
3414 accordance with Section 19.02.1.6 showing the total number of employees hired in the previous
3415 month and of those employees hired, the city of residence of those new employees. CITY will
3416 calculate annually the percent of new hires that are Oakland residents. Failure to comply with
3417 Section 55.01 hiring requirements may result in liquidated damages per Article 22. CITY may
3418 put CONTRACTOR on a corrective action plan to achieve compliance with Section 55.01.
3419 Failure to meet the corrective action plan may result in CITY not extending Contract per Article 3

3420 55.03 CONTRACTOR may provide documentation of employees that are Oakland
3421 residents that do not work on this Contract for the CITY's consideration. CITY, at its sole
3422 discretion, may choose to use the number of Oakland residents that are employees of
3423 CONTRACTOR that do not work on this Contract in the annual calculation for compliance with
3424 this Article.

3425 **Article 56. RELIGIOUS PROHIBITION**

3426 56.01 There shall be no religious worship, instruction or proselytization as part of, or in
3427 connection with, the performance of this Contract.

3428 **Article 57. POLITICAL PROHIBITION AND CAMPAIGN**
3429 **CONTRIBUTIONS**

3430 57.01 This Contract is subject to the City of Oakland Campaign Reform Act of Chapter
3431 3.12 of the Oakland Municipal Code and its implementing regulations. The Campaign Reform
3432 Act prohibits contractors that are doing business or seeking to do business with CITY from
3433 making campaign contributions to Oakland candidates between commencement of negotiations
3434 and either one hundred eighty (180) days after completion of, or termination of, Contract
3435 negotiations. CONTRACTOR has signed and dated an Acknowledgment of Campaign
3436 Contribution Limits Schedule O attached hereto and incorporated herein as Attachment 3.

3437 **Article 58. BUSINESS TAX CERTIFICATE**

3438 58.01 CONTRACTOR shall obtain and provide proof of a valid CITY business tax
3439 certificate. Said business tax certificate will be valid prior to and to the conclusion of this
3440 Contract. A copy of the business tax certificate for 2015 is attached hereto and incorporated
3441 herein as Exhibit 16. A copy of subsequent business tax certificates shall be sequentially
3442 numbered and attached hereto.

3443 **Article 59. ATTORNEYS FEES**

3444 59.01 In any dispute between the parties, whether or not resulting in litigation or any
3445 appeal therefrom, the prevailing party shall be entitled to recover from the other party all
3446 reasonable costs, including, without limitation, reasonable attorneys' fees. "Prevailing parties"
3447 shall include without limitation (i) a party who dismisses an action in exchange for sums
3448 allegedly due such party; (ii) the party which received performance from the other party of an
3449 alleged breach of a covenant or a desired remedy where such performance is substantially
3450 equal to the relief sought in an action; or (iii) the party determined to be the prevailing party by a
3451 court of law.

3452 **Article 60. LIMITATION OF FELONY DISCLOSURE ON JOB**
3453 **APPLICATION**

3454 60.01 CONTRACTOR is required to exclude from the initial job application, any
3455 requirement of the applicant to disclose felony history as long as it complies with governing
3456 laws.

3457 **Article 61. COMPETITIVE WAGES AND BENEFITS**

3458 61.01 Living Wage Requirements. CONTRACTOR shall comply with CITY Living
3459 Wage Ordinance Chapter 2.28 of the Oakland Municipal Code and its implementing regulations.
3460 The Ordinance requires among other things, submission of the Declaration of Compliance
3461 attached and incorporated herein as Attachment 3. All of the provisions of Section 61.01, or any
3462 part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver
3463 is explicitly set forth in such agreement in clear and unambiguous terms.

3464 61.02 Competitive Wages and Benefits. CONTRACTOR shall pay Competitive Wages
3465 and Benefits defined as wages and benefits equivalent to or better than collectively bargained
3466 contracts in use in Alameda, Contra Costa, San Francisco, Santa Clara, and San Mateo
3467 Counties. CONTRACTOR shall provide CITY evidence of compliance with this provision at
3468 CITY's request.

3469 61.02.1 CONTRACTOR shall provide CITY ninety (90) day notice for
3470 expiration any of CONTRACTOR's collectively bargained contracts. CONTRACTOR shall
3471 timely notice CITY should other issues arise with CONTRACTOR's collectively bargained
3472 contracts.

3473 **Article 62. VALIDITY OF CONTRACTS**

3474 62.01 This Contract shall not be binding or of any force or effect until signed by the City
3475 Administrator or his or her designee and approved as to form and legality by the City Attorney or
3476 his or her designee.

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Article 63. EQUAL BENEFITS ORDINANCE

3478 63.01 This Contract is subject to the Equal Benefits Ordinance of Chapter 2.232.010 of
3479 the Oakland Municipal Code and its implementing regulations. Entities which enter into a
3480 "contract" with the City for an amount of Twenty-Five Thousand Dollars (\$25,000.00) or more for
3481 public works or improvements to be performed, or for goods or services to be purchased or
3482 grants to be provided at the expense of the City or to be paid out of moneys deposited in the
3483 treasury or out of trust moneys under the control of or collected by the City; and Entities which
3484 enter into a "property contract" pursuant to Section 2.23.020(D) with the City in an amount of
3485 Twenty-Five Thousand Dollars (\$25,000.00) or more for the exclusive use or occupancy (1) of
3486 real property owned or controlled by the City or (2) of real property owned by others for the
3487 City's use or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.

3488 63.02 The Ordinance shall only apply to those portions of CONTRACTOR's operations
3489 that occur (1) within the CITY; (2) on real property outside Oakland if the property is owned by
3490 CITY or if CITY has a right to occupy the property, and if CONTRACTOR's presence at that
3491 location is connected to a contract with CITY; and (3) elsewhere in the United States where
3492 work related to a City contract is being performed. The requirements of this Section shall not
3493 apply to subcontracts or subcontractors of any contract or contractor. The Equal Benefits
3494 Ordinance requires among other things, submission of Schedule N-1, the Equal Benefits-
3495 Declaration of Nondiscrimination, incorporated herein.

3496

Article 64. LABOR PEACE

3497 64.01 CITY has determined that the level of vulnerability of the proposed Contract to
3498 labor disputes is sufficient to warrant that labor peace is essential to the propriety interests of
3499 CITY. Therefore, CONTRACTOR shall at all times comply with the provisions of
3500 CONTRACTOR's Employee and Labor Relations Plan set forth in Exhibit 14 to this Contract.

3501

Article 65. AMENDMENT

3502 65.01 No modification, amendment or supplement to this Contract will be binding on the
3503 parties unless it is made in writing, duly authorized by CONTRACTOR and CITY and signed by
3504 both parties.

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Article 66. ALL PRIOR CONTRACTS SUPERSEDED

3506 66.01 This document incorporates and includes all prior negotiations, correspondence,
3507 conversations, agreements and understandings applicable to the matters contained in this
3508 Contract and the parties agree that there are no commitments, agreements or understandings
3509 concerning the subject matter of this Contract that are not contained in this document or in the
3510 Disposal Services Contract or the Mixed Materials and Organics Collection Services Contract
3511 which are being executed simultaneously with this document. Accordingly, it is agreed that no
3512 deviation from the terms of this Contract shall be predicated upon any prior representations or
3513 agreements, whether oral or written.

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Article 67. HEADINGS

3515 67.01 Headings in this document are for convenience of reference only and are not to
3516 be considered in any interpretation of this Contract.

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Article 68. LEGAL REPRESENTATION

68.01 Each of the parties has received the advice of legal counsel prior to signing this Contract. The parties agree no provision or provisions may be subject to any rule of construction based upon any party being considered the party "drafting" this Contract.

Article 69. EXHIBITS

69.01 Each Exhibit referred to in this Contract forms an essential part of this Contract. Each such Exhibit is a part of this Contract and each is incorporated by this reference.

