CITY OF OAKLAND

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AGENDA REPORT

TO: HENRY L. GARDNER
CITY ADMINISTRATOR

FROM: Brooke A. Levin

SUBJECT: Amendment of Ordinances Awarding Zero Waste Contracts

DATE: September 19, 2014

City Administrator Approval

Date 9/19/14

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council adopt following legislation:

1. Ordinance Amending Ordinance No. 13253 C.M.S., Which Granted A Franchise For Mixed Materials And Organics Collection Services To California Waste Solutions, Inc., To Instead Grant The Franchise For Mixed Materials And Organics Collection Services To Waste Management Of Alameda County, And/Or Such Other Affiliate Entity Approved By The City Administrator, Contingent On Its Execution Of A Mixed Materials And Organics Collection Services Contract With The City, And Authorizing The City Administrator To Negotiate And Execute Such A Contract Which May Regulate Maximum Service Rates For Mixed Materials And Organics Collection Services, Residential Recycling Services, And Disposal Services, And Setting Forth Procedures To Allow For Adjustment Of Maximum Service Rates, On Such Terms And Conditions And Rates Approved By The City Council

2. Ordinance Amending Ordinance No. 13255 C.M.S., Which Authorized The City Administrator To Execute An Exclusive Contract For Landfill Disposal Services With California Waste Solutions, Inc., To Instead Authorize The City Administrator To Execute An Exclusive Contract For Landfill Disposal Services With Waste Management Of Alameda County, And/Or Such Other Affiliate Entity Approved By The City Administrator, On Such Terms And Conditions And Rates Approved By The City Council

EXECUTIVE SUMMARY

California Waste Solutions (CWS) and Waste Management of Alameda County (WMAC) signed a memorandum of agreement (MOU). The MOU (Attachment A) provides for cooperation for

the implementation of Oakland's Zero Waste services on terms agreed to by CWS and WMAC. The terms of this MOU could be implemented by the City through amendment of the ordinances that awarded the Mixed Materials and Organics and Landfill Disposal contracts to CWS, and award the contracts to WMAC instead. CWS has requested that these two ordinances be amended as described.

Although staff did not participate in development or negotiation of the MOU, it is recommended that City Council to consider amending the two ordinances to facilitate MOU implementation because this action would confer several benefits to the City and the ratepayers alike. The benefits include mixed material processing on day one of the contract, an important step toward achieving the City's zero waste and greenhouse gas emissions reduction goals. The contracts would be awarded to two companies with deep roots in Oakland, and provide for a significant level of cooperation between them to smooth potential transitional issues in July 2015 for the benefit of the community. The potential for displacement of current employees of the two companies, including many current Oakland residents, is eliminated. All programs and services previously required by the City Council in its earlier award of these two contracts will be incorporated into the new contracts.

OUTCOME

Approval of the amended Ordinances would allow the City Administrator to execute contracts (Attachments B and C) that would replace the existing service agreements with Waste Management of Alameda County (WMAC) and California Waste Solutions (CWS), which expire on June 30, 2015. Execution of new contracts at this time is necessary to ensure continuity of solid waste collection and disposal services on July 1, 2015, which are vital to public health and safety in the City of Oakland.

BACKGROUND/LEGISLATIVE HISTORY

At a Special Meeting on August 13, 2013, the City Council approved three ordinances that authorized the City Administrator to finalize and implement contracts with CWS for Mixed Materials and Organics Collection Services (MM&O), Residential Recycling Collection Services (RR), and Landfill Disposal Services.

On August 18, 2014, a lawsuit was filed against the City of Oakland by WMAC, claiming that the City Council violated its own policies and processes in awarding the three Zero Waste Services contracts to CWS on August 13, 2014.

On or about August 29, 2014, three referenda to overturn the three ordinances the City Council approved on August 13, 2014 were launched; if successful, would suspend the three ordinances awarding contracts to CWS for the Zero Waste Services, and allow Oakland voters to approve the ordinances through an election process.

ANALYSIS

Through authority granted to the City Administrator by the City Council to negotiate the final terms of the MM&O and RR contracts, final contract provisions will address the following elements as agreed by CWS and WMAC in the MOU:

- Single family dwelling (SFD) 32-gallon rate of $36.82 per month, which is the same rate approved by the City Council on August 13, 2014.

- Civicorps – WMAC agrees to the same provisions to which CWS had agreed, per City Council's Motion on August 13, 2014: "(WMAC) will developed plans with Civicorps to provide training of interns without impact or displacement of permanent union jobs. The arrangement will be subject to the approval of the City Administrator."

- East Bay Municipal Utility District (EBMUD) – WMAC will develop plans to deliver Commercial Organic Material to EBMUD, and shall enter into a separate processing agreement with EBMUD for these materials, subject to approval of the City Administrator, using EBMUD's existing and already permitted facilities.

- Recycling Sorter Wages – CWS and WMAC agree to increase sorters' wages to $20.94 by 2019, and to provide affordable family healthcare coverage.

- Multi family dwelling (MFD) green cart service – WMAC will provide source-separated organics (green cart) collection service to all MFD.

- Illegal dumping pickups – As was included in the July 30, 2014 contract, WMAC will provide 25 pickups per day of illegal dumping.

Rate Summary
Table 1 shows the rates and rate impacts, for representative service levels in the single family, multi-family and commercial sectors.

Table 1: Monthly Rate and Impact

Service	Monthly Rate*	Rate Impact
Single Family (32-gallon cart)	$ 36.82	23.56%
Multi Family (20-unit building)	$616.90	30.09%
Commercial (1 cu. yd. bin)	$194.10	38.76%

* or such higher or lower rates as approved by the City Council pursuant to

proposal by the franchisee

Table 2 breaks out the MM&O, RR and Disposal cost components for the 32-gallon single-family (SFD) residential cart rate. The rate includes Council requested ILWU Local 6 sorter wages and benefits.

Table 2: 32-gal SFD Cart Rate - MM&O/RR/Disposal Rate Components

Service		Current Monthly Rate FY 2014/15	*MM&O - WMAC* *Disposal - WMAC* *RR - CWS*	
			Monthly Rate*	**Rate Impact**
Single Family (32-gallon cart)	MMO Collection Element		$25.26	
	MMO Disposal Element		$2.39	
	Recycling		$9.17	
	Total Rate	**$29.80**	**$36.82**	**23.56%**

* or such higher or lower rates as approved by the City Council pursuant to proposal by the franchisee

Table 3 shows annual rate adjustments for the Residential Recycling (RR) component of the 32-gallon single-family residential rate based on the agreement between CWS and WMAC. The additional $0.97 rate increase in each of contract years 2, 3, and 4 would become part of base rates and be compounded by each subsequent annual Refuse Rate Index (RRI) adjustment over the entire RR contract term.

Table 3: Residential Recycling Annual Rate Adjustment for 32-gal SFD Cart Rate

Year 1 Base Rate*	$ 9.17/ per month
Year 2 Adjustment	Prescribed RRI + $0.97
Year 3 Adjustment	Prescribed RRI + $0.97
Year 4 Adjustment	Prescribed RRI + $0.97
Year 5 & beyond Adjustment	Prescribed RRI

* or such higher or lower rates as approved by the City Council pursuant to proposal by the franchisee

The MOU contains the following provisions:

- The MOU states that the term of the RR contract will be twenty years. CWS has clarified that the term would be 20 years plus two five-year extensions at the City's sole option. However the RR contract published with July 30, 2014 Council report has a term of ten years with two (2) five-year extensions. Should CWS pursue on extension past the 20-year maximum term already approved by City Council, amendment of Ordinance No. 15254, which awarded the RR franchise to CWS, to authorize the City Administrator to extend the term would be necessary.

- The MOU includes the statement, "CWS shall have the power and authority to resolve all contamination issues with respect to RR customers." The City will work with CWS to develop a recycling contamination correction process that is fair to residents, and which includes progressive notification resulting in either the correction of contamination or assessment of contamination charges.

- CWS will use existing RR carts, including the use of WMAC's RR carts in the current WMAC RR service area. CWS will replace up to 20% of RR carts in the first year.

- WMAC will use existing MM&O carts, bins and debris boxes. WMAC will replace up to 20% of carts in the first year.

Call Center

The City Council set policy direction to require the MM&O contractor to identify that the customer service call center be located in Alameda County. The RFP invited proposers to provide an alternative with pricing for a call center outside of the county. Rate options for an in-county call center were presented to the City Council on May 29, 2014. WMAC has indicated that the cost of an in-county call center would add 1.95% to the rates and would have to be added to the MM&O contract. Table 4 shows rate impacts on the 32-gallon SFD residential cart rate for an in-County call center.

Table 4: In-County Call Center Rate Impacts on 32-gal SFD Cart Rate

Service		Current Monthly Rate FY 2014/15	Monthly Rate* Rate Impact	
Single Family (32-gallon cart)	Proposed Rate	$ 29.80	$ 36.82	23.56%
	Add Local Call Center		$ 0.54	1.81%
	Total	**$ 29.80**	**$ 37.36**	**25.37%**

* or such higher or lower rates as approved by the City Council pursuant to request by the franchisee

Award of the MM&O and Landfill disposal contracts are contingent on: 1) dismissal with prejudice of following litigation in Waste Management of Alameda County, Inc. v. City of Oakland, Alameda County Superior Court Case No. RG14737204, and 2) submission to the Oakland City Clerk of written notices of withdrawal of referenda measures signed by all proponents, pursuant to California Elections Code Section 9604(c), on City Ordinance Nos. 13253, 13254, and 13255 C.M.S., which awarded franchise agreements to California Waste Solutions for Garbage Collection, Recycling Services and Disposal/Landfill, and no petition for a referendum on any of the above-referenced ordinances being submitted to or filed with the Oakland Clerk within the 30-day period provided for referendum petitions under California Elections Code Section 9237. These awards shall be null and void if the lawsuits are not dismissed with prejudice and the referenda are not withdrawn, or if a petition for a referendum is filed.

PUBLIC OUTREACH/INTEREST

This item did not legally require any additional public outreach other than that required by the State Brown Act and City's Sunshine Ordinance, but the City did provide email notice to interested parties.

COORDINATION

Public Works Department staff has coordinated closely with the Office of the City Attorney for this report and amendment of the two ordinances.

COST SUMMARY/IMPLICATIONS

Adoption of these ordinances will sustain the City's franchise fees ($28 million) at the same level as today. The majority of fees (70%) are used to support City sanitation services provided by the Public Works Department, including street sweeping, graffiti and illegal dumping abatement, parks litter removal. Eighteen percent of the fees go into the General Fund and eleven percent is used to support mandated Integrated Waste Management Act (AB939) program development and planning for solid waste reduction and recycling, franchise contract management, environmental compliance, and related activities.

SUSTAINABLE OPPORTUNITIES

Economic: Expanding and actively supporting use of discarded materials drives local economic and workforce development with 'green collar' jobs and value added production.

Environmental: Waste reduction and recycling conserves natural resources, reduces air and water pollution, protects habitat, and reduces greenhouse gas (GHG) emissions.

Social Equity: Increased jobs through additional diversion of materials from the landfill.

CEQA

For award of the Franchise Agreement(s) to WMAC through these two amended Ordinances, City staff (Public Works and Planning & Building) determined that the City Council's actions are exempt from the California Environmental Quality Act (CEQA), because award of these franchise agreements would be a continuation of existing programs, but with greater environmental benefits. These added environmental benefits are created by shifting from a diesel-fueled fleet to a compressed natural gas fleet, and diverting greater amounts of recyclables and organics from landfill disposal.

The City has independently reviewed, considered and confirmed the environmental analyses conducted (Attachment D); these analyses conclude that there would not be the potential for significant environmental impacts under any of the options, therefore no further environmental review is required. Specifically, the project is exempt from CEQA pursuant to the following CEQA Guidelines, each of which provides a separate and independent basis for CEQA compliance and when viewed collectively provide an overall basis for CEQA compliance:

- Section 15301: Ongoing operation of existing facilities;
- Section 15307: Action for the protection of natural resources;
- Section 15308: Action for the protection of the environment;
- Section 15183: Approvals consistent with Community Plans

- Section 15273: City approval to change the rates; and/or
- Section 15061(b)(3): Common sense exemption because project does not have potential to cause significant effect on the environment

For questions regarding this report, please contact Becky Dowdakin, Environmental Services Manager, 510-238-6981.

Respectfully submitted,

BROOKE A. LEVIN
Director, Public Works Department

Prepared by:
Susan Kattchee, Assistant Director

Prepared by:
Becky Dowdakin, Acting Environmental Svcs. Manager

Attachment A: Memorandum of Agreement between CWS and WMAC
Attachment B: Mixed Materials and Organics Collection Services Contract
Attachment C: Landfill Disposal Services Contract
Attachment D: Environmental Analysis

ATTACHMENT A

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MEMORANDUMN OF AGREEMENT BETWEEN

CALIFORNIA WASTE SOLUTIONS, INC.

WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.

RESOLVING PENDING LITIGATION AND ACTION AND

PROVIDING FOR COOPERATION FOR IMPLEMENTATION OF

OAKLAND ZERO WASTE PROGRAM

This Agreement is effective September 18, 2014, subject to approvals as provided herein, including, but not limited to, the approvals required by the City of Oakland. Waste Management of Alameda County, Inc. (WMAC) and California Waste Solutions, Inc. (CWS), hereinafter the "Parties" agree to the following outline of a compromise of their differences regarding the Oakland Zero Waste contracts:

1. WMAC will dismiss with prejudice its lawsuit against CWS and the City of Oakland (the City), with a corresponding release and/ or forbearance of any and all claims CWS and/or the City have, or could assert, against WMAC and/or its affiliates
2. Providing the City rescinds its existing Zero Waste Ordinances that are the subject of the current Referendum efforts,, WMAC will end its financial support of the Referendum challenging the award of the Zero Waste Contracts by the City to CWS and will exercise its good faith best efforts to cause the proponents of the Referendum not to file signatures with the City. WMAC understands that if signatures are delivered to the City, then CWS will have no obligation to perform hereunder and the parties expect that the City will not be supportive of a Zero Waste contract with WMAC.
3. The Parties will jointly consider strategic business opportunities in the solid waste business and work collaboratively on both public education and other performance requirements of the Zero Waste program.
4. WMAC will perform all MMO and Disposal services, subject to the negotiation of a mutually acceptable contract and rate terms between WMAC and the City of Oakland. CWS will perform RR services, subject to the negotiation of a mutually acceptable contract and rate terms between CWS and the City of Oakland. As discussed with City, it is contemplated by the Parties that the total rates from CWS and WMAC will not exceed the amount of revenue in WMAC's August 12, 2014 final written proposal to the City.
5. CWS expects to negotiate a contract with the City at the level of the rates heretofore approved for RR based on diesel trucks but will utilize CNG trucks (($8.85 plus ILWU wage and benefit, plus COLA/RRI plus $0.97 per year for

years two, three and four) as provided in Zero Waste RR Contract. The term of the RR contract will be for a twenty year term.

6. WMAC expects to negotiate a mutually acceptable contract with the City that contemplates revised commercial, multifamily, and roll off rates but WMAC shall not exceed the residential rates approved by the City for the CWS MMO contract and the Disposal Contract.

7. WMAC will work with Civicorps and EBMUD as CWS was directed by prior City action.
8. WMAC will not oppose CWS development or improvements to CWS' Gateway Facility, Wood Street Facility,10th Street Facility, or other facilities in support thereof (collectively, the 'CWS Facilities") directly or indirectly. WMAC will not support, directly or indirectly, any CEQA challenge regarding the CWS Facilities or the Zero Waste contracts. CWS has, in the past, provided services for WMAC from CWS Facilities and may in the future.
9. WMAC will take on financial responsibility for all trucks already ordered by CWS that are designed for use in performing the MM&O contracts; this obligation does not include trucks necessary for CWS performance of RR obligations.
10. WMAC agrees to allow CWS free use of existing WMAC RR carts. WM will pick up used carts from CWS when notified by CWS within 48 hours.
11. CWS shall have the power and authority to resolve all contamination issues with respect to RR customers. CWS will be entitled to recover MMO Overage Rate for collecting contaminated RR.
12. The parties will cooperate on 7/1/15 transition of services.
13. The parties' Zero Waste work will be branded under a name to be agreed upon (along the lines of "Zero Waste Program"). The joint branding will appear on trucks, billings and other promotional materials.
14. WMAC will pay CWS $2,500,000 in settlement of all costs and fees and other claims arising with respect to the law suit and the referendum.
15. WMAC will acquire a ten year Right of First Refusal (ROFR) for any of CWS recycling businesses in Alameda County for a total value and purchase price of $12,500,000. Payment will be $2,500,000 upon execution of the ROFR upon City approval of MMO, RR and Disposal as provided herein. The balance with interest at the rate of 3.5% per annum will be payable in level payments over ten years, commencing of July 1, 2015.

The parties agree that items 1 through 15, above, accurately reflect their obligations to one another. The mutual obligations of the parties are contingent on award of new Zero Waste contracts by the City with terms in accordance with the foregoing points. This Agreement may be signed in counter parts.

The Parties agree that they have taken no actions and will take no action that in any way diminishes or affects their ability to perform any contract or obligation to the City based on any discussions of proposed terms of a settlement and in advance of express approval by the City. Consistent with the prior discussions with the City, the Parties agree to provide a copy of this Memorandum to the City in connection with its consideration of taking any action on the matters referenced herein, and this agreement shall be contingent upon the City's exercise of the powers delegated to it by the State of California pursuant to Public Resources Code Section 40059 et. seq. to adopt ordinances that are consistent with the terms of this agreement.

Dated: Sept. 18-2014

CWS DAVID DIONG President

Dated: 9/18/2014

WMAC
Barry Stokick, President
Waste Management of Alameda Co, Inc.

ATTACHMENT B

Final Circulation Draft
*Subject to such terms & conditions approved by the City Council
September 19, 2014

MIXED MATERIALS & ORGANICS COLLECTION SERVICES CONTRACT

Executed between

City of Oakland

and

Waste Management of Alameda County, Inc.

July 1, 2015

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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 WASTE MANAGEMENT OF ALAMEDA COUNTY, INC., 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;

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

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

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

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

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

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

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

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

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

ARTICLE 1. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.30 CONTRACTOR. WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.

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

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

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

1.33.1 A grade greater than fifteen (15) percent;

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

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

1.33.4 An unpaved surface over which Containers must be rolled;

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

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

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

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

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

1.36 Disposal Contractor. [insert company]

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

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

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

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

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

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

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

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

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

1.46 Guarantor. [Insert Name].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.90 Unacceptable Waste. Any and all waste, including but not limited to, Hazardous Waste and Household Hazardous Waste, the acceptance or handling of which would cause a violation of any permit condition or legal or regulatory requirement, damage or threatened damage to CONTRACTOR'S equipment or facilities, or present a substantial endangerment to the health or safety of the public or CONTRACTOR'S employees; provided, that *de minimis* quantities or waste of a type and amount normally found in Garbage or Mixed Materials after implementation of programs for the safe Collection, Processing, treatment, and Disposal of Household Hazardous Waste in compliance with sections 41500 and 41802 of the California Public Resources Code shall not constitute Unacceptable Waste. Unacceptable Waste does

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

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

ARTICLE 2. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 3. TERM OF CONTRACT

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

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

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

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

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

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

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

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

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

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

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

5.03.10 Waste vegetable oil used as an alternative fuel;

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

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

5.03.13 Hazardous Waste regardless of its source;

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

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

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

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

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

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

ARTICLE 6. SERVICE STANDARDS

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

6.02 Hours and Days of Collection.

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

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

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

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

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

6.06 Containers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.12 Processing and Disposal.

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

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

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

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

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

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

6.14 Commingling of Materials.

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

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

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

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

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

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

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

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

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

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

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

6.16 Ownership of Materials.

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

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

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

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

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

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

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

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

ARTICLE 7. CHARGES AND RATES

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.

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.

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).

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).

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

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).

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.

7.01.3.1.3. Add 7.01.3.1.2 to the MM&O RRI adjustment (along with Government Fee adjustments, if any) to arrive at the Annual Rate Adjustment.[1]

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

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

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

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

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

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

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

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

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

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

[1] 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.12 Delinquent Service Accounts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.14 CONTRACTOR'S Payment to Residential Recycling Contractor.

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

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

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

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

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

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

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

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

7.16 Annual Rate Adjustments.

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

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

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

7.16.2.1.1. Cost Category Weight. Contractor will calculate the total of all Allowable Expenses (as defined in Exhibit 2) for each Cost Category (also defined in Exhibit 2) for the period of July 1, 2015 through December 31, 2015. 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. For example, if the Allowable Expenses of the Diesel Fuel Cost Category total One Hundred Dollars ($100), and the Allowable Expenses within all Cost Categories is Two Thousand Dollars ($2,000), then the Diesel Fuel Cost Category's item weight will be five (5) percent. The Cost Categories shall be reweighed every year based on allowable expenses thereafter from January 1 through December 31.

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

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

[1] 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.

