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OAKLAND

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Final Circulation Draft  
Subject to Council Selection Process  
July 25, 2014

# **MIXED MATERIALS & ORGANICS COLLECTION SERVICES CONTRACT**

**Executed between**

**City of Oakland**

**and**

**[Insert Contractor name]**

July 1, 2015



Final Circulation Draft  
Subject to Council Selection Process  
July 25, 2014

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- ATTACHMENT 1      Contract between the CITY of Oakland and Disposal Contractor (To be inserted after award)
- ATTACHMENT 2      Contract between the CITY of Oakland and Residential Recycling Contractor (To be inserted after award)
- ATTACHMENT 3      City of Oakland Required Forms (To be inserted after award)

## CITY OF OAKLAND

This Contract made and entered into [Insert Date] (the "Effective Date"), by and between the City of Oakland, in the state of California, hereinafter referred to as "CITY" and [insert company] a California corporation, hereinafter referred to as "CONTRACTOR."

### RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

72

## ARTICLE 1. DEFINITIONS

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

78 1.01 AB 32. The Global Warming Solutions Act, (California Public Safety Code  
79 section 38500 et seq.) as amended, including rules and regulations promulgated thereunder as  
80 amended, which among other things, sets a greenhouse gas reduction goal by 2020.

81 1.02 AB 341. The California legislation (Stats. 2006, Ch. 476), as it may be amended  
82 from time to time, that, among other things, added Chapter 12.8 of Part 3 of Division 30 of the

83 Public Resources Code (commencing with section 42649) imposing mandatory commercial  
84 recycling requirements and requirements that each jurisdiction implement an outreach and  
85 education program and monitor compliance with the Mandatory Commercial Recycling  
86 requirements.

87 1.03 AB 939. The California Integrated Waste Management Act (Public Resources  
88 Code section 40000 et seq.), as amended from time to time.

89  
90 1.04 Bin. A watertight metal or plastic Container with a hinged plastic lid and a  
91 capacity of between one (1) and seven (7) cubic yards, designed or intended to be mechanically  
92 dumped into a packer type truck, which is approved by CITY and labeled as specified by CITY.  
93 Bins may also include Compactors that are owned or leased by the MFD or Commercial Service  
94 Recipient, contingent upon confirmation of compatibility from CONTRACTOR.

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

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

109 1.07 Change in Law. The adoption, promulgation, or modification of any generally  
110 applicable and enforceable federal, state, local joint power authority (JPA), or foreign rule, law,  
111 regulation, ordinance, order, judgment, decree, permit or administrative agency guidelines  
112 (excluding orders, judgments, and decrees specific to a particular facility) duly adopted and  
113 promulgated officially in writing for uniform application occurring after January 1, 2013. Change  
114 in Law does not include changes initiated by CONTRACTOR. Change in Law shall not include  
115 such changes enacted or adopted prior to the due date for RFP proposals, or regulatory  
116 changes approved prior to the effective date of this Contract (i.e. chaptered statute or final  
117 adoption of regulation).

118 1.08 CITY. The CITY of Oakland, California, a municipal corporation.

119 1.09 CITY Administrator. The CITY official who is responsible for the day-to-day  
120 operations of CITY agencies and departments or his/her designee.

121 1.10 CITY Bulky Goods Collection Service. The Collection of Bulky Goods from CITY  
122 Facilities in the Service Area, the delivery of the Bulky Goods to the appropriate facilities, and  
123 the Disposal, Processing and marketing of the Bulky Goods.

124 1.11 CITY Collection Services. CITY Mixed Materials Collection Service, CITY  
125 Organic Materials Collection Service, CITY Bulky Goods Collection Service, Street Litter  
126 Container Collection Service, Temporary Roll-Off Box Collection Service, and CITY Special  
127 Event Collection Service.

128 1.12 CITY Facilities. Those CITY properties or locations as set forth in Exhibit 4,  
129 which is attached to and included in this Contract and as may be amended.

130 1.13 CITY Mixed Materials Collection Service. The Collection of Mixed Materials from  
131 CITY Facilities in the Service Area and either the delivery of the Mixed Materials to the  
132 appropriate Mixed Materials Processing Facility, the Processing of the Mixed Materials and the  
133 transfer of the Processing Residue to the Disposal Facility or the delivery of the non-processed  
134 Mixed Materials to the Disposal Facility.

135 1.14 CITY Organic Materials Collection Service. The Collection of Organic Materials  
136 from CITY Facilities in the Service Area, the delivery of the Organic Materials to an Organic  
137 Materials Processing Facility, and the Processing and marketing of the Organic Materials.

138 1.15 CITY Special Event Collection Service. The Collection of Garbage, Recyclable  
139 Materials, Organic Materials and other materials as appropriate at CITY-sponsored special  
140 events.

141 1.16 Collect/Collection. To pick up, transport and Process Discarded Materials.

142 1.17 Collection Services. SFD Collection Services, MFD Collection Services,  
143 Commercial Collection Services and CITY Collection Services.

144 1.18 Commercial. A business establishment and/or industrial facility including, but not  
145 limited to, governmental, religious and educational facilities.

146 1.19 Commercial Collection Services. Commercial Mixed Materials Collection  
147 Service, Commercial Organic Materials Subscription Collection Service, Temporary Roll-Off Box  
148 Collection Service, and Commercial Special Events Collection Service.

149 1.20 Commercial Mixed Materials Collection Service. The Collection of Mixed  
150 Materials from Commercial Service Addresses in the Service Area and either the delivery of the  
151 Mixed Materials to the appropriate Mixed Materials Processing Facility, the Processing of the  
152 Mixed Material and the transfer of the Processing Residue to the Disposal Facility, or the  
153 delivery of the non-processed Mixed Materials to the Disposal Facility.

154  
155 1.21 Commercial Organic Materials Subscription Collection Service. The Collection of  
156 Organic Materials from Commercial Service Addresses in the Service Area subscribing to such  
157 service, the delivery of the Organic Materials to an Organic Materials Processing Facility and  
158 the Processing and marketing of the Organic Materials.

159 1.22 Commercial Special Events Collection Service. Mixed Materials, Recyclable  
160 Materials and Organic Materials Collection, Disposal and processing services at special events  
161 such as street festivals.

162 1.23 Community Outreach. Any information (whether written or otherwise) directed by  
163 CONTRACTOR to Customers regarding the programs and services provided under this  
164 Contract and shall be subject to the prior review and approval of CITY. The party proposing to  
165 make such communication shall make reasonable good faith efforts to consult with the other  
166 party to ensure accuracy and consistency with the requirements and spirit of this Contract.

167 1.24 Compactor. Any Roll-Off Box or Bin which has a compaction mechanism,  
168 whether stationary or mobile, contingent upon confirmation of compatibility from  
169 CONTRACTOR.

170

171 1.25 Construction and Demolition Debris. Materials resulting from construction,  
172 remodeling, repair or demolition operations on any house, or residential property, Commercial  
173 building, pavement or other structure. Construction and Demolition Debris includes but is not  
174 limited to rocks, soils, tree remains and other Plant Debris which results from land clearing or  
175 land development operations in preparation for construction.

176 1.26 Container. A Bin, Cart, Roll-Off Box, Compactor, street litter receptacle or other  
177 item approved by CITY for use in containing materials set out for Collection under the terms of  
178 this Contract.

179 1.27 Contract or Franchise Contract. The written document and all amendments  
180 thereto, between CITY and CONTRACTOR, governing the provision of Collection Services as  
181 provided herein, including all exhibits hereto, as it may be amended from time to time.

182 1.28 Contract Manager. The CITY employee(s) designated by the CITY Administrator  
183 to act as his/her designee regarding the day to day management of this Contract.

184 1.29 Contract Year. Each twelve (12) month period from July 1 to June 30 beginning  
185 July 1, 2015.

186 1.30 CONTRACTOR. [insert company]

187 1.31 Covered Electronic Device or CED. Discarded electronic devices that the  
188 California Department of Toxic Substances Control ("DTSC") has determined to be a covered  
189 electronic device (California Public Resources Code section 42463). CEDs include cathode ray  
190 tube (CRT) devices (including televisions and computer monitors), LCD desktop monitors,  
191 laptop computers with LCD displays, LCD televisions, plasma televisions, portable DVD players  
192 with LCD screens and other electronic devices as may be added by the DTSC from time to time.

193 1.32 Customer. The Person or Persons who have the legal right to initiate, cancel or  
194 make changes to Collection Services.

195 1.33 Difficult to Serve. A set-out site for Containers which has any of the following  
196 features:

197 1.33.1 A grade greater than fifteen (15) percent;

198 1.33.2 An obstructed vertical clearance of less than fifteen (15) feet;

199 1.33.3 A paved, concrete or similar surface over which Containers must be rolled  
200 that contains large deep grooves;

201 1.33.4 An unpaved surface over which Containers must be rolled;

202 1.33.5 A turn radius of less than fifty (50) feet; or

203 1.33.6 Is more than one hundred (100) feet from the public road.

204 1.34 Discarded Material. Garbage, Mixed Materials, Recyclable Materials, Organic  
205 Materials or Bulky Goods Generated at a Service Address and placed in a manner and location  
206 that is designated for Collection pursuant to this Contract.

207 1.35 Disposal/Dispose. The disposition of Mixed Materials, Garbage and Residue  
208 received from CONTRACTOR and CITY at the Disposal Facility under the terms of this  
209 Contract, or a) the placement of any materials Collected pursuant to this Contract in landfills,  
210 including as "beneficial reuse" as defined by California Code of Regulations Title 27, Chapter 3,  
211 Article 1, section 20686; or (b) disposition to "incinerators" as defined by Alameda County

212 Waste Reduction and Recycling Initiative Charter Amendment (Measure D) SUBSECTION  
213 64.150 T.

214 1.36 Disposal Contractor. [insert company]

215 1.37 Disposal Facility or Landfill. [insert landfill name and address]

216 1.38 Divert/Diversion. The avoidance of Disposal at the Disposal Facility or other  
217 landfill, or through "transformation" as defined by Public Resources Code section 40201, of any  
218 materials Collected pursuant to this Contract, through Processing.

219 1.39 Dwelling Unit. Any individual living unit that includes a kitchen, and a room or  
220 suite of rooms, and is designed or occupied as separate living quarters for an individual or  
221 group of individuals. Dwelling Units include live/work units, as defined by Oakland Planning  
222 Code section 17.65.160. Dwelling Units do not include work/live units, as defined by Oakland  
223 Planning Code Section 17.65.150.

224 1.40 E-Waste. Waste that is powered by batteries or electricity, such as computers,  
225 telephones, answering machines, radios, stereo equipment, tape players/recorders,  
226 phonographs, videocassette players/recorders, compact disc players/recorders, calculators and  
227 other items also defined as CEDs.

228 1.41 Fixed Body Vehicle. Any wheeled vehicle that does not rely on a Roll-Off Box or  
229 other detachable container to Collect, contain and transport material.

230 1.42 Food Scraps. Raw or cooked vegetable, fruit, grain, fish, and other items,  
231 including meat, bones, dairy products, cooking fats, oil or kitchen grease; paper, cardboard, and  
232 other compostable items that have been contaminated with food, cooking fats, oil or kitchen  
233 grease; compostable paper or plastics associated with food preparation or consumption such as  
234 paper towels, paper plates, paper cups, tissue, waxed paper and waxed cardboard; and other  
235 materials agreed upon the parties that are capable of being composted and that are set out  
236 separate from Mixed Materials for Collection as Organic Materials.

237 1.43 Force Majeure. Any acts of God, such as landslides, lightning, fires, storms,  
238 floods, pestilence, freezing, earthquakes, explosions, sabotage, civil disturbances, acts of a  
239 public enemy, wars, terrorism, blockades, riots or other industrial disturbances, eminent domain,  
240 condemnation or other taking or other events of a similar nature not caused or maintained by  
241 CITY or CONTRACTOR, which event is not reasonably within the control of the party claiming  
242 the excuse from its obligations due to such event to the extent such event has a significant and  
243 material adverse effect on the ability of a party to perform its obligations thereunder. Force  
244 Majeure shall not include power outages, fuel shortages, strikes, work stoppage or slowdown,  
245 sickout, lockout, picketing or other concerted job action conducted by or directed at  
246 CONTRACTOR or CONTRACTOR'S employees or subcontractors. Force Majeure shall  
247 include a Change in Law if such Change in Law prohibits a party's performance hereunder.  
248 Notwithstanding the foregoing, (i) no event relating to the Disposal Facility operated by  
249 CONTRACTOR or a related party of CONTRACTOR, or the delivery of Garbage, Mixed  
250 Materials and/or Residue to a facility shall constitute a Force Majeure under this Contract unless  
251 (and then only to the extent) that such event prevents the delivery of or acceptance of Garbage,  
252 Mixed Materials and Residues to or by that facility; (ii) no failure of performance by any  
253 subcontractor of CONTRACTOR shall be a Force Majeure unless such failure was itself caused  
254 by a Force Majeure; (iii) except as provided herein, no event which merely increases  
255 CONTRACTOR'S cost of performance shall be a Force Majeure; and (iv) no event, the effects  
256 of which could have been prevented by reasonable precautions, including compliance with  
257 agreements and applicable laws, shall be a Force Majeure.

258 1.44 Garbage. All, putrescible and non-putrescible waste, non-recyclable packaging  
259 and rubbish attributed to normal activities of a Service Address wherein the Garbage is  
260 generated and Collected, which is set out for Collection by the Service Recipient. Except for  
261 Garbage Collected at CITY Facilities, Garbage must be generated at the Service Address  
262 wherein the Garbage is Collected. Garbage does not include abandoned automobiles or those  
263 items defined herein as Unacceptable Waste.

264 1.45 Gross Receipts. CONTRACTOR revenue collected from Customers for the  
265 provision of the Mixed Materials and Organics Collection Services exclusive of taxes and  
266 government fees.

267 1.46 Guarantor. [Insert Name].

268 1.47 Guaranty. The document contained in Exhibit 18, which is attached to and  
269 included in this Contract that is executed by the Guarantor guaranteeing the timely and full  
270 performance of CONTRACTOR'S obligations.

271 1.48 Generator. A Person, Commercial business or any other entity that produces  
272 Garbage, Mixed Materials, Organic Materials, or Bulky Goods.

273 1.49 Hazardous Waste. For purposes of this Contract, Hazardous Waste shall include  
274 those wastes defined as Hazardous Waste in Oakland Municipal Code section 8.28.010 or as  
275 subsequently amended. Section 8.28.010 currently defines Hazardous Waste as any  
276 hazardous waste, material, substance or combination of materials which because of its quantity,  
277 concentration or physical, chemical or infectious characteristics may cause or significantly  
278 contribute to an increase in mortality or an increase in serious irreversible or incapacitating  
279 reversible illness or may pose a substantial present or potential risk to human health or the  
280 environment when improperly treated, stored, transported, Disposed or otherwise managed and  
281 which requires special handling under any present or future federal, state or local law excluding  
282 *de minimis* quantities of waste of a type and amount normally found in residential Garbage after  
283 implementation of programs for the safe Collection, recycling, treatment and Disposal of  
284 Household Hazardous Waste in compliance with sections 41500 and 41802 of the California  
285 Public Resources Code. Hazardous Waste shall include but not be limited to: (a) substances  
286 that are toxic, corrosive, inflammable or ignitable; (b) petroleum products, crude oil (or any  
287 fraction thereof) and their derivatives; (c) explosives, asbestos, radioactive materials, toxic  
288 substances or related hazardous materials; and (d) substances defined, regulated or listed  
289 (directly or by reference) by applicable local, state or federal law as "hazardous substances,"  
290 "hazardous materials," "hazardous wastes," "pollutant," "reproductive toxins," "toxic waste" or  
291 "toxic substances" or similarly identified as hazardous to human health or the environment,  
292 including those so defined in or pursuant to any of the following statutes: (i) the Comprehensive  
293 Environmental Response, Compensation and Liability Act ("CERCLA") of 1980, 42 USC section  
294 9601 *et seq.* (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC section 1802,  
295 *et seq.*; (iii) the Resource Conservation and Recovery Act, 42 USC section 6901 *et seq.*; (iv) the  
296 Clean Water Act, 33 USC section 1251 *et seq.*; (v) California Health and Safety Code section  
297 25115-25117, 25249.8, 25281 and 25316; (vi) the Clean Air Act, 42 USC section 7901 *et seq.*;  
298 and (vii) California Water Code section 13050. All rules and regulations adopted and  
299 promulgated pursuant to such statutes and future amendments to or recodifications of such  
300 statutes and any regulations adopted pursuant to these statutes after the date of this Contract,  
301 as well as any subsequently enacted federal or California statute relating to the use, release or  
302 disposal of toxic or hazardous substances, or to the remediation of air, surface waters,  
303 groundwater, soil or other media contaminated with such substances any other hazardous or  
304 toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or

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

310 1.50 Household Hazardous Waste ("HHW"). Any Hazardous Waste generated at a  
311 SFD, MFD or CITY Facility Service Address within the Service Area including but not limited to,  
312 cleaning products, automotive products, fuel, lubricants, E-Wastes, paints, painting supplies,  
313 fluorescent lamps, compact fluorescent lamps, varnishes, solvents, herbicides, pesticides,  
314 fertilizers, automobile batteries, household batteries, adhesives and Universal Waste except  
315 those items defined in this Contract as Recyclable Materials including Used Oil or Used Oil  
316 Filters and dry cell household batteries when placed for Collection as set forth in this Contract or  
317 as directed by CITY.

318 1.51 Labor Disruption. Labor Disruptions are defined as strikes, slowdowns, sickout,  
319 picketing, other concerted job actions, directed at CONTRACTOR, CONTRACTOR's employees  
320 or subcontractors, excluding lockouts or stoppages conducted or initiated by CONTRACTOR.

321 1.52 Large Plant Debris. Oversized Plant Debris such as tree trunks, branches or  
322 untreated and unpainted wood with a diameter of more than six (6) inches and not more than  
323 two (2) feet, or a length of more than four (4) feet and no more than six (6) feet, or weighing not  
324 more than seventy-five (75) pounds.

325 1.53 Material Recovery Facility or MRF. Any facility, selected by CONTRACTOR and  
326 approved or specifically designated by CITY, designed, operated and legally permitted for the  
327 purpose of receiving and Processing Recyclable Materials, Organic Materials or Mixed  
328 Materials.

329 1.54 Maximum Service Rates. Those rates and ancillary charges that were approved  
330 by CITY and are contained in Exhibit 1 which is attached to and included in this Contract.

331 1.55 Multi-family Dwelling or MFD. Any residence with five (5) or more Dwelling Units,  
332 including any flat, apartment, condominium, town home, service-enriched housing or other  
333 residence and other Dwelling Units in detached buildings on a single parcel and excluding a  
334 hotel, motel, dormitory, sheltered nursing facility, rooming house or other such similar facility as  
335 determined by CITY.

336 1.56 MFD Bulky Goods Collection Service. The Collection of Bulky Goods from MFD  
337 Service Recipients in the Service Area, the delivery of the Bulky Goods to the appropriate  
338 facilities and the Disposal, Processing or marketing of the Bulky Goods.

339 1.57 MFD Collection Services. MFD Mixed Materials Collection Service, MFD  
340 Organic Materials Collection Service, Temporary Roll-Off Box Collection Service, and MFD  
341 Bulky Goods Collection Service.

342 1.58 MFD Mixed Materials Collection Service. The Collection of Mixed Materials from  
343 MFD Service Addresses in the Service Area and the delivery of the Mixed Materials to the  
344 appropriate Mixed Materials Processing Facility, the Processing of the Mixed Materials and the  
345 transfer of the Processing Residue to the Disposal Facility.

346 1.59 MFD Organic Materials Collection Service. The Collection of Organic Materials  
347 from MFD Service Addresses in the Service Area and the delivery of that Organic Materials to  
348 an Organic Materials Processing Facility for Processing.

349 1.60 Mixed Materials. All materials that are set out by the Service Recipient for  
350 Collection by CONTRACTOR excluding items that are Source Separated. Mixed Materials do  
351 not include items defined herein as Unacceptable Waste.

352 1.61 Mixed Materials Extra Service Tag. A tag approved by CITY and provided by  
353 CONTRACTOR which may be purchased for use at SFD and MFD Service Addresses for the  
354 Collection of extra Garbage or Mixed Materials.

355 1.62 Mixed Materials Processing Facility. Any MRF or Organics Processing Facility  
356 selected by CONTRACTOR and approved by CITY that is designed, operated and legally  
357 permitted for the purpose of receiving and Processing Mixed Materials.

358 1.63 Non-Collection Notice. A form developed and used by CONTRACTOR as  
359 approved by CITY to notify Service Recipients of the reason for non-collection of materials set  
360 out by the Service Recipient for Collection by CONTRACTOR pursuant to this Contract.

361 1.64 Organic Materials ("Organics"). Plant Debris, Food Scraps, compostable food  
362 ware, compostable food containers, compostable paper, horse stable matter and other material  
363 agreed upon by both parties that are separated for inclusion in the SFD Organic Materials  
364 Collection Service, MFD Organic Materials Collection Service, Commercial Organic Materials  
365 Subscription Collection Service or CITY Organic Materials Collection Service programs except  
366 for Organic Materials Collected at CITY Facilities. Organic Materials must be generated at the  
367 Service Address wherein the Organic Materials are Collected. Organic Materials do not include  
368 items herein defined as Unacceptable Waste.

369 1.65 Organic Materials Extra Service Tag. A tag approved by CITY and provided by  
370 CONTRACTOR which may be purchased for use at Commercial Service Addresses subscribing  
371 to Commercial Organic Materials Subscription Collection Service for the Collection of extra  
372 Organic Materials.

373 1.66 Organic Materials Processing Facility. Any facility selected by CONTRACTOR  
374 and approved by CITY, which is designed, operated and legally permitted for the purpose of  
375 receiving and Processing Organic Materials or Mixed Materials.

376 1.67 Overage. An amount of material in excess of the capacity of the Container  
377 utilized at the Service Address for the set out of such material except where such material is set  
378 out through the use of an Extra Service Tag.

379 1.68 Per Dwelling Unit Recycling Rate. The dollar amount effective July 1 each year,  
380 which CONTRACTOR invoices and collects from SFD and MFD Customers. The Per Dwelling  
381 Unit Recycling Rate may comprise a RR Contractor component and a stabilization component.

382 1.69 Person. An individual, association, partnership, corporation, joint venture,  
383 school, the United States, the State of California, any municipality or other political subdivision  
384 thereof or any other entity whatsoever.

385 1.70 Plant Debris. Any vegetative matter resulting from normal yard and landscaping  
386 maintenance or unpainted and untreated wood that is not more than four (4) feet in its longest  
387 dimension or more than six (6) inches in diameter or weighs less than seventy-five (75) pounds  
388 per individual piece and can be handled by two (2) persons. Plant Debris includes palm, yucca,  
389 cactus, grass clippings, leaves, pruning, weeds, branches, brush, holiday trees and other forms  
390 of horticultural waste. Plant Debris must be generated at the Service Address from which the  
391 Plant Debris is Collected except for material generated on property owned or maintained by  
392 CITY. Plant Debris does not include items defined herein as Unacceptable Waste.

393 1.71 Processing. An operation or series of operations, whether involving equipment,  
394 manual labor, or mechanical or biological processes that sorts, enhances, upgrades,  
395 concentrates, decontaminates, packages or otherwise prepares Recyclable Materials, Organic  
396 Materials, Mixed Materials or Bulky Goods and returns marketable elements thereof to the  
397 economic mainstream in the form of raw material for new, reused or reconstituted products.  
398 Processing begins at the time the Recyclable Materials, Organic Materials, Bulky Goods or  
399 Mixed Materials are delivered to the Processing facility and ends when the finished Processed  
400 materials are sold or reused and the Residue is properly Disposed.

401 1.72 Recyclable Materials. Those materials designated in this Contract or other  
402 materials agreed upon by parties for Collection and Recycling under this Contract which are  
403 segregated from Mixed Materials by the Service Recipient at the source of generation.  
404 Recyclable Materials include newspaper, mixed paper (including white and colored paper,  
405 magazines, telephone books, chipboard, junk mail and high grade paper), glass containers,  
406 metal containers (ferrous, non-ferrous and bi-metal containers including empty aerosol  
407 containers), aluminum foil and trays, milk and juice cartons, soup and juice boxes, all narrow  
408 neck rigid plastic containers, non-bottle rigid plastics, corrugated cardboard and dry cell  
409 household batteries when contained in a sealed heavy duty plastic bag and set out for  
410 Collection as required by CITY. CITY and CONTRACTOR may mutually agree to include  
411 additional materials or remove materials from this list of Recyclable Materials.

412 1.73 Residential Recycling ("RR") Contractor. [Insert Name].

413 1.74 Residue. Materials remaining after the Processing of Mixed Materials,  
414 Recyclable Materials, Organic Materials or Bulky Goods which cannot reasonably be Diverted.

415 1.75 Roll-Off Box. A metal Container of between six (6) and fifty (50) cubic yards that  
416 is normally loaded onto a motor vehicle and transported to an appropriate facility. A Roll-Off  
417 Box may be open topped or covered at the discretion of CITY with or without a compaction unit.

418 1.76 Service Address. The physical location of the SFD, MFD, Commercial or CITY  
419 property receiving Collection Services.

420 1.77 Service Area. That area within the corporate limits of the city of Oakland.

421 1.78 Service Recipient. A Person receiving Collection Services at the Service  
422 Address under the terms of this Contract.

423 1.79 SFD Collection Services. SFD Mixed Materials Collection Service, SFD Organic  
424 Materials Collection Service, Temporary Roll-Off Box Collection Service, and SFD Bulky Goods  
425 Collection Service.

426 1.80 SFD Bulky Goods Collection Service. The Collection of Bulky Goods from SFD  
427 Service Addresses in the Service Area, the delivery of the Bulky Goods to the appropriate  
428 facilities and the Processing marketing and Disposal of the Bulky Goods.

429 1.81 SFD Mixed Materials Collection Service. The Collection of Mixed Materials from  
430 SFD Service Addresses in the Service Area and either the delivery of the Mixed Materials to the  
431 appropriate Mixed Materials Processing Facility, the Processing of the Mixed Material and the  
432 transfer of the Processing Residue to the Disposal Facility or the delivery of the non-processed  
433 Mixed Materials to the Disposal Facility.

434 1.82 SFD Organic Materials Collection Service. The Collection of Organic Materials  
435 from SFD Service Addresses in the Service Area, and the delivery of the Organic Materials to  
436 an Organic Materials Processing Facility for Processing.

- 437
- 438
- 439           1.83 Single Family Dwelling or SFD. A detached or attached residence containing  
440 four (4) or fewer Dwelling Units when each Dwelling Unit is designed or used for occupancy by  
441 one (1) or more individuals.
- 442           1.84 Solid Waste. All putrescible and non-putrescible solid, semisolid and liquid  
443 wastes including Garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, Construction  
444 and Demolition Debris, discarded home and industrial appliances, dewatered, treated or  
445 chemically fixed sewage sludge which is not Hazardous Waste, manure, vegetable or animal  
446 solid and semisolid wastes and other discarded solid and semi-solid wastes as defined in  
447 California Public Resources Code section 40191, as that section may be amended from time to  
448 time, but does not include Source Separated Recyclable Materials, abandoned vehicles and  
449 parts thereof, Hazardous Waste or low-level radioactive waste, medical waste, Unacceptable  
450 Waste or Plant Debris. Solid Waste may include Recyclable Materials, Compostable Materials  
451 and Construction and Demolition Debris if such materials are not Source Separated from Solid  
452 Waste at the site of generation or Collected for Recycling, Composting, Processing and  
453 marketing.
- 454           1.85 Source Separated. Recyclable Materials, Organic Materials and Bulky Goods  
455 that have been segregated from Garbage, by or for the Generator at the Service Address at  
456 which the materials were generated for diversion.
- 457           1.86 Street Litter Container Collection Service. The Collection of Garbage and  
458 Recyclable Materials from street litter Containers within the Service Area and the transport and  
459 delivery of the Collected materials to the appropriate facility.
- 460           1.87 Temporary Roll-Off Box Collection Service. The Collection of Discarded  
461 Materials from a Service Address, which are generated as a byproduct of activities at that  
462 Service Address other than permitted construction or demolition through use of a temporarily  
463 placed box and the delivery of those materials to the appropriate facility.
- 464           1.88 Ton/Tonnage. A unit of measure for weight equivalent to two thousand (2,000)  
465 standard pounds where each pound contains sixteen (16) ounces.
- 466           1.89 Universal Waste ("U-Waste"). Materials that DTSC considers Universal Waste  
467 (California Code of Regulations Title 22, Div 4.5, Ch 23), including materials such as batteries,  
468 thermostats, lamps, cathode ray tubes, computers, telephones, answering machines, radios,  
469 stereo equipment, tape players/recorders, phonographs, video cassette players/recorders,  
470 compact disc players/recorders, calculators, some appliances, aerosol cans, fluorescent lamps  
471 and certain mercury-containing devices.
- 472           1.90 Unacceptable Waste. Any and all waste, including but not limited to, Hazardous  
473 Waste and Household Hazardous Waste, the acceptance or handling of which would cause a  
474 violation of any permit condition or legal or regulatory requirement, damage or threatened  
475 damage to CONTRACTOR'S equipment or facilities, or present a substantial endangerment to  
476 the health or safety of the public or CONTRACTOR'S employees; provided, that *de minimis*  
477 quantities or waste of a type and amount normally found in Garbage or Mixed Materials after  
478 implementation of programs for the safe Collection, Processing, treatment, and Disposal of  
479 Household Hazardous Waste in compliance with sections 41500 and 41802 of the California  
480 Public Resources Code shall not constitute Unacceptable Waste. Unacceptable Waste does

481 not include Used Oil, Used Oil Filters, dry cell or household batteries when placed for Collection  
482 as set forth in this Contract.

483 1.91 Work Day. Any day, Monday through Saturday that is not a holiday as set forth  
484 in Section 6.11 of this Contract.

## 485 **ARTICLE 2. REPRESENTATIONS AND WARRANTIES OF** 486 **CONTRACTOR**

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

489 2.01 Corporate Status. CONTRACTOR is a corporation duly organized, validly  
490 existing and in good standing under the laws of the State of California. It is qualified to transact  
491 business in the State of California and has the corporate power to own its properties and to  
492 carry on its business as now owned and operated and as required by this Contract.

493 2.02 Corporate Authorization. CONTRACTOR has full legal right, power, and  
494 authority to execute, deliver, and perform its obligations under this Contract. The Board of  
495 Directors of CONTRACTOR (or the shareholders if necessary) has taken all actions required by  
496 law, its articles of incorporation, its bylaws or otherwise to authorize the execution and delivery  
497 of this Contract. The persons signing this Contract on behalf of CONTRACTOR have authority  
498 to do so.

499 2.03 Contract Duly Executed. The Persons signing this Contract on behalf of  
500 CONTRACTOR have been authorized by CONTRACTOR to do so, and this Contract has been  
501 duly executed and delivered by CONTRACTOR in accordance with the authorization of its  
502 Board of Directors or shareholders, if necessary, and constitutes a legal, valid, and binding  
503 obligation of CONTRACTOR enforceable against CONTRACTOR in accordance with its terms.

504 2.04 No Conflict with Applicable Law or Other Documents. To the best of  
505 CONTRACTOR's knowledge, neither the execution and delivery by CONTRACTOR of this  
506 Contract nor the performance by CONTRACTOR of its obligations hereunder:

507 2.04.1 Conflicts with, violates or will result in a violation of any existing applicable  
508 law; or

509 2.04.2 Conflicts with, violates or will result in a breach or default under any term  
510 or condition of any existing judgment, order or decree of any court, administrative agency or  
511 other governmental authority, or of any existing Contract or instrument to which CONTRACTOR  
512 is a party, or by which CONTRACTOR or any of Contractor's properties or assets is bound; or

513 2.04.3 Will result in the creation or imposition of any lien, charge, or  
514 encumbrance of any nature whatsoever upon any of the properties or assets of CONTRACTOR  
515 which will interfere materially with CONTRACTOR'S performance hereunder.

516 2.05 No Litigation. There is no action, suit, proceeding or action at law or equity, or to  
517 the best of CONTRACTOR'S knowledge, any investigation before or by any court or  
518 governmental entity, pending or threatened against CONTRACTOR or otherwise affecting  
519 CONTRACTOR, wherein an unfavorable decision, ruling or finding, in any single case or in the  
520 aggregate, would materially adversely affect CONTRACTOR'S performance hereunder, or  
521 which in any way would adversely affect the validity or enforceability of this Contract, or which  
522 would have a material adverse effect on the financial condition of CONTRACTOR or its parent  
523 company.



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

4.01 General. CONTRACTOR covenants that it shall obtain and deliver to CITY the document set forth in Section 4.02 below and use its best efforts to deliver it on or before June 1, 2015. If such document is not delivered to CITY in satisfactory form by June 15, 2015, CITY may terminate this Contract with absolutely no continuing financial obligations to CONTRACTOR and may resort to the rights and remedies provided for in Article 29 hereof.

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

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

## ARTICLE 5. SERVICES PROVIDED BY CONTRACTOR

5.01 Grant of Exclusive Contract. Except as otherwise provided in this Contract, CONTRACTOR is herein granted an exclusive Contract to provide Collection Services within the Service Area. No other services shall be exclusive to CONTRACTOR.

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

5.03 Collection by Other Persons. Notwithstanding CONTRACTOR'S rights under this Contract as described above, the following materials may be Collected by Persons other than CONTRACTOR:

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

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

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

5.03.4 Recyclable Materials or Bulky Goods that are Source Separated at any Service Address by the Generator and donated or sold. Recyclable Materials are considered "donated or sold" so long as the Person collecting the Recyclable Materials does not receive a net payment from the Generator (including but not limited to any payment for

611 consulting and/or management fees related to the collection of any waste materials including  
612 Recyclable Materials);

613                   5.03.5           Beverage containers delivered for Recyclable Materials under the  
614 California Beverage Container Recyclable Materials Litter Reduction Act, section 14500, et seq.;

615                   5.03.6           Organic Materials removed from a Service Address by a  
616 gardening, landscaping or tree trimming service provider as an incidental part of a total service  
617 offered by that service provider rather than as a hauling service;

618                   5.03.7           Source Separated Recyclable Materials generated by Commercial  
619 Service Addresses including but not limited to those collected by a Person under contract to  
620 CITY and those collected through private arrangements between the Generator and the  
621 collection company, which are recycled at a recycling facility that holds all applicable permits;  
622 provided, however, that loads that contain more than ten (10) percent by weight or volume of  
623 non-recyclable material shall not be considered Source Separated Recyclable Materials;

624                   5.03.8           Discarded Materials removed from a Service Address in a Fixed  
625 Body vehicle by a property management, maintenance or cleanup service provider as an  
626 incidental part of the total on-property cleanup or maintenance service offered by the service  
627 provider rather than as a hauling service;

628                   5.03.9           Animal waste and remains from slaughterhouses and butcher  
629 shops or grease or vegetable oil waste for use as tallow;

630                   5.03.10          Waste vegetable oil used as an alternative fuel;

631                   5.03.11          Homogeneous organic by-products such as spent hops or coffee  
632 bean chaff which are generated by food product manufacturers and processors delivered to  
633 destinations other than solid waste or compost facilities and used as livestock feed;

634                   5.03.12          By-products of sewage treatment including sludge, grit and  
635 screenings;

636                   5.03.13          Hazardous Waste regardless of its source;

637                   5.03.14          Bulky Goods removed from a Service Address for a nominal  
638 charge by a retailer as an incidental part of a sale of merchandise; and

639                   5.03.15          Bulky Goods removed from a Service Address for a nominal  
640 charge by a reuse facility or reuse business.

641           5.04   Prohibition. Nothing in Section 5.03 shall allow the Collection, through the use of  
642 a Roll-Off Box, of Mixed Materials, Garbage, Organics, Bulky Goods, or SFD, MFD or CITY  
643 Recyclable Materials for a fee by a service provider whose primary service is hauling.

644           5.05   Use of Other Persons. CONTRACTOR acknowledges and agrees that CITY  
645 may permit other Persons besides CONTRACTOR to Collect any and all types of materials  
646 excluded from the scope of this Contract, as set forth above, without seeking or obtaining  
647 approval of CONTRACTOR.

648           5.06   Applicable Law. The scope of this Contract shall be interpreted to be consistent  
649 with applicable law, now and during the term of the Contract subject to provisions of Section 30.  
650 If future judicial interpretations of current law or new laws, regulations, or judicial interpretations  
651 limit the ability of CITY to lawfully provide for the scope of services as specifically set forth  
652 herein, CONTRACTOR agrees that the scope of the Contract will be limited to those services  
653 and materials which may be lawfully provided. In such an event, it shall be the responsibility of

654 CONTRACTOR to minimize the financial impact of such future judicial interpretations or new  
655 laws, subject to the other provisions of the Contract.

656

## ARTICLE 6. SERVICE STANDARDS

657 6.01 Service Standards. CONTRACTOR shall perform all Collection Services under  
658 this Contract in a thorough and professional manner. Subject to Section 29.05, Collection  
659 Services described in this Contract shall be performed regardless of weather conditions or  
660 difficulty of Collection.

661 6.02 Hours and Days of Collection.

662 6.02.1 SFD and MFD Collection Services shall be provided, commencing no  
663 earlier than 6:00 a.m. and terminating no later than 6:30 p.m., in accordance with the CITY  
664 Municipal Code, Monday through Friday with no service on Saturday (except for holiday service  
665 as set forth in Section 6.11 of this Contract in which case normal Collection hours may be  
666 utilized) or Sunday. The hours, days, or both of Collection may be extended due to  
667 extraordinary circumstances or conditions with the prior written consent of the Contract  
668 Manager.

669 6.02.2 Commercial Collection Services and CITY Collection Services shall be  
670 provided Monday through Saturday with limited Collection Services on Sunday.  
671 CONTRACTOR shall endeavor to route collection vehicles in a manner that minimizes noise  
672 and traffic impacts during critical periods of the day, including: near residential properties from 6  
673 pm to 6 am, near schools during pick-up and drop-off hours, in merchant districts during normal  
674 business hours, and in high traffic areas during peak commute hours. CONTRACTOR shall  
675 resolve complaints of noise and traffic impacts caused by CONTRACTOR'S activities to the  
676 satisfaction of CITY.

677 6.03 Transfer of Loads on Public Streets and Roads. CONTRACTOR is prohibited  
678 from transferring loads from one vehicle to another on any public right-of-way unless there is a  
679 necessity to do so because of road conditions, mechanical failure, truck fire or accidental  
680 damage to a vehicle without written permission from the Contract Manager.

681 6.04 Manner of Collection. CONTRACTOR shall provide Collection Services with as  
682 little disturbance as reasonably possible and shall leave any Cart or Bin in an upright position,  
683 with the lid closed, at the same point it was Collected without obstructing alleys, roadways,  
684 driveways, sidewalks or mail boxes. CONTRACTOR will not be responsible for Carts or Bins  
685 being moved or open due to weather conditions or other factors beyond its control, such as  
686 scavengers. CONTRACTOR shall also lock any Bin and close or lock as appropriate any  
687 Container enclosure which it opened or unlocked as part of Collection Services.

688 6.05 Record of Non-Collection. When any Discarded Material, or other material set  
689 out for regular or special Collection, is not Collected by CONTRACTOR for sufficient reason,  
690 CONTRACTOR shall leave a Non-Collection Notice. A copy of any Non-Collection Notice,  
691 along with the name and address of the party noticed, shall be delivered to the Contract  
692 Manager within twenty-four (24) hours of CITY'S request.

693 6.06 Containers.

694 6.06.1 Carts. Carts are to be hot-stamped, embossed, or laminated, with a  
695 unique identification number and the words "City of Oakland," and in-molded with the type of  
696 materials to be Collected (i.e., Garbage, Organic Materials, Recyclable Materials), name and  
697 phone number of CONTRACTOR, and instructions for proper usage. In-molding on the Carts

698 shall be on the lids. CONTRACTOR'S name shall not be included on the body of Carts.  
 699 Labeling and graphics of the Carts shall be approved by CITY. Carts shall not contain any type  
 700 of advertising without the written approval of the Contract Manager.

701 6.06.2 Bins. Bins, including those defined herein as Compactors are to be  
 702 marked with a unique identification number, labeled with the type of materials to be Collected  
 703 (i.e., Garbage, Organic Materials, Recyclable Materials), the size in cubic yards,  
 704 CONTRACTOR'S name and phone number and instructions for proper usage and be in good  
 705 working order. Labeling and graphics of the Bins shall be approved by CITY. Used Bins may  
 706 be utilized providing they are newly painted, properly marked, in good working order and free of  
 707 rust and holes. CITY retains the right to inspect any such used Bins and direct CONTRACTOR  
 708 to replace such used Bin if it is deemed to be not acceptable. Bins shall not contain any type of  
 709 advertising without the written permission and approval of the Contract Manager.

710 6.06.3 Roll-Off Boxes. Roll-Off Boxes, including those defined herein as  
 711 Compactors are to be marked with a unique identification number, labeled with the size in cubic  
 712 yards, CONTRACTOR'S name and phone number and instructions for proper usage, be in good  
 713 working order, and at the discretion of CITY have lids. Labeling and graphics of the Roll-Off  
 714 Boxes shall be approved by CITY. Used Roll-Off Boxes may be utilized, provided they are  
 715 newly painted, properly marked, in good working order and free of rust and holes. CITY retains  
 716 the right to inspect any such used Roll-Off Boxes and direct CONTRACTOR to replace such  
 717 used Roll-Off Box if it is deemed to be not acceptable.

718 6.06.4 Purchase, Distribution, and Collection of Carts and Bins. CONTRACTOR  
 719 shall be responsible for the purchase and distribution of fully assembled and functional  
 720 Containers to Service Addresses in the Service Area based on the type and level of service  
 721 received by each Service Address. CONTRACTOR shall also distribute Containers, as needed,  
 722 to new Service Addresses during the term of this Contract. The distribution shall be completed  
 723 no later than the next regularly scheduled Collection day after receipt of notification from CITY,  
 724 the Customer or the Service Recipient; provided, however, CONTRACTOR must receive the  
 725 notification at least six (6) Work Days prior to distribution.

726 6.06.4.1 CONTRACTOR shall be responsible for the Collection of  
 727 abandoned, used, discarded, or unwanted Mixed Materials or Organic Materials Containers in  
 728 the Service Area within six (6) Work Days of notification by CITY, a Service Recipient, or a  
 729 Customer. The Containers shall be repaired or, if repair is not practical, Recycled. This service  
 730 shall be provided at no additional cost to CITY, Customer or Service Recipient.

731 6.06.5 Repair or Replacement of Carts and Bins. CONTRACTOR shall be  
 732 responsible for repair or replacement of Carts and Bins and their component parts, including but  
 733 not limited to, hinged lids, wheels, axles and labels, as provided below. CONTRACTOR shall  
 734 also be responsible for securing replacement of all items covered by manufacturer warranty.

735 6.06.6 Replacement of Carts and Bins Provided Under Previous Contract. If  
 736 CONTRACTOR has, or obtains Carts provided under previous contract, then in lieu of providing  
 737 one hundred percent of new Carts, CONTRACTOR may replace at least twenty (20) percent of  
 738 the Carts provided under the previous contract at no cost or inconvenience to the Service  
 739 Recipient or Customer in the initial Contract Year. In particular, CONTRACTOR shall replace at  
 740 least the following number of Carts in each category:

	Mixed Material Carts	Organics Carts
SFD Service Addresses	20,400	20,400

MFD Service Addresses	2,000	n/a.
Commercial Service Addresses	400	n/a.

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

745 6.06.7 Replacement of Carts and Bins Damaged by CONTRACTOR.  
 746 CONTRACTOR'S employees shall take care to prevent damage to Carts or Bins by  
 747 unnecessary rough treatment. However, any Cart or Bin damaged by CONTRACTOR shall be  
 748 replaced or repaired by CONTRACTOR, at CONTRACTOR'S expense, no later than the next  
 749 regularly scheduled Collection day or within six (6) Work Days (whichever is later), at no cost or  
 750 inconvenience to the Service Recipient or Customer.

751 6.06.8 Replacement of Carts and Bins Due to Normal Wear and Tear. Upon  
 752 notification to CONTRACTOR by a Service Recipient or Customer of the need for replacement  
 753 or repair to a Cart(s) or Bin(s) due to normal wear and tear, CONTRACTOR shall replace or  
 754 repair such Cart(s) or Bin(s) at CONTRACTOR'S expense, by the next regularly scheduled  
 755 Collection day, or within six (6) Work Days (whichever is later) at no cost or inconvenience to  
 756 the Service Recipient or Customer.

757 6.06.9 Replacement of Carts and Bins Required Through No Fault of  
 758 CONTRACTOR. Upon notification to CONTRACTOR by CITY or a Service Recipient that the  
 759 Service Recipient's Mixed Materials or Organics Cart(s), or Bin(s) have been stolen or damaged  
 760 beyond repair through no fault of CONTRACTOR, CONTRACTOR shall deliver a replacement  
 761 Cart(s), or Bin(s) to the Service Address no later than the next regularly scheduled Collection  
 762 day, at no cost, subject to the limitations set forth below, or inconvenience to the Service  
 763 Recipient or Customer. Notwithstanding the foregoing, in cases where CONTRACTOR can  
 764 demonstrate that the replacement is due to factors other than CONTRACTOR mishandling or  
 765 damage, ordinary wear and tear, or third-party theft, CONTRACTOR may invoice the Customer  
 766 or Service Recipient requesting such a replacement in accordance with the "Cart Replacement"  
 767 Maximum Service Rate set forth in Exhibit 1 to this Contract or as may be adjusted under the  
 768 terms of this Contract from time to time. CONTRACTOR shall maintain records documenting all  
 769 Cart and Bin replacements occurring on a monthly basis.

770 6.06.10 Reporting Requirements for Replacements. No later than July 15,  
 771 2016 and annually thereafter during the term of this Contract, CONTRACTOR shall provide  
 772 CITY with an electronic report of Cart and Bin Replacements provided during the preceding  
 773 Contract Year in a form and format approved by CITY and using software approved by CITY. At  
 774 a minimum, the report shall include the size, type, and number of Bins and Carts replaced and  
 775 the reason for such replacement based upon one of the following five (5) categories: Missing;  
 776 Stolen; Damaged; Destroyed; or Normal Wear and Tear. The report shall also include a  
 777 calculation of the base number for Cart and Bin replacements under Section 6.06.9 for the prior  
 778 Contract Year and the current Contract Year.

779 6.06.11 Cart or Bin Change. As provided below, upon notification to  
 780 CONTRACTOR by CITY or a Customer that a change in the size or number of Carts or Bins is  
 781 required, including a change to provide additional Mixed Materials or Organics capacity

782 CONTRACTOR shall deliver such Carts or Bins to the Service Address by the next regularly  
783 scheduled Collection day or within six (6) Work Days (whichever is later).

784 6.06.11.1 Each SFD Service Address shall be entitled to receive two  
785 (2) free Mixed Materials Cart exchanges (meaning an increase or decreased Cart size) and two  
786 (2) free Organic Materials Cart exchanges during the initial Contract Year, and once every year  
787 thereafter during the term of this Contract.

