

AMENDED AND RESTATED AGREEMENT
BETWEEN
CITY OF GARDENA
AND
WASTE RESOURCES OF GARDENA
FOR
INTEGRATED SOLID WASTE
MANAGEMENT SERVICES

* * *

March 22, 2022

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4. Contractor’s Faithful Performance Bond
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6. Processing, Transfer, and Disposal Services and Facility Standards
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8. City Facilities
9. City Street and Park Containers

RECITALS

This Franchise Agreement (“Agreement”) is entered into this ___ day of _____, 2022, by and between the City of Gardena (“City”) and Waste Resources of Gardena (“Contractor”), for the Collection, transportation, Recycling, Processing, and Disposal of Solid Waste and other services related to meeting the goals and requirements of the California Integrated Waste Management Act.

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (AB 939) (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 Integrated Solid Waste Management within their jurisdictions to meet the goals and requirements of AB 939; and,

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

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

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

WHEREAS, City declares its intention of maintaining reasonable rates and quality service related to the Collection, Transfer and Transportation, Recycling, Processing, and Disposal of Solid Waste and other services; and,

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), the City of Gardena has determined that the public health, safety, and well-being require that an exclusive franchise be awarded to a qualified Contractor for the collection, Transfer and Transportation, Recycling, Processing, and Disposal of Solid Waste and other services related to meeting the

diversion goals required by AB 939, and other requirements of the California Integrated Waste Management Act; and,

WHEREAS, the City Council of the City has determined that Contractor, by demonstrated experience, reputation and capacity is qualified to continue to exclusively provide for the Collection of Solid Waste (except as otherwise permitted pursuant to Section 2.9 of this Agreement) within the corporate limits of City and to Transport such Solid Waste to places of Processing and Disposal, which may be designated in accordance with this Agreement, and City and Contractor desire that Contractor be engaged to perform such services on the terms and conditions set forth in this Agreement; and,

WHEREAS, the successful implementation of Solid Waste Handling in Residential, Commercial and industrial areas in the City will entail the expenditure of large sums of capital by the Contractor, for which the Contractor is entitled to be compensated. City intends that this Agreement will contribute to safeguarding public health by providing the most cost-effective, efficient, reliable, and environmentally appropriate Solid Waste services to its citizens, and,

WHEREAS, City and Contractor (“Parties”) hereto desire to enter said Agreement; and,

WHEREAS, Contractor has agreed, as part of this Agreement, acting as an independent contractor to provide such personnel, equipment and supplies as are necessary to ensure City complies with the requirements of Public Resources Code Section 49100, et seq.,

WHEREAS, Public Resources Code Section 40059 permits City to impose terms and conditions on the award of a Solid Waste franchise if, in the opinion of the governing body, the public health, safety and well-being require the imposition of those terms and conditions;

WHEREAS, Contractor has represented and warranted to City that it has the experience, responsibility, and qualifications to provide the services as described herein;

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

ARTICLE 1: DEFINITIONS

Whenever any term used in this Agreement has been defined by the provisions of Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the Municipal Code or the Public Resources Code shall apply unless the term is otherwise defined in this Agreement, in which case this Agreement shall control.

Except as provided in Article 1, words beginning with lower case letters are being used with their common ordinary meanings, not as defined terms. Otherwise, the following capitalized words and terms used in this Agreement shall have the following respective meanings:

1.1 AB 1826

"AB 1826" means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 modifying Division 30 of the California Public Resources Code), also commonly referred to as "AB 1826," as amended, supplemented, superseded, and replaced from time to time.

1.2 AB 341

"AB 341" means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 [Chesbro, AB 341]), also commonly referred to as "AB 341," as amended, supplemented, superseded, and replaced from time to time.

1.3 AB 827

"AB 827" means the Assembly Bill approved by the Governor of the State of California on October 2, 2019, which amended Sections 42649.1, 42649.2, 42649.8, and 42649.81 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time.

1.4 AB 939

"AB 939" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 et seq.), as it may be amended from time to time.

1.5 Affiliate

"Affiliate" means all businesses (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect ownership interest or common management shall be deemed to be "Affiliated with" Contractor and included within the term "Affiliates" as used herein. An Affiliate shall include a business in which Contractor owns a direct or indirect ownership interest, a business which has a direct or indirect ownership interest in Contractor and/or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership

interest in Contractor. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded, and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater. Being an Affiliate does not exempt a business from the application of assignment requirements under Section 12.5.