Article 70. EFFECTIVE DATE

This Contract shall become effective at such time as it is properly executed by CITY and CONTRACTOR and CONTRACTOR shall begin Recycling Services, as covered herein, as of July 1, 2015.

IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Contract on the day and year first written above.

CITY OF OAKLAND

[Contractor Company Name]

By: _____
[Name, Title]

By: _____
[Name, Title]

Date

Date

City of Oakland Business License Number

The foregoing Contract has been reviewed and approval is recommended:

Resolution No. _____ C.M.S.
Approved by City Council

APPROVED AS TO FORM:

[Name, Title]
City Attorney

Attest:



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By: _____
[Name, Title] Date
City Clerk

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INDEX OF EXHIBITS

EXHIBIT 1

MAXIMUM RECYCLING SERVICE RATES
(Rate sheets are included in Staff Report.)

EXHIBIT 1A

MAXIMUM RECYCLING SERVICE RATES – SFD SERVICES

EXHIBIT 1A

MAXIMUM RECYCLING SERVICE RATES – PER COLLECTED TON

EXHIBIT 1B

MAXIMUM RECYCLING SERVICE RATES – SFD ANCILLARY SERVICES

EXHIBIT 1C

MAXIMUM RECYCLING SERVICE RATES – MFD ANCILLARY SERVICES

EXHIBIT 1D

MAXIMUM RECYCLING SERVICE RATES – NON-EXCLUSIVE COMMERCIAL SERVICES

EXHIBIT 1E

MAXIMUM RECYCLING SERVICE RATES – EMERGENCY SERVICE RATES - EMPLOYEES

EXHIBIT 1F

MAXIMUM RECYCLING SERVICE RATES -- EMERGENCY SERVICE RATES - EQUIPMENT

EXHIBIT 2

REFUSE RATE INDEX
(CWS Exhibit 2 attached. WMAC Exhibit 2 attached.)

EXHIBIT 3

APPROVED FACILITIES
(To be filled in upon award.)

EXHIBIT 4

CITY FACILITIES
(To be determined and attached by March 31, 2015.)

EXHIBIT 5

TRANSITION PLAN
(Contained in RFP Proposals. Shall be updated and attached based on current timing within 30 days of signing of agreements.)

EXHIBIT 6

COMMUNITY OUTREACH STRATEGY
(Contained in RFP Proposals. Shall be updated and attached based on current timing within 30 days of signing of agreements.)

EXHIBIT 7

DIVERSION RECOVERY PLAN

(To be agreed upon after Council selection. Attached upon signing agreements.)

EXHIBIT 8

CUSTOMER SERVICE PLAN

(Provided as part of proposal. Shall be updated and attached based on current timing within 30 days of signing of agreements.)

EXHIBIT 9

RECYCLING COLLECTION SERVICE OPERATIONS PLAN

(In proposal. To be attached at signing of agreements.)

EXHIBIT 10

VEHICLE SPECIFICATIONS

(Set forth in proposals. Attached based on selection at signing of agreements.)

EXHIBIT 11

CONTAINER SPECIFICATIONS

(Set forth in proposals. Attached based on selection at signing of agreements.)

EXHIBIT 12

MEMORANDUM OF UNDERSTANDING

(To be developed after selection of contractors, if required, within 60 days after signing of agreements.)

EXHIBIT 13

LOCAL BUSINESS PRESENCE AND PARTICIPATION REPORTING FORM

(To be attached within 30 days.)

EXHIBIT 13 A

LOCAL BUSINESS PRESENCE AND PARTICIPATION REQUIREMENTS

(To be attached within 30 days.)

EXHIBIT 14

EMPLOYEE AND LABOR RELATIONS PLAN

(Provided in proposals. To be modified and attached within 30 days.)

EXHIBIT 15

GUARANTY AGREEMENT

(Copy as Exhibit 18 in MMO Contract.)

EXHIBIT 16

BUSINESS TAX CERTIFICATE

(To be attached, prior to signing.)

**Exhibit 2
CWS**

**Exhibit 2
CWS**

Exhibit 2 Annual Rate Adjustment

1. **RR Annual Rate Adjustment Calculation.** The Annual Rate Adjustment for the Residential Recycling Collection Contract shall be calculated in the following manner:
 - 1.1. There are seven (7) Contractor Cost Categories for purposes of the RRI adjustment calculation: RR Union Labor, Diesel Fuel, CNG Fuel, Vehicle Replacement, Vehicle Maintenance, Processing, and All Other. There are an additional three (3) Contractor Cost Categories, of which their weighted percent change will be added to the RRI adjustment for purposes of the Annual Rate Adjustment: Government Fees/Taxes – Processing, Government Fees/Taxes – Collection, and Franchise Fees.
 - 1.2. Within each Cost Category (1-10) are expenses generally described in the attached Operating Cost Statement – Description (the “Allowed Expenses”). Only these Allowable Expenses may be used by Contractor to calculate the annual total of each Cost Category.
 - 1.3. CONTRACTOR will calculate the total of all Allowable Expenses (as defined in Section 5 of this Exhibit 2) for each Cost Category (also defined herein) for the full or partial, as appropriate, calendar year ending December 31. Each Cost Category will then be assigned an “item weight” based on the proportionate share of its Allowable Expenses total to the total of all Allowable Expenses for all Cost Categories (1-10). For example, if the Allowable Expenses of the Diesel Fuel Cost Category total \$100, and the Allowable Expenses within all Cost Categories is \$2,000, then the Diesel Fuel Cost Category’s item weight will be 5%. The Cost Categories shall be reweighed every year based on allowable expenses thereafter from January 1st through December 31st.
 - 1.4. Each Cost Category’s item weight is then multiplied by the percent change of its Cost Indicator to calculate its weighted percentage change. Each Cost Category’s review dates or review years are set forth below. Each Cost Category’s Cost Indicator is set forth in Section 2 below. For those Cost Categories using a review year, the percentage change is the difference in the annual average of the cost indicator index of the preceding review year and the annual average of the cost indicator index of current review year. For those Cost Categories using a review date, the percentage change is the difference in the cost indicator at the previous review date and the cost indicator at the current review date. With regard to those Cost Indicators which are a published index, should such index be discontinued, a successor index shall be selected by mutual agreement of the parties. Successor indices shall be those indices that are most closely equivalent to the discontinued index.

CWS RR Exhibit 2

Item	Cost Category	Previous Year or Date	Review Year or Date	Current Year or Date	Review Year or Date
1	RR Union Labor	July 1 of previous calendar year	July 1 of previous calendar year	July 1 of current calendar year	July 1 of current calendar year
2	Diesel Fuel	December 31 of previous year	December 31 of next calendar year	December 31 of previous year	December 31 of current calendar year
3	CNG Fuel	December 31 of previous year	December 31 of next calendar year	December 31 of previous year	December 31 of current calendar year
4	Vehicle Replacement	December 31 of previous year	December 31 of next calendar year	December 31 of previous year	December 31 of current calendar year
5	Vehicle Maintenance	December 31 of previous year	December 31 of next calendar year	December 31 of previous year	December 31 of current calendar year
6	Processing ¹	December 31 of previous year	December 31 of next calendar year	December 31 of previous year	December 31 of current calendar year
7	All Other	December 31 of previous year	December 31 of next calendar year	December 31 of previous year	December 31 of current calendar year
8	Government Fees/Taxes - Processing	July 1 of previous calendar year	July 1 of previous calendar year	July 1 of current calendar year	July 1 of current calendar year
9	Government Fees/Taxes - Processing	July 1 of previous calendar year	July 1 of previous calendar year	July 1 of current calendar year	July 1 of current calendar year
10	Franchise Fees	July 1 of previous calendar year	July 1 of previous calendar year	July 1 of current calendar year	July 1 of current calendar year

1.5. The weighted percentage change of Cost Categories 1 - 7 are then added together to calculate the RRI adjustment. The weighted percent change of the RR Franchise Fees shall be as calculated except where there is negative CWS revenue for the year as set forth in Section [to be inserted] of the Contract, in which case the Franchise Fee increase is zero. The weighted percent change of

¹ Except for the Union Labor Cost Category which will have a July 1 review year all other Cost Categories within the Processing RRI will have December 31 review years.