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

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

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

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

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

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

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

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

7.17 Required Information.

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

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

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

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

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

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

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

7.17.8 Franchise Fee. The franchise fee for the fiscal year July 1, 2015, through June 30, 2016, shall be the initial franchise fee of Twenty-five Million Thirty-four Thousand Dollars ($25,034,000) adjusted by the annual change in the Consumer Price Index – All Urban Consumers, Series ID cuura422sa0, Not Seasonally adjusted, San Francisco-Oakland-San Jose, CA for the prior calendar year, January 1, 2014, through December 31, 2014. The franchise fee for the next fiscal year and each subsequent fiscal year shall be adjusted annually 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 except that in no year shall the franchise fee adjustment be less than zero (0) percent. Notwithstanding the foregoing, no

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

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

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

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

7.18 Stability Funds.

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

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

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

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

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

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

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

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

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

ARTICLE 8. DIVERSION REQUIREMENTS

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

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

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

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

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

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

ARTICLE 9. SFD COLLECTION SERVICES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 10. MFD COLLECTION SERVICES

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

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

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

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

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

10.02 MFD Mixed Materials Collection Service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 11. COMMERCIAL COLLECTION SERVICES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 12. CITY COLLECTION SERVICES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12.10 Disposal and Processing Facilities.

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

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

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

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

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

ARTICLE 13. COLLECTION ROUTES

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

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

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

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

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

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

ARTICLE 14. COLLECTION EQUIPMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 15. LOCAL OFFICE

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

ARTICLE 16. CUSTOMER SERVICE

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

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

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

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

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

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

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

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

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

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

16.04 Multilingual/TDD Service. CONTRACTOR'S call center shall at all times during the normal business hours set forth in Section 16.02 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 in accordance with its Equal Access Program requirements. CONTRACTOR shall at all times maintain the capability of responding to telephone calls through Telecommunications Device for the Deaf (TDD) Services.

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

ARTICLE 17. COMMUNITY OUTREACH SERVICES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 18. EMERGENCY SERVICE PROVISIONS

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

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

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

ARTICLE 19. RECORD KEEPING & REPORTING REQUIREMENTS

19.01 Record Keeping.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19.03.1.1 Customer and Collection Services Data. List of all Customers serviced under this Contract including and sortable by Collection Service type, Customer name, Service Address (street number, street name, Zip Code), number of Containers billed for by Collection Service type, Container size, and material type, e.g., Mixed Material, Organic Material.

19.03.1.2 [reserved]

19.03.1.3 Local Hire Requirement Annual Report. CONTRACTOR shall provide an annual report on its compliance with Local Hire Requirements in Article 55 of this Contract.

19.03.1.4 Gross Receipts. CONTRACTOR shall provide a summary of the prior year's Gross Receipts received, by Collection Service type.

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

19.03.1.6 Business Tax Certificate. Copy of current business tax certificate.

19.04 Additional Reporting and Access to Information.

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

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

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

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

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

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

ARTICLE 20. NONDISCRIMINATION

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

ARTICLE 21. SERVICE INQUIRIES AND COMPLAINTS

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

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

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

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

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

ARTICLE 22. QUALITY OF PERFORMANCE OF CONTRACTOR

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

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

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

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

CITY Initial Here _____ CONTRACTOR Initial Here_____

CONTRACTOR agrees to pay (as liquidated damages and not as penalty) the following 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 15th 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: • Greater than three minutes and up to four minutes • Greater than four minutes and up to five minutes • Over five minutes (Section 16.02.3).	 $1,000 per week $2,000 per week $3,000 per week
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

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

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

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

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

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

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

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

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

ARTICLE 23. BILLING AUDIT AND PERFORMANCE REVIEWS

23.01 Billing Audit and Performance Review.

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

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

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

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

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

23.01.2.4 Verify the Diversion percentages reported by CONTRACTOR.

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

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

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

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

ARTICLE 24. PERFORMANCE SECURITY

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

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

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

ARTICLE 25. INSURANCE

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

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

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

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

25.02.3 Hazardous Waste and Environmental Impairment Liability Insurance.

25.02.4 Crime Insurance for Employee Theft.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 26. INDEMNIFICATION

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

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

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

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

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

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

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

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

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

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

26.06 Maximum Service Rates.

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 27. DEFENSE OF CONTRACTOR'S RIGHTS

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

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

ARTICLE 28. OBLIGATION TO PROVIDE SERVICE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28.03.12 <u>Liquidated Damages for Labor Disruptions</u>

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

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

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

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

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

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

ARTICLE 29. DEFAULT OF CONTRACT

29.01 CITY Termination.

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:

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

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

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

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

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

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.

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

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

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

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

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

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

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

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

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

29.03 CONTRACTOR Termination.

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

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

29.03.1.2 CITY has failed or refused to perform or observe the terms, conditions or covenants in this Contract not otherwise addressed in this Section 29.03; provided that said breach is not cured within thirty (30) calendar days of receipt of written notice from CONTRACTOR to do so, or if by reason of the nature of such breach, the same cannot be remedied within thirty (30) calendar days following receipt by CITY of written demand from CONTRACTOR to do so, CITY fails to commence the remedy of such breach 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, CITY shall have the burden of proof to demonstrate (a) that the breach cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with diligence to cure said breach, and such breach will be cured within a reasonable period of time. In the event that CITY fails to cure any breach pursuant to this provision, CONTRACTOR shall have the right to terminate this Contract. CONTRACTOR shall provide written notice of termination to CITY upon CITY's failure to cure and this Contract shall terminate one (1) year after service of such notice.

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

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

ARTICLE 30. MODIFICATIONS TO THE CONTRACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Acknowledgement of waiver of rights by trial by jury if proceeding with binding arbitration pursuant to Section 30.02.3 of this Contract.	
_____	_____
CITY OF OAKLAND	CONTRACTOR

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

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

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

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

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

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

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

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

30.03.4.3 Labor requirements (number of employees by classification);

30.03.4.4 Type of Carts or Bins to be utilized;

30.03.4.5 Provision for program publicity, outreach, and marketing;

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

30.03.4.7 Advantages and disadvantages of the change;

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

30.03.4.9 An implementation schedule.

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

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

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

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

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

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

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

ARTICLE 31. LEGAL REPRESENTATION

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

ARTICLE 32. FINANCIAL INTEREST

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

ARTICLE 33. CONTRACTOR'S PERSONNEL

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

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

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

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

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

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

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

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

ARTICLE 34. UNACCEPTABLE WASTE

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

ARTICLE 35. INDEPENDENT CONTRACTOR

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

ARTICLE 36. LAWS TO GOVERN

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

ARTICLE 37. CONSENT TO JURISDICTION

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

ARTICLE 38. ASSIGNMENT

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

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

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

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

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

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

and, (5) of any other information required by CITY to ensure the proposed assignee can fulfill the terms of this Contract in a timely, safe and effective manner.

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

38.04 CITY Discretion to Accept or Reject Assignment. CITY, in its sole discretion, may accept, reject or conditionally accept the proposed assignment. If CITY accepts a partial assignment, the corporate guaranty provided in Section 1.47 and Exhibit 18 and the performance security provided in Article 24 shall remain in effect unless CITY in its sole discretion consents to adequate substitutes by the assignee or to a novation, and absent a novation CONTRACTOR shall not be released from liability under this Contract.

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

ARTICLE 39. COMPLIANCE WITH LAWS

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

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

ARTICLE 40. PERMITS AND LICENSES

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

ARTICLE 41. OWNERSHIP OF WRITTEN MATERIALS

41.01 All reports, documents, brochures, public education materials, and other written, printed, electronic or photographic materials developed by CITY or CONTRACTOR for the CITY as required by this Contract, whether developed directly or indirectly by CITY or CONTRACTOR shall be and shall remain the property of CITY without limitation or restrictions on the use of such materials by CITY. CONTRACTOR shall not use such materials in connection with any project not connected with this Contract without the prior written consent of the Contract

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

ARTICLE 42. WAIVER

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

ARTICLE 43. POINT OF CONTACT

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

ARTICLE 44. CONFLICT OF INTEREST

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

ARTICLE 45. NOTICES

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

<u>As to the CITY</u>:

City Administrator
Office of the City Administrator
City of Oakland
1 Frank Ogawa Plaza, 3rd Floor
Oakland, CA 94612
Telephone: 510-238-3301
E-mail: cityadministrator@oaklandnet.com

<u>With copies to</u>:

Director of Public Works
Public Works Agency
City of Oakland
250 Frank Ogawa Plaza, Suite 4314
Oakland, CA 94612
Telephone: 238-4470
E-mail: blevin@oaklandnet.com

City Attorney

Office of the City Attorney
City of Oakland
1 Frank Ogawa Plaza, 6th 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 CONTRACTOR:

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

ARTICLE 46. TRANSITION TO NEXT CONTRACTOR

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

ARTICLE 47. CONTRACTOR'S RECORDS

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

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

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

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

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

ARTICLE 48. ENTIRE CONTRACT

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

ARTICLE 49. SEVERABILITY

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

ARTICLE 50. RIGHT TO REQUIRE PERFORMANCE

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

ARTICLE 51. CORPORATE GUARANTY

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

ARTICLE 52. EMPLOYEE RETENTION REQUIREMENTS

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

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

ARTICLE 53. SUBCONTRACTING

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

ARTICLE 54. [RESERVED]

ARTICLE 55. LOCAL HIRE COMPLIANCE

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

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

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

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

ARTICLE 56. RELIGIOUS PROHIBITION

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

ARTICLE 57. POLITICAL PROHIBITION AND CAMPAIGN CONTRIBUTIONS

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

ARTICLE 58. BUSINESS TAX CERTIFICATE

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

ARTICLE 59. ATTORNEYS FEES

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

ARTICLE 60. LIMITATION OF FELONY DISCLOSURE ON JOB APPLICATION

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

ARTICLE 61. COMPETITIVE WAGES AND BENEFITS

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

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

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

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

ARTICLE 62. VALIDITY OF CONTRACTS

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

ARTICLE 63. EQUAL BENEFITS ORDINANCE

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

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

ARTICLE 64. LABOR PEACE

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

ARTICLE 65. AMENDMENT

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

ARTICLE 66. ALL PRIOR CONTRACTS SUPERSEDED

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

ARTICLE 67. HEADINGS

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

ARTICLE 68. LEGAL REPRESENTATION

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

ARTICLE 69. EXHIBITS

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

ARTICLE 70. EFFECTIVE DATE

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

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

CITY OF OAKLAND	[Contractor Company Name]
By:_____	By:_____
[Name, Title]	[Name, Title]

_____ _____
Date Date

_____
City of Oakland Business License Number

The foregoing Contract has been reviewed and approval is recommended:

Resolution No._____ C.M.S.

Approved by City Council

APPROVED AS TO FORM:

_____ _____
[Name, Title] Date
City Attorney

Attest:

By: _____ _____
[Name, Title] Date
City Clerk

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2333142.1

ATTACHMENT C

Final Circulation Draft
*Subject to such terms & conditions approved by the City Council
September 19, 2014

Disposal Services Contract

Executed between

City of Oakland

and

Waste Management of Alameda County, Inc.

July 1, 2015

CITY OF
OAKLAND

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CITY OF OAKLAND

This Disposal Services Contract ("Contract") is entered into [Insert Date] (the "Effective Date") by and between the CITY OF OAKLAND, a California municipal corporation ("CITY") and WASTE MANAGEMENT OF ALAMEDA COUNTY, INC., a California corporation ("CONTRACTOR").

RECITALS

WHEREAS, CITY enters this Contract with CONTRACTOR, under which CONTRACTOR receives Garbage generated within the CITY and Residue from the Processing of Mixed Materials Collected by the Mixed Materials and Organics ("MM&O") Collection Contractor within the CITY of Oakland at the Disposal Facility;

WHEREAS, the City Council of the City of Oakland determines, pursuant to its police powers, that obtaining a long-term commitment for Disposal of Garbage generated in the CITY and Residue from the Processing of Mixed Materials Collected by the MM&O Collection Contractor within the CITY is in the best interests of the health, safety and well-being of the citizens of the CITY;

WHEREAS, the state of California, 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 and 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); and,

WHEREAS, this Contract also advances the objectives of the federal government to encourage environmentally sound Garbage management (Resource Conservation and Recovery Act of 1976 (RCRA), 42, U.S.C. section 6941 et seq.);

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

WHEREAS, in 2002 the City Council of the City of Oakland approved Resolution No. 77500 C.M.S., adopting 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. adopting a Zero Waste Goal by 2020;

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

WHEREAS, the Disposal Facility is intended to be the principal facility for the Disposal of Mixed Materials and Garbage generated in the CITY and Mixed Materials Residue from the Processing of Mixed Materials Collected by the MM&O Collection Contractor within the CITY, as well as Recyclable Materials Residue from the Processing of Recyclable Materials Collected by the Residential Recyclables Contractor;

WHEREAS, the CONTRACTOR guarantees permitted capacity at the Disposal Facility for up to thirty (30) years for Disposal of all Mixed Materials and Garbage generated in the CITY and Mixed Materials Residue from the Processing of Mixed Materials Collected by the MM&O Collection Contractor within the CITY;

WHEREAS, the City Council of the City of Oakland determines that in order to provide adequate Disposal capacity, it is in the best interests of the CITY to secure a commitment from CONTRACTOR for the right to a portion of the Disposal Facility's current Disposal capacity on the terms and subject to the conditions set out in this Contract. The intent of this provision is, in part, for the CITY to contribute to preventing the substantial environmental, aesthetic, health, and safety problems that may be created from increasing volumes of Garbage in this country;

WHEREAS, the CONTRACTOR has represented that it has the experience and ability to provide for Disposal of Mixed Materials, Garbage and Residue, at the Disposal Tipping Fees provided for herein;

WHEREAS, the CITY has entered into Collection Service Contracts to provide: (i) Mixed Material and Organics Collection Services and (ii) Residential Recycling Collection Services within the CITY;

WHEREAS, the CONTRACTOR receives Disposal Tipping Fees from the CITY'S MM&O Collection Contractor for the acceptance of Mixed Materials, Garbage and Residue at the Disposal Facility for final Disposal;

WHEREAS, the CITY determined that the CONTRACTOR has proposed to provide Disposal Services at the Disposal Facility in a manner and on terms which are in the best interest of the CITY and its residents and businesses, taking into account the qualifications and experience of the CONTRACTOR, and the Disposal Tipping Fees for providing such services;

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

WHEREAS, the City Council of the City of Oakland declares its intention of maintaining reasonable Disposal Tipping Fees for the Disposal of Mixed Materials, Garbage and Residue.

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Contract and for other good and valuable consideration, the CITY and CONTRACTOR agree as follows.

ARTICLE 1. DEFINITIONS

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

1.01 Bulky Goods. Materials such as, but not limited to, stoves, refrigerators, water heaters, washing machines, clothes dryers, small air conditioning units, other large and small household appliances, including appliances containing Freon, furniture, carpets, tires, wood, household items, tires with or without rims, mattresses, clothing, Large Plant Debris, corrugated cardboard, materials generated from minor home repairs or remodeling and other similar materials that can be handled by two (2) people and which do not individually weigh more than seventy-five (75) pounds and which are delivered to the Disposal Facility by the MM&O Collection Contractor.

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

1.03 CITY. The CITY of Oakland, California, a municipal corporation.

1.04 CITY Administrator. The CITY official who is responsible for the day-today operations of CITY agencies and departments or his/her designee.

1.05 Collect/Collection. To pick up, transport, and remove Garbage, Mixed Materials, Organic Materials or Bulky Goods.

1.06 Collection Contractor(s). The Mixed Materials and Organic (MM&O) Collection Contractor and the Residential Recycling (RR) Collection Contractor during the term of this Contract.

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

1.08 Construction and Demolition Debris. Materials resulting from construction, remodeling, repair or demolition operations on any house, residential property, commercial building, pavement or other structure. Construction and Demolition Debris includes but is not limited to rocks, soils, tree remains and other Plant Debris that results from land clearing or land development operations in preparation for construction.

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

1.10 CONTRACTOR. WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.

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

1.12 Disposal/Dispose. The final Processing and disposition of Mixed Materials, Garbage and Residue received from the Collection Contractor(s) and CITY by CONTRACTOR under the terms of this Contract onto land located at the Disposal Facility, including but not limited to placement as alternative daily cover, road construction, slope stabilization, or other beneficial uses. Disposal does not include transformation using incineration, pyrolysis, distillation, gasification, biological conversion or other similar methodologies unless authorized by CITY.

1.13 Disposal Facility or Landfill. The Altamont Landfill located at 10840 Altamont Pass Road, Livermore, California 94551 that is that is owned and operated by CONTRACTOR.

1.14 Disposal Services. The receipt, acceptance and Disposal of all Mixed Materials, Garbage and Residue delivered by the Collection Contractor(s) and CITY to the Disposal Facility.

1.15 Disposal Tipping Fee or Tipping Fee. The charges for acceptance of material delivered to the Disposal Facility as set forth in Exhibit 1, which is attached to and included in this Contract.

1.16 Divert/Diversion. To prevent Recyclable Materials, Organic Materials and other materials from Disposal at the Disposal Facility or transformation facilities (including facilities using incineration, pyrolysis, distillation, gasification or biological conversion methods) through source reduction, reuse, recycling and composting, as provided in section 41780 of the California Integrated Waste Management Act of 1989, as such California Integrated Waste Management Act may be hereafter amended or superseded.

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

1.18 Food Scraps. Raw or cooked vegetable, fruit, grain, fish, and other items, including meat, bones, dairy products, cooking fats, oil or kitchen grease; paper, cardboard, and other compostable items that have been contaminated with food, cooking fats, oil or kitchen grease; compostable or paper or plastics associated with food preparation or consumption, such as paper towels, paper plates, paper cups, tissue, waxed paper and waxed cardboard; and other materials agreed upon by the MM&O Collection Contractor and City that are capable of being composted and that are set out separate from Mixed Materials for Collection as Organic Materials.

1.19 Force Majeure. Any acts of God, such as landslides, lightning, fires, storms, floods, pestilence, freezing, and earthquakes; explosions, sabotage, civil disturbances, acts of a public enemy, wars, terrorism, blockades, riots, or other industrial disturbances, eminent domain, condemnation or other taking, or other events of a similar nature, not caused or maintained by CITY or CONTRACTOR, which event is not reasonably within the control of the party claiming the excuse from its obligations due to such event, to the extent such event has a significant and material adverse effect on the ability of a party to perform its obligations thereunder. Force Majeure shall not include power outages, fuel shortages, strikes, work stoppage or slowdown, sickout, lockout, picketing or other concerted job action conducted by or directed at CONTRACTOR or CONTRACTOR's employees or subcontractors. Force Majeure shall include a Change in Law if such Change in Law prohibits a party's performance hereunder. Notwithstanding the foregoing, (i) no event relating to a Disposal Facility, other than a Disposal Facility operated by CONTRACTOR or a related party of CONTRACTOR, or the delivery of

Garbage, Mixed Materials and/or Reside to that facility shall constitute a Force Majeure under this contract unless (and then only to the extent) that such event prevents the delivery of or acceptance of Garbage, Mixed Materials and Reside to or by a that facility; (ii) no failure of performance by any subcontractor of CONTRACTOR shall be a Force Majeure unless such failure was itself caused by a Force Majeure; (iii) except as provided herein, no event which merely increases CONTRACTOR'S cost of performance shall be a Force Majeure; and () no event, the effects of which could have been prevented by reasonable precautions, including compliance with agreements and applicable laws, shall be a Force Majeure.

1.20 Garbage. All, putrescible and non-putrescible waste, non-recyclable packaging and rubbish attributed to normal activities of the service address wherein the Garbage is generated. Garbage does not include abandoned automobiles or those items defined herein as Unacceptable Waste.

1.21 Gas Control Credits. All greenhouse gas credits, carbon credits and other similar credits that can be received for the control of gases emitted by the Disposal Facility, such as emission cap and trade allowances issued under the Regional Greenhouse Gas Initiative or the rules of any of its member states, and any emission credit authorized by the Global Warming Solutions Act for the reduction of greenhouse gases.

1.22 Guarantor. [Insert Name]

1.23 Guaranty. The document contained in Exhibit 3, which is attached to and included in this Contract that is executed by the Guarantor guaranteeing the timely and full performance of CONTRACTOR'S obligations.

1.24 Hazardous Waste. For purposes of this Contract, Hazardous Waste shall include those wastes defined as Hazardous Waste in Oakland Municipal Code Section 8.28.010 or as subsequently amended. Section 8.28.010 currently defines Hazardous Waste as any hazardous waste, material, substance or combination of materials which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or may pose a substantial present or potential risk to human health or the environment when improperly treated, stored, transported, disposed or otherwise managed; and which requires special handling under any present or future federal, State or local law, excluding de minimis quantities of waste of a type and amount normally found in residential Garbage after implementation of programs for the safe Collection, recycling, treatment and Disposal of Household Hazardous Waste in compliance with Sections 41500 and 41802 of the California Public Resources Code. Hazardous Waste shall include, but not be limited to: (a) substances that are toxic, corrosive, inflammable or ignitable; (b) petroleum products, crude oil (or any fraction thereof) and their derivatives; (c) explosives, asbestos, radioactive materials, toxic substances or related hazardous materials; and (d) substances defined, regulated or listed (directly or by reference) by applicable local, State or federal law as "hazardous substances," "hazardous materials," "hazardous wastes," "pollutant," "reproductive toxins," "toxic waste," or "toxic substances," or similarly identified as hazardous to human health or the environment, including those so defined in or pursuant to any of the following statutes: (i) the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, 42 USC section 9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC section 1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC section 6901 et seq.; (iv) the Clean Water Act, 33 USC section 1251 et seq.; (v) California Health and Safety Code section 25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC section 7901 et seq.; and (vii) California Water Code section 13050; all rules and regulations adopted and

promulgated pursuant to such statutes, and future amendments to or recodifications of such statutes, and any regulations adopted pursuant to these statutes after the date of this Contract, as well as any subsequently enacted federal or California statute relating to the use, release or disposal of toxic or hazardous substances, or to the remediation of air, surface waters, groundwater, soil or other media contaminated with such substances; any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, State or local environmental laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products. The parties intend that this definition not be limited to any particular statutory or regulatory regime and that it be construed as broadly as possible.