788 6.06.11.2 Each MFD Service Address shall be entitled to receive two  
789 (2) free service exchanges in the first Contract Year. Beginning on July 1, 2016, each MFD  
790 Service Address shall be entitled to receive one (1) free service exchanges per Contract Year  
791 during the term of this Contract. For the purposes of this Section, a service exchange  
792 represents the exchange of as few as one (1) and as many as the total number of Carts and  
793 Bins provided by CONTRACTOR to the Service Address.

794 6.06.11.3 Each CITY Facility shall be entitled to receive one (1) free  
795 service exchange per Contract Year during the term of this Contract. For the purposes of this  
796 Section, a service exchange represents the exchange of as few as one (1) and as many as the  
797 total number of Carts and Bins provided by CONTRACTOR to CITY Facility.

798 6.06.11.4 CONTRACTOR shall be compensated for the cost of those  
799 exchanges in excess of the limitations set forth herein per Contract Year, in accordance with the  
800 "Cart or Bin Exchange" Maximum Service Rate as set forth in Exhibit 1 of this Contract.

801 6.06.12 Ownership of Carts. Ownership of Carts shall rest with  
802 CONTRACTOR and upon termination of this Contract, CONTRACTOR shall be responsible for  
803 removing all Carts in service from the Service Area. In the case of the termination of this  
804 Contract prior to the expiration of the initial term or optional extension term, CITY shall have the  
805 right to take temporary possession of the Carts and shall retain such possession for a  
806 reasonable period until satisfactory arrangements can be made to provide Collection Services  
807 using other equipment (not to exceed five (5) months). There shall be no monies owing to  
808 CONTRACTOR from CITY for such use of the carts. Upon the receipt of written notice from  
809 CITY, CONTRACTOR shall submit to the Contract Manager an inventory of Carts, including  
810 their locations.

811 6.06.13 Ownership of Bins. Ownership of Bins shall rest with  
812 CONTRACTOR and upon termination of this Contract, CONTRACTOR shall be responsible for  
813 removing all Bins in service from the Service Area. In the case of the termination of this  
814 Contract prior to the expiration of the initial term or optional extension term, CITY shall have the  
815 right to take temporary possession of the Bins and shall retain such possession until satisfactory  
816 arrangements can be made to provide Collection Services using other equipment (not to exceed  
817 five (5) months). There shall be no monies owing to CONTRACTOR from CITY for such use of  
818 the Bins. Upon the receipt of written notice from CITY, CONTRACTOR shall submit to the  
819 Contract Manager an inventory of Bins, including their locations.

820 6.06.14 Ownership of Roll-Off Boxes. Ownership of Roll-Off Boxes shall  
821 rest with CONTRACTOR and upon termination of this Contract, CONTRACTOR shall be  
822 responsible for removing all Roll-Off Boxes in service from the Service Area. In the case of this  
823 termination of the Contract prior to the expiration of the initial term or optional extension term  
824 due to the default of CONTRACTOR as set forth in Article 29 of this Contract, CITY shall have  
825 the right to take temporary possession of the Roll-Off Boxes and shall retain such possession  
826 until satisfactory arrangements can be made to provide Collection Services using other

827 equipment (not to exceed three (3) months). There shall be no monies owing to  
828 CONTRACTOR from CITY for such use of the Roll-Off Boxes.

829 6.07 Compactors. Compactor equipment may be owned by the Customer or leased  
830 from CONTRACTOR or any other source provided the Compactor Container is compatible with  
831 CONTRACTOR'S Collection vehicles.

832 6.08 Annual Inspection and Cleaning of Bins and Roll-Off Boxes. At least once each  
833 Contract Year, at no charge to CITY or the Customer, CONTRACTOR shall inspect all  
834 CONTRACTOR provided Bins and Roll-Off Boxes at the Service Address and shall replace  
835 those Bins or Roll-Off Boxes needing cleaning or repair, with clean, undamaged Bins or Roll-Off  
836 Boxes, and remove the dirty or damaged Bins or Roll-Off Boxes for cleaning or repair.

837 6.09 Extra Service Tags. CONTRACTOR shall make Mixed Materials Extra Service  
838 Tags readily available to SFD and MFD Service Addresses at a minimum through the mail, at  
839 CONTRACTOR'S office at [Insert Address] and at other retail locations as determined by  
840 CONTRACTOR. CONTRACTOR shall maintain a sufficient inventory of Mixed Materials and  
841 Organic Materials Extra Service Tags to accommodate Collection of requests from Service  
842 Recipients. Mixed Materials Extra Service Tags and Organic Materials Extra Service Tags sold  
843 by CONTRACTOR shall be priced in accordance with the Maximum Service Rates set forth in  
844 Exhibit 1.

845 6.10 Labor and Equipment. CONTRACTOR shall provide and maintain all labor,  
846 equipment, tools, facilities, and personnel supervision required for the performance of  
847 CONTRACTOR'S obligations under this Contract. CONTRACTOR shall at all times have  
848 sufficient backup equipment and labor (subject to Service Resumption Protocol) to fulfill  
849 CONTRACTOR'S obligations under this Contract. No compensation for CONTRACTOR'S  
850 services or for CONTRACTOR'S supply of labor, equipment, tools, facilities or supervision shall  
851 be provided or paid to CONTRACTOR by CITY or by any Customer except as expressly  
852 provided by this Contract.

853 6.11 Holiday Service. January 1, Thanksgiving Day, and December 25<sup>th</sup> shall be  
854 designated<sup>1</sup> legal holidays. CONTRACTOR shall not be required to provide Collection Services  
855 on the designated holidays. In any week in which one of these holidays falls on a Work Day,  
856 and CONTRACTOR elects to not provide Collection Services, SFD Collection Services for the  
857 holiday and each Work Day thereafter may be delayed one (1) Work Day for the remainder of  
858 the week with normally scheduled Collection Services being performed on the next Work Day.  
859 MFD, Commercial and CITY Collection Services shall be adjusted as agreed between  
860 CONTRACTOR and the Customer but must meet the minimum frequency requirement of one  
861 (1) time per week. CONTRACTOR shall notify Service Addresses and CITY at least thirty (30)  
862 calendar days in advance of changes to the Collection day because of a holiday schedule.

863 6.12 Processing and Disposal.

864 6.12.1 Compliance with Regulations. All materials Collected under this Contract  
865 shall be delivered to facilities that comply with the Department of Resources Recycling and  
866 Recovery regulations.

867 6.12.1.1 Regulatory Inquiry. In those instances where  
868 CONTRACTOR is required by any law or regulation to submit written or electronic materials  
869 related to the provision of Collection Services under the terms of this Contract to any regulatory  
870 agency, CONTRACTOR shall submit copies of such written or electronic materials to CITY  
871 simultaneously with CONTRACTOR'S submittal to such regulatory agency.

872           6.12.2 Permits and Approvals. CONTRACTOR must assure that all facilities  
873 selected by CONTRACTOR shall possess all necessary permits and approvals by local  
874 enforcement agencies to be in full compliance with all regulatory agencies to conduct all  
875 operations at the approved location. CONTRACTOR shall, upon written request from CITY,  
876 arrange for the facilities selected by CONTRACTOR to provide copies of facility permits, notices  
877 of violations, inspection areas or concerns, or administrative action to correct deficiencies  
878 related to the operation. Failure to provide facility information shall result in the levy of  
879 liquidated damages as specified in Article 22 of this Contract and may result in CONTRACTOR  
880 being in default under this Contract.

881           6.12.3 Disposal and Mixed Materials Processing Facilities. Except as set forth  
882 below, all Mixed Materials Collected as a result of performing Collection Services shall be  
883 transported to the Disposal Facility or the Mixed Materials Processing Facility. In the event the  
884 Facility being utilized by CONTRACTOR is closed on a Work Day, CONTRACTOR shall  
885 transport and deliver the Mixed Materials to such other legally permitted Disposal Facility or  
886 Mixed Materials Processing Facility as is approved by CITY. Failure to comply with this  
887 provision shall result in the levy of liquidated damages as specified in Article 22 of this Contract  
888 and may result in CONTRACTOR being in default under this Contract.

889           6.12.4 Organic Materials Processing Facility. All Organic Materials Collected as  
890 a result of performing Collection Services shall be delivered to a fully permitted Organic  
891 Materials Processing Facility as designated by CONTRACTOR and approved by CITY. In the  
892 event the facility is closed on a Work Day, CONTRACTOR shall transport and deliver the  
893 Organic Materials to such other legally permitted facility as is approved by CITY.  
894 CONTRACTOR shall ensure that all Organic Materials Collected pursuant to this Contract, is  
895 delivered to the approved Organic Materials Processing Facility. Failure to comply with this  
896 provision shall result in the levy of liquidated damages as specified in Article 22 of this Contract  
897 and may result in CONTRACTOR being in default under this Contract.

898           6.13 Inspections. CITY shall have the right to inspect CONTRACTOR'S facilities or  
899 Collection vehicles and their contents at any time while operating inside or outside the Service  
900 Area.

901           6.14 Commingling of Materials.

902           6.14.1 Mixed Materials, and Organic Materials. Except as provided in Section  
903 28.03.12, Mixed Materials and Organic Materials that have been Source Separated and set out  
904 for Collection shall not be commingled by CONTRACTOR prior to delivery to a transfer facility,  
905 the Disposal Facility, the Mixed Materials Processing Facility, MRF or Organics Processing  
906 Facility as appropriate without the express prior written authorization of the Contract Manager  
907 and such authorization shall not be unreasonably withheld.

908           6.14.2 Mixed Materials Collected in Oakland. CONTRACTOR may not  
909 commingle Mixed Materials Collected pursuant to this Contract, with other material Collected by  
910 CONTRACTOR inside or outside the Service Area prior to delivery to a transfer facility, the  
911 Disposal Facility, or a Mixed Materials Processing Facility without the authorization of the  
912 Contract Manager and such authorization shall not be unreasonably withheld. However, if  
913 permission is given, CONTRACTOR must allocate tons among the cities based on the  
914 methodology set forth in Exhibit [ ].

915           6.14.3 Material Separation. Except for those materials Collected as part of the  
916 provision of SFD, MFD or City Bulky Goods Collection Services, Mixed Materials, Organic  
917 Materials, Recyclable Materials, and Bulky Goods shall not be mixed together in

918 CONTRACTOR'S Collection equipment. Each category of material Collected shall be kept  
919 separated according to type or classification.

920         6.15 Spillage and Litter. CONTRACTOR shall not litter premises in the process of  
921 providing Collection Services or while its vehicles are on the road. CONTRACTOR shall  
922 transport all materials Collected under the terms of this Contract in such a manner as to prevent  
923 the spilling or blowing of such materials from CONTRACTOR'S vehicle. CONTRACTOR shall  
924 exercise all reasonable care and diligence in providing Collection Services so as to prevent  
925 spilling or dropping of Discarded Materials and shall immediately, at the time of occurrence,  
926 clean up such spilled or dropped materials in accordance with the "Spill Response Plan"  
927 approved by CITY in Exhibit 10 which is attached to and included in this Contract.  
928 CONTRACTOR shall commence clean up any spillage or litter by end of Work Day upon notice  
929 from the Contract Manager.

930         6.15.1 Litter Cleanup. CONTRACTOR is required to clean up reasonable  
931 amounts and types of litter around the area of the Container, whether or not CONTRACTOR  
932 has caused the litter. In the event of more than one (1) instance in any six (6) month period,  
933 not caused by CONTRACTOR, requiring CONTRACTOR to clean up litter around the  
934 Containers at a specific Service Address, CONTRACTOR shall make reasonable efforts to  
935 contact the Service Recipient and work with the Service Recipient to resolve the litter problem.  
936 In the event the litter problem cannot be resolved CONTRACTOR may bill such Customer in  
937 accordance with the "litter cleanup" Maximum Service Rate as set forth in Exhibit 1 to this  
938 Contract.

939         6.15.2 Street Litter Containers. Except for Bulky Goods and/or Unacceptable  
940 Waste, CONTRACTOR is required to clean up litter in and around street litter Containers  
941 regardless of whether CONTRACTOR has caused the litter, and regardless of whether the  
942 amount of litter is considered excessive. Should CONTRACTOR discover the presence of  
943 Bulky Goods or Unacceptable Waste, and/or if a specific street litter Container has excessive  
944 amounts of litter during four (4) consecutive cleanups, CONTRACTOR shall immediately notify  
945 CITY. Upon notification, CITY shall determine the process for removing the Bulky Goods,  
946 Unacceptable Waste, and/or excessive amounts of litter, including characterizing the pickup as  
947 one of CONTRACTOR's required illegal dumping pickups. CITY and CONTRACTOR shall also  
948 meet and confer to discuss whether additional steps are necessary to mitigate excessive litter.

949         6.15.3 Overage Cleanup. CONTRACTOR is required to Collect Discarded  
950 Materials, including materials not contained in bags with affixed Mixed Materials or Organics  
951 Excess Service Tags, placed for Collection in excess of the capacity of the Container.  
952 CONTRACTOR shall be compensated for Collection of Overages not contained in bags with  
953 affixed Mixed Materials or Organics Excess Service Tags in accordance with the "Overage"  
954 Maximum Service Rate set forth in Exhibit 1 to this Contract.

955         6.15.4 Damage to Public Streets. In the event where damage to public streets  
956 within CITY is caused by a hydraulic oil spill from CONTRACTOR'S vehicle, or a vehicle load  
957 fire that is dumped onto the street for containment purposes, CONTRACTOR shall be  
958 responsible for all repairs to return the street to the same condition it was in prior to the spill or  
959 fire. CONTRACTOR shall also be responsible for all clean-up activities related to the spill or  
960 fire. Repairs and clean-up shall be performed in a manner satisfactory to the Contract Manager  
961 and at no cost to CITY.

962         6.15.5 Oil, Other Vehicle Fluid Spills or Vehicle Load Fires. In the event of a  
963 vehicle fluid spill from CONTRACTOR'S vehicle or vehicle load fire, CONTRACTOR shall

964 immediately respond in the manner as set forth in the "Spill Response Plan" approved by CITY  
965 in Exhibit 10 of this Contract.

966           6.16 Ownership of Materials.

967                   6.16.1 Title to Mixed Materials, Organic Materials, Recyclable Materials and  
968 Bulky Goods shall pass to CONTRACTOR at such time as said materials are placed in a  
969 Container and set out for Collection, or for those materials that are not required to be  
970 Containerized, at the time the materials are set out for Collection.

971                   6.16.2 Title to other materials Collected as part of other Collection Services  
972 offered by CONTRACTOR under the terms of this Contract shall pass to CONTRACTOR at the  
973 time the material is placed in a Container utilized by CONTRACTOR for Collection or at a CITY  
974 approved Drop-off site; provided, however, title to Unacceptable Waste shall remain with the  
975 Generator unless expressly accepted by CONTRACTOR.

976           6.17 Hazardous Waste. Except regarding services provided outside the scope of this  
977 Contract, under no circumstances shall CONTRACTOR'S employees knowingly Collect  
978 Hazardous Waste, or knowingly remove unsafe or poorly containerized Hazardous Waste, from  
979 a Collection Container. If CONTRACTOR determines that material placed in any Container for  
980 Collection is Hazardous Waste, or other material that may not legally be accepted at the  
981 Disposal Facility or one of the Processing facilities, or presents a hazard to CONTRACTOR'S  
982 employees, CONTRACTOR shall have the right to refuse to accept such material. The  
983 Generator shall be contacted by CONTRACTOR and requested to arrange for proper Disposal.  
984 If the Generator cannot be reached immediately, CONTRACTOR shall, before leaving the  
985 premises, leave a Non-Collection Notice that indicates the reason for refusing to Collect the  
986 material and submit an incident report to Contract Manager.

987                   6.17.1 If Hazardous Waste is found in a Collection Container that poses an  
988 imminent danger to people property, or the environment, CONTRACTOR shall immediately call  
989 911 to notify the City of Oakland Fire Department. CONTRACTOR shall immediately notify  
990 CITY of any Hazardous Waste that has been identified, and submit an incident report to  
991 Contract Manager.

992                   6.17.2 If Hazardous Waste is identified at the time of delivery to the Disposal  
993 Facility, or a Processing facility and the Generator cannot be identified, CONTRACTOR shall be  
994 solely responsible for handling and arranging transport and disposition of the Hazardous Waste.

995           6.18 Regulations and Record Keeping. CONTRACTOR shall comply with emergency  
996 notification procedures required by applicable laws and regulatory requirements. All records  
997 required by regulations shall be maintained at CONTRACTOR'S facility. These records shall  
998 include waste manifests, waste inventories, waste characterization records, inspection records,  
999 incident reports, and training records.

1000           6.19 Transition. CONTRACTOR understands and agrees that the time between a  
1001 July/August 2014 formal Contract signing and July 1, 2015, is intended to provide  
1002 CONTRACTOR with ample and sufficient time to, among other things, order equipment, prepare  
1003 necessary routing schedules and route maps, obtain any permits and licenses, establish/build  
1004 facilities and begin the public awareness campaign as part of CONTRACTOR'S transition  
1005 program as specified in Exhibit 6, which is attached to and included in this Contract.

1006           6.20 Property Damage. CONTRACTOR shall be responsible for the repair or  
1007 replacement, if repair is not adequate, of any damages to public or private property caused by  
1008 CONTRACTOR during the provision of Collection Services.

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**ARTICLE 7. CHARGES AND RATES**

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

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

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7.01.2 Annual Rate Adjustment. On July 1, 2016, and each July 1 thereafter during the term of the Contract (each an "Adjustment Date"), the Maximum Service Rates shall be adjusted by an "Annual Rate Adjustment." The Annual Rate Adjustment will include the Refuse Rate Index adjustment (Section 7.16.2 and Exhibit 2), and adjustments due to changes in Franchise Fees (Section 7.01.3) and Changes in Government Fees (Section 7.01.4).

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

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

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7.01.3.1.1. Determine item weight of Franchise Fees:

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

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

1054 7.01.3.1.3. Add 7.01.3.1.2 to the MM&O RRI adjustment (along  
1055 with Government Fee adjustments, if any) to arrive at the Annual Rate Adjustment.<sup>1</sup>

1056 7.01.4 Changes in Government Fees. On July 1, 2015, Maximum Service Rates  
1057 will be adjusted to capture new and increased Government Fees/Taxes (collection, processing  
1058 and disposal) since January 1, 2013.

1059 7.01.4.1 The Maximum Service Rates shall be adjusted on each  
1060 Adjustment Date to fully capture CONTRACTOR's increased costs based on new or increased  
1061 Government Fees (collection, processing and disposal) implemented or to be implemented  
1062 since the previous Adjustment Date (or July 1, 2015 regarding the July 1, 2016 adjustment).  
1063 For purposes of this Section, "Government Fees" are surcharges, fees, assessments, taxes  
1064 (non-income), licenses, and other amounts payable to federal, state or local authorities in  
1065 relation to CONTRACTOR's performance hereunder. Specifically, Government Fees include,  
1066 but are not limited to, San Leandro Mitigation (Franchise) Fee, San Leandro Business Tax,  
1067 Alameda County LEA Fee, and, regarding Disposal RRI Government Fees, those listed in Form  
1068 2 of CONTRACTOR's January 9, 2013 SG3 proposal.

1069 7.01.4.2 The three (collection, processing, and disposal)  
1070 Government Fees/Taxes adjustments will be calculated prior to the upcoming July 1 Adjustment  
1071 Date as follows:

1072 7.01.4.2.1. Determine item weight of each Government  
1073 Fees/Taxes Cost Category:

1074 (Total Government Fees/Taxes for previous calendar year ending December 31) / (Total  
1075 Allowable Expenses for all Cost Categories under MM&O Contract for previous calendar  
1076 year ending December 31))

1077 7.01.4.2.2. Determine percent change of each Government  
1078 Fees/Taxes Cost Category for upcoming July 1 – June 30 period:

1079 ((Total Government Fees/Taxes (on per ton basis) for upcoming July 1 – June 30) -  
1080 (Total Government Fees/Taxes (on a per ton basis) for the just completed July 1 –  
1081 June 30)) / (Total Government Fees/Taxes (on a per ton basis) for the just completed  
1082 July 1 – June 30)

1083 7.01.4.2.3. Multiply the result of 7.01.4.2.1 by the result of  
1084 7.01.4.2.2 to determine the weighted percentage change of each Government Fees/Taxes Cost  
1085 Category.

1086 7.01.4.2.4. Add 7.01.4.2.3 to the MM&O RRI adjustment (along  
1087 with Franchise Fee adjustments, if any) to arrive at the Annual Rate Adjustment.

1088 7.01.4.3 In the event of a new Government Fee/Tax, or a change in  
1089 an existing Government Fee/Tax, which becomes effective at some time other than July 1 of  
1090 any year, CONTRACTOR shall be compensated for such change through the inclusion of a  
1091 "Retroactive Element" in the next Annual Rate Adjustment. However, in the event that the

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<sup>1</sup> For purposes of clarity, the Franchise Fee adjustment and three Government Fee adjustments are not included in the MM&O RRI adjustment, but are added to the MM&O RRI adjustment to arrive at the Annual Rate Adjustment. As such, these four adjustments are not subject to the caps as provided in Section 7.6.2.1 of the Contract.

1092 Government Fee/Tax is imposed by CITY, a rate adjustment shall occur at the time such fee  
1093 becomes effective. CITY and CONTRACTOR agree that the "Retroactive Element" shall be an  
1094 amount needed to compensate CONTRACTOR for increases in Government Fees/Taxes paid  
1095 during the period from the inception of the fee increase through the subsequent June 30 and  
1096 shall not include interest, overhead, or any other costs of any type. The "Retroactive Element"  
1097 shall only be included in the rate structure for twelve (12) months or that period necessary to  
1098 allow CONTRACTOR to recover all retroactive amounts, if less than twelve (12) months, and  
1099 shall be removed prior to calculating the rates to be set as of the subsequent July 1. However,  
1100 no governmental fees or charges to which CONTRACTOR agrees contractually or negotiates  
1101 shall be passed through to Customers unless agreed to in writing by CITY.

1102           7.01.5 Payment of Governmental Fees. CONTRACTOR shall pay, when and as  
1103 due, any and all governmental fees to the appropriate federal, State, regional, or local  
1104 governmental entities that levied the fees, and shall provide CITY with proof of such payments  
1105 promptly upon request.

1106           7.02 CONTRACTOR Billing. CONTRACTOR shall be responsible for the billing and  
1107 collection of payments for all Collection Services. The rates charged by CONTRACTOR to  
1108 Customers for the provision of Collection Services shall not exceed the Maximum Service Rates  
1109 authorized by CITY and attached in Exhibit 1 to this Contract and as adjusted under the terms of  
1110 this Contract. CITY shall approve the format and text for all Customer bills and notices. Billing  
1111 errors identified by CONTRACTOR or Customer shall be corrected within two (2) business  
1112 days. Customers who notified CONTRACTOR of billing errors shall either be provided with a  
1113 statement credit or sent a revised bill within three (3) business days after the error is corrected.  
1114 CONTRACTOR shall use the mailing address provided by the Customer.

1115           7.03 CONTRACTOR as Billing Agent. CONTRACTOR shall Collect Maximum  
1116 Recycling Service Rates as billing agent for services provided to Customers by CITY'S  
1117 Residential Recycling Contractor. CONTRACTOR shall base its billings for Residential  
1118 Recycling Collection Services on the Maximum Recycling Service Rates as set forth in Exhibit 1  
1119 and Customer information provided by the Residential Recycling Contractor and/or CITY as  
1120 appropriate. [This may change after a final determination is made as to who is going to provide  
1121 the actual dwelling unit count for the invoices – the RR Contractor or the City.]

1122           7.04 Production of SFD Customer Invoices. CONTRACTOR shall invoice SFD  
1123 Customers for SFD Collection Services and SFD Recycling Collection Services in advance of  
1124 service, on a quarterly basis beginning July 1, 2015. The invoice shall be remitted to the  
1125 Customer no earlier than the first day of the period for which the service is being billed. The  
1126 invoice shall be produced in a form and format that is approved by CITY.

1127           7.04.1 The Collection Services rate shall be based on Container size and  
1128 frequency of Collection and include all costs of providing Collection Services including  
1129 Processing, Disposal and franchise fee costs. The SFD Recycling Collection Services rate shall  
1130 be a flat maximum Per Dwelling Unit rate as provided by CITY and any ancillary charges as  
1131 may have been provided by the Residential Recycling Contractor in the manner set forth in  
1132 Section 7.04.2 below.

1133           7.04.2 No less than fifteen (15) calendar days before the first day of each  
1134 monthly billing period beginning on August 1, 2015, the Residential Recycling Contractor may  
1135 provide a SFD ancillary service invoice to CONTRACTOR for any ancillary charges that it may  
1136 have incurred. The ancillary service invoice is to be produced in the form and format approved  
1137 by CITY and include, at a minimum, the Customer name, Service Address and billing address  
1138 along with a specific description of each ancillary charge. To the extent the invoice is received

1139 in a timely manner and contains the necessary information in the required form and format  
1140 CONTRACTOR shall include those ancillary charges in the invoices prepared for the upcoming  
1141 billing cycle. In the event the ancillary service invoice is not received in a timely manner or the  
1142 information is not provided in the required form and format, CONTRACTOR shall notify CITY  
1143 and the Residential Recycling Contractor of the timing or format discrepancies and shall not be  
1144 required to include the ancillary charges in the invoices prepared for the upcoming billing cycle.  
1145 [Depending upon who is awarded the contract, this may be deleted]

1146 7.05 Production of MFD Customer Invoices. CONTRACTOR shall invoice MFD  
1147 Customers for MFD Collection Services and MFD Recycling Collection Services in advance, not  
1148 less than monthly beginning July 1, 2015. The invoice shall be remitted to the Customer no  
1149 earlier than the first day of the period for which the service is being billed. The invoice shall be  
1150 produced in a form and format that is approved by CITY.

1151 7.05.1 The Maximum Collection Services Rates shall be based on Container  
1152 size and frequency of Collection and include all costs of providing Collection Services including  
1153 Processing, Disposal and franchise fee costs. The MFD Recycling Collection Services rate  
1154 shall be a flat maximum Per Dwelling Unit rate as provided by CITY and any ancillary charges  
1155 as may have been provided by the Residential Recycling Contractor in the manner set forth in  
1156 Section 7.05.2 below.

1157 7.05.2 No less than fifteen (15) calendar days before the first day of each billing  
1158 period beginning with the August 1, 2015 billing period, the Residential Recycling Contractor  
1159 may provide a MFD ancillary service invoice to CONTRACTOR for any ancillary charges that it  
1160 may have incurred. The ancillary service invoice is to be produced in the form and format  
1161 approved by CITY and include, at a minimum, the Customer name, Service Address and billing  
1162 address along with a specific description of each ancillary charge. To the extent the invoice is  
1163 received in a timely manner and contains the necessary information in the required form and  
1164 format CONTRACTOR shall include those ancillary charges in the invoices prepared for the  
1165 upcoming billing cycle. In the event the ancillary service invoice is not received in a timely  
1166 manner or the information is not provided in the required form and format, CONTRACTOR shall  
1167 notify CITY and the Residential Recycling Contractor of the timing or format discrepancies and  
1168 shall not be required to include the ancillary charges in the invoices prepared for the upcoming  
1169 billing cycle. [Depending upon who is awarded the contract, this may be deleted]

1170 7.06 Production of Commercial Customer Invoices. CONTRACTOR shall invoice  
1171 Commercial Customers for Commercial Collection Services, in arrears but no less than twelve  
1172 (12) times per year. Invoices shall be remitted no earlier than the first day of the month  
1173 following the month for which the service is being billed. The invoice shall be produced in a  
1174 form and format that is approved by CITY. The Commercial invoice shall include at a minimum,  
1175 a Collection rate which shall be based on Container size and frequency of Collection and  
1176 include all costs of providing Collection Services including Processing, Disposal and franchise  
1177 fee costs.

1178 7.07 Invoices for Temporary Roll-Off Boxes. Customers utilizing temporary Roll-Off  
1179 Boxes shall be invoiced in arrears of the provision of service although a deposit may be required  
1180 in advance.

1181 7.08 Partial Month Service. If, during a month, a Customer is added to or deleted  
1182 from CONTRACTOR'S Service Area, CONTRACTOR'S billing shall be pro-rated based on the  
1183 service rate established in Exhibit 1 divided by four (4), and multiplied by the number of actual  
1184 weeks in the month that service was provided to the Customer. CONTRACTOR shall refund  
1185 customers who terminate service any pre-paid amount.

1186 7.09 Customer Self Haul. On or before July 15, 2015 and annually thereafter during  
1187 the term of this Contract, CITY shall provide CONTRACTOR with an electronic list of those  
1188 Service Addresses that have obtained a self-haul permit. Beginning August 15, 2015 and  
1189 monthly thereafter during the term of this Contract, CITY shall provide an electronic update of  
1190 any additional Service Addresses that have obtained a self-haul permit.

1191 7.10 CITY Provided Billing Inserts. CITY may provide educational and other material  
1192 to CONTRACTOR for inclusion in the invoices provided by CONTRACTOR to SFD, MFD and  
1193 Commercial Customers as set forth in Article 17.

1194 7.11 Methods of Payment. CONTRACTOR shall provide the means for Customers to  
1195 pay bills through the following methods: cash, checks, credit cards, internet payment service or  
1196 automatic withdrawal from bank account. On-line (E-Pay) bill methods shall be password  
1197 protected and comply with federal regulations protecting the privacy of Customer credit  
1198 information. CONTRACTOR shall provide evidence of such security certifications and advise  
1199 CITY of CONTRACTOR'S security measures implemented for on-line payment.

1200 7.12 Delinquent Service Accounts.

1201 7.12.1 SFD invoices shall be delinquent when they are unpaid on the forty-fifth  
1202 (45th) day of the quarterly billing cycle. CONTRACTOR may charge late fees as set forth in  
1203 Section 7.13.1 and take such action as is legally available to collect or cause collection of past  
1204 due amounts, including requesting permission of CITY to terminate Collection Services in  
1205 accordance with the process set forth below.

1206 7.12.2 MFD invoices shall be delinquent when they are unpaid on the last day of  
1207 the monthly billing cycle. CONTRACTOR may charge late fees as set forth in Section 7.13.1  
1208 and take such action as is legally available to collect or cause collection of past due amounts,  
1209 including requesting permission of CITY to terminate Collection Services in accordance with the  
1210 process set forth below.

1211 7.12.3 Commercial invoices shall be delinquent when they are unpaid on the last  
1212 day of the monthly billing cycle. CONTRACTOR may charge late fees as set forth in Section  
1213 7.13.1 and take such action as is legally available to collect or cause collection of past due  
1214 amounts, including requesting permission of CITY to terminate Collection Services in  
1215 accordance with the process set forth below.

1216 7.13 Delinquent Service Account Termination Process. CONTRACTOR may  
1217 implement the following service termination process for SFD, MFD and Commercial Customers  
1218 whose accounts are delinquent.

1219 7.13.1 CONTRACTOR may charge a delinquent Customer a late fee which is  
1220 the greater of Five Dollars (\$5.00) or one and one half (1.5) percent per month (not  
1221 compounded). CONTRACTOR may take such action as is legally available to collect or cause  
1222 collection of such past due amounts.

1223 7.13.2 CONTRACTOR may issue a delinquency notice at any point after the  
1224 account becomes delinquent. Sections 7.13.2.1 through 17.13.12 outline processes regarding  
1225 notification and cure of such delinquencies and associated issues, including without limitation  
1226 regarding notification and collection of delinquencies, termination of service, and CITY's option  
1227 to subscribe to service on behalf of delinquent SFD and MFD property owners to whom  
1228 CONTRACTOR has terminated service and to impose special assessments against delinquent  
1229 properties to recover the costs of such service. With respect to the timelines related to the  
1230 delinquency notices and hearings set forth in Sections 7.13.2.1 through 17.13.12, CITY

1231 reserves the right to modify the timelines by written policy adopted by the City Administrator, or  
1232 his or her designee, after consultation with CONTRACTOR.

1233                               7.13.2.1           Delinquency notice will be sent to the property owner and  
1234 billing address.

1235                               7.13.2.2           Delinquency notice will include information on Hearing  
1236 scheduled approximately fifteen (15) calendar days after date of the notice to dispute the non-  
1237 payment.

1238                               7.13.2.3           Delinquency notice will specify that failure to pay the bill  
1239 may result in termination of service and that CITY will deem lack of service to be a nuisance.

1240                               7.13.2.4           For SFD and MFD Customers, delinquency notice will  
1241 further provide that CITY may, in order to abate the nuisance, subscribe on behalf of the  
1242 property owner at the property owner's expense beginning with the next billing cycle and impose  
1243 as special assessment against the property on which the nuisance is maintained.

1244                               7.13.3 CONTRACTOR, subject to its compliance with the requirements of  
1245 Section 7.13, has the right to terminate service if the bill remains unpaid on the forty-fifth (45th)  
1246 day after issuing the delinquency notice.

1247                               7.13.4 CONTRACTOR and CITY will hold hearing concerning delinquent bills on  
1248 the date specified in the delinquency notice (typically the sixtieth (60th) day of the billing cycle).

1249                               7.13.5 Following the Hearing (typically the sixty-first (61st) day of the billing  
1250 cycle), CONTRACTOR, on CITY'S behalf, will send final delinquency notice to property owner,  
1251 billing address, and Service Address for the accounts with a past due balance notifying them  
1252 that service will be terminated by CONTRACTOR on the ninetieth (90th) day of the billing, if  
1253 CONTRACTOR does not receive payment, and that CITY may declare the failure to maintain  
1254 service for the property a nuisance. For SFD and MFD Customers, the final delinquency notice  
1255 shall further provided that CITY may (a) subscribe to service on the property owner's behalf at  
1256 the property owner's expense to abate the nuisance; and (b) impose a special assessment on  
1257 the property for the costs associated with abating the nuisance.

1258                               7.13.6 No sooner than the first day of the next billing cycle, CONTRACTOR shall  
1259 provide CITY a list of properties (Service Addresses) to which it will stop service for non-  
1260 payment. The list is to be produced in the form and format approved by CITY and include, at a  
1261 minimum, the Customer name, Service Address and billing address, assessor's parcel number  
1262 (APN), Customer service level (i.e., number and size of Containers, frequency of Collection),  
1263 and Customer billing rate for the next billing cycle.

1264                               7.13.7 The next business day following its receipt of the list described in Section  
1265 7.13.6, or as soon as reasonably practicable thereafter, CITY will elect, with respect to SFD and  
1266 MFD Service Addresses only, whether to declare the conditions on the property to be a  
1267 nuisance and subscribe to service on behalf of property owner at the property owner's expense  
1268 to abate nuisance.

1269                               7.13.8 Approximately ten (10) days following its election under Section 7.13.7,  
1270 CITY will confirm status of delinquent accounts with CONTRACTOR and, for those properties  
1271 for which the City has subscribed on behalf of the property owner, imposes a special

1272 assessment on those properties that are still delinquent. CITY will provide notice to property  
1273 owner (as determined from County Assessor's or Recorder's records) by certified mail.<sup>1</sup>

1274 7.13.9 Upon receipt of proceeds from the special assessment, CITY will forward  
1275 the portion of the special assessment attributable to CONTRACTOR billing to CONTRACTOR.  
1276 CITY'S financial liability to CONTRACTOR for payment for services rendered when CITY  
1277 declares a nuisance and subscribes on behalf of the property owner is limited to the proceeds of  
1278 such special assessments.

1279 7.13.10 CONTRACTOR can require that in order to reestablish service the  
1280 Customer must pay any past-due amounts. However, CONTRACTOR shall not be required to  
1281 address any outstanding assessment before resuming service, but CONTRACTOR shall  
1282 promptly notify CITY of the initiation of service.

1283 7.13.11 CONTRACTOR may require a credit card, or at the discretion of  
1284 the Service Recipient, a deposit equal to one billing cycle's payment, be maintained on file for  
1285 any Customer whose account went into ninety (90) day delinquency.

1286 7.13.12 CITY will continue to subscribe on Customer's behalf and impose  
1287 special assessments for each billing cycle until it is notified by CONTRACTOR that Customer  
1288 has cleared delinquent account with CONTRACTOR and subscribed to service. Throughout the  
1289 period in which CITY has subscribed on behalf of the property owner, CONTRACTOR shall bill  
1290 CITY and send a copy of such bill to the property owner and the last known billing address for  
1291 the Customer. The bill shall indicate that CONTRACTOR has terminated service as a result of  
1292 Customer's non-payment, that as a result CITY has declared the property a nuisance due to the  
1293 Customer's failure to maintain service, that CITY has subscribed to service on behalf of the  
1294 property owner at the property owner's expense to abate the nuisance, and that CITY will  
1295 impose a special assessment for the costs of abating the nuisance, and that the Customer may  
1296 avoid the imposition of further special assessments by paying its delinquent balances with  
1297 CONTRACTOR and reinstating its account.

1298 7.14 CONTRACTOR'S Payment to Residential Recycling Contractor.

1299 7.14.1 Residential Recycling Contractor Invoice. In accordance with the terms  
1300 and conditions of the Memorandum of Understanding between CONTRACTOR, CITY and the  
1301 Residential Recycling Contractor as set forth in Exhibit 15 which is attached to and included in  
1302 this Contract, CONTRACTOR shall receive a monthly invoice based on the agreed upon  
1303 number of SFD and MFD Dwelling Units and any ancillary services performed, in the form and  
1304 format set forth in Exhibit 15, from the Residential Recycling Contractor within ten (10) calendar  
1305 days of the end of each month beginning with the month of July 2015.

1306 7.14.2 Authorization of Payment by CITY. In accordance with the terms and  
1307 conditions of the Memorandum of Understanding between CONTRACTOR, CITY and the  
1308 Residential Recycling Contractor as set forth in Exhibit 15 to this Contract, CITY shall provide  
1309 payment authorization to CONTRACTOR prior to the payment of each monthly invoice to the  
1310 Residential Recycling Contractor.

1311 7.14.3 Timing of Monthly Invoice Payment. In the event CONTRACTOR  
1312 receives payment authorization from CITY as set forth in Section 7.14.2, no later than twenty  
1313 (20) calendar days from the date the monthly invoice was due to CONTRACTOR,

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<sup>1</sup> Gov. Code section 38773.5(b) provides that notice by certified mail "shall be given at the time of imposing the assessment."

1314 CONTRACTOR shall remit payment of the monthly invoice to the Residential Recycling  
1315 Contractor no later than thirty (30) calendar days from the date the monthly invoice was due to  
1316 CONTRACTOR and send a copy to the Contract Manager. In the event CONTRACTOR does  
1317 not receive payment authorization from CITY as set forth in Section 7.14.2, within twenty (20)  
1318 calendar days from the date the monthly invoice was due to CONTRACTOR, CONTRACTOR  
1319 shall remit payment of the monthly invoice to the Residential Recycling Contractor within ten  
1320 (10) calendar days of receipt of such payment authorization and shall send a copy to the  
1321 Contract Manager.

1322           7.14.4 Timing of Payment of Ancillary Charges. CONTRACTOR shall be  
1323 responsible for payment to the Residential Recycling Contractor of those ancillary charges  
1324 included in the SFD and MFD invoices provided for in Sections 7.04.2 and 7.05.2, only to the  
1325 extent such ancillary charges are collected by CONTRACTOR. Such payment shall be made  
1326 no later than ten (10) calendar days following the month in which the funds were collected and  
1327 shall be accompanied by a remittance form in the format approved by CITY and include at a  
1328 minimum the Customer name and billing address along with a specific description of each  
1329 ancillary charge and the date invoiced with a copy to the Contract Manager.

1330           7.14.5 Non-Payment of Monthly Invoice or Ancillary Charges. In the event  
1331 CONTRACTOR does not provide payment of monthly invoices or ancillary charges to  
1332 Residential Recycling Contractor in the time and manner set forth in this Section, CITY shall,  
1333 within five (5) Work Days of receiving knowledge of such non-payment, draw such funds as are  
1334 necessary from CONTRACTOR'S letter of credit established in Section 24.03 of this Contract to  
1335 pay the Residential Recycling Contractor. [Delete if MMO and RR are the same contractor]

1336           7.15 CONTRACTOR'S Maximum Service Rates. Maximum Service Rates shall  
1337 consist of a Maximum MMO Service Rate, which includes all costs of providing Collection  
1338 Services including but not limited to Collection, Processing, Disposal, and franchise fee costs,  
1339 and such other charges as may be added by CITY during the term of this Contract and a  
1340 Maximum Per Dwelling Unit Recycling Rate as approved by CITY. CONTRACTOR shall not be  
1341 entitled to any compensation that is not listed in Exhibit 1. On or after July 1, 2015, and each  
1342 subsequent July 1, CONTRACTOR'S Maximum Service Rates shall be adjusted as set forth in  
1343 the next section below.

1344           7.16 Annual Rate Adjustments.

1345           7.16.1 Annual Adjustment to Maximum Service Rates Prior to Start of Collection  
1346 Services. In order to provide some mitigation for inflation between the time that the Maximum  
1347 Service Rates were proposed and the time when Collection Services will commence, the  
1348 Maximum Collection Service Rates as set forth in Exhibit 1 to this Contract shall be adjusted on  
1349 July 1, 2015 by the annual change in the Consumer Price Index – All Urban Consumers, Series  
1350 ID cuura422sa0, Not Seasonally adjusted, San Francisco-Oakland-San Jose, CA for the prior  
1351 calendar year, January 1, 2014 through December 31, 2014.

1352           7.16.2 Annual Adjustment to Maximum Service Rates After Start of Collection  
1353 Services. On each Adjustment Date, the Maximum Service Rates as set forth in Exhibit 1 shall  
1354 be adjusted by an Annual Rate Adjustment, which will include a RRI adjustment, pursuant to  
1355 this Section 7.16.2. and Exhibit 2 to this Contract, as well as Franchise Fee and Government  
1356 Fee/Tax adjustments. The RRI adjustment is calculated independently of the Franchise Fee  
1357 and Government Fee/Tax adjustments.

1358 7.16.2.1 Annual Rate Adjustment. On the Adjustment Date during  
1359 the term of this Contract, the Maximum Service Rates set forth in Exhibit 1 shall be adjusted by  
1360 a RRI adjustment pursuant to this Section 7.16.2.1 and Exhibit 2 to this Contract.

1361 7.16.2.1.1. Cost Category Weight. Contractor will calculate the total of all  
1362 Allowable Expenses (as defined in Exhibit 2) for each Cost Category (also defined in Exhibit 2)  
1363 for the period of July 1, 2015 through December 31, 2015. Each Cost Category will then be  
1364 assigned an "item weight" based on the proportionate share of its Allowable Expenses total to  
1365 the total of all Allowable Expenses for all Cost Categories. For example, if the Allowable  
1366 Expenses of the Diesel Fuel Cost Category total One Hundred Dollars (\$100), and the  
1367 Allowable Expenses within all Cost Categories is Two Thousand Dollars (\$2,000), then the  
1368 Diesel Fuel Cost Category's item weight will be five (5) percent. The Cost Categories shall be  
1369 reweighed every year based on allowable expenses thereafter from January 1 through  
1370 December 31.

1371 7.16.2.1.2. Annual Rate Adjustment Calculation. The RRI adjustment (a  
1372 component of the Annual Rate Adjustment) shall be the lower of: (i) six (6) percent, or (ii) the  
1373 sum of the weighted percentage change (based on the total of all Cost Categories) in the Cost  
1374 Indicators of Cost Categories 1 - 8 (each described in Exhibit 2)<sup>1</sup> from the previous review date  
1375 to the current review date. For Cost Category Items 2 (Diesel Fuel), 3 (CNG Fuel), 4 (Vehicle  
1376 Replacement), 5 (Vehicle Maintenance), and all but the Union Labor Cost Category of Items 6  
1377 (Davis Street Processing) and 7 (Disposal) and 8 (All Other), the current review year is the most  
1378 recent calendar year ended December 31. For Cost Category Item 1 (MM&O Union Labor), and  
1379 the Union Labor Cost Category of Items 6 (Davis Street Processing) and 7 (Disposal), the  
1380 current review date is July 1 of the current year. See Exhibit 2.

1381 7.16.2.1.3. The weighted percentage change in the Cost Indicator of a Cost  
1382 Category may be either positive or negative. There shall be no limit on Annual Rate  
1383 Adjustments, but an RRI adjustment shall not be greater than six (6) percent in any individual  
1384 year (except the final year of the original Contract term and the final year of any extension  
1385 Contract terms when it may not be greater than eight (8) percent) or lower than Negative 5 (-5)  
1386 percent. In any year that the RRI adjustment calculation is more than six (6) percent, the  
1387 amount above six (6) percent and up to eight (8) percent shall be carried-forward to successive  
1388 RRI adjustments under this Contract until applied or the Contract terminates. RRI adjustments  
1389 in any year in excess of eight (8) percent shall not be carried forward to any future year. With  
1390 regard to the July 1, 2024, RRI adjustment, carried-forward RRI adjustment amounts that had  
1391 not been recouped in previous RRI adjustments due to the six (6) percent cap shall be recouped  
1392 to the extent they do not exceed eight (8) percent. With regard to the July 1, 2029, RRI  
1393 adjustment, carried-forward RRI adjustment amounts that had not been recouped in 2025,  
1394 2026, 2027 or 2028 RRI adjustments due to the six (6) percent cap shall be recouped to the  
1395 extent they do not exceed eight (8) percent. With regard to the July 1, 2034, RRI adjustment,  
1396 carried-forward RRI adjustment amounts that had not been recouped in 2030, 2031, 2032 or

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<sup>1</sup> Categories 9 (Government Fees/Taxes – Disposal), 10 (Government Fees/Taxes – Processing), 11 (Government Fees/Taxes – Collection), and 12 (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.

1397 2033 RRI adjustments due to the six (6) percent cap shall be recouped to the extent they do not  
1398 exceed eight (8) percent.

1399 7.16.2.1.4. Should CONTRACTOR agree to labor increases with Local 70  
1400 that exceed the labor increase allowable under the 2009 CBA ("differential"), those differential  
1401 amounts shall not be included in the RRI adjustment (i.e., as a CONTRACTOR cost for  
1402 purposes of calculating a percent change of the MM&O Union Labor Cost Category). However,  
1403 such differential amounts shall be recovered by CONTRACTOR in Annual Rate Adjustments by  
1404 applying them to the Maximum Service Rates in equal installments over a three (3) year period,  
1405 including the year in which the differential is first incurred. For example, if the weighted  
1406 differential between the 2009 CBA and a subsequent CBA is three tenths (0.3) percent, then the  
1407 current Annual Rate Adjustment would be increased by one tenth (0.1) percent and the two (2)  
1408 subsequent Annual Rate Adjustments by one tenth (0.1) percent. For purposes of clarity,  
1409 recovery of the differential amounts shall not be subject to any cap under this section.

1410 7.16.2.2 Diversion Adjustment. Beginning with the July 1, 2017,  
1411 rate adjustment, the diversion adjustment shall be applied to all RRI adjustments. Except for  
1412 those instances as set forth in Section 7.16.2.4 when the reciprocal of the diversion adjustment  
1413 is required to be used, the diversion adjustment shall be the lesser of one hundred (100)  
1414 percent or the percentage calculated by dividing the diversion rate achieved by CONTRACTOR  
1415 in the calendar year immediately preceding the effective date of the rate adjustment, by the  
1416 minimum annual Diversion requirement for that calendar year, pursuant to Article 8 of this  
1417 Contract and as set forth in Exhibit 8, which is attached to and included in this Contract. The  
1418 diversion rate achieved by CONTRACTOR each calendar year will be calculated using Table B  
1419 of Exhibit 8. In the event the diversion adjustment is less than one hundred (100) percent, the  
1420 adjustment shall only be effective for one (1) year and shall be removed prior to calculating the  
1421 subsequent year's rate adjustment as set forth in Section 7.16.2.1 above.