CWS RR Exhibit 2

Cost Categories 8 - 10 are then added to the RRI adjustment to calculate the Annual Rate Adjustment.

2. RR Cost Indicators

<u>RR Cost Category</u>	<u>Cost Indicator²</u>
RR Union Labor	Projected (as of March 1 st preceding the review date to be effective as of the review date) total Union (Local 70, 1546 and 6 Clerical) wage, health and welfare, and pension costs under Waste Management of Alameda County, Inc. collective bargaining agreements for those employees domiciled at [to be inserted]. Calculated pursuant to Section 3 below.
Diesel Fuel	Series ID: wpu057303 #2 Diesel Fuel (average for 12 months ending on the current review year)
CNG Fuel	Schedule G-NGV-1, compiled and published by the Pacific Gas and Electric Co. Analysis and Rate Department and reported monthly in the "Gas Rate Finder" publication (http://www.pge.com/tariffs) reflecting the sum of the Customer, procurement, transportation and public purpose program charges (average for 12 months ending on the current review year).
Vehicle Replacement	Series ID: pcu336211336211 Truck, bus, car, and other vehicle bodies, for sale separately (average for 12 months ending on the current review year)
Vehicle Maintenance	Series ID: pcu3339243339243 Parts and attachments for industrial work trucks (average for 12 months ending on the current review year)
Processing:	Processing RRI (Calculated pursuant to Section 4 below)
All Other:	Series ID: cuura422sa0 Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-San Jose, CA (average for 12 months ending on the current review year)
Government Fees/Taxes (Processing) -	CWS to list applicable Government Fees/Taxes
Government Fees/Taxes (Collection) -	CWS to list applicable Government Fees/Taxes

² With regard to each Cost Indicator under the RR, Processing RRI which is an index, the Cost Indicator will be the index's twelve-month average for the period ending on the applicable (previous or current) December 31 review year. With regard to the Union Labor Cost Categories within the RR, and Processing RRI's, the Cost Indicator will be the projected union labor costs on the applicable (previous or current) July 1 review date.

CWS RR Exhibit 2

Franchise Fees

Series ID: cuura422sa0 Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-San Jose, CA (average for 12 months ending on the current review year)

3. **RR Union Labor Cost Indicator.** Annual changes to the RR Union Labor Cost Indicator shall be calculated by determining the total labor increase for each Union party to a collective bargaining agreement with CONTRACTOR, as follows:

3.1. Local 70 annual total labor increase shall be determined by calculating the percentage change of the sum of the All Classification straight time hourly wage rate, monthly health and welfare premium (as converted to a straight time hourly rate³), and the straight time hourly pension rate between the previous review date and the current review date. Since this calculation must be performed prior to the July 1st of the current review date, CITY and CONTRACTOR have agreed that the costs for the current review date shall be those costs that are projected as of March 1st preceding the current review date to be effective as of the current review date. Changes that become known after March 1st preceding the current review date shall be incorporated into the RRI adjustment in the next year with no provision for retroactive adjustments. The resulting year over year percentage change shall be multiplied by the percentage of RR Union Labor employees represented by Local 70.

3.2. Local 1546 annual total labor increase shall be determined by calculating the percentage change of the sum of the Journeyman classification straight time hourly wage rate, monthly health and welfare premium (as converted to a straight time hourly rate), and the straight time hourly pension rate between the previous review date and the current review date. Since this calculation must be performed prior to the July 1st of the current review date, CITY and CONTRACTOR have agreed that the costs for the current review date shall be those costs that are projected as of March 1st preceding the current review date to be effective as of the current review date. Changes that become known after March 1st preceding the current review date shall be incorporated into the RRI adjustment in the next year with no provision for retroactive adjustments. The resulting year over year percentage change shall be multiplied by the percentage of RR Union Labor employees represented by Local 1546.

3.3. Local 6 Clerical annual total labor increase shall be determined by calculating the percentage change of the sum of the CSR II classification straight time hourly wage rate, monthly health and welfare premium (as converted to a straight time hourly rate), and the straight time hourly pension rate between the previous review date and the current review date. Since this calculation must be performed prior to the July 1st of the current review date, CITY and CONTRACTOR have agreed that the costs for the current review date shall be those costs that are projected as of March 1st preceding the current review date to be effective as of the current review date. Changes that become known after March 1st preceding the

³ Converting monthly amounts to hourly will be done by dividing the monthly amount by 173.

CWS RR Exhibit 2

current review date shall be incorporated into the RRI adjustment in the next year with no provision for retroactive adjustments. The resulting year over year percentage change shall be multiplied by the percentage of RR Union Labor employees represented by Local 6 Clerical.

3.4. Once the weighted percentage labor increase for each Union is determined, the above sums shall be added together to determine the overall weighted percentage change of the RR Union Labor Cost Category to be applied to the RR RRI adjustment calculation.

3.5. For purposes of clarification with regard to the July 1, 2016 Annual Rate Adjustment, the review years or dates for the Cost Categories will be as follows:

Item	Cost Category	Previous Review Year or Date	Current Review Year or Date
1	RR Union Labor	July 1, 2015	July 1, 2016
2	Diesel Fuel	Calendar Year Ending December 31, 2014	Calendar Year Ending December 31, 2015
3	CNG Fuel	Calendar Year Ending December 31, 2014	Calendar Year Ending December 31, 2015
4	Vehicle Replacement	Calendar Year Ending December 31, 2014	Calendar Year Ending December 31, 2015
5	Vehicle Maintenance	Calendar Year Ending December 31, 2014	Calendar Year Ending December 31, 2015
6	Processing ⁴	Calendar Year Ending December 31, 2014	Calendar Year Ending December 31, 2015
7	All Other	Calendar Year Ending December 31, 2014	Calendar Year Ending December 31, 2015
8	Government Fees/Taxes - Processing	July 1, 2015	July 1, 2016
9	Government Fees/Taxes - Collection	July 1, 2015	July 1, 2016
10	Franchise Fees	July 1, 2015	July 1, 2016

⁴ Except for the Union Labor Cost Category which will have a July 1 review year all other Cost Categories within the Processing RRI December 31 review years.

CWS RR Exhibit 2

To calculate the Annual Rate Adjustment, the RRI adjustment is added to the sum of the weighted percentage change (including all Cost Categories) in the Cost Indicators of Cost Categories 8 – 10. The following is an example Annual Rate Adjustment calculation:

Item	Cost Category	Cost Indicator Percent Change	Item Weight	Weighted Percent Change
1	RR Union Labor	4.64%	45.49%	2.11%
2	Diesel Fuel	15.70%	0.00%	0.00%
3	CNG Fuel	-0.10%	2.77%	0.00%
4	Vehicle Replacement	3.14%	2.13%	0.07%
5	Vehicle Maintenance	2.67%	1.76%	0.05%
6	Processing	3.79%	7.20%	0.27%
7	All Other	2.24%	9.38%	0.21%
	RRI Adjustment			2.70%
8	Government Fees/Taxes Collections	- 0.01%	0.01%	0.00%
9	Government Fees/Taxes Processing	- 3.27%	5.37%	0.18%
10	RR Franchise Fees	2.24%	25.89%	0.58%
			100%	
	Annual Rate Adjustment			3.46%

The Annual Rate Adjustment is then multiplied by the Diversion Adjustment as appropriate before being applied to the Maximum Collection Service Rates.