1.25 Household Hazardous Waste. Any Hazardous Waste generated at a single family or multi-family service address within the CITY, including, but not limited to, cleaning products, automotive products, fuel, lubricants, E-Wastes, paints, painting supplies, fluorescent lamps, compact fluorescent lamps, varnishes, solvents, herbicides, pesticides, fertilizers, automobile batteries, household batteries, adhesives, and Universal Waste except those items defined in this Contract as Recyclable Materials, including Used Oil or Used Oil Filters, and dry cell household batteries.

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

1.27 Landfill Gas-to-Energy Credits. All energy credits, fuel production credits and other similar credits that may be available for the creation of a fuel or the production of alternative energy.

1.28 Large Plant Debris. Oversized Plant Debris such as tree trunks, branches or untreated and unpainted wood.

1.29 Material Recovery Facility or MRF. Any facility, selected by the Collection Contractor(s) and approved by CITY, or specifically designated by CITY, designed, operated, and legally permitted for the purpose of receiving, sorting, Processing, storing, or preparing Recyclable Materials, Organic Materials or Mixed Materials for sale, market, or reuse.

1.30 Mixed Materials. All Garbage, Recyclable Materials, Organic Materials and Bulky Goods, excluding items that are source separated from Garbage. Mixed Materials do not include items defined herein as Unacceptable Waste.

1.31 Mixed Materials and Organics (MM&O) Collection Contractor. The company holding a current Mixed Materials and Organics Collection Services Contract with the CITY of Oakland.

1.32 Mixed Materials Residue. Materials remaining after the Processing of Mixed Materials that cannot reasonably be Diverted from the Landfill.

1.33 Organic Materials ("Organics"). Plant Debris, Food Scraps, compostable food ware, compostable food containers, compostable paper, horse stable matter, etc. Organic Materials do not include items herein defined as Unacceptable Waste.

1.34 Organic Materials Residue. Materials remaining after the Processing of Organic Materials that cannot reasonably be Diverted from the Landfill.

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

1.36 Plant Debris. Any vegetative matter resulting from normal yard and landscaping maintenance or unpainted and untreated wood. Plant Debris includes palm, yucca, cactus; grass clippings, leaves, pruning, weeds, branches, brush, holiday trees, and other forms of horticultural waste. Plant Debris does not include items defined herein as Unacceptable Waste.

1.37 Post-Closure. All activities and related costs during the period subsequent to the closure of the Disposal Facility or portions of the Disposal Facility in accordance with applicable laws and permits.

1.38 Processing or Process. An operation or series of operations, whether involving equipment or manual labor, which sorts, enhances, upgrades, concentrates, decontaminates, packages or otherwise prepares Mixed Materials, Recyclable Materials, Organic Materials or Bulky Goods for a secondary use. Processing begins at the time Mixed Materials, Recyclable Materials, Bulky Goods or Organic Materials are delivered to the Processing Facility and ends when the Processed materials are sold or reused, and the Residue is properly Disposed.

1.39 Recovered Materials. Recyclable Materials or Organic Materials removed at the Disposal Facility from Garbage, Mixed Materials or Residue and directed to recycling, reuse or compost processing.

1.40 Recyclable Materials. Those materials designated in this Contract or by CITY for Collection and Processing under the MM&O or RR Collection Service Contracts which are segregated from Mixed Materials by the CITY or service recipient at the source of generation and set out for Collection. Recyclable Materials include those materials defined by CITY, including newspaper, mixed paper (including white and colored paper, magazines, telephone books, chipboard, junk mail, and high grade paper) glass containers, metal containers (ferrous, non-ferrous, and bi-metal Containers including empty aerosol containers), aluminum foil and trays, milk and juice cartons, all narrow neck rigid plastic containers, non-bottle rigid plastics, and corrugated cardboard. Recyclable Materials also include dry cell batteries generated by residential service recipients and CITY facilities.

1.41 Recyclable Materials Residue. Materials remaining after the Processing of Recyclable Materials that cannot reasonably be Diverted from the Landfill.

1.42 Residential Recycling (RR) Contractor. The company holding a current Residential Recyclable Materials Collection Services Contract with the CITY of Oakland.

1.43 Residue. Mixed Materials Residue, Organic Materials Residue and Recyclable Materials Residue.

1.44 Revenue Generating Resources. Resources generated by or at the Disposal Facility including, but not limited to, Recovered Materials, Gas Control Credits, Landfill Gas-to-Energy Credits and landfill gas that can be sold or otherwise used to produce revenue for CONTRACTOR.

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

1.46 Universal Waste ("U-Waste"). Materials that the California Department of Toxic Substances Control considers Universal Waste, (California Code of Regulations Title 22, Div 4.5, Ch 23) including materials such as batteries, thermostats, lamps, cathode ray tubes,

computers, telephones, answering machines, radios, stereo equipment, tape players/recorders, phonographs, video cassette players/recorders, compact disc players/recorders, calculators, some appliances, aerosol cans, fluorescent lamps, certain mercury-containing devices and such other items as may be added from time to time.

1.47 Unacceptable Waste. Any and all waste, including but not limited to, Hazardous Waste, the acceptance or handling of which would cause a violation of any permit condition or legal or regulatory requirement, damage or threatened damage to CONTRACTOR'S equipment or facilities, or present a substantial endangerment to the health or safety of the public or CONTRACTOR'S employees; provided, that de minimis quantities or waste of a type and amount normally found in Garbage, Mixed Materials, or Residue after implementation of programs for the safe Collection, Processing, treatment, and Disposal of Household Hazardous Waste in compliance with sections 41500 and 41802 of the California Public Resources Code shall not constitute Unacceptable Waste.

1.48 Work Day. Any day, Monday through Saturday that is not a holiday as set forth in Section 5.06 of this Contract.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

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

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

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

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

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

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

2.04.2 Conflicts with, violates or will result in a breach or default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing contract or instrument to which CONTRACTOR

is a party, or by which CONTRACTOR or any of CONTRACTOR'S properties or assets is bound; or

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

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

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

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

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

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

ARTICLE 3. TERM OF CONTRACT

3.01 Initial Term. The term of this Contract shall be for a twenty (20) year term beginning on July 1, 2015, and terminating on June 30, 2035. CITY, in its sole discretion, shall have an option to extend the Contract for up to two (2) additional five (5) year periods.

3.01.1 First Extension. On or about April 1, 2033, CITY, at its sole discretion may extend this Contract by five (5) years by notifying CONTRACTOR of its intension to do so in writing.

3.01.2 Second Extension. On or about April 1, 2038, CITY, at its sole discretion may extend this Contract by five (5) years by notifying CONTRACTOR of its intension to do so in writing.

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

ARTICLE 4. OBLIGATIONS OF CITY

4.01 General. CITY and CONTRACTOR acknowledge that CITY will not be responsible for the payment of Disposal Tipping Fees for Mixed Materials, Garbage or Residue that the Collection Contractor(s) deliver to the Disposal Facility. CITY contractually controls the delivery of Mixed Materials and Garbage Collected in CITY and Residue from Mixed Materials Processing activities by the MM&O Collection Contractor and shall direct the MM&O Collection Contractor to deliver such Mixed Material, Garbage or Mixed Material Residue to the Disposal Facility. CONTRACTOR acknowledges that CITY has no ability to direct individuals who self-haul to use the Disposal Facility. CITY may utilize CITY staff and vehicles to haul Mixed Materials, Garbage, Bulky Goods or other materials generated by or at any building, structure, yard, park, or any other facility owned, leased, or operated by CITY to the Disposal Facility. CONTRACTOR shall bill CITY for CITY-hauled loads at no more than the then current Disposal Tipping Fee, as calculated under this Contract, for the type of material being hauled.

4.02 Hazardous Waste Programs. CITY shall contractually require its Collection Contractor(s) to develop and implement a load inspection program to detect and discover Hazardous Waste and Household Hazardous Waste and shall prohibit Collection Contractor(s) from knowingly delivering such material to the Disposal Facility. CITY shall encourage its residents to participate in the Alameda County Household Hazardous Waste Program that provides residents with a place for safe recycling, treatment, and/or disposition of Household Hazardous Waste. The parties recognize, however, that CITY cannot assure CONTRACTOR that such programs will prevent any amount of Hazardous Waste or Household Hazardous Waste from being delivered to the Disposal Facility.

4.03 No Limit on Waste Prevention. CITY, Collection Contractor(s) or other CITY agents will continue to develop and participate in waste prevention activities including, source reduction and Diversion activities, which may reduce the amount of material delivered to the Disposal Facility. Nothing in this Contract shall restrict CITY, Collection Contractor(s) or other CITY agents from any such activities.

ARTICLE 5. OBLIGATIONS OF CONTRACTOR

5.01 General. During the term of this Contract, and consistent with Section 5.12 herein, CONTRACTOR shall provide Disposal Services under the terms and conditions of this Disposal Services Contract. CONTRACTOR shall perform its obligations with respect to Disposal Services hereunder in accordance with sound management and operations practice, regulatory and permit requirements, applicable law, the provisions hereof, and covenants, conditions, and restrictions pertaining to the Disposal of Mixed Materials, Garbage and Residue.

5.02 Facility Permits.

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

5.02.1.1 CONTRACTOR shall keep CITY fully informed, in a timely manner, of its progress in securing permits, or renewals of permits that occur during the term of this Contract as they pertain to the Disposal operations at the Disposal Facility in accordance with this Contract and the costs related thereto.

5.02.1.2 CONTRACTOR shall provide CITY, upon CITY'S request, with copies of any applications that CONTRACTOR submits to any regulatory body in connection with the issuance of new permits, or the extension, revision or modification of existing permits with respect to the Disposal Facility.

5.02.2 CONTRACTOR Compliance with Permits. CONTRACTOR shall comply with all permits, terms, and conditions of such permits as they may be amended or superseded related to the operation and maintenance of the Disposal Facility. Over the term of this Contract, CONTRACTOR shall be solely responsible for assuring that the facility is operated in compliance with all requirements of the California Environmental Quality Act (CEQA). CONTRACTOR shall be solely responsible for paying any fines or penalties imposed by governmental agencies for CONTRACTOR'S noncompliance with permit terms or CONTRACTOR'S failure to obtain or maintain compliance with the requirements of the permits necessary to operate the Disposal Facility.

5.03 Operations. CONTRACTOR, at its cost and expense, shall operate the Disposal Facility in the manner required by applicable law and permits. CONTRACTOR'S responsibilities for the Disposal Facility shall include, but are not limited to, the following:

5.03.1 Operation, management, and maintenance of the Disposal Facility will comply with sound management and operations practice, regulatory and permit requirements, applicable law, standard industry practices, and covenants, conditions and restrictions pertaining to the site;

5.03.2 Provision, operation, and maintenance of all equipment, rolling stock, and supplies necessary for operations, and environmental monitoring; and

5.03.3 Operation, maintenance and management of leachate and Disposal Facility gas management systems, groundwater monitoring and management systems, storm water drainage and control systems, treatment facilities, buildings, on-site roadways, utilities, and any other required facility elements.

5.04 Days and Hours of Operation. CONTRACTOR shall operate the Disposal Facility for the receipt of Mixed Materials, Garbage and Residue in accordance with the days and hours of operation as set forth in all permits. At a minimum, CONTRACTOR shall accept Mixed Materials, Garbage and Residue delivered by the Collection Contractor(s) Monday through Friday from 6:00 a.m. to 5:00 p.m. and Saturday from 6:00 a.m. to 4:30 p.m. CONTRACTOR may not reduce the hours or total number of hours for acceptance of Mixed Materials, Garbage and Residue delivered by the Collection Contractor(s) required by the Contract without the concurrence of CITY and Collection Contractor(s) except where such changes are required by a change in the Disposal Facility permits.

5.05 Emergency Services. In the event of a tornado, major storm, earthquake, fire, natural disaster or other such event, the Contract Manager may require CONTRACTOR to extend the hours of operation in order to accept materials from CITY'S Collection Contractor(s). However, CONTRACTOR shall not be required to extend the hours of operation to the extent that such extension would cause CONTRACTOR to violate its permit(s).

5.06 Holidays. CONTRACTOR shall not be required to accept Mixed Materials, Garbage or Residue from the Collection Contractor(s) at the Disposal Facility on January 1, Thanksgiving Day and December 25.

5.07 Average Turnaround Time.

5.07.1 In the event CONTRACTOR is not the MM&O Collection Contractor as defined under this Contract, CONTRACTOR shall operate the Disposal Facility so that all MM&O Collection Contractors' vehicles are processed, unloaded, and exited from the facility no more than twenty (20) minutes, on average, after arriving at the scale house and mounting the scale to weigh-in. For purposes of this 5.07.1, "on average" shall be calculated on a monthly basis.

5.07.2 In the event CONTRACTOR is the MM&O Collection Contractor, but CITY has exercised its authority to have other personnel Collect and deliver Mixed Materials, Garbage or Residue to the Disposal Facility as a result of a strike or other labor unrest, CONTRACTOR shall operate the Disposal Facility so that all Collection vehicles delivering Mixed Materials, Garbage and Residue from CITY are processed, unloaded, and exited from the facility no more than twenty (20) minutes, on average after arriving at the scale house and mounting the scale to weigh-in, unless CITY has approved a labor peace plan specifying a longer time period.

5.08 Scale Operation.

5.08.1 Weighing Standards and Procedures. The scale house(s) at the Disposal Facility entrance shall serve as the location for weighing vehicles and charging Tipping Fees as provided herein. All weighing shall be conducted by CONTRACTOR or its agents by a licensed weigh master. CONTRACTOR scale house personnel shall be responsible for inspecting the Mixed Materials, Garbage and Residue delivered to the Disposal Facility. The Collection Contractor(s)' vehicles shall be charged Tipping Fees based on the Tonnage of Mixed Materials, Garbage and Residue accepted by the Disposal Facility and the applicable Disposal Tipping Fees as set forth in Exhibit 1 which is attached to and included in this Contract. CONTRACTOR shall weigh and record inbound weights of all Collection Contractor(s) vehicles when the vehicles arrive at the Disposal Facility. In addition, CONTRACTOR shall weigh and record outbound weights of such vehicles for which CONTRACTOR does not maintain tare weight information. CONTRACTOR shall provide each driver with a receipt showing the date, time, and quantity and type of Mixed Materials, Garbage or Residue delivered to the Disposal Facility and the Tipping Fee charged for such material. The scale house computer system shall compile information into various reports, which typically include for each transaction, date of receipt, inbound and (as applicable) outbound times, documentation of the Tipping Fee charged, inbound and outbound weights of vehicle, vehicle identification number, hauler identification and/or classification, customer account, material type, vehicle type, weight of load, and invoice number.

5.08.2 Maintenance and Operation. CONTRACTOR shall maintain, in accordance with applicable law, at least two (2) State-certified motor vehicle scales at the Disposal Facility. All scales shall be linked to a centralized computer recording and billing system which shall be compatible with CONTRACTOR'S systems and account for tracking all incoming and outgoing materials. CONTRACTOR shall operate such scales during facility receiving hours, established in Section 5.04, provided that CONTRACTOR shall provide CITY with access to weighing information at all times and copies thereof within three Work Days of request from CITY.

5.08.3 Vehicle Tare Weights. Between the time this Contract is executed and June 1, 2015, CONTRACTOR shall weigh and determine the unloaded ("tare") weight of each MM&O Collection Contractor's vehicles to be used to deliver Mixed Materials, Garbage or Mixed Materials Residue to the Disposal Facility beginning July 1, 2015. Before July 1, 2015, CONTRACTOR shall provide CITY and MM&O Collection Contractor with a report listing vehicle tare weight information, which shall include, at a minimum, hauler name, tare weight, vehicle identification number, and date tare weight was determined. CONTRACTOR shall, at least every six (6) months, reweigh and revise tare weights for all MM&O Collection Contractors' vehicles used to deliver Mixed Materials, Garbage or Mixed Materials Residue to the Disposal Facility.

5.08.3.1 When CONTRACTOR is notified in writing by the MM&O Contractor that new vehicles have been placed into service or significant repairs have been made to vehicles, CONTRACTOR shall promptly weigh such vehicles and determine the tare weight of each vehicle. Within ten (10) Work Days of weighing, CONTRACTOR shall provide CITY and MM&O Collection Contractor with a report listing vehicle tare weight information. CONTRACTOR, CITY, and MM&O Collection Contractor shall have the right to request re-weighing of vehicles up to two (2) times per year, unless there is reasonable suspicion or evidence that tare weights are not accurate, in which case the scales shall be recalibrated in accordance with the provision so of Section 5.08.6 and tare weights shall be updated. (Note: Sections 5.08.3 and 5.08.3.1 may be deleted or modified based on the final Disposal Services Contract award.)

5.08.4 Substitute Scales. To the extent practicable, if a scale is inoperable, being tested or otherwise unavailable, all vehicles shall be weighed on the remaining operating scale(s). To the extent that all Disposal Facility scales are inoperable, being tested, or otherwise unavailable, CONTRACTOR shall substitute portable scales until the permanent scales are replaced or repaired. CONTRACTOR shall arrange for any inoperable scale to be repaired as soon as possible and, in any event, within three (3) Work Days of the failure of the permanent scale. CONTRACTOR shall arrange to immediately obtain a temporary substitute scale(s) should the repair of the permanent scale require more than twelve (12) hours.

5.08.5 Estimates. Pending substitution of portable scales or during power outages, CONTRACTOR shall estimate the Tonnage of Mixed Materials, Garbage and Residue delivered to the Disposal Facility by utilizing the arithmetic average of that vehicle's recorded Tons of Mixed Materials, Garbage or Residue delivered on its preceding three (3) deliveries, on the same day of the week, to the Disposal Facility, with the exception that the estimate of Tonnage in roll-off boxes shall be made by multiplying the estimated number of cubic yards of Mixed Materials, or Garbage delivered per non-compacted roll-off box by 0.25 Tons per cubic yard or compacted roll-off box by 0.50 Tons per cubic yard or such other amounts as may be agreed to in writing between CONTRACTOR and CITY.

5.08.5.1 All information required by this Article shall continue to be recorded for each delivery of Mixed Material, Garbage or Residue to the Disposal Facility during any period the scales are out of service.

5.08.6 Testing. CONTRACTOR shall test and calibrate all scales in accordance with applicable law, but at least every twelve (12) months. Upon CITY request, CONTRACTOR shall provide CITY with copies of test results. CONTRACTOR shall further test and calibrate any or all scales upon written request therefore by CITY, within three (3) Work Days of such request. If such test results indicate that the scale or scales complied with applicable law, CITY shall reimburse CONTRACTOR the direct costs of such tests. If such test results indicate that

the scale or scales did not comply with applicable law, CONTRACTOR shall bear the costs thereof and CONTRACTOR shall at its own cost adjust and correct, consistent with the results of such test, all weight measurements recorded and Tipping Fees calculated, charged and paid, as the case may be, from the date of such request.

5.08.7 Records. CONTRACTOR shall maintain scale records that provide information such as, but not limited to, date of receipt, inbound and, (as applicable) outbound time, inbound and outbound weights of vehicles, Tipping Fee charged, vehicle identification number, vehicle type, type of material, hauler identification and/or classification, type, and weight. CONTRACTOR shall also maintain records of all outbound materials that provide information such as, but not limited to material type, weight, destination and revenue from sale of materials. CONTRACTOR'S records shall, to the extent practical, include the above information for all Oakland material delivered by self-haulers.

5.09 Personnel. CONTRACTOR shall engage and train qualified and competent employees, including managerial, supervisory, clerical, maintenance, and operating personnel, in numbers necessary and sufficient for operation of the Disposal Facility and to perform CONTRACTOR'S obligations hereunder.

5.10 Ownership of Materials. Once Mixed Materials, Garbage or Residue are delivered to the Disposal Facility by Collection Contractor(s), ownership and possession of such material shall transfer directly from the Collection Contractor(s) to CONTRACTOR. CONTRACTOR is hereby granted the right to retain, recycle, Process, Dispose, subject to the limitations set forth in Section 1.12 on allowable Disposal methodologies, and otherwise use such materials, or any part thereof, in any lawful fashion or for any lawful purpose desired by CONTRACTOR. Such right shall include CONTRACTOR'S right to retain any benefit resulting from its right to retain, recycle, Process, Dispose, or reuse the Mixed Materials, Garbage or Residue in accordance with the provisions of the Revenue Sharing Plan provided by CONTRACTOR as set forth in Exhibit 6 which is attached to and included in this Contract.

5.11 Rejection of Unacceptable Waste.

5.11.1 Inspection. CONTRACTOR shall use standard industry practices to endeavor to detect and discover Unacceptable Waste and shall not knowingly accept Unacceptable Waste at the Disposal Facility. CONTRACTOR shall comply with the inspection procedures contained in its permit requirements. CONTRACTOR shall promptly modify such procedure to reflect any changes in permits or applicable law.

5.11.2 Unacceptable Waste Handling and Costs. CONTRACTOR shall arrange for or provide transportation and delivery to an appropriately permitted facility of all Unacceptable Waste, which has been accepted by CONTRACTOR, that are encountered and which cannot be accepted at the Disposal Facility. CONTRACTOR is solely responsible for handling and arranging transport and disposition of any Unacceptable Waste that is contained in or with Mixed Materials, Garbage or Residue accepted by CONTRACTOR, and for all related costs.