1422 7.16.2.3 In any year that the RRI adjustment results in a positive  
1423 number, the RRI Adjustment shall be adjusted by multiplying the RRI adjustment by the  
1424 diversion adjustment.

1425 7.16.2.4 In any year that the RRI adjustment results in a negative  
1426 number, RRI Adjustment shall be adjusted by multiplying the RRI adjustment by the reciprocal  
1427 of the diversion adjustment. For example if the diversion adjustment was ninety-five (95)  
1428 percent, the reciprocal of the diversion adjustment would be calculated by dividing one hundred  
1429 (100) percent by ninety-five (95) percent. ( $100.00\% / 95\% = 105.26\%$ ).

1430 7.16.2.5 In any year that the Annual Rate Adjustment is a negative  
1431 number, CITY may, at its sole discretion, choose to postpone the implementation of the  
1432 adjustment for one (1) year. In that event the current year rate would remain the same and the  
1433 subsequent year rate would be calculated by first, applying the negative Annual Rate  
1434 Adjustment to the current rate and then applying the subsequent years Annual Rate Adjustment  
1435 to that rate. For example if the Year X rate was \$100.00 and the Year X+1 Annual Rate  
1436 Adjustment was -2.2% and the Year X+2 Annual Rate Adjustment was +2.2% and CITY chose  
1437 to not apply the negative Annual Rate Adjustment in Year X+1 then the rate in Year X+1 would  
1438 be \$100.00 and the rate in Year X+2 would be \$99.95 ( $\$100.00 \times -2.2\% = \$97.80 \times 2.2\% =$   
1439  $\$99.95$ ).

1440 7.16.2.6 In any year that CITY chooses to postpone the  
1441 implementation of a negative Annual Rate Adjustment for one (1) year, CONTRACTOR shall  
1442 retain those excess funds that it collects as a result of the Maximum Service Rates not being  
1443 reduced for that year in the Recycling stability account as set forth in Section 7.21.1 below for

1444 use in such manner as may be directed by the Contract Manager. An accounting of the funds  
1445 shall be provided to the Contract Manager by the fifteenth (15th) day of each month after the  
1446 month in which the funds are collected and shall be accompanied by such documentation as  
1447 may be requested by CITY.

1448           7.17 Required Information.

1449                   7.17.1 Financial Information. On or before March 1, 2016, and annually  
1450 thereafter during the term of this Contract, CONTRACTOR shall deliver to CITY financial  
1451 information for the specific services performed under this Contract for the preceding calendar  
1452 year. Such financial information shall be in the format as set forth in Exhibit 2, or as may be  
1453 further revised by CITY from time to time. If CONTRACTOR fails to submit the financial  
1454 information in the required format by March 1, it is agreed that CONTRACTOR shall be deemed  
1455 to have waived the RRI adjustment for the next billing period and if the delayed submission  
1456 exceeds three (3) months then the increase will be delayed for a second billing period.

1457                   7.17.2 Diversion Data. On or before March 1, 2017, and annually thereafter  
1458 during the term of this Contract, CONTRACTOR shall deliver to CITY diversion data for the  
1459 specific services performed under this Contract in the format specified by CITY. If  
1460 CONTRACTOR fails to submit the diversion data in the required format by March 1,  
1461 CONTRACTOR may be subject to daily liquidated damages pursuant to Article 22.

1462                   7.17.3 Adjustments. Annual Maximum Service Rate adjustments shall be made  
1463 only in units of one cent (\$0.01). Fractions of less than one cent (\$0.01) shall not be considered  
1464 in making adjustments. The indices shall be rounded at four (4) decimal places for the  
1465 adjustment calculations.

1466                   7.17.4 If CONTRACTOR'S failure to submit the financial required under Section  
1467 7.16 is the result of extraordinary or unusual circumstances as demonstrated by  
1468 CONTRACTOR to the reasonable satisfaction of the Contract Manager, CITY, at its reasonable  
1469 discretion, may consider the request for the annual Maximum Service Rate adjustment.

1470                   7.17.5 As of May 15, 2016, and annually thereafter during the term of this  
1471 Contract, the Contract Manager shall notify CONTRACTOR of the Maximum Service Rate  
1472 adjustment to the affected service rates to take place on the subsequent July 1.

1473                   7.17.6 Adjustments Due to Changes In Law. CONTRACTOR agrees that no  
1474 extraordinary adjustment shall occur or rate adjustment be provided except as set forth in Article  
1475 30 and Sections 28.01 and 28.02.

1476                   7.17.7 CONTRACTOR'S Payments to CITY. CONTRACTOR shall make  
1477 payment to CITY of a negotiated franchise fee, and such other fees as may be specified in this  
1478 Contract.

1479                   7.17.8 Franchise Fee. The franchise fee for the fiscal year July 1, 2015, through  
1480 June 30, 2016, shall be the initial franchise fee of Twenty-five Million Thirty-four Thousand  
1481 Dollars (\$25,034,000) adjusted by the annual change in the Consumer Price Index – All Urban  
1482 Consumers, Series ID cura422sa0, Not Seasonally adjusted, San Francisco-Oakland-San  
1483 Jose, CA for the prior calendar year, January 1, 2014, through December 31, 2014. The  
1484 franchise fee for the next fiscal year and each subsequent fiscal year shall be adjusted annually  
1485 by the percentage change in the annual average of the Franchise Fee cost indicator (Series ID:  
1486 cura422sa0 Consumer Price Index, All urban Consumers, All Items, San Francisco-San Jose-  
1487 Oakland, CA) as set forth in Section 2 of Exhibit 2 to this Contract except that in no year shall  
1488 the franchise fee adjustment be less than zero (0) percent. Notwithstanding the foregoing, no

1489 adjustment shall be implemented for a particular fiscal year if CONTRACTOR's Gross Receipts  
1490 for the prior calendar year were less than the calendar year previous to that, but not including  
1491 any calendar years prior to July 1, 2015. The franchise fee for each fiscal year shall be divided  
1492 into twelve (12) equal payments, and paid monthly no later than the fifteenth (15th) day of each  
1493 month for the preceding month except that the first franchise fee payment will be due no later  
1494 than August 15, 2015.

1495                   7.17.9           Proposal Development and Cost Reimbursement Fee. No later  
1496 than thirty (30) calendar days after the execution of this Contract by CITY and CONTRACTOR,  
1497 CONTRACTOR shall submit proposal development and cost reimbursement fee to CITY in the  
1498 amount of Seven Hundred Fifty Thousand Dollars (\$750,000).

1499                   7.17.10          Other Fees. CITY may set such other fees as it deems  
1500 necessary. However, CONTRACTOR shall not be responsible for remitting such other fees to  
1501 CITY until such time as the Maximum Service Rates as set forth in Exhibit 1 have been adjusted  
1502 to include such other fees.

1503                   7.17.11          Acceptance of Payment. No acceptance by CITY of any payment  
1504 shall be construed as an accord that the amount is in-fact the correct amount, nor shall such  
1505 acceptance of payment be construed as a release of any claim CITY may have against  
1506 CONTRACTOR for any additional sums payable under the provisions of this Contract. All  
1507 amounts paid shall be subject to independent audit and recalculation by CITY. If, after the  
1508 audit, such recalculation indicates an underpayment CONTRACTOR shall pay to CITY the  
1509 amount of the underpayment and shall reimburse CITY for all reasonable costs and expenses  
1510 incurred in connection with the audit and recalculation within ten (10) Work Days of receipt of  
1511 written notice from CITY that such is the case. If, after audit, such recompilation indicates an  
1512 overpayment, CITY shall notify CONTRACTOR in writing of the amount of the overpayment,  
1513 less costs and expenses incurred in connection with the audit and recalculation.  
1514 CONTRACTOR may offset the amounts next due following receipt of such notice by the amount  
1515 specified therein.

1516                   7.18    Stability Funds.

1517                   7.18.1 Recycling Stability Funds. Recycling stability funds represent the  
1518 stabilization component of the SFD and MFD Maximum Per Dwelling Unit Recycling Rate, that  
1519 may be included at the sole discretion of CITY, and to the extent included in the SFD and MFD  
1520 Maximum Per Dwelling Unit Recycling Rate, are collected by CONTRACTOR for use in  
1521 stabilizing recycling billing fluctuations or to make up for shortfalls experienced by  
1522 CONTRACTOR, when required payments to the RR Contractor exceed the RR Contractor  
1523 Component of the Maximum Per Dwelling Unit Recycling Rate funds collected over any  
1524 calendar year. Recycling stability funds shall be maintained by CONTRACTOR in a separate  
1525 interest bearing account, whose interest accrues to the account. Recycling stability funds may  
1526 only be used at the direction of CITY.

1527                   7.18.1.1        SFD Recycling stability funds are calculated by multiplying  
1528 the stabilization component of the SFD Maximum Per Dwelling Unit Recycling Rate by the total  
1529 number of SFD Dwelling Units associated with each of the invoices that were collected during  
1530 each month.

1531                   7.18.1.2        MFD Recycling stability funds are calculated by multiplying  
1532 the stabilization component of the MFD Per Dwelling Unit Recycling Rate by the total number of  
1533 MFD Dwelling Units associated with each of the invoices that were collected during each month.

1534 7.18.1.3 SFD and MFD Recycling stability fund account balances  
1535 shall be reported to the Contract Manager no later than the tenth (10<sup>th</sup>) day of each month  
1536 beginning in August of 2015 and monthly thereafter during the term of this Contract.

1537  
1538 7.19 Billing Records. CONTRACTOR shall keep records, electronically or paper, of all  
1539 billing documents and Customer account records, including but not limited to, invoices, receipts,  
1540 and collection notices, each in chronological order, for a period of three (3) years after the date  
1541 of receipt or issuance.

1542 7.20 CITY Access to Customer Account and Service Information. Within a reasonable  
1543 time after the commencement of the Collection Services, CONTRACTOR and CITY shall  
1544 determine a means by which the following information shall be electronically provided to CITY  
1545 via a live computer link or some other format acceptable to CITY: (i) all routing information from  
1546 route audits to include name and address of Customer, Service Recipient and route number; (ii)  
1547 records of daily Collection, Disposal, and Processing figures; (iii) names and addresses of  
1548 Customers, Service Recipients and account classification (i.e., SFD, MFD, Commercial, Roll-Off  
1549 Box), and service level (i.e., number and size of Containers, frequency of Collection); (iv) notes  
1550 on location of Carts and Bins at Service Addresses; (v) record of missed pickups; and (vi)  
1551 customer service log. Upon expiration or termination of this Contract, CITY shall have the  
1552 immediate and permanent right to access and copy all such information contained in  
1553 CONTRACTOR'S customer account and service information system relevant to this Contract.

1554 7.21 Collection Services Census Data. On or before July 15, 2016 and annually  
1555 thereafter during the term of this Contract, CONTRACTOR shall deliver to CITY, Collection  
1556 Services census data for all Service Addresses as of the preceding July 1. This information  
1557 shall be delivered electronically in a format approved by CITY, using software approved by  
1558 CITY.

1559 7.21.1 Census data for SFD Service Addresses shall consist of a list of SFD  
1560 Service Recipients receiving, SFD Collection Services during the previous month and include at  
1561 a minimum: (i) Service Recipient name and Service Address; (ii) name and address of  
1562 Customer if different from Service Recipient and Service Address; and (iii) service level,  
1563 separately for Mixed Materials and Organics (i.e., number and size of Containers, and  
1564 frequency of Collection).

1565 7.21.2 Census data for MFD and Commercial Service Addresses shall consist of  
1566 the number of Service Recipients receiving MFD or Commercial Collection Services during the  
1567 preceding month. The census data shall be segregated by Customer type, and include at a  
1568 minimum: (i) Service Recipient name and Service Address; (ii) name and address of Customer  
1569 if different from Service Recipient and Service Address; and (iii) service level, separately for  
1570 Mixed Materials and Organics (i.e., number and size of Containers, and frequency of  
1571 Collection).

## 1572 **ARTICLE 8. DIVERSION REQUIREMENTS**

1573 8.01 Minimum Annual Diversion Requirements. CONTRACTOR shall achieve  
1574 minimum annual Diversion requirements beginning with Calendar year 2016 as set forth in Part  
1575 1 of Table A of Exhibit 8 to this Contract, or such other Diversion requirements as may be set in  
1576 accordance with the provisions of Article 30 of this Contract. Annual Diversion rates shall be  
1577 calculated for each calendar year using Table B of Exhibit 8, and the methodology therein,  
1578 beginning with calendar year 2016.

1579 8.02 Failure to Meet Minimum Annual Diversion Requirements. CONTRACTOR'S  
1580 failure to meet the minimum annual Diversion requirement set forth in Part 1 of Table A of  
1581 Exhibit 8 shall result in a diversion adjustment being applied to Maximum Service Rate  
1582 adjustments as specified in Section 7.16.2.2 of this Contract.

1583 8.03 Minimum Diversion Requirement for Contract Extension. CONTRACTOR shall  
1584 meet a minimum Diversion requirement of forty (40) percent in calendar year 2022, calculated  
1585 as set forth in Section 8.01 of this Contract. Meeting the 2022 minimum Diversion requirement  
1586 will be a significant factor in the CITY's decision, at its sole discretion, to offer the Contract  
1587 extension set forth in Section 3.01.1 of this Contract or terminate this contract no later than  
1588 June 30, 2025.

1589 8.04 Annual Diversion Requirements for Contract Extension(s). By March 31, 2023,  
1590 CONTRACTOR shall provide to CITY Part 2 of Table A of Exhibit 8 to this Contract by entering  
1591 annual Diversion requirements for Contract Years ending June 30, 2026, June 30, 2027,  
1592 June 30, 2028, June 30, 2029 and June 30, 3030. Should CONTRACTOR receive a Contract  
1593 extension for such years as set forth in Article 3 of this Contract, the proposed annual Diversion  
1594 requirements shall be incorporated into Exhibit 8 of the Contract extension.

1595 8.05 If the initial five (5)-year extension had been granted and CONTRACTOR seeks  
1596 a second five (5)-year extension, by March 31, 2028, CONTRACTOR shall provide to CITY Part  
1597 2 of Table A of Exhibit 8 to this Contract by entering annual Diversion requirements for Contract  
1598 Years ending June 30, 2031, June 30, 2032, June 30, 2033, June 30, 2034, and June 30, 2035.  
1599 Should CONTRACTOR receive a Contract extension(s) for such years as set forth in Article 3 of  
1600 this Contract, the proposed annual Diversion requirements shall be incorporated into Exhibit 8 of  
1601 the Contract extension

1602 8.06 CONTRACTOR shall use a statistically significant method approved by CITY to  
1603 calculate the Tonnage of finished Processed material, net of Residue, attributable to material  
1604 Collected under this Contract. CONTRACTOR shall use a statistically significant method  
1605 approved by CITY to calculate the Tonnage of Residue attributable to material Collected under  
1606 this Contract. Processed Mixed Materials, Organic Materials, and Recyclable Materials  
1607 departing a Mixed Materials, Organic Materials, or Recyclable Materials Processing Facility  
1608 (e.g., CONTRACTOR's Davis Street facilities) for processes other than Disposal will be  
1609 calculated as Diverted.

## 1610 **ARTICLE 9. SFD COLLECTION SERVICES**

1611 9.01 SFD Collection Services. These services shall be governed by the following  
1612 terms and conditions.

1613 9.01.1 Size and Frequency of Service. CONTRACTOR shall offer Mixed  
1614 Materials Carts in 20, 32, 64, and 96 gallon nominal Cart sizes, with the default Cart size being  
1615 32 gallons. CONTRACTOR shall offer Organic Materials Carts in 20, 32, 64 and 96 gallon  
1616 nominal Cart sizes, with the default Cart size being 64 gallons. The size of the Cart shall be  
1617 selected by the SFD Customer. Service Recipients receiving Backyard Collection Service as set  
1618 forth in Sections 9.01.4, 9.01.5 or 9.01.6 below may set out their Mixed Materials or Organic  
1619 Materials in their own can. Except as set forth in Sections 9.04 through 9.08, SFD Collection  
1620 Services shall be provided one (1) time per week on a scheduled route basis. SFD Collection  
1621 Services shall be scheduled so that a SFD Service Address receives SFD Mixed Materials  
1622 Collection Service and SFD Organic Materials Collection Service on the same Work Day.

1623 9.01.1.1 Overages. CONTRACTOR shall be required to Collect all  
1624 Overages of Mixed Materials Carts that are set out for Collection regardless of whether the  
1625 Overages are properly contained in bags affixed with an Extra Service Tag. CONTRACTOR  
1626 may be compensated for the collection of such Overages if the Overages are not properly  
1627 contained in bags affixed with an Extra Service Tag, and Contractor obtains and retains pictorial  
1628 evidence of such Overages. Compensation shall be provided in accordance with the approved  
1629 "Overage" surcharge set forth in Exhibit 1 or as may be adjusted under the terms of this  
1630 Contract.

1631 9.01.1.2 Multiple Overages. In the case of repeated Overages of  
1632 Mixed Materials Carts, CONTRACTOR may send written notification to the SFD Customer that  
1633 includes dates of observed Overages, any previous notifications, photographic documentation  
1634 of said Overages, and an offer to arrange for an appropriate change in Cart size and/or  
1635 Collection frequency. Should Overages persist after three (3) notifications and CONTRACTOR  
1636 is unable to reach an agreement with the SFD Customer regarding an appropriate change in  
1637 Cart size and/or frequency of Collection, CONTRACTOR may impose such service level  
1638 increase as is needed to avoid the Overages and notify the SFD Customer and Contract  
1639 Manager in writing. The SFD Customer may petition CITY regarding any change in Cart size  
1640 and/or Collection frequency. Should three (3) months elapse with no Overage recurrence taking  
1641 place following the change in service, the Overage problem shall be considered resolved.

1642 9.01.2 Manner of Collection. CONTRACTOR shall provide SFD Collection  
1643 Services with as little disturbance as possible. Except in the case of backyard Collection  
1644 Services CONTRACTOR shall leave any Cart in an upright position, with the lid closed, at the  
1645 point of collection without obstructing alleys, roadways, driveways, sidewalks or mail boxes. In  
1646 the case of Backyard Collection Service, CONTRACTOR shall remove the Containers from the  
1647 back or side of the Service Address (or from such other location as agreed to by  
1648 CONTRACTOR and the Service Recipient), shall empty the contents into the collection vehicle,  
1649 and shall return the Containers to the location from which they were removed. CONTRACTOR  
1650 will not be responsible for Carts or Bins being moved or open due to weather conditions or other  
1651 factors beyond its control, such as scavengers.

1652 9.01.3 Curbside Collection Service. SFD Curbside Collection Service shall be  
1653 provided where Mixed Materials and Organic Materials are placed within three (3) feet of the  
1654 curb, or at edge of street pavement for streets without curbs.

1655 9.01.4 Premium Backyard Collection Service. CONTRACTOR shall provide  
1656 premium backyard Collection of Mixed Materials and Organic Materials to a SFD Service  
1657 Address if requested by the SFD Customer for their convenience. CONTRACTOR shall be  
1658 compensated for such services at the approved Maximum Service Rates provided in Exhibit 1  
1659 for premium backyard Collection Service.

1660 9.01.5 Exempt Backyard Collection Service. Notwithstanding any term or  
1661 definition set forth in this Contract, CONTRACTOR shall provide exempt backyard Collection of  
1662 Mixed Materials, and Organic Materials to SFD Service Addresses whose occupants meet the  
1663 requirements for the exemption programs set forth below in Sections 9.01.6 through 9.01.8 and,  
1664 based on information provided by CITY to CONTRACTOR, those Service Addresses receiving  
1665 such service from the prior Collection Contractor. CONTRACTOR shall provide exempt  
1666 backyard Collection of Mixed Materials, and Organic Materials to SFD Service Addresses at no  
1667 additional charge to CITY or SFD Customer.

1668 9.01.6 Frail Senior Exemption Program. CONTRACTOR shall provide exempt  
1669 backyard Collection of Mixed Materials and Organic Materials to SFD Service Addresses whose

1670 occupants demonstrate that they meet the requirements set forth in this Section 9.01.6 through  
1671 the submission of a complete application requesting this exemption along with all required  
1672 documentation and certifications. Services shall begin on the next regularly scheduled  
1673 Collection day of the Service Address after CONTRACTOR'S receipt of the completed  
1674 application. No additional monies shall be due to CONTRACTOR for the exempt backyard  
1675 Collection of Mixed Materials, and Organic Materials.

1676 9.01.6.1 Applicant must be sixty (60) years of age or older.

1677 9.01.6.2 Applicant must be the owner of record or primary renter.

1678 9.01.6.3 The Dwelling Unit must be solely occupied by the  
1679 applicant, unless all other occupants meet the requirements of frail senior exemption program  
1680 as set forth in this Section 9.01.6, the disability exemption program as set forth in Section  
1681 9.01.7, or are under the age of twelve (12) years old.

1682 9.01.6.4 Applicant must provide a signed statement from a  
1683 registered Doctor of Medicine (M.D.) stating that bringing the wheeled Containers to curbside  
1684 creates an undue physical hardship on the applicant.

1685 9.01.7 Disability Exemption Program. CONTRACTOR shall provide exempt  
1686 backyard Collection of Mixed Materials, and Organic Materials to SFD Service Addresses  
1687 whose occupants demonstrate that they meet the requirements set forth in this Section 9.01.7  
1688 through the submission of a complete application requesting this exemption along with all  
1689 required documentation and certifications. Services shall begin on the next regularly scheduled  
1690 Collection day of the Service Address after CONTRACTOR'S receipt of the completed  
1691 application. No additional monies shall be due to CONTRACTOR for the exempt backyard  
1692 Collection of Mixed Materials, and Organic Materials.

1693 9.01.7.1 Applicant must be the owner of record or primary renter.

1694 9.01.7.2 The Dwelling Unit must be solely occupied by the  
1695 applicant, unless all other occupants meet the requirements of frail senior exemption program  
1696 as set forth in Section 9.01.6, the disability exemption program as set forth in this Section  
1697 9.01.7, or are under the age of twelve (12) years old.

1698 9.01.7.3 Applicant must provide proof that is acceptable to  
1699 CONTRACTOR of long term or permanent physical disability, which may include; 1) a signed  
1700 statement from a registered Doctor of Medicine (M.D.); 2) proof or registration as a disabled  
1701 driver as determined by the Department of Motor Vehicles; or 3) documentation of grant of  
1702 permanent disability status by the State of California.

1703 9.01.8 Curbside Placement Exemption. CONTRACTOR may petition CITY for  
1704 exempt backyard Collection of Mixed Materials and Organic Materials from SFD Service  
1705 Recipients other than as required by Sections 9.01.6 and 9.01.7

1706 9.01.9 Collection Day. CONTRACTOR shall provide exempt backyard  
1707 Collection of Mixed Materials and Organic Materials on the same Work Day that curbside  
1708 Collection Service would otherwise be provided to the Service Address.

1709 9.02 SFD Mixed Materials Collection Service. This service will be governed by the  
1710 following additional terms and conditions:

1711 9.02.1 Containerized Mixed Materials. CONTRACTOR shall provide SFD Mixed  
1712 Materials Collection Service to all SFD Service Addresses in the Service Area whose Mixed  
1713 Materials are properly containerized in Mixed Materials Containers, except as set forth in

1714 Section 9.02.2 below, regardless of whether or not the lid is fully closed, where the Containers  
1715 have been placed within three (3) feet of the curb, paved surface of the public roadway, closest  
1716 accessible roadway, or other such location agreed to by CONTRACTOR and Service Recipient  
1717 which will provide safe and efficient accessibility to CONTRACTOR'S Collection crew and  
1718 vehicle.

1719 9.02.2 Disposal Facility or Mixed Materials Processing Facility. All Mixed  
1720 Materials Collected as a result of performing SFD Mixed Materials Collection Services shall be  
1721 transported and delivered to the Disposal Facility or Mixed Materials Processing Facility.

1722 9.02.3 Residue From Mixed Materials Processing. An amount of Residue equal  
1723 to the Residue generated as a result of Processing the Mixed Material Collected during the  
1724 performance of SFD Mixed Materials Collection Services under the terms of this Contract shall  
1725 be delivered to the Disposal Facility.

1726 9.02.4 Additional Mixed Materials Capacity. Upon notification to CONTRACTOR  
1727 by CITY or a SFD Customer that additional Mixed Materials capacity is requested,  
1728 CONTRACTOR shall deliver such Mixed Materials Carts as are needed to meet the capacity  
1729 requirements of the Service Address by the next regularly scheduled Collection day or within six  
1730 (6) Work Days (whichever is later). CONTRACTOR may be compensated for the cost of  
1731 providing additional Mixed Material capacity in accordance with the approved Maximum Service  
1732 Rate as provided in Exhibit 1 or as may be adjusted under the terms of this Contract.

1733 9.03 SFD Organic Materials Collection Service. This service will be governed by the  
1734 following additional terms and conditions.

1735 9.03.1 Containerized Organic Materials. CONTRACTOR shall provide SFD  
1736 Organic Materials Collection Service to all SFD Service Addresses in the Service Area whose  
1737 Organic Materials, except as set forth in Sections 9.03.2, 9.04 and 9.05, are properly  
1738 containerized in Organic Materials Containers, regardless of whether or not the lid is fully closed  
1739 where the Containers have been placed within three (3) feet of the curb, paved surface of the  
1740 public roadway, closest accessible roadway, or other such location agreed to by  
1741 CONTRACTOR and Service Recipient, that will provide safe and efficient accessibility to  
1742 CONTRACTOR'S Collection crew and vehicle.

1743 9.03.2 Organic Materials in Excess of Container Capacity. SFD Service  
1744 Recipients may set out unlimited additional Organic Materials each week in recyclable 32-gallon  
1745 paper gardening bags, in bundles, or in Service Recipient's container, provided it meets the  
1746 requirements of Oakland Municipal Code Section 8.28.140. No bag, bundle or container may  
1747 exceed seventy five (75) pounds in weight. Branches and unpainted/untreated wood may not  
1748 exceed four (4) feet in length or six (6) inches in diameter, CONTRACTOR may limit the  
1749 amount of Organic Materials to be Collected from a SFD Service Address to sixty four (64)  
1750 gallons per week if it is able to show to the satisfaction of CITY that the Service Recipient is  
1751 setting out Organic Materials generated from a location other than the Service Address.

1752 9.03.2.1.1. In the event excess Organic Materials are set out in  
1753 a plastic bag, CONTRACTOR may Collect the Organics as Mixed Materials Overage and  
1754 invoice the SFD Customer at the Mixed Materials Overage Maximum Service Rate as set forth  
1755 in Exhibit 1 to this Contract.

1756 9.03.2.1.2. CONTRACTOR shall not be required to Collect  
1757 excess Organic Materials that are not set out in compliance with Section 9.03.2. In the event of  
1758 non-collection CONTRACTOR shall deliver a Non-Collection Notice to the Service Address,

1759 which explains why Collection was not made and how the item(s) may be properly set out, and  
1760 shall maintain a copy of such notice during the term of this Contract.

1761                   9.03.3 Organic Materials Processing Services. Except for Organic Materials  
1762 Residue, or as otherwise provided in this Contract, CONTRACTOR shall ensure that all Organic  
1763 Materials Collected pursuant to this Contract are Diverted .

1764                   9.03.4 Organic Materials Processing Facility. CONTRACTOR shall deliver all  
1765 Collected Organic Materials to a fully permitted Organic Materials Processing Facility or a  
1766 properly permitted transfer station. All expenses related to Organic Materials Processing and  
1767 marketing will be the sole responsibility of CONTRACTOR.

1768                   9.03.5 Additional Organic Materials Capacity. Upon notification to  
1769 CONTRACTOR by CITY or a SFD Customer that additional Organic Materials Cart capacity is  
1770 requested in the form of a larger Cart or an additional Cart, CONTRACTOR shall deliver such  
1771 Organic Materials Carts as are needed to meet the capacity requirements of the Service  
1772 Address by the next regularly scheduled Collection day or within six (6) Work Days (whichever  
1773 is later). CONTRACTOR shall not receive additional compensation for the Collection of a larger  
1774 Organic Materials Cart. However CONTRACTOR may be compensated for the Collection of  
1775 more than one (1) Organic Materials Cart in accordance with the approved Maximum Service  
1776 Rate as provided in Exhibit 1 or as may be adjusted under the terms of this Contract.

1777                   9.03.6 Reduction or Discontinuation of Service. CONTRACTOR shall retain the  
1778 right to reduce capacity or discontinue provision of Organic Materials Collection Service to SFD  
1779 Customers under the following circumstances:

1780                   9.03.6.1           The Organic Materials Cart is found to be contaminated  
1781 through the inclusion of more than ten (10) percent of materials that are not Organic Materials  
1782 as defined herein more than four (4) times in any twelve (12) month period. Upon a finding a  
1783 fourth instance of such contamination in any twelve (1) month period, CONTRACTOR shall  
1784 notify the SFD Customer in writing that an additional violation of the contamination requirements  
1785 of the program will result in the discontinuation of service.

1786                   9.04 Curbside Holiday Tree Collection. CONTRACTOR shall Collect Holiday Trees  
1787 from all SFD Service Addresses as part of the SFD Organic Materials Collection Service when  
1788 such trees are in lengths of four (4) feet or less and are set out at the curb. CONTRACTOR  
1789 shall provide this service beginning on the first Work Day after December 25<sup>th</sup> through the end  
1790 of the second full work week in January or dates approved by CITY.

1791                   9.04.1 Contaminated Holiday Trees. Holiday trees that are flocked or contain  
1792 tinsel or other decorations or are attached to a tree stand may be delivered to the Disposal  
1793 Facility at the discretion of CONTRACTOR.

1794                   9.05 Bulky Goods Collection Service. This service will be governed by the terms and  
1795 conditions set forth in Exhibit 14 and such changes to that Exhibit as may be agreed to between  
1796 CITY and CONTRACTOR.

1797                   9.05.1 Annual Changes to Bulky Goods Collection Service Requirements.  
1798 Beginning with Bulky Goods Collection Service for Contract Year July 1, 2016, through June 30,  
1799 2017 and annually thereafter during the term of this Contract, CITY and CONTRACTOR may  
1800 mutually agree to changes in the Bulky Goods Collection Service program. Such mutually  
1801 agreed to changes shall be documented through the revision of Exhibit 14 to this Contract and  
1802 the revised Exhibit 14 shall be signed by authorized representatives of CITY and  
1803 CONTRACTOR.

1804 9.06 Temporary Roll-Off Box Collection Service. CONTRACTOR shall provide  
1805 Temporary Roll-Off Collection Service to all SFD Customers in the Service Area subscribing to  
1806 such service. CONTRACTOR shall respond to requests for service within two (2) Work Days of  
1807 receipt of the request. CONTRACTOR shall be compensated for such services in accordance  
1808 with the Maximum Service Rates as set forth in Exhibit 1 to this Contract as may be adjusted in  
1809 accordance with the terms of this Contract.

## 1810 **ARTICLE 10. MFD COLLECTION SERVICES**

1811 10.01 MFD Collection Services. These services shall be governed by the following  
1812 terms and conditions.

1813 10.01.1 Manner of Collection. CONTRACTOR shall provide MFD  
1814 Collection Service with as little disturbance as possible and shall leave any Container in an  
1815 upright position, with the lid closed, at the same point it was Collected without obstructing alleys,  
1816 roadways, driveways, sidewalks or mail boxes. CONTRACTOR shall close or lock, as  
1817 appropriate, Containers and Container enclosures that were opened by CONTRACTOR as part  
1818 of the Collection process. CONTRACTOR will not be responsible for Carts or Bins being moved  
1819 or open due to weather conditions or other factors beyond its control, such as scavengers.

1820 10.01.2 Collection Location. The default MFD Collection location shall be  
1821 designated areas within the property confines, and in compliance with any applicable City codes  
1822 and ordinances, unless with consent of the building owner/manager Collection may be from an  
1823 alternate location, including at the curb.

1824 10.01.3 Accessibility. CONTRACTOR shall Collect all Mixed Materials  
1825 and Organic Materials Containers that are readily accessible to CONTRACTOR'S crew and  
1826 vehicles and not blocked. However, CONTRACTOR shall provide "push services" and "key  
1827 services" as necessary during the provision of MFD Collection Services. Push services shall  
1828 include, but not be limited to, dismounting from the Collection vehicle, moving the Bins or Carts  
1829 from their storage location for Collection and returning the Bins or Carts to their storage location.  
1830 Push services may include unlocking and relocking the Bin or enclosure Key services shall  
1831 include the provision of a master lock and key by CONTRACTOR to the Service Address for the  
1832 convenience of CONTRACTOR. CONTRACTOR shall be compensated for providing "push  
1833 services" and or "key services" in accordance with the approved Maximum Service Rates as  
1834 provided in Exhibit 1 or as may be adjusted in accordance with the terms of this Contract.

1835 10.01.4 Difficult to Serve. If CONTRACTOR determines that the set--out  
1836 location for Carts or Bins is Difficult to Serve, CONTRACTOR shall contact the MFD Customer  
1837 to discuss a change in the set out location. In the event a new set out location is not agreed to  
1838 between the CONTRACTOR and MFD Customer, then CONTRACTOR shall be compensated  
1839 for providing Difficult to Serve Collection Services in accordance with the approved Maximum  
1840 Service Rates as provided in Exhibit 1 or as may be adjusted in accordance with the terms of  
1841 this Contract.

1842 10.02 MFD Mixed Materials Collection Service.

1843 10.02.1 Containerized Mixed Materials. CONTRACTOR shall provide  
1844 MFD Mixed Materials Collection Service to all MFD Service Addresses in the Service Area  
1845 where the Mixed Materials are properly containerized in Mixed Materials Carts or Bins, except  
1846 as set forth in Sections 10.02.5 or 10.04 regardless of whether or not the lid is fully closed.

1847                    10.02.2            Service Frequency. CONTRACTOR shall provide MFD Mixed  
1848 Materials Collection Service at least weekly. However, in those instances where the scheduled  
1849 Collection day falls on a holiday as set forth in Section 6.11 herein, the Collection day may be  
1850 adjusted in a manner agreed to between the MFD Service Recipient and CONTRACTOR as  
1851 long as service is received a minimum of one (1) time per week.

1852                    10.02.2.1        CONTRACTOR shall respond to requests for service  
1853 utilizing Roll-Off Boxes within two (2) Work Days of the request from the MFD Customer.

1854                    10.02.3            Container Sizes. CONTRACTOR shall offer Mixed Materials  
1855 Containers in 20, 32, 64 and 96 gallon nominal Cart sizes and in 1, 1.5, 2, 3, 4, 6 and cubic yard  
1856 Bins. CONTRACTOR shall offer Roll-Off Boxes in 6, 10, 20, 30, and 40 cubic yard sizes with  
1857 lids.

1858                    10.02.4            Minimum Capacity. CONTRACTOR shall provide Mixed Materials  
1859 Container sizes and with Collection frequencies such that the total weekly capacity of Mixed  
1860 Materials Collection Service is equal to the number of Dwelling Units in the MFD multiplied by  
1861 twenty (20) gallons. The size and number of the Container(s) and the frequency (above the  
1862 minimum) of Collection shall be determined by the MFD Customer. However, the size and  
1863 frequency shall be sufficient to meet the minimum capacity set forth in this Section 10.02.4 and  
1864 to provide that no Mixed Materials need be placed outside the appropriate Container on a  
1865 regular basis.

1866                    10.02.4.1        For purposes of calculating minimum capacity in cubic  
1867 yards under Section 10.02.4, the minimum gallons (calculated by multiplying the number of  
1868 Dwelling Units in the MFD times twenty (20) gallons) shall be divided by two hundred (200) and  
1869 the result calculated to the first decimal place. In those instances where the result does not  
1870 equal a specific Container size offered by CONTRACTOR, the results shall be rounded to the  
1871 nearest Container size, in accordance with the examples set forth below.

1872                    10.02.4.2        For example, if a MFD is composed of twelve (12) Dwelling  
1873 Units then the minimum capacity would be calculated as two hundred forty (240) gallons, (12  
1874 Dwelling Units x 20 gallons per Dwelling Unit), which is equivalent to 1.2 cubic yards (240  
1875 gallons /200 gallons per cubic yard = 1.2 cubic yards), and rounded down to 1 cubic yard.

1876                    10.02.4.3        For example, if a MFD is composed of fifteen (15) Dwelling  
1877 Units then the minimum capacity would be calculated as three hundred (300) gallons, (15  
1878 Dwelling Units x 20 gallons per Dwelling Unit) which is equivalent to 1.5 cubic yard (300 gallons  
1879 /200 gallons per cubic yard = 1.5 cubic yards). Since CONTRACTOR offers a 1.5 cubic yard Bin  
1880 rounding is not necessary.

1881                    10.02.4.4        For example, if a MFD is composed of twenty five (25)  
1882 Dwelling Units then the minimum capacity would be calculated as five hundred (500) gallons,  
1883 (25 Dwelling Units x 20 gallons per Dwelling Unit) which is equivalent to 2.5 cubic yard (500  
1884 gallons /200 gallons per cubic yard = 2.5 cubic yards), rounded up to 3 cubic yards.

1885                    10.02.5            Collection of Mixed Materials Overage. CONTRACTOR shall be  
1886 required to Collect all Mixed Materials Overage that are set out for Collection regardless of  
1887 whether or not the Mixed Materials Overages are properly contained in a bag affixed with an  
1888 Extra Service Tag. CONTRACTOR shall not be entitled to additional compensation for the  
1889 Collection Mixed Materials Overages unless such Overages are not contained in bags with  
1890 affixed Extra Service Tags in which case CONTRACTOR shall obtain and retain pictorial  
1891 evidence of such Overages and may be compensated for the Collection of such Overages in

1892 accordance with the approved "Overage" surcharge as provided in Exhibit 1 or as may be  
1893 adjusted under the terms of this Contract.

1894                   10.02.6        Multiple Overages. In the case of repeated Overages of Mixed  
1895 Materials CONTRACTOR may send written notification to the MFD Customer that includes  
1896 dates of observed Overages, any previous notifications, photographic documentation of said  
1897 Overages, and an offer to arrange for an appropriate change in Bin or Cart size, and /or  
1898 Collection frequency. Should Overages persist after three (3) notifications and CONTRACTOR  
1899 is unable to reach an agreement with the MFD Customer regarding an appropriate change in  
1900 Bin or Cart size and/or frequency of Collection, CONTRACTOR may impose such service level  
1901 increase as is needed to avoid the Overages and notify the MFD Customer and Contract  
1902 Manager in writing. The MFD Customer may petition CITY regarding any change in Bin or Cart  
1903 size and/or Collection frequency. Should three (3) months elapse with no Overage recurrence  
1904 taking place following the change in service the Overage problem shall be considered resolved.

1905                   10.02.7        Additional Mixed Materials Capacity. Upon notification to  
1906 CONTRACTOR by CITY or a MFD Customer that additional Mixed Materials capacity is  
1907 requested, CONTRACTOR shall deliver such Mixed Materials Containers as are needed to  
1908 meet the capacity requirements of the Service Address by the next regularly scheduled  
1909 Collection day or within six (6) Work Days (whichever is later). CONTRACTOR may be  
1910 compensated for the cost of providing additional Mixed Materials capacity in accordance with  
1911 the approved Maximum Service Rates as provided in Exhibit 1 or as may be adjusted under the  
1912 terms of this Contract.

1913                   10.02.8        Mixed Materials Processing Facility. All Mixed Materials Collected  
1914 as a result of performing MFD Mixed Material Collection Service shall be delivered to the Mixed  
1915 Materials Processing Facility.

1916                   10.02.9        Residue from Mixed Materials Processing. An amount of Residue  
1917 equal to the Residue generated as a result of Processing the Mixed Material Collected during  
1918 the performance of MFD Mixed Materials Collection Service under the terms of this Contract  
1919 shall be delivered to the Disposal Facility.

1920                   10.03    MFD Organic Materials Collection Service. This service will be governed by the  
1921 following terms and conditions: [this may change depending on final Council decision]

1922                   10.03.1        Containerized Organic Materials. CONTRACTOR shall provide  
1923 MFD Organic Materials Collection Service to all MFD Customers in the Service Area who  
1924 request such service and whose Organic Materials are properly containerized in Organic  
1925 Materials Carts or Bins, except as set forth in Sections 10.03.5 and 10.04, regardless of whether  
1926 the lids are closed CONTRACTOR shall provide all MFD Customers requesting this service with  
1927 a written copy of the provisions of Section 10.03.7 regarding discontinuance of service.

1928                   10.03.2        Service Frequency. CONTRACTOR shall provide MFD Organic  
1929 Materials Collection Service one (1) time per week. However, in those instances where the  
1930 scheduled Collection day falls on a holiday as set forth in Section 6.11 herein, the Collection day  
1931 may be adjusted in a manner agreed to between the Service Recipient and CONTRACTOR as  
1932 long as service is received a minimum of one (1) time per week.

1933                   10.03.3        Container Sizes. Except as set forth in Section 10.03.6  
1934 CONTRACTOR shall offer Organic Materials Containers in 32, and 64 gallon nominal Cart  
1935 sizes.

1936 10.03.4 Minimum Capacity. At a minimum, CONTRACTOR shall provide  
1937 one (1) 32 gallon Organic Materials Cart to any MFD of twelve (12) or fewer Dwelling Units, and  
1938 one (1) 64 gallon Organic Materials Cart to any MFD of thirteen or (13) more Dwelling Units.

1939 10.03.5 Collection of Organic Materials Overages. CONTRACTOR shall  
1940 be required to Collect all Organic Materials that are set out for Collection regardless of whether  
1941 or not the Organic Materials are contained in an Organic Materials Cart. CONTRACTOR shall  
1942 be entitled to additional compensation for the Collection of Organic Materials Overages in  
1943 accordance with the approved "Overage" surcharge as provided in Exhibit 1 or as may be  
1944 adjusted under the terms of this Contract.

1945 10.03.6 Additional Organic Materials Capacity. Upon notification to  
1946 CONTRACTOR by CITY or a Customer that additional Organic Materials capacity is requested,  
1947 CONTRACTOR shall deliver such Organic Materials Containers as are needed to meet the  
1948 capacity requirements of the Service Address by the next regularly scheduled Collection day or  
1949 within six (6) Work Days (whichever is later). CONTRACTOR must provide additional Container  
1950 capacity if requested by the MFD Customer.

1951 10.03.7 Reduction or Discontinuation of Service. CONTRACTOR shall  
1952 retain the right to reduce capacity or discontinue provision of Organic Materials Collection  
1953 Service to Service Addresses under the following circumstances.

1954 10.03.7.1 The Organics Cart is found to be contaminated through the  
1955 inclusion of more than ten (10) percent of materials that are not Organic Materials as defined  
1956 herein more than four (4 ) times in any twelve (12) month period. Upon finding a fourth instance  
1957 of such contamination in any twelve (12) month period CONTRACTOR shall notify the MFD  
1958 Customer in writing that an additional violation of the contamination requirements of the  
1959 program will result in the discontinuance of service.

1960 10.03.8 Organic Materials Processing Facility. CONTRACTOR shall  
1961 deliver all Collected Organic Materials to a fully permitted Organic Materials Processing Facility.  
1962 All expenses related to Organic Materials Processing and marketing will be the sole  
1963 responsibility of CONTRACTOR.

1964 10.03.9 Organic Materials Processing Services. Except for Organic  
1965 Materials Residue or as otherwise provided in Section 30 of this Contract, CONTRACTOR shall  
1966 ensure that all Organic Materials Collected pursuant to this Contract are Diverted.

1967 10.04 Holiday Tree Collection. CONTRACTOR shall Collect Holiday Trees from all  
1968 MFD Customers in the manner set forth in Exhibit 10 to this Contract. CONTRACTOR shall  
1969 provide this service beginning on the first Work Day after December 25<sup>th</sup> through the end of the  
1970 second full work week in January or dates approved by CITY.

1971 10.04.1 Contaminated Holiday Trees. Holiday trees that are flocked or  
1972 contain tinsel or other decorations or are attached to a tree stand may be delivered to the  
1973 Disposal Facility at the discretion of CONTRACTOR.

1974 10.05 Bulky Goods Collection Service. This service will be governed by the terms and  
1975 conditions set forth in Exhibit 14 and such changes to that Exhibit as may be agreed to between  
1976 CITY and CONTRACTOR.

1977 10.05.1 Annual Changes to Bulky Goods Collection Service  
1978 Requirements. Beginning with Contract Year July 1, 2016, through June 30, 2017 and annually  
1979 thereafter during the term of this Contract, CITY and CONTRACTOR may mutually agree to  
1980 changes in the Bulky Goods Collection Service program. Such mutually agreed to changes

1981 shall be documented through the revision of Exhibit 14 to this Contract and the revised Exhibit  
1982 14 shall be signed by authorized representatives of CITY and CONTRACTOR.

1983 10.06 Temporary Roll-Off Box Collection Service. CONTRACTOR shall provide  
1984 Temporary Roll-Off Collection Service to all MFD Customers in the Service Area subscribing to  
1985 such service. CONTRACTOR shall respond to requests for service within two (2) Work Days of  
1986 receipt of the request. CONTRACTOR shall be compensated for such services in accordance  
1987 with the Maximum Service Rates as set forth in Exhibit 1 to this Contractor as may be adjusted  
1988 in accordance with the terms of this Contract.

## 1989 **ARTICLE 11. COMMERCIAL COLLECTION SERVICES**

1990 11.01 Commercial Collection Services. These services will be governed by the  
1991 following terms and conditions.

1992 11.01.1 Size and Frequency of Service. CONTRACTOR shall offer Mixed  
1993 Organic Materials Carts in Materials Carts in 20, 32, 64 and 96 gallon nominal Cart sizes, and  
1994 Recyclable Materials and 32, 64 or 96 gallon nominal Cart sizes. CONTRACTOR shall offer  
1995 Mixed Materials, Recyclable Materials, and Organic Materials Bins in 1, 1.5 2, 3, 4, 6 and 7  
1996 cubic yard sizes. CONTRACTOR shall offer Mixed Materials, Recyclable Materials, and  
1997 Organic Materials Roll-Off Boxes in 6, 10, 20, 30, and 40 cubic yard sizes with lids. However, in  
1998 those instances where the scheduled Collection day falls on a holiday as set forth in Section  
1999 6.11 herein, the Collection day may be adjusted in a manner agreed to between the Commercial  
2000 Customer and CONTRACTOR as long as service is received a minimum of one (1) time per  
2001 week. The size of the Container and the frequency (above the minimum) of Collection shall be  
2002 determined between the Commercial Customer and CONTRACTOR. However, size and  
2003 frequency shall be sufficient to provide that no Mixed Materials, Recyclable Materials, or  
2004 Organic Materials need be placed outside the Container on a regular basis. CONTRACTOR  
2005 shall respond to requests for services utilizing Roll-Off Boxes within two (2) Work Days of the  
2006 request from the Commercial Customer. Commercial Customers may use a Compactor they  
2007 own or lease provided that the Customer is completely responsible for its proper maintenance  
2008 and that such Compactor shall be of a type that can be serviced by CONTRACTOR'S  
2009 equipment.