1.6 Agreement

"Agreement" means this Exclusive Franchise Agreement for Integrated Solid Waste Management Services between the City and Contractor for the Collection and subsequent Transfer, Transportation, Processing, and/or Disposal, of Residential and Commercial Premises Discarded Materials and C&D, including all exhibits and attachments, and any amendments thereto.

1.7 Alternative Facility

"Alternative Facility" means any Facility other than Approved Facilities approved by City for temporary use.

1.8 Applicable Law

"Applicable Law" means all statutes, rules, regulations, guidelines, actions, determinations, Permits, orders, or requirements of the United States, State, County, City and local and regional government authorities and agencies having applicable jurisdiction, that apply to or govern the Facility, the Site or the performance of the Parties' respective obligations hereunder, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, zoning, non-discrimination, prevailing wages if applicable, and the Los Angeles County Countywide Integrated Waste Management Plan. All references herein to Applicable Law include subsequent amendments or modifications thereof, unless otherwise specifically limited in this Agreement.

1.9 Approved Facilities

"Approved Facility(ies)" means any one of or any combination of the: Approved C&D Processing Facility; Approved Disposal Facility; Approved Organic Waste Processing Facility, Approved Source Separated Recyclable Materials Processing Facility; and, Approved Transfer Facility as listed in Exhibit 6.

1.10 Back-Haul

"Back-Haul" means generating and transporting Source Separated Recyclable Materials and/or Source Separated Organic Waste to a destination owned and operated by the Generator using the Generator's own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).

1.11 Billings

"Billings" means any and all statements of charges for services rendered in accordance with this Agreement, howsoever made, described or designated by City or Contractor, or made by others for City or Contractor, to Customers in the City.

1.12 Bin

"Bin" means a rigid Container with hinged lids and wheels with a capacity of at least one (1) cubic yard and less than ten (10) cubic yards.

1.13 Blue Container

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

1.14 Brown Container

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

1.15 Bulky Items

"Bulky Items" means Solid Waste that cannot and/or would not typically be accommodated within a Cart including specifically: furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as "white goods"); Residential wastes (including wood waste, tree branches, and scrap wood); electronic equipment (including stereos, televisions, computers and monitors, VCRs, microwaves and other similar items commonly known as "brown goods" and "E-Waste"); and clothing. Bulky Items do not include car bodies, tires, Construction and Demolition Debris or items requiring more than two Persons to remove. Other items not specifically included or excluded above will be Collected provided that they are not more than eight feet in length, four feet in width, or more than 150 pounds. In the event a question ever arises as to whether a specific item or category of items meets the definition of Bulky Items, City shall be responsible to determine whether said definition shall apply, which determination shall be final and binding on the Parties.

1.16 California Code of Regulations (CCR)

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

1.17 CalRecycle

“CalRecycle” means the State of California’s Department of Resources Recycling and Recovery, and, as this department was structured prior to January 1, 2010, the California Integrated Waste Management Board or CIWMB.

1.18 Cart

“Cart” means a polyethylene wheeled Container with a hinged lid and wheels serviced by an automated or semi-automated truck with a capacity of no less than 30- and no greater than 101-gallons.

1.19 City

"City" means City of Gardena, California, a municipal corporation, and all the territory lying within the municipal boundaries of City as presently existing or as such boundaries may be modified during the term of this Agreement.

1.20 City Manager

“City Manager” means the City Manager of City. The City Manager or his or her designee is the authorized agent of City in enforcing the terms of this Agreement.

1.21 Collect, Collected and Collection

"Collect", "Collected" or "Collection" means to take physical possession, transport, and remove Solid Waste within and from City.

1.22 Commercial

"Commercial" refers to services performed at or for Commercial Premises.

1.23 Commercial Edible Food Generators

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

1.24 Commercial Premises

"Commercial Premises" means Premises upon which business activity is conducted, and any other Premises not defined as Residential Premises per Section 1.83 of this Agreement, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding Residential Premises upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the property. Notwithstanding any provision to the contrary herein, in the Gardena Municipal Code, or otherwise, for purposes of this Agreement, Premises upon which the following uses are occurring shall be deemed to be Commercial Premises: Assisted Living Facilities, Convalescent Homes, Dormitories, Extended Stay Motels, Group Residential Facilities, Group Care Facilities, Hotels, and Motels.

1.25 Contractor Compensation

"Contractor Compensation" means the revenue received by the Contractor from Billings in return for providing services in accordance with this Agreement and any amendments to this Agreement.

1.26 Compost

"Composting" or "Compost" (or any variation thereof) includes a controlled biological decomposition of Organic Waste yielding a safe and nuisance free Compost product.

1.27 Compostable Plastics

"Compostable Plastics" or "Compostable Plastic" means plastic materials that meet the ASTM D6400 standard for compostability.