5.11.3 Remedies for Rejected Materials. If CONTRACTOR rejects material delivered to the Disposal Facility by Collection Contractor(s), because it contains Unacceptable Waste including Hazardous Wastes, CONTRACTOR shall direct Collection Contractor(s) to remove and dispose of it in a safe and lawful manner, at the sole expense of the Collection Contractor(s). In the event that Unacceptable Waste is delivered to the Disposal Facility, CONTRACTOR shall be entitled to pursue whatever remedies, if any, it may have against Collection Contractor(s) bringing such Unacceptable Waste to the Disposal Facility, provided

that in no case shall CITY be considered to have brought such Unacceptable Waste to the Disposal Facility. In the event the Collection Contractor(s) delivers Unacceptable Waste on a frequent or continuous basis and the Collection Contractor(s) refuses to provide for the proper handling and disposition of such Unacceptable Waste, CONTRACTOR shall provide written notice to CITY of such refusal by Collection Contractor(s). Nothing herein shall excuse CONTRACTOR from the responsibility of handling such Unacceptable Waste in a lawful manner and to arrange for the proper disposition of such materials. In the event the CITY delivers Unacceptable Waste to the Disposal Facility, CITY shall have the same responsibility as the Collection Contractor(s).

5.11.4 Notification. In the event CONTRACTOR is not the Collection Contractor(s) and CONTRACTOR rejects delivered materials, CONTRACTOR shall immediately notify the Collection Contractor(s) verbally and then follow such verbal notification with written notice. The written notice will identify: the date and time of occurrence; material type; material weight or volume; characterization of material; and CONTRACTOR'S reason for rejection of the delivered material.

5.12 Reservation of Disposal Capacity. CONTRACTOR guarantees its ability to accept and Dispose all Mixed Materials, Garbage and Mixed Material Residue delivered to the Disposal Facility by, or on behalf of, CITY, and CITY'S MM&O Collection Contractor, or successor for thirty (30) years from July 1, 2015. CONTRACTOR shall be responsible for reasonably estimating the quantity of capacity that it shall be required to provide to accept and Dispose of all Mixed Materials, Garbage and Mixed Materials Residue generated in CITY over the term of the Contract. CITY makes no representations, and is under no obligation, regarding the quantity or composition of the Mixed Material, Garbage and Mixed Material Residue to be delivered to the Disposal Facility by, or on behalf of, CITY and CITY'S MM&O Collection Contractor or successor.

5.13 Alternate Disposal Facility.

5.13.1 If CONTRACTOR becomes unable to accept Mixed Material, Garbage and Mixed Materials Residue generated in CITY at the Disposal Facility because it did not use reasonable business efforts in resisting changes, alterations and amendments to permits, or due to reasons within its control and which could have been avoided by the exercise of due care, or as the result of any labor unrest, including but not limited to, strike, slowdown, sick-out, picketing, or other concerted job action conducted by CONTRACTOR, CONTRACTOR'S employees or subcontractors, then and only if, and to the extent, CONTRACTOR is actually prevented from accepting, Processing and/or transferring Mixed Materials, Garbage and Mixed Materials Residue at the Disposal Facility because of a concerted labor action, CONTRACTOR shall (i) accept, and Dispose of such Mixed Materials, Garbage and Mixed Materials Residue at another Disposal Facility owned by it (or by another company which is owned and controlled, directly or indirectly, by CONTRACTOR), at the then-current Disposal Tipping Fees in effect under this Contract, and shall pay any additional transportation costs incurred by the MM&O Collection Contractor in delivering the Mixed Materials, Garbage and Mixed Materials Residue to the other Disposal Facility, or (ii) shall arrange for all Mixed Materials, Garbage and Mixed Materials Residue to be accepted, and Disposed at a disposal facility not owned by it or an affiliated company, in which case CONTRACTOR shall pay any difference in the fees charged at such disposal facility plus any additional transportation costs incurred in delivering Mixed Materials, Garbage and Mixed Materials Residue to the disposal facility, and the then-current Disposal Tipping Fees in effect under this Contract. If as a result of a labor action directed at CONTRACTOR, CONTRACTOR makes arrangements that allow for continued operation of the Disposal Facility during the labor action, then it shall not be obligated to provide an alternative

Disposal Facility and CITY shall be required to direct all Mixed Materials, Garbage and Mixed Materials Residue to the Disposal Facility, providing operations at the Disposal Facility are consistent with the requirements under this Contract.

5.13.2 If CONTRACTOR, despite using reasonable business efforts to resist changes, alterations and amendments to permits under Section 5.02, becomes unable to accept and Dispose of Mixed Materials, Garbage and Mixed Materials Residue generated in CITY at the Disposal Facility, or if CONTRACTOR becomes unable to accept and Dispose of Mixed Materials, Garbage and Mixed Materials Residue at the Disposal Facility as the result of an event of Force Majeure as defined herein then CONTRACTOR shall, to the extent it is legally able to do so, offer to accept and Dispose of Mixed Materials, Garbage and Mixed Materials Residue at another disposal facility owned by it (or by another company which is owned and controlled, directly or indirectly, by CONTRACTOR), at the then-current Disposal Tipping Fees in effect under this Contract. CONTRACTOR has no obligation, however, to pay for additional transportation costs incurred by the MM&O Collection Contractor. CITY has no obligation to accept such offer and, if CITY rejects such an offer, CITY may terminate this Contract by giving written notice in the manner as set forth in Article 21 of this Contract. Such termination shall be effective thirty (30) calendar days after CITY has given notice.

5.14 Monthly Report. Beginning on July 1, 2015, and monthly during the term of this Contract, CONTRACTOR shall provide a complete and accurate monthly report no later than twenty (20) calendar days after the end of the reporting month. Therefore, the first report will be due no later than August 20, 2015 for the reporting month of July 2015. The report shall be prepared in an electronic format in a form approved by the Contract Manager and shall, if requested by CITY, include data that can be uploaded by CITY. The report shall include the total Tonnage of Mixed Materials, Garbage and Residue generated in the CITY that was accepted and Disposed at the Disposal Facility and shall also list other applicable information, including date of receipt, inbound and outbound time, inbound and outbound weights of vehicles, Disposal Tipping Fee charged, vehicle identification number, vehicle type, type of material, hauler identification type, and weight, separately for each of the following categories for material Collected by the Collection Contractor(s) within CITY: residential Garbage, Mixed Materials, Mixed Materials Residue, residential Organic Materials Residue, or residential Recyclable Materials Residue, commercial Garbage, Mixed Materials, or Residue, and CITY Garbage, Mixed Materials, or Residue. In addition, the report shall include Tonnage information for materials generated in the CITY delivered by other companies, small vehicles, CITY hauled materials, and other self-haulers, Recovered Materials and destination of outbound materials. The monthly report shall also include the following using an allocation methodology, where appropriate, that is acceptable to CITY:

5.14.1 Tonnage information by material type for material accepted at the Disposal Facility;

5.14.2 Gross revenue from the sale of each Revenue Producing Resource;

5.14.3 Number and nature of rejected loads during the month;

5.14.4 In addition CONTRACTOR shall maintain and make the following information available to CITY upon request:

5.14.4.1 Number and nature of occurrences in which CONTRACTOR identified Hazardous Waste inadvertently accepted; and

5.14.4.2 Number and nature of any notices of violation.

5.15 Annual Report of Disposal Facility Activity. Beginning February 15, 2016, and annually thereafter during the term of this Contract, CONTRACTOR shall submit a complete and accurate annual report of Disposal Facility activity to CITY. Annual reports shall be submitted no later than forty-five (45) calendar days after the end of each full or partial calendar year. Therefore, the first report will be due no later than February 15, 2016, for the partial calendar year of July 2015 through December 2015. The report shall be prepared in an electronic format in a form approved by the Contract Manager and shall, if requested by CITY, include data that can be uploaded by CITY. This report shall contain all items required by Section 5.14 in addition to the following: a list of parties that CONTRACTOR has guaranteed capacity to through written agreements, the annual estimated Tonnage to be delivered by each party, and the term of CONTRACTOR'S capacity commitment. In the event CONTRACTOR has agreements with private companies, the name of the party may be withheld from the list; however, the annual Tonnage estimate and term of the commitment must be provided.

5.15.1 The annual report shall include information on amounts of Mixed Materials, Garbage and/or Residue delivered to the Disposal Facility and Disposed, Recycled or Diverted and other information that CITY may request in order to meet its related federal, State and local solid waste obligations.

5.16 Correction of Reports. In the event CONTRACTOR is notified in writing by CITY of the need to resubmit a corrected monthly or annual report, as set forth in Section 5.14 or 5.15 above, CONTRACTOR shall submit the corrected report within three (3) Work Days of the written notification.

5.17 Closure and Post-Closure of Landfill. CONTRACTOR shall safely manage the Disposal Facility in full regulatory compliance not only during normal Disposal Facility operating period but also during the Disposal Facility closure and Post-Closure periods. CONTRACTOR acknowledges that it is solely responsible for: (i) the appropriate closure and Post-Closure activities of the Disposal Facility; and, (ii) the establishment and funding of any reserve funds required by applicable law for the purposes of providing funds for the payment of costs of closure of the Disposal Facility (or any Landfill cell within the Disposal Facility) or Post-Closure activities relating to the Disposal Facility. Without limitation, in no event shall CITY or Collection Contractor(s) be responsible for paying any deficiencies in such required reserves. In addition, CITY or Collection Contractors(s) shall have no responsibility to make any payments in the event that actual closure and Post-Closure costs relating to the Disposal Facility exceed the amounts upon which CONTRACTOR'S Disposal Tipping Fee was based on and the amount reserved by CONTRACTOR for such purposes.

5.18 Right to Enter Disposal Facility and Observe Operations. Upon reasonable written notice of not less than twenty-four (24) hours, CITY and its designated representative(s) shall have the right to enter, observe and inspect the Disposal Facility at any time during operations; conduct studies or surveys of the Disposal Facility; meet with the Disposal Facility manager(s) or their representatives at any time; and meet with other employees upon request, which request shall not be unreasonably denied by CONTRACTOR, provided that CITY and its representatives comply with CONTRACTOR'S reasonable safety and security rules and shall not interfere with the work of CONTRACTOR or its subcontractors. Upon CITY request, CONTRACTOR shall make personnel available to accompany CITY employees on inspections. CONTRACTOR shall ensure that its employees cooperate with CITY and respond to CITY'S reasonable inquiries.

5.19 Provision of Emergency Services. CONTRACTOR shall provide emergency services, at CITY'S request, in the event of major accidents, disruptions or natural calamities.

CONTRACTOR shall be capable of providing emergency services within twenty-four (24) hours of notification by CITY, or as soon thereafter as is reasonably practical, in light of the circumstances. Emergency services that exceed CONTRACTOR'S obligations under this Contract including, but not limited to, obligations related to facility receiving hours, the types and quantities of permitted materials accepted at the Disposal Facility, and the nature of resource recovery activities, shall be compensated through a modification to the scope of services using procedures set forth on Section 5.20.

5.19.1 Specifically, with reference to any legal action contesting charges for services under this Contract or the MM&O Collection Contract, should a court of competent jurisdiction or other regulatory agency set aside, invalidate or stay all or a portion of the Maximum Services Rate or Disposal Tipping Fees established by City, Contractor agrees to continue to provide Disposal Services as otherwise set forth herein. City may take such urgency actions as necessary to facilitate Contractor's continuation of Disposal Services, potentially including interim suspension of portions of MM&O or Disposal Services. Under such circumstances, City and Contractor agree to cooperate and mutually act in good faith and, if needed, immediately meet and confer to address the impact of these legal actions. Such legal actions shall not be considered a change in law or force majeure event excusing Contractor's performance.

5.19.2 If as a result of a legal action the Contractor is unable to include Governmental Fees in the rates it charges for Disposal Services, then Contractor agrees, upon direction from the City, to reduce its charges to MM&O Contractor in an amount corresponding to the disallowed fee or charge, and shall thereafter not be required to remit the amount of the disallowed fee or charge to the City or other governmental entity provided it is not collected from MM&O Contractor.

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

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

satisfactory agreement to address this shortfall has been reached between CONTRACTOR and CITY.

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

5.20 Modifications to Scope of Service.

5.20.1 General. CITY may direct CONTRACTOR to perform additional services (including, but not limited to, performance of resource recovery activities) or modify the manner in which CONTRACTOR performs existing services (including, but not limited to, the modifications to or elimination of services). CONTRACTOR'S Disposal Tipping Fee shall be increased or decreased, as appropriate, to give effect to these adjustments.

5.20.2 Implementing Changes in Service. CONTRACTOR shall submit a proposal to perform such additional services pursuant to Section 5.20.3 below. CITY shall consider CONTRACTOR's proposal and upon CITY approval or determination, CITY will issue a notice approving the modification to the scope of service and determine the amount by which the Disposal Tipping Fee should be adjusted. CONTRACTOR shall implement the changes in accordance with the schedule directed by CITY, regardless of whether the parties agree on the Disposal Tipping Fee adjustment amount. If the parties do not agree on the adjustment amount, CONTRACTOR may challenge its adequacy pursuant to Article 28.

5.20.3 Service Proposal. Within sixty (60) calendar days of CITY request for a proposal to modify services, CONTRACTOR shall present its proposal to modify existing services. At a minimum, the proposal shall contain a complete description of the following:

5.20.3.1 Program objectives and goals to be used in measuring the success of the program as discussed in Section 5.20.5 below;

5.20.3.2 Methodology to be employed (changes to equipment, staffing, etc.);

5.20.3.3 Equipment to be utilized (equipment number, types, capacity, age, etc.);

5.20.3.4 Labor requirements (changes in number of employees by classification);

5.20.3.5 Provision for program publicity, education, and marketing (if appropriate);

5.20.3.6 Estimate of the impact of the service modification (increased Diversion Tonnage, reduced costs, increased public service, etc.); and

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

5.20.3.8 CITY may request the assistance of an independent third party to review the proposal. The reasonable costs of such review shall be paid by CONTRACTOR if the modification to the scope of services is initiated by CONTRACTOR or, by CITY if the modification to the scope of services is initiated by CITY. CONTRACTOR'S refusal to pay the

reasonable cost of review of a CONTRACTOR-initiated proposal shall be grounds for CITY rejection of such proposal.

5.20.3.9 CITY may request copies of, or access to, CONTRACTOR'S operating and business records reasonably required to verify the reasonableness and accuracy of the impacts associated with a modification to the scope of services. CONTRACTOR shall fully cooperate with CITY'S request and provide CITY and its agent(s) copies of or access to CONTRACTOR'S records.

5.20.4 Termination for Cause. CITY shall have the right to terminate a program for cause, at no cost to CITY or CITY'S ratepayers if CONTRACTOR is not achieving the program's agreed to and defined goals and objectives as approved by CITY in accordance with Section 5.20.3. Prior to such termination CITY shall meet and confer with CONTRACTOR for a period of up to ninety (90) calendar days to resolve CITY'S concerns. Thereafter, CITY may terminate the program if CITY reasonably believes CONTRACTOR cannot meet or is not meeting the agreed to and defined project goals and objectives. Notwithstanding these changes, CONTRACTOR shall continue the program during the ninety (90) day period unless instructed in writing by CITY to discontinue the program.

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

5.21 Recovered Materials. CONTRACTOR shall use reasonable efforts to operate the Disposal Facility so as to segregate Recoverable Materials. CONTRACTOR shall document the quantity of Recovered Materials removed from the Garbage, Mixed Materials or Residue delivered by the MM&O Collection Contractor and the quantity of such material Diverted from Disposal. CONTRACTOR shall calculate the quantity of Recovered Materials Diverted from Disposal on a monthly basis using a methodology acceptable to CITY and shall report thereon in accordance with reporting requirements set forth herein. CONTRACTOR shall provide resource recovery programs as may be agreed between CITY and CONTRACTOR to Divert Recoverable Materials from Disposal.

5.22 Other Services. CONTRACTOR shall provide additional services not otherwise contemplated under this Contract at a price to be mutually agreed upon between CITY and CONTRACTOR. In the event CONTRACTOR and CITY cannot agree on terms, conditions and price of such service or program CITY shall have the right to procure the service of other vendors or contractors to provide the requested service or program at a location other than CONTRACTOR'S Disposal Facility.

5.23 CITY Delivered Materials. CONTRACTOR shall dispose of dirt and debris, Bulky Goods, and tires with or without rims if offered for Disposal as Mixed Materials or Garbage which are collected by CITY crews and delivered by CITY vehicles to the Disposal Facility.

5.24 Non-Permitted Companies. CONTRACTOR recognizes that collection of Construction and Demolition Debris in CITY is regulated by CITY, and in most cases may only be performed by companies that have obtained permits from CITY for Construction and Demolition Debris collection. For those commercial loads containing materials that are identified by the individual delivering the materials as being generated in CITY, CONTRACTOR

shall provide a monthly statement as part of the monthly report, listing the date and weight of each load, and the name of the company delivering each load. CONTRACTOR shall also post, on a sign in clear view of all customers, CITY'S requirement that a permit is required for companies delivering Construction and Demolition Debris generated in the CITY in Roll-Off Boxes to the Disposal Facility.

5.25 Notification of Non-Payment. CONTRACTOR shall notify the Contract Manager in writing or by email in the event the MM&O Contractor fails to pay invoices submitted by CONTRACTOR for the provision of Disposal Services within thirty (30) days of the due date.

5.26 Cessation of Disposal Services to MM&O Contractor. CONTRACTOR may cease to provide Disposal Services to CITY'S MM&O Contractor, only after giving CITY thirty (30) calendar days advance written notice, to be served as provided in Article 21, upon the happening of the following event

5.26.1 CONTRACTOR has provided written notice to CITY and CITY'S MM&O Contractor that CITY'S MM&O Contractor has failed to pay CONTRACTOR for Disposal Services for a period of two (2) months and said non-payment has not been cured within thirty (30) calendar days of receipt of written notice by CITY.

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

5.27.1 Within two (2) hours of notification to CONTRACTOR by labor that a Labor Disruption has been authorized, CONTRACTOR shall notify the Public Works Director and Contract Manager by telephone and or electronic communication and follow up with confirmation to the CITY Administrator within twelve (12) hours of such notice.

5.27.2 CONTRACTOR will bring in alternate work forces within three (3) Work Days of the commencement of a Labor Disruption for the purpose of providing Disposal Services in accordance with this Contract.

5.27.3 If necessary, CONTRACTOR shall provide disposal at an Alternate Facility pursuant to Section 5.13.

5.27.4 If after thirty (30) days from the commencement of a Labor Disruption there is a continuing CONTRACTOR failure to materially perform the Disposal Services, such failure to perform shall be considered a default under Article 11 and CITY may cancel this Contract. In such an event, CITY shall not waive its right to seek damages from CONTRACTOR for any increase in cost as a result of the breach of this Contract by CONTRACTOR and the consequential election by CITY to cancel the Contract and move forward with alternate collection alternatives.

5.27.5 If CONTRACTOR fails to provide Disposal Services pursuant to Sections 5.27.2 and/or 5.27.3 within three (3) Work Days of a Labor Disruption, then CITY may begin to impose liquidated damages under Section 24.01.1 for such failure no earlier than five (5) Work Days after CONTRACTOR provides notice of the Labor Disruption to CITY. However, a claim for liquidated damages may not be sought unless the Labor Disruption is caused by a dispute between CONTRACTOR and the employees employed at facilities covered by this Contract.

ARTICLE 6. DISPOSAL TIPPING FEE

6.01 Disposal Tipping Fee. The Disposal Tipping Fee established under this Section 6.01 includes all costs associated with complying with all 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 disposition of Mixed Materials, Garbage or Residue that are in force on the effective date 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. The Disposal Tipping Fee comprises two (2) elements: 1) a Disposal Fee Element, and 2) a Government Fee Element.

6.01.1 Annual Adjustments to the Disposal Fee Element. Except as provided in this Article 6, the Disposal Fee Element shall not be adjusted over the term of this Contract.

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

6.01.1.2 Annual Disposal Fee Element Adjustment. Beginning on July 1, 2016, and annually thereafter, the Disposal Fee Element of the Disposal Tipping Fee shall be adjusted by the RRI adjustment as set forth in Exhibit 2.

6.02 Government Fees. The Disposal Tipping Fee includes the Government Fee Elements set forth in Exhibit 1.

6.02.1 Changes in Government Fee Elements. Government Fee Elements shall be adjusted each July 1 as needed, so that they equal the then current government fees required to be paid by CONTRACTOR. In the event of a new government fee, or a change in an existing government fee, which becomes effective at some time other than July 1 of any year, CONTRACTOR shall be compensated for such change through the inclusion of a "Retroactive Element" in the next rate adjustment. CITY and CONTRACTOR agree that the "Retroactive Element" shall be an amount needed to compensate CONTRACTOR for increases in fees paid during the period from the inception of the fee increase through the subsequent June 30 and shall not include interest, overhead or any other costs of any type. The "Retroactive Element" shall only be included in the rate structure for twelve (12) months or that period necessary to allow CONTRACTOR to recover all retroactive amounts, if less than twelve (12) months, and shall be removed prior to calculating the rates to be set as of the subsequent July 1. However, no governmental fees or charges to which CONTRACTOR agrees contractually or negotiates shall be passed through to customers unless agreed to in writing by CITY.

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

6.03 Annual Adjustment. The annual Disposal Tipping Fee adjustment shall comprise the changes in the Disposal Fee Element, subject to the limitations set forth above, and the changes in the Governmental Fee Elements.