2010 11.01.2 Manner of Collection. CONTRACTOR shall provide Commercial  
2011 Collection Services with as little disturbance as possible and shall leave any Container in an  
2012 upright position, with the lid closed, at the same point it was Collected without obstructing alleys,  
2013 roadways, driveways, sidewalks or mail boxes. CONTRACTOR shall close or lock, as  
2014 appropriate, Containers and Container enclosures that were opened by CONTRACTOR as part  
2015 of the Collection process. CONTRACTOR will not be responsible for Carts or Bins being moved  
2016 or open due to weather conditions or other factors beyond its control, such as scavengers

2017 11.01.3 Accessibility. CONTRACTOR shall Collect all Mixed Materials  
2018 and Organic Materials Containers that are readily accessible to CONTRACTOR'S crew and  
2019 vehicles and not blocked. However, CONTRACTOR shall provide "push services" and "key  
2020 services" as necessary during the provision of Commercial Collection Services. Push services  
2021 shall include, but not be limited to, dismounting from the Collection vehicle, moving the Bins or  
2022 Carts from their storage location for Collection and returning the Bins or Carts to their storage  
2023 location. Push services may include unlocking and relocking the Bin or enclosure Key services  
2024 shall include the provision of a master lock and key by CONTRACTOR to the Service address  
2025 for the convenience of CONTRACTOR. CONTRACTOR shall be compensated for providing

2026 “push services” and or “key services” in accordance with the approved Maximum Service Rates  
2027 as provided in Exhibit 1 or as may be adjusted in accordance with the terms of this Contract.

2028 11.01.4 Difficult to Serve. If CONTRACTOR determines that the set-out  
2029 location for Carts or Bins is Difficult to Serve, CONTRACTOR shall contact the Commercial  
2030 Customer to discuss a change in the set out location. In the event a new set out location is not  
2031 agreed to between the CONTRACTOR and Commercial Customer, then CONTRACTOR shall  
2032 be compensated for providing Difficult to Serve Collection Services in accordance with the  
2033 approved Maximum Service Rates as provided in Exhibit 1 or as may be adjusted in accordance  
2034 with the terms of this Contract.

2035 11.01.5 Multiple Overages. In the case of repeated Overages of Mixed  
2036 Materials, Recyclable Materials, or Organic Materials, CONTRACTOR may send written  
2037 notification to the Commercial Customer that includes dates of observed Overages, any  
2038 previous notifications, photographic documentation of said Overages, and an offer to arrange for  
2039 an appropriate change in Bin or Cart size, and/or Collection frequency. Should Overages persist  
2040 after three (3) notifications and CONTRACTOR is unable to reach an agreement with the  
2041 Commercial Customer regarding an appropriate change in Bin or Cart size and/or frequency of  
2042 Collection, CONTRACTOR may impose such service level increase as is needed to avoid the  
2043 Overages and notify the Commercial Customer and Contract Manager in writing. The  
2044 Commercial Customer may petition CITY regarding any change in Bin or Cart size and/or  
2045 Collection frequency. Should three (3) months elapse with no Overage recurrence taking place  
2046 following the change in service the Overage problem shall be considered resolved.

2047 11.02 Commercial Mixed Materials Collection Service. This service will be governed by  
2048 the following additional terms and conditions.

2049 11.02.1 Containerized Mixed Materials. CONTRACTOR shall provide  
2050 Commercial Mixed Materials Collection Service to all Commercial Service Addresses in the  
2051 Service Area where Mixed Materials are properly Containerized in Mixed Materials Containers,  
2052 regardless of whether the lid is fully closed where the Containers are accessible as set forth in  
2053 Section 11.01.3 above.

2054 11.02.2 Collection of Mixed Materials Overage. CONTRACTOR shall also  
2055 be required to Collect all Mixed Materials Overages that are set out for Collection regardless of  
2056 whether or not the Mixed Materials Overages are properly contained in a Container.  
2057 CONTRACTOR shall obtain and retain pictorial evidence of such Overages and may be  
2058 compensated for the Collection of such Overages in accordance with the approved “Overage”  
2059 Maximum Service Rate as provided in Exhibit 1 or as may be adjusted under the terms of this  
2060 Contract.

2061 11.02.3 Disposal and Mixed Materials Processing Facilities. All Mixed  
2062 Materials Collected as a result of performing Commercial Mixed Materials Collection Services  
2063 shall be transported and delivered to the Disposal Facility or the Mixed Materials Processing  
2064 Facility.

2065 11.02.4 Residue From Mixed Materials Processing. An amount of  
2066 Residue equal to the Residue generated as a result of Processing the Mixed Materials Collected  
2067 during the performance of Commercial Mixed Materials Collection Services under the terms of  
2068 this Contract shall be delivered to the Disposal Facility.

2069 11.03 Additional Mixed Materials Capacity. Upon notification to CONTRACTOR by  
2070 CITY or a Commercial Customer that additional Mixed Materials capacity is requested,  
2071 CONTRACTOR shall deliver such Mixed Materials Containers as are needed to meet the

2072 capacity requirements of the Service Address by the next regularly scheduled Collection Day, or  
2073 within six (6) Work Days (whichever is later). CONTRACTOR may be compensated for the cost  
2074 of providing additional Mixed Materials capacity in accordance with the approved "Mixed  
2075 Materials Collection" Maximum Service Rates provided in Exhibit 1 or as may be adjusted under  
2076 the terms of this Contract.

2077           11.04 Commercial Organic Materials Subscription Collection Service. This service will  
2078 be governed by the following terms and conditions.

2079           11.04.1 Containerized Organic Materials. CONTRACTOR shall provide  
2080 Commercial Organic Materials Subscription Collection Service to all Commercial Customers in  
2081 the Service Area that subscribe to such service and whose Organic Materials are properly  
2082 containerized in Organic Materials Carts or Bins, regardless of whether the lids are closed,  
2083 where the Organic Materials Containers are accessible as set forth in Section 11.01.3.  
2084 CONTRACTOR may be compensated for Commercial Organic Materials Collection Service in  
2085 accordance with the approved "Commercial Organic Materials Collection" Maximum Service  
2086 Rates as provided in Exhibit 1.

2087           11.04.2 Collection of Organic Materials Overages. CONTRACTOR shall  
2088 be required to Collect all Organic Materials that are set out for Collection regardless of whether  
2089 or not the Organic Materials are properly contained in a Container. CONTRACTOR shall obtain  
2090 and retain pictorial evidence of such Overages and may be compensated for the Collection of  
2091 such Overages in accordance with the approved "Overage" Maximum Service Rate as provided  
2092 in Exhibit 1 or as may be adjusted under the terms of this Contract.

2093           11.04.3 Organic Materials Processing Facility. All Organic Materials  
2094 Collected as a result of performing Commercial Organics Material Subscription Collection  
2095 Services shall be delivered to the Organic Materials Processing Facility. All expenses related to  
2096 Organic Materials Processing and marketing will be the sole responsibility of CONTRACTOR.

2097           11.04.4 Additional Organic Materials Capacity. Upon notification to  
2098 CONTRACTOR by CITY or a Commercial Customer that additional Organic Materials Capacity  
2099 is requested, CONTRACTOR shall deliver such Organic Materials Containers as are needed to  
2100 meet the capacity requirements of the Service Address by the next regularly scheduled  
2101 Collection day, or within six (6) Work Days (whichever is later). CONTRACTOR shall be  
2102 compensated for the cost of providing additional Organic Materials Containers in accordance  
2103 with the approved "Commercial Organic Materials Collection" Maximum Service Rate provided  
2104 in Exhibit 1 or as may be adjusted under the terms of this Contract.

2105           11.04.5 Reduction or Discontinuation of Service. CONTRACTOR shall  
2106 retain the right to reduce capacity or discontinue provision of Organic Materials Subscription  
2107 Collection Services to Commercial Customers under the following circumstances:

2108           11.04.5.1 The Organic Materials Cart or Bin is found to be  
2109 contaminated through the inclusion of more than ten (10) percent of materials that are not  
2110 Organic Materials as defined herein more than four (4) times in any twelve (12) month period.  
2111 Upon a finding a fourth instance of such contamination in any twelve (1) month period,  
2112 CONTRACTOR shall notify the Commercial Customer in writing that an additional violation of  
2113 the contamination requirements of the program will result in the discontinuation of service.

2114           11.05 Commercial Special Events Collection Service. CONTRACTOR shall offer Mixed  
2115 Materials, Recyclable Materials and Organic Materials Collection, Disposal and processing  
2116 services at special events in accordance with the approved "Special Events Collection"  
2117 Maximum Service Rates provided in Exhibit 1 or as may be adjusted under the terms of this

2118 Contract. Such services shall include the delivery and pickup of Containers. CONTRACTOR will  
2119 deliver Containers the day before the event and pick up Containers the day following the event,  
2120 unless arranged otherwise with Customer. If the event is on a weekend or Collection holiday,  
2121 CONTRACTOR will deliver Containers the last Work Day before the event and pick up  
2122 Containers the first Work Day following the event, unless arranged otherwise with Customer.

2123 11.06 Temporary Roll-Off Box Collection Service. CONTRACTOR shall provide  
2124 Temporary Roll-Off Collection Service to all Commercial Customers in the Service Area  
2125 subscribing to such service. CONTRACTOR shall respond to requests for service within two (2)  
2126 Work Days of receipt of the request. CONTRACTOR shall be compensated for such services in  
2127 accordance with the Maximum Service Rates as set forth in Exhibit 1 to this Contract as may be  
2128 adjusted in accordance with the terms of this Contract.

## 2129 **ARTICLE 12. CITY COLLECTION SERVICES**

2130 12.01 CITY Collection Services. CONTRACTOR has offered to donate the following  
2131 services as corporate good will:

2132 12.01.1 Conditions of Service. CONTRACTOR shall provide CITY  
2133 Collection Services to all CITY Facilities existing in the Service Area as of the effective date of  
2134 the Contract where Mixed Materials and Organic Materials are properly containerized in Bins,  
2135 Carts, or Roll-Off Boxes regardless of whether the lid is closed, and where the Bins, Carts, or  
2136 Roll-Off Boxes are accessible as set forth in Section 12.01.4. All such Mixed Materials and  
2137 Organic Materials must be generated on City Facilities or on property maintained by CITY. To  
2138 the extent the number of CITY Facilities being serviced by CONTRACTOR increases  
2139 disproportionately to the reasonably expected growth in CITY Collection Services provided  
2140 during the term of the Contract, the parties agree to meet and confer in good faith to discuss  
2141 appropriate service levels as well as compensation for additional services. If the parties are  
2142 unable to agree upon the appropriate amount of compensation, the parties shall resolve their  
2143 disagreement through the dispute resolution process as set forth in Section 30.02.

2144 12.01.2 Size and Frequency of Service. CONTRACTOR shall offer Mixed  
2145 Materials Carts in 20, 32, 64 and 96 gallon nominal Cart sizes, and Organic Materials Carts in  
2146 20, 32, 64 or 96 gallon nominal Cart sizes. CONTRACTOR shall offer Mixed Materials and  
2147 Organic Materials Bins in 1, 1.5, 2, 3, 4, 6, and 7 cubic yard sizes. CONTRACTOR shall offer  
2148 Mixed Materials and Organic Materials Roll-Off Boxes in 6, 10, 20, 30, and 40 cubic yard sizes  
2149 with lids (if desired by CITY). Except for those services that utilize Roll-Off Boxes for Collection,  
2150 each service shall be provided at least once every week on a scheduled route basis. However,  
2151 in those instances where the scheduled Collection day falls on a holiday as set forth in Section  
2152 6.11 herein, or on a CITY holiday or business closure day, the Collection day may be adjusted  
2153 in a manner agreed to between CITY and CONTRACTOR as long as service is received a  
2154 minimum of one (1) time per week. The size of the Container and the frequency (above the  
2155 minimum) of Collection shall be determined between CITY and CONTRACTOR. However, size  
2156 and frequency shall be sufficient to provide that no Mixed Materials or Organic Materials need  
2157 be placed outside the Container on a regular basis. For those services utilizing Roll-Off Boxes  
2158 for Collection, the frequency of Collection shall be on a regular or irregular basis as determined  
2159 solely by the needs of CITY.

2160 12.01.3 Manner of Collection. CONTRACTOR shall provide CITY  
2161 Collection Services with as little disturbance as possible and shall leave any Container an  
2162 upright position, with the lid secure, at the same point it was Collected without obstructing  
2163 alleys, roadways, driveways, sidewalks or other public areas. CONTRACTOR shall close or

2164 lock, as appropriate, Container enclosures that were opened by CONTRACTOR as part of the  
2165 Collection process.

2166                   12.01.4        Accessibility. CONTRACTOR shall Collect all Mixed Materials  
2167 and Organic Materials Containers that are readily accessible to CONTRACTOR'S crew and  
2168 vehicles and not blocked. However, CONTRACTOR shall provide "push services" and "key  
2169 services" as necessary during the provision of CITY Collection Services. Push services shall  
2170 include, but not be limited to, dismounting from the Collection vehicle, moving the Bins or Carts  
2171 from their storage location for Collection and returning the Bins or Carts to their storage location.  
2172 Push services may include unlocking and relocking the Bin or enclosure Key services shall  
2173 include the provision of a master lock and key by CONTRACTOR to the Service Address for the  
2174 convenience of CONTRACTOR. CONTRACTOR shall not be compensated for providing "push  
2175 services" and or "key services" to CITY.

2176                   12.01.4.1       Notification. CONTRACTOR shall notify CITY daily, by e-  
2177 mail, of all situations that prevent or hinder Collection from any CITY Facility, unless otherwise  
2178 directed by CITY.

2179                   12.02 Street Litter Container Service. During the term of this Contract, CONTRACTOR  
2180 shall Collect and maintain those street litter Containers as are set forth in Exhibit 4 to this  
2181 Contract. CITY may modify Exhibit 4 as needed, by providing written notice to CONTRACTOR,  
2182 but such modification shall not increase the number of street litter Containers by more than ten  
2183 (10) per Contract Year. This service shall include daily emptying of street litter Containers  
2184 including liners and enclosures, and removal of debris atop or around Container, on Work days  
2185 (Monday-Friday), and monitoring and emptying of Containers on Saturday and Sunday, as  
2186 directed by CITY.

2187                   12.02.1        CONTRACTOR shall be responsible for repairing and maintaining  
2188 all street litter Containers, including liners, doors, locks, and any other attached hardware or  
2189 mechanisms. Maintenance includes graffiti removal and/or paint-over. Repair to damaged  
2190 Containers, including removal or paint-over of graffiti, must be completed made within six (6)  
2191 Work Days of notice from CITY. If CITY requests that more than ten (10) litter containers be  
2192 repaired or replaced during any week, CONTRACTOR and CITY shall meet to agree on repair  
2193 schedules.

2194                   12.02.2        CONTRACTOR shall be responsible for providing new street litter  
2195 Containers as needed, replacing irreparably damaged Containers, and maintaining an adequate  
2196 Container inventory. New street litter Containers shall have separate Garbage and Recyclable  
2197 Materials capacity integrated into the Container and shall be approved by the Contract  
2198 Manager. CONTRACTOR shall replace damaged Containers, and place new Containers  
2199 requested by CITY within six (6) Work Days of CITY request.

2200                   12.02.3        CONTRACTOR shall take ownership of CITY street litter  
2201 Containers owned by CITY upon implementation of Contract (July 1, 2015). CONTRACTOR  
2202 shall be responsible for Recycling, Disposal, or sale of surplus or damaged street litter  
2203 Containers. At end of Contract, CITY may exercise option to take ownership of any street litter  
2204 Containers then in use.

2205                   12.02.4        CONTRACTOR shall also be responsible for Collection from those  
2206 street litter Containers placed in conformance with CITY standards by Business Improvement  
2207 Districts and Community Benefit Districts if notified by CITY. CITY shall provide CONTRACTOR  
2208 thirty (30) day notice of such additions to the Collection list and limit such additions to no more  
2209 than twenty (20) per calendar year.

2210 12.02.5 CONTRACTOR may petition CITY to remove street litter  
2211 containers from problematic or underutilized locations.

2212 12.03 City Council and Mayor Roll-Off Boxes. CONTRACTOR shall provide delivery  
2213 and Collection Services for Roll-Off Boxes requested by CITY Council and Mayor for use in the  
2214 Service Area. CONTRACTOR shall allocate twelve (12) 20-cubic yard Roll-Off boxes to each of  
2215 the eight (8) Council offices and the Mayor, for a total of up to one hundred eight (108) twenty-  
2216 yard Roll-Off Boxes each calendar year. Any unused portion of this allocation shall carry forward  
2217 to succeeding calendar years, up to a maximum of twenty four (24) additional 20-cubic yard  
2218 Roll-Off Boxes that must be provided in any one (1) calendar year. Such services shall be  
2219 provided in such a manner that all Collection, Processing and Disposal needs, and related staff  
2220 support and public education materials for the event are adequately and properly provided for  
2221 by CONTRACTOR.

2222 12.03.1 CONTRACTOR is responsible for managing requests for Roll-Off  
2223 Boxes from the offices of CITY Council and Mayor, and for monitoring the allocation and use of  
2224 the Roll-Off Boxes. CONTRACTOR shall provide CITY a monthly report that shows the  
2225 allocation of Roll-Off Boxes by office, including allocations that were carried forward, and use to-  
2226 date for the current calendar year.

2227 12.03.2 CONTRACTOR shall, in response to the written request of the  
2228 offices of the City Council or Mayor, deliver and Collect Roll-Off Boxes for use in City Council  
2229 and Mayor Roll-Off Box events. The appropriate office of the City Council or Mayor shall notify  
2230 CONTRACTOR in writing not less than ten (10) calendar days prior to the date of the need for  
2231 the Roll-Off Box. The notice to CONTRACTOR shall specify the date of delivery and Collection  
2232 of the Roll-Off Box(es), the location(s) for delivery, and the number of the Roll-Off Boxes to be  
2233 delivered. CONTRACTOR shall remove the Roll-Off Box no later than the end of the first Work  
2234 Day following the event day. CONTRACTOR shall transport and deliver the Collected materials  
2235 to a facility as is appropriate for the disposition of the materials and approved by the Contract  
2236 Manager.

2237 12.04 CITY Sponsored Events. CONTRACTOR shall deliver and collect up to thirty  
2238 (30) Roll-Off Boxes per calendar year in support of CITY sponsored events, as requested by the  
2239 Contract Manager. At such events where CONTRACTOR provides Roll-Off Boxes,  
2240 CONTRACTOR shall also provide Carts for CITY'S temporary use if requested by the Contract  
2241 Manager. CITY may designate Roll-Off Boxes for Mixed Materials, Recyclable Materials or  
2242 Organic Materials Collection. CITY shall empty Carts prior to removal by CONTRACTOR.  
2243 CONTRACTOR shall remove Roll-Off Boxes and Carts no later than the end of the first Work  
2244 Day following the event day. CONTRACTOR shall transport and deliver the Collected materials  
2245 to a facility as is appropriate for the disposition of the materials, and as approved by the  
2246 Contract Manager.

2247 12.05 CITY-Approved Adopt-a-Spot Mixed Material and Organics Services.  
2248 CONTRACTOR shall provide up to One Hundred Fifty (150) 64-gallon Mixed Material or  
2249 Organics Carts to CITY Adopt A Spot volunteers for use in cleaning and greening public spaces  
2250 in Oakland. CITY shall provide CONTRACTOR with authorized list of Adopt A Spot volunteer  
2251 Service Recipients annually. CONTRACTOR shall provide service to such Carts when they are  
2252 set out for Collection with Service Recipient's other Containers. CONTRACTOR shall provide  
2253 Mixed Material or Organic Carts and services at no additional cost to Customers, Service  
2254 Recipients or CITY.

2255 12.06 Temporary Roll-Off Box Collection Service. CONTRACTOR shall provide  
2256 Temporary Roll-Off Collection Service to all CITY Facilities in the Service Area requesting such

2257 service at no charge to CITY. CONTRACTOR shall respond to requests for service within two  
2258 (2) Work Days of receipt of the request.

2259 12.07 CITY Delivered Materials. CONTRACTOR shall accept up to seven thousand  
2260 five hundred (7,500) Tons of material (the "tonnage allowance") during the period July 1, 2015  
2261 through December 31, 2015 at no charge to CITY. Beginning Calendar Year 2016, and each  
2262 subsequent Calendar Year, the Tonnage allowance shall be fifteen-thousand (15,000) Tons. In  
2263 any Calendar Year, CITY shall be allowed to deliver dirt and debris, Garbage, Recyclable  
2264 Materials, Organic Materials and Bulky Goods above the Tonnage allowance, but not more than  
2265 the unused Tonnage allowance from the prior two (2) calendar years, at no charge to CITY.  
2266 Source Separated Recyclable Materials delivered to CONTRACTOR'S facilities shall not count  
2267 toward the Tonnage allowance established pursuant to this Section. The CITY shall make  
2268 reasonable efforts to deliver materials properly separated to facilitate processing where feasible  
2269 such as with park landscaping green waste. CONTRACTOR shall be compensated for those  
2270 Tons that exceed the Tonnage allowance for any calendar year, except as otherwise provided in  
2271 this Section. Such compensation shall be based on the per Ton fee for Disposal at the Disposal  
2272 Facility.

2273 12.08 Illegal Dumping Notification and Collection. CONTRACTOR shall direct its  
2274 Collection vehicle drivers to note (i) the addresses of any premises at which the driver observes  
2275 that Garbage, Mixed Materials, Recyclable Materials, and/or Organic Materials Material is  
2276 accumulating; and (ii) the address, or other location description, at which Garbage, Mixed  
2277 Materials, Recyclable Materials, and/or Organic Materials has been dumped in an apparently  
2278 unauthorized manner. CONTRACTOR shall deliver the address or description to CITY within  
2279 three (3) Work Days of such observation. CONTRACTOR shall also provide Collection services  
2280 at up to twenty-five (25) locations per Work Day of up to three (3) cubic yards of such illegally  
2281 dumped materials per location provided, however, CONTRACTOR shall not be required to  
2282 collect materials not safely accessible by Collection vehicles and/or personnel.

2283 12.09 Provision of Compost. CONTRACTOR shall provide up to five hundred (500)  
2284 cubic yards per Contract Year of premium quality compost or other soil amendment or mulch  
2285 products delivered to locations in the Service Area and in amounts as directed by the Contract  
2286 Manager. Should CITY require greater amounts of these products than five hundred (500)  
2287 cubic yards per Contract Year CONTRACTOR shall provide such at a preferential price. For  
2288 deliveries of 20 yards or less, CITY must schedule the delivery at least three (3) days in  
2289 advance. For deliveries over twenty (20) yards, delivery dates are subject to CONTRACTOR's  
2290 available inventory.

2291 12.10 Disposal and Processing Facilities.

2292 12.10.1 Mixed Materials Processing Facility and Disposal Facility. All  
2293 Mixed Materials Collected as a result of CITY Collection Services shall be transported and  
2294 delivered to the Disposal Facility or the Mixed Materials Processing Facility.

2295 12.10.1.1 Residue From Mixed Materials Processing. An amount of  
2296 Residue equal to the Residue generated as a result of Processing the Mixed Materials Collected  
2297 during the performance of CITY Mixed Material Collection Service under the terms of this  
2298 Contract shall be delivered to the Disposal Facility.

2299 12.10.2 Organic Materials Processing Facility. All Organic Materials  
2300 Collected as a result of performing CITY Collection Services shall be delivered to the Organic  
2301 Materials Processing Facility. All expenses related to Organic Materials Processing and  
2302 marketing will be the sole responsibility of CONTRACTOR.

2303 12.10.3 Residue From Organic Materials Processing. An amount of  
2304 Residue equal to the Residue generated as a result of Processing the Organic Materials  
2305 Collected during the performance of CITY Organic Material Collection Service under the terms  
2306 of this Contract shall be delivered to the Disposal Facility.

2307 12.11 Modification of CITY Collection Services. CITY may from time to time direct  
2308 modifications of CITY Collection Services. Any such modification which materially increases or  
2309 decreases the cost of CONTRACTOR providing CITY Collection Services shall be handled  
2310 pursuant to the procedures set forth in Article 30.

2311

## ARTICLE 13. COLLECTION ROUTES

2312 13.01 Collection Routes. Within five (5) Work Days of receipt of a request from CITY,  
2313 CONTRACTOR shall provide CITY with maps precisely defining Collection routes, and the  
2314 travel routes to the Collection routes, together with the days and the times at which Collection  
2315 shall regularly commence.

2316 13.02 Subsequent Collection Route Changes. In the event a Residential Collection  
2317 route change will change the Collection day of ten (10) percent or more of the Service  
2318 Addresses on that route, CONTRACTOR shall provide a written plan, which is subject City  
2319 approval, not less than sixty (60) days before the proposed date of implementation.  
2320 CONTRACTOR shall coordinate implementation of route changes with the Residential  
2321 Recycling Contractor and shall notify affected Service Addresses of the Collection route  
2322 changes.

2323 13.02.1 In the event a Residential Collection route change will change the  
2324 Collection day of less than ten (10) percent of the Service Addresses on that route,  
2325 CONTRACTOR shall provide written notification to the affected Service Addresses and the  
2326 Contract Manager not less than two (2) weeks prior to the new Collection day. [CONTRACTOR  
2327 shall coordinate implementation of route changes with the Residential Recycling Contractor.]

2328 13.03 Route Map Update. CONTRACTOR shall revise the Customer route maps to  
2329 show the addition of Customers added due to construction / occupancy and shall provide such  
2330 revised maps to the Contract Manager upon request.

2331 13.04 CONTRACTOR Audit of Routes. In addition to any other auditing requirements  
2332 under this Contract, CONTRACTOR shall perform a comprehensive audit of SFD, MFD and  
2333 Commercial Customer Routes every full or partial three (3) calendar years, and submit to CITY  
2334 a written report on the results of that audit, no later than thirty (30) calendar days after  
2335 completion of the audit. The report should include the testing protocols, and the details of the  
2336 route audit findings along with recommendations, if any, on how CONTRACTOR will modify the  
2337 current system to correct any errors noted during the audit. If CITY requests, CONTRACTOR  
2338 shall cooperate fully with CITY to allow CITY to verify the accuracy of CONTRACTOR'S route  
2339 audit report.

2340 13.05 Coordination with Street Sweeping. CITY AND CONTRACTOR acknowledge  
2341 that CONTRACTOR may have to modify Collection days to accommodate CITY's street  
2342 sweeping schedule.

2343

## ARTICLE 14. COLLECTION EQUIPMENT

2344 14.01 General Provisions. All equipment used by CONTRACTOR in the performance  
2345 of Collection Services under this Contract shall be of a high quality. The vehicles shall be

2346 designed and operated so as to prevent Collected materials from escaping from the vehicles.  
2347 Hoppers shall be closed on top and on all sides with screening material to prevent Collected  
2348 materials from leaking, blowing or falling from the vehicles. All trucks and Containers shall be  
2349 watertight and shall be operated so that liquids do not spill during Collection or in transit.

2350 14.02 Vehicle Registration, Licensing and Inspection. On or before July 1, 2015 and  
2351 upon request by CITY thereafter during the term of this Contract, CONTRACTOR shall submit  
2352 documentation to the Contract Manager to verify that each of CONTRACTOR'S Collection  
2353 vehicles is in compliance with all registration, licensing and inspection requirements of the  
2354 California Highway Patrol, the California Department of Motor Vehicles, and any other  
2355 applicable laws or regulations. CONTRACTOR shall not use any vehicle that is not in  
2356 compliance with applicable registration, licensing and inspection requirements to perform  
2357 Collection Services. Each vehicle shall comply, at all times, with all applicable statutes, laws or  
2358 ordinances of any public agency.

2359 14.03 Clean Air Vehicles. During the term of this Contract, to the extent required by  
2360 law, CONTRACTOR shall provide its Collection vehicles to be in full compliance with local,  
2361 State and federal clean air requirements that were enacted or scheduled to be enacted,  
2362 including, but not limited to, the California Air Resources Board Heavy Duty Engine Standards  
2363 as currently proposed to be contained in CCR Title 13, Section 2020 et seq.; the Federal EPA's  
2364 Highway Diesel Fuel Sulfur regulations and any other applicable air pollution control.

2365 14.04 Bulky Goods. Vehicles used for Collection of Bulky Goods containing Freon or  
2366 other gases shall not use compactor mechanisms or mechanical handling equipment that may  
2367 release Freon or other gases from pressurized appliances.

2368 14.05 Global Positioning Systems (GPS). CONTRACTOR shall provide all route  
2369 Collection vehicles equipped with fully functioning on-board GPS with direct and real-time  
2370 linkages to CONTRACTOR'S Customer service system.

2371 14.06 Vehicle Noise Level. All Collection operations shall be conducted as quietly as  
2372 possible and must comply with U.S. EPA noise emission regulations currently codified at 40  
2373 CFR Part 205, California Vehicle Code Section 27207, and other applicable State, County, and  
2374 CITY noise control regulations.

2375 14.07 Safety Equipment. All Collection equipment used by CONTRACTOR shall have  
2376 appropriate safety markings including, but not limited to, highway lighting, flashing and warning  
2377 lights, clearance lights, and warning flags. All such safety markings shall be in accordance with  
2378 the requirements of the California Vehicle Code, as may be amended from time to time. All  
2379 Collection vehicles shall be equipped with audible back-up warning devices.

2380 14.08 Vehicle Signage and Painting. Collection vehicles shall have signage in letters of  
2381 contrasting color, at a size approved by CITY, on each side and the rear of each vehicle that  
2382 clearly states that the Collection vehicle is servicing the CITY of Oakland provides  
2383 CONTRACTOR'S name, CONTRACTOR'S Customer service telephone number, CITY'S  
2384 Oakland Recycles logo and the number of the vehicle. CONTRACTOR shall repaint all vehicles  
2385 (including vehicles striping) during the term of this Contract on a frequency as necessary to  
2386 maintain a positive public image as reasonably determined by the Contract Manager.

2387 14.09 Collection Vehicle Education Requirements. All new Collection vehicles shall  
2388 include space for outdoor poster advertising to be utilized by CITY. No advertising shall be  
2389 permitted other than the name and corporate logo of CONTRACTOR except promotional  
2390 advertisement of the Recyclable Materials and Organic Materials programs.

2391           14.10 Bin, Compactor and Roll-Off Box Signage, Painting, and Cleaning. All metal  
2392 Bins, Compactors or Roll-Off Boxes furnished by CONTRACTOR shall be either painted or  
2393 galvanized. All Bins, Compactors or Roll-Off Boxes shall display CONTRACTOR'S name,  
2394 CONTRACTOR'S toll free customer service telephone number, and shall be kept in a clean and  
2395 sanitary condition. Each Bin, Compactor or Roll-Off Box shall include a description of the type  
2396 of material to be placed in the Container and shall be painted in a color and manner, acceptable  
2397 to CITY, which is unique to that type of material. Such Bins, Compactors or Roll-Off Boxes as  
2398 are provided by CONTRACTOR shall be steam cleaned and repainted by CONTRACTOR as  
2399 frequently as necessary, but no more often than one (1) time per quarter, so as to maintain  
2400 them in a sanitary condition. However, no more often than one (1) time per quarter, upon  
2401 receipt of notification (from CITY or Customer) by CONTRACTOR of graffiti on a Bin,  
2402 Compactor or Roll-Off Box, CONTRACTOR shall clean or replace such Bin, Compactor or Roll-  
2403 Off Box within five (5) Work Days. Instances of CONTRACTOR cleaning, repainting or  
2404 replacement exceeding the quarterly limits set forth above are subject to CONTRACTOR fees,  
2405 as provided in Exhibit 1.

2406           14.11 Vehicle Maintenance. CONTRACTOR shall maintain Collection vehicles in a  
2407 clean condition and in good repair at all times and ensure that no Collected materials, oil,  
2408 grease, or other substances will blow, fall out, escape or leak out of the vehicle, with the  
2409 exceptions of vehicle emission. All parts and systems of the Collection vehicles shall operate  
2410 properly and be maintained in a condition satisfactory to CITY. CONTRACTOR shall wash all  
2411 Collection vehicles at least once a week. All washings shall be conducted in a manner that  
2412 conforms to the BMP Guidelines for Non-Point Source Pollutants in the publication entitled  
2413 Storm Water Best Management Practices Handbook for Industrial Commercial published by the  
2414 California Storm Water Quality Association (CASQA).

2415           14.12 Maintenance Log. CONTRACTOR shall maintain a maintenance log for all  
2416 Collection vehicles. The log shall at all times be accessible to CITY for physical inspection upon  
2417 request of Contract Manager, and shall show, at a minimum, each vehicles' CONTRACTOR  
2418 assigned identification number, date purchased or initial lease, dates of performance of routine  
2419 maintenance, dates of performance of any additional maintenance, and description of additional  
2420 maintenance performed.

2421           14.13 Equipment Inventory. On or before July 1, 2015, and annually thereafter,  
2422 CONTRACTOR shall provide to CITY an inventory of Collection vehicles and major equipment  
2423 used by CONTRACTOR for Collection or transportation and performance of services under this  
2424 Contract. The inventory shall indicate each Collection vehicle by CONTRACTOR-assigned  
2425 identification number, DMV license number, the ages of the chassis and body, type of fuel used,  
2426 the type and capacity of vehicle body, the date of acquisition, the decibel rating, the  
2427 maintenance status, and the number of vehicles by type. CONTRACTOR shall submit to the  
2428 Contract Manager, by web, cloud, or e-mail, an updated inventory annually, or more often at the  
2429 request of the Contract Manager. Each vehicle inventory shall be accompanied by a  
2430 certification signed by CONTRACTOR that all Collection vehicles meet the requirements of this  
2431 Contract.

2432           14.14 Reserve Equipment. CONTRACTOR shall have available to it, at all times,  
2433 reserve Collection equipment that can be put into service and operation within one (1) hour of  
2434 any breakdown. Such reserve equipment shall correspond in size and capacity to the  
2435 equipment used by CONTRACTOR to perform the contractual duties.

2436           14.15 Covering of Loads. All loads not in covered body trucks shall be tarped or  
2437 restrained to prevent spilling.

2438 14.16 Weight Restrictions. CONTRACTOR shall not load vehicles in excess of the  
2439 manufacturer's recommendations or limitations imposed by federal, State or local weight  
2440 restrictions on vehicles. CONTRACTOR acknowledges that CITY may document compliance  
2441 with this provision of the Contract through review of scale tickets and records of the Disposal  
2442 and Processing Facilities.

2443 14.17 Vehicle Tare Weights. Between the time this Contract is executed and July 1,  
2444 2015, CONTRACTOR shall have the Disposal Contractor weigh and determine the unloaded  
2445 ("tare") weight of each of CONTRACTOR'S vehicles that will be used to deliver Mixed materials  
2446 and other materials to the Disposal Facility. CONTRACTOR shall, at least every two (2) years,  
2447 have the Disposal Contractor reweigh and revise tare weights for all CONTRACTOR'S vehicles  
2448 used to deliver Mixed Materials and other materials to the Disposal Facility.

## 2449 **ARTICLE 15. LOCAL OFFICE**

2450 15.01 Oakland Office. During the term of this Contract CONTRACTOR shall maintain  
2451 an office in the Service Area. CONTRACTOR'S office shall provide toll-free telephone access  
2452 to CITY residents, and shall be located where Customers can pay their bills or make service  
2453 requests or inquires in person. The office shall be open and staffed from 8:00 am to 6:00 pm on  
2454 Work Days, except for designated holidays. The office shall have a responsible person in  
2455 charge who is familiar with the specific Collection Services provided by CONTRACTOR to CITY.  
2456 CONTRACTOR shall equip the office with a direct terminal connection to the customer service  
2457 system operated at CONTRACTOR'S call center.

## 2458 **ARTICLE 16. CUSTOMER SERVICE**

2459 16.01 Customer Service Program. CONTRACTOR shall develop, implement, and  
2460 maintain a customer service program approved by CITY to ensure that all services provided  
2461 under this Contract are high quality. CONTRACTOR'S customer service plan is set forth as  
2462 Exhibit 9, which is attached to and included in this Contract.

2463 16.02 CONTRACTOR'S Customer Service Center and Telephone and Email Access.  
2464 CONTRACTOR shall maintain a Customer center that provides toll-free telephone and email  
2465 access to residents and businesses of CITY, and is staffed by trained and experienced  
2466 Customer Service Representatives (CSRs). Such Customer service center shall have  
2467 responsible persons in charge during Collection hours, and shall be open 8:00 a.m. to 6:00 p.m.  
2468 on regularly scheduled Work Days (Monday through Friday) and when SFD or MFD Collection  
2469 Services are scheduled to be provided on Saturday; and be staffed with a sufficient number of  
2470 CSRs and equipped with sufficient telephone and email capacity such that:

2471 16.02.1 Up to ten (10) incoming calls can be received at one time;

2472 16.02.2 Customer or Service Recipient calls received during normal  
2473 business hours are answered by system within five (5) rings;

2474 16.02.3 Average Speed to Answer for Residential Customer calls shall be  
2475 three (3) minutes or less based on a weekly average. Speed to Answer is the time commencing  
2476 when a caller is placed in a queue (immediately after a caller hears CONTRACTOR recorded  
2477 messages and makes a choice from the phone tree) and ending when a live agent picks up the  
2478 call;

2479 16.02.4 During any on-hold waiting time and when the call center is  
2480 closed, Customers or Service Recipients are offered the option to leave a voice message;

2481 16.02.5 Any call "on-hold" in excess of one and one half (1.5) minutes  
2482 shall have the option to remain "on-hold" or to be switched to a message center where the  
2483 Customer can leave a message;

2484 16.02.6 Customer or Service Recipient voice messages are returned in  
2485 the order received and left by 6:00 p.m. Pacific time at latest by the close of the Work Day  
2486 following the day the voice message is received; and

2487 16.02.7 Customer or Service Recipient mails are responded to in the order  
2488 received and left by 6:00 p.m. Pacific time at latest by the close of the Work Day following the  
2489 day the email is received.

2490 16.03 Telephone Access to the Residential Recycling Contractor. CONTRACTOR  
2491 shall provide a local telephone number that allows callers to be automatically transferred to the  
2492 Residential Recycling Contractor, as appropriate. It shall be CONTRACTOR'S responsibility to  
2493 ensure that transferred callers experience no changes in volume or clarity from that associated  
2494 with direct calls to CONTRACTOR. The Residential Recycling Contractor shall reasonably  
2495 determine the appropriate volume for call transfers.

2496 16.04 Multilingual/TDD Service. CONTRACTOR'S call center shall at all times during  
2497 the normal business hours set forth in Section 16.02 maintain the capability of responding to  
2498 telephone calls in English, Chinese (Cantonese), Vietnamese, Spanish, and such other  
2499 languages as reasonably may be directed by CITY in accordance with its Equal Access  
2500 Program requirements. CONTRACTOR shall at all times maintain the capability of responding  
2501 to telephone calls through Telecommunications Device for the Deaf (TDD) Services.

2502 16.05 Website. CONTRACTOR shall develop and maintain a state-of-the-art website  
2503 dedicated to services provided in CITY, which is accessible by the public. The website shall  
2504 include answers to frequently asked questions, rates for Collection Services, listing and  
2505 description of Mixed Materials, Recyclable Materials and Organic Materials, Collection Service  
2506 schedules and maps, and other related topics. The website shall also have a link to CITY'S  
2507 website and a link to the Recyclable Materials Collection Contractor's website. CONTRACTOR  
2508 shall arrange for CITY'S website to include an e-mail link to CONTRACTOR and a link to  
2509 CONTRACTOR'S website. CONTRACTOR'S website shall provide the public the ability to e-  
2510 mail comments inquiries and request services or service changes to CONTRACTOR.

## 2511 **ARTICLE 17. COMMUNITY OUTREACH SERVICES**

2512 17.01 Community Outreach Services. CONTRACTOR shall be required to implement,  
2513 at its own expense, CONTRACTOR'S Community Outreach Strategy set forth in Exhibit 7 to this  
2514 Contract. The Community Outreach Strategy will provide an overview of the Contractor's plans  
2515 to engage the community in full use of the Collection Services and the Diversion goals of the  
2516 Contract.

2517 17.01.1 Transitional Outreach Plan. CONTRACTOR shall prepare and  
2518 implement, at its own expense, a transitional outreach plan consisting of a community outreach  
2519 campaign that makes aware and fully informs SFD, MFD, and Commercial Customers of the  
2520 Collection Services, highlighting changes to the current services, relevant to the Customer  
2521 experience, which will occur through execution of the Contract. The transitional outreach plan  
2522 will be consistent with and informed by CONTRACTOR'S Community Outreach Strategy as set  
2523 forth in Exhibit 7. The transitional outreach plan will be implemented beginning January 2015,  
2524 or with execution of the Contract, whichever is later. The transitional plan will cover all

2525 CONTRACTOR'S community outreach services in Calendar Year 2015. The budget for the  
2526 transitional plan shall be not more than One Million Dollars (\$1,000,000).

2527                   17.01.2        Annual Outreach Plan. CONTRACTOR, at its own expense, shall  
2528 prepare, submit and implement an annual outreach plan that is consistent with and informed by  
2529 CONTRACTOR'S Community Outreach Strategy as set forth in Exhibit 7. CONTRACTOR shall  
2530 submit the initial annual outreach plan for CITY approval no later than September 1, 2015, and  
2531 subsequent annual outreach plans no later than September 1 each year thereafter. CITY shall  
2532 review and respond to the proposal within forty five (45) days. Implementation of the annual  
2533 outreach plan would begin on January 1 of each year. The annual outreach plan must include  
2534 specific steps designed to increase Diversion and Customer participation in the Collection  
2535 Services, and measure the effectiveness of these efforts. The annual outreach plan should  
2536 target specific materials, or demographic or service sectors where improvements can be  
2537 maximized. Outreach targets should be based on measured trends and patterns in recycling  
2538 and disposal activities, participation, and tonnages by service sector, within the Service Area  
2539 and within identified Service Area localities, as indicated by information obtained by both the  
2540 Contract Manager and CONTRACTOR'S staff.

2541                   17.01.3        Community Outreach Budget. CONTRACTOR shall be required  
2542 to allocate or spend no more than One Million Dollars (\$1,000,000) in the first calendar year of  
2543 the Contract, to implement the transitional outreach plan, and not more than Five Hundred  
2544 Thousand Dollars (\$500,000) per calendar year thereafter to implement the annual outreach  
2545 plan. All such expenditures require prior approval from CITY unless included in outreach plan.  
2546 CITY and CONTRACTOR may mutually agree to perform joint Public Outreach activities using  
2547 all or some of the annual Public Outreach budget. Public relations activity costs cannot be  
2548 applied to the Public Outreach budget. At the end of the calendar year, any funds in the  
2549 approved annual outreach budget that remain unspent shall be carried forward to the following  
2550 calendar year. However, in the event CONTRACTOR has unspent funds at the end of three (3)  
2551 consecutive calendar years, the unspent funds shall be deposited in the Rate Stabilization  
2552 Fund.

2553                   17.01.4        Community Outreach Professional Services. Contractor will  
2554 engage the services of a professional firm or firms that specialize in community outreach,  
2555 marketing, public relations, and graphic design that preferably are based in Oakland or the Bay  
2556 Area. Such firms shall possess a minimum five (5) years' experience in marketing,  
2557 communications and/or community outreach, including two (2) years' experience conducting  
2558 outreach in a city comparable to Oakland in size and complexity; and knowledge of outreach  
2559 best practices, such as community-based social marketing.

2560                   17.02 CITY Approval Required. All marketing, messaging or other mass  
2561 communications, including but not limited to print, outdoor media, broadcast, web-based, e-mail,  
2562 and telephone voice messages, directed to Customers or Service Recipients, must be approved  
2563 by the Contract Manager prior to execution or delivery to the Customer or Service Recipient,  
2564 regardless of whether these communications relate to the Collection Services. All public  
2565 relations, press and community outreach activities that involve the Collection Services, or that  
2566 are targeted to the Service Recipients or Customers, must have prior written approval from the  
2567 Contract Manager, whether or not they are being paid for from the Community Outreach budget.  
2568 CONTRACTOR shall not perform any work on Community Outreach materials or activities  
2569 without prior written approval from the Contract Manager. All materials shall be submitted in  
2570 writing for review and approval. Written authorization by the Contract Manager is required prior  
2571 to final production of any Community Outreach materials. National marketing efforts by  
2572 corporate affiliates of CONTRACTOR are outside the scope of this Article 17; however, any

2573 national efforts which are to be targeted directly to Oakland or East Bay customers shall require  
2574 reasonable prior notification to CITY.

2575           17.03 Outreach Production Requirements. CONTRACTOR shall utilize designers,  
2576 printers and mail houses located within the Service Area for the design, development, printing  
2577 and mailing of all community outreach materials related to this Contract, unless otherwise  
2578 approved by Contract Manager. In addition, unless Contract Manager has granted an exception  
2579 in writing, the Community Outreach materials shall:

2580                   17.03.1           Be printed on one hundred (100) percent recycled paper with at  
2581 least fifty (50) percent post-consumer recycled content using soy based (or other non-toxic)  
2582 inks;

2583                   17.03.2           Include CITY'S Oakland Recycles logo and the CITY'S recycling  
2584 hotline phone number;

2585                   17.03.3           Include four (4) languages whenever possible and/or needed; and

2586                   17.03.4           Be made accessible to those with disabilities, in accordance with  
2587 all applicable federal, state, and local laws and regulations.

2588           17.04 Copyrights. At CONTRACTOR'S sole expense, CONTRACTOR shall execute  
2589 appropriate documents to assign to CITY either a copyright to works created pursuant to this  
2590 Article 17, or a license limited for the term of the Contract for use of such works, if so requested  
2591 by CITY. CONTRACTOR shall provide space in CONTRACTOR'S printed public outreach  
2592 materials, for CITY to include announcements, community information, articles, and  
2593 photographs.

2594           17.05 Annual Collection Service Notice. Each full or partial calendar year during the  
2595 term of this Contract, CONTRACTOR shall publish and distribute separate notices to all SFD  
2596 Customers and Service Recipients regarding the SFD Collection Service, to all MFD Customers  
2597 and Service Recipients regarding MFD Collection Service, and to all Commercial Customers  
2598 regarding Commercial Collection Service. To the extent appropriate, based on the category of  
2599 Customer receiving the notice, it shall contain at a minimum: definitions of the materials to be  
2600 Collected, procedures for setting out the materials, Collection and Disposal options for  
2601 unacceptable materials such as Hazardous Waste, maps of the Service Area indicating the day  
2602 of the week that Collection Service will be provided, and CONTRACTOR Customer service  
2603 phone number, email address and website address. The notice shall be provided in English,  
2604 Spanish, Vietnamese and Chinese (Cantonese) and such other languages as reasonably may  
2605 be directed by CITY in accordance with its Equal Access Program requirements, and shall be  
2606 distributed by CONTRACTOR no later than June 1, 2015 for the first partial calendar year and  
2607 by November 15, 2016 and annually thereafter for the remaining term of the Contract.

2608           17.06 Bill Inserts. CITY may provide educational and other material to CONTRACTOR  
2609 for inclusion in the invoices provided by CONTRACTOR to SFD, MFD and Commercial  
2610 Customers for Collection Services. CONTRACTOR shall not charge CITY for the inclusion of up  
2611 to three (3) 8 ½" by 11" pages per billing. To the extent CITY provides the insert material in an  
2612 electronic format, CONTRACTOR shall ensure that such materials are delivered or made  
2613 available to Customers utilizing electronic billing options provided by CONTRACTOR. In the  
2614 case of bill inserts developed jointly by CITY and CONTRACTOR, the cost of bill insert  
2615 development and production shall be allocated to the annual community outreach budget.