4. Processing RRI embedded in RR RRI.

4.1. The Processing RRI shall be calculated in the following manner:

4.1.1. There are six (6) Contractor Cost Categories for purposes of the Processing RRI adjustment calculation: Processing Union Labor, Diesel Fuel, CNG Fuel, Vehicle Replacement, Vehicle Maintenance, and All Other.

4.1.2. Within each Cost Category are expenses generally described in the attached Operating Cost Statement – Description (the “Allowed

CWS RR Exhibit 2

Expenses"). Only these Allowed Expenses may be used by Contractor to calculate the annual total of each Cost Category.

4.1.3. CONTRACTOR will annually calculate each Cost Category's item weight. For example, if the annual total of all Allowable Expenses of Diesel Fuel (a Cost Category) is \$100, and the annual total of all Allowable Expenses for all Cost Categories is \$2,000, Diesel Fuel's weighted percentage factor is 5%.

4.1.4. Each Cost Category's item weight is then multiplied by the percent change of its Cost Indicator to calculate its weighted percentage change. Each Cost Category's review dates or review years are set forth below.

Item	Cost Category	Previous Review Date or Year	Current Review Date or Year
1	Processing Union Labor	July 1 of previous calendar year	July 1 of current calendar year
2	Diesel Fuel	December 31 of next previous calendar year	December 31 of previous calendar year
3	CNG Fuel	December 31 of next previous calendar year	December 31 of previous calendar year
4	Vehicle Replacement	December 31 of next previous calendar year	December 31 of previous calendar year
5	Vehicle Maintenance	December 31 of next previous calendar year	December 31 of previous calendar year
6	All Other	December 31 of next previous calendar year	December 31 of previous calendar year

Each Cost Category's Cost Indicator is set forth in Section 4.2 below. For those Cost Categories using a review year, the percentage change is the difference in the annual average of the cost indicator index of the preceding review year and the annual average of the cost indicator index of current review year. For those Cost Categories using a review date, the percentage change is the difference in the cost indicator at the previous review date and the cost indicator at the current review date. For example, with regard to the Union Labor Cost Category, the Cost Indicator is

CWS RR Exhibit 2

Wages, Health & Welfare, and Pension costs under Waste Management of Alameda, Inc., CBAs with Local 70, 1546 and 6 Clerical, Landfill and Recycling bargaining units. With regard to those Cost Indicators which are a published index, should such index be discontinued, a successor index shall be selected by mutual agreement of the parties. Successor indices shall be those indices that are most closely equivalent to the discontinued index.

4.1.5. The weighted percentage change of each Cost Category is then added together to calculate the RRI adjustment.

4.1.6. Processing RRI Cost Indicators

<u>Cost Category</u>	<u>Cost Indicator</u>
Union Labor	Projected (as of March 1 st preceding the review date to be effective as of the review date) total Union (Local 70, Local 1546, Local 6 Clerical, Local 6 Landfill, Local 6 Recycling) wage, health and welfare, and pension costs under Waste Management of Alameda County, Inc. collective bargaining agreements for those employees domiciled at [to be inserted]. Calculated pursuant to Section 4.3 below.
Diesel Fuel	Series ID: wpu057303 #2 Diesel Fuel (average for 12 months ending on the current review year)
CNG Fuel	Schedule G-NGV-1, compiled and published by the Pacific Gas and Electric Co. Analysis and Rate Department and reported monthly in the "Gas Rate Finder" publication (http://www.pge.com/tariffs) reflecting the sum of the Customer, procurement, transportation and public purpose program charges (average for 12 months ending on the current review year) .
Vehicle Replacement	Series ID: pcu336211336211 Truck, bus, car, and other vehicle bodies, for sale separately (average for 12 months ending on the current review year)
Vehicle Maintenance	Series ID: pcu3339243339243 Parts and attachments for industrial work trucks (average for 12 months ending on the current review year)
All Other	Series ID: cuura422sa0 Consumer Price Index, All Urban Consumers, All Items. San Francisco-Oakland-San Jose, CA (average for 12 months ending on the current review year)

4.2. Processing Union Labor Cost Indicator. Annual changes to the processing Union Labor Cost Indicator shall be calculated by determining the total labor increase for each Union party to a collective bargaining agreement with CONTRACTOR, as follows: [Description of Locals may change based on those representing CWS employees under this contract]

CWS RR Exhibit 2

4.2.1. Local 70 annual total labor increase shall be determined by calculating the percentage change of the sum of the All Classification straight time hourly wage rate, monthly health and welfare premium (as converted to a straight time hourly rate), and the straight time hourly pension rate between the previous review date and the current review date. Since this calculation must be performed prior to the July 1st of the current review date, CITY and CONTRACTOR have agreed that the costs for the current review date shall be those costs that are projected as of March 1st preceding the current review date to be effective as of the current review date. Changes that become known after March 1st preceding the current review date shall be incorporated into the RRI adjustment in the next year with no provision for retroactive adjustments. The resulting year over year percentage change shall be multiplied by the percentage of processing Union Labor employees represented by Local 70.

4.2.2. Local 1546 annual total labor increase shall be determined by calculating the percentage change of the sum of the Journeyman classification straight time hourly wage rate, monthly health and welfare premium (as converted to a straight time hourly rate), and the straight time hourly pension rate between the previous review date and the current review date. Since this calculation must be performed prior to the July 1st of the current review date, CITY and CONTRACTOR have agreed that the costs for the current review date shall be those costs that are projected as of March 1st preceding the current review date to be effective as of the current review date. Changes that become known after March 1st preceding the current review date shall be incorporated into the RRI adjustment in the next year with no provision for retroactive adjustments. The resulting year over year percentage change shall be multiplied by the percentage of processing Union Labor employees represented by Local 1546.

4.2.3. Local 6 Clerical annual total labor increase for clerical employees shall be determined by calculating the percentage change of the sum of the CSR II classification wage rate, monthly health and welfare premium (as converted to a straight time hourly rate), and the straight time hourly pension rate between the previous review date and the current review date. Since this calculation must be performed prior to the July 1st of the current review date, CITY and CONTRACTOR have agreed that the costs for the current review date shall be those costs that are projected as of March 1st preceding the current review date to be effective as of the current review date. Changes that become known after March 1st preceding the current review date shall be incorporated into the RRI adjustment in the next year with no provision for retroactive adjustments. The resulting year over year percentage change shall be multiplied by the percentage of processing Union Labor employees represented by Local 6 Clerical.

4.2.4. Local 6 Landfill annual total labor increase for landfill employees shall be determined by calculating the percentage change of the sum of the HEO classification wage rate, monthly health and welfare premium (as converted to a straight time hourly rate), and the straight time hourly pension rate between the previous review date and the current review date. Since this calculation must be

CWS RR Exhibit 2

performed prior to the July 1st of the current review date, CITY and CONTRACTOR have agreed that the costs for the current review date shall be those costs that are projected as of March 1st preceding the current review date to be effective as of the current review date. Changes that become known after March 1st preceding the current review date shall be incorporated into the RRI adjustment in the next year with no provision for retroactive adjustments. The resulting year over year percentage change shall be multiplied by the percentage of processing Union Labor employees represented by Local 6 Landfill.

4.2.5. Local 6 Recycling annual total labor increase for recycling employees shall be determined by calculating the percentage change of the sum of the Sorter and Operator classification wage rate, monthly health and welfare premium (as converted to a straight time hourly rate) and the annual pension contribution (as converted to a straight time hourly rate) between the previous review date and the current review date. Since this calculation must be performed prior to the July 1st of the current review date, CITY and CONTRACTOR have agreed that the costs for the current review date shall be those costs that are projected as of March 1st preceding the current review date to be effective as of the current review date. Changes that become known after March 1st preceding the current review date shall be incorporated into the RRI adjustment in the next year with no provision for retroactive adjustments. The resulting year over year percentage change shall be multiplied by the percentage of processing Union Labor employees represented by Local 6 Recycling.