1.28 Construction and Demolition Debris

"Construction and Demolition Debris" or "C&D Material," means any combination of inert building materials and Solid Waste resulting from construction, remodeling, repair, cleanup, or demolition operations as defined in California Code of Regulations, Title 22 Section 66261.3 et seq. This term includes, but is not limited to, asphalt, concrete, Portland cement concrete, brick, lumber, gypsum wallboard, cardboard, and other associated packaging; roofing material, ceramic tile, carpeting, plastic pipe and steel. The material may be commingled with rock, soil, tree stumps; and other vegetative matter resulting from land clearing and landscaping for construction or land development projects.

1.29 Containers

"Containers" means any and all types of Solid Waste receptacles, including Carts, Bins, and Roll-off Boxes.

1.30 Contractor

"Contractor" means Waste Resources of Gardena, and its officers, directors, employees, agents, companies and Subcontractors.

1.31 Contract Year

"Contract Year" means any fiscal year of the City commencing on July 1 and ending June 30 during the initial and any extended term of this agreement.

1.32 CPI

"CPI" means the Consumer Price Index for Trash and Garbage Collection (CUUR0000SEHG02), U.S. City average, as published by the United States Department of Labor, Bureau of Labor Statistics.

1.33 Customer

"Customer" means the Person having the care and control of any Premises in the City receiving Solid Waste Handling Service from the Contractor pursuant to the terms of this Agreement.

1.34 Designated Waste

"Designated Waste" means non-Hazardous Waste which may pose special Disposal problems because of its potential to contaminate the environment, and which may be Disposed of only in Class II Disposal sites or Class III Disposal sites pursuant to a variance issued by the California Department of Health Services. Designated Waste consists of those substances classified as Designated Waste by the State, in California Code of Regulations Title 23, Section 2522 as may be amended from time to time.

1.35 Discarded Materials

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

1.36 Disposal or Disposed

"Disposal" or "Disposed" means the ultimate disposition of Solid Waste Collected by Contractor at a landfill or otherwise in full regulatory compliance.

1.37 Disposal Site(s)

"Disposal Site(s)" means the Solid Waste handling Facility or Facilities utilized for the ultimate Disposal of Solid Waste Collected by Contractor.

1.38 Divert or Diversion

"Divert" or "Diversion" (or any variation thereof) means to prevent Discarded Materials from Disposal at landfill or transformation facilities, (including facilities using incineration, pyrolysis, distillation, gasification, or biological conversion methods) through source reduction, reuse, Recycling, Composting, anaerobic digestion or other method of Processing, subsequent to the provisions of AB 939. Diversion is a broad concept that is to be inclusive of material handling and Processing changes that may occur over the Term including, but not limited to, changes in standard industry practice or implementation of innovative (but not necessarily fully proven) techniques or technology that reduce Disposal risk, decrease costs and/or are for other reasons deemed desirable by the City.

1.39 Edible Food

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

1.40 Electronic Waste or E-Waste

"Electronic Waste" or "E-Waste" means electronic equipment and includes, but is not limited to, stereos, televisions, computers and computer monitors, VCRs, cellular phones, fax machines, household copiers, computer printers, other items with electric plugs that are banned from landfilling, and other similar items commonly known as "brown goods."

1.41 Environmental Law

"Environmental Law" means any federal and state statute, county, local and City ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions or permits, licenses and other operating authorizations relating to (i) pollution or protection of the environment, including natural resources, (ii) exposure of Persons, including employees, to Hazardous Substances or other products, raw materials, chemicals or other

substances, (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or Commercial activities, or (iv) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and Disposal.

1.42 Excluded Waste

“Excluded Waste” means Hazardous Substance, Hazardous Waste, infectious waste, Designated Waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that Approved Facility operator(s) reasonably believe(s) would, as a result of or upon acceptance, Transfer, Processing, or Disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be Disposed of in Class III landfills or accepted at the Facility by permit conditions, waste that in Contractor’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Unit or Multi-Unit Residential Premises Solid Waste after implementation of programs for the safe Collection, Processing, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code. Excluded Waste does not include used motor oil and filters, household batteries, Universal Wastes, and/or latex paint when such materials are defined as allowable materials for Collection through this Agreement and the Generator or Customer has properly placed the materials for Collection pursuant to instructions provided by City or Contractor as set forth in this Agreement.

1.43 Facility

"Facility" means any plant or site, owned or leased and maintained, operated or used by Contractor for purposes of performing under this Agreement.