2616           17.07 Bulky Goods Collection Service. Outreach requirements for the Bulky Goods  
2617 Collection Service program include an annual announcement sent to all residential Service

2618 Addresses, a mid-year reminder notice to all service addresses, and an appointment  
2619 confirmation notice sent to Service Recipients following the scheduling of an appointment.  
2620 These materials are described in the Bulky Services Agreement, attached as Exhibit 14, which  
2621 may be modified as needed by agreement of CONTRACTOR and CITY.

2622 17.08 CONTRACTOR'S Website. CONTRACTOR shall maintain a website that uses  
2623 graphics and statistics illustrating CITY progress toward becoming a Zero Waste Community,  
2624 and provides resources the community can use to support Zero Waste and Sustainability  
2625 efforts, the Collection Services, and other programs as requested by CITY. CITY shall review  
2626 and approve CONTRACTOR'S website content that is related to this Contract.

2627 17.09 News Media Relations. CITY shall oversee all press activities including press  
2628 releases, press conferences, press kits, press packets and general press inquiries regarding the  
2629 Program. CONTRACTOR shall notify the Contract Manager by e-mail or phone of all requests  
2630 for news media interviews related to the Collection Services program within twenty-four (24)  
2631 hours of CONTRACTOR'S receipt of the request. Before responding to any news media  
2632 inquiries involving controversial issues or any issues likely to affect participation or Customer  
2633 perception of services, CONTRACTOR will discuss CONTRACTOR'S proposed response with  
2634 the Contract Manager. However, notwithstanding anything to the contrary in this Section 17.09,  
2635 there may be instances of unannounced media visits where CONTRACTOR responses would  
2636 be beneficial, in CONTRACTOR's reasonable judgment. In such cases, CONTRACTOR will not  
2637 be obligated to obtain CITY consent to media communication, but will summarize such  
2638 communication to CITY as soon as practicable. Copies of draft news releases or proposed  
2639 trade journal articles shall be submitted to CITY for prior review and approval at least five (5)  
2640 Work Days in advance of release. Copies of articles resulting from media interviews or news  
2641 releases shall be provided to CITY within five (5) Work Days after publication.

2642 17.10 Compost for CITY Residents. CONTRACTOR shall make available a total of  
2643 eighty (80) cubic yards per calendar year of pre-bagged compost for distribution to Oakland  
2644 residents at two (2) annual compost give-back events within the jurisdictional limits of CITY  
2645 during each of the first two (2) years of the Contract. CONTRACTOR shall work with CITY to  
2646 determine the dates and locations of the give-back events.

2647 17.10.1 CONTRACTOR shall be responsible for all aspects related to  
2648 planning, managing, and staffing of the compost give-back event. Residents shall be required  
2649 to show proof of residency to receive the compost product. No later than ten (10) Work Days  
2650 following the compost give-back event, CONTRACTOR shall submit to CITY a written report  
2651 identifying the number of residents who accepted materials; the number of bags given away; the  
2652 total tonnage of material given away; a summary of feedback and suggestions provided by  
2653 residents; and any suggestions CONTRACTOR proposes for the next compost give-back  
2654 event(s).

## 2655 **ARTICLE 18. EMERGENCY SERVICE PROVISIONS**

2656 18.01 Emergency Services. CONTRACTOR shall provide emergency services (i.e.,  
2657 special collections, transport, processing,) at CITY'S request in the event of a declared local,  
2658 State, or federal state of emergency, major accidents, disruptions or natural calamities.  
2659 CONTRACTOR shall be capable of providing emergency services within twenty-four (24) hours  
2660 of notification by CITY, or as soon thereafter as is reasonably practical in light of the  
2661 circumstances. An emergency contact person designated by CONTRACTOR shall be  
2662 accessible during the term of this Contract twenty-four (24) hours per day for the Contract  
2663 Manager or other CITY Administrator designee to contact CONTRACTOR. CONTRACTOR

2664 shall receive additional compensation, above the normal compensation contained in this  
2665 Contract, to cover the costs of rental equipment, additional personnel, overtime hours and other  
2666 documented expenses based on the rates set forth in Exhibit 1 to this Contract provided  
2667 CONTRACTOR has first secured written authorization and approval from CITY through the  
2668 CITY Administrator.

2669 18.02 In the event of an emergency as set forth above, the Contract Manager may  
2670 grant CONTRACTOR a variance from regular routes and schedules. As soon as practicable  
2671 after such event, CONTRACTOR shall advise the Contract Manager when it is anticipated that  
2672 normal routes and schedules can be resumed. The Contract Manager shall make an effort  
2673 through the local news media to inform the public when regular services may be resumed.

## 2674 **ARTICLE 19. RECORD KEEPING & REPORTING REQUIREMENTS**

### 2675 19.01 Record Keeping.

2676 19.01.1 Accounting Records. CONTRACTOR shall maintain full, complete  
2677 and separate financial, statistical and accounting records, pertaining to cash and billing, and  
2678 provision of all Collection Services provided under this Contract, prepared on an accrual basis in  
2679 accordance with generally accepted accounting principles. Such records shall be subject to  
2680 audit and inspection by CITY. Gross Receipts derived from provision of the Collection Services  
2681 shall be recorded as revenues in the accounts of CONTRACTOR. These records shall be  
2682 separate and segregated from other records maintained by CONTRACTOR for services outside  
2683 the scope of this Contract as may be provided by CONTRACTOR. CONTRACTOR shall  
2684 maintain and preserve all cash, billing and Disposal records for a period of not less than five (5)  
2685 years following the close of each of CONTRACTOR'S fiscal years.

2686 19.01.2 CONTRACTOR Payments to CITY. CONTRACTOR shall  
2687 maintain records of all payments made to CITY for all items listed in Section 7.17.7, 7.17.8,  
2688 7.17.9, and 7.17.10.

2689 19.01.3 Tonnage Records. CONTRACTOR shall maintain records of the  
2690 incoming and outgoing quantities, measured in pounds, of (i) Mixed Materials, Recyclable  
2691 Materials, and Organics Material, and Bulky Materials Collected, Processed, composted, and  
2692 Disposed under the terms of this Contract, and (ii) Recyclable Materials and Organic Materials,  
2693 by material type, sold, donated or given for no compensation, and Residue Disposed.

2694 19.01.4 Records. CONTRACTOR shall maintain all other records relevant  
2695 to the provision of Collection Services under this Contract. After a meet and confer if  
2696 CONTRACTOR so requests, CONTRACTOR shall maintain such additional records as  
2697 reasonably required by CITY and agreed to by CONTRACTOR.

2698 19.01.4.1 CONTRACTOR shall maintain a relational database that  
2699 includes data from all required reports for the term of this Contract, and provide CITY with  
2700 access to the database. Database shall be flexible to accommodate changing needs and  
2701 conditions over the term of this Contract.

2702 19.02 Reporting Requirements. Monthly reports shall be delivered to CITY no later  
2703 than fifteen (15) calendar days after the end of the prior month. Quarterly reports shall be  
2704 delivered to CITY no later than twenty (20) calendar days after the end of the reporting quarter.  
2705 Annual reports shall be delivered to CITY no later than thirty (30) days after the end of each  
2706 preceding calendar year. Monthly, quarterly and annual reports shall be provided electronically  
2707 in forms and formats acceptable to the CITY.

2708 19.02.1 Monthly Reports. CONTRACTOR shall provide reports that  
2709 include the following data for each month and year to date.

2710 19.02.1.1 Collection Service Account Data. Number of SFD and  
2711 MFD buildings and units served; number of Commercial and CITY accounts served. Number of  
2712 containers in service by Collection Service type, container size, and material type (e.g., Mixed  
2713 Materials, Organic Materials), and container service location (e.g., curbside placement,  
2714 Premium Backyard, Exempt Backyard). Number of Non-Collection Notices issued by Collection  
2715 Service type and by reason for non-collection.

2716 19.02.1.2 Collected Tonnage Data. Tonnage for all materials  
2717 Collected, by Collection Service type and by material type, e.g., Mixed Material, Organic  
2718 Materials. Bulky Goods Collection Service, including Collected tonnage, bulky goods item  
2719 counts, and other data and information per Exhibit 14 of this Contract. Tonnage for all materials  
2720 delivered to the transfer facility by CITY vehicles, and tonnage and pull data for CITY Roll-Off  
2721 boxes serviced by CONTRACTOR.

2722 19.02.1.3 Processed Tonnage Data. Tonnage for all Collected  
2723 materials that are delivered to Processing facilities by Collection Service type, and by  
2724 processing facilities.

2725 19.02.1.4 Processed Materials Data. Tonnage of each material  
2726 produced through the Processing of Collected materials at CONTRACTOR's Processing  
2727 Facility, e.g., finished compost, old corrugated containers, mixed paper and other recycled  
2728 commodity grades, feedstock for biomass or refuse derived fuel, and energy products derived  
2729 from CONTRACTOR's Processing of Organic materials (should CONTRACTOR produce such  
2730 energy products). CONTRACTOR shall use a statistically significant method approved by CITY  
2731 to calculate the Tonnage of finished Processed material, net of Residue, attributable to material  
2732 Collected under this Contract.

2733 19.02.1.5 Disposal Tonnage Data. Tonnage for all materials  
2734 Collected that are transferred to the Disposal Facility without Processing, by Collection Service  
2735 type. Tonnage for all Residue from Processing of Collected materials, by processing facility.  
2736 CONTRACTOR shall use a statistically significant method approved by CITY to calculate the  
2737 tonnage of Residue attributable to material Collected under this Contract.

2738 19.02.1.6 Customer Service Data. Number of Customer and Service  
2739 Recipient contacts, e.g., phone calls or electronic communications, by date, Collection Service  
2740 type, and topic including but not limited to the topics listed.

2741 19.02.1.7 Local Hire Requirement Update. CONTRACTOR shall  
2742 provide monthly updates on its compliance with Local Hire Requirements in Article 55 of this  
2743 Contract.

2744 19.02.1.8 Roll-Off Box Report. CONTRACTOR shall provide a City  
2745 Council and Mayor Roll-Off Box report that shows the allocation of Roll-Off Boxes by office,  
2746 including allocations that were carried forward, and use to-date for the then current calendar  
2747 year in compliance with Section 12.03.1.

2748 19.02.2 Quarterly Reports. CONTRACTOR shall provide the following  
2749 information each quarter:

2750 19.02.2.1 Public Outreach and Information Activities. Report on all  
2751 public outreach and information activities undertaken during the period, including distribution of  
2752 outreach materials and other promotional activities.

- 2753 19.02.2.2 Processing and Marketing Activities. Report on Recyclable  
2754 Materials and Organic Materials Processing and marketing issues or conditions, if any,  
2755 occurring during the previous quarter.
- 2756 19.02.2.3 Customer Service Activities. Report on customer service  
2757 and Call Center issues or conditions, if any, occurring during the previous quarter.
- 2758 19.02.2.4 Operational Issues and Activities. Report on significant  
2759 changes in Collection Service or Processing operations, instances of property damage or  
2760 accidents, scavenging, or other operational issues.
- 2761 19.03 Annual Reports. CONTRACTOR shall provide the following data and information  
2762 each year.
- 2763 19.03.1.1 Customer and Collection Services Data. List of all  
2764 Customers serviced under this Contract including and sortable by Collection Service type,  
2765 Customer name, Service Address (street number, street name, Zip Code), number of  
2766 Containers billed for by Collection Service type, Container size, and material type, e.g., Mixed  
2767 Material, Organic Material.
- 2768 19.03.1.2 [reserved]
- 2769 19.03.1.3 Local Hire Requirement Annual Report. CONTRACTOR  
2770 shall provide an annual report on its compliance with Local Hire Requirements in Article 55 of  
2771 this Contract.
- 2772 19.03.1.4 Gross Receipts. CONTRACTOR shall provide a summary  
2773 of the prior year's Gross Receipts received, by Collection Service type.
- 2774 19.03.1.5 Equipment Inventory. Updated complete inventory of  
2775 Collection vehicles used pursuant to this Contract, by vehicle chassis identification number,  
2776 vehicle body identification number, license number and model year.
- 2777 19.03.1.6 Business Tax Certificate. Copy of current business tax  
2778 certificate.
- 2779 19.04 Additional Reporting and Access to Information.
- 2780 19.04.1 CONTRACTOR shall provide CITY with any additional data and  
2781 information requested by CITY that is maintained by, or readily available to, CONTRACTOR  
2782 and that is specifically related to the Collection Services. Such reports shall be provided within  
2783 a reasonable time following the request.
- 2784 19.04.2 CONTRACTOR shall provide CITY with CONTRACTOR's Call  
2785 Center records as requested by CITY and which are required pursuant to other provisions of  
2786 this Contract.
- 2787 19.04.3 CONTRACTOR shall provide a large wall map of the Service Area  
2788 that shows Collection day of service for SFD and MFD routes. CONTRACTOR shall provide an  
2789 updated map whenever route changes include a change to day of service.
- 2790 19.04.4 CONTRACTOR shall provide CITY with Collection Route  
2791 information as requested by CITY, as may reasonably be provided. Such information to be  
2792 provided within a reasonable time following the request.

2793 19.04.5 CONTRACTOR shall provide CITY with CONTRACTOR's  
2794 Collection vehicle global positioning system (GPS) reports as requested by CITY, as may  
2795 reasonably be provided.

2796 19.05 Nothing in this Article 19, or elsewhere in this Contract, shall be construed to  
2797 require CONTRACTOR to provide cost (other than the weight of costs for purposes of  
2798 calculating RRI) or profit information.

## 2799 **ARTICLE 20. NONDISCRIMINATION**

2800 20.01 Nondiscrimination. In the performance of all work and services under this  
2801 Contract, CONTRACTOR shall not discriminate against any person on the basis of such  
2802 person's race, color, religion/religious creed, sex/gender, pregnancy, marital status, age,  
2803 national origin/ancestry, physical and/or mental disability, medical condition, sexual orientation,  
2804 gender identity, military or veteran status, or status in any other group protected by federal,  
2805 State or local law. CONTRACTOR shall comply with all applicable local, state and federal laws  
2806 and regulations regarding nondiscrimination, including those prohibiting discrimination in  
2807 employment.

## 2808 **ARTICLE 21. SERVICE INQUIRIES AND COMPLAINTS**

2809 21.01 CONTRACTOR'S Customer Service. All Customer and Service Recipient  
2810 inquiries and complaints about the Services shall be directed to CONTRACTOR. A  
2811 representative of CONTRACTOR shall be available to receive the inquiries and complaints  
2812 during normal business hours. All service inquiries and requests will be handled by  
2813 CONTRACTOR in a prompt, courteous, and efficient manner. In the case of a dispute between  
2814 CONTRACTOR and a Customer, the matter may be reviewed and a decision made by the  
2815 Contract Manager.

2816 21.01.1 Customer Service System. CONTRACTOR will utilize an  
2817 automated Customer service system to maintain a record of all inquiries and complaints in a  
2818 manner prescribed by CITY. In addition thereto, CONTRACTOR shall maintain, at  
2819 CONTRACTOR'S place of business, an automated Customer service system, listing all  
2820 Customer service requests, complaints and CONTRACTOR notices. Said system shall contain  
2821 the names and addresses of parties involved, date of such service request, complaint or  
2822 noticing, nature of same, and the date and manner of disposition of each case. Such system  
2823 shall be kept so that it may conveniently be inspected by representatives of CITY upon request.

2824 21.01.2 Response Requirements. For those complaints related to missed  
2825 Collections that are received by 12:00 noon on a Work Day, CONTRACTOR will return to the  
2826 Customer address and Collect the missed Carts or Bins by 12:00 noon on the following Work  
2827 Day. For those complaints related to missed Collections that are received after 12:00 noon on a  
2828 Work Day, CONTRACTOR shall have until the end of the following Work Day to resolve the  
2829 complaint. For those complaints or service requests related to Carts or Bins for new  
2830 Customers, or repair, replacement or exchange of Carts or Bins, the appropriate Articles of this  
2831 Contract shall apply.

2832 21.01.3 Missed Collections. CONTRACTOR agrees that it is in the best  
2833 interest of CITY that all Mixed Materials, Recyclable Materials, Organic Materials and Bulky  
2834 Goods be Collected on the scheduled Collection day. Accordingly, missed Collections will  
2835 normally be Collected as set forth herein regardless of the reason that the Collection was  
2836 missed. However, in the event a Service Address reports missed Collection Services more than

2837 two (2) times in any consecutive two (2) month period the Contract Manager will work with  
2838 CONTRACTOR to determine an appropriate resolution to that situation. In the event  
2839 CONTRACTOR believes any complaint to be without merit, CONTRACTOR shall notify the  
2840 Contract Manager, by e-mail. The Contract Manager will investigate all disputed complaints and  
2841 render a decision.

## 2842 **ARTICLE 22. QUALITY OF PERFORMANCE OF CONTRACTOR**

2843 22.01 Intent. CONTRACTOR acknowledges and agrees that one of CITY'S primary  
2844 goals in entering into this Contract is to ensure that the Collection Services are of the highest  
2845 caliber, that Service Recipient and Customer satisfaction remains at the highest level, that  
2846 maximum Diversion levels are achieved, and that materials Collected are put to the highest and  
2847 best use to the extent feasible.

2848 22.02 Contract Compliance Coordinator. CONTRACTOR will provide for a full-time  
2849 Contract Compliance Coordinator dedicated to CITY. The Contract Compliance Coordinator  
2850 shall be responsible for monitoring CONTRACTOR'S programs and services and assisting CITY  
2851 in maintaining full contractual compliance at all times during the term of the Contract. These  
2852 duties shall include but not be limited to issues related to new and existing Customer needs,  
2853 public education, routing, and customer service. The Contract compliance Coordinator shall  
2854 meet monthly with CITY staff to provide updates on all areas of service as needed.

2855 22.03 Services Manager. CONTRACTOR shall designate a manager to be in charge of  
2856 the Collection Services within the Service Area. The manager shall have the authority and  
2857 knowledge to direct CONTRACTOR resources as need to resolve matters of concern to CITY.  
2858 The Services Manager, or designee shall be available to the Contract Manager through the use  
2859 of a mobile telephone at all times that CONTRACTOR is providing Collection Services.

2860 22.04 Liquidated Damages. The parties further acknowledge that consistent and  
2861 reliable Collection Services are of utmost importance to CITY, and that CITY has considered  
2862 and relied on CONTRACTOR'S representations as to its quality of service commitment in  
2863 awarding the Contract. The parties further recognize that some quantified standards of  
2864 performance are necessary and appropriate to ensure consistent and reliable service and  
2865 performance. The parties further recognize that if CONTRACTOR fails to achieve the  
2866 performance standards, or fails to submit required documents in a timely manner, CITY, and  
2867 CITY'S residents and businesses will suffer damages and that it is and will be impractical and  
2868 extremely difficult to ascertain and determine the exact amount of damages. Therefore, without  
2869 prejudice to CITY'S right to treat such non-performance as an event of default under Article 29,  
2870 the parties agree that the liquidated damages amount defined in this Article represent  
2871 reasonable estimates of the amount of such damages considering all of the circumstances  
2872 existing on the effective date of this Contract, including the relationship of the sums to the range  
2873 of harm to CITY, Customers, Service Recipients, and the community as a whole. which  
2874 reasonably could be anticipated, and the anticipation that proof of actual damages would be  
2875 costly or impractical. In placing their initials at the places provided, each party specifically  
2876 confirms the accuracy of the statements made above and the fact that each party has had  
2877 ample opportunity to consult with legal counsel and obtain an explanation of the liquidated  
2878 damage provisions at the time that the Contract was made.

2879 CITY Initial Here \_\_\_\_\_ CONTRACTOR Initial Here \_\_\_\_\_

2880 CONTRACTOR agrees to pay (as liquidated damages and not as penalty) the following  
2881 amounts:

1	Failure to timely submit or make available to CITY documents and reports as required under the provisions of this Contract (Various Sections).	\$100 per incident per day
2	Failure to correct identified billing errors as required in (Article 7).	\$10 per incident per billing cycle capped at \$100,000 per billing cycle
3	Failure to pay the amount due to the Residential Recycling Contractor within the time period set forth herein after receiving invoice approval from CITY (Section 7.14).	\$250 per incident per day
4	Failure to remit the Franchise Fee and other payments to CITY by the 15 <sup>th</sup> of each month (Section 7.20).	\$250 per incident per day
-----	omitted	-----
6	Failure to provide timely transition documents or meet transition requirements (Section Article 6.19).	\$300 per item per day
-----	omitted	-----
8	Failure to notify CITY daily of all situations that prevent or hinder Collection from any CITY Facility, unless otherwise directed by CITY (Article 12).	\$100 per day
9	Failure to Collect or otherwise recover within the time set forth in Section 21.01.2 materials that are set out for Collection including materials that have been rejected but where a Non-Collection Notice was not provided which exceeds one (1) such failures per 1,000 services per service category (e.g., Mixed Materials, Organics) per service sector (SFD, MFD, Commercial) per month, or which exceeds twenty-five (25) such failures per 1,000 services per month for Bulky.	\$150 per incident per day
10	Failure to service, repair, maintain, or replace street litter Containers (as provided in Section 12.02) which exceeds 5 such failures per week.	\$50 per incident per day
11	Missed or incomplete SFD Residential Collection at the same Service address for: Two consecutive scheduled Collections Three of six scheduled Collections Eight Collections in six months Twelve Collections in twelve months (Article 9).	\$50 per incident \$250 per incident \$500 per incident \$1,000 per incident

12	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 6.06.9.3) which exceeds 10 such failures per week.	\$150 per incident per day
13	Failure to commence clean-up of spills, leaks, or litter caused by CONTRACTOR by end of Work Day, upon notification from CITY (Section 6.15).	\$300 per incident
14	Failure to properly return empty Carts or Bins to the point of Collection, upright with lids closed and locks secured, as required by Section 6.04, which exceeds 50 such failures per month.	\$150 per incident per day
15	Failure to answer a Customer call within five (5) rings (Section 16.02.2). Answer" includes any method of picking up Customer calls, including recorded greetings.	\$50 per incident
16	Customer on-hold wait time, based on a weekly average that is: <ul style="list-style-type: none"> <li>• Greater than three minutes and up to four minutes</li> <li>• Greater than four minutes and up to five minutes</li> <li>• Over five minutes</li> </ul> (Section 16.02.3).	\$1,000 per week \$2,000 per week \$3,000 per week
17	Failure to return a Customer voice message or respond to a Customer e-mail by the close of the Work Day following the day the voice message or e-mail is received (Section 16.02.6) provided it is received by 6:00 p.m.	\$150 per incident per day
18	Failure to make Extra Service Tags available to Customers in the manner set out by this Contract (Section 6.09).	\$150 per incident per day
19	Failure to begin Collection Service within 7 work days for a new customer account, or receipt of an application for premium backyard Collection, exempt backyard Collection programs or the curbside placement exemption within the time required by Section 6.06.4, which exceeds 20 such failures per calendar quarter.	\$150 per incident per day
-----	omitted	-----
-----	omitted	-----
22	Failure to provide delivery of compost within the times required by (Section 12.09).	\$150 per incident per day
23	Failure to maintain Collection vehicles pursuant to Article 14.	\$150 per incident per day

24	Failure to mark and label Carts, Bins and Roll-Off Boxes; to inspect, clean and maintain metal Bins, Compactors or Roll-Off Boxes in a clean and sanitary manner which exceeds 100 such failures annually (Section 6.06.1, 6.06.2, 6.06.3, and 14.10).	\$150 per incident per day
25	Failure to meet vehicle noise requirements (Section 14.06).	\$100 per incident per day
-----	omitted	-----
27	Commingling Mixed Materials, Organic Materials, or Recyclable Materials with other material types prior to delivery to the designated processing facility, except as permitted in the Contract (Section 6.14).	\$500 per incident
28	Failure to ensure that a vehicle operator is properly licensed (Section 33.01.4).	\$500 per incident per day
29	Failure to maintain office and call center hours as required by this Contract (Section 15.01).	\$100 per incident per day
30	Failure to maintain Collection hours and days as required by this Contract (Section 6.02).	\$250 per incident per day
31	Failure to have CONTRACTOR personnel in proper uniform (Section 33.01.3).	\$250 per incident per day
32	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
33	Changing Collection day of ten (10) percent or more of the Service Addresses on a Residential Route without proper authorization by the Contract Manager and proper notification to the Service Addresses (Section 13.02).	\$5,000 per route per incident
34	Failure to provide adequate primary and alternate capacity to accept and process Mixed Materials, Recyclable Materials or Organic Materials (Sections 6.12.3, 6.12.4 and 6.12.5).	\$500 per day
35	Failure to provide a transfer station or Processing facility for City Delivered Materials (Section 12.07).	\$500 per day
36	Failure to respond timely to CITY requests for services or information (Section 22.02).	\$150 per incident
37	Disposal of Recyclable Materials or Organic Materials in the Disposal Facility without first obtaining the required permission of CITY (Sections 6.12.4 and 6.12.5).	\$1,000 per load

38	Failure to deliver any Collected materials to CITY approved Disposal Facility, Mixed Materials Processing Facility, Materials Recovery Facility, or Organic Materials Processing Facility, as appropriate, except as otherwise expressly provided in this Contract (Sections 6.12.3, 6.12.4, and 6.12.5).	\$5,000 per load
-----	omitted	-----
40	Failure or neglect to complete at least ninety percent (90%) of each route on the regular scheduled Collection day (Sections 9.01.2, 10.01.1, 11.01.2 and 12.01.3).	\$1,000 for each route not completed
41	Transferring loads on CITY streets except as otherwise expressly provided in this Contract (Section 6.03).	\$150 per incident
42	Failure to provide Customers the payment methods for billings in the manner set out in this Contract (Section 7.11).	\$150 per incident per day
43	Failure to provide Mayor and City Council Roll-Off Box within 10 calendar days of a request by the Mayor or Council Office (Section 12.03.2).	\$150 per incident per day
44	Changing the Collection day of less than ten (10) percent of the Service Addresses on a Residential Collection route without proper notification to Service Addresses and Contract Manager, as appropriate (Section 13.02.1).	\$500 per route per day
45	Failure to conduct route audits and report results to CITY in a timely manner (Section 13.04).	\$150 per audit per day
46	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
47	Failure to comply with the public outreach standards in the manner set out in Sections 7.01.2 – 17.09.	\$150.00 per incident per day for time-related standards \$5,000 per incident for other standards not time-related

48	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
49	Failure to comply with 50% local hire preference for Oakland residents provision for new employees (Article 55) herein.	\$5000 per position annually
-----	omitted	-----
-----	omitted	-----
-----	omitted	-----
53	Failure to comply with worker retention requirements	\$5000 per position

2882 22.05 Liquidated damages shall apply to service disruptions caused by a  
2883 CONTRACTOR-initiated lockout or similar CONTRACTOR-initiated work stoppage.

2884 22.06 Procedure for Review of Liquidated Damages Before assessing liquidated  
2885 damages pursuant to Items 1, 6, 25, 32, 34, 35, 36, 41, 45, 47, 48, 49, and 53 of this Article 22,  
2886 the CITY and CONTRACTOR shall meet and confer regarding these specific areas of  
2887 substandard performance. If, despite such meeting, incidents of the type(s) addressed at the  
2888 meeting continue to occur, the CITY may proceed to assess liquidated damages as provided  
2889 above. The Contract Manager may assess liquidated damages pursuant to this Article 22 on a  
2890 monthly basis. However, liquidated damages may only be assessed if CONTRACTOR is  
2891 notified of the event within sixty (60) days of the City's knowledge of its occurrence. Prior to  
2892 assessing liquidated damages, CITY shall give the CONTRACTOR written notice of its intention  
2893 to do so ("Notice of Assessment"). The notice shall include a description of the event of non-  
2894 performance. The CONTRACTOR may review and make copies (at its own expense) of all non-  
2895 confidential information in the CITY's possession relating to the event of non-performance.  
2896 During the first 90 days of the Contract, the CITY agrees not to assess liquidated damages due  
2897 to challenges which may occur during implementation of the new Contract. If in the future there  
2898 shall be an implementation period required to commence a new level or type of service, the  
2899 CITY and CONTRACTOR agree to discuss a similar suspension of liquidated damages for a  
2900 specified period of time.

2901 22.06.1 The assessment shall become final unless, within thirty (30)  
2902 calendar days of the date of the Notice of Assessment, CONTRACTOR provides a written  
2903 request for a meeting with the Contract Manager to present evidence that the assessment  
2904 should not be made.

2905 22.06.2 The Contract Manager shall schedule a meeting between  
2906 CONTRACTOR and the CITY Administrator or the CITY Administrator's designee as soon as  
2907 reasonably possible after timely receipt of CONTRACTOR'S request.

2908 22.06.3 The CITY Administrator or the CITY Administrator's designee shall  
2909 review CONTRACTOR'S evidence and render a decision sustaining or reversing the liquidated  
2910 damages as soon as reasonably possible after the meeting. Written notice of the decision shall  
2911 be provided to CONTRACTOR.

2912 22.06.4 In the event CONTRACTOR does not submit a written request for  
2913 a meeting within thirty (30) calendar days of the date of the Notice of Assessment, the Contract

2914 Manager's determination shall be final and CONTRACTOR shall submit payment to CITY no  
2915 later than fifteen (15) calendar days following final determination. At the sole option of CITY, if  
2916 monies are owed to CONTRACTOR, CITY may deduct the liquidated damages from the letter of  
2917 credit required by Section 24.03 of this Contract.

2918 22.06.5 CITY'S assessment or Collection of liquidated damages shall not  
2919 prevent CITY from exercising any other right or remedy, including the right to terminate this  
2920 Contract, for CONTRACTOR'S failure to perform the work and services in the manner set forth  
2921 in this Contract.

## 2922 **ARTICLE 23. BILLING AUDIT AND PERFORMANCE REVIEWS**

### 2923 23.01 Billing Audit and Performance Review.

2924 23.01.1 Selection and Cost. CITY may conduct two (2) billing audit and  
2925 performance reviews ("review") of CONTRACTOR'S performance during the initial term of this  
2926 Contract. The review will be performed by a qualified firm under contract to CITY. CITY shall  
2927 have the final responsibility for the selection of the firm but shall seek and accept comments and  
2928 recommendations from CONTRACTOR. CONTRACTOR shall be responsible for the cost of  
2929 the reviews up to a maximum of One Hundred Fifty Thousand Dollars (\$150,000) per review.

2930 23.01.2 Purpose. The review shall be designed to meet the following  
2931 objectives.

2932 23.01.2.1 Verify that Customer billing rates have been properly  
2933 calculated and they correspond to the level of service received by the Customer.

2934 23.01.2.2 Verify that franchise fees, and other charges required  
2935 under this Contract have been properly calculated and paid to CITY.

2936 23.01.2.3 Verify CONTRACTOR'S compliance with the reporting  
2937 requirements and performance standards of the Collection Services Contract.

2938 23.01.2.4 Verify the Diversion percentages reported by  
2939 CONTRACTOR.

2940 23.01.3 CONTRACTOR'S Cooperation. CONTRACTOR shall cooperate  
2941 fully with the review and provide all requested data otherwise required to be provided under this  
2942 Contract, including certain operational data, financial data and other data requested by CITY  
2943 within thirty (30) calendar days. Failure of CONTRACTOR to cooperate or provide the  
2944 requested documents in the required time shall be considered an event of default.

2945 23.02 CITY Requested Program Review. CITY reserves the right to require  
2946 CONTRACTOR to periodically conduct reviews of the SFD, MFD, Commercial, and CITY  
2947 Collection Services programs to assess performance indicators, including but not limited to:  
2948 average volume of Recyclable Materials per setout per Service Address , average volume of  
2949 Organic Materials per setout per Service Address, Collection Services participation levels,  
2950 contamination levels, etc. Prior to the program review, CITY and CONTRACTOR shall meet to  
2951 discuss the purpose of the review and the method, scope, time frame for completion and data to  
2952 be provided by CONTRACTOR. CONTRACTOR shall then prepare and submit to the Contract  
2953 Manager a written program review plan for review and approval. The Contract Manager shall  
2954 review and, to the extent necessary at the sole discretion of CITY, modify the program review  
2955 plan, and return it to CONTRACTOR for implementation.



2997 25.02.1 Commercial General Liability: Insurance Services Office (ISO)  
2998 Occurrence Form CG 0001 or, if approved by CITY, Claims Made Form No. CG0 0002.  
2999 Automobile Liability: Insurance Services Office Form No. CA 0001, code 1 "any auto."

3000 25.02.2 Workers' Compensation Insurance as required by the State of  
3001 California and Employers Liability Insurance.

3002 25.02.3 Hazardous Waste and Environmental Impairment Liability  
3003 Insurance.

3004 25.02.4 Crime Insurance for Employee Theft.

3005 25.02.5 Minimum Limits of Insurance. CONTRACTOR shall maintain  
3006 insurance limits no less than:

3007 25.02.6 Commercial General Liability: Twenty Million Dollars  
3008 (\$20,000,000) each occurrence, including products and completed operations coverage.

3009 25.02.6.1 Coverage afforded on behalf of the CITY,  
3010 Councilmembers, directors, officers, agents, employees and volunteers shall be primary  
3011 insurance, but only as respects the services provided by CONTRACTOR under this Contract.  
3012 Any other insurance available to the City, Councilmembers, directors, officers, agents,  
3013 employees and volunteers under any other policies shall be excess insurance (over the  
3014 insurance required by this Contract).

3015 25.02.7 Automobile Liability: Ten Million Dollars (\$10,000,000) combined  
3016 single limit per accident for bodily injury and property damage.

3017 25.02.8 Workers' Compensation and Employers Liability: Workers'  
3018 Compensation insurance as required by the State of California, with statutory limits, and  
3019 Employers Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each  
3020 accident, Two Million Dollars (\$2,000,000) policy limit bodily injury by disease, and Two Million  
3021 Dollars (\$2,000,000) each employee bodily injury by disease.

3022 25.02.9 Hazardous Waste and Environmental Impairment Liability: Ten  
3023 Million Dollars (\$10,000,000.00) each occurrence covering liability arising from the release of  
3024 waste materials and/or irritants, contaminants or pollutants. Hazardous Waste and  
3025 Environmental Impairment Liability will include coverage for all operations of CONTRACTOR,  
3026 and include all owned, landfills or waste disposal sites and transfer stations. If coverage is on a  
3027 Claims Made basis, the retroactive date must be shown, and must be before the date of the  
3028 Contract or the beginning of Contract work. Insurance must be maintained and evidence of  
3029 insurance must be provided for at least five (5) years after completion of the Contract of work.  
3030 If coverage is cancelled or non-renewed, and not replaced with another claims made policy form  
3031 with a retroactive date prior to the contract effective date, CONTRACTOR must purchase  
3032 "extended reporting" coverage for a minimum of five (5) years after completion of work. CITY,  
3033 its Councilmembers, directors, officers, agents, employees and volunteers are to be covered as  
3034 additional insureds with respect to liability arising from the release of waste materials and/or  
3035 irritants, contaminants or pollutants. Such coverage shall, if commercially available without  
3036 involvement of CITY, automatically broaden in its form of coverage to include legislated  
3037 changes in the definition of waste material and/or irritants, contaminants or pollutants.

3038 25.02.10 Crime Insurance for Employee Theft. Five Hundred Thousand  
3039 Dollars (\$500,000) per loss coverage.

3040           25.03 Deductibles and Self-Insured Retention. Any deductibles or self-insured  
3041 retention shall be for the account of CONTRACTOR and shall be paid entirely by  
3042 CONTRACTOR without any contribution from CITY.

3043           25.04 Endorsements. The liability policies are to contain, or be endorsed to contain,  
3044 the following provisions:

3045           25.04.1           CITY, its Councilmembers, directors, officers, employees, agents  
3046 and volunteers are to be covered as additional insureds with respect to liability arising out of  
3047 automobiles owned, leased, hired or borrowed by or on behalf of CONTRACTOR; products and  
3048 completed operations of CONTRACTOR; liability arising out of work or operations performed by  
3049 or on behalf of CONTRACTOR, including material parts or equipment furnished in connection  
3050 with such work or operations; and with respect to Hazardous Waste, Pollution and/or  
3051 Environmental Impairment Liability.

3052           25.04.2           CONTRACTOR'S insurance coverage shall be primary insurance  
3053 as respects CITY, its officers, officials, employees, agents and volunteers but only as respects  
3054 the services provided by CONTRACTOR under this Contract. Any insurance or self-insurance  
3055 maintained by CITY, its officers, officials, employees, agents or volunteers shall be excess of  
3056 CONTRACTOR'S insurance and shall not contribute with it.

3057           25.04.3           CONTRACTOR'S insurance shall apply separately to each  
3058 insured against whom claim is made or suit is brought, except with respect to the limits of the  
3059 insurer's liability.

3060           25.04.4           The limits of insurance are the minimum required limits and if  
3061 CONTRACTOR maintains higher limits, CITY shall be entitled to coverage for the higher limits  
3062 maintained by CONTRACTOR.

3063           25.04.5           The Automobile Liability policy shall be endorsed to delete the  
3064 Pollution and/or the Asbestos exclusion, or documentation that CONTRACTOR carries  
3065 environmental pollution liability coverage for solid waste transported by CONTRACTOR. The  
3066 Automobile Liability policy shall also be endorsed to add the Motor Carrier act endorsement  
3067 (MCS-90) TL 1005, TL 1007 and /or other endorsements required by federal or state authorities.

3068           25.05 Waiver of Subrogation. CONTRACTOR hereby agrees to waive subrogation  
3069 which any insurer of CONTRACTOR may acquire from CONTRACTOR by virtue of the payment  
3070 of any loss. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect  
3071 this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver  
3072 of subrogation in favor of CITY for all work performed by CONTRACTOR, its employees, agents  
3073 and subcontractors.

3074           25.06 Cancellation. Each insurance policy required by this clause shall be occurrence-  
3075 based or an alternate form as approved by CITY and endorsed to state that coverage shall not  
3076 be cancelled by either party, except after sixty (60) days' prior written notice has been given to  
3077 CITY. CONTRACTOR shall provide at least sixty (60) days' written notice to CITY, by certified  
3078 mail, return receipt requested, of any insurance policy required hereunder being suspended,  
3079 voided, or reduced in coverage or limits. Any failure to comply with reporting provisions of the  
3080 policies shall not affect CONTRACTOR'S obligations to CITY, its officers, officials, employees,  
3081 agents or volunteers.

3082           25.07 Claims Made Coverage. If General Liability or Hazardous Waste and  
3083 Environmental Impairment Liability coverage is written on a claims-made from:

3084 25.07.1 The "Retro Date" must be shown, and must be before the date of  
3085 the contract or the beginning of contract work.

3086 25.07.2 Insurance must be maintained and evidence of insurance must be  
3087 provided for at least five (5) years after completion of the contract of work.

3088 25.07.3 If coverage is canceled or non-renewed, and not replaced with  
3089 another claims-made policy form with a "Retro Date" prior to the contract effective date,  
3090 CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years  
3091 after completion of contract work.

3092 25.07.4 A copy of the claims reporting requirements must be submitted to  
3093 CITY for review.

3094 25.08 Acceptability of Insurers. Insurance is to be placed with insurers admitted to  
3095 transact business in California with a current A.M. Best's rating of no less than A:VII. If pollution  
3096 and/or Environmental Impairment and/or errors and omission coverage are not available from  
3097 an admitted" insurer, the coverage may be written with CITY's permission, by a non-admitted  
3098 insurance company. A Non-admitted company should have an A.M. Best's rating of A:X or  
3099 higher.

3100 25.09 Verification of Coverage. CONTRACTOR shall furnish CITY with original  
3101 certificates and amendatory endorsements effecting coverage required by this clause. All  
3102 certificates and endorsements are to be received and approved by CITY before work  
3103 commences. However, failure to obtain the required documents prior to the work beginning  
3104 shall not waive CONTRACTOR'S obligation to provide them. CITY reserves the right to require  
3105 complete copies of all required insurance policies, including endorsements required by these  
3106 specifications, at any time. Such documents shall remain confidential.

3107 25.10 Subcontractors. CONTRACTOR shall include all subcontractors as insureds  
3108 under its policies or require and verify that all subcontractors maintain insurance meeting all the  
3109 requirements of this contract.

3110 25.10.1 Proof of insurance shall be mailed to the following address or any  
3111 subsequent address as may be directed in writing by CITY.

3112 Contract Manager  
3113 Environmental Services Division, PWA  
3114 250 Frank Ogawa Plaza, Suite 5301  
3115 Oakland, CA 94612

3116 25.11 Modification of Insurance Requirements. The insurance requirements provided  
3117 in this Contract may be modified or waived by CITY, in writing, upon the request of  
3118 CONTRACTOR if CITY determines such modification or waiver is in the best interest of CITY  
3119 considering all relevant factors, including exposure to CITY.

3120

## ARTICLE 26. INDEMNIFICATION

3121 26.01 Indemnification of CITY. CONTRACTOR shall defend, with counsel acceptable  
3122 to CITY, indemnify and hold harmless, to the fullest extent allowed by law, CITY, its officers,  
3123 officials, employees, volunteers agents and assignees (indemnitees)), from and against any and  
3124 all loss, liability, penalties, forfeitures, claims, demands, actions, proceedings or suits, in law or  
3125 in equity, of every kind and description, (including, but not limited to, injury to and death of any  
3126 person and damage to property, or for contribution or indemnity claimed by third parties) arising  
3127 or resulting from or in any way connected with: (i) the operation of CONTRACTOR, its agents,

3128 employees, contractors, and/or subcontractors, in exercising the privileges granted to it by this  
3129 Contract; (ii) the failure of CONTRACTOR, its agents, employees, contractors, and/or  
3130 subcontractors to comply in all respects with the provisions and requirements of this Contract,  
3131 applicable laws, ordinances and regulations, and/or applicable permits and licenses; and (iii) the  
3132 acts of CONTRACTOR, its agents, employees, contractors, and/or subcontractors in performing  
3133 services under this Contract for which strict liability is imposed by law. The foregoing indemnity  
3134 shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, action, suit injury,  
3135 death or damage is also caused in part by any of the indemnitees' negligence. Notwithstanding  
3136 anything to the contrary in this Contract, the indemnity obligations of CONTRACTOR shall not in  
3137 any way extend to indemnifying and/or defending the CITY or any other indemnitees for any  
3138 claim, liability, damages, liens, penalties, or any costs or obligations whatsoever arising from, or  
3139 related to, the CITY's setting of rates or fees under this Contract or in connection with  
3140 Proposition 218, Article XIIC and Article XIID of the California Constitution.

3141 26.02 Contractor Indemnity Regarding City Approvals. To the maximum extent  
3142 permitted by law, CONTRACTOR shall defend (with counsel reasonably acceptable to the City),  
3143 indemnify, and hold harmless the CITY, the Oakland City Council, and their respective agents,  
3144 officers, employees and volunteers (hereafter collectively called "City Parties") from any liability,  
3145 damages, claim, judgment, loss (direct or indirect) action, causes of action, or proceeding  
3146 (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff  
3147 time, expenses or costs) (collectively called "Action") against the CITY to set aside, void or  
3148 annul this Agreement or any City Approvals approved concurrently herewith or any Subsequent  
3149 Approval or the implementation of the same based upon an allegation that the City shall have  
3150 failed to comply with the California Environmental Quality Act. The CITY may elect, in its sole  
3151 discretion, to participate in the defense of said Action, and CONTRACTOR shall reimburse the  
3152 CITY for its reasonable legal costs and attorneys' fees. CONTRACTOR shall not be obligated to  
3153 reimburse CITY for attorneys' fees paid to outside counsel in such defense.

3154 26.02.1 Within ten (10) calendar days of the filing of any Action as  
3155 specified in the preceding paragraph, CONTRACTOR shall execute a Joint Defense Letter  
3156 Agreement with the CITY, acceptable to the Office of the City Attorney, which memorializes the  
3157 above obligations. These obligations and the Joint Defense Letter of Agreement shall survive  
3158 termination, extinguishment, or invalidation of the City Approval or any Subsequent Approval  
3159 requested by CONTRACTOR. Failure to timely execute the Letter Agreement does not relieve  
3160 the CONTRACTOR of any of the obligations contained in this Section or other requirements or  
3161 Conditions of Approval that may be imposed by the CITY.

3162 26.03 Contractor Cooperation. In the event there is a legal challenge by a third party to  
3163 the City's award of the MM&O Contract, CONTRACTOR agrees to cooperate with the CITY in  
3164 the defense of such a challenge to the extent CITY's and CONTRACTOR's respective legal  
3165 positions are not in conflict. As a condition of the acceptance of the award of the MM&O  
3166 Contract, CONTRACTOR agrees to waive any claims it may have against the CITY pertaining  
3167 to any issues arising from and/or related to the Zero Waste Services procurement process  
3168 regarding the MM&O Contract award.

3169 26.04 CONTRACTOR'S Obligation Not Excused. CONTRACTOR'S obligation to  
3170 defend, hold harmless, and indemnify shall not be excused because of CONTRACTOR'S  
3171 inability to evaluate liability or because CONTRACTOR evaluates liability and determines that  
3172 CONTRACTOR is not liable to the claimant. CONTRACTOR must respond within thirty (30)  
3173 days to the tender of a claim for defense and indemnity by CITY, unless this time has been  
3174 extended by CITY. If CONTRACTOR fails to accept or reject a tender of defense and indemnity  
3175 within thirty (30) days, in addition to any other remedy authorized by law, so much of any money

3176 due CONTRACTOR by virtue of this Contract as shall reasonably be considered necessary by  
3177 CITY, may be retained by CITY as an offset against its costs and damages until final disposition  
3178 has been made or the claim or suit for damages, or until CONTRACTOR accepts or rejects the  
3179 tender of defense, whichever occurs first.

3180 With respect to third party claims against CONTRACTOR, CONTRACTOR waives any and all  
3181 rights of any type to express or implied indemnity against the Indemnities.

3182       26.05 Hazardous Substances Indemnification. CONTRACTOR shall indemnify, defend  
3183 with counsel acceptable to CITY, protect and hold harmless CITY, its officers, officials,  
3184 employees, agents, assigns and any successor or successors to CITY'S interest from and  
3185 against all claims, damages (including but not limited to special, consequential, natural  
3186 resources and punitive damages) injuries, hazardous materials response mediation and  
3187 removal costs, losses, demands, liens, liabilities, causes of action, suits, legal or administrative  
3188 proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and  
3189 expenses (including but not limited to attorney's and expert witness fees and costs incurred in  
3190 connection with defending against any of the foregoing or enforcing this indemnity) of any kind  
3191 whatsoever paid, incurred or suffered by, or asserted against CITY or its officers, officials,  
3192 employees, agents, assigns, or contactors arising from or attributable to acts or omissions of  
3193 CONTRACTOR, or its agents, including but not limited to any repair, cleanup or detoxification,  
3194 or preparation and implementation of any removal, remedial, response, closure and post-  
3195 closure or other plan (regardless of whether undertaken due to governmental action) concerning  
3196 any hazardous substance or hazardous wastes at any place where CONTRACTOR transports,  
3197 stores, or Disposes of Mixed Materials pursuant to this Contract. The foregoing indemnity is  
3198 intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. section  
3199 9607(c) and California Health and Safety Code section 25364, to defend insure, protect, hold  
3200 harmless and indemnify CITY from liability.

3201       26.05.1       This provision is in addition to all other provisions in this Contract  
3202 and is intended to survive the end of the term of this Contract. CONTRACTOR'S Guaranty shall  
3203 extend to the indemnification obligation hereunder.