Once the weighted percentage labor increase for each Union is determined, the above sums shall be added together to determine the overall weighted percentage change of the processing Union Labor Cost Category to be applied to the Processing RRI adjustment calculation.

The CITY has [describe resolution regarding Local 6 living wages]. Should the City implement such living wage resolution (or similar) at any time before or after the Contract commencement date (July 1, 2015), the Maximum Service Rates shall be immediately adjusted to fully capture all of CONTRACTOR's increased labor costs resulting there from. For purposes of clarity, recovery of such increased labor costs shall not be subject to any cap under this Contract.

5. RR Operating Cost Statement-Description

RR Union Labor:	List all labor accounts for CWS's employees domiciled at [to be inserted] who are members of Local 70, Local 1546 and Local 6 Clerical. Wages – hourly & overtime, Bonuses, Commissions, Other Compensation, Compensated Absences & Vacation, Severance, Health & Welfare Insurance Premiums, Pension & Retirement Benefits, Payroll Taxes,
Diesel Fuel:	Clear and/or Dyed Diesel Fuel, Gasoline, Fuel Tax Credit accounts.

CWS RR Exhibit 2

CNG Fuel:	LNG and/or CNG fuel, Fuel Tax Credit accounts.
Vehicle Replacement:	Equipment and Support Equipment depreciation accounts. Vehicle Rental Equipment accounts
Vehicle Maintenance:	Building (Maintenance), Tires, Parts & Supplies, Lubricants, Third Party Services, Other.
Processing	Processing RRI
All Other:	List all other expense accounts related to the services provided under this Contract. Advertising Amortization Bad debt and collection charges Bank charges Building and repairs Computer costs Consulting and professional fees Depreciation Depreciation (non-vehicle) Donations and contributions Dues and subscriptions Environmental compliance Equipment - rental Equipment (Support) - tires, parts, supplies Fines and penalties Fuel (non-diesel and non-CNG) General yard repairs and maintenance Insurance (e.g., general liability, fire, truck damage, and extended coverage) Legal License fees Litigation settlements Lobbying Lubricants Meals and entertainment Miscellaneous Non-union labor wages and benefits (e.g., salaries, hourly wages, overtime, bonuses, commissions, safety expense and bonuses, other compensation, compensated absences

CWS RR Exhibit 2

and vacation, severance, health and welfare insurance, workers compensation premiums and claims, pension and retirement costs, payroll taxes, contract labor, and other employee costs)

Office supplies

Performance bond expense

Permits

Postage

Printing

Procurement card rebates

Real property rent

Registration

Security

Seminars and education

Site monitoring and testing

Taxes

Taxes (real and personal property)

Third party services

Travel

Utilities (e.g., telephone, electricity, gas)

Vehicle licenses and permits

Vehicle transportation costs - license fees, permits, insurance, bridge tolls

Workers compensation premiums and claims

Union labor Workers Compensation Premiums & Claims, Union Contract Labor, Safety Program Expense and Other Employee Costs (e.g., uniforms, boot allowance, tool allowance).

Government Fees/Taxes –

Processing: List type and amount of each Government Fees/Taxes paid

Government Fees/Taxes –

Collection: List type and amount of each Government Fees/Taxes paid

Franchise Fees: Franchise Fees payable to CITY pursuant to the Contract.

6. Processing Operating Cost Statement - Description

Processing Union Labor: List all labor accounts for CWS's employees domiciled at [to be inserted] who are members of Local 70, Local 1546 and Local 6 Clerical, Local 6 Recycling and Local 6 Landfill. Wages – hourly & overtime, Bonuses, Commissions, Other

CWS RR Exhibit 2

	Compensation, Compensated Absences & Vacation, Severance, Health & Welfare Insurance Premiums, Pension & Retirement Benefits, Payroll Taxes,
Diesel Fuel:	Clear and/or Dyed Diesel Fuel, Gasoline, Fuel Tax Credit accounts.
CNG Fuel:	LNG and/or CNG fuel, Fuel Tax Credit accounts.
Vehicle Replacement:	Equipment and Support Equipment depreciation accounts. Vehicle Rental Equipment accounts
Vehicle Maintenance:	Building (Maintenance), Tires, Parts & Supplies, Lubricants, Third Party Services, Other.
All Other:	List all other expense accounts related to the services provided under this Contract. Advertising Amortization Bad debt and collection charges Bank charges Building and repairs Computer costs Consulting and professional fees Depreciation Depreciation (non-vehicle) Disposal of residue Donations and contributions Dues and subscriptions Environmental compliance Equipment - rental Equipment (Support) - tires, parts, supplies Fines and penalties Fuel (non-diesel and non-CNG) General yard repairs and maintenance Insurance (e.g., general liability, fire, truck damage, and extended coverage) Legal License fees Litigation settlements Lobbying Lubricants

CWS RR Exhibit 2

Meals and entertainment

Miscellaneous

Non-union labor wages and benefits (e.g., salaries, hourly wages, overtime, bonuses, commissions, safety expense and bonuses, other compensation, compensated absences and vacation, severance, health and welfare insurance, workers compensation premiums and claims, pension and retirement costs, payroll taxes, contract labor, and other employee costs)

Office supplies

Performance bond expense

Permits

Postage

Printing

Procurement card rebates

Real property rent

Registration

Security

Seminars and education

Site monitoring and testing

Taxes

Taxes (real and personal property)

Third party services

Travel

Utilities (e.g., telephone, electricity, gas)

Vehicle licenses and permits

Vehicle transportation costs - license fees, permits, insurance, bridge tolls

Workers compensation premiums and claims

Union labor Workers Compensation Premiums & Claims, Union Contract Labor, Safety Program Expense and Other employee Costs (e.g., uniforms, boot allowance, tool allowance).

**Exhibit 2
WMAC**

**Exhibit 2
WMAC**

Exhibit 2 Annual Rate Adjustment

1. **RR Annual Rate Adjustment Calculation.** The Annual Rate Adjustment for the Residential Recycling Collection Contract shall be calculated in the following manner:
 - 1.1. There are seven (7) Contractor Cost Categories for purposes of the RRI adjustment calculation: RR Union Labor, Diesel Fuel, CNG Fuel, Vehicle Replacement, Vehicle Maintenance, Davis Street Processing, and All Other. There are an additional three (3) Contractor Cost Categories, of which their weighted percent change will be added to the RRI adjustment for purposes of the Annual Rate Adjustment: Government Fees/Taxes – Davis Street Processing, Government Fees/Taxes – Collection, and Franchise Fees.
 - 1.2. Within each Cost Category (1-10) are expenses generally described in the attached Operating Cost Statement – Description (the “Allowed Expenses”). Only these Allowable Expenses may be used by Contractor to calculate the annual total of each Cost Category.
 - 1.3. CONTRACTOR will calculate the total of all Allowable Expenses (as defined in Section 5 of this Exhibit 2) for each Cost Category (also defined herein) for the full or partial, as appropriate, calendar year ending December 31. Each Cost Category will then be assigned an “item weight” based on the proportionate share of its Allowable Expenses total to the total of all Allowable Expenses for all Cost Categories (1-10). For example, if the Allowable Expenses of the Diesel Fuel Cost Category total \$100, and the Allowable Expenses within all Cost Categories is \$2,000, then the Diesel Fuel Cost Category’s item weight will be 5%. The Cost Categories shall be reweighed every year based on allowable expenses thereafter from January 1st through December 31st.
 - 1.4. Each Cost Category’s item weight is then multiplied by the percent change of its Cost Indicator to calculate its weighted percentage change. Each Cost Category’s review dates or review years are set forth below. Each Cost Category’s Cost Indicator is set forth in Section 2 below. For those Cost Categories using a review year, the percentage change is the difference in the annual average of the cost indicator index of the preceding review year and the annual average of the cost indicator index of current review year. For those Cost Categories using a review date, the percentage change is the difference in the cost indicator at the previous review date and the cost indicator at the current review date. With regard to those Cost Indicators which are a published index, should such index be discontinued, a successor index shall be selected by mutual agreement of the parties. Successor indices shall be those indices that are most closely equivalent to the discontinued index.