6.04 Changes in Disposal Fee Element Due to Changes in Law.

6.04.1 The Disposal Fee Element in Exhibit 1 includes all costs associated with complying with all existing laws, governmental regulations and permits applicable to the Disposal Facility as of the date of this Contract and including requirements that may be imposed on permits for which CONTRACTOR has applied for including amendments to permits, as of the effective date of this Contract. The purposes of this Section 6.04 are (a) to specify the costs of compliance with laws and governmental regulations that is included in the Disposal Fee Element, as well as other similar costs, whose increase may not result in an increase in the Disposal Fee Element, (b) to identify those laws and governmental regulations that may be enacted in the future, a proportionate share of the cost of which may be the basis for an increase in the Disposal Fee Element, and (c) to specify the method by which CITY'S proportionate share of such costs will be determined.

6.04.2 The Disposal Fee Element will not be increased as a result of any of the following:

6.04.2.1 Costs to comply with all laws and governmental regulations existing as of the Effective Date, if any, which become effective, or which require compliance by a date, after the Effective Date of this Contract, including but not limited to, all closure and Post-Closure cost regulations.

6.04.2.2 Costs due to CONTRACTOR'S negligence, active or passive, or intentional misconduct, or fines or penalties for violations of law.

6.04.2.3 Costs for which CONTRACTOR is already responsible under other provisions of this Contract.

6.04.2.4 Costs attributable to the classification of the Disposal Facility that are only necessary in order to allow CONTRACTOR to accept material other than Garbage or Residue at the Disposal Facility.

6.04.2.5 Costs attributable to permits and amendments to permits, (i) which have been issued to CONTRACTOR, or (ii) for which CONTRACTOR has applied for by the effective date of this Contract (attached as Exhibit 7).

6.04.3 The Disposal Fee Element may be increased to reflect CITY'S proportionate share, determined as provided in Section 6.04.4, of the net increase in the Disposal Fee Element attributable to the following, to the extent mandated by Changes in Laws: (1) costs of making improvements or modifications at the Disposal Facility, (2) costs of performing closure/Post-Closure monitoring at the Disposal Facility, and/or (3) costs caused directly by, or directly necessary for operations at the Disposal Facility, including costs of site-specific record keeping and reporting, if such costs (in items (1), (2), and/or (3)) are necessary to comply with changes to the existing laws and governmental regulations enacted or promulgated after the effective date of this Contract, and not otherwise excluded by virtue of Section 6.04.2.1, with new laws and governmental regulations enacted or promulgated after the effective date of this Contract and not otherwise excluded by virtue of Section 6.04.2, with new permits and changes to the terms and conditions contained in existing permits (except as provided in Section 6.04.2) applicable to the Disposal Facility.

6.04.3.1 This Article is not intended to allow the Disposal Fee Element to be increased to cover increased overhead and general or administrative expenses unless they can be specifically identified and related to disposal of Mixed Materials, Garbage or Residue Collected in CITY, e.g., a laboratory technician added at the regional level, and which are attributable to Changes in Law.

6.04.4 Proportionate Share of Disposal Facility Costs. To the extent that the net increase in costs of complying with Changes in Law are attributable to material already in place at the Disposal Facility at the time such Change in Law occurs, then CITY'S proportionate share of the present value of such increases in costs shall be determined by multiplying such increase in costs by a fraction, the numerator of which is the amount of material as of the time of increase is computed that is deposited at the Disposal Facility which was delivered under this Contract and the denominator of which is the total amount of material then deposited at the Disposal Facility from all sources. CONTRACTOR represents that these amounts as of January 1, 2015, are approximately (to be inserted based on Contract award) Tons and (to be inserted based on contract award) Tons, respectively. The costs of compliance with Changes in Law described in this section shall be calculated on a "per Ton" basis, amortized over the useful life of the facilities constructed, and the annual amortization incorporated in the Disposal Tipping Fee over the remaining term of this Contract. The annual increase in the Disposal Fee Element attributable to the amortization of such costs shall be determined by dividing CITY'S aggregate proportionate share of such costs by (i) the remaining term of this Contract and (ii) the average number of Tons of Mixed Materials and Garbage collected from within CITY'S boundaries during the preceding year. The annual amortization described in the prior sentence shall be added to the Disposal Fee Element after said Disposal Fee Element is otherwise adjusted for said year as set forth in Section 6.01.1, adjustments to reflect changes in the Governmental Fees Element as described below, and adjustments to the Disposal Fee Element described in the following section.

6.04.4.1 To the extent that the costs of complying with Changes in Law are attributable to material not yet in place at the Disposal Facility at the time such Change in Law occurs, then CITY'S proportionate share of such costs shall be determined by multiplying the present value of such costs by a fraction, the numerator of which is the average number of Tons of material from CITY Disposed of at the Disposal Facility during the preceding three (3) years multiplied by the number of years remaining in the term of this Contract and the denominator of which is the total remaining permitted air space available for Disposal at the Disposal Facility as of the date of the change. As of the effective date of this Contract, the remaining air space is approximately (to be completed based on Contract Award) Tons. The costs of compliance with Changes in Law shall be calculated on a "per Ton" basis and amortized over the remaining life of the Disposal Facility and the annual amortization incorporated in the Disposal Fee Element over the remaining term of this Contract by adding CITY'S proportionate share of such increases to the Disposal Fee Element. The annual amortization described in the prior sentence shall be added to the Disposal Fee Element after said Disposal Fee Element is otherwise adjusted for said year as set forth in Section 6.01.1, and to reflect changes in the Governmental Fees Element as described in the preceding paragraph above. In all cases in which CONTRACTOR requests an increase in the Disposal Fee Element above that provided for in Section 6.01.1 based on the costs of compliance with a Change in Law, CONTRACTOR shall provide CITY, on an annual basis, evidence showing (1) that the work required by the Change in Law has been performed, (2) the amount of costs actually incurred, and (3) that the costs incurred were necessary to comply with the Change in Law.

6.04.5 Procedures for Sharing in Cost of Changes in Laws. If CONTRACTOR believes that complying with Changes in Law will increase the costs of operating the Disposal Facility, and that it is entitled, under this Article to an increase in the Disposal Fee Element to reflect the costs of compliance, then it must follow the procedures in this Article before the Disposal Fee Element will be increased.

6.04.5.1 CONTRACTOR shall give CITY prompt notice (in no case less than ninety (90) days before their effective date, if possible) of the regulations, specifically identifying them and describing what changes in operations at the Disposal Facility are required, when compliance is required, and whether CONTRACTOR or the Disposal Facility is eligible for any exemptions or variances.

6.04.5.2 CONTRACTOR shall thereafter submit to CITY for review and comment, its proposed method for complying with the regulations, the estimated cost of compliance, CITY'S proportionate share thereof, and the associated increase necessary in the Disposal Fee Element. CITY will act promptly on the submission.

6.04.5.3 CONTRACTOR shall thereafter submit its proposed method of compliance to the appropriate regulatory agency. If the regulatory agency approves that method without conditions, the proportionate share of the costs necessary to implement that method of compliance will be the amount by which the Disposal Fee Element may be increased.

6.04.6 No fees or charges to which CONTRACTOR agrees contractually or negotiates shall be passed through to customers unless agreed to in writing by CITY.

6.05 Payment of Taxes. CONTRACTOR shall pay, when and as due, any and all governmental assessments, or taxes incurred as a result of CONTRACTOR'S provision of services under this Contract, including estimated taxes and shall provide CITY with proof of such payments promptly upon request.

6.06 Disposal Facility Closure/Post Closure Funding. CITY and CONTRACTOR agree that CITY shall not be liable for any Disposal Facility closure/Post-Closure costs for waste Disposal prior to July 1, 2015.

6.06.1 CONTRACTOR acknowledges and agrees that from July 1, 2015, going forward, the Disposal Tipping Fee adequately funds CITY'S liability for Disposal Facility closure/Post -Closure costs.

6.07 Proposal Development Fee. No later than thirty (30) calendar days after the execution of this Contract by CITY and CONTRACTOR, CONTRACTOR shall submit a one-time proposal development fee to CITY in the amount of Two Hundred Fifty Thousand Dollars ($250,000).

ARTICLE 7. INDEMNITY AND INSURANCE,

7.01 CONTRACTOR'S Duty to Indemnify CITY. CONTRACTOR shall and does indemnify and hold harmless CITY, its agents (for purposes of this Article, including attorneys and consultants), officers, employees, volunteers, successors, assigns, and appointed and elected officials (collectively "Indemnitees") from and against any and all losses, liabilities, claims, suits, allegations, actions, damages, interest, penalties, fines, forfeitures, demands and/or causes of action (collectively "claims") arising from or in connection with CONTRACTOR'S performance hereunder, including but not limited to closure/Post-Closure costs associated with a Change in Law related to Tonnage received prior to the Change in Law, except to the extent such claims arise out of the negligence or willful misconduct of CITY, in

which case CONTRACTOR'S indemnification shall be reduced in proportion to CITY'S degree of comparative fault. CONTRACTOR shall indemnify and hold harmless the Indemnitees from and against all costs of investigation, litigation, negotiation or alternative dispute resolution; counsel fees; expenses incurred in obtaining expert testimony and the attendance of witnesses; and all other expenses and liabilities incurred in connection with the defense of any action or proceedings brought thereon, and from and against any orders, judgments, or decrees which may be entered therein. CITY shall provide CONTRACTOR with prompt notice of any claims, and CONTRACTOR shall assume the defense of any claim, with counsel reasonably acceptable to the Indemnitees, and CONTRACTOR shall have authority to settle any claim, with CITY'S consent which may not be unreasonably withheld and provided such settlement fully releases and extinguishes Indemnitees' alleged liability under the claim. Where a conflict of interest exists between the Indemnitees and CONTRACTOR with respect to a claim, CONTRACTOR shall provide the Indemnitees with independent legal counsel of the Indemnitees' choice, at CONTRACTOR'S expense. Without limiting the generality of the foregoing, CONTRACTOR'S indemnification shall include: personal injury, death or damage to property (including contamination); product liability, violation of federal, State, or local law; or any other claim whatsoever connected with the activities of CONTRACTOR, its subcontractors, agents, and/or employees under this Contract or on account of the performance of character of the work performed hereunder, including unforeseen difficulties, accidents, occurrence, or omissions, including but not limited to, any failure to exclude Hazardous Waste from Collection or Processing; any claim that CONTRACTOR, or its agents, subcontractors, directors, officers, employees or representatives, has breached an express or implied warranty of merchantability or fitness for particular use or any other warranty relating to any materials marketed pursuant to this Contract; or any claim that any of them has violated any license, copyright, or other limitation on CONTRACTOR'S use of computer software in connection with CONTRACTOR'S performance of services under this Contract. Notwithstanding the foregoing, CONTRACTOR shall not be required to indemnify the Indemnitees for: (i) claims resulting entirely from the acts or omissions of independent (not affiliated with Contractor) third party owners or operators of facilities approved by CITY under this Contract, where such third party acts or omissions are beyond CONTRACTOR'S control; (ii) third party claims based solely on CONTRACTOR'S delivery of the de minimis amounts of materials excluded from the definition of Hazardous Waste under this Contract to a facility approved by CITY under this Contract, and (iii) any claim that CITY set or approved Disposal Tipping Fees in violation of applicable law. Approval of insurance coverage or acceptance of work or services by CITY under this Contract does not relieve CONTRACTOR or its agents, subcontractors, directors, officers, employees, or representatives of liability under this Article.

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

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

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

7.04 Hazardous Material Indemnification. CONTRACTOR shall indemnify, defend with counsel acceptable to CITY, and hold harmless, at CONTRACTOR'S sole cost and expense, CITY, its City Council, officers, officials, employees, volunteers and agents, and the Collection Contractor(s) (collectively, "Indemnitees") from and against any and all claims, damages, injuries, costs (including and without limit any and all response, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including reasonable attorneys' and expert witness fees, expenditures for investigation and remediation) and costs of any kind whatsoever, paid, imposed upon, incurred, or suffered by or asserted against any of the Indemnitees by reason of, or arising from, the presence, Disposal, escape, migration, leakage spillage, discharge, emission, release, handling or transportation of Hazardous Materials in, on, at, or under the Disposal Facility (collectively, "environmental events"), any personal injury, death, or property damage, arising out of or related to any of the environmental events; any lawsuit brought or threatened, settlement reached, or government hearing, investigation, inquiry, proceeding, or order relating to any Hazardous Materials or any of the environmental events.

7.04.1 Such indemnification shall apply to all events arising from or attributable to the acts or omissions of CONTRACTOR, its officers, directors, employees, whether or not negligent or otherwise culpable, in connection with or related to CONTRACTOR'S performance of this Contract, including without limit damages arising from or attributable to any operations, repair, clean-up or detoxification, or preparation and implementation of any removal, remedial, response, closure, Post-Closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Materials at the Disposal Facility. For the avoidance of doubt, the foregoing indemnity is intended to operate as an agreement pursuant to section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 U.S.C. section 9607(e) and California Health and Safety Code section 25364, to defend, protect, hold harmless, and indemnify CITY from liability thereunder.

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

7.05 Environmental Indemnification. CONTRACTOR shall indemnify, defend with counsel acceptable to CITY, and hold harmless, at CONTRACTOR'S sole cost and expense,

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

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

7.06 Insurance. CONTRACTOR shall secure and maintain throughout the course of the Contract, at CONTRACTOR's own cost and expense, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONTRACTOR, its agents, representatives, employees or subcontractors.

7.06.1 Commercial General Liability Insurance. CONTRACTOR, at its own expense, shall maintain liability and property damage insurance for the period covered by this Contract in the amount of Five Million Dollars ($5,000,000) per occurrence. If such CGL insurance contains an aggregate limit, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. The scope of such coverage shall be at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence form CG0001). CITY and CONTRACTOR shall review coverage within sixty (60) days of the end of calendar year 2020. Such coverage shall include, but not be limited to, protection against claims arising from: bodily and personal injury, including death resulting therefrom; damage to property resulting from activities contemplated under this Contract; product liability; and claims relating to completed operations. As respects the services provided by CONTRACTOR under this Agreement, the policy shall stipulate that this insurance is primary insurance and that no other insurance carried by CITY will be called upon to contribute to a loss suffered by CONTRACTOR hereunder, except where indemnity from CITY applies. The policy shall stipulate that this insurance shall apply separately to each of the insured parties against whom a claim is made, except with respect to the limits of the insurer's liability. Such insurance shall be with insurers and under forms of policies reasonably satisfactory in all respects to CITY and shall provide that written notice must be given to CITY thirty (30) days prior to policy cancellation. CONTRACTOR shall notify CITY within thirty (30) days of its knowledge of or any material change in coverage that impacts this Contract.

7.06.2 Motor Vehicle Liability Insurance. CONTRACTOR, at its own expense, shall maintain motor vehicle liability insurance for the period covered by this Contract in the amount of Five Million Dollars ($5,000,000) per occurrence combined single limit coverage for personal and bodily injury and property damage. The scope of such coverage shall be at least as broad as Insurance Services Office form number CA 0001 Covering Automobile Liability, Code (any auto). CITY and CONTRACTOR shall review coverage within sixty (60) days of the

end of calendar year 2020. CITY may require reasonable changes in the amount of the insurance coverage set forth herein based on documented changes in industry standards during the five (5) year period ended June 30, 2020. Such insurance shall be with insurers and under forms of policies reasonably satisfactory in all respects to CITY and shall provide that written notice must be given to CITY thirty (30) days prior to policy cancellation. CONTRACTOR shall notify CITY within thirty (30) days of its knowledge or any material change in coverage that impacts this Contract.

7.06.3 Worker Compensation Insurance. CONTRACTOR, at its own expense, shall carry and maintain full Worker Compensation Insurance, as required by the California Labor Code and Employer's Liability insurance with limits not less than Five Million Dollars ($5,000,000) for each employee per accident or disease. The scope of such coverage shall be at least as broad as the Worker's Compensation insurance required by the State of California and Employer's Liability insurance. Such insurance shall be with insurers and under forms of policies reasonably satisfactory in all respects to CITY, unless CONTRACTOR is self-insured and complies with the requirements of Section 7.04.5. Such policies shall provide that written notice must be given to CITY thirty (30) days prior to cancellation. CONTRACTOR shall notify CITY within thirty (30) days of its knowledge or any material change in coverage that impacts this Contract. The Workers Compensation policy shall be endorsed with a waiver of subrogation in favor of CITY for all work performed by CONTRACTOR, its employees, agents and subcontractors.

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

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

7.06.5.1 CITY may require reasonable changes in the amount of the insurance coverage set forth herein based on documented changes in industry standards during the five (5) year period ended June 30, 2020.

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

7.06.5.3 For any claims related to this Contract, CONTRACTOR'S insurance coverage shall be primary insurance as respects CITY, its Councilmembers, directors, officers, agents, employees and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, agents, or volunteers shall be excess of CONTRACTOR'S insurance and shall not contribute with it.

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

7.06.5.5 Each insurance policy required by this Article shall be occurrence based (except as provided in Section 7.04.5.11), shall be endorsed to state coverage, shall not be canceled except after thirty (30) days' prior written notice has been given to CITY. CONTRACTOR shall provide at least thirty (30) days' written notice to CITY, by certified mail, return receipt requested, of any insurance policy required hereunder being materially changed.

7.06.5.6 CITY, its Councilmembers, directors, officers, agents, employees and volunteers shall be named as additional insured on all policies. In the event of cancellation, thirty (30) days prior written notice thereof shall be given to CITY. CONTRACTOR shall provide at least thirty (30) days' written notice to CITY, by certified mail, return receipt requested, of any insurance policy required hereunder being materially changed.

7.06.5.7 CONTRACTOR shall furnish CITY with original certificates affecting coverage required by this clause. The certificates are to be signed by a Person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by CITY before work commences. The insurance information required by this provision shall be provided to CITY by May 15, 2015.

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

7.06.5.9 CONTRACTOR and insurer agree to waive all rights of subrogation against CITY for losses arising from work performed by CONTRACTOR for CITY. CONTRACTOR shall deliver certificates of insurance and/or a waiver of subrogation endorsement.

7.06.5.10 The Comprehensive General Liability Insurance and Automobile Liability insurance shall be written on an occurrence basis and kept in force during the entire term of this Contract; Environmental Impairment and Pollution Liability Insurance is written on a claims-made basis and shall be maintained through continuous renewals so as to provide the same levels of coverage after the expiration of this Contract as might be necessary to protect CITY from any and all liability during all applicable statutes of limitation which might apply to claims of third parties arising out of the activities of CONTRACTOR during the term of this Contract. The deductibles or self-insured retention with respect to any Environmental Impairment and Pollution Liability Insurance, including any renewals as set forth herein, shall not exceed Five Million Dollars ($5,000,000). Hazardous Waste and Environmental Impairment Liability will include coverage for all operations of CONTRACTOR under this Contract. If coverage is on a claims made basis, the retroactive date must be shown, and must be before the date of the Contract or the beginning of the Contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Contract of work. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior the contract effective date, CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

7.06.5.11 CONTRACTOR shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve CONTRACTOR from any

obligation under this Contract. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third Person against CONTRACTOR or any subcontractor on account of any occurrence related to this Contract, CONTRACTOR shall promptly report the facts in writing to the insurance carrier and to CITY.

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

7.07 Subcontractors. CONTRACTOR shall include subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. Coverage for subcontractors shall be subject to all requirements stated herein.

7.08 Non-renewal or Cancellation. Upon notification of receipt by CITY of a notice of cancellation, material change in coverage, or expiration of policy(ies), CONTRACTOR shall file with CITY certificates for such policy(ies), satisfactory to CITY.

7.09 Failure to Comply. If at any time during the term of the Contract, CONTRACTOR fails to comply with the provisions of Section 7.04 CITY may, in addition to any other remedy available to CITY, take out and maintain, at CONTRACTOR'S expense, such insurance as CITY may deem proper and charge the cost thereof to CONTRACTOR.

7.10 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions shall be for the account of CONTRACTOR and shall be the sole responsibility of CONTRACTOR.

ARTICLE 8. PERFORMANCE SECURITY

8.01 Performance Bond. A performance bond must be furnished by CONTRACTOR within fifteen (15) calendar days of notification to CONTRACTOR that that the Contract has been executed. CONTRACTOR shall furnish to CITY, and keep current, a performance bond in a form with language that is acceptable to CITY, for the faithful performance of this Contract and all obligations arising hereunder in an amount of Five Million Dollars ($5,000,000). The performance bond must be executed by a surety company that is acceptable to CITY; an admitted surety company licensed to do business in the State of California; has an "A:VII" or better rating by A. M. Best or Standard and Poors; and is included on the list of surety companies approved by the Treasurer of the United States

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

8.03 Letter of Credit. As an alternative to the performance bond required by Section 8.01, at CITY'S option, CONTRACTOR may deposit with CITY an irrevocable letter of credit in an amount as set forth in Section 8.01 or such other amount as may be agreed to between CITY and CONTRACTOR. If allowed, the letter of credit must be issued by an FDIC insured banking institution chartered to business in the State of California, (consistent with the Uniform Customs and Practice for Documentary Credits, then current revision or similar uniform convention approved by CITY), in CITY's name, and be callable at the discretion of CITY. Nothing in this Article shall, in any way, obligate CITY to accept a letter of credit in lieu of the performance bond.

ARTICLE 9. CORPORATE GUARANTY

9.01 In addition to the performance security required in Article 8, CONTRACTOR is required to obtain a Guaranty, and Guarantor has agreed to guarantee CONTRACTOR'S performance of this Contract, including CONTRACTOR'S indemnification obligations hereunder pursuant to a Guaranty in substantially the form attached as Exhibit 3. The Guaranty is being provided concurrently with CONTRACTOR'S execution of this Contract.