3204       26.06 Maximum Service Rates.

3205       26.06.1       Consistent with the limitations provided by Public Resources Code  
3206 section 40059.2 and the obligations of CONTRACTOR set forth above, the following provisions  
3207 are intended to address issues of defense and acceptance of the tender of defense and  
3208 indemnity by CITY in the event that CITY and/or CONTRACTOR are named in any lawsuit (a)  
3209 challenging the CITY's setting of Maximum Service Rates for Collection Services under this  
3210 Contract, (b) impacting the ability of CONTRACTOR to collect or retain up to the Maximum  
3211 Service Rates for Collection Services, and/or (c) in connection with the application of the  
3212 California Constitution to the imposition, payment, or collection of Maximum Service Rates and  
3213 charges for services provided by CONTRACTOR under this Contract ("Maximum Service Rates  
3214 Lawsuit").

3215       26.06.2       In the event of a Maximum Service Rates Lawsuit, CITY shall  
3216 actively defend such lawsuit, and CONTRACTOR agrees to cooperate with CITY to the extent  
3217 practical and/or necessary. CONTRACTOR and CITY further agree to toll, during the pendency  
3218 of any Maximum Service Rates Lawsuit, all cross claims against each other which are  
3219 inconsistent with the Contract, including, but not limited to the tolling of any claim filed under the  
3220 California Government Code. CONTRACTOR shall have no obligation to defend any lawsuit  
3221 based on the Maximum Service Rates or that otherwise addresses any portion of the rates  
3222 proposed by CONTRACTOR or the award of the Contract by CITY. In the event said lawsuit

3223 results in the reduction or elimination of any portion of the proposed rates by CONTRACTOR,  
3224 the remedies set forth in the provisions below shall apply.

3225           26.06.3           Nothing in this Section is intended to imply that any action of CITY  
3226 or CONTRACTOR with regard to adoption, imposition or collection of Maximum Service Rates  
3227 is violative of any laws, regulations or Constitutional provisions. These provisions are merely  
3228 intended as a statement of an agreed upon process for defense and allocation of risks between  
3229 CITY and CONTRACTOR in the event of a Maximum Service Rates Lawsuit, regardless of the  
3230 merit or lack of merit of any of the claims set forth therein.

3231           26.07 Environmental Indemnification. CONTRACTOR shall indemnify, defend with  
3232 counsel acceptable to CITY, and hold harmless, at CONTRACTOR'S sole cost and expense,  
3233 CITY, its City Council, officers, officials, employees, volunteers and agents, and the Collection  
3234 Contractor (collectively, "Indemnitees") from and against any and all claims, damages, injuries,  
3235 costs (including and without limit any and all response, remediation and removal costs), losses,  
3236 demands, debts, liens, liabilities, causes of action suits, legal or administrative proceedings,  
3237 interest, fines, charges, penalties, and expenses (including reasonable attorneys' and expert  
3238 witness fees, expenditures for investigation and remediation) and costs of any kind whatsoever,  
3239 paid, imposed upon, incurred, or suffered by or asserted against any of the Indemnitees by any  
3240 lawsuit brought or threatened, settlement reached, or government hearing, investigation, inquiry,  
3241 proceeding, or order relating to, or arising from, directly or indirectly, CONTRACTOR'S alleged  
3242 failure or actual failure to comply with the environmental laws and regulations. This  
3243 indemnification will not extend to environmental claims to the extent they are caused by the sole  
3244 or joint or contributory negligence or intentional misconduct or omission of CITY, its officers,  
3245 employees or agents, or the Collection Contractor(s).

3246           26.07.1           This provision is in addition to all other provisions in this Contract  
3247 and is intended to survive the end of the term of this Contract. CONTRACTOR'S Guaranty shall  
3248 extend to the indemnification obligation hereunder.

3249           26.08 Separate Counsel. CITY may elect to have separate legal counsel from  
3250 CONTRACTOR at any time at its sole discretion, and in such case CONTRACTOR will pay one-  
3251 half (1/2) of all fees and costs and charges for such separate legal counsel.

3252           26.09 Consideration. It is specifically understood and agreed that the consideration  
3253 inuring to CONTRACTOR for the execution of this Contract consists of the promises, payments,  
3254 covenants, rights and responsibilities contained in this Contract.

3255           26.10 Obligation. The execution of this Contract by CONTRACTOR shall obligate  
3256 CONTRACTOR to comply with the foregoing indemnification provisions; however, the collateral  
3257 obligation of providing insurance must also be fully complied with as set forth in Article 25  
3258 above.

3259           26.11 Subcontractors. CONTRACTOR shall require all subcontractors to enter into a  
3260 contract containing the provisions set forth Sections 26.01, 26.02, 26.03, 26.04, 26.05, 26.06,  
3261 26.07, and Article 25 in its entirety and in the preceding subsection in which contract the  
3262 subcontractor fully indemnifies CITY in accordance with this Contract.

3263           26.12 Exception. Notwithstanding Sections 26.01, 26.02 and 26.03, CONTRACTOR'S  
3264 obligation to indemnify, hold harmless and defend CITY, its officers and employees pursuant to  
3265 this Article 26 shall not extend to any loss, liability, penalty, claim, damage, action or suit to the  
3266 extent caused by or based on the acts or omissions constituting willful misconduct or active  
3267 negligence on the part of CITY or any other indemnitee. This section is not intended to modify in  
3268 any way the parties' respective rights and obligations under Section 26.05.

3269           26.13 Damage by CONTRACTOR. If CONTRACTOR's employees or subcontractors  
3270 cause any injury, damage or loss to CITY property, including but not limited to CITY streets or  
3271 curbs, CONTRACTOR shall reimburse CITY for CITY'S cost of repairing such injury, damage or  
3272 loss. Such reimbursement is not in derogation of any right of CITY to be indemnified by  
3273 CONTRACTOR for any such injury, damage or loss. With the prior written approval of CITY,  
3274 CONTRACTOR may repair the damage at CONTRACTOR'S sole cost and expense.

## 3275                           **ARTICLE 27. DEFENSE OF CONTRACTOR'S RIGHTS**

3276           27.01 When either CITY or CONTRACTOR determines in their reasonable discretion  
3277 that there are infringements of CONTRACTOR's rights under this Contract, CITY shall take all  
3278 commercially reasonable actions necessary to prevent the infringement, including legal actions.  
3279 If requested by CITY, CONTRACTOR shall, with counsel reasonably acceptable to CITY,  
3280 assume the prosecution necessary to enforce such rights, and, shall defend, with counsel  
3281 reasonably approved by the CITY, indemnify and hold harmless CITY, its employees and  
3282 officials, against any and all claims arising out of CITY'S performance under this Article 27.  
3283 CITY will fully cooperate with CONTRACTOR in prosecuting and defending CONTRACTOR'S  
3284 exclusive Contract rights. CONTRACTOR shall reimburse CITY within thirty (30) days of receipt  
3285 of an invoice, for all actual, reasonable costs associated with defense of Contract rights  
3286 (including, but not limited to, CITY staff and CITY Attorney time, including applicable CITY  
3287 overhead allocations, and outside consultants, including attorney fees and costs).

3288           27.02 CITY and CONTRACTOR believe that it is in the best interests of CITY to ensure  
3289 that Mixed Materials and Organics are not collected by third parties in violation of the City's  
3290 Municipal Code and CONTRACTOR's exclusive rights under this Contract and that all  
3291 appropriate steps should be taken within the parties' power to eliminate the occurrence of such  
3292 violations within CITY. Accordingly, the CITY shall consider, in its discretion, revisions to the  
3293 Municipal Code, in sufficient time for them to become effective on or before July 1, 2015, that to  
3294 the extent permitted by law, would make unlawful the placement of containers and/or provision  
3295 of services for the collection of Mixed Materials or Organics within CITY that are not authorized  
3296 by the CITY and would, among other things, authorize CITY to impound such containers after  
3297 notice to the violator. The proposed revisions shall give the City Administrator the ability to  
3298 delegate the authority to impound such containers to CONTRACTOR. In the event such  
3299 revisions are adopted, the City Administrator will delegate such authority to CONTRACTOR in  
3300 such circumstances he or she deems appropriate, consistent with the first sentence of this  
3301 section. Any actions taken by CONTRACTOR pursuant to the delegation shall be at  
3302 CONTRACTOR's sole risk.

## 3303                           **ARTICLE 28. OBLIGATION TO PROVIDE SERVICE**

3304           28.01 CITY and CONTRACTOR agree, as more fully set forth in the Recitals to this  
3305 Contract, that proper Collection of Mixed Materials and Organic Materials is fundamental to the  
3306 protection of the public health, safety and the well-being of the residents of CITY. CITY'S  
3307 responsibility for ensuring the adequacy of these sanitation services in part provides the  
3308 justification for the granting of an exclusive franchise to CONTRACTOR. This exclusive grant  
3309 creates an obligation, subject to the terms and conditions of the Contract, that Collection  
3310 Services are continued to be provided even under difficult or adverse circumstances, such as  
3311 but not limited to, natural disaster, labor unrest, and any period where legal actions impact the  
3312 effectiveness of portions of this Contract.

3313 28.02 Specifically, with reference to any Maximum Service Rates Lawsuit as defined in  
3314 Section 26.04, such legal actions shall not be considered a change in law or force majeure  
3315 event excusing CONTRACTOR'S performance, except as otherwise excused as set forth  
3316 below.

3317 28.02.1 During the pendency of any such litigation, and in the event a court of  
3318 competent jurisdiction or other regulatory agency sets aside, invalidates or stays all or a portion  
3319 of the Maximum Service Rates, then CITY and CONTRACTOR agree to undertake the  
3320 following:

3321 28.02.1.1 CITY and CONTRACTOR agree to immediately meet and  
3322 confer to negotiate in good faith any modifications to CONTRACTOR's obligations under this  
3323 Contract to ensure provision of basic Collection Services and enable CONTRACTOR to  
3324 continue to bill and collect for the ongoing cost of services, including its return on capital and  
3325 costs of operations. Nothing in this Contract, including those provisions relating to the CITY's  
3326 regulation of Maximum Service Rates, shall be read to limit CONTRACTOR's right to bill and  
3327 collect for the cost of continuing provision of Collection Service.

3328 28.02.1.2 CONTRACTOR shall provide basic Collection Services.  
3329 For the purposes of this Article 28, basic Collection Services are those minimum services  
3330 necessary to protect human health and the environment within the CITY as agreed to by and  
3331 between CITY and CONTRACTOR. In the event CITY and CONTRACTOR are unable to agree  
3332 on basic Collection Services within a period not to exceed two weeks from that date on which a  
3333 court of competent jurisdiction or other regulatory agency with authority reduces Maximum  
3334 Service Rates, CONTRACTOR shall have the authority to make adjustments in services to  
3335 mitigate against any revenue impacts resulting from a Maximum Service Rates lawsuit.  
3336 CONTRACTOR shall also have the right to implement all lawful "self-help" actions in order to  
3337 receive payment for providing basic Collection Services. CITY shall continue to provide  
3338 nuisance abatement and may also take other urgency actions as necessary to facilitate  
3339 CONTRACTOR'S continuation of basic Collection Services and ability to obtain compensation  
3340 from Customers therefor. The intent of this provision is to ensure that CONTRACTOR  
3341 continues to receive compensation, including its rate of return, consistent with that specified in  
3342 the Contract for the level of services provided. If certain services are reduced and/or eliminated  
3343 as a result of a Maximum Service Rates Lawsuit, the CITY agrees that during the term of the  
3344 elimination of said services it shall not contract with any other company or party to provide these  
3345 services and will contract only with CONTRACTOR to restore said services either during or after  
3346 the conclusion of the Maximum Service Rates Lawsuit. If CITY finds it necessary to procure  
3347 eliminated services, it shall do so from CONTRACTOR at commercially reasonable rates.

3348 28.02.1.3 In connection with providing basic Collection Services,  
3349 CONTRACTOR shall continue to charge Customers for the cost of providing such services.  
3350 CONTRACTOR shall, in coordination with CITY, reduce its charges to Customers in an amount  
3351 corresponding to any CITY fee or charge set aside, invalidated, or stayed by such court,  
3352 regulatory agency, or otherwise agreed to. CONTRACTOR's reduced charges, to the extent  
3353 they correspond to the Maximum Service Rates allowed under this Contract minus any such fee  
3354 or charge set aside, are intended to generate revenue to CONTRACTOR not less than  
3355 CONTRACTOR'S anticipated return on investment for the applicable calendar year.  
3356 CONTRACTOR shall thereafter not be required to remit the amount of any disallowed fee or  
3357 charge, provided it is not collected from Customers.

3358 28.02.1.4 CONTRACTOR shall not be obligated to refund Customers  
3359 for any amount of previously collected fees or charges later set aside or invalidated by a court.

3360 CONTRACTOR and CITY deem the Maximum Service Rates to fix the actual reasonable cost  
3361 of service to Customers as these rates and the escalation methodology set forth in this Contract  
3362 are the result of a multi-year open competition for the CITY's franchise Collection Services. Any  
3363 CITY fees or charges set aside by any court or the CITY during the pendency of any Maximum  
3364 Service Rates Lawsuit shall, to the extent they are collected from Customers, be paid into an  
3365 escrow account established by the CITY, which shall be made available for use pursuant to  
3366 order of the court, or in the absence of such order to address CONTRACTOR's losses, if any,  
3367 consistent with CITY's obligations set forth below.

3368           28.02.2           If by virtue of an order by a court of competent jurisdiction, an  
3369 order issued by a regulatory agency with authority, or pursuant to or an agreement between  
3370 petitioner/plaintiff and CITY that affects all or a portion of the Maximum Service Rates, and this  
3371 results in a loss to CONTRACTOR not otherwise recovered through a temporary reduction in  
3372 services, CITY shall implement, with CONTRACTOR's consent, methods to recapture any  
3373 losses that CONTRACTOR sustained under this Article 28. Such methods may include an  
3374 adjustment in future Maximum Service Rates, a reduction in, or adjustment to, services and/or  
3375 other obligations under the Contract, or such other lawful methods which may be agreed to by  
3376 CITY and CONTRACTOR. Any method selected shall be designed to produce revenues that  
3377 ensure CONTRACTOR fully recoups any and all demonstrated losses within no more than two  
3378 years from that date on which Maximum Service Rates were reduced (or within two years  
3379 following the trial court's determination in the event of a Maximum Service Rates Lawsuit), or,  
3380 by the termination date of said Contract if less than two (2) years remain on the Term.  
3381 CONTRACTOR shall have the right to terminate the Contract upon twelve (12) months written  
3382 notice after the two (2) year period for recoupment of CONTRACTOR losses has expired, in the  
3383 event CONTRACTOR has not been made whole for the demonstrated losses and no  
3384 satisfactory agreement to address this shortfall has been reached between CONTRACTOR and  
3385 CITY.

3386           28.02.3           Nothing herein is intended to imply that California Constitution  
3387 Articles XIII(C) or (D) apply to the Maximum Service Rates provided for under this Contract.  
3388 The foregoing paragraphs are merely intended as a contractual allocation of risks in the event of  
3389 an unanticipated event affecting the ability to impose or collect Maximum Service Rates.  
3390 Furthermore, nothing herein is intended to abrogate CONTRACTOR's rights under Sections  
3391 7.12 and 7.13.

3392           28.03   Service Resumption Protocol (Labor Disruptions). In the event of a Labor  
3393 Disruption whereby employees of CONTRACTOR do not perform work for CONTRACTOR at  
3394 normally anticipated levels or efficiency which affects the ability of the CONTRACTOR to  
3395 provide Collection Services in accordance with this Contract, CONTRACTOR shall comply with  
3396 the following provisions, and only for the periods set forth below:

3397           28.03.1           In conjunction with the execution of this Contract CONTRACTOR  
3398 shall develop and provide a General Contingency Plan to address CONTRACTOR's program to  
3399 best provide continued service during a Labor Disruption that may significantly interfere with  
3400 CONTRACTOR's ability to provide Collection Services. The Contingency Plan shall be provided  
3401 to the City sufficiently in advance for review and acceptance prior to July 1, 2015. From time to  
3402 time during the term of this Contract, CONTRACTOR and CITY shall meet to discuss whether  
3403 modifications and updates to the General Contingency Plan are needed.

3404           28.03.2           Within two (2) hours of notification to CONTRACTOR by labor that  
3405 a Labor Disruption has been authorized, CONTRACTOR shall notify the Public Works Director

3406 and Contract Manager by telephone and or electronic communication and follow up with  
3407 confirmation to the CITY Administrator within twelve (12) hours of such notice.

3408                   28.03.3           From the outset of any Labor Disruption, CONTRACTOR shall  
3409 take all commercially reasonable actions to minimize disruptions to service, focusing initially on  
3410 the Collection of putrescible waste to protect public health and safety.

3411                   28.03.4           Within three (3) Work Days of notice of a Labor Disruption, if  
3412 CONTRACTOR is not providing Collection Services in accordance with normal scheduled pick-  
3413 ups, CONTRACTOR shall meet with CITY to develop any agreed upon modifications to the  
3414 General Contingency Plan which may be required to successfully carry out the plan's objectives.

3415                   28.03.5           CONTRACTOR will bring in alternate work forces within three (3)  
3416 Work Days of the commencement of a Labor Disruption for the purpose of providing Essential  
3417 Collection Services (i.e., collection of putrescible waste as needed and at least once per week  
3418 from public facilities, such as hospitals, airports, ports and certain government facilities, where a  
3419 failure to so collect would impede critical public services) in accordance with this Contract and to  
3420 implement the General Contingency Plan. In this regard, it is recognized that CONTRACTOR  
3421 would not be able to provide CITY with priority over other priority type services required in  
3422 governmental jurisdictions receiving services from CONTRACTOR and likewise affected by  
3423 such Labor Disruption, but other such jurisdictional limits are not to receive priority with regard  
3424 to Essential Collection Services over CITY.

3425                   28.03.6           In addition to providing Essential Collection Services within three  
3426 (3) Work Days of a Labor Disruption, within ten (10) Work Days of a Labor Disruption,  
3427 CONTRACTOR shall bring in an alternative work force to provide Basic Collection Services (i.e.  
3428 residential and commercial garbage and organics) in accordance with the typical collection  
3429 intervals (i.e. weekly, twice weekly) as set forth in this Contract, unless the schedules and  
3430 volumes set forth in the General Contingency Plan, as modified with the agreement of CITY,  
3431 alter the above. In this regard, CITY is not to receive priority over other governmental  
3432 jurisdictions receiving services from CONTRACTOR and likewise affected by such strike, but  
3433 other such jurisdictional limits are not to receive priority over CITY with regard to the  
3434 promptness and/or quality of service provided to CITY.

3435                   28.03.7           Within twelve (12) Work Days of a Labor Disruption,  
3436 CONTRACTOR shall provide Bulky Waste Service and provide for active cleanup of any  
3437 accumulated waste which has been set out for collection and not properly picked up during the  
3438 Labor Disruption. These services shall be in addition to the provision of Essential Collection  
3439 Services and Basic Collection Services; however failure to do so shall not be a material breach  
3440 of this Protocol.

3441                   28.03.8           In the event CONTRACTOR'S alternate work force is unable to  
3442 provide Collection Services in accordance with the schedules, volumes and routing set forth in  
3443 this Contract, or the schedules, volumes and routing in the General Contingency Plan, CITY  
3444 shall have the right, but not the obligation, to bring in outside forces to provide Collection  
3445 Services which are not being provided by CONTRACTOR and charge CONTRACTOR for the  
3446 reasonable direct and indirect expenses (including administrative and overhead) incurred by  
3447 CITY in this regard.

3448                   28.03.9           In the event CITY retains its own forces to provide full or partial  
3449 Collection Service in accordance with Section 28.03.9 above, CONTRACTOR agrees that the  
3450 materials Collected by those forces can be taken directly from CITY to the landfill of  
3451 CONTRACTOR at Altamont, California in the event the Davis Street Transfer Station owned by

3452 CONTRACTOR is not operational. In the event neither the CONTRACTOR's Davis Street  
3453 Transfer Station nor Altamont Landfill are operational during the period of such Labor  
3454 Disruption, CONTRACTOR agrees that the materials Collected by those forces retained by  
3455 CITY can be taken directly from CITY to such other landfill and/or transfer station as selected by  
3456 CITY.

3457 28.03.10 If after thirty (30) days from the commencement of a Labor  
3458 Disruption there is a continuing CONTRACTOR failure to materially perform the services set  
3459 forth in this Section, such failure to perform shall be considered a default under Section 29.01  
3460 and CITY may cancel this Contract. In such an event, CITY shall not waive its right to seek  
3461 damages from CONTRACTOR for any increase in cost of Collection incurred by CITY as a  
3462 result of the breach of this Contract by CONTRACTOR and the consequential election by CITY  
3463 to cancel the Contract and move forward with alternate collection alternatives.

3464 28.03.11 CONTRACTOR may not be able to ensure that Organic Materials  
3465 are Source Separated from Mixed Materials. Therefore, for the purposes of a Labor Disruption  
3466 only, CONTRACTOR may commingle Organic Materials and Mixed Materials during Collection,  
3467 and CONTRACTOR shall take commercially reasonable actions to prevent the commingled  
3468 Organic Materials from being delivered to any Disposal Facility.

3469 28.03.12 Liquidated Damages for Labor Disruptions

3470 28.03.12.1 If CONTRACTOR fails to provide Essential Collection  
3471 Services within three (3) Work Days of the Labor Disruption or Basic Collection Services within  
3472 ten (10) Work Days of the Labor Disruption, then CITY may begin to impose liquidated damages  
3473 under Section 22.04 for such failure, no earlier than five (5) Work Days for Essential Collection  
3474 Services or fifteen (15) Work Days for Basic Collection Services, after CONTRACTOR provides  
3475 notice of the Labor Disruption to CITY, subject to the limitations in 28.03.14.

3476 28.03.12.2 If CONTRACTOR fails to provide any other services,  
3477 including, but not limited to, Bulky Waste Services within twelve (12) Work Days of any Labor  
3478 Disruption, then CITY may begin to impose liquidated damages under Section 22.04 for such  
3479 failure, no earlier than fifteen (15) Work Days after CONTRACTOR provides notice of the Labor  
3480 Disruption to CITY, subject to the limitations in 28.03.14.

3481 28.03.13 A claim for liquidated damages may not be sought unless the  
3482 Labor Disruption is caused by a dispute between CONTRACTOR and the employees employed  
3483 at facilities covered by this Contract. The following limitations shall also apply with regard to  
3484 application of liquidated damages:

3485 28.03.13.1 In the event the application of the liquidated damage is  
3486 conditioned upon CONTRACTOR's failure to complete a certain percentage of a task, that  
3487 percentage shall be multiplied by eighty percent (80%).

3488 28.03.13.2 In the event the application of the liquidated damage is  
3489 conditioned upon the number of times CONTRACTOR fails to perform or incorrectly performs a  
3490 task, that number shall be divided by eighty percent (80%) and rounded up to the nearest whole  
3491 number.

3492 28.03.13.3 In the event the application of the liquidated damage is  
3493 conditioned upon a single occurrence, the amount of the liquidated damage shall be multiplied  
3494 by eighty percent (80%) and rounded up to the nearest whole number.

**ARTICLE 29. DEFAULT OF CONTRACT**

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29.01 CITY Termination.

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

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

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

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

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

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

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29.01.1.6 CONTRACTOR has failed or refused to perform or observe the terms, conditions or covenants in this Contract not otherwise addressed in this Section 29.01, the service levels prescribed herein, or any of the rules and regulations promulgated by CITY pursuant thereto or has wrongfully failed or refused to comply with the instructions of the Contract Manager relative thereto; provided that said default is not cured within thirty (30) calendar days of receipt of written notice from CITY to do so, or if by reason of the nature of such default, the same cannot be remedied within thirty (30) calendar days following receipt by CONTRACTOR of written demand from CITY to do so, CONTRACTOR fails to commence the remedy of such default within said thirty (30) calendar days following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof. In any dispute concerning failure to remedy or diligence in pursuing a cure, CONTRACTOR shall have the burden of proof to demonstrate (a) that the default cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with diligence to cure said default, and such default will be cured within a reasonable period of time.

3540                   29.01.1.7       Except in the event of a Labor Disruption, CONTRACTOR  
3541 has failed or refused to provide Essential Collection Services for a period of three (3)  
3542 consecutive Work Days, on the fourth (4th) Work Day CITY may secure CONTRACTOR'S  
3543 equipment, records and other property used or useful in providing Collection Services under this  
3544 Contract in order to provide interim Essential Collection Services until such time as the matter is  
3545 resolved and CONTRACTOR is again able to perform pursuant to this Contract; provided,  
3546 however, if CONTRACTOR is unable for any reason or cause to resume performance at the  
3547 end of thirty (30) calendar days all liability of CITY under this Contract to CONTRACTOR shall  
3548 cease and this Contract may be deemed terminated by CITY, and CITY shall retain equipment,  
3549 records and other property used in providing Collection Services on an interim basis until CITY  
3550 has made other suitable arrangements for the provision of Collection Services, which may  
3551 include award of the Contract to another contractor. Notwithstanding any other provision in this  
3552 Contract to the contrary, CITY'S right to take interim possession of, or make use of, any of  
3553 CONTRACTOR'S equipment, including, without limitation, vehicles, Carts, Bins and Containers,  
3554 shall not allow CITY to assign ownership of such vehicles, Carts, Bins and Containers to  
3555 another contractor and CITY acknowledges that CONTRACTOR'S lender has a security interest  
3556 in such equipment. For purposes of clarity, this Section 29.01.6 shall not apply where the failure  
3557 to perform is caused by a Force Majeure event; or

3558                   29.01.1.8       In the event of a Labor Disruption, CONTRACTOR has  
3559 failed to meet the obligations by the time periods set forth in Section 28.03; or

3560                   29.01.1.9       CONTRACTOR has failed or refused to remit payment to  
3561 the Recyclable Materials Collection Contractor for billing invoices successively for three (3)  
3562 months or longer. [This section may be deleted depending on award of RR Contract.]

3563                   29.01.2       In the event that CONTRACTOR'S annual Diversion percentage  
3564 for any calendar year, as calculated on Table B to Exhibit 8 of this Contract, is more than five (5)  
3565 percentage points lower than the minimum annual Diversion requirement for that calendar year  
3566 as set forth in Table A to Exhibit 8 of this Contract, CITY and CONTRACTOR shall meet and  
3567 confer to implement a corrective action plan for CONTRACTOR to achieve compliance. Failure  
3568 to meet the agreed-upon corrective action plan may result in liquidated damages not to exceed  
3569 One Hundred Fifty Dollars (\$150.00) for each Work Day until compliance is met.

3570                   29.01.3       In the event that the Contract is terminated, CONTRACTOR shall  
3571 furnish CITY with immediate access to all of its business records related to its Customer and  
3572 billing accounts for Collection Services.

3573                   29.01.4       Repetitive Compliance Issues. Notwithstanding CONTRACTOR's  
3574 timely cure of previous breaches, in the event that CONTRACTOR'S record of performance  
3575 shows that it has regularly and frequently failed to meet a particular material Contract obligation,  
3576 despite written notices from CITY and beyond what is common by industry standards, CITY and  
3577 CONTRACTOR agree to meet and confer, in good faith, regarding operational changes  
3578 necessary to resolve the issue. If the parties cannot agree on necessary operational changes,  
3579 then the matter will be mediated pursuant to Section 30.02.1. Once the operational changes  
3580 have been agreed upon, CONTRACTOR shall be responsible for their implementation.

3581                   29.02 Effective Date. In the event of the aforesaid events specified above, and except  
3582 as otherwise provided in said subsections, termination shall be effective upon the date specified  
3583 in CITY'S written notice to CONTRACTOR and upon said date this Contract shall be deemed  
3584 immediately terminated and upon such termination all liability of CITY under this Contract to  
3585 CONTRACTOR shall cease, and CITY shall have the right to call the performance bond and  
3586 shall be free to negotiate with other contractors for the operation of the herein specified

3587 services. CONTRACTOR for failure to perform shall reimburse CITY all direct and indirect costs  
3588 of providing interim Collection Services.

3589           29.02.1       Immediate Termination. CITY may terminate this Contract  
3590 immediately upon written notice to CONTRACTOR (provided CITY has first given  
3591 CONTRACTOR written notice of breach and ten (10) Work Days to cure) in the event  
3592 CONTRACTOR fails to provide and maintain the performance bond as required by this  
3593 Contract, or if CONTRACTOR fails to obtain or maintain insurance policies endorsements as  
3594 required by this Contract, or if CONTRACTOR fails to provide the proof of insurance as required  
3595 by this Contract, or if CONTRACTOR offers or gives any gift prohibited by CITY administrative  
3596 policy.

3597 29.03 CONTRACTOR Termination.

3598           29.03.1       CITY Events of Default. The following shall be CITY Events of Default,  
3599 following which the CONTRACTOR may cancel this Contract (except as otherwise provided  
3600 below in this Article) by giving CITY thirty (30) calendar days advance written notice, to be  
3601 served as provided in Article 45:

3602                       29.03.1.1 CITY has allowed any final judgment, in favor of  
3603 CONTRACTOR, for the payment of money to stand against it unsatisfied and said default is not  
3604 cured within ninety (90) calendar days of receipt of written notice from CONTRACTOR to do so;  
3605 or

3606                       29.03.1.2       CITY has failed or refused to perform or observe the terms,  
3607 conditions or covenants in this Contract not otherwise addressed in this Section 29.03; provided  
3608 that said breach is not cured within thirty (30) calendar days of receipt of written notice from  
3609 CONTRACTOR to do so, or if by reason of the nature of such breach, the same cannot be  
3610 remedied within thirty (30) calendar days following receipt by CITY of written demand from  
3611 CONTRACTOR to do so, CITY fails to commence the remedy of such breach within said thirty  
3612 (30) calendar days following such written notice or having so commenced shall fail thereafter to  
3613 continue with diligence the curing thereof. In any dispute concerning failure to remedy or  
3614 diligence in pursuing a cure, CITY shall have the burden of proof to demonstrate (a) that the  
3615 breach cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with  
3616 diligence to cure said breach, and such breach will be cured within a reasonable period of time.  
3617 In the event that CITY fails to cure any breach pursuant to this provision, CONTRACTOR shall  
3618 have the right to terminate this Contract. CONTRACTOR shall provide written notice of  
3619 termination to CITY upon CITY's failure to cure and this Contract shall terminate one (1) year  
3620 after service of such notice.

3621           29.04 Termination Cumulative. A party's right to terminate this Contract is cumulative  
3622 to any other rights and remedies provided by law or by this Contract.

3623           29.05 Force Majeure. The parties shall be excused from performing their respective  
3624 obligations under this Contract in the event they are prevented from so performing by reason of  
3625 Force Majeure.

## 3626                                       **ARTICLE 30. MODIFICATIONS TO THE CONTRACT**

3627           30.01 Contract Modifications and Changes in Law. CITY and CONTRACTOR  
3628 understand and agree that the California Legislature has the authority to make comprehensive  
3629 changes in Mixed Materials, Garbage, Recyclable Materials, or Organic Materials management  
3630 legislation and that these and other changes in law in the future that mandate certain actions or

3631 programs for counties or municipalities may require changes or modifications in some of the  
3632 terms, conditions or obligations under this Contract. CONTRACTOR agrees that the terms and  
3633 provisions of CITY'S Municipal Code, as it now exists or as it may be amended in the future,  
3634 shall apply to all of the provisions of this Contract and the Customers of CONTRACTOR located  
3635 within the Service Area, provided, however, that CITY will not amend CITY'S Municipal Code in  
3636 a way that is inconsistent with the Contract unless compelled to do so by federal or State law.  
3637 In the event any Change in Law, modifications to CITY'S Municipal Code, or directed changes  
3638 by CITY materially alters the obligations of CONTRACTOR, then the affected compensation as  
3639 established under this Contract shall be adjusted. Nothing contained in this Contract shall  
3640 require any party to perform any act or function contrary to law. CITY and CONTRACTOR  
3641 agree to enter into good faith negotiations regarding modifications to this Contract, which may  
3642 be required in order to implement changes in the interest of the public welfare or due to Change  
3643 in Law. When such modifications are made to this Contract, CITY and CONTRACTOR shall  
3644 negotiate in good faith a reasonable and appropriate compensation adjustment for any increase  
3645 or decrease in the services or other obligations required of CONTRACTOR due to any  
3646 modification in the Contract under this Section 30.01. CITY and CONTRACTOR shall not  
3647 unreasonably withhold agreement to such compensation adjustment.

3648                   30.01.1       Compensation Adjustments. In the event of a Change in Law or  
3649 regulations of any governmental agency that will require additional or different services to be  
3650 provided by CONTRACTOR which are not otherwise covered by this Contract, CONTRACTOR  
3651 shall provide CITY with a written rate increase request for additional compensation to  
3652 CONTRACTOR based on such additional or different services. The rate increase request shall  
3653 include but not be limited to the information set forth in Sections 30.03.1 through 30.03.9 below.  
3654 If the proposed rate increase exceeds five (5) percent and CITY does not agree with such rate  
3655 increase, CITY, in addition to negotiating with CONTRACTOR may submit the matter to non-  
3656 binding mediation as set forth in Section 30.02.1.

3657                   30.02 Dispute Resolution. Except for a CONTRACTOR Default under Article 29, and  
3658 except as provided below in section 30.02.3, should any dispute arise under this Contract,  
3659 including but not limited to the performance and obligations of the parties, or service or  
3660 compensation changes, such disputes shall be resolved by the following procedures:

3661                   30.02.1       The parties shall resolve their disputes informally to the maximum  
3662 extent possible and shall attempt to resolve such disputes in a cooperative and mutually  
3663 satisfactory manner. Either party shall give the other written notice of such dispute, and also  
3664 provide written notice to the Contract Manager. The Contract Manager shall then schedule a  
3665 meeting between CONTRACTOR and the CITY Administrator or the CITY Administrator's  
3666 designee as soon as reasonably possible. In the event such dispute cannot be resolved by the  
3667 parties themselves within thirty (30) days of their first meeting, either party may propose the  
3668 appointment of a mediator. The parties shall agree on a mediator within 30 days of either party's  
3669 request for mediation.

3670                   30.02.2       Mediation. If the disputing parties cannot informally resolve the  
3671 dispute, they shall attempt to resolve such dispute through non-binding mediation for a period  
3672 not to exceed ninety (90) days from the date of their last informal meeting, absent a written  
3673 agreement to extend the time of non-binding mediation.

3674                   30.02.2.1       The party desiring mediation shall give written notice  
3675 thereof to the other party to this Contract, specifying the dispute to be mediated.

3676 30.02.2.2 The mediation shall be held at Oakland, California, or at  
3677 such other location as may be mutually agreed among the parties. The mediation shall be  
3678 conducted and a mediator chosen pursuant to the rules of JAMS Mediation Rules.

3679 30.02.2.3 At least ten (10) days before the date of the mediation,  
3680 each side shall provide the mediator with a statement of its position and copies of all supporting  
3681 documents. Each party shall send to the mediation a person who has authority to bind the  
3682 party. If a subsequent dispute will involve third parties, such as insurers or subcontractors, they  
3683 shall also be asked to participate in the mediation.

3684 30.02.2.4 Should mediation be unsuccessful, and if the dispute does  
3685 not concern valuation items for which binding arbitration is required in Section 30.02.3, then a  
3686 party may commence an adversarial proceeding before any court of competent jurisdiction in  
3687 the County of Alameda. Disputes that concern valuation items defined in Section 30.02.3 shall  
3688 proceed with binding arbitration procedures as set forth below.

3689 30.02.3 Binding Arbitration. This Section only applies to disputes over  
3690 "Valuation Items," which are defined herein as disputes over a specific amount of money or  
3691 compensation that is due or owed by either party, and the dispute arises under one of the  
3692 following provisions of this Contract: Articles 7 and 8 and Sections 12.01.1, 17.01.3, 18.01,  
3693 30.01, 30.03, 30.08, and 30.09. Except as provided in Section 30.02.3.1 below, disputes  
3694 relating to Valuation Items shall be referred to binding arbitration upon mutual written approval  
3695 of the disputing parties. If the disputing parties do not mutually agree in writing to binding  
3696 arbitration, a party may commence an adversarial proceeding before any court of competent  
3697 jurisdiction in the County of Alameda.

3698 30.02.3.1 Valuation Items in Section 7.12 and Section 7.13 and its  
3699 subsections are not subject to and are excluded from, mandatory binding arbitration  
3700 requirements in this Contract.

3701 30.02.3.2 Binding arbitration proceedings shall be in accordance with  
3702 California Code of Civil Procedure Section 1280 et seq., the then-current JAMS Streamlined  
3703 Arbitration Rules, and the terms of section 30.02.3 and its subsections. In the event of any  
3704 inconsistency, the terms of section 30.02.3 and its subsections shall control. The arbitration  
3705 shall be administered by JAMS and conducted in the County of Alameda. If the parties are  
3706 unable to select an arbitrator within twenty (20) days after delivering written notice requesting  
3707 arbitration, JAMS shall select a qualified arbitrator from its panel. If JAMS is unwilling or unable  
3708 to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause,  
3709 the parties may mutually designate another arbitration organization with similar procedures to  
3710 serve as the provider of arbitration. If the parties cannot agree on the arbitration organization,  
3711 the Presiding Judge of the Alameda County Superior Court shall designate such an organization  
3712 upon the petition of either party.

3713 30.02.3.3 The arbitrator shall be independent of and unaffiliated with,  
3714 each party and shall not ever have been an employee of either party, under contract with either  
3715 party in the past five (5) years or acted as an arbitrator for such party within the past five (5)  
3716 years.

3717 30.02.3.4 Within twenty (20) days after initiation of the arbitration, if  
3718 not previously done so under the terms of this Contract, the parties shall each submit to each  
3719 other and the arbitrator their respective relevant value for the item subject to the valuation  
3720 dispute, with such supporting information as is reasonably necessary to support such suggested  
3721 value. If the two (2) valuations so submitted differ by less than or equal to ten percent (10%) of

3722 the higher of the two (2), the average of the two (2) shall become the agreed upon amount for  
 3723 purposes of this Contract and the arbitration shall not be continued. If the two (2) valuations  
 3724 differ by more than ten percent (10%) of the higher of the two (2), then the arbitrator shall make  
 3725 a determination of the relevant value and submit such determination to both the parties. This  
 3726 third valuation will then be averaged with the closer of the two (2) previous valuations and the  
 3727 result shall be the relevant value. In no event shall the resolution of a valuation dispute result in  
 3728 a valuation higher than that which was set forth by CONTRACTOR (e.g., a impact of a  
 3729 "material" disclosure or a higher tip fee adjustment). The final arbitrated value shall be binding  
 3730 on the parties.

3731 30.02.3.5 The arbitrator shall have the authority and power to award  
 3732 costs, including attorneys' fees and costs to the prevailing party. Unless otherwise awarded by  
 3733 the arbitrator, the parties shall evenly split the cost of any arbitration under this Article.

3734 30.02.3.6 By agreeing to binding arbitration, the parties irrevocably  
 3735 and voluntarily waive any right they may have to a trial by jury to the extent permitted by law.

3736

3737 Acknowledgement of waiver of rights by trial by jury if proceeding with  
 3738 binding arbitration pursuant to Section 30.02.3 of this Contract.

3739

\_\_\_\_\_  
 CITY OF OAKLAND

\_\_\_\_\_  
 CONTRACTOR

3740

3741 30.02.4 During the pendency of any dispute under this Article, all applicable  
 3742 time periods directly related to the dispute, including but not limited to the filing of a Government  
 3743 Code Claim, shall be tolled until its resolution; provided, however, that no tolling shall apply to  
 3744 any matters other than those directly related to the dispute, and such tolling shall not entitle a  
 3745 party to breach, default, or fail to perform its obligations under this Contract.

3746 30.03 Changes in Required Services Within the Scope. CITY may direct changes in  
 3747 the services required under the scope of this Contract, including the addition of pilot programs  
 3748 and innovative services that may entail new Collection methods or requirements for Customers  
 3749 and Service Recipients, the deletion of existing services, and the modification of the manner in  
 3750 which existing services are performed. However, no changes in services shall be construed so  
 3751 as to impair the exclusive rights of CONTRACTOR granted hereunder. CITY'S authority to  
 3752 delete existing services shall not be in derogation of CONTRACTOR'S exclusive Contract  
 3753 rights, i.e., if CITY elects to discontinue a service that is within the scope of the under this  
 3754 Contract, CITY shall not allow a third party to perform it. CONTRACTOR shall promptly and  
 3755 cooperatively comply with such directions and the rates shall be adjusted as costs/losses are  
 3756 incurred, pursuant to the procedures set forth in this Section, to fairly and fully reflect the  
 3757 additional costs and lost revenue (including but not limited to the recovery by CONTRACTOR of  
 3758 all costs and revenue losses associated with stranded assets and/or unrecovered capital), or  
 3759 cost reduction, associated with the directed change(s) in required services, but not for the  
 3760 preparation of CONTRACTOR'S proposal to perform such services.

3761 30.03.1 All sums that appear in this Section 30.03 are expressed in July 2015  
 3762 dollars and shall be adjusted beginning July 1, 2016 and annually thereafter during the  
 3763 Contract's term, by the same percentage as the percentage used to adjust the Maximum  
 3764 Collection Services Rates for that fiscal year as set forth in Section 7.16, except that in no year  
 3765 shall the adjustment be less than zero (0) percent

3766 30.03.2 Implementing Changes in Service of \$250,000 or Less. If changes in  
3767 service will cumulatively affect CONTRACTOR's costs by Two Hundred Fifty Thousand Dollars  
3768 (\$250,000) or less over the term of the Contract, then CONTRACTOR is not required to submit  
3769 a proposal under Section 30.03.4 and shall implement the changes in accordance with a  
3770 schedule directed by CITY. CITY shall determine the amount by which the rates should be  
3771 adjusted. If the parties do not agree on the rate adjustment amount, CONTRACTOR may  
3772 challenge the adequacy of the rates pursuant to Section 30.02 above.

3773 30.03.3 Implementing Changes in Service Greater than \$250,000. If  
3774 changes in service will cumulatively affect CONTRACTOR's costs by greater than Two Hundred  
3775 Fifty Thousand Dollars (\$250,000) over the term of the Contract, then CONTRACTOR shall  
3776 submit a proposal to perform such services pursuant to Section 30.03.4 below. CITY shall  
3777 consider CONTRACTOR'S proposal and shall determine the amount by which the rates should  
3778 be adjusted. CONTRACTOR shall implement the changes in accordance with the schedule  
3779 directed by CITY, regardless of whether the parties agree on the rate adjustment amount. If the  
3780 parties do not agree on the rate adjustment amount, CONTRACTOR may challenge the  
3781 adequacy of the rates pursuant to Section 30.02 above.

3782 30.03.4 Service Proposal. Within sixty (60) calendar days of receipt of a  
3783 request for a service change from CITY under Section 30.03.3, CONTRACTOR shall submit a  
3784 proposal to provide such service. At a minimum, the proposal shall contain a complete  
3785 description of the following:

3786 30.03.4.1 Collection methodology to be employed (equipment,  
3787 manpower, etc.);

3788 30.03.4.2 Equipment to be utilized, including equipment to be  
3789 purchased (vehicle number, types, capacity, age, etc.);

3790 30.03.4.3 Labor requirements (number of employees by  
3791 classification);

3792 30.03.4.4 Type of Carts or Bins to be utilized;

3793 30.03.4.5 Provision for program publicity, outreach, and marketing;

3794 30.03.4.6 Five (5) year projection of the financial results of the  
3795 program's operations in an operating statement format including documentation of the key  
3796 assumptions underlying the projections and the support for those assumptions, giving full effect  
3797 to the savings or costs to existing services;

3798 30.03.4.7 Advantages and disadvantages of the change;

3799 30.03.4.8 A recommendation as to whether the change should be  
3800 implemented; and

3801 30.03.4.9 An implementation schedule.

3802 30.04 Services Outside of Scope. CITY may request CONTRACTOR to submit a  
3803 proposal to provide new services outside of the scope of this Contract. If CONTRACTOR either  
3804 refuses to provide the new services or the parties are unable to agree on the terms and  
3805 conditions of such services within one hundred twenty (120) days from the date when CITY first  
3806 requests a proposal from CONTRACTOR, CONTRACTOR acknowledges and agrees that CITY  
3807 may permit other persons or companies besides CONTRACTOR to perform those services  
3808 outside of the scope of this Contract.

3809           30.05 New Technology. In the event that technological advancements in the  
3810 Collection, transportation, Processing, handling or Disposal of Mixed Materials, Recyclable  
3811 Materials, and/or Organic Materials are made, and which if implemented alone or in conjunction  
3812 with another technology would cumulatively reduce the initial rates established by this Contract  
3813 by approximately ten (10) percent or more, CONTRACTOR shall so notify CITY, and CITY may  
3814 require CONTRACTOR to utilize or implement said new technology and new rates shall be  
3815 mutually agreed upon and established. CONTRACTOR shall retain the ability to propose  
3816 changes to CITY in its Mixed Materials and Organic Materials Collection Service for the purpose  
3817 of maximizing efficiency. Said changes will not be implemented without the prior written  
3818 approval of CITY.

3819           30.06 Monitoring and Evaluation. If CITY requests, CONTRACTOR shall meet with  
3820 CITY to describe the progress of each new program and other service issues. If applicable,  
3821 CONTRACTOR shall document the results of the new programs on a monthly basis, including  
3822 at a minimum the tonnage Diverted by material type, the end use or processor of the Diverted  
3823 materials, the cost per ton for transporting and Processing each type of material, and other such  
3824 information requested by CONTRACTOR and/or CITY necessary to evaluate the performance  
3825 of each program.

3826           30.06.1       At each meeting, CITY and CONTRACTOR shall have the  
3827 opportunity to discuss revisions to the program. CITY shall have the right to terminate a  
3828 program if, in CITY'S sole discretion, CONTRACTOR is not cost effectively achieving the  
3829 program's goals and objectives. Prior to such termination, CITY shall meet and confer with  
3830 CONTRACTOR for a period of up to ninety (90) calendar days to resolve CITY'S concerns.

3831           30.07 For clarification, any adjustment to the Maximum Service Rates under this Article  
3832 30 are calculated separately from Annual Rate Adjustments and are not subject to a cap.

3833           30.08 Changes in Materials. In the event the quantity, composition or quality of the  
3834 Mixed Materials and/or Organic Materials Collected under the terms of this Contract is shown to  
3835 the reasonable satisfaction of CITY to have substantially changed from what it was at the  
3836 inception of this Contract, such that CONTRACTOR'S costs and/or ability to achieve the annual  
3837 Diversion requirements as set forth in Article 8 are materially affected, the parties shall negotiate  
3838 in good faith (a) a reasonable and appropriate modification to those annual Diversion  
3839 requirements, and/or (b) adjustments to CONTRACTOR's compensation if modifications to the  
3840 annual Diversion requirements are not desired by the CITY or do not adequately compensate  
3841 CONTRACTOR. CITY and CONTRACTOR shall not unreasonably withhold agreement to such  
3842 modifications.