WMAC RR Exhibit 2

Item	Cost Category	Previous Year or Date	Review Year or Date	Current Year or Date	Review Year or Date
1	RR Union Labor	July 1 of previous calendar year		July 1 of current calendar year	
2	Diesel Fuel	December 31 of next previous calendar year		December 31 of previous calendar year	
3	CNG Fuel	December 31 of next previous calendar year		December 31 of previous calendar year	
4	Vehicle Replacement	December 31 of next previous calendar year		December 31 of previous calendar year	
5	Vehicle Maintenance	December 31 of next previous calendar year		December 31 of previous calendar year	
6	Davis Street Processing ¹	December 31 of next previous calendar year		December 31 of previous calendar year	
7	All Other	December 31 of next previous calendar year		December 31 of previous calendar year	
8	Government Fees/Taxes - Processing	July 1 of previous calendar year		July 1 of current calendar year	
9	Government Fees/Taxes - Processing	July 1 of previous calendar year		July 1 of current calendar year	
10	Franchise Fees	July 1 of previous calendar year		July 1 of current calendar year	

1.5. The weighted percentage change of Cost Categories 1 - 7 are then added together to calculate the RRI adjustment. The weighted percent change of the RR Franchise Fees shall be as calculated except where there is negative WMAC revenue for the year as set forth in Section [to be inserted] of the Contract, in which case the Franchise Fee increase is zero. The weighted

¹ Except for the Union Labor Cost Category which will have a July 1 review year all other Cost Categories within the Davis Street Processing RRI will have December 31 review years.

WMAC RR Exhibit 2

percent change of Cost Categories 8 - 10 are then added to the RRI adjustment to calculate the Annual Rate Adjustment.

2. RR Cost Indicators

<u>RR Cost Category</u>	<u>Cost Indicator²</u>
RR Union Labor	Projected (as of March 1 st preceding the review date to be effective as of the review date) total Union (Local 70, 1546 and 6 Clerical) wage, health and welfare, and pension costs under Waste Management of Alameda County, Inc. collective bargaining agreements for those employees domiciled at 172-98 th Avenue, Oakland, CA. Calculated pursuant to Section 3 below.
Diesel Fuel	Series ID: wpu057303 #2 Diesel Fuel (average for 12 months ending on the current review year)
CNG Fuel	Schedule G-NGV-1, compiled and published by the Pacific Gas and Electric Co. Analysis and Rate Department and reported monthly in the "Gas Rate Finder" publication (http://www.pge.com/tariffs) reflecting the sum of the Customer, procurement, transportation and public purpose program charges (average for 12 months ending on the current review year).
Vehicle Replacement	Series ID: pcu336211336211 Truck, bus, car, and other vehicle bodies, for sale separately (average for 12 months ending on the current review year)
Vehicle Maintenance	Series ID: pcu3339243339243 Parts and attachments for industrial work trucks (average for 12 months ending on the current review year)
Davis Street Processing:	Davis Street Processing RRI (Calculated pursuant to Section 4 below)
All Other:	Series ID: cuura422sa0 Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-San Jose, CA (average for 12 months ending on the current review year)

² With regard to each Cost Indicator under the RR, Davis Street Processing RRI which is an index, the Cost Indicator will be the index's twelve-month average for the period ending on the applicable (previous or current) December 31 review year. With regard to the Union Labor Cost Categories within the RR, and Davis Street Processing RRI's, the Cost Indicator will be the projected union labor costs on the applicable (previous or current) July 1 review date.

WMAC RR Exhibit 2

Government Fees/Taxes (Processing) - WMAC to list applicable Government Fees/Taxes

Government Fees/Taxes (Collection) - WMAC to list applicable Government Fees/Taxes

Franchise Fees Series ID: cuura422sa0 Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-San Jose, CA (average for 12 months ending on the current review year)

3. **RR Union Labor Cost Indicator.** Annual changes to the RR Union Labor Cost Indicator shall be calculated by determining the total labor increase for each Union party to a collective bargaining agreement with CONTRACTOR, as follows:

3.1. Local 70 annual total labor increase shall be determined by calculating the percentage change of the sum of the All Classification straight time hourly wage rate, monthly health and welfare premium (as converted to a straight time hourly rate³), and the straight time hourly pension rate between the previous review date and the current review date. Since this calculation must be performed prior to the July 1st of the current review date, CITY and CONTRACTOR have agreed that the costs for the current review date shall be those costs that are projected as of March 1st preceding the current review date to be effective as of the current review date. Changes that become known after March 1st preceding the current review date shall be incorporated into the RRI adjustment in the next year with no provision for retroactive adjustments. The resulting year over year percentage change shall be multiplied by the percentage of RR Union Labor employees represented by Local 70.

3.2. Local 1546 annual total labor increase shall be determined by calculating the percentage change of the sum of the Journeyman classification straight time hourly wage rate, monthly health and welfare premium (as converted to a straight time hourly rate), and the straight time hourly pension rate between the previous review date and the current review date. Since this calculation must be performed prior to the July 1st of the current review date, CITY and CONTRACTOR have agreed that the costs for the current review date shall be those costs that are projected as of March 1st preceding the current review date to be effective as of the current review date. Changes that become known after March 1st preceding the current review date shall be incorporated into the RRI adjustment in the next year with no provision for retroactive adjustments. The resulting year over year percentage change shall be multiplied by the percentage of RR Union Labor employees represented by Local 1546.

3.3. Local 6 Clerical annual total labor increase shall be determined by calculating the percentage change of the sum of the CSR II classification straight time hourly wage rate, monthly health and welfare premium (as converted to a straight time hourly rate), and the straight time hourly pension rate between the

³ Converting monthly amounts to hourly will be done by dividing the monthly amount by 173.

WMAC RR Exhibit 2

previous review date and the current review date. Since this calculation must be performed prior to the July 1st of the current review date, CITY and CONTRACTOR have agreed that the costs for the current review date shall be those costs that are projected as of March 1st preceding the current review date to be effective as of the current review date. Changes that become known after March 1st preceding the current review date shall be incorporated into the RRI adjustment in the next year with no provision for retroactive adjustments. The resulting year over year percentage change shall be multiplied by the percentage of RR Union Labor employees represented by Local 6 Clerical.

3.4. Once the weighted percentage labor increase for each Union is determined, the above sums shall be added together to determine the overall weighted percentage change of the RR Union Labor Cost Category to be applied to the RR RRI adjustment calculation.

3.5. For purposes of clarification with regard to the July 1, 2016 Annual Rate Adjustment, the review years or dates for the Cost Categories will be as follows:

Item	Cost Category	Previous Review Year or Date	Current Review Year or Date
1	RR Union Labor	July 1, 2015	July 1, 2016
2	Diesel Fuel	Calendar Year Ending December 31, 2014	Calendar Year Ending December 31, 2015
3	CNG Fuel	Calendar Year Ending December 31, 2014	Calendar Year Ending December 31, 2015
4	Vehicle Replacement	Calendar Year Ending December 31, 2014	Calendar Year Ending December 31, 2015
5	Vehicle Maintenance	Calendar Year Ending December 31, 2014	Calendar Year Ending December 31, 2015
6	Davis Street Processing ⁴	Calendar Year Ending December 31, 2014	Calendar Year Ending December 31, 2015
7	All Other	Calendar Year Ending December 31, 2014	Calendar Year Ending December 31, 2015
8	Government Fees/Taxes Processing	July 1, 2015	July 1, 2016
9	Government Fees/Taxes	July 1, 2015	July 1, 2016

⁴ Except for the Union Labor Cost Category which will have a July 1 review year all other Cost Categories within the Davis Street Processing RRI December 31 review years.