1.44 Food Recovery

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

1.45 Food Recovery Organization

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

- A. A food bank as defined in Section 113783 of the Health and Safety Code;

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

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

1.46 Food Recovery Service

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

1.47 Food Scraps

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

1.48 Food-Soiled Paper

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

1.49 Food Waste

“Food Waste” means source-separated Food Scraps, Food-Soiled Paper, and Compostable Plastics. Food Waste is a subset of Source Separated Green Container Organic Waste (Source Separated Organic Waste). {Note to WRG: If Compostable Plastics are not part of the Food Waste stream Collected by Contractor, this definition will be amended.}

1.50 Franchise

"Franchise" means the special right granted by City to operate a public utility for Solid Waste services within the City.

1.51 Franchise Fee

“Franchise Fee” means the fee paid by Contractor to City for the right to hold the Franchise for Solid Waste services granted by this Agreement.

1.52 Generator

“Generator” means any Person whose act first causes Discarded Materials to become subject to regulation under federal, State, or local regulations.

1.53 Gray/Black Container

“Gray/Black Container” has the same meaning as in 14 CCR Section 18982.2(a) and shall be used for the purpose of storage and Collection of Gray/Black Container Waste or Mixed Waste.

1.54 Gray/Black Container Waste

“Gray/Black Container Waste” means Solid Waste that is collected in a Gray/Black Container that is part of a three-Container Organic Waste Collection service that prohibits the placement of Organic Waste in the Gray/Black Container as specified in 14 CCR Sections 18984.1(a) and (b) or as otherwise defined in 14 CCR Section 17402(a)(6.6). For the purposes of this Agreement, Gray/Black Container Waste includes carpet and textiles.

1.55 Green Container

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

1.56 Green Waste

"Green Waste" means tree trimmings, wood stumps, grass cuttings, dead plants, leaves, branches, flowers, plant stocks, and dead trees (not more than six (6) inches in diameter or 48 inches in length) and similar materials. Green Waste is a subset of Organic Waste.

1.57 Gross Revenues

“Gross Revenues” or “Gross Revenue” means any and all revenue or compensation in any form collected directly or indirectly by the Contractor for the waste management services provided pursuant to this Agreement within the City of Gardena, including recyclable solid wastes and green wastes, in accordance with the Generally Accepted Accounting Principles. "Gross Revenues" include, but are not limited to, monthly customer fees actually collected from solid waste and recyclable solid wastes, special pickup fees, commercial bin and drop box rental and collection fees, and fees for redelivery of commercial bins and drop boxes, without subtracting the fees paid to City in accordance with this Agreement or any cost of doing business, but excluding revenues from the sale of recyclable materials and recyclable solid waste, and franchise fees collected from the customer.

1.58 Hazardous Substance

“Hazardous Substance” shall mean any of the following: (a) any substance defined, regulated or listed (directly or by reference) as “hazardous substances”, “hazardous materials”,

“hazardous wastes”, “toxic waste”, “pollutant” or “toxic substances” or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC Section 9601, et seq.; (ii) the Hazardous Substances Transportation Act, 49 USC Section 5101, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC Section 6901, et seq.; (iv) the Clean Water Act, 33 USC Section 1251, et seq.; (v) California Health and Safety Code Sections 25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC Section 7401, et seq.; and (vii) California Water Code Section 13050; (b) any amendments, rules, or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereinafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste, or pollutant identified as hazardous or toxic or regulated under any other applicable federal, State, and local environmental laws currently existing or hereinafter enacted, including without limitation, friable asbestos, polychlorinated biphenyl (“PCBs”), petroleum, natural gas and synthetic fuel products, and by-products.

1.59 Household Hazardous Waste (“HHW”)

"Household Hazardous Waste" or “HHW” means material used in residences that may threaten human health or the environment when improperly discarded and usually has one or more of the following characteristics; flammable, toxic, corrosive, and/or reactive.

1.60 Incompatible Materials

“Incompatible Material” or “Incompatibles” mean(s) human-made inert material, including, but not limited to, glass, metal, plastic, and also includes Organic Waste that the receiving end-user, facility, operation, property, or activity is not designed, permitted, or authorized to perform Organic Waste recovery activities as defined in 14 CCR Section 18983.1(b), or as otherwise defined by 14 CCR Section 17402(a)(7.5).

1.61 Large Event

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

1.62 Large Venue

“Large Venue” means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of 14 CCR, Division 7, Chapter 12 and this Agreement, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium,

amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of 14 CCR, Division 7 Chapter 12 and this Agreement, a site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to this Agreement.