3843           30.09 Changes in Recycling Commodities Markets. In the event of a material change in  
3844 a recyclable or organic material commodity market (e.g., a market becomes unavailable or  
3845 economically non-viable), and such event affects the ability of CONTRACTOR to comply with  
3846 the provisions of Article 8 or significantly increases CONTRACTOR's costs, CITY or  
3847 CONTRACTOR may request that the parties enter into good faith negotiations regarding  
3848 modifications to this Contract in order to provide CONTRACTOR relief from such material  
3849 change. For purposes of this Section, reasonably foreseeable fluctuations in the market price of  
3850 recyclable or organic materials will not be deemed material changes in such commodity market.  
3851 CITY and CONTRACTOR agree to negotiate in good faith a reasonable modification to the  
3852 provisions of Article 8 (e.g., disposal of a material instead of diversion) and/or adjustments to  
3853 CONTRACTOR's compensation if Article 8 modifications are not desired by CITY or do not  
3854 adequately compensate CONTRACTOR for the material market change. CITY and  
3855 CONTRACTOR shall not unreasonably withhold agreement to such modification.

3856

**ARTICLE 31. LEGAL REPRESENTATION**

3857 31.01 Acknowledgement. It is acknowledged that each party was, or had the  
3858 opportunity to be, represented by counsel in the preparation of and contributed equally to the  
3859 terms and conditions of this Contract and, accordingly, the rule that a contract or Contract shall  
3860 be interpreted strictly against the party preparing the same shall not apply herein due to the joint  
3861 contributions of both parties.

3862

**ARTICLE 32. FINANCIAL INTEREST**

3863 32.01 Representation. CONTRACTOR warrants and represents that no elected official,  
3864 officer, agent or employee of CITY has a financial interest, directly or indirectly, in this Contract  
3865 or the compensation to be paid under it and, further, that no CITY employee who acts in CITY  
3866 as a "purchasing agent" as defined in the appropriate Section of California Statutes, nor any  
3867 elected or appointed officer of CITY, nor any spouse or child of such purchasing agent,  
3868 employee or elected or appointed officer, is a partner, officer, director or proprietor of  
3869 CONTRACTOR and, further, that no such CITY employee, purchasing agent, CITY elected or  
3870 appointed officer, or the spouse or child of any of them, alone or in combination, has a material  
3871 interest in CONTRACTOR. Material interest means direct or indirect ownership of more than  
3872 five (5) percent of the total assets or capital stock of CONTRACTOR.

3873

**ARTICLE 33. CONTRACTOR'S PERSONNEL**

3874 33.01 Personnel Requirements. CONTRACTOR shall employ and assign qualified  
3875 personnel to perform all services set forth herein. CONTRACTOR shall be responsible for  
3876 ensuring that its employees comply with all applicable laws and regulations and meet all federal,  
3877 State and local requirements related to their employment and position.

3878 33.01.1 CITY may request the transfer of any employee of  
3879 CONTRACTOR who materially violates any provision hereof, or who is wanton, negligent, or  
3880 discourteous in the performance of his duties.

3881 33.01.2 CONTRACTOR shall not permit its employees to demand or  
3882 solicit, directly or indirectly, any additional compensation or gratuity from Customers or Service  
3883 Recipients for the provision of Collection Services under the terms of this Contract.

3884 33.01.3 CONTRACTOR'S field operations personnel shall be required to  
3885 wear a clean uniform shirt bearing CONTRACTOR'S name. CONTRACTOR'S employees, who  
3886 normally come into direct contact with the public, including drivers, shall bear some means of  
3887 individual photographic identification such as a name tag or identification card.

3888 33.01.4 Each driver of a Collection vehicle shall at all times carry a valid  
3889 California driver's license and all other required licenses for the type of vehicle that is being  
3890 operated.

3891 33.01.5 Each driver of a Collection vehicle shall at all times comply with all  
3892 applicable State and federal laws, regulations and requirements.

3893 33.01.6 CONTRACTOR'S employees, officers, and agents shall at no time  
3894 be allowed to identify themselves or in any way represent themselves as being employees of  
3895 CITY.

3896 33.01.7 CONTRACTOR'S name and the Customer Service telephone  
3897 number shall be properly displayed on all Collection vehicles.

3898

**ARTICLE 34. UNACCEPTABLE WASTE**

3899 34.01 CONTRACTOR shall not be required to Collect, transport or deliver for Disposal,  
3900 Unacceptable Waste, but may offer such services. All such Collection, transport and delivery for  
3901 Disposal of Unacceptable Waste is not regulated under this Contract, but if provided by  
3902 CONTRACTOR shall be in strict compliance with all federal, state and local laws and  
3903 regulations.

3904

**ARTICLE 35. INDEPENDENT CONTRACTOR**

3905 35.01 In the performance of services pursuant to this Contract, CONTRACTOR shall be  
3906 an independent contractor and not an officer, agent, servant or employee of CITY.  
3907 CONTRACTOR shall have exclusive control of the details of the services and work performed  
3908 and over all persons performing such services and work. CONTRACTOR shall be solely  
3909 responsible for the acts and omissions of its officers, agents, employees, contractors and  
3910 subcontractors, if any. Neither CONTRACTOR nor its officers, employees, agents, contractors  
3911 or subcontractors shall obtain any right to retirement benefits, Workers Compensation benefits,  
3912 or any other benefits that accrue, to CITY employees and CONTRACTOR expressly waives any  
3913 claim it may have or acquire to such benefits.

3914

**ARTICLE 36. LAWS TO GOVERN**

3915 36.01 The law of the state of California shall govern the rights, obligations, duties and  
3916 liabilities of CITY and CONTRACTOR under this Contract and shall govern the interpretation of  
3917 this Contract.

3918

**ARTICLE 37. CONSENT TO JURISDICTION**

3919 37.01 The parties agree that any litigation between CITY and CONTRACTOR  
3920 concerning or arising out of this Contract shall be filed and maintained exclusively in the  
3921 municipal or superior courts of Alameda County, state of California, or in the United States  
3922 Court for the Northern District of California to the fullest extent permissible by law. Each party  
3923 consents to service of process in any manner authorized by California law.

3924

**ARTICLE 38. ASSIGNMENT**

3925 38.01 CITY Right to Terminate in Event of Assignment. CONTRACTOR  
3926 acknowledges that this Contract involves rendering a vital service to CITY'S residents and  
3927 businesses, and that CITY has selected CONTRACTOR to perform the services specified  
3928 herein based on (1) CONTRACTOR'S experience, skill and reputation for conducting its  
3929 operations in a safe, effective and responsible fashion, at all times in keeping with applicable  
3930 environmental laws, regulations and best management practices for the provision of Collection  
3931 Services and (2) CONTRACTOR'S financial resources to maintain the required equipment and  
3932 to support its indemnity obligations to CITY under this Contract. CITY has relied on each of  
3933 these factors, among others, in choosing CONTRACTOR to perform the services to be  
3934 rendered by CONTRACTOR under this Contract. Any assignment by CONTRACTOR, either  
3935 directly or indirectly, in whole or in part, of its rights or any interest it may have in this Contract  
3936 including any transfer of its stock or assets to a third party shall give CITY, in its sole discretion,  
3937 the basis for terminating this Contract in whole or in part upon the giving of a thirty (30) day  
3938 written notice to CONTRACTOR. In the event such notice of termination is given as authorized

3939 by this Article, CONTRACTOR shall continue, for up to six (6) months following notice of  
3940 termination, to provide any or all of the services it is obligated to perform under this Contract if  
3941 requested by CITY in writing. CITY'S right to terminate the Contract in whole or in part shall  
3942 expire unless exercised within sixty (60) days of receiving written notice from CONTRACTOR as  
3943 provided herein of an assignment by CONTRACTOR. "Assignment" or "Assign" as used in this  
3944 Contract shall include, but not be limited to, (i) a sale, exchange or other transfer of substantially  
3945 all of CONTRACTOR'S assets dedicated to any or all of the services to be provided under this  
3946 Contract to a third party (ii) a sale, exchange or other transfer of outstanding common stock of  
3947 CONTRACTOR to a third party provided said sale, exchange or transfer results in a change of  
3948 control of CONTRACTOR or any sale, exchange or transfer of the common stock of  
3949 CONTRACTOR which results in the effective transfer of control of substantially all of  
3950 CONTRACTOR'S assets dedicated to any or all of the services to be provided under this  
3951 Contract to a third party; (iii) any dissolution, reorganization, consolidation, merger, re-  
3952 capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow  
3953 arrangement, liquidation or other transaction to which results in a change of ownership or  
3954 control of CONTRACTOR; (iv) any assignment by operation of law, including insolvency or  
3955 bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution  
3956 being levied against this Contract, appointment of a receiver taking possession of  
3957 CONTRACTOR'S property, or transfer occurring in the event of a probate proceeding; and (v)  
3958 any combination of the foregoing (whether or not in related or contemporaneous transactions)  
3959 which has the effect of any such transfer or change of ownership, or change of control of  
3960 CONTRACTOR, or substantially all of the assets used for providing any of the services under  
3961 this Contract to a third party. For purposes of this Contract, an "assignment" shall not include a  
3962 sale, transfer or exchange with [insert company] or any of its subsidiaries, successors or  
3963 assigns, provided such affiliated entity has financial capabilities and management, available  
3964 locally, equal to or greater than CONTRACTOR.

3965 38.02 Procedure for CITY Evaluation of Proposed Assignment. If CONTRACTOR  
3966 requests CITY'S consideration of and consent to an assignment, CONTRACTOR shall meet the  
3967 following preliminary requirements:

3968 38.02.1 CONTRACTOR shall pay CITY its reasonable expenses for  
3969 attorney's fees, consultant's fees and investigation costs necessary to investigate the suitability  
3970 of any proposed assignee, and to review and finalize any documentation required as a condition  
3971 for approving any such assignment;

3972 38.02.2 CONTRACTOR shall furnish CITY with audited financial  
3973 statements of the proposed assignee's operations for the immediately preceding three (3)  
3974 operating years; and

3975 38.02.3 CONTRACTOR shall furnish CITY with satisfactory proof that: (1)  
3976 the proposed assignee has at least ten (10) years of experience providing Collection Services  
3977 on a scale equal to or exceeding the scale of operations conducted by CONTRACTOR under  
3978 this Contract; (2) in the last five (5) years, the proposed assignee has not suffered any  
3979 significant citations or other censure from any federal, State or local agency having jurisdiction  
3980 over its Collection Services operations due to any significant failure to comply with State, federal  
3981 or local environmental laws and the assignee has provided CITY with a complete list of such  
3982 citations and censures; (3) the proposed assignee has at all times conducted its operations in  
3983 an environmentally safe and conscientious fashion; (4) the proposed assignee conducts its  
3984 Collection Services operation practices in accordance with sound management practices in full  
3985 compliance with all federal, State and local laws regulating the provision of Collection Services;



4028 Manager. This Article 41 does not apply to ideas or concepts described in such materials and  
4029 does not apply to the format of such materials.

**ARTICLE 42. WAIVER**

4030  
4031 42.01 Waiver by CITY or CONTRACTOR of any breach for violation of any term  
4032 covenant or condition of this Contract shall not be deemed to be a waiver of any other term,  
4033 covenant or condition or any subsequent breach or violation of the same or of any other term,  
4034 covenant or condition. The subsequent acceptance by CITY of any fee, tax, or any other  
4035 monies, which may become due from CONTRACTOR to CITY shall not be deemed to be a  
4036 waiver by CITY of any breach for violation of any term, covenant or condition of this Contract.

**ARTICLE 43. POINT OF CONTACT**

4037  
4038 43.01 The day-to-day dealings between CONTRACTOR and CITY shall be between  
4039 CONTRACTOR and the Contract Manager.

**ARTICLE 44. CONFLICT OF INTEREST**

4040  
4041 44.01 CONTRACTOR covenants and declares it has no conflicts of interest that would  
4042 in any manner impair or affect CONTRACTOR'S ability to perform under this Contract.

**ARTICLE 45. NOTICES**

4043  
4044 45.01 Except as provided herein, whenever either party desires to give notice to the  
4045 other, it must be given by written notice by registered or certified mail, or by other methods  
4046 designated for next day delivery with proof of receipt, addressed to the party for whom it is  
4047 intended, at the place last specified and to the place for giving of notice in compliance with the  
4048 provisions of this paragraph. For the present, the parties designate the following as the  
4049 respective persons and places for giving of notice:

As to the CITY:

4050  
4051 City Administrator  
4052 Office of the City Administrator  
4053 City of Oakland  
4054 1 Frank Ogawa Plaza, 3<sup>rd</sup> Floor  
4055 Oakland, CA 94612  
4056 Telephone: 510-238-3301  
4057 E-mail: cityadministrator@oaklandnet.com  
4058

With copies to:

4059  
4060 Director of Public Works  
4061 Public Works Agency  
4062 City of Oakland  
4063 250 Frank Ogawa Plaza, Suite 4314  
4064 Oakland, CA 94612  
4065 Telephone: 238-4470  
4066 E-mail: blevin@oaklandnet.com  
4067

4068 City Attorney

4069 Office of the City Attorney  
4070 City of Oakland  
4071 1 Frank Ogawa Plaza, 6<sup>th</sup> Floor  
4072 Oakland, CA 94612  
4073 Telephone: (510) 238-3601  
4074 E-mail: info@oaklandcityattorney.org  
4075

4076 Director of Finance and Management  
4077 Finance and Management Agency  
4078 City of Oakland  
4079 150 Frank Ogawa Plaza, Suite 5215  
4080 Oakland, CA 94612  
4081 Telephone: (510) 238-2220  
4082 E-mail: sjohnson@oaklandnet.com  
4083

4084 As to CONTRACTOR:

4085  
4086 45.02 Notices shall be effective when received at the address as specified above.  
4087 Changes in the respective address to which such notice is to be directed may be made by  
4088 written notice with a courtesy copy provided by email. The original of items that are transmitted  
4089 by email must also be mailed as required herein.

#### 4090 **ARTICLE 46. TRANSITION TO NEXT CONTRACTOR**

4091 46.01 In the event CONTRACTOR is not awarded a Contract extension to continue to  
4092 provide Collection Services following the expiration or upon early termination of this Contract,  
4093 CONTRACTOR shall cooperate fully with CITY and any subsequent contractors to assure a  
4094 smooth transition of services described in this Contract. Such cooperation shall include but not  
4095 be limited to transfer of computer data, files and tapes; providing routing information, route  
4096 maps, vehicle fleet information, and list of Customers; providing a complete inventory of all  
4097 Carts and Bins; providing adequate labor and equipment to complete performance of all  
4098 Collection Services required under this Contract; coordinating Collection of materials set out in  
4099 new Containers if new Containers are provided for a subsequent Contract and providing other  
4100 reports and data required by this Contract.

#### 4101 **ARTICLE 47. CONTRACTOR'S RECORDS**

4102 47.01 CONTRACTOR shall maintain any and all letters, books of account, invoices,  
4103 vouchers, canceled checks, and other records or documents evidencing or relating to charges  
4104 for services or expenditures and disbursements charged to Customers for a minimum period of  
4105 five (5) years, or for any longer period required by law, from the date of final payment to  
4106 CONTRACTOR pursuant to this Contract.

4107 47.02 CONTRACTOR shall maintain all documents and records, that demonstrate  
4108 performance under this Contract for a minimum period of five (5) years, or for any longer period  
4109 required by law, from the date of termination or completion of this Contract.

4110 47.03 Any records or documents required to be maintained pursuant to this Contract  
4111 shall be made available for inspection or audit, at any time during regular business hours, upon  
4112 written request by the Contract Manager, the CITY Attorney, CITY Auditor, CITY Administrator,

4113 or a designated representative of any of these officers. Copies of such documents shall be  
4114 provided to CITY for inspection at CITY offices when it is practical to do so. Otherwise, unless  
4115 an alternative site is mutually agreed upon, the records shall be available at CONTRACTOR'S  
4116 address indicated for receipt of notices in this Contract.

4117 47.04 Where CITY has reason to believe that such records or documents may be lost  
4118 or discarded due to the dissolution, disbandment or termination of CONTRACTOR'S business,  
4119 CITY may, by written request or demand of any of the above named officers, require that  
4120 custody of the records be given to CITY and that the records and documents be maintained in  
4121 CITY Hall. Access to such records and documents shall be granted to any party authorized by  
4122 CONTRACTOR, CONTRACTOR'S representatives, or CONTRACTOR'S successor-in-interest.

## 4123 **ARTICLE 48. ENTIRE CONTRACT**

4124 48.01 This Contract and the Exhibits attached hereto constitute the entire Contract and  
4125 understanding between the parties hereto, and it shall not be considered modified, altered,  
4126 changed or amended in any respect unless in writing and signed by the parties hereto.

## 4127 **ARTICLE 49. SEVERABILITY**

4128 49.01 If any provision of this Contract or the application of it to any person or situation  
4129 shall to any extent be held invalid or unenforceable, the remainder of this Contract and the  
4130 application of such provisions to persons or situations other than those as to which it shall have  
4131 been held invalid or unenforceable, shall not be affected, shall continue in full force and effect,  
4132 and shall be enforced to the fullest extent permitted by law.

## 4133 **ARTICLE 50. RIGHT TO REQUIRE PERFORMANCE**

4134 50.01 The failure of either party at any time to require performance by the other of any  
4135 provision hereof shall in no way affect the right thereafter to enforce same. Nor shall waiver by  
4136 a party of any breach of any provision hereof be taken or held to be a waiver of any succeeding  
4137 breach of such provision or as a waiver of any provision itself.

## 4138 **ARTICLE 51. CORPORATE GUARANTY**

4139 51.01 In addition to the performance security required in Article 24, CONTRACTOR is  
4140 required to obtain a Guaranty, and Guarantor has agreed to guarantee CONTRACTOR'S  
4141 performance of this Contract, including CONTRACTOR'S indemnification obligations hereunder  
4142 pursuant to a Guaranty in substantially the form attached as Exhibit 18. The Guaranty is being  
4143 provided concurrently with CONTRACTOR'S execution of this Contract.

## 4144 **ARTICLE 52. EMPLOYEE RETENTION REQUIREMENTS**

4145 52.01 CONTRACTOR acknowledges that if and when Collection Services are  
4146 transferred to CONTRACTOR, as the successful proposer, that workers who perform services  
4147 for CITY'S current Contractor (if different from CONTRACTOR) may be displaced from their  
4148 employment. CONTRACTOR represents and warrants that it shall offer employment to all  
4149 qualified displaced workers who have been employed by the current Contractor for at least one  
4150 hundred twenty (120) calendar days prior to July 1, 2015, provided that CONTRACTOR shall  
4151 not be required to create additional positions that CONTRACTOR does not need nor to lay-off  
4152 or discharge CONTRACTOR'S employees in order to employ qualified displaced workers. A

4153 qualified displaced worker includes non-management workers of the current Contractor who  
4154 have been employed, in a full-time paid status, for at least one hundred twenty (120) calendar  
4155 days prior to July 1, 2015 and who would otherwise be laid-off. CONTRACTOR is prohibited  
4156 from discharging any qualified displaced workers for at least ninety (90) calendar days after  
4157 July 1, 2015 except for cause. After the initial ninety (90) calendar days, the continued  
4158 employment of qualified displaced workers will be under the terms and conditions established  
4159 for all of CONTRACTOR'S workers in the particular job classification. CONTRACTOR shall  
4160 submit displaced worker hiring status reports to the Contract Manager on the last working day of  
4161 October 2015 and on the last working day of June 2016.

4162 **ARTICLE 53. SUBCONTRACTING**

4163 53.01 CONTRACTOR shall not engage any subcontractors to perform any of the  
4164 services required of it under this Contract without the prior written approval of CITY.  
4165 CONTRACTOR shall notify CITY no later than ninety (90) days prior to the date on which it  
4166 proposes to enter into a subcontract, providing CITY with all information it requests with respect  
4167 to the proposed subcontractor. CITY may approve or reject any proposed subcontract and/or  
4168 subcontractor in its sole discretion if the proposed subcontract replaces essential services to be  
4169 performed by CONTRACTOR pursuant to Article 9, Article 10, Article 11, and Article 12 of this  
4170 Contract. CITY'S consent to a subcontract and/or subcontractor shall not be unreasonably  
4171 withheld as to other aspects of this Contract that are not deemed to involve essential services to  
4172 CITY.

4173 **ARTICLE 54. [RESERVED]**

4174 **ARTICLE 55. LOCAL HIRE COMPLIANCE**

4175 55.01 CONTRACTOR represents and warrants that at least fifty (50) percent of all new  
4176 hires in their workforce will be Oakland residents (i.e., for every two (2) new hires, one (1) will be  
4177 a resident of Oakland). A compliance baseline will be determined on October 1, 2015. The  
4178 baseline calculation will be total number of full-time equivalent employees with a verified  
4179 Oakland address assigned to this Contract divided by the total number of full-time equivalent  
4180 employees assigned to this Contract. CONTRACTOR shall provide documentation for the  
4181 number of employees used in the baseline and employees that are used in the calculation as  
4182 Oakland residents. Compliance with this Section 55.01 is subject to requirements of  
4183 CONTRACTOR collective bargaining agreements.

4184 55.02 Beginning November 2015, CONTRACTOR will provide a monthly report in  
4185 accordance with Section 19.02.1.7 showing the total number of employees hired in the previous  
4186 month and of those employees hired, the city of residence of those new employees. CITY will  
4187 calculate annually the percent of new hires that are Oakland residents. Failure to comply with  
4188 Section 55.01 hiring requirements may result in liquidated damages per Article 22. CITY may  
4189 put CONTRACTOR on a corrective action plan to achieve compliance with Section 55.01.  
4190 Failure to meet the corrective action plan may result in CITY not extending Contract per Article  
4191 3.

4192 55.03 CONTRACTOR may provide documentation of employees that are Oakland  
4193 residents that do not work on this Contract for the CITY'S consideration. CITY, at its sole  
4194 discretion, may choose to use the number of Oakland residents that are employees of

4195 CONTRACTOR that do not work on this Contract in the annual calculation for compliance with  
4196 this Article.

4197 **ARTICLE 56. RELIGIOUS PROHIBITION**

4198 56.01 There shall be no religious worship, instruction, or proselytization as part of, or in  
4199 connection with, the performance of this Contract.

4200 **ARTICLE 57. POLITICAL PROHIBITION AND CAMPAIGN**  
4201 **CONTRIBUTIONS**

4202 57.01 This Contract is subject to the City of Oakland Campaign Reform Act of Chapter  
4203 3.12 of the Oakland Municipal Code and its implementing regulations. The Campaign Reform  
4204 Act prohibits contractors that are doing business or seeking to do business with CITY from  
4205 making campaign contributions to Oakland candidates between commencement of negotiations  
4206 and either one hundred eighty (180) days after completion of, or termination of, Contract  
4207 negotiations. CONTRACTOR has signed and dated an Acknowledgment of Campaign  
4208 Contribution Limits Schedule O attached hereto and incorporated herein as Attachment 3.

4209 **ARTICLE 58. BUSINESS TAX CERTIFICATE**

4210 58.01 CONTRACTOR shall obtain and provide proof of a valid CITY business tax  
4211 certificate. Said business tax certificate will be valid prior to and to the conclusion of this  
4212 Contract. A copy of the business tax certificate for 2015 is attached hereto and incorporated  
4213 herein as Exhibit 19. A copy of subsequent business tax certificates shall be sequentially  
4214 numbered and attached hereto.

4215 **ARTICLE 59. ATTORNEYS FEES**

4216 59.01 In any dispute between the parties, whether or not resulting in litigation or any  
4217 appeal therefrom, the prevailing party shall be entitled to recover from the other party all  
4218 reasonable costs, including, without limitation, reasonable attorneys' fees. "Prevailing parties"  
4219 shall include without limitation (i) a party who dismisses an action in exchange for sums  
4220 allegedly due such party; (ii) the party which received performance from the other party of an  
4221 alleged breach of a covenant or a desired remedy where such performance is substantially  
4222 equal to the relief sought in an action; or (iii) the party determined to be the prevailing party by a  
4223 court of law.

4224 **ARTICLE 60. LIMITATION OF FELONY DISCLOSURE ON JOB**  
4225 **APPLICATION**

4226 60.01 CONTRACTOR is required to exclude from the initial job application, any  
4227 requirement of the applicant to disclose felony history as long as it complies with governing  
4228 laws.

4229 **ARTICLE 61. COMPETITIVE WAGES AND BENEFITS**

4230 61.01 Living Wage Requirements. CONTRACTOR shall comply with CITY Living  
4231 Wage Ordinance Chapter 2.28 of the Oakland Municipal Code and its implementing regulations.  
4232 The Ordinance requires among other things, submission of the Declaration of Compliance

4233 attached and incorporated herein as Attachment 3. All of the provisions of Section 61.01, or any  
4234 part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver  
4235 is explicitly set forth in such agreement in clear and unambiguous terms.

4236 61.02 Competitive Wages and Benefits. CONTRACTOR shall pay Competitive Wages  
4237 and Benefits defined as wages and benefits equivalent to or better than collectively bargained  
4238 contracts in use in Alameda, Contra Costa, San Francisco, Santa Clara, and San Mateo  
4239 Counties. CONTRACTOR shall provide CITY evidence of compliance with this provision at  
4240 CITY'S request.

4241 61.03 CONTRACTOR shall provide CITY ninety (90) day notice for expiration any of  
4242 CONTRACTOR'S collectively bargained contracts. CONTRACTOR shall timely notice CITY  
4243 should other issues arise with CONTRACTOR'S collectively bargained contracts.

## 4244 **ARTICLE 62. VALIDITY OF CONTRACTS**

4245 62.01 This Contract shall not be binding or of any force or effect until signed by the City  
4246 Administrator or his or her designee and approved as to form and legality by the City Attorney or  
4247 his or her designee.

## 4248 **ARTICLE 63. EQUAL BENEFITS ORDINANCE**

4249 63.01 This Contract is subject to the Equal Benefits Ordinance of Chapter 2.232.010 of  
4250 the Oakland Municipal Code and its implementing regulations. Entities which enter into a  
4251 "contract" with the City for an amount of Twenty-Five Thousand Dollars (\$25,000.00) or more for  
4252 public works or improvements to be performed, or for goods or services to be purchased or  
4253 grants to be provided at the expense of the City or to be paid out of moneys deposited in the  
4254 treasury or out of trust moneys under the control of or collected by the City; and Entities which  
4255 enter into a "property contract" pursuant to Section 2.23.020(D) with the City in an amount of  
4256 Twenty-five Thousand Dollars (\$25,000.00) or more for the exclusive use or occupancy (1) of  
4257 real property owned or controlled by the City or (2) of real property owned by others for the  
4258 City's use or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.

4259 63.02 The Ordinance shall only apply to those portions of CONTRACTOR'S  
4260 operations that occur (1) within the CITY; (2) on real property outside Oakland if the property is  
4261 owned by CITY or if CITY has a right to occupy the property, and if CONTRACTOR'S presence  
4262 at that location is connected to a contract with CITY; and (3) elsewhere in the United States  
4263 where work related to a City contract is being performed. The requirements of this Section shall  
4264 not apply to subcontracts or subcontractors of any contract or contractor. The Equal Benefits  
4265 Ordinance requires among other things, submission of Schedule N-1, the Equal Benefits-  
4266 Declaration of Nondiscrimination, incorporated herein.

## 4267 **ARTICLE 64. LABOR PEACE**

4268 64.01 General. CITY has determined that the level of vulnerability of the proposed  
4269 Contract to labor disputes is sufficient to warrant that labor peace is essential to the property  
4270 interests of CITY. Therefore, CONTRACTOR shall at all times comply with the provisions of  
4271 CONTRACTOR'S Term Resumption of Service Plan.

4272

**ARTICLE 65. AMENDMENT**

4273 65.01 No modification, amendment, or supplement to this Contract will be binding on  
4274 the parties unless it is made in writing, duly authorized by CONTRACTOR and CITY, and  
4275 signed by both parties.

4276

**ARTICLE 66. ALL PRIOR CONTRACTS SUPERSEDED**

4277 66.01 This document incorporates and includes all prior negotiations, correspondence,  
4278 conversations, agreements and understandings applicable to the matters contained in this  
4279 Contract and the parties agree that there are no commitments, agreements or understandings  
4280 concerning the subject matter of this Contract that are not contained in this document or in the  
4281 Disposal Services Contract or the Residential Recycling Services Contract which are being  
4282 executed simultaneously with this document. Accordingly, it is agreed that no deviation from the  
4283 terms of this Contract shall be predicated upon any prior representations or agreements,  
4284 whether oral or written.

4285

**ARTICLE 67. HEADINGS**

4286 67.01 Headings in this document are for convenience of reference only and are not to  
4287 be considered in any interpretation of this Contract.

4288

**ARTICLE 68. LEGAL REPRESENTATION**

4289 68.01 Each of the parties has received the advice of legal counsel prior to signing this  
4290 Contract. The parties agree no provision or provisions may be subject to any rule of construction  
4291 based upon any party being considered the party "drafting" this Contract.

4292

**ARTICLE 69. EXHIBITS**

4293 69.01 Each Exhibit referred to in this Contract forms an essential part of this Contract.  
4294 Each such Exhibit is a part of this Contract and each is incorporated by this reference.

4295

**ARTICLE 70. EFFECTIVE DATE**

4296 70.01 This Contract shall become effective at such time as it is properly executed by  
4297 CITY and CONTRACTOR and CONTRACTOR shall begin Collection Services, as covered  
4298 herein, as of July 1, 2015.

4299

4300 IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Contract on the day  
4301 and year first written above.

4302 CITY OF OAKLAND

[Contractor Company Name]

4303

4304

4305

4306 By: \_\_\_\_\_  
4307 [Name, Title]

By: \_\_\_\_\_  
[Name, Title]

4308



4309 \_\_\_\_\_  
4310 \_\_\_\_\_  
4311 \_\_\_\_\_  
4312 Date \_\_\_\_\_ Date \_\_\_\_\_  
4313 \_\_\_\_\_  
4314 \_\_\_\_\_ City of Oakland Business License Number

4315 **The foregoing Contract has been reviewed and approval is recommended:**

4316 Resolution No. \_\_\_\_\_ C.M.S.

4317 Approved by City Council

4318 APPROVED AS TO FORM:

4319 \_\_\_\_\_  
4320 \_\_\_\_\_  
4321 \_\_\_\_\_  
4322 [Name, Title] \_\_\_\_\_ Date \_\_\_\_\_  
4323 City Attorney

4324 **Attest:**

4325 \_\_\_\_\_  
4326 By: \_\_\_\_\_  
4327 [Name, Title] \_\_\_\_\_ Date \_\_\_\_\_  
4328 City Clerk  
4329 \_\_\_\_\_

4330 This page intentionally left blank.

## INDEX OF EXHIBITS

### **EXHIBIT 1**

MAXIMUM SERVICE RATES

(Rate sheets are included in Staff Report.)

### **EXHIBIT 1A**

MAXIMUM SERVICE RATES, SFD SERVICES

### **EXHIBIT 1B**

MAXIMUM SERVICE RATES, MFD SERVICES

### **EXHIBIT 1C**

MAXIMUM SERVICE RATES, COMMERCIAL SERVICES

### **EXHIBIT 1D**

MAXIMUM SERVICE RATES, SFD, MFD AND COMMERCIAL ROLL-OFF BOX SERVICES

### **EXHIBIT 1E**

MAXIMUM SERVICE RATES, EMERGENCY SERVICE RATES, EMPLOYEES

### **EXHIBIT 1F**

MAXIMUM SERVICE RATES, EMERGENCY SERVICE RATES, EQUIPMENT

### **EXHIBIT 1G**

MAXIMUM SERVICE RATES, SPECIAL EVENTS SERVICES

### **EXHIBIT 1H**

MAXIMUM RECYCLING SERVICE RATES

### **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**

CITY-SPONSORED EVENTS

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

**EXHIBIT 6**

**TRANSITION PLAN**

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

**EXHIBIT 7**

**COMMUNITY OUTREACH STRATEGY**

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

**EXHIBIT 8**

**DIVERSION**

(CWS version attached. WMAC version attached.)

**EXHIBIT 8**

**Table A - Minimum Annual Diversion Requirements**

(Attached)

**EXHIBIT 8**

**Table B - Calculation of Annual Diversion Rate**

(Attached)

**EXHIBIT 9**

**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 10**

**COLLECTION SERVICES OPERATIONS PLAN**

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

**EXHIBIT 11 - DELETED**

**EXHIBIT 12**

**VEHICLE SPECIFICATIONS**

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

**EXHIBIT 13**

**CONTAINER SPECIFICATIONS**

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

**EXHIBIT 14**

**BULKY GOODS COLLECTION SERVICE AGREEMENT**

(Attached)

**EXHIBIT 15**

**MEMORANDUM OF UNDERSTANDING**

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

**EXHIBIT 16**

LOCAL BUSINESS PRESENCE AND PARTICIPATION REPORTING FORM  
(To be attached within 30 days.)

**EXHIBIT 16 A**

LOCAL BUSINESS PRESENCE AND PARTICIPATION REQUIREMENTS  
(To be attached within 30 days.)

**EXHIBIT 17**

EMPLOYEE AND LABOR RELATIONS PLAN  
(Provided in proposals. To be modified and attached within 30 days.)

**EXHIBIT 18**

GUARANTY AGREEMENT  
(Attached)

**EXHIBIT 19**

BUSINESS TAX CERTIFICATE  
(To be attached, prior to signing.)

2305977.1

**Exhibit 2  
CWS**

**Exhibit 2  
CWS**

## Exhibit 2 Annual Rate Adjustment

1. **MM&O Annual Rate Adjustment Calculation.** The Annual Rate Adjustment for the Mixed Material and Organics Collection Contract shall be calculated in the following manner:
  - 1.1. There are eight (8) Contractor Cost Categories for purposes of the RRI adjustment calculation: MM&O Union Labor, Diesel Fuel, CNG Fuel, Vehicle Replacement, Vehicle Maintenance, Processing, Disposal, and All Other. There are an additional four (4) 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 – Disposal, Government Fees/Taxes – Processing, Government Fees/Taxes – Collection, and Franchise Fees.
  - 1.2. Within each Cost Category (1-12) 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 4 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 (1-12). 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 1<sup>st</sup> through December 31<sup>st</sup>.
  - 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 MMO Exhibit 2

Item	Cost Category	Previous Year or Date	Review	Current Year or Date	Review
1	MM&O 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	Processing <sup>1</sup>	December 31 of next previous calendar year		December 31 of previous calendar year	
7	Disposal	December 31 of next previous calendar year		December 31 of previous calendar year	
8	All Other	December 31 of next previous calendar year		December 31 of previous calendar year	
9	Government Fees/Taxes – Disposal	July 1 of previous calendar year		July 1 of current calendar year	
10	Government Fees/Taxes – Processing	July 1 of previous calendar year		July 1 of current calendar year	
11	Government Fees/Taxes – Collection	July 1 of previous calendar year		July 1 of current calendar year	
12	Franchise Fees	July 1 of previous calendar year		July 1 of current calendar year	

<sup>1</sup> 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 MMO Exhibit 2

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1.5. The weighted percentage change of Cost Categories 1 - 8 are then added together to calculate the RRI adjustment. The weighted percent change of the MM&O Franchise Fees shall be as calculated except where there is negative CWS revenue for the year as set forth in Section [to be completed] of the Contract, in which case the Franchise Fee increase is zero. The weighted percent change of Cost Categories 9 - 12 are then added to the RRI adjustment to calculate the Annual Rate Adjustment.

### 2. MM&O Cost Indicators

<u>MM&amp;O Cost Category</u>	<u>Cost Indicator<sup>2</sup></u>
MM&O Union Labor	Projected (as of March 1 <sup>st</sup> 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 <sup>th</sup> Avenue, Oakland, CA. <b>Calculated pursuant to Section 3 below.</b>
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 ( <a href="http://www.pge.com/tariffs">http://www.pge.com/tariffs</a> ) 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:	[to be determined based on the terms of the CWS processing contract(s)]
Disposal:	[to be determined based on the terms of the CWS disposal contract.]

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<sup>2</sup> With regard to the Union Labor Cost Categories within the MM&O RRI, the Cost Indicator will be the projected union labor costs on the applicable (previous or current) July 1 review date.

## CWS MMO Exhibit 2

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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 – CWS to list applicable Government Fees/Taxes

Disposal

Government Fees/Taxes - CWS to list applicable Government Fees/Taxes

Processing

Government Fees/Taxes – CWS to list applicable Government Fees/Taxes

Collection

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. **MM&O Union Labor Cost Indicator.** Annual changes to the MM&O 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: [to be amended based on actual Local's performing services for CWS under the terms of the MMO Contract]

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 rate<sup>3</sup>), 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 1<sup>st</sup> 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 1<sup>st</sup> preceding the current review date to be effective as of the current review date. Changes that become known after March 1<sup>st</sup> 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 MM&O 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 1<sup>st</sup> of the current review date, CITY and CONTRACTOR have agreed that the costs for the current review date shall be those costs that are

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<sup>3</sup> Converting monthly amounts to hourly will be done by dividing the monthly amount by 173.

## CWS MMO Exhibit 2

projected as of March 1<sup>st</sup> preceding the current review date to be effective as of the current review date. Changes that become known after March 1<sup>st</sup> 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 MM&O 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 1<sup>st</sup> 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 1<sup>st</sup> preceding the current review date to be effective as of the current review date. Changes that become known after March 1<sup>st</sup> 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 MM&O 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 MM&O Union Labor Cost Category to be applied to the MM&O 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	MM&O 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	To be determined based on processing contract(s)	To be determined based on processing contract(s)

## CWS MMO Exhibit 2

7	Disposal	To be determined based on disposal contract	To be determined based on disposal contract
8	All Other	Calendar Year Ending December 31, 2014	Calendar Year Ending December 31, 2015
9	Government Fees/Taxes - Disposal	To be determined based on disposal contract	To be determined based on disposal contract
10	Government Fees/Taxes - Processing	To be determined based on processing contract(s)	To be determined based on processing contract(s)
11	Government Fees/Taxes - Collection	July 1, 2015	July 1, 2016
12	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 9 – 12. The following is an example Annual Rate Adjustment calculation:

Item	Cost Category	Cost Indicator Percent Change	Item Weight	Weighted Percent Change
1	MM&O Union Labor	4.64%	30.79%	1.43%
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	Disposal	5.45%	13.80%	0.75%
8	All Other	2.24%	9.38%	0.21%
	<b>RRI Adjustment</b>			<b>2.78%</b>
9	Government Fees/Taxes - Collections	0.01%	0.01%	0.00%

## CWS MMO Exhibit 2

10	Government Fees/Taxes - Processing	3.27%	5.37%	0.18%
11	Government Fees/Taxes - Disposal	5.13%	0.90%	0.05%
12	MM&O Franchise Fees	2.24%	25.89%	0.58%
			100%	
	<b>Annual Rate Adjustment</b>			<b>3.59%</b>

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

#### 4. MM&O Operating Cost Statement-Description

**MM&O Union Labor:** List all labor accounts for CWS's employees domiciled at [to be completed] who are members of Local 70, Local 1546 and Local 6 Clerical [May change]. 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.

**Processing** [To be determined]

**Disposal:** [To be determined]

**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

## CWS MMO Exhibit 2

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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 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

## CWS MMO Exhibit 2

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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 –**

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

**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.

**Exhibit 2  
WMAC**

**Exhibit 2  
WMAC**

### Exhibit 2 Annual Rate Adjustment

1. **MM&O Annual Rate Adjustment Calculation.** The Annual Rate Adjustment for the Mixed Material and Organics Collection Contract shall be calculated in the following manner:
  - 1.1. There are eight (8) Contractor Cost Categories for purposes of the RRI adjustment calculation: MM&O Union Labor, Diesel Fuel, CNG Fuel, Vehicle Replacement, Vehicle Maintenance, Davis Street Processing, Disposal, and All Other. There are an additional four (4) 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 – Disposal, Government Fees/Taxes – Processing, Government Fees/Taxes – Collection, and Franchise Fees.
  - 1.2. Within each Cost Category (1-12) 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 6 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 (1-12). 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 1<sup>st</sup> through December 31<sup>st</sup>.
  - 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.

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Item	Cost Category	Previous Year or Date	Review Year or Date	Current Year or Date	Review Year or Date
1	MM&O 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 next previous year	December 31 of next calendar year	December 31 of previous year	December 31 of calendar year
3	CNG Fuel	December 31 of next previous year	December 31 of next calendar year	December 31 of previous year	December 31 of calendar year
4	Vehicle Replacement	December 31 of next previous year	December 31 of next calendar year	December 31 of previous year	December 31 of calendar year
5	Vehicle Maintenance	December 31 of next previous year	December 31 of next calendar year	December 31 of previous year	December 31 of calendar year
6	Davis Street Processing <sup>1</sup>	December 31 of next previous year	December 31 of next calendar year	December 31 of previous year	December 31 of calendar year
7	Disposal <sup>2</sup>	December 31 of next previous year	December 31 of next calendar year	December 31 of previous year	December 31 of calendar year
8	All Other	December 31 of next previous year	December 31 of next calendar year	December 31 of previous year	December 31 of calendar year
9	Government Fees/Taxes – Disposal	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	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
11	Government Fees/Taxes – Collection	July 1 of previous calendar year	July 1 of previous calendar year	July 1 of current calendar year	July 1 of current calendar year

<sup>1</sup> 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.

<sup>2</sup> Except for the Union Labor Cost Category which will have a July 1 review year all other Cost Categories within the Disposal RRI will have December 31 review years.

## WMAC MMO Exhibit 2

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12	Franchise Fees	July 1 of previous calendar year	July 1 of current calendar year
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1.5. The weighted percentage change of Cost Categories 1 - 8 are then added together to calculate the RRI adjustment. The weighted percent change of the MM&O Franchise Fees shall be as calculated except where there is negative WMAC revenue for the year as set forth in Section 7.19.1 of the Contract, in which case the Franchise Fee increase is zero. The weighted percent change of Cost Categories 9 - 12 are then added to the RRI adjustment to calculate the Annual Rate Adjustment.

### 2. MM&O Cost Indicators

<u>MM&amp;O Cost Category</u>	<u>Cost Indicator<sup>3</sup></u>
MM&O Union Labor	Projected (as of March 1 <sup>st</sup> 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 <sup>th</sup> Avenue, Oakland, CA. <b>Calculated pursuant to Section 3 below.</b>
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 ( <a href="http://www.pge.com/tariffs">http://www.pge.com/tariffs</a> ) 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)

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<sup>3</sup> With regard to each Cost Indicator under the MM&O, Davis Street Processing and Disposal RRI's 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 MM&O, Davis Street Processing and Disposal RRI's, the Cost Indicator will be the projected union labor costs on the applicable (previous or current) July 1 review date.

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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**)

Disposal:      Disposal RRI (**Calculated pursuant to Section 5 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 – WMAC to list applicable Government Fees/Taxes

Disposal

Government Fees/Taxes - WMAC to list applicable Government Fees/Taxes

Processing

Government Fees/Taxes – WMAC to list applicable Government Fees/Taxes

Collection

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. **MM&O Union Labor Cost Indicator.** Annual changes to the MM&O 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 rate<sup>4</sup>), 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 1<sup>st</sup> 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 1<sup>st</sup> preceding the current review date to be effective as of the current review date. Changes that become known after March 1<sup>st</sup> 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 MM&O Union Labor employees represented by Local 70.

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<sup>4</sup> Converting monthly amounts to hourly will be done by dividing the monthly amount by 173.

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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 1<sup>st</sup> 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 1<sup>st</sup> preceding the current review date to be effective as of the current review date. Changes that become known after March 1<sup>st</sup> 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 MM&O 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 1<sup>st</sup> 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 1<sup>st</sup> preceding the current review date to be effective as of the current review date. Changes that become known after March 1<sup>st</sup> 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 MM&O 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 MM&O Union Labor Cost Category to be applied to the MM&O 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	MM&O 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	Calendar Year Ending

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		December 31, 2014	December 31, 2015
5	Vehicle Maintenance	Calendar Year Ending December 31, 2014	Calendar Year Ending December 31, 2015
6	Davis Street Processing <sup>5</sup>	Calendar Year Ending December 31, 2014	Calendar Year Ending December 31, 2015
7	Disposal <sup>6</sup>	Calendar Year Ending December 31, 2014	Calendar Year Ending December 31, 2015
8	All Other	Calendar Year Ending December 31, 2014	Calendar Year Ending December 31, 2015
9	Government Fees/Taxes – Disposal	July 1, 2015	July 1, 2016
10	Government Fees/Taxes – Processing	July 1, 2015	July 1, 2016
11	Government Fees/Taxes – Collection	July 1, 2015	July 1, 2016
12	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 9 – 12. The following is an example Annual Rate Adjustment calculation:

Item	Cost Category	Cost Indicator Percent Change	Item Weight	Weighted Percent Change
1	MM&O Union Labor	4.64%	30.79%	1.43%
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%

<sup>5</sup> 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.

<sup>6</sup> Except for the Union Labor Cost Category which will have a July 1 review year all other Cost Categories within the Disposal RRI will have December 31 review years.

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7	Disposal	5.45%	13.80%	0.75%
8	All Other	2.24%	9.38%	0.21%
	<b>RRI Adjustment</b>			<b>2.78%</b>
9	Government Fees/Taxes - Collections	0.01%	0.01%	0.00%
10	Government Fees/Taxes - Processing	3.27%	5.37%	0.18%
11	Government Fees/Taxes - Disposal	5.13%	0.90%	0.05%
12	MM&O Franchise Fees	2.24%	25.89%	0.58%
			100%	
	<b>Annual Rate Adjustment</b>			<b>3.59%</b>

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 MM&O 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, 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.

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

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### 4.2. Davis Street Processing RRI Cost Indicators

<u>Cost Category</u>	<u>Cost Indicator</u>
Davis Street Union Labor	Projected (as of March 1 <sup>st</sup> 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. <b>Calculated pursuant to Section 4.3 below.</b>
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 ( <a href="http://www.pge.com/tariffs">http://www.pge.com/tariffs</a> ) 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)

**4.3. 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:

- 4.3.1. 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 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 1<sup>st</sup> 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 1<sup>st</sup> preceding the current review date to be effective as of the current review date. Changes that become known after March 1<sup>st</sup> preceding the current review date shall be

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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.

- 4.3.2. 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 1<sup>st</sup> 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 1<sup>st</sup> preceding the current review date to be effective as of the current review date. Changes that become known after March 1<sup>st</sup> 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.
- 4.3.3. 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 1<sup>st</sup> 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 1<sup>st</sup> preceding the current review date to be effective as of the current review date. Changes that become known after March 1<sup>st</sup> 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 Clerical.
- 4.3.4. 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 1<sup>st</sup> 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 1<sup>st</sup> preceding the current review date to be effective as of the current review date. Changes that become known after March 1<sup>st</sup>

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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.

- 4.3.5. 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 1<sup>st</sup> 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 1<sup>st</sup> preceding the current review date to be effective as of the current review date. Changes that become known after March 1<sup>st</sup> 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 resulting there from. For purposes of clarity, recovery of such increased labor costs shall not be subject to any cap under this Contract.

### **5. Disposal RRI embedded in the MM&O RRI.**

5.1. The Disposal RRI shall be calculated in the following manner:

- 5.1.1. There are six (6) Contractor Cost Categories for purposes of the Disposal RRI adjustment calculation: Disposal Union Labor, Diesel Fuel, CNG Fuel, Equipment Replacement, Equipment Maintenance, and All Other.
- 5.1.2. 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.

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5.1.3. 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%.

5.1.4. Each Cost Category's item weight is then multiplied by the percent change of its Cost Indicator from the previous review date to the current review date to calculate its weighted percentage change. Each Cost Category's review dates are set forth below:

Item	Cost Category	Previous Review Date or Year	Current Review Date or Year
1	Disposal 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	Equipment Replacement	December 31 of next previous calendar year	December 31 of previous calendar year
5	Equipment 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 5.2 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 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

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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.