WMAC RR Exhibit 2

	Collection		
10	Franchise Fees	July 1, 2015	July 1, 2016

To calculate the Annual Rate Adjustment, the RRI adjustment is added to the sum of the weighted percentage change (including all Cost Categories) in the Cost Indicators of Cost Categories 8 – 10. The following is an example Annual Rate Adjustment calculation:

Item	Cost Category	Cost Indicator Percent Change	Item Weight	Weighted Percent Change
1	RR Union Labor	4.64%	45.49%	2.11%
2	Diesel Fuel	15.70%	0.00%	0.00%
3	CNG Fuel	-0.10%	2.77%	0.00%
4	Vehicle Replacement	3.14%	2.13%	0.07%
5	Vehicle Maintenance	2.67%	1.76%	0.05%
6	Davis Street Processing	3.79%	7.20%	0.27%
7	All Other	2.24%	9.38%	0.21%
	RRI Adjustment			2.70%
8	Government Fees/Taxes Collections	0.01%	0.01%	0.00%
9	Government Fees/Taxes Processing	3.27%	5.37%	0.18%
10	RR Franchise Fees	2.24%	25.89%	0.58%
			100%	
	Annual Rate Adjustment			3.46%

The Annual Rate Adjustment is then multiplied by the Diversion Adjustment as appropriate before being applied to the Maximum Collection Service Rates.

4. Davis Street Processing RRI embedded in RR RRI.

4.1. The Davis Street Processing RRI shall be calculated in the following manner:

4.1.1. There are six (6) Contractor Cost Categories for purposes of the Davis Street Processing RRI adjustment calculation: Davis Street Union Labor,

WMAC RR Exhibit 2

Diesel Fuel, CNG Fuel, Vehicle Replacement, Vehicle Maintenance, and All Other.

- 4.1.2. Within each Cost Category are expenses generally described in the attached Operating Cost Statement – Description (the “Allowed Expenses”). Only these Allowed Expenses may be used by Contractor to calculate the annual total of each Cost Category.
- 4.1.3. CONTRACTOR will annually calculate each Cost Category’s item weight. For example, if the annual total of all Allowable Expenses of Diesel Fuel (a Cost Category) is \$100, and the annual total of all Allowable Expenses for all Cost Categories is \$2,000, Diesel Fuel’s weighted percentage factor is 5%.
- 4.1.4. Each Cost Category’s item weight is then multiplied by the percent change of its Cost Indicator to calculate its weighted percentage change. Each Cost Category’s review dates or review years are set forth below.

Item	Cost Category	Previous Review Date or Year	Current Review Date or Year
1	Davis Street Union Labor	July 1 of previous calendar year	July 1 of current calendar year
2	Diesel Fuel	December 31 of next previous calendar year	December 31 of previous calendar year
3	CNG Fuel	December 31 of next previous calendar year	December 31 of previous calendar year
4	Vehicle Replacement	December 31 of next previous calendar year	December 31 of previous calendar year
5	Vehicle Maintenance	December 31 of next previous calendar year	December 31 of previous calendar year
6	All Other	December 31 of next previous calendar year	December 31 of previous calendar year

Each Cost Category’s Cost Indicator is set forth in Section 4.2 below. For those Cost Categories using a review year, the percentage change is the difference in the annual average of the cost indicator index of the preceding review year and the annual average of the cost indicator index

WMAC RR Exhibit 2

of current review year. For those Cost Categories using a review date, the percentage change is the difference in the cost indicator at the previous review date and the cost indicator at the current review date. For example, with regard to the Davis Street Union Labor Cost Category, the Cost Indicator is Wages, Health & Welfare, and Pension costs under Waste Management of Alameda, Inc., CBAs with Local 70, 1546 and 6 Clerical, Landfill and Recycling bargaining units. With regard to those Cost Indicators which are a published index, should such index be discontinued, a successor index shall be selected by mutual agreement of the parties. Successor indices shall be those indices that are most closely equivalent to the discontinued index.

- 4.1.5. The weighted percentage change of each Cost Category is then added together to calculate the RRI adjustment.

4.1.6. Davis Street Processing RRI Cost Indicators

<u>Cost Category</u>	<u>Cost Indicator</u>
Davis Street Union Labor	Projected (as of March 1 st preceding the review date to be effective as of the review date) total Union (Local 70, Local 1546, Local 6 Clerical, Local 6 Landfill, Local 6 Recycling) wage, health and welfare, and pension costs under Waste Management of Alameda County, Inc. collective bargaining agreements for those employees domiciled at Davis Street, San Leandro, CA. Calculated pursuant to Section 4.3 below.
Diesel Fuel	Series ID: wpu057303 #2 Diesel Fuel (average for 12 months ending on the current review year)
CNG Fuel	Schedule G-NGV-1, compiled and published by the Pacific Gas and Electric Co. Analysis and Rate Department and reported monthly in the "Gas Rate Finder" publication (http://www.pge.com/tariffs) reflecting the sum of the Customer, procurement, transportation and public purpose program charges (average for 12 months ending on the current review year) .
Vehicle Replacement	Series ID: pcu336211336211 Truck, bus, car, and other vehicle bodies, for sale separately (average for 12 months ending on the current review year)
Vehicle Maintenance	Series ID: pcu3339243339243 Parts and attachments for industrial work trucks (average for 12 months ending on the current review year)
All Other	Series ID: cuura422sa0 Consumer Price Index, All Urban Consumers, All Items. San Francisco-Oakland-San Jose, CA (average for 12 months ending on the current review year)

WMAC RR Exhibit 2

4.2. Davis Street Union Labor Cost Indicator. Annual changes to the Davis Street Union Labor Cost Indicator shall be calculated by determining the total labor increase for each Union party to a collective bargaining agreement with CONTRACTOR, as follows:

4.2.1. Local 70 annual total labor increase shall be determined by calculating the percentage change of the sum of the All Classification straight time hourly wage rate, monthly health and welfare premium (as converted to a straight time hourly rate), and the straight time hourly pension rate between the previous review date and the current review date. Since this calculation must be performed prior to the July 1st of the current review date, CITY and CONTRACTOR have agreed that the costs for the current review date shall be those costs that are projected as of March 1st preceding the current review date to be effective as of the current review date. Changes that become known after March 1st preceding the current review date shall be incorporated into the RRI adjustment in the next year with no provision for retroactive adjustments. The resulting year over year percentage change shall be multiplied by the percentage of Davis Street Union Labor employees represented by Local 70.

4.2.2. Local 1546 annual total labor increase shall be determined by calculating the percentage change of the sum of the Journeyman classification straight time hourly wage rate, monthly health and welfare premium (as converted to a straight time hourly rate), and the straight time hourly pension rate between the previous review date and the current review date. Since this calculation must be performed prior to the July 1st of the current review date, CITY and CONTRACTOR have agreed that the costs for the current review date shall be those costs that are projected as of March 1st preceding the current review date to be effective as of the current review date. Changes that become known after March 1st preceding the current review date shall be incorporated into the RRI adjustment in the next year with no provision for retroactive adjustments. The resulting year over year percentage change shall be multiplied by the percentage of Davis Street Union Labor employees represented by Local 1546.

4.2.3. Local 6 Clerical annual total labor increase for clerical employees shall be determined by calculating the percentage change of the sum of the CSR II classification wage rate, monthly health and welfare premium (as converted to a straight time hourly rate), and the straight time hourly pension rate between the previous review date and the current review date. Since this calculation must be performed prior to the July 1st of the current review date, CITY and CONTRACTOR have agreed that the costs for the current review date shall be those costs that are projected as of March 1st preceding the current review date to be effective as of the current review date. Changes that become known after March 1st preceding the current review date shall be incorporated into the RRI

WMAC RR Exhibit 2

adjustment in the next year with no provision for retroactive adjustments. The resulting year over year percentage change shall be multiplied by the percentage of Davis Street Union Labor employees represented by Local 6 Clerical.