ARTICLE 10. FORCE MAJEURE

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

ARTICLE 11. DEFAULT OF CONTRACT

11.01 Termination by CITY. Subject to Article 10, 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 21, upon the happening of any one of the following events:

11.01.1 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

11.01.2 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

11.01.2.1 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

11.01.3 CONTRACTOR has defaulted, by failing or refusing to pay in a timely manner the franchise fees, liquidated damages or other monies due CITY and said default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or

11.01.4 CONTRACTOR has defaulted by allowing any final judgment, in favor of CITY, for the payment of money related to performance under this Contract to stand against it unsatisfied and said default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or

11.01.5 In the event that the monies due CITY under Section 11.01.3 above or an unsatisfied final judgment under Section 11.01.4 above is the subject of a judicial proceeding, CONTRACTOR shall not be in default if the sum of money is bonded. All bonds shall be in the form acceptable to the CITY Attorney; or

11.01.6 CONTRACTOR has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Contract 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 and said default is not cured within thirty (30) calendar days of receipt of written notice by 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 with CONTRACTOR having 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; or

11.01.7 CONTRACTOR fails to perform its obligations under this Contract, and: (i) if the failure or refusal of CONTRACTOR to perform Disposal Services required by this Contract has created an imminent threat to public health and is not cured within (2) Work Days after receiving written notice from CITY specifying the breach; or (ii) in the case of any other breach of the Contract, the breach continues for more than thirty (30) calendar days after receiving written notice from CITY for the correction thereof, provided that where such breach cannot be cured within such thirty (30) calendar day period, CONTRACTOR shall not be in default of this Contract if CONTRACTOR shall have commenced such action required to cure the particular breach within ten (10) calendar days after such notice, and it continues such performance diligently until completed. However, if CONTRACTOR has complied with its obligations to arrange and pay for Disposal of Mixed Materials, Garbage and Residue at an alternative disposal facility as set forth in Section 5.13, it shall not be in default of this Contract.

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

11.03 Right to Perform. If this Contract is suspended and/or terminated due to CONTRACTOR default, CITY shall have the right to perform and complete, by contract or otherwise, the work herein or such part thereof as it may deem necessary and incur all expenses necessary for completion of the work, including, but not limited to, Disposal of Mixed Materials, Garbage and Residue at an alternative disposal facility, but not including any right to operate the Disposal Facility. If such expenses (including, but not limited to, the actual fees charged for Disposal) exceed the amounts which would have been paid to CONTRACTOR under this Contract, if it had been fully performed by CONTRACTOR, then CONTRACTOR shall pay for the remaining term of this Contract, the amount of such excess costs to CITY within thirty (30) calendar days of CONTRACTOR'S receipt of a claim for reimbursement, and evidence of costs incurred, from CITY.

11.04 Immediate Termination. CITY may terminate this Contract immediately upon written notice to CONTRACTOR (provided CITY has first given CONTRACTOR written notice of breach and ten (10) Work Days to cure) in the event CONTRACTOR fails to provide and maintain the performance security as required by this Contract, CONTRACTOR fails to obtain or maintain insurance policies endorsements as required by this Contract, or CONTRACTOR fails to provide the proof of insurance as required by this Contract.

11.05 Termination Cumulative. CITY'S right to terminate this Contract is cumulative to any other rights and remedies provided by law or by this Contract.

ARTICLE 12. LEGAL REPRESENTATION

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

ARTICLE 13. FINANCIAL INTEREST

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

ARTICLE 14. INDEPENDENT CONTRACTOR

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

ARTICLE 15. LAWS TO GOVERN

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

ARTICLE 16. CONSENT TO JURISDICTION

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

ARTICLE 17. ASSIGNMENT

17.01 CITY Right to Terminate in Event of Assignment. CONTRACTOR acknowledges that this Contract involves rendering a vital service to CITY's residents and businesses, and that CITY has selected CONTRACTOR to perform the services specified herein based on (1) CONTRACTOR's experience, skill and reputation for conducting its operations in a safe, effective and responsible fashion, at all times in keeping with applicable environmental laws, regulations and best management practices for Disposal of Mixed Materials, Garbage and Residue and (2) CONTRACTOR's financial resources to maintain the required equipment and to support its indemnity obligations to CITY under this Contract. CITY has relied on each of these factors, among others, in choosing CONTRACTOR to perform the services to be rendered by CONTRACTOR under this Contract. Any assignment by CONTRACTOR, either directly or indirectly, in whole or in part, of its rights or any interest it may have in this Contract including any transfer of its stock or assets to a third party shall give CITY, in its sole discretion, the basis for terminating this Contract in whole or in part upon the giving of a thirty (30) day written notice to CONTRACTOR. In the event such notice of termination is given as authorized by this Article, CONTRACTOR shall continue, for up to six (6) months following notice of termination, to provide any or all of the services it is obligated to perform under this Contract if requested by CITY in writing. CITY'S right to terminate the Contract in whole or in part shall expire unless exercised within sixty (60) days of receiving written notice from CONTRACTOR as provided herein of an assignment by CONTRACTOR. "Assignment" or "Assign" as used in this Contract shall include, but not be limited to, (i) a sale, exchange or other transfer of substantially all of CONTRACTOR's assets dedicated to any or all of the services to be provided under this Contract to a third party (ii) a sale, exchange or other transfer of outstanding common stock of CONTRACTOR to a third party provided said sale, exchange or transfer results in a change of control of CONTRACTOR or any sale, exchange or transfer of the common stock of CONTRACTOR which results in the effective transfer of control of substantially all of CONTRACTOR's assets dedicated to any or all of the services to be provided under this Contract to a third party; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which results in a change of ownership or control of CONTRACTOR; (iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Contract, appointment of a receiver taking possession of CONTRACTOR's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of CONTRACTOR, or substantially all of the assets used for providing any of the services under this Contract to a third party. For purposes of this Contract, an "assignment" shall not include a sale, transfer or exchange with [_____] or any of its subsidiaries, successors or assigns, provided such affiliated entity has financial capabilities equal to or greater than CONTRACTOR.

[For purposes of this Contract, an "assignment" shall not include a sale, transfer or change in control if ownership of Contractor or any Affiliate is transferred to either individuals in consanguinity with the Duong Family, or trusts or other entities owned or controlled by a member or members of the Duong Family, provided that such trusts or other entities possess the business, professional, and technical expertise to manage and collect Recyclable Materials, and possess the equipment, facilities, and employee resources required to perform this under this Contract. Within sixty (60) Days prior to any such transfer of ownership or to trusts or other entities owned by a member or members of the Duong Family, Contractor shall provide written notice to the City and provide City with an opportunity to meet and confer with the new owner to discuss matters related to this Contract. Such sixty (60) Day notice shall not be required in the event of cases involving death or legal incapacity. In such case, notice shall be provided as soon as practical. Notwithstanding the foregoing, the skill, acumen, and relevant experience of the day-to-day management of Contractor shall remain satisfactory to the City notwithstanding a change in ownership.]

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

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

17.02.2 CONTRACTOR shall furnish CITY with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years;

17.02.3 CONTRACTOR shall furnish CITY with satisfactory proof that: (1) the proposed assignee has at least ten (10) years of Mixed Materials, Garbage and Residue Disposal experience on a scale equal to or exceeding the scale of operations conducted by CONTRACTOR under this Contract; (2) in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, State or local agency having jurisdiction over its Mixed Materials, Garbage and Residue Disposal operations due to any significant failure to comply with State, federal or local environmental laws and the assignee has provided CITY with a complete list of such citations and censures; (3) the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (4) the proposed assignee conducts its Mixed Materials, Garbage and Residue Disposal practices in accordance with sound management practices in full compliance with all federal, State and local laws regulating the Disposal of Mixed Materials, Garbage and Residue including hazardous substances; and, (5) of any other information required by CITY to ensure the proposed assignee can fulfill the terms of this Contract in a timely, safe and effective manner.

17.03 CONTRACTOR Default. Under no circumstances shall CITY be obliged to consider any proposed assignment if CONTRACTOR is in default at any time during the period of consideration.

17.04 CITY Discretion to Accept or Reject Assignment. CITY, in its sole discretion, may accept, reject or conditionally accept the proposed assignment. If CITY accepts a partial assignment, the corporate guaranty provided in Section 1.23 and Exhibit 3 and the performance security provided in Article 8 shall remain in effect unless CITY in its sole discretion consents to adequate substitutes by the assignee or to a novation, and absent a novation CONTRACTOR shall not be released from liability under this Contract.

17.05 Subcontractor. The use of a subcontractor to perform services under this Contract shall not constitute delegation of CONTRACTOR's duties provided that CONTRACTOR has received prior written authorization from CITY to subcontract such services and the Contract Manager has approved a subcontractor who will perform such services. CONTRACTOR shall be responsible for directing the work of CONTRACTOR's subcontractors and any compensation due or payable to CONTRACTOR's subcontractor shall be the sole responsibility of CONTRACTOR. CITY shall have the right to require the removal of any approved subcontractor for reasonable cause. No subcontractors have been approved by CITY.

ARTICLE 18. COMPLIANCE WITH LAWS

18.01 In the performance of this Contract, CONTRACTOR shall comply with all applicable laws, regulations, ordinances and codes of the federal, State and local governments, including without limitation those of CITY.

18.02 CITY shall provide written notice to CONTRACTOR of any planned amendment to the CITY Ordinances that would affect the performance of CONTRACTOR'S services or obligations pursuant to this Contract, in which case Change in Law could apply. Such notice shall be provided at least thirty (30) calendar days prior to the Oakland City Council's approval of such an amendment.

ARTICLE 19. WAIVER

19.01 Waiver by CITY or CONTRACTOR of any breach for violation of any term covenant or condition of this Contract shall not be deemed to be a waiver of any other term, covenant or condition or any subsequent breach or violation of the same or of any other term, covenant or condition. The subsequent acceptance by CITY of any fee, tax, or any other monies which may become due from CONTRACTOR to CITY shall not be deemed to be a waiver by CITY of any breach for violation of any term, covenant or condition of this Contract.

ARTICLE 20. POINT OF CONTACT

20.01 The day-to-day dealings between CONTRACTOR and CITY shall be between CONTRACTOR and the Contract Manager.

ARTICLE 21. NOTICES

21.01 Except as provided herein, whenever either party desires to give notice to the other, it must be given by written notice by registered or certified mail, or by other methods designated for next day delivery with proof of receipt, addressed to the party for whom it is intended, at the place last specified and to the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective persons and places for giving of notice:

As to CITY:

City Administrator
Office of the City Administrator
CITY OF OAKLAND
One Frank Ogawa Plaza, Third 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: blevin@oaklandnet.com

City Attorney
Office of the City Attorney
CITY OF OAKLAND
One Frank Ogawa Plaza, Sixth 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 CONTRACTOR:

[Title]
[Company]
[Street Address]
[City, State, Zip]
[Telephone: (xxx) xxx-xxxx]
[E-mail:]

21.02 Notices shall be effective when received at the address as specified above. Changes in the respective address to which such notice is to be directed may be made by written notice with a courtesy copy provided by email. The original of items that are transmitted by email must also be mailed as required herein.

ARTICLE 22. NONDISCRIMINATION

22.01 Nondiscrimination. In the performance of all work and services under this Contract, CONTRACTOR shall not discriminate against any person on the basis of such person's race, color, religion/religious creed, sex/gender, pregnancy, marital status, age, national origin/ancestry, physical and/or mental disability, medical condition, sexual orientation,

gender identity, military or veteran status, or status in any other group protected by federal, State or local law. CONTRACTOR shall comply with all applicable local, State and federal laws and regulations regarding nondiscrimination, including those prohibiting discrimination in employment.

ARTICLE 23. CONTRACTOR'S RECORDS

23.01 CONTRACTOR shall maintain all documents and records that demonstrate performance under this Contract for a minimum period of five (5) years, or for any longer period required by law, from the date of termination or completion of this Contract.

23.02 Any records or documents required to be maintained pursuant to this Contract shall be made available for inspection, copy or, audit at any time during regular business hours, upon written request by the Contract Manager, City Attorney, City Auditor, CITY Administrator, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at CITY offices when it is practical to do so. Otherwise, unless an alternative site is mutually agreed upon, the records shall be available at CONTRACTOR'S address indicated for receipt of notices in this Contract.

23.03 Where CITY has reason to believe that such records or documents may be lost or discarded due to the dissolution, disbandment or termination of CONTRACTOR'S business, CITY may, by written request or demand of any of the above named officers, require that custody of the records be given to CITY and that the records and documents be maintained in CITY offices. Access to such records and documents shall be granted to any party authorized by CONTRACTOR, CONTRACTOR'S representatives or CONTRACTOR'S successor-in-interest.

ARTICLE 24. QUALITY OF PERFORMANCE OF CONTRACTOR

24.01 Liquidated Damages. The parties further acknowledge that consistent and reliable Disposal Services are of utmost importance to CITY and that CITY has considered and relied on CONTRACTOR'S representations as to its quality of service commitment in awarding the Contract to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if CONTRACTOR fails to achieve the performance standards, or fails to submit required documents in a timely manner, CITY, Collection Contractor(s) and CITY'S residents and businesses will suffer damages, and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages. Therefore, without prejudice to CITY'S right to treat such non-performance as an event of default under Article 11 the parties agree that the liquidated damages amounts defined in this Article represent reasonable estimates of the amounts of such damages considering all of the circumstances existing on the effective date of this Contract, including the relationship of the sums to the range of harm to CITY that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Contract was made.

CITY Initial Here_____ CONTRACTOR Initial Here_____

24.01.1 CONTRACTOR agrees to pay (as liquidated damages and not as penalty) the following amounts:

Liquidated Damages		
	Item	**Amount**
a.	Failure to maintain minimum operation hours or days. (Section 5.04)	$1,000 per Work Day.
b.	Failure to turnaround Collection Contractor vehicles at the Disposal Facility as set forth in Section 5.07.	$100 per occurrence.
c.	Failure to provide adequate primary and alternate capacity to accept and Dispose of Mixed Materials, Garbage and/or Residue. (Sections 5.12 and 5.13)	$10,000 per calendar day.
d.	Failure to submit complete and accurate required reports to CITY in a timely manner. (Sections 5.14 and 5.15)	$300 per calendar day.
e.	Failure to correct submittal of inaccurate data within three (3) Work Days (or such other time period as may be agreed to in writing between CITY and CONTRACTOR) of written notification by CITY as set forth in Section 5.16.	$500 per incident per calendar day.
f.	omitted	$150 per calendar day.
g.	Failure to comply with the insurance provisions of this Contract as set forth in Article 7.	$500 per incident per calendar day.
h.	Failure to cure non-compliance with the provisions of this Contract in the manner and time set forth in the Contract (Various Articles).	$150 per incident per calendar day.

24.02 CITY may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of complaints by Collection Contractor(s).

24.03 Liquidated damages shall apply to service disruptions caused by a CONTRACTOR-initiated lockout or similar CONTRACTOR-initiated work stoppage.

24.04 Procedure for Review of Liquidated Damages. Before assessing liquidated damages pursuant to Items b and c of this Article 24, the CITY and CONTRACTOR shall meet and confer regarding these specific areas of substandard performance. If, despite such meeting, incidents of the type(s) addressed at the meeting continue to occur, the CITY may proceed to assess liquidated damages as provided above.

24.04.1 The assessment shall become final unless, within thirty (30) calendar days of the date of the notice of assessment, CONTRACTOR provides a written request for a meeting with the Contract Manager to present evidence that the assessment should not be made.

24.04.2 The Contract Manager shall schedule a meeting between CONTRACTOR and the CITY Administrator or the CITY Administrator's designee as soon as reasonably possible after timely receipt of CONTRACTOR'S request.

24.04.3 The CITY Administrator or the CITY Administrator's designee shall review CONTRACTOR'S evidence and render a decision sustaining or reversing the liquidated damages as soon as reasonably possible after the meeting. Written notice of the decision shall be provided to CONTRACTOR.

24.04.4 In the event CONTRACTOR does not submit a written request for a meeting within thirty (30) calendar days of the date of the Notice of Assessment, the Contract Manager's determination shall be final and CONTRACTOR shall submit payment to CITY no later than ten (10) Work Days following final determination. If CITY does not receive CONTRACTOR'S payment within the ten (10) Work Day period, CITY may proceed against the letter of credit required by Section 24.04 of this Contract

24.04.5 CITY'S assessment or Collection of liquidated damages shall not prevent CITY from exercising any other right or remedy, including the right to terminate this Contract, for CONTRACTOR'S failure to perform the work and services in the manner set forth in this Contract.

ARTICLE 25. LABOR PEACE

25.01 General. CITY has determined that the level of vulnerability of the proposed Contract to labor disputes is sufficient to warrant that labor peace is essential to the proprietary interests of CITY. Therefore, CONTRACTOR shall at all times comply with the provisions of CONTRACTOR'S Employee and Labor Relations Plan set forth in Exhibit 5 to this Contract.

ARTICLE 26. SEVERABILITY

26.01 If any provision of this Contract or the application of it to any Person or situation shall to any extent be held invalid or unenforceable, the remainder of this Contract and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

ARTICLE 27. RIGHT TO REQUIRE PERFORMANCE

27.01 The failure of either party at any time to require performance by the other of any provision hereof shall in no way affect the right thereafter to enforce same. Nor shall waiver by a party of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

ARTICLE 28. DISPUTE RESOLUTION

28.01 Except for a CONTRACTOR Default under Article 11, and except as provided below in Section 28.01.3, should any dispute arise under this Contract, including but not limited to the performance and obligations of the parties, or service or compensation changes, such disputes shall be resolved by the following procedures:

28.01.1 The parties shall resolve their disputes informally to the maximum extent possible and shall attempt to resolve such disputes in a cooperative and mutually

satisfactory manner. Either party shall give the other written notice of such dispute, and also provide written notice to the Contract Manager. The Contract Manager shall then schedule a meeting between CONTACTOR and the CITY Administrator or the CITY Administrator's designee as soon as reasonably possible. In the event such dispute cannot be resolved by the parties themselves within thirty (30) days of their first meeting, either party may propose the appointment of a mediator. The parties shall agree on a mediator within 30 days of either party's request for mediation.

28.01.2 Mediation. If the disputing parties cannot informally resolve the dispute, they shall attempt to resolve such dispute through non-binding mediation for a period not to exceed ninety (90) days from the date of their last informal meeting, absent a written agreement to extend the time of non-binding mediation.

28.01.2.1 The party desiring mediation shall give written notice thereof to the other party to this Contract, specifying the dispute to be mediated.

28.01.2.2 The mediation shall be held at Oakland, California, or at such other location as may be mutually agreed among the parties. The mediation shall be conducted and a mediator chosen pursuant to the rules of JAMS Mediation Rules.

28.01.2.3 At least ten (10) days before the date of the mediation, each side shall provide the mediator with a statement of its position and copies of all supporting documents. Each party shall send to the mediation a person who has authority to bind the party. If a subsequent dispute will involve third parties, such as insurers or subcontractors, they shall also be asked to participate in the mediation.

28.01.2.4 Should mediation be unsuccessful, and if the dispute does not concern valuation items for which binding arbitration is required in Section 28.01.3, then a party may commence an adversarial proceeding before any court of competent jurisdiction in the County of Alameda. Disputes that concern valuation items defined in Section 28.01.3 shall proceed with binding arbitration procedures as set forth below.

28.01.3 Binding Arbitration. This Section only applies to disputes over "Valuation Items," which are defined herein as disputes over a specific amount of money or compensation that is due or owed by either party, and the dispute arises under one of the following provisions of this Contract: Article 6 and Section 5.20.2.. Disputes relating to Valuation Items shall be referred to binding arbitration upon mutual written approval of the disputing parties. If the disputing parties do not mutually agree in writing to binding arbitration, a party may commence an adversarial proceeding before any court of competent jurisdiction in the county of Alameda.

28.01.3.1 Binding arbitration proceedings shall be in accordance with California Code of Civil Procedure section 1280 et seq., the then-current JAMS Streamlined Arbitration Rules, and the terms of section 28.01.3 and its subsections. In the event of any inconsistency, the terms of section 28.01.3 and its subsections shall control. The arbitration shall be administered by JAMS and conducted in the County of Alameda. If the parties are unable to select an arbitrator within twenty (20) days after delivering written notice requesting arbitration, JAMS shall select a qualified arbitrator from its panel. If JAMS is unwilling or unable to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause, the parties may mutually designate another arbitration organization with similar procedures to serve as the provider of arbitration. If the parties cannot agree on the arbitration organization, the Presiding Judge of the Alameda County Superior Court shall designate such an organization upon the petition of either party.

28.01.3.2 The arbitrator shall be independent of, and unaffiliated with, each party and shall not ever have been an employee of either party, under contract with either party in the past five (5) years or acted as an arbitrator for such party within the past five (5) years.

28.01.3.3 Within twenty (20) days after initiation of the arbitration, if not previously done so under the terms of this Contract, the parties shall each submit to each other and the arbitrator their respective relevant value for the item subject to the valuation dispute, with such supporting information as is reasonably necessary to support such suggested value. If the two (2) valuations so submitted differ by less than or equal to ten (10) percent of the higher of the two, the average of the two shall become the agreed upon amount for purposes of this Contract and the arbitration shall not be continued. If the two valuations differ by more than ten (10) percent of the higher of the two, then the arbitrator shall make a determination of the relevant value and submit such determination to both the parties. This third valuation will then be averaged with the closer of the two previous valuations and the result shall be the relevant value. In no event shall the resolution of a valuation dispute result in a valuation higher than that which was set forth by Contractor (e.g., a impact of a "material" disclosure or a higher tip fee adjustment). The final arbitrated value shall be binding on the parties.