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

### 5.2. Disposal RRI Cost Indicators

<u>Cost Category</u>	<u>Cost Indicator</u>
Disposal Union Labor	Projected (as of March 1 <sup>st</sup> preceding the review date to be effective as of the review date) total Union (Local 1546 and Local 6 Landfill) wage, health and welfare, and pension costs under Waste Management of Alameda County, Inc. collective bargaining agreements for those employees domiciled at the Altamont Landfill in Livermore, CA. <b>Calculated pursuant to Section 5.3 below.</b>
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 ( <a href="http://www.pge.com/tariffs">http://www.pge.com/tariffs</a> ) reflecting the sum of the Customer, procurement, transportation and public purpose program charges (average for 12 months ending on the current review year) .
Equipment Replacement	Series ID: pcu336211336211 Truck, bus, car, and other vehicle bodies, for sale separately (average for 12 months ending on the current review year)
Equipment 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-San Jose-Oakland, CA (average for 12 months ending on the current review year)

**5.3. Disposal Union Labor Cost Indicator.** Annual changes to the Disposal 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:

5.3.1. Local 1546 annual total labor increase shall be determined by calculating the percentage change of the sum of the Journeyman classification wage rate, monthly health and welfare premium (as converted to a straight time

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hourly rate), and the hourly pension rate between the previous review date and the current review date. Since this calculation must be performed prior to the July 1<sup>st</sup> 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 1<sup>st</sup> preceding the current review date to be effective as of the current review date. Changes that become known after March 1<sup>st</sup> 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 Disposal Union Labor employees represented by Local 1546.

- 5.3.2. 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 hourly pension rate between the previous review date and the current review date. Since this calculation must be performed prior to the July 1<sup>st</sup> 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 1<sup>st</sup> preceding the current review date to be effective as of the current review date. Changes that become known after March 1<sup>st</sup> 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 Disposal Union Labor employees represented by Local 6 Landfill.

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

### 6. MM&O Operating Cost Statement-Description

<b>MM&amp;O Union Labor:</b>	List all labor accounts for WMAC's employees domiciled at 172-98 <sup>th</sup> 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,
<b>Diesel Fuel:</b>	Clear and/or Dyed Diesel Fuel, Gasoline, Fuel Tax Credit accounts.
<b>CNG Fuel:</b>	LNG and/or CNG fuel, Fuel Tax Credit accounts.

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<b>Vehicle Replacement:</b>	Equipment and Support Equipment depreciation accounts. Vehicle Rental Equipment accounts
<b>Vehicle Maintenance:</b>	Building (Maintenance), Tires, Parts & Supplies, Lubricants, Third Party Services, Other.
<b>Davis Street Processing</b>	See Davis Street Processing RRI
<b>Disposal:</b>	See Disposal RRI
<b>All Other:</b>	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

## WMAC MMO Exhibit 2

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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 –**

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

### **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.

## WMAC MMO Exhibit 2

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### 7. Davis Street Processing Operating Cost Statement - Description

<b>Davis Street Union Labor:</b>	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,
<b>Diesel Fuel:</b> accounts.	Clear and/or Dyed Diesel Fuel, Gasoline, Fuel Tax Credit
<b>CNG Fuel:</b>	LNG and/or CNG fuel, Fuel Tax Credit accounts.
<b>Vehicle Replacement:</b>	Equipment and Support Equipment depreciation accounts. Vehicle Rental Equipment accounts
<b>Vehicle Maintenance:</b>	Building (Maintenance), Tires, Parts & Supplies, Lubricants, Third Party Services, Other.
<b>All Other:</b>	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

## WMAC MMO Exhibit 2

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

## WMAC MMO Exhibit 2

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### 8. Altamont Landfill Disposal Operating Cost Statement - Description

<b>Disposal Union Labor:</b>	List all labor accounts for WMAC's employees domiciled at the Altamont Landfill in Livermore, CA. who are members of Local 1546 and Local 6 Landfill. Wages – hourly & overtime, Bonuses, Commissions, Other Compensation, Compensated Absences & Vacation, Severance, Health & Welfare Insurance Premiums, Pension & Retirement Benefits, Payroll Taxes,
<b>Diesel Fuel:</b>	Clear and/or Dyed Diesel Fuel, Gasoline, Fuel Tax Credit accounts.
<b>CNG Fuel:</b>	LNG and/or CNG fuel, Fuel Tax Credit accounts.
<b>Vehicle Replacement:</b>	Equipment and Support Equipment depreciation accounts. Vehicle Rental Equipment accounts
<b>Vehicle Maintenance:</b>	Building (Maintenance), Tires, Parts & Supplies, Lubricants, Third Party Services, Other.
<b>All Other:</b>	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

## WMAC MMO Exhibit 2

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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  
Capping ARO expense, Closure-Post Closure ARO Expense, Ground Water Monitoring, LF Fees & Taxes, LF Testing & Engineering, Landfill road Maintenance, Leachate Monitoring, LF Capping Amortization, LF Close-Post Closure Amortization, License-Fees-Permits, Methane Collection & Treatment, Non-GCCS Air Monitoring, Non143 Airspace

## WMAC MMO Exhibit 2

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Amortization, Other Monitoring, Royalties, Site Maintenance cost, Surface Water Monitoring

Union labor Workers Compensation Premiums & Claims,

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

**Exhibit 8  
CWS**

**Exhibit 8  
CWS**

EXHIBIT 8 CWS  
DIVERSION PLAN

Table A  
Annual Minimum Required Diversion Rates

Part 1		Part 2	
Calendar Year	Minimum Diversion Rate	Calendar Year	Minimum Diversion Rate
2016	31.50%	2026	To Be Completed in 2023
2017	33.00%	2027	
2018	34.50%	2028	
2019	36.00%	2029	
2020	47.50%	2030	
2021	49.00%	2031	
2022	50.00%	2032	
2023	51.00%	2033	
2024	52.00%	2034	
2025	52.00%	2035	

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**Exhibit 8  
WMAC**

**Exhibit 8  
WMAC**

EXHIBIT 8 WMAC  
DIVERSION PLAN

Table A  
Annual Minimum Required Diversion Rates

Part 1		Part 2	
Calendar Year	Minimum Diversion Rate	Calendar Year	Minimum Diversion Rate
2016	37.09%	2026	To Be Completed in 2023
2017	37.09%	2027	
2018	45.69%	2028	
2019	53.07%	2029	
2020	56.38%	2030	
2021	57.67%	2031	
2022	60.01%	2032	
2023	62.45%	2033	
2024	62.78%	2034	
2025	62.57%	2035	

**Exhibit 14**

**Exhibit 14**

**Exhibit 14**  
**Bulky Goods Collection Service Agreement**

This Exhibit governs Bulky Goods Collection Service (Bulky Service) for eligible SFD and MFD Service Addresses, and Service Recipients.

**A. OVERVIEW**

1. Per Sections 9.05 and 10.05 of the Contract, and subject to the limitations of Section B of this Exhibit, CONTRACTOR shall provide Bulky Goods Collection Service to SFD and MFD Service Addresses, and to Service Recipients in individual Dwelling Units. This service shall target bulky Recyclable and non-recyclable items that are not typically Collected as part of Mixed Material and Organics Collection Services or Residential Recycling Collection Services. The goals of Bulky Goods Collection Service are:
  - a. Convenient and safe collection and processing of household items that cannot be Collected in the weekly Material and Organics Collection Services or Residential Recycling Collection Services;
  - b. High waste diversion through Recycling; and
  - c. Minimization of illegal disposal/dumping.
2. CONTRACTOR shall provide Bulky Goods Collection Service appointments on Work Days during residential Collection hours per Contract Section 6.02.1, with the exceptions that CONTRACTOR shall recover Friday missed Collections on Saturday, and CONTRACTOR may, at its discretion, schedule Bulky Goods Collection Service appointments on Saturdays.
3. CONTRACTOR shall ensure adequate customer service and operational capacity to provide service upon demand for all eligible households, per the criteria in Section C.2.
4. CONTRACTOR shall leave a Non-Collection Notice for unacceptable items (described in Section E.1.) that it left uncollected.
5. CONTRACTOR shall notify CITY of all non-collected items per Attachment A of this Exhibit.
6. Beginning July 1, 2016, CITY and CONTRACTOR agree to meet and confer annually to evaluate the effectiveness of the Bulky Goods Collection Service program, and consider adjustments to the service.

**B. ELIGIBILITY**

All SFD and MFD Service Addresses shall be eligible for Bulky Goods Collection Services as described in this Exhibit. Additionally, all Service Recipients in SFD and MFD Dwelling Units shall be eligible for certain Bulky Goods Collection Services as described in this Exhibit.

1. Each SFD Dwelling Unit shall be eligible for an Annual Pickup consisting of one (1) Full Service Collection Event, as defined in Section D of this Exhibit, per Contract Year, at no additional charge to the Service Recipient, Customer or CITY. In addition to the Annual Pickup, each SFD Service Address shall be eligible for additional Full Service Collection Events (Pay-As-You-Go Pickups) at the Bulky Goods Pay-As-You-Go Pickup Maximum Services Rates as set forth in Exhibit 1 to the Contract.
2. Each MFD Dwelling Unit shall be eligible for an Annual Pickup consisting of one half of one (1/2) Full Service Collection Event per Contract Year as described in Section D of this Exhibit at no additional charge to Service Recipient, Customer or CITY. In addition to the Annual Pickup, each MFD Dwelling Unit shall be eligible for additional Full Service Collection Events (Pay-As-You-Go Pickups) at the Bulky Goods Pay-As-You-Go Pickup Maximum Services Rates as set forth in Exhibit 1 to the Contract.
3. CONTRACTOR shall only be required to accept appointments for Annual Pickups from SFD and MFD

Customers, and Service Recipients in 1-unit SFD buildings.

4. CONTRACTOR shall only be required to accept appointments for Pay-As-You-Go Pickups that are billed to the account associated with the Service Address from SFD and MFD Customers.
5. CONTRACTOR shall be required to accept appointments for Pay-As-You-Go Pickups from Service Recipients in any SFD or MFD Dwelling Unit when such services are billed to the personal credit card of the SFD or MFD Service Recipient requesting the service.

#### **C. CUSTOMER SERVICE**

1. CONTRACTOR's customer service representatives (CSR) shall review the following points with the Customer or Service Recipient when scheduling a Bulky Goods Collection Service appointment:
  - a. Confirmation of whether the appointment is for an Annual Pickup or Pay-As-You-Go Pickup;
  - b. Items the Customer or Service Recipient intends to set out;
  - c. List of acceptable/unacceptable items setout standards per Sections D and E of this Exhibit;
  - d. Confirmation of Customer or Service Recipient's current telephone number; and
  - e. Explicit information regarding the caller's financial liability for overage charges and CITY fines.
2. Collection shall be scheduled for and provided on a date within two (2) weeks of the appointment call, unless the caller requests a later date. CONTRACTOR shall notify CITY if CONTRACTOR cannot schedule appointments within two (2) weeks for any reason.
3. CONTRACTOR shall send an Appointment Confirmation Notice accompanied by (or included within) a Bulky Goods Collection Service brochure no later than the next Work Day after the appointment is scheduled.
4. CONTRACTOR shall Collect on the scheduled appointment day all improperly prepared but otherwise acceptable Recyclable items, and may charge for Overage for such items per Section F.
5. CONTRACTOR shall propose measures to ensure that large Bulky Goods Collection Service Collection events shall be managed to ensure Customer satisfaction and to minimize blight. Examples of such measures include but are not limited to: on-site meetings with Customers; site visits to determine setout location and assess potential access issues; and allocating appropriate resources to ensure complete and on-time Collection.

#### **D. ACCEPTED ITEMS**

1. One (1) "Full Service Collection Event" shall include Collection of:
  - a. Up to three (3) cubic yards (equal to approximately twenty [20] 32-gallon bags) of non-recyclable Bulky Goods, which include but are not limited to furniture, materials generated from minor home repairs (subject to Section E.) and other household items;
  - b. Two (2) large appliances;
  - c. Four(4) electronic devices as described in the California Code of Regulations Title 22, §66260.201 that require handling as "Covered electronic devices" (CED) (video display devices including but not limited to televisions and computer monitors);
  - d. Four (4) tires, including tires on rims;

- e. Four(4) mattresses or box springs;
  - f. Four (4) carpets;
  - g. Computers;
  - h. Consumer electronic products;
  - i. Scrap metal;
  - j. Corrugated cardboard;
  - k. Unpainted/untreated wood; and
  - l. Plant Debris.
2. One half (1/2) of a "Full Service Collection Event" shall include collection of:
- a. Up to one-and-a-half (1.5) cubic yards of non-recyclable bulky items, which include but are not limited to furniture, home remodeling debris (subject to Section E.) and other household items;
  - b. One (1) large appliance;
  - c. Two (2) electronic devices as described in the California Code of Regulations Title 22, §66260.201 that require handling as "Covered electronic devices" (CED) (video display devices including but not limited to televisions and computer monitors);
  - d. Two (2) tires including tires on rims;
  - e. Two (2) mattresses or box springs;
  - f. Two (2) carpets;
  - g. Computers;
  - h. Consumer electronic products;
  - i. Scrap metal;
  - j. Corrugated cardboard;
  - k. Unpainted wood; and
  - l. Plant Debris.
3. Recyclable items shall be prepared as described in Attachment B to this Exhibit.
4. Setouts shall be placed within three (3) feet of the curb or paved surface of the public roadway, closest accessible roadway, or other such location agreed to by CONTRACTOR and Customer or Service Recipient that provides safe and efficient accessibility to CONTRACTOR'S Collection crew and vehicle.

**E. NON-ACCEPTED ITEMS**

1. The following items set out for Collection shall not be Collected by CONTRACTOR:
- a. Rocks, dirt, and concrete.
  - b. Household Hazardous Waste.
  - c. Any single item (excluding appliances and furniture) that weighs more than seventy five (75) pounds.
  - d. Items that might otherwise be acceptable, but due to the condition of the items or the manner in which

they have been positioned for Collection, these items pose a risk to the safety of CONTRACTOR'S staff, or a risk of property damage, and CONTRACTOR'S staff is unable to mitigate these risks by using alternative Collection methods or safe handling procedures.

**2. CONTRACTOR shall:**

- a. Leave a Non-Collection Notice for all non-collected items, advising the Customer or Service Recipient of the reason item(s) were not Collected, and listing the contact information for the Alameda County Household Hazardous Waste Facility.
- b. Make digital photographs of the uncollected setout available to CITY that clearly identifies the Service Address.
- c. Notify CITY and Customer or Service recipient per Section J.
- d. Follow up with Customers or Service Recipients whose setouts or partial setouts are not collected per E.1.d.:
  - i. Contact the Customer or Service Recipient on the appointment day and explain the specific conditions, as determined by CONTRACTOR field staff who assessed the safety risk, that need to be corrected in order to make the items acceptable (examples: "nails on wood must be flattened", or, "items in unstable stack must be placed on the ground", etc.)
  - ii. Schedule one (1) final recovery pick up of item(s) with Customer or Service Recipient if they agree to correct the unsafe conditions.
  - iii. If Customer or Service Recipient does not agree to correct the unsafe conditions, inform them that CONTRACTOR will notify CITY, and that they may be subject to CITY fines if they fail to either bring the items back onto their property or dispose of them in a legal manner.
  - iv. Update the daily notification to CITY to indicate the disposition of the item(s).

**F. OVERAGE FEES**

1. CONTRACTOR may charge Overage fees, per cubic yard of material, for non-Recyclable items and/or improperly prepared Recyclable items, set out in excess of three (3) cubic yards, per the Exhibits 1A and 1B (Maximum Service Rates for SFD and MFD Services). Such Overage fees may be charged only when CONTRACTOR completes Collection of the set-out on the scheduled appointment date. In the case of street closure caused by construction, police activity, or other similar conditions on the scheduled appointment date, when CONTRACTOR completes Collection on the first Work Day following the street closure.
2. For 2-4 unit SFD buildings and all MFD buildings, material set out in excess of the amount scheduled for the appointment (e.g., 2 units of a 4-unit SFD are scheduled [eligible for 6 cubic yards], and 8 cubic yards are set out; or 5 units of a 10-unit MFD are scheduled [eligible for 7.5 cubic yards] and 10 cubic yards are set out), CONTRACTOR shall Collect all items set out. The Overage shall be deducted from the account's remaining balance of Annual Pickup(s) for that Contract Year. CONTRACTOR may charge Overage fees if the account does not have a sufficient balance of Annual Pickups to cover the Overage, for that portion of the Overage that is not covered by the remaining balance. CONTRACTOR shall notify Customer in writing of the deduction and/or Overage charge per this Section.
3. For all Overage charges billed, or assessed per Section F.2, CONTRACTOR shall promptly provide to the Customer or Service Recipient, and make available to CITY, the following documentation:

- a. Digital photographs of the set out at the time of Collection, which clearly identify the Service Address.
  - b. Citation of:
    - i. Number of total cubic yards set out.
    - ii. Number of Overage cubic yards.
    - iii. Number of residential units attributed to the set-out.
    - iv. Date of scheduled appointment and date of Collection.
4. All Overage charges shall appear on Customers' regular Collection Service bill as a discreet line item identified as "Bulky Goods Collection Service Overage" or similar language, and cite the date that the Bulky Goods Collection Service was provided. For Service Recipients who ordered Pay-As-You-Go service, Overage charges shall be billed as a separate transaction on the Service Recipient's credit card.

#### **G. PUBLIC EDUCATION AND COMMUNITY OUTREACH**

1. The following outreach materials shall be developed by CONTRACTOR in conjunction with CITY and used to notify eligible Customers and Service Recipients:
  - a. Bulky Goods Collection Service promotional literature to be send via pre-sorted First Class mail to Customers and Service Recipients, not less than two (2) times per year;
  - b. Appointment Confirmation Notice (described in Section C.3); and
  - c. Non-Collection Notice(s) for items that were not collected due to:
    - i. Unacceptable items set out; or
    - ii. Improperly set out Recyclable items that were Collected but could not be recycled, such as Plant Debris contained in plastic bags, and may be subject to Overage charge.
2. All Bulky Goods Collection Service public education materials shall be provided in English with phone numbers for Spanish, Vietnamese, and Chinese language translation services. CITY may change the languages listed herein to comply with CITY's Equal Access Bulky Service requirements.

#### **H. REPORTING**

1. CONTRACTOR shall include Bulky Goods Collection Service data in its monthly report in a format acceptable to CITY including:
  - a. Number of eligible residential Dwelling Units
  - b. Number of appointments, in aggregate, and broken out by:
    - i. SFD Annual Pickups (per month and year-to-date)
    - ii. SFD Pay-As-You-Go Pickups (per month and year-to-date)
    - iii. MFD Annual Pickups (per month and year-to-date)
    - iv. MFD Pay-As-You-Go Pickups (per month and year-to-date)
    - v. Service Recipient Pay-As-You-Go Pickups (per month and year-to-date)

- c. Number of setouts Collected (per month and year-to-date)
  - d. Number of appointments for which there were no setouts (per month and year-to-date)
  - e. Number of setouts greater than three (3) cubic yards (per month and year-to-date)
  - f. Number of setouts at which items were left uncollected (per month and year-to-date)
  - g. Quantity in Tons of Bulky Goods Collection Service material Landfilled (per month and year-to-date)
  - h. Quantity in Tons of Bulky Goods Collection Service material Diverted from Landfill for Recycling (per month and year-to-date)
  - i. Item counts for large appliances, CED (including but not limited to televisions and computer monitors), tires, mattresses and carpets (per month and year-to-date).
2. CONTRACTOR shall biannually apply a statistical significance method to quantify in Tons recovered from Mixed Material processing (if Mixed Material Processing is employed). The methodology shall be approved by CITY.

**I. NON COMPLIANT SETOUTS**

1. CONTRACTOR shall work closely with CITY staff to ensure that all non-compliant setouts are promptly identified and proper notification is promptly made. It is the intention of this Exhibit that CONTRACTOR operations personnel in the field who observe non-compliant setouts and potential illegal dump sites shall immediately report these to the appropriate contacts at CONTRACTOR and at CITY, so that disposition of the setout can be determined and appropriate action can be taken without delay. Non-compliant setouts include, but are not limited to:
- a. Setouts that were placed at the curb earlier than one (1) day before scheduled service date.
  - b. Setouts partially picked up by CONTRACTOR with non-acceptable items left at curb.
  - c. Any set-out that CONTRACTOR'S staff observe that might be illegal dumping.

**J. NOTIFICATION TO CITY OF OAKLAND AND TO CUSTOMER OR SERVICE RECIPIENT**

1. CONTRACTOR shall send a list of each week's scheduled Bulky Goods Collection Service appointments no later than 2 PM on the Friday prior to the Collection week to designated CITY contacts per Attachment A of this Exhibit.
2. CONTRACTOR shall have an internal system to confirm whether or not every scheduled setout is actually Collected on its scheduled Collection day. In the event of a missed or incomplete pick up CONTRACTOR shall do the following:
  - a. Notify CITY via email no later than 8:00 AM on the day following the scheduled appointment unless the appointment is scheduled for a Saturday, in which case the following Work Day;
  - b. Notify the Customer or Service Recipient no later than 9:00 AM on the day following the scheduled appointment and confirm that recovery will be made on the day following the scheduled appointment unless the appointment is scheduled for a Saturday, in which case the following Work Day;

- c. Recover set-out on the day following the scheduled appointment, including recovery of Friday setouts on Saturday, but the following Work Day if the appointment is scheduled for a Saturday.

**K. COLLECTION AND PROCESSING**

In order to help meet CITY's waste diversion goals, CONTRACTOR shall deliver all loads to a MRF for recycling:

1. Mixed Material loads (if any) containing both recyclable and non-recyclable items shall be delivered to a MRF for processing. A statistically significant method to quantify recovery from Mixed Material loads delivered to and processed at the MRF shall be employed at a minimum twice per year (per Section H.2.c.). No loads shall be directly delivered to a Landfill or for transfer to Landfill without being processed for recovery at a MRF.
2. Large appliances, electronic devices, tires including tires on rims, mattresses, box springs, computers, consumer electronic products, scrap metal, corrugated cardboard, unpainted wood, carpets and Plant Debris shall be recycled.
3. CITY reserves the right to direct CONTRACTOR to take Bulky Goods Collected pursuant to this Exhibit to a designated site or sites for the purpose of permitting persons who will reuse or recycle such Bulky Goods to obtain the Bulky Goods at no cost. CONTRACTOR shall have no obligation to Dispose of the Bulky Goods or Bulky Good Residue remaining at the directed site or sites after reusers and recyclers have removed reusable or recyclable Bulky Goods. CONTRACTOR shall be entitled to an adjustment to the service rates to reflect any increased costs arising from CITY's direction.
4. All Diversion from Bulky Goods Collection Service shall be credited to CITY.

Attachment A

Notification to CITY and Customer of Non-Collection

Contact information in this attachment subject to change. CONTRACTOR shall use updated contact information as provided by CITY.

Item#	Deliverable	Section	Notification Deadline	Contact
1	List of addresses by day of each week's scheduled bulky pick up appointments.	J.1.	2 PM on the Friday prior to the collection week	(Distribution list TBD)
2	List of addresses where scheduled setouts, or portions of setouts, were not picked-up on the scheduled date.	J.2.		

3	Notify and update CITY of status of declined pickup of safety risk items	E.2.		
4	List of addresses where scheduled setout was not collected in its entirety due to non-collection of <i>hazardous</i> , non-acceptable items.	E.1.b.	8:00 AM on the day following the scheduled appointment	<b>Office of Emergency Services:</b> <b>Call 510-238-3938</b>  lgriffin@oaklandnet.com
5	a) Notify Customer or Service Recipient of missed pickup of any acceptable items  b) Confirm recovery on day following scheduled appointment	E.2.a.  J.2.b.	a) Day of appointment  b) 9 AM on day following appointment	a) Leave Non-collection Notice  b) Phone Customer or Service Recipient at phone number per C.1.f.
6	a) Notify Customer or Service Recipient of declined pickup of non-accepted or improperly set out items  b) Communicate specific corrective steps to have improperly set out items recovered.	E.2.a  E.2.d.	a) Day of appointment  b) Day of appointment	a) Leave Non-collection Notice  b) Phone Customer or Service Recipient at phone number per C.1.f.

**Attachment B**  
Preparation of Acceptable Recyclable Items

CONTRACTOR'S Bulky Goods outreach shall instruct Customers to prepare setouts according to the following.

1. Items may be set out no earlier than one (1) day prior to scheduled appointment and no later than 6 a.m. of the scheduled pickup day.
2. Items must be grouped by material:

- a. Separate bulky items
  - b. Place large metal appliances, tires including tires on rims, mattresses, and electronic items in distinct groups for efficient collection and recycling
  - c. All metal and or plastic containers in which materials are set out shall be emptied and returned to the curb by CONTRACTOR unless Customer communicates otherwise.
  - d. Citations may be issued and fees assessed to property owner if Bulky Service rules are not followed.
  - e. Items may not be stacked in an unsafe/unstable manner whereby removing an item would cause items to fall against person and/or property.
3. Lumber, carpet and similar items must be securely tied in bundles which may not exceed four (4) feet long or seventy-five (75) pounds.
4. Large metal appliances:
- a. Remove doors from refrigerators for safety
  - b. Tape shut doors and drawers of stoves, dishwashers, etc.
5. Scrap metal:
- a. Place small items in boxes
  - b. Tie larger items in bundles no more than 4 feet long
6. Plant Debris:
- a. Place loose Plant Debris in paper bags, typically available at local hardware stores
  - b. Place in own container – up to 32-gallon
  - c. Unpainted/untreated wood can be recycled with Plant Debris
  - d. Securely tie bundles of branches and unpainted/untreated wood. Bundles may not exceed four (4) feet long or seventy five (75) pounds. Individual pieces may not exceed six (6) inches in diameter
  - e. Plant Debris set out in plastic bags cannot be recycled, and shall be counted toward:
    - i. The 3 cubic yards of disposal, or
    - ii. Overage charges if applicable
7. Electronic items:
- Consumer electronic products, including Universal Waste Electronic Devices (UWED) and Covered Electronic Devices (CED) as described in the California Code of Regulations Title 22.

**Exhibit 18**

**Exhibit 18**

EXHIBIT 18  
GUARANTY AGREEMENT

City of Oakland

This Guaranty, made as of the date written below by CONTRACTOR, to and for the benefit of the City of Oakland (CITY)

WHEREAS, CONTRACTOR, and the CITY, entered into a CONTRACT BETWEEN THE CITY AND CONTRACTOR FOR provision of Collection Services, dated as of \_\_\_\_\_, (the "Contract"), which Contract is incorporated in this Guaranty by reference and by this Guaranty made part of this Agreement; and

WHEREAS, the CITY is willing to enter into the Contract only upon the condition that Guarantor execute this Guaranty; and

WHEREAS, in the event the CONTRACTOR fails to timely and fully perform its obligations, including the payment of moneys, pursuant to the Contract and as it may hereafter be amended or modified by CONTRACTOR and the CITY, the Guarantor is willing to guaranty CONTRACTOR'S timely and full performance thereof.

NOW, THEREFORE, as an inducement to the CITY to enter into the Contract as described above, the Guarantor agrees as follows:

Capitalized terms used in the Contract and not otherwise defined in this Agreement, will have the meaning assigned to them in the Contract.

1. **Guaranty of CONTRACTOR'S Performance Under Contract.** Guarantor by this Guaranty directly, unconditionally, irrevocably, and absolutely guaranties the timely and full performance of CONTRACTOR'S obligations under the Contract in accordance with the terms and conditions contained therein or to cause the timely and full performance. Within thirty (30) days' written request therefore by the CITY, Guarantor will honor the Guaranty. Notwithstanding the unconditional nature of the Guarantor's payment obligations set forth in this Agreement, the Guarantor may assert the defenses provided in the paragraph entitled Defenses under Section 8 of this Guaranty, against claims made under this Guaranty.
2. **Governing law; consent to jurisdiction; service of process.** This Guaranty is governed by the laws of the State of California. The Guarantor by this Guaranty agrees to the service of process in the State for any claim or controversy arising out of the Guaranty or relating to any breach. The Guarantor by this Guaranty agrees that the courts of the State and to the extent permitted by law, the United States District Court for the Northern District of California, will have the exclusive jurisdiction of all suits, actions, and other proceedings involving itself and to which the CITY may be party for the adjudication of any claim or controversy arising out of this Guaranty or relating to any breach of this Guaranty, waives any objections that it might otherwise have to the venue of any Court for the trial of any suit, action, or proceeding, any consents to the service of process in any suit, action, or proceeding by prepaid registered mail return receipt required.
3. **Enforceability; no assignment.** This Guaranty is binding upon and enforceable against Guarantor, its successors, assigns, and lawful representatives. It is for the benefit of the

CITY, its successors and assigns. The Guarantor may not assign or delegate the performance of the Guaranty without the prior written consent of the CITY in its sole discretion. Any assignment made without the prior written consent of the CITY is voidable by the CITY in its sole discretion. Together with its request for CITY consent, Guarantor will pay CITY \$10,000 for its reasonable expenses for private attorney's fees and investigation costs ("assignment expenses") necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any assignment. CITY will reimburse Guarantor the excess, if any, over those assignment expenses it incurs. Contrariwise, Guarantor will pay CITY the excess assignment expenses, if any, over \$10,000 CITY incurs within thirty (30) days' of CITY'S request therefore. Guarantor will further pay the CITY the CITY'S reimbursement costs for fees of attorneys who are not CITY employees and investigation costs necessary to enjoin the assignment or to otherwise enforce this provision within thirty (30) days of the CITY'S request therefore ("injunction costs"). Guarantor's obligation to pay CITY assignment expenses and injunction costs will not exceed \$35,000 in the aggregate, excluding any costs that the CITY may recover under applicable law, including court costs paid to a prevailing party.

For purposes of the Guaranty "assign" and "assignment" means:

- a) selling, exchanging or otherwise transferring effective control of management of the Guarantor (through sale, exchange or other transfer of outstanding stock or otherwise);
- b) issuing new stock or selling, exchanging or otherwise transferring 20% or more of the then outstanding common stock of the Guarantor;
- c) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Guarantor;
- d) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment of an execution, being levied against Guarantor, appointment of a receiver taking possession of any of Guarantor's tangible or intangible property; and,
- e) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any transfer or change of Ownership or control of Guarantor.

For purposes of determining "Ownership", the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date here, will apply, provided that (1) 10 percent is substituted for 50 percent in Section 318(a)(2)(C) and in section 218(a)(3)(C) thereof; and (2) Section 218(a)(5)(C) is disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than 20 percent is disregarded and percentage interests is determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

4. **Guarantor absolute and unconditional.** The undertakings of Guarantor set forth in this Guaranty are absolute and unconditional, and the CITY is entitled to enforce any or all of

those undertakings against Guarantor without being first required to enforce any remedies or to seek to compel the CONTRACTOR to perform its obligations under the Contract or to seek, or obtain recourse against any other party or parties, including but not limited to the CONTRACTOR or any assignee of the CONTRACTOR, who are, or may be, liable therefore in whole or in part, irrespective of any cause or state of facts whatever. Without limiting the generality of the foregoing, the Guarantor expressly agrees that its state of facts or the happening from time to time of an event, other than the payment of the terms of the Contract, including, without limitation, any of the following, each of which is by this Guaranty expressly waived as a defense to its liability under this Guaranty, except to the extent those defenses would be available to the CONTRACTOR and release, discharge or otherwise offset CONTRACTOR'S obligations under the Agreement:

- a) the invalidity, irregularity, illegality or unenforceability, of or any defect in or objections to the Contract;
- b) any modification or amendment or compromise of or waiver of compliance with or consent to variation from any of the provisions of the Contract by the CONTRACTOR;
- c) any release of any collateral or lien thereof, including, without limitation, any performance bond, or performance security;
- d) any defense based upon the election of any remedies against the Guarantor of the CONTRACTOR, or both, including without limitation, any consequential loss by the Guarantor of its right to recover any deficiency, by the way of subrogation or otherwise, from the CONTRACTOR or any other Person or entity;
- e) the recovery of any judgment against the CONTRACTOR to enforce any of that collateral, performance bond or performance security;
- f) the CITY or its assigns taking or omitting to take any of the actions which it or any of that assign is required to take under the Contract; any failure, omission or delay on the part of the CITY or its assignees to enforce, assert or exercise any right, power or remedy conferred on it or its assigns by the Contract, except to the extent that failure, omission or delay gives rise to an applicable statute of limitations defense by the CONTRACTOR with respect to a specific obligation;
- g) the default or failure of the Guarantor to fully perform any of its obligations set forth in the Guaranty;
- h) the bankruptcy, insolvency, or similar proceeding involving or pertaining to the CONTRACTOR or the CITY, or any order or decree of a court, trustee or receiver in any proceeding;
- i) in addition to those circumstances described in item (h), any other circumstance which might otherwise constitute a legal or equitable discharge of a guarantor or limit the recourse of the CITY to the Guarantor;
- j) the existence or absence of any action to enforce the Contract;

- k) subject to the provisions of the Contract relating to uncontrollable circumstances, any present or future law or order of any government or any agency thereof, purporting to reduce, amend or otherwise affect the Contract or to vary any terms of payment or performance under the Contract;

Providing that, notwithstanding the forgoing, Guarantor will not be required to pay any monetary obligation of CONTRACTOR to CITY from which CONTRACTOR would be discharged, released or otherwise excused under the provisions of the Contract.

5. **Waivers.** Guarantor by the Guaranty waives:

- a) notice of acceptance of the Guaranty and of the creation, renewal, extension and accrual of the limited financial obligations Guaranteed under this Guaranty;
- b) notice that any Person has relied on this Guaranty;
- c) diligence, demand of payment and notice of default or nonpayment under this Guaranty or the Contract, and any and all other notices required under the Contract;
- d) filing of claims with a court in the event of reorganization, insolvency, or bankruptcy of the CONTRACTOR;
- e) any right to require a proceeding first against the CONTRACTOR or with respect to any collateral or lien, including, without limitation, any performance bond, or any other requirement that the CITY exercise any remedy or take any other action against the CONTRACTOR or any other Person, or in respect of any collateral or lien, before proceeding under this Guaranty;
- f) (i) any demand for performance or observance of, or (ii) any enforcement of any provision of, or (iii) any pursuit or exhaustion of remedies with respect to, any security (including, with limitation, any performance bond) for the obligations of the CONTRACTOR under the Contract; any pursuit of exhaustion of remedies against the CONTRACTOR or any other obligor or guarantor of the obligations; and any requirement of promptness or diligence on the part of any Person in connection therewith;
- g) to the extent that it lawfully may do so, any and all demands or notices of every kind and description with respect to the foregoing or which may be required to be given by any statute or rule of law, and any defense of any kind which it may now or hereafter have with respect to this Guaranty or the obligations of the CONTRACTOR under the Contract, *except* any Notice to the CONTRACTOR required pursuant to the Contract or applicable law which Notice preconditions the CONTRACTOR'S obligation or the defenses listed in Section 8 below.

To the extent that it may lawfully do so, the Guarantor by this Guaranty further agrees to waive, and does by this Guaranty absolutely and irrevocably waive and relinquish, the benefit and advantage of, and does by this Guaranty covenant not to assert, any appraisalment, valuation, stay extension, redemption or similar laws, now or any time hereafter in force, which might delay, prevent or otherwise impede the due performance or proper enforcement of the Guaranty, the Contract, or the obligations of the CONTRACTOR

under the Contract and by this Guaranty expressly agrees that the right of the CITY under this Guaranty may be enforced notwithstanding any partial performance by the CONTRACTOR or the Guarantor, or the foreclosure upon any security (including, with limitation, any performance bond, or performance security) given by the CONTRACTOR for its performance of any of its obligations under the Contract.

6. **Agreements between CITY and CONTRACTOR; Waivers by CITY.** The Guarantor agrees that, without the necessity for any additional endorsement or Guaranty by or any reservation of rights against Guarantor and without any further assent by Guarantor, by mutual agreement between the CITY and CONTRACTOR, the CITY and CONTRACTOR may, from time to time:
- a) renew, modify or compromise the liability of the CONTRACTOR for or upon any of the obligations by the Guaranty Guaranteed; or
  - b) consent to any amendment or change of an terms of the Contract; or
  - c) accept, release, or surrender any security (including, without limitation, any performance bond), or
  - d) grant any extensions or renewals of the obligations of the CONTRACTOR under the Contract, and any other indulgence with respect thereto, and to affect any release, compromise or settlement with respect thereto, all without releasing or discharging the liability of Guarantor under this Guaranty.

The Guarantor further agrees that the CITY or any of its assigns will have and may exercise full power in its uncontrolled discretion, without in any way affecting the liability of the Guarantor under this Guaranty, to waive compliance with and any default of the CONTRACTOR under, the Contract.

7. **Continuing Guaranty.** This Guaranty is a continuing Guaranty and will continue to be effective or be reinstated, as applicable, if at any time any payment of any of the obligations under this Guaranty is rescinded or is otherwise required to be returned upon reorganization, insolvency or bankruptcy of the CONTRACTOR or Guarantor or otherwise, all as though payment had not been made.
8. **Defenses.** Notwithstanding any provision in the Guaranty to the contrary, the Guarantor may exercise or assert any and all legal or equitable rights, defenses, counter claims or affirmative defenses under the Contract or applicable law which the CONTRACTOR could assert against any party seeking to enforce the Contract against the CONTRACTOR, and nothing in the Guaranty will constitute a waiver thereof by the Guarantor.
9. **Payment of costs of enforcing Guaranty.** Guarantor agrees to pay all costs, expenses and fees, including all reasonable attorney's fees, which may be incurred by the CITY in enforcing the Guaranty following the default on the part of the Guarantor under this Guaranty whether the same is enforced by suit or otherwise.
10. **Enforcement.** The terms of this Guaranty may be enforced as to any one or more breaches either separately or cumulatively.

11. **Remedies cumulative.** No remedy in this Guaranty conferred upon or reserved to the CITY under this Guaranty is intended to be exclusive or any other available remedy or remedies, but each and every remedy is cumulative and is in addition to every other remedy given under the Guaranty and the Contract or in this Guaranty after existing at law or in equity or by statute.
12. **Severability.** The invalidity or unenforceability of any one or more phrases, sentences or clauses in the Guaranty contained will not affect the validity or enforceability of the remaining portions of this Guaranty, or any part thereof.
13. **Amendments.** No amendment, change, modification or termination of this Guaranty is made except upon the written consent of Guarantor and the CITY.
14. **Term.** The obligations of the Guarantor under this Guaranty will remain in full force and effect until (i) all monetary obligations of the CONTRACTOR under the Contract will have been fully performed or provided for in accordance with the Contract, or (ii) the discharge, release or other excuse of those obligations in accordance with the terms of the Contract.
15. **No set-off, etc.**

**By Guarantor.** The obligation of Guarantor under this Guaranty will not be affected by any set-off, counterclaim, recoupment, defense or other right that Guarantor may have against the CITY on account of any claim of the Guarantor against the CITY; *provided* that Guarantor reserves the right to bring independent claims not arising from the Contract against the CITY so long as any claim will not be used to set-off or deduct from any claims which the CITY may have against the Guarantor arising from this Guaranty.

**By CONTRACTOR.** The obligation of Guarantor under this Guaranty is subject to any set-off, counterclaim, recoupment, defense or other right that the CONTRACTOR may assert pursuant to the Contract, if any, but the obligation of Guarantor under this Guaranty will not be subject to any set-off counterclaim, recoupment, defense or other right that the CONTRACTOR may assert independently of and outside the Contract.

16. **Warranties and representations.** The Guarantor warrants and represents that as of date of execution of this Guaranty:
  - a) The Guarantor has the power, authority and legal right to enter into this Guaranty and to perform its obligations and undertakings under this Guaranty, and the execution, delivery and performance of this Guaranty by the Guarantor (i) have been duly authorized by all necessary corporate and shareholder action on the part of the Guarantor, (ii) have the requisite approval of all federal, State and local governing bodies having jurisdiction or authority with respect thereto, (iii) do not violate any judgment, order, law or regulation applicable to the Guarantor, (iv) do not conflict with or constitute a default under any agreement or instrument to which the Guarantor is a party or by which the Guarantor or its assets may be bound or affected; and (v) do not violate any provision of the Guarantor's articles or certificate of incorporation or by-laws.
  - b) This Guaranty has been duly executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms; and

c) There are no pending or, to the knowledge of the Guarantor, threatened actions or proceedings before any court administrative agency which would have a material adverse effect on financial condition of the Guarantor, or the ability of the Guarantor to perform its obligations or undertakings under this Guaranty.

17. **No merger; no conveyance of assets.** Guarantor agrees that during the term of this Guaranty in accordance with Section 14 Guarantor will not consolidate with or merge into any other corporation where the shareholders of the Guarantor yield control of the Guarantor, or a majority interest in the Guarantor, to the newly formed corporation, or convey, transfer or lease all or substantially all of its properties and assets to any person, firm, joint venture, corporation, and other entity, unless the CITY consents thereto in accordance with Section 3 above.

18. **Counterparts.** This Guaranty may be executed in any number of counterparts, some of which may not bear the signatures of all parties to the Guaranty. Each counterpart, when so executed and delivered, is deemed to be an original and all counterparts, taken together, will constitute one and the same instrument; *provided, however,* that in pleading or proving this Guaranty, it will not be necessary to produce more than one copy (or sets of copies) bearing the signature of the Guarantor.

19. **Notices.** All notices, instructions and other communications required or permitted to be given to or made upon any party to this Guaranty shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

City Administrator  
Office of the City Administrator  
City of Oakland  
1 Frank Ogawa Plaza, 3<sup>rd</sup> Floor  
Oakland, CA 94612  
Telephone: (510) 238-3301  
E-mail: cityadministrator@oaklandnet.com

With copies to:

Director of Public Works  
Public Works Agency  
City of Oakland  
250 Frank Ogawa Plaza, Suite 4314  
Oakland, CA 94612  
Telephone(510) 238-4470  
E-mail: vtroyan@oaklandnet.com

City Attorney  
Office of the City Attorney  
City of Oakland  
1 Frank Ogawa Plaza, 6<sup>th</sup> Floor  
Oakland, CA 94612  
Telephone: (510) 238-3601  
E-mail: info@oaklandcityattorney.org

Director of Finance and Management  
Finance and Management Agency  
City of Oakland  
150 Frank Ogawa Plaza, Suite 5215  
Oakland, CA 94612  
Telephone: (510) 238-2220  
E-mail: sjohnson@oaklandnet.com

As to the GUARANTOR:

[Title]  
[Company]  
[Street Address]  
[City, State, Zip]  
Telephone: xxx-xxx-xxx  
E-mail: xxx@xxx.xxx

With a copy to:

[Title]  
[Company]  
[Street Address]  
[City, State, Zip]  
Telephone: xxx-xxx-xxx  
E-mail: xxx@xxx.xxx

20. **Separate Suits.** Each and every payment default by CONTRACTOR under the Contract will give rise to a separate cause of action under this Guaranty, and separate suits may be brought under this Guaranty by the CITY or its assigns as each cause of action arises.
21. **Headings.** The Section headings appearing in this Guaranty are for convenience only and will not govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Guaranty.
22. **Entire Agreement.** This Guaranty constitutes the entire Guaranty between the parties to this Guaranty with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any Person other than the Guarantor, the CITY and their permitted successors and assigns under this Guaranty any rights or remedies under or by reason of this Guaranty.
23. **Personal Liability.** It is understood and agreed to by the CITY that nothing contained in the Guaranty will create any obligation or right to look to any director, officer, employee or stockholder of the Guarantor (or any affiliate thereof) for the satisfaction of any obligations under this Guaranty, and no judgment, order or execution with respect to or in connection with this Guaranty is taken against any director, officer, employee or stockholder.
24. **Events of Default.** Each of the following will constitute an event of default under this Guaranty:

- a) **Failure to fulfill payment of guaranty.** Guarantor fails to fulfill full and timely payment of any guaranty under this Guaranty, including Section 1, and the failure continues for five (5) days after Notice (which is deemed given upon receipt of registered or certified mailing by U.S. Postal Service or of invoiced commercial service) (hereinafter defined as "Notice") has been given to the Guarantor by the CITY, fails to perform any of its obligations under this Guaranty or engages in any acts prohibited under this Guaranty other than failures itemized below, and fails to cure that failure or conduct within thirty (30) days;
- b) **Breach of Guaranty.** The Guarantor fails to observe and perform any covenant, condition or agreement of this Guaranty, other than any failures listed explicitly in this section, and that failure continues for more than thirty (30) days after Notice has been given the Guarantor by the CITY;
- c) **Failure to give Notice of proposed assignment, etc.** The Guarantor fails to give CITY Notice in accordance with Section 19 within ten (10) days of the first to occur of
- (i) CONTRACTOR or any Affiliate issuing a press release as to any proposed assignment, (within the meaning of Section 3), or consolidation, merger, conveyance, transfer or lease described in paragraph (e) of this Section (24) or
  - (ii) The filing with the Securities and Exchange Commission of a Form 8-K or other filing with respect to a memorandum of intent or an agreement and plan therefore
- (paragraph (i) and (ii) together defined as, "Change Notice");
- d) **Consolidation, merger; conveyance of assets.** The Guarantor consolidates, merges or conveys, transfers or leases assets in violation of Section 17 despite CITY Council action following Change Notice in preceding paragraph c) withholding or denying CITY consent, and on or before 15 days thereafter does not provide CITY with a substitute Guarantor satisfaction to CITY in CITY'S sole discretion;
- e) **Bankruptcy, Insolvency, Liquidation.** Guarantor files a voluntary claim for debt relief under any applicable bankruptcy, on solvency, debtor relief, or other similar law now or hereafter in effect or will consent to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, custodian, administrator (or similar official) of Guarantor for any substantial part of Guarantor's operating assets or any substantial part of Guarantor's property, or will make any general assignment for the benefit of Guarantor's creditors, or will fail generally to pay Guarantor's debts as they become due or will take any action in furtherance of any of the foregoing.

A court having jurisdiction enters a decree or order for relief in respect of the Agreement, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Guarantor consents to or fails to oppose any proceeding, or any court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Guarantor or for any substantial part of the Guarantor's operating equipment or assets, or orders the winding up or liquidation of the affairs of the Guarantor.

- f) **Breach of Representations or Warranties.** Any representation or warranty of Guarantor is untrue as of the date thereof, Guarantor knowingly makes, causes to be made or condones the making of any false entry in its books, and accounts, records and reports under this Guaranty.

Upon any Event of Default the CITY may to proceed first and directly against the Guarantor under Guaranty without proceeding against or exhausting any other remedies, which it may have. The Guarantor acknowledges that any CONTRACTOR default comprises a default under the Agreement.

IN WITNESS WHEREOF Guarantor has executed this instrument the day and year first above written.

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

Attest: \_\_\_\_\_ Date: \_\_\_\_\_

Proper notarial acknowledgement of execution by Guarantor must be attached.

(1) Chairman, president or vice-president, and (2) secretary, assistant secretary, CFO or assistant treasurer, must sign for corporations. Otherwise, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

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

CITY OF OAKLAND

[Contractor Company]

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

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

[Name, Title]

[Name, Title]

Approved as to Form:

\_\_\_\_\_  
[Name, Title]