4.2.4. Local 6 Landfill annual total labor increase for landfill employees shall be determined by calculating the percentage change of the sum of the HEO classification wage rate, monthly health and welfare premium (as converted to a straight time hourly rate), and the straight time hourly pension rate between the previous review date and the current review date. Since this calculation must be performed prior to the July 1st of the current review date, CITY and CONTRACTOR have agreed that the costs for the current review date shall be those costs that are projected as of March 1st preceding the current review date to be effective as of the current review date. Changes that become known after March 1st preceding the current review date shall be incorporated into the RRI adjustment in the next year with no provision for retroactive adjustments. The resulting year over year percentage change shall be multiplied by the percentage of Davis Street Union Labor employees represented by Local 6 Landfill.

4.2.5. Local 6 Recycling annual total labor increase for recycling employees shall be determined by calculating the percentage change of the sum of the Sorter and Operator classification wage rate, monthly health and welfare premium (as converted to a straight time hourly rate) and the annual pension contribution (as converted to a straight time hourly rate) between the previous review date and the current review date. Since this calculation must be performed prior to the July 1st of the current review date, CITY and CONTRACTOR have agreed that the costs for the current review date shall be those costs that are projected as of March 1st preceding the current review date to be effective as of the current review date. Changes that become known after March 1st preceding the current review date shall be incorporated into the RRI adjustment in the next year with no provision for retroactive adjustments. The resulting year over year percentage change shall be multiplied by the percentage of Davis Street Union Labor employees represented by Local 6 Recycling.

Once the weighted percentage labor increase for each Union is determined, the above sums shall be added together to determine the overall weighted percentage change of the Davis Street Union Labor Cost Category to be applied to the Davis Street Processing RRI adjustment calculation.

The CITY has [describe resolution regarding Local 6 living wages]. Should the City implement such living wage resolution (or similar) at any time before or after the Contract commencement date (July 1, 2015), the Maximum Service Rates shall be immediately adjusted to fully capture all of CONTRACTOR's increased labor costs

WMAC RR Exhibit 2

resulting there from. For purposes of clarity, recovery of such increased labor costs shall not be subject to any cap under this Contract.

5. RR Operating Cost Statement-Description

RR Union Labor:	List all labor accounts for WMAC's employees domiciled at 172-98 th Avenue, Oakland, CA. who are members of Local 70, Local 1546 and Local 6 Clerical. Wages – hourly & overtime, Bonuses, Commissions, Other Compensation, Compensated Absences & Vacation, Severance, Health & Welfare Insurance Premiums, Pension & Retirement Benefits, Payroll Taxes,
Diesel Fuel:	Clear and/or Dyed Diesel Fuel, Gasoline, Fuel Tax Credit accounts.
CNG Fuel:	LNG and/or CNG fuel, Fuel Tax Credit accounts.
Vehicle Replacement:	Equipment and Support Equipment depreciation accounts. Vehicle Rental Equipment accounts
Vehicle Maintenance:	Building (Maintenance), Tires, Parts & Supplies, Lubricants, Third Party Services, Other.
Davis Street Processing	See Davis Street Processing RRI
All Other:	List all other expense accounts related to the services provided under this Contract. Advertising Amortization Bad debt and collection charges Bank charges Building and repairs Computer costs Consulting and professional fees Depreciation Depreciation (non-vehicle) Donations and contributions Dues and subscriptions Environmental compliance Equipment - rental Equipment (Support) - tires, parts, supplies Fines and penalties Fuel (non-diesel and non-CNG) General yard repairs and maintenance

WMAC RR Exhibit 2

Insurance (e.g., general liability, fire, truck damage, and extended coverage)

Legal

License fees

Litigation settlements

Lobbying

Lubricants

Meals and entertainment

Miscellaneous

Non-union labor wages and benefits (e.g., salaries, hourly wages, overtime, bonuses, commissions, safety expense and bonuses, other compensation, compensated absences and vacation, severance, health and welfare insurance, workers compensation premiums and claims, pension and retirement costs, payroll taxes, contract labor, and other employee costs)

Office supplies

Performance bond expense

Permits

Postage

Printing

Procurement card rebates

Real property rent

Registration

Security

Seminars and education

Site monitoring and testing

Taxes

Taxes (real and personal property)

Third party services

Travel

Utilities (e.g., telephone, electricity, gas)

Vehicle licenses and permits

Vehicle transportation costs - license fees, permits, insurance, bridge tolls

Workers compensation premiums and claims

Union labor Workers Compensation Premiums & Claims,

WMAC RR Exhibit 2

Union Contract Labor, Safety Program Expense and Other Employee Costs (e.g., uniforms, boot allowance, tool allowance).

Government Fees/Taxes –

Processing: List type and amount of each Government Fees/Taxes paid

Government Fees/Taxes –

Collection: List type and amount of each Government Fees/Taxes paid

Franchise Fees: Franchise Fees payable to CITY pursuant to the Contract.

6. Davis Street Processing Operating Cost Statement - Description

Davis Street Union Labor: List all labor accounts for WMAC's employees domiciled at Davis Street, San Leandro, CA. who are members of Local 70, Local 1546 and Local 6 Clerical, Local 6 Recycling and Local 6 Landfill. Wages – hourly & overtime, Bonuses, Commissions, Other Compensation, Compensated Absences & Vacation, Severance, Health & Welfare Insurance Premiums, Pension & Retirement Benefits, Payroll Taxes,

Diesel Fuel: Clear and/or Dyed Diesel Fuel, Gasoline, Fuel Tax Credit accounts.

CNG Fuel: LNG and/or CNG fuel, Fuel Tax Credit accounts.

Vehicle Replacement: Equipment and Support Equipment depreciation accounts.
Vehicle Rental Equipment accounts

Vehicle Maintenance: Building (Maintenance), Tires, Parts & Supplies, Lubricants, Third Party Services, Other.

All Other: List all other expense accounts related to the services provided under this Contract.

Advertising
Amortization
Bad debt and collection charges
Bank charges
Building and repairs
Computer costs
Consulting and professional fees
Depreciation
Depreciation (non-vehicle)
Disposal of residue
Donations and contributions

WMAC RR Exhibit 2

Dues and subscriptions
Environmental compliance
Equipment - rental
Equipment (Support) - tires, parts, supplies
Fines and penalties
Fuel (non-diesel and non-CNG)
General yard repairs and maintenance
Insurance (e.g., general liability, fire, truck damage, and extended coverage)
Legal
License fees
Litigation settlements
Lobbying
Lubricants
Meals and entertainment
Miscellaneous
Non-union labor wages and benefits (e.g., salaries, hourly wages, overtime, bonuses, commissions, safety expense and bonuses, other compensation, compensated absences and vacation, severance, health and welfare insurance, workers compensation premiums and claims, pension and retirement costs, payroll taxes, contract labor, and other employee costs)
Office supplies
Performance bond expense
Permits
Postage
Printing
Procurement card rebates
Real property rent
Registration
Security
Seminars and education
Site monitoring and testing
Taxes
Taxes (real and personal property)
Third party services
Travel

WMAC RR Exhibit 2

Utilities (e.g., telephone, electricity, gas)

Vehicle licenses and permits

Vehicle transportation costs - license fees, permits, insurance, bridge tolls

Workers compensation premiums and claims

Union labor Workers Compensation Premiums & Claims, Union Contract Labor, Safety Program Expense and Other Employee Costs (e.g., uniforms, boot allowance, tool allowance).