28.01.3.4 The arbitrator shall have the authority and power to award costs, including attorneys' fees and costs to the prevailing party. Unless otherwise awarded by the arbitrator, the parties shall evenly split the cost of any arbitration under this Article.

28.01.3.5 By agreeing to binding arbitration, the parties irrevocably and voluntarily waive any right they may have to a trial by jury to the extent permitted by law.

Acknowledgement of waiver of rights by trial by jury if proceeding with binding arbitration pursuant to Section 28.01.3 of this Contract.

_____	_____
CITY OF OAKLAND	CONTRACTOR

28.01.4 During the pendency of any dispute under this Article, all applicable time periods directly related to the dispute shall be tolled until its resolution; provided, however, that no tolling shall apply to any matters other than those directly related to the dispute and such tolling shall not entitle a party to breach, default, or fail to perform its obligations under this Contract.

ARTICLE 29. ALL PRIOR CONTRACTS SUPERSEDED

29.01 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained in this Contract and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Contract that are not contained in this document or in the Collection Service Contracts which are being executed simultaneously with this document. Accordingly, it is agreed that no deviation from the terms of this Contract shall be predicated upon any prior representations or agreements, whether oral or written.

ARTICLE 30. HEADINGS

30.01 Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Contract.

ARTICLE 31. EXHIBITS

31.01 Each Exhibit referred to in this Contract forms an essential part of this Contract. Each such Exhibit is a part of this Contract and each is incorporated by this reference.

ARTICLE 32. EFFECTIVE DATE

32.01 This Contract shall become effective at such time as it is properly executed by CITY and CONTRACTOR and CONTRACTOR shall begin Disposal Services, as covered herein, as of July 1, 2015.

IN WITNESS WHEREOF, CITY and CONTRACTOR have duly authorized execution of this Contract and have executed the Contract as of the dates set forth below.

CITY OF OAKLAND	[Contractor Company Name]
By:_____	By:_____
[Name, Title]	[Name, Title]
_____	_____
Date	Date

APPROVED AS TO FORM:

_____

[Name, Title]

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2333135.1

WASTE MANAGEMENT

July 8, 2014

Susan Kattchee
Zero Waste Services RFP Project Manager
City of Oakland
250 Frank H. Ogawa Plaza
Suite 5301
Oakland, CA 94612-2034

Re: Zero Waste Services, analysis pursuant to the California Environmental Quality Act.

Dear Ms. Kattchee:

Waste Management of Alameda County, Inc. ("WMAC") currently provides collection, processing, recycling, and disposal services to the City of Oakland (the "City") pursuant to a July 1, 2005 Franchise Agreement for Integrated Solid Waste Management Services, as amended (the "2005 Integrated Agreement"). As described below, the services proposed by WMAC in response to the City's Zero Waste Services Requests for Proposals reduce environmental impacts incurred under the existing franchise and, as a result, the award of the new franchises to WMAC is exempt from the California Environmental Quality Act.

WMAC has submitted proposals in response to three City Requests for Proposals ("RFPs"): Mixed Materials and Organics Collection Services – Service Group 1 ("MM&O"), Residential Recycling Collection Services – Service Group 2 ("RR"), and Disposal Services – Service Group 3 ("Disposal").

WMAC's proposals present an entirely in-county solution to the City's waste management needs, as all of WMAC's facilities are in Alameda County, including the company's headquarters at 98th Avenue in Oakland, where its offices are located and collection vehicles are stored and serviced, the Davis Street Resource Recovery Complex and Transfer Station in San Leandro, and the Altamont Landfill in Livermore.

I. Project Impacts

WMAC's proposals in response to the MM&O, RR, and Disposal RFPs create no new environmental impacts over and above existing levels and in many areas substantially reduce the impacts, including the following:

1. Collection and Transfer Trucks

WMAC's proposals would result in the replacement of diesel-powered collection and transfer trucks with trucks powered by compressed natural gas ("CNG") largely generated from landfill gas. This will result in a significant reduction of air pollutants and greenhouse gas ("GHG") emissions, along with other positive impacts.

Under the City's current agreements, WMAC uses 59 diesel collection vehicles and California Waste Solutions ("CWS") uses an estimated 16 to 18 diesel vehicles for its current portion of residential recyclables collection, all of which emit carbon dioxide and other air emissions, notably nitrogen oxides and particulate matter. Meanwhile, biogenic liquefied natural gas ("LNG") is currently powering 134 of WMAC's collection vehicles in Alameda County and 42 of WMAC's transfer trucks from the Davis Street Transfer Station in San Leandro. If awarded the MM&O, RR, and Disposal agreements, WMAC's entire fleet of vehicles serving the Oakland area will be powered by CNG, primarily derived from WMAC's Altamont landfill gas with backup CNG sources available during any plant down time. WMAC's new collection vehicles will be powered by Cummins CNG motors for residential, commercial, and industrial customer collections. The conversion to CNG will reduce air emissions now created by diesel-powered trucks. For each heavy-duty "Class 8" collection truck that WMAC converts to natural gas, the company reduces the use of diesel fuel by an average of 8,000 gallons per year. (A comparison of the type and number of vehicles, and miles traveled, between the current and proposed contract is attached as Exhibit A)

As stated above, the natural gas that will be the primary source used to fuel WMAC's collection and transfer trucks will be produced at the Altamont Landfill using biomethane, which is the lowest carbon-intensity vehicle fuel commercially available because it is made from landfill gas—a near-term carbon source.[1] High Mountain Fuels ("HMF")[2] operates a natural gas production facility at the Altamont Landfill. The HMF plant is designed to purify and liquefy landfill gas (i.e., methane) that Waste Management collects from the natural decomposition of organic waste placed in the landfill since 1980. This transportation-grade LNG and CNG fuel is produced using electricity (about 2 MW) also produced from landfill gas onsite. Therefore, no sources of fossil fuels are used to produce natural gas at the Altamont Landfill. In fact, LNG and CNG produced at the Altamont Landfill actual prevents GHG emissions by channeling landfill gases into fuel, ensuring that they cannot be released into the atmosphere. Over 13,000 gallons of natural gas fuel are produced at the HMF facility each day. Since 2009, when the facility began operation, the plant has produced over 11 million gallons of natural gas fuel to date, which has reduced consumption of diesel fuel by approximately 2 million gallons per year. This biogenic LNG and CNG has become the primary fuel for WMAC's fleet of trash and recycling collection trucks.

This method of producing transportation-grade natural gas fuel is carbon-neutral because the methane generated by landfill decomposition, which was previously flared, is now converted to fuel used in place of carbon-intensive diesel fuel and other forms of CNG that are derived from fossil fuels instead of biomethane. Compared to using diesel-fueled vehicles, using trucks powered by biogenic LNG or CNG results in significant reductions of GHG emissions. Since the HMF facility began operating in 2009, the

[1] Emissions of carbon dioxide (CO2) generated from the burning of landfill gas (either in a flare or engine) are considered biogenic, meaning they come from a biofuel recently generated from atmospheric carbon sources (such as trees, plants, or bacteria) and do not contribute to a net increase in today's atmospheric CO2.

[2] High Mountain Fuels, LLC ("HMF") is a joint venture company whose sole members are WM LNG, Inc. (an indirect subsidiary of Waste Management) and Linde Merchant Production, Inc. HMF has leased property at Altamont Landfill and produces LNG from landfill gas. Currently, HMF is providing fuel for WMAC's natural gas-fueled fleet.

Other environmental benefits resulting from WMAC's fleet of clean vehicles include:

- Maximized productivity through automated residential collections
- Larger legal payload (10.5 tons), resulting in fewer trips to recovery facility, which saves fuel and minimizes air contaminants and road wear and tear
- Reduced litter during collections and reduced fly-away debris during travel
- Collection vehicles will not idle during refueling because "slow-fill" CNG equipment has been installed at the 98th Avenue facility and will be installed at the Davis Street facility by no later than 2016.
- Lower noise and fuel savings due to idle compaction mode (800 rpm vs. 1400 rpm currently)
- Full eject payload vehicle, which is safer during the off-loading of the commodity procedure
- Disc brake applications will eliminate brake noise and maximize brake life by incorporating a transmission retarder, which slows the vehicle between stops without using friction material
- Leaves no skid marks due to the driver remaining in the cab in control of the brake applications and the transmission retarder assisting stops
- Has flexibility to service carts manually in difficult areas or when the need arises
- Onboard scales by Air-Weigh alert a driver when a truck is near its maximum load capacity, eliminating overweight vehicles and minimizing wear and tear on City streets.
- Proprietary onboard computer system allows centralized dispatch facilities to obtain near real-time information related to all truck locations, stops serviced, capacity, service status, and other key service indicators. This enables dispatch to communicate with Operations Base for immediate and efficient customer issue resolution including on-call requests, on-demand service requirements, re-routing, and customer service needs. The onboard computer system constantly evolves and allows WMAC to monitor and track vehicle and driver activities in order to optimize efficiency and overall performance and reduce unnecessary truck trips.

2. Composting Method

WMAC's proposal for the MM&O franchise agreements would also reduce the emission of other harmful air pollutants through superior composting methods. Under the proposal, WMAC would no longer utilize the Grover Facility for composting organic materials collected in Oakland. Rather, green waste, green waste mixed with food scraps, and source-separated organic materials would be sent to the Redwood composting facility initially, then to the Altamont composting facility beginning in 2016. Organics derived from multi-family processing will be sent to the Redwood facility for composting, beginning July 1, 2015, and then to the Altamont facility for composting in 2016. Upon completion of the Integrated Waste Processing Facility ("IWPF") in 2018, all organic material derived from MSW processing will be sent to the Altamont composting facility. The Covered Aerated Static Pile ("CASP") method of composting implemented at the Redwood and Altamont Landfills will result in significant reductions in emissions of Precursor Volatile Organic Compounds ("POCs") compared to the traditional "windrow" composting method currently being performed at the Grover Facility.

POCs are the primary precursor compounds in air pollution that result in the formation of ground-level ozone and particulate matter in the atmosphere, which are the main ingredients of the air pollutant referred to as smog. Compared to a windrow facility, reductions of POC emissions in a CASP process are primarily achieved by using mechanical air blowing systems to aerate the organic material and provide oxygen for the biological decomposition process to occur. In a windrow process (including the process used at the Grover Facility), aeration is achieved through periodic mixing of materials using a stirring or turning device, which creates uncontrolled POC emissions when the pile is stirred or turned. In a CASP system, however, process air that has passed through the compost pile is sent through a bio-filtration process to destroy the POCs prior to discharge. The CASP process is a specific form of compost aeration in which the compost piles are constructed with a layer of bio-filtration media on top of the piles. Process air is blown through the piles and, as it travels through the bio-filtration layer, bacteria consumes any POC compounds present in the process air. The resulting air discharged from the pile is significantly less contaminated with POCs compared to emissions from a traditional windrow pile. In fact, the bio-filtration emission control measures in use in CASP facilities have resulted in POC emission reductions of up to 90 percent compared to traditional windrow processes. For these projects, an 85 percent reduction has been conservatively used to determine potential emissions from a CASP facility.

Under WMAC's proposals, POC emissions would be reduced by 63 to 66 percent per year. More specifically, POC emissions from the Redwood composting facility during the first year of the agreement are estimated to be 43 tons per year compared to 129 tons from the current Grover composting facility. This significant reduction will occur even though the amount of organics processed will increase from 45,147 tons in 2013 to 53,828 tons in 2015 because of improved collection, segregation, and diversion, which will result in more organics sent for composting instead of being disposed at the landfill. By the time the IWPF becomes operational in 2018, an estimated 58,913 tons of organic material will be processed but will result in POC emissions of only 47 tons per years due to the superior CASP method.[4] This reduction in POC emissions will in turn reduce the creation of ground-level ozone and smog.

3. Collection Containers

In its MM&O and RR proposals, WMAC offered to replace existing collection containers with new containers. However, WMAC is discussing alternatives with the city under which customers could continue to use existing containers in good condition, which would reduce the need to consume additional raw materials for the production of collection carts. In any event, WMAC will continue to recycle containers taken out of service.

[4] Air emission factors from the *South Coast Air Quality Management District Technology Assessment for Rule 1133: Emissions Reduction from Composting and Related Activities*, (Table 2-11) were used to calculate the actual emissions and the potential emissions for windrow-type composting and the proposed emissions for CASP composting at Altamont and Redwood Landfills.

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4. **Davis Street**

The following facilities at WMAC's Davis Street Resource Recovery Complex and Transfer Station will continue to reduce environmental impacts over existing levels.

a. **Organics Transfer Building**

The function of this facility is to transfer organics for composting and possibly anaerobic digestion. WMAC constructed this LEED™ Gold designed facility in September 2011. The building is designed to bring food scraps and organics transfer operations under one roof and help to eliminate vectors and contain odors through its state-of-the-art negative air and bio-filtration system. The building allows for speedy, efficient transfer of organics utilizing Davis Street's fleet of natural gas-fueled trucks, including biomethane captured by the Altamont Landfill's LNG facility. Source-separated organics from curbside commercial, residential customers and organics derived from processed MSW through the IWPF will be transferred to WMAC's Redwood composting facility and then to the Altamont composting facility in 2016.

b. **Single Stream Material Recovery Facility**

The function of this facility is to process single-stream recyclables from single-family, multi-family, and commercial customers. In 2006, WMAC built the state-of-the-art Single Stream Material Recovery Facility ("MRF") at Davis Street. In 2010, the facility was upgraded with the addition of optical sorters to segregate plastics further. The daily capacity is 400 tons. Optical sorting increases quality control to maximize diversion and recycling.

WMAC anticipates expanding the Single Stream MRF again in 2014 to 2015. The upgrade will result in an additional 250 tons per day of capacity and employ a series of manual sort lines, vacuums, magnets, eddy currents, and optical sorters as well as a state-of the art glass system, ensuring the highest diversion possible. The future expansion, which was subject to the required environmental review under CEQA, is currently fully permitted by the City of San Leandro.

The convenient location of the Single Stream MRF at Davis Street allows for the transfer of source-separated recyclables from the other MRFs at the Davis Street campus. As part of the Davis Street Master Plan, elevated conveyor belts will be installed to facilitate the flow of materials across the site, helping to reduce GHG emissions associated with vehicular transfer as well as improving safety from reduced vehicle traffic.

c. **Dry Material/C&D Material Recovery Facility**

The function of this facility, which recently completed an expansion, is to process dry mixed material loads, construction and demolition ("C&D") debris, and bulky recyclables. The daily fully permitted capacity is 800 tons.

With regard to dry mixed materials, the facility processes loads that are high in recyclable content and low in organics. Such loads will primarily come from re-routed commercial and retail vehicles, non-source separated single stream material from malls and warehouses, construction materials, demolition materials, and other streams.

WMAC anticipates that this facility is the only dry material/C&D material facility in Alameda County that will be a fully permitted and certified High Diversion Mixed Waste Processing Facility.

The 800 tons-per-day layout and technology will maximize recycling and diversion from dry material and C&D material through effective sizing, recognition, and capture. Along with traditional recyclables, materials such as wood, rock, metals, and concrete are also culled.

The facility is also designed for Oakland material streams that may not be able to participate in source separation. This strategy is designed to divert materials that would traditionally be landfilled.

Most organic material recovered is converted into WM Earthcare™, the company's closed-loop solution for beneficially reusing organics in the communities from which they are generated. WM Earthcare™ mulch begins with clean, untreated, and unpainted lumber that is received from construction and dry materials, and is then repurposed. Concrete, asphalt, and other inerts recovered are used for internal and external construction projects, such as road building and commercial base.

In addition, "slow-fill" CNG equipment will be installed at the Davis Street campus so that collection and transfer vehicles will not idle while refueling.

5. Altamont Landfill

WMAC's Altamont Landfill, located in Alameda County, has received Oakland's waste for 32 years. With its existing entitlements, sufficient airspace, 24/7 operations, two landfill-gas-to-energy projects, HMF landfill gas-to-LNG facility, wind farm, CNG fueling station, conservation easements, wild life habitats, tire recycling, C&D recycling, and proposed covered aerated static pile composting (CASP) and Reclaimable Anaerobic Digester (RAC)/Wet digestion, WMAC's Altamont Resource Recovery Facility is the most environmentally beneficial residual disposal option for the City of Oakland. Also, disposal tonnage from the City of Oakland will be reduced under the new agreement due to increased landfill diversion. The facility is fully permitted to accept the City's waste stream and no additional permitting or environmental review is required. Moreover, the "tippers" at the Altamont, which tip the transfer trailers to dispose waste into the landfill, are being converted from diesel fuel to CNG by the end of 2014, which will further reduce adverse air emissions.

6. 98th Avenue

WMAC's headquarters at 98th Avenue in Oakland is LEED™ Gold certified. WMAC anticipates that it will install solar panels at the facility once the design, engineering, and analysis phases of this project are completed in late 2015 or early 2016. Additionally, WMAC has installed "slow fill" CNG equipment

at the facility, which allows collection vehicles to refuel without idling.

7. Increased Diversion

If WMAC is awarded the MM&O and RR franchise agreements, it will utilize the facilities described above, as well as new programs and technologies, to significantly increase the current diversion of MM&O and RR material. WMAC projects that diversion of the total tons collected under the MM&O franchise agreement will increase from 35 percent in 2015 to 62 percent in 2022, provided certain conditions exist or have not materially changed.

More specifically, under WMAC's proposals, approximately 10,454 more tons of organics will be composted in 2016 compared to 2013. For recyclables, improved processing will result in over 9,000 more tons diverted for recycling between the first and second years of the contract. And 9,200 fewer tons of waste will be disposed in the landfill between 2013 and 2015. When the IWPF begins operating in 2018, 73,554 fewer tons of waste will be disposed in the landfill compared to 2013. By 2025, WMAC estimates that 76,159 fewer tons will be disposed in the landfill each year, which is approximately 46 percent reduction in landfill disposal compared to the current agreements. Consequently, WMAC's proposals will help the City achieve the 50 percent disposal reduction required by the Integrated Waste Management Act and come closer to achieving its Zero Waste goal.

II. CEQA Analysis

WMAC's proposed operations under the new franchise agreement will not expand existing operations, nor will the proposed operations add to environmental impacts realized under current operations. In fact, WMAC's proposals will reduce environmental impacts for the reasons stated above. All facilities to be used for new operations are already fully permitted, do not require any expansions or alterations beyond those already approved and permitted, and are fully capable of receiving, processing, disposing of or otherwise accommodating the City of Oakland's waste stream under the new franchise agreements. Consequently, WMAC's proposed operations to meet the requirements of the new franchise agreements are exempt from review under the California Environmental Quality Act ("CEQA") implementing regulations. *See* 14 Cal. Code Regs. § 15061(b).

1. Ongoing Operation of Existing Facilities

The City's approval of WMAC's proposed operations under the new franchise agreements would be exempt from CEQA review requirements because it would involve the ongoing operation of existing facilities. The CEQA Guidelines provide an exemption for "the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of" the City's determination. 14 Cal. Code Regs. § 15301. As explained above, all of the facilities that WMAC will use to accept, segregate, divert, transfer, and dispose of the City's waste and recyclables are already in operation and have already been subject to full CEQA review and environmental permitting. The City's approval would not result in either the construction of any new facilities or non-minor alteration of existing facilities. The Altamont compositing facility, set for

completion in 2016, and the IWPF that WMAC plans to begin operating in 2018, are already planned, , and environmental review is completed., Moreover, both facilities which will proceed regardless of the City's approval of WMAC's proposals. Therefore, the award of the franchise agreements to WMAC is subject to the exemption for existing facilities under Section 15301 of the CEQA Guidelines. The application of this categorical exemption is not barred by any of the exceptions set forth in Section 15300.2.

2. Action to Protect the Environment

Approval of WMAC's proposals would also be exempt from CEQA review requirements as an agency action for protection of the environment. The CEQA Guidelines provide an exemption for actions by agencies "to assure the maintenance, restoration, enhancement, or protection of the environment" where the action "involves procedures for protection of the environment." 14 Cal. Code Regs. § 15308. If adopted, WMAC's proposals would result in environmental protection through reduced emissions of GHGs and other air pollutants including nitrogen oxides, POCs, and particulate matter. WMACs proposals would also result in reduced truck trips and vehicle miles traveled, which would have beneficial impacts on traffic, result is less noise in the community, and reduce wear and tear on City streets. WMAC's proposals will also increase diversion of waste materials from disposal in the landfill through increased recycling and composting of organic waste. Many of these environmental benefits were called for in the City's RFPs. Consequently, the award of the franchise agreements to WMAC is subject to the exemption for agency actions to protect the environment under Section 15308 of the CEQA Guidelines. None of the exceptions in set forth in Section 15300.2 would be implicated, so the application of this categorical exemption is not barred.

3. Action to Protect Natural Resources

Similarly, the City's approval would be exempt from CEQA review as an agency action for protection of natural resources. The CEQA Guidelines include an exemption for actions by agencies "to assure the maintenance, restoration, or enhancement of a natural resource." *See* 14 Cal. Code Regs. § 15307. As explained, WMAC's proposals would reduce emissions of harmful air pollutants and GHGs, which would have beneficial impacts on natural resources in the Oakland area as well as regionally and globally. Increased recycling will reduce the need for raw materials, which will also benefit natural resources. And increased composting, which will be made into fertilizer, will reduce the use of fertilizers of crops, which will then reduce water pollution. The City's RFP process included many of these requirements for natural resources protection. Therefore, the City's approval of WMAC's proposals is also subject to the categorical exemption for agency actions to protect natural resources under Section 15307 of the CEQA Guidelines. As with the previous exemptions, the exceptions in Section 15300.2 would not be implicated.

4. Changes to Rates and Other Charges

Because the City's approval includes changes to the rates for waste collection and disposal, it is not subject to CEQA review. The CEQA Guidelines include a statutory exemption for "the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public

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agencies" which are for the purpose of "meeting operating expenses" or "obtaining funds for capital projects, necessary to maintain service within existing service areas." *See* 14 Cal. Code Regs. § 15273. The City's approval of new franchise agreements will increase the rates charged to City residents and businesses for the collection and disposal of refuse in order to keep pace with increased costs and to achieve increased diversion goals to meet the City's Zero Waste objectives and to maintain collection within existing services areas. As a result, CEQA does not apply to the City's approval of new franchise agreements due to the required rate changes.

5. Common Sense Exemption

Additionally, the City's approval would be exempt from CEQA review requirements pursuant to the "common sense" exemption. The CEQA Guidelines state that a "project is exempt from CEQA if" the project "is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment." 14 Cal. Code Regs. § 15061(b)(3). Where an activity will not have a "significant effect on the environment, the activity is not subject to CEQA." *Id.* The City's approval will have no significant adverse effect on the environment because it will not result in the construction or operation of any new facilities or equipment that will have a significant adverse impact on the environment. Indeed, WMAC's proposals will have significant environmental benefits, as explained above, including:

- Reduced emissions of GHGs through the use of biogenic LNG and CNG to fuel collection and transfer vehicles, rather than carbon-intensive diesel fuel
- Significantly reduced emissions of harmful air pollutants, including nitrogen oxides and particulate matter resulting from the elimination of diesel vehicles, as well as reduced POC emissions from superior composting technology
- Reduced truck trips and truck mileage, resulting in less emissions, noise and less wear and tear on City streets
- Increase diversion of waste to recycling and composting, reducing the amount of waste disposed in the landfill

As a result, WMAC's proposals will substantially reduce pollution and waste disposal, allowing the City to meet its environmental goals. For these reasons, the project will not have a significant adverse effect on the environment, and in fact will have a positive environmental impact. Therefore, the City's approval is exempt from CEQA, in accordance with Section 15061(b)(3) of the CEQA Guidelines.

6. Approval Consistent with Community Plan

Finally, the City's approval of the new franchise agreements is not subject to CEQA review because the action is consistent with the Alameda County Integrated Waste Management Plan and, the City' solid waste and Zero Waste plans (collectively "Plan"). CEQA provides an exemption for projects that are consistent with a general plan, community plan, or zoning plan for which an environmental impact report ("EIR") was previously certified. *See* Cal. Pub Res. Code § 21083.3; 14 Cal. Code Regs. § 15183. In that situation, an additional environmental review shall not be required, unless there are

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project-specific significant effects which are peculiar to the project or its site. *See* 14 Cal. Code Regs. § 15183(a),(c). The City's approval of WMAC's proposals in response to the RFPs is consistent with the Plan. There are no project-specific environmental impacts associated with WMAC's proposed operations, as discussed above. As a result, no further CEQA review is required.

7. Conclusion

Because the City's approval of WMAC's proposals in response to the three RFPs is exempt from CEQA, no further CEQA review is required. A notice of exemption would be appropriate but is not required. *See* 14 Cal. Code Regs. § 15062.

Regards,

Barry Skolnick
President, Waste Management of Alameda County, Inc.
Area Vice President, Northern California-Nevada

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2014 SEP 19 PM 12: 30

APPROVED AS TO FORM AND LEGALITY

City Attorney

OAKLAND CITY COUNCIL

ORDINANCE NO._____C.M.S.

ORDINANCE AMENDING ORDINANCE NO. 13253 C.M.S., WHICH GRANTED A FRANCHISE FOR MIXED MATERIALS AND ORGANICS COLLECTION SERVICES TO CALIFORNIA WASTE SOLUTIONS, INC., TO INSTEAD GRANT THE FRANCHISE FOR MIXED MATERIALS AND ORGANICS COLLECTION SERVICES TO WASTE MANAGEMENT OF ALAMEDA COUNTY, AND/OR SUCH OTHER AFFILIATE ENTITY APPROVED BY THE CITY ADMINISTRATOR, CONTINGENT ON ITS EXECUTION OF A MIXED MATERIALS AND ORGANICS COLLECTION SERVICES CONTRACT WITH THE CITY, AND AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE SUCH A CONTRACT WHICH MAY REGULATE MAXIMUM SERVICE RATES FOR MIXED MATERIALS AND ORGANICS COLLECTION SERVICES, RESIDENTIAL RECYCLING SERVICES, AND DISPOSAL SERVICES, AND SETTING FORTH PROCEDURES TO ALLOW FOR ADJUSTMENT OF MAXIMUM SERVICE RATES, ON SUCH TERMS AND CONDITIONS AND RATES APPROVED BY THE CITY COUNCIL

WHEREAS, the Legislature of the State of California, 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; and,

WHEREAS, the State of California, 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 and 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 wellbeing of its citizens (California Public Resources Code Section 40059); and,

WHEREAS, pursuant to California Public Resources Code Section 40059(a), 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 the to-be-executed Mixed Materials and Organics Collection Services Contract ("Contract"), and other services related to meeting the Act's fifty (50) percent Diversion goal and other requirements of the Act; and,

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; and,

WHEREAS, in 2002 the City Council of the City of Oakland approved Resolution No. 77500 C.M.S., to adopt a goal of 75% 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; and,

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; and

WHEREAS, in 2006 the City Council of the City of Oakland approved Resolution No. 80286 C.M.S., adopting a Zero Waste Strategic Plan; and,

WHEREAS, on March 18, 2014, the City Council of the City of Oakland approved Resolution 84898 C.M.S. establishing policies to provide good, family-supporting wages and benefits to all workers who provide recycling services to the City of Oakland, its residents or businesses, through any exclusive franchise agreement; to provide consideration of a local non-combustible biowaste-to-energy facility for handling of source separated organics collected through new organics franchise agreements; and to provide an organics 'third' bin for source-separated organics for all Oakland residents, including those in multifamily buildings, as the minimum preferred default outcome for franchised collection services; and

WHEREAS, on August 13, 2014, the City Council of the City of Oakland approved Ordinance No. 13253 C.M.S., granting a franchise for mixed materials and organics collection services to California Waste Solutions, Inc.; and

WHEREAS, the City Council has expressed interest in supporting job training opportunities to Oakland youth through programs provided by Civicorps ; and

WHEREAS, it is the intent of the City to grant instead an exclusive franchise to Waste Management of Alameda County Inc. (the "Franchisee"), contingent on its the execution of a Mixed Materials and Organics Collection Services Contract with the City, for the Collection and Processing of certain subsets of Solid Waste defined as Mixed Materials, Garbage, Organic Materials and Bulky Goods in the to-be-executed Contract; and,

WHEREAS, the City has granted an exclusive franchise, subject to execution of an associated contract, for the provision of Recycling Services and authorized the execution of an exclusive contract for Landfill Disposal Services associated with the Recycling Collection Services Contract and Mixed Materials and Organics Collection Contract; and

WHEREAS, the City further declares its intent to regulate the maximum rates Franchisee will charge Customers for the Collection, transportation, Processing, recycling, composting, and/or Disposal of Mixed Materials, Garbage, Organic Materials, and Bulky Goods, and for Recycling Services and Disposal Services, both of which rates are incorporated into the maximum rates for Mixed Materials and Organics Services; and

WHEREAS, the City Council has determined through a competitive procurement process for Mixed Materials and Organics (MM&O) Collection Services that Franchisee, by demonstrated experience, reputation and capacity, is qualified to provide for the Collection of Mixed Materials, Organic Materials and Bulky Goods within the corporate limits of the City, the transportation of such material to appropriate places for Processing, Recycling, Composting and/or Disposal; and City Council desires that Franchisee be engaged to perform such services on the basis set forth in the to-be-executed Contract; and

WHEREAS, Franchisee, through its proposal to the City, has proposed and represented that it has the ability and capacity to provide for the Collection of Mixed Materials, Organic Materials and Bulky Goods within the corporate limits of the City; the transportation of such material to appropriate places for Processing, Recycling, Composting and/or Disposal; and the Processing of materials; and

WHEREAS, based on Franchisee's proposal to the City and subsequent negotiations with Franchisee, City desires to grant an exclusive franchise to Franchisee to provide the Mixed Materials and Organics Collection services as specified in the City's Request for Proposals, in accordance with the terms and conditions of the to-be-executed Contract; and

WHEREAS, the City has independently reviewed, considered and confirmed the environmental analysis conducted for these services; and

WHEREAS, this environmental analysis concludes that there would not be the potential for significant environmental impacts, and therefore no further environmental review is required; and

WHEREAS, the City Council finds and determines that the requirements of the California Environmental Quality Act ("CEQA") have been satisfied, and this action on the part of the City Council is exempt from CEQA pursuant, CEQA Guidelines section 15301, CEQA Guidelines section 15307, CEQA Guidelines section 15308, CEQA Guidelines section 15273, CEQA Guidelines section 15183, and/or CEQA Guidelines section 15061 (b) (3); and

WHEREAS, each of the foregoing provides a separate and independent basis for an exemption and when viewed collectively provides an overall basis for an exemption, as further described and explained in the accompanying environmental analysis dated July 8, 2014 attached to the September 19, 2014 City Administrator report to the City Council (Attachment D), incorporated herein by the reference as if fully set forth herein; and

NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. The City Council has independently reviewed and considered this environmental

determination and finds and determines that the action complies with the CEQA;; and directs the City's Environmental Review Officer to file a Notice of Exemption.

Section 2. The Council does hereby find and declare that the above recitals are true and correct and that the award of a franchise for Mixed Materials and Organics Collection to Franchisee is for a proper public purpose, is in the public interest, convenience, and welfare, and is for the common benefit of the inhabitants of the city. The City hereby grants Waste Management of Alameda County Inc. (WMAC), contingent on its execution of the Mixed Materials and Organics Collection Services Contract, an exclusive franchise for the provision of Mixed Materials and Organics Collection Services, as identified in the Request for Proposals for Zero Waste Services, originally released on September 5, 2012. The term of the franchise from July 1, 2015 to June 30, 2025 with the potential extension through June 30, 2035 as specified in the Contract.

Section 3. Based on the form of the Mixed Materials and Organics Services Contract circulated with the Requests for Proposals, City and Franchisee have reached general, but not complete, agreement on the Mixed Materials and Organics Collections Services Contract, the current form of which is attached to the City Administrator Revised Agenda Report dated July 28, 2014 to the City Council. The City Administrator is authorized, subject to the review and approval of the City Attorney, to further negotiate and execute a Mixed Materials and Organics Collections Service Contract on behalf of the City, consistent with this Ordinance and with the general form of the Contract attached to the City Administrator Revised Agenda Report dated July 28, 2014 to the City Council.

Section 4. The Council does hereby authorize the Franchisee to charge customers, beginning July 1, 2015, the maximum rates set forth in the Rate Tables contained in the City Administrator Agenda Report dated September 19, 2014 to the City Council, or such higher or lower rates as approved by City Council pursuant to request by the Franchisee, for the various Mixed Materials and Organics Collection Services outlined in the MM&O Contract attached to the same Agenda Report and as specified and further described in the Contract.

Section 5. The City Administrator is authorized to conduct all negotiations and execute all documents including but not limited to amendments, modifications, notices, and related actions (including rate adjustments as specified in the Contract) which may be necessary and consistent with the basic intent and purpose of this Ordinance and the Mixed Materials and Organics Collection Services Contract, except for those rate adjustments that the Oakland Municipal Code requires be approved by the City Council.

Section 6. In consideration of the special franchise right granted by the City to Franchisee to transact business, provide services, use the public street and/or other public places, and to operate a public utility for Mixed Materials and Organics collection services, Franchisee shall remit a monthly franchise fee payment to the City, as specified in the Contract. From July 1, 2015 through June 30, 2025, Franchisee shall pay the City a monthly franchise fee of Twenty Five Million Thirty Four Thousand Dollars ($25,034,000) per annum, subject to annual adjustment on July 1 each year, as specified in the Contract.

Section 7. The Franchisee shall develop plans with Civicorps to provide training of interns without impact or displacement of permanent union jobs, through a contract subject to approval by the City Administrator.

Section 8. The Franchisee shall deliver commercial organics to East Bay Municipal Utility District, and shall enter into a separate processing agreement with EBMUD for these materials, subject to approval by the City Administrator.

Section 9. The Franchisee shall pay ILWU Local 6 recycling sorters $20.94 per hour in 2019.

Section 10. The Franchisee shall provide ILWU Local 6 workers affordable family health care coverage beginning July 1, 2015.

Section 11. The franchise awarded hereunder shall be contingent on: 1) dismissal with prejudice of litigation in Waste Management of Alameda County, Inc. v. City of Oakland, and 2) submission to the Oakland City Clerk of written notices of withdrawal of referenda measures signed by all proponents, pursuant to California Elections Code Section 9604(c), on City Ordinance Nos. 13253, 13254, and 13255 C.M.S., which awarded franchise agreements to California Waste Solutions for Garbage Collection, Recycling Services and Disposal/Landfill, and no petition for a referendum on any of the above-referenced ordinances being submitted to or filed with the Oakland City Clerk within the 30-day period provided for referendum petitions under California Elections Code Section 9237. The award authorized hereunder shall be null and void if the lawsuits is not dismissed with prejudice and the referenda are not withdrawn, or if a petition for a referendum is filed.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, and PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

ATTEST:_____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2014 SEP 19 PM 12: 30

APPROVED AS TO FORM AND LEGALITY

City Attorney

OAKLAND CITY COUNCIL

ORDINANCE NO._____C.M.S.

ORDINANCE AMENDING ORDINANCE NO. 13255 C.M.S., WHICH AUTHORIZED THE CITY ADMINISTRATOR TO EXECUTE AN EXCLUSIVE CONTRACT FOR LANDFILL DISPOSAL SERVICES WITH CALIFORNIA WASTE SOLUTIONS, INC., TO INSTEAD AUTHORIZE THE CITY ADMINISTRATOR TO EXECUTE AN EXCLUSIVE CONTRACT FOR LANDFILL DISPOSAL SERVICES WITH WASTE MANAGEMENT OF ALAMEDA COUNTY, AND/OR SUCH OTHER AFFILIATE ENTITY APPROVED BY THE CITY ADMINISTRATOR, ON SUCH TERMS AND CONDITIONS AND RATES APPROVED BY THE CITY COUNCIL

WHEREAS, on August 13, 2014, the City Council of the City of Oakland approved Ordinance No. 13255 C.M.S., granting a contract for landfill disposal services to California Waste Solutions, Inc.; and

WHEREAS, City of Oakland ("City") desires instead to enter into a Contract with Waste Management of Alameda County, Inc. ("Contractor"), under which Contractor receives Garbage and Bulky Goods generated within the City, and Residue from the Processing of Mixed Materials Collected by the Mixed Materials and Organics (MM&O) Collection Contractor within the City of Oakland at the Disposal Facility; and

WHEREAS, the City Council of the City determines, pursuant to its police powers, that obtaining a long-term commitment for Disposal of Garbage and Bulky Goods generated in the City, and Residue from the Processing of Mixed Materials Collected by the MM&O Collection Contractor within the City is in the best interests of the health, safety and well-being of the citizens of the City; and

WHEREAS, the State of California, 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 and 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); and

WHEREAS, the proposed Contract also advances the objectives of the federal government to encourage environmentally sound Garbage management (Resource Conservation and Recovery Act of 1976 (RCRA), 42, U.S.C. Section 6941 et. seq.); and

WHEREAS, in 1990 the Alameda County Waste Reduction and Recycling Initiative Charter Amendment established a county-wide solid waste diversion goal of seventy five (75) percent by 2010; and

WHEREAS, in 2002 the City Council of the City of Oakland approved Resolution No. 77500 C.M.S., adopting a goal of 75% 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; and

WHEREAS, in 2006 the City Council of the City of Oakland approved Resolution No. 79774 C.M.S. adopting a Zero Waste Goal by 2020; and

WHEREAS, in 2006 the City Council of the City of Oakland approved Resolution No. 80286 C.M.S., adopting a Zero Waste Strategic Plan; and

WHEREAS, the Disposal Facility is intended to be the principal facility for the Disposal of Mixed Materials, Garbage and Bulky Goods generated in the City, and Mixed Materials Residue from the Processing of Mixed Materials Collected by the MM&O Collection Contractor within the City; and

WHEREAS, the Contractor guarantees permitted capacity at the Disposal Facility for up to thirty (30) years for Disposal of all Mixed Materials, Garbage, and Bulky Goods generated in the City and Mixed Materials Residue from the Processing of Mixed Materials Collected by the MM&O Collection Contractor within the City; and

WHEREAS, the City Council of the City of Oakland determines that in order to provide adequate Disposal capacity, it is in the best interests of the City to secure a commitment from Contractor for the right to a portion of the Disposal Facility's current Disposal capacity on the terms and subject to the conditions set out in the proposed Contract. The intent of this provision is, in part, for the City to contribute to preventing the substantial environmental, aesthetic, health, and safety problems that may be created from increasing volumes of Garbage in this country; and

WHEREAS, the Contractor has represented that it has the experience and ability to provide for Disposal of Mixed Materials, Garbage, Bulky Goods and Residue, at the Disposal Tipping Fees provided for herein; and

WHEREAS, the City has entered into Collection Service Contracts to provide: i) Mixed Material and Organics Collection Services and ii) Residential Recycling Collection Services within the City; and

WHEREAS, the Contractor receives Disposal Tipping Fees from the City's MM&O Collection Contractor for the acceptance of Mixed Materials, Garbage, Bulky Goods and Residue at the Disposal Facility for final Disposal; and

WHEREAS, the City determined that the Contractor has proposed to provide Disposal Services at the Disposal Facility in a manner and on terms that are in the best interest of the City and its residents and businesses, taking into account the qualifications and experience of the Contractor, and the Disposal Tipping Fees for providing such services; and

WHEREAS, the City wishes to engage the Contractor to provide the services specified within the proposed Contract, in accordance with the terms and conditions of the proposed Contract; and

WHEREAS, the City Council of the City of Oakland declares its intention of maintaining reasonable Disposal Tipping Fees for the Disposal of Mixed Materials, Garbage, Bulky Goods and Residue; and

WHEREAS, the City has independently reviewed, considered and confirmed the environmental analysis conducted for these services; and

WHEREAS, this environmental analysis concludes that there would not be the potential for significant environmental impacts, and therefore no further environmental review is required; and

WHEREAS, the City Council finds and determines that the requirements of the California Environmental Quality Act ("CEQA") have been satisfied, and this action on the part of the City Council is exempt from CEQA pursuant, CEQA Guidelines section 15301, CEQA Guidelines section 15307, CEQA Guidelines section 15308, CEQA Guidelines section 15273, CEQA Guidelines section 15183, and/or CEQA Guidelines section 15061 (b) (3); and

WHEREAS, each of the foregoing provides a separate and independent basis for an exemption and when viewed collectively provides an overall basis for an exemption, as further described and explained in the accompanying environmental analysis dated July 8, 2014 attached to the September 19, 2014 City Administrator report to the City Council (Attachment D), incorporated herein by the reference as if fully set forth herein; and

NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. The City Council has independently reviewed, considered, and confirmed this environmental determination and finds and determines that the action complies with the CEQA and directs the City's Environmental Review Officer to file a Notice of Exemption.

Section 2. The Council does hereby find and declare that the above recitals are true and correct and that the award of a Contract for Disposal Services to Contractor is for the proper public purpose, is in the public interest, convenience, and welfare, and is for the common benefits of the inhabitants of the city.

Section 3. Based on the form of the Disposal Services Contract circulated with the Requests for Proposals, City and Contractor have reached general, but not complete, agreement on the Disposal Services Contract, the current form of which is attached to the City Administrator's

Revised Agenda Report dated July 28, 2014 to the City Council. The City Administrator is authorized, subject to the review and approval of the City Attorney, to negotiate and execute the Disposal Services Contract on behalf of the City, consistent with this Ordinance and with the general form of the Contract attached to the City Administrator Revised Agenda Report dated September 19, 2014 to the City Council.

Section 4. The City Administrator is authorized to conduct all negotiations and execute all documents including but not limited to Franchise Agreement amendments, modifications, notices, and related actions which may be necessary and consistent with the basic intent and purpose of the Franchise Agreement, except for those rate adjustments that the Oakland Municipal Code requires to be approved by Council.

Section 5. The franchise awarded hereunder shall be contingent on: 1) dismissal with prejudice of litigation in Waste Management of Alameda County, Inc. v. City of Oakland, and 2) submission to the Oakland City Clerk of written notices of withdrawal of referenda measures signed by all proponents, pursuant to California Elections Code Section 9604(c), on City Ordinance Nos. 13253, 13254, and 13255 C.M.S., which awarded franchise agreements to California Waste Solutions for Garbage Collection, Recycling Services and Disposal/Landfill, and no petition for a referendum on any of the above-referenced ordinances being submitted to or filed with the Oakland City Clerk within the 30-day period provided for referendum petitions under California Elections Code Section 9237. The award authorized hereunder shall be null and void if the lawsuits is not dismissed with prejudice and the referenda are not withdrawn, or if a petition for a referendum is filed.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, and PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

ATTEST:_____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____