1.63 Materials Recovery Facility (“MRF”)

"Materials Recovery Facility" means a permitted Solid Waste Facility where Solid Wastes or Recyclable Materials are sorted or separated for the purposes of Recycling, Processing or composting.

1.64 Mixed Waste Organic Collection Stream or Mixed Waste

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

1.65 Mulch

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

- A. Meets or exceeds the physical contamination, maximum metal concentration, and pathogen density standards for land applications specified in 14 CCR Section 17852(a)(24.5)(A)(1) through (3).
- B. Was produced at one or more of the following types of Facilities:
 - 1. A compostable material handling operation or facility as defined in 14 CCR Section 17852(a)(12), that is permitted or authorized under Division 7 of Title 14 of the CCR, other than a chipping and grinding operation or facility as defined in 14 CCR Section 17852(a)(10);
 - 2. A Transfer/Processing Facility or Transfer/Processing operation as defined in 14 CCR Section 17402(a)(30) and (31), respectively, that is permitted or authorized under 14 CCR, Division 7, Chapter 12; or,
 - 3. A Solid Waste landfill as defined in PRC Section 40195.1 that is permitted under 27 CCR, Division 2.

1.66 Multi-Unit Residential Premises

Multi-Unit Residential Premises means any building and/or structure, or portion thereof, in City, which is used for residential housing purposes, irrespective of whether residents are transient, temporary or permanent, and having five (5) or more self-contained living units.

1.67 Non-Compostable Paper

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

1.68 Non-Organic Recyclables

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

1.69 Organic Waste

"Organic Waste" means Solid Wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, food, Green Waste, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.

1.70 Owner

"Owner" means the Person holding the legal title to the real property constituting the Premises to which Solid Waste Collection service is to be provided under this Agreement or the Person holding legal title to the Disposal Site.

1.71 Person

"Person" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Los Angeles, towns, cities, and special purpose districts.

1.72 Premises

"Premises" means any land or building in City where Solid Waste is generated or accumulated.

1.73 Process, Processed, or Processing

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

1.74 Prohibited Container Contaminants

“Prohibited Container Contaminants” means the following: (i) Discarded Materials placed in the Blue Container that are not identified as acceptable Source Separated Recyclable Materials for the City’s Blue Container; (ii) Discarded Materials placed in the Green Container that are not identified as acceptable Source Separated Green Container Organic Waste for the City’s Green Container; (iii) Discarded Materials placed in the Gray/Black Container that are acceptable Source Separated Recyclable Materials and/or Source Separated Green Container Organic Waste to be placed in City’s Green Container and/or Blue Container; and (iv) Excluded Waste placed in any Container.

1.75 Proposition 218

"Proposition 218" means Articles XIIC and XIID of the California Constitution and any implementing legislation promulgated thereunder, as amended, supplemented, superseded, and replaced from time to time. As an initiative of the City to maximize public participation in the rate setting process, fees charged to customers pursuant to this Agreement will be approved in accordance with the majority protest procedures of Proposition 218.

1.76 Putrescible Waste

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

1.77 Quarantined Organic Waste

“Quarantined Organic Waste” means Organic Waste which has been determined to be subject to quarantine by the California Department of Food and Agriculture (CDFA).

1.78 Recycling

“Recycling” means the process of Collecting, sorting, cleansing, treating, and reconfiguring materials for the purpose of returning them to the economic mainstream in the form of raw material for new, Reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. Recycling includes processes deemed to constitute a reduction of

Landfill Disposal pursuant to 14 CCR, Division 7, Chapter 12, Article 2. Recycling does not include gasification or transformation as defined in Public Resources Code Section 40201.

1.79 Recyclable Materials

“Recyclable Materials” means those Discarded Materials that: the Generators set out in Recyclables Containers for Collection for the purpose of Recycling by the Contractor and that exclude Excluded Waste. No Discarded Materials shall be considered Source Separated Recyclable Materials unless such material is separated from Organic Waste, and Solid Waste. Source Separated Recyclable Materials shall include, but not be limited to: newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons, telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, gable top beverage containers, cereal, and other similar food boxes yet excluding paper tissues, paper towels, paper with plastic coating, paper contaminated with food, wax paper, foil-lined paper and cartons, Tyvex non-tearing paper envelopes); chipboard; corrugated Cardboard; glass containers of any color (including brown, clear, and green glass bottles and jars); aluminum (including beverage containers and small pieces of scrap metal); steel, tin, or bi-metal cans; mixed plastics such as plastic containers (no. one (1) to seven (7)), except expanded Polystyrene (EPS); bottles including containers made of HDPE, LDPE, or PET; and, those materials added by the Contractor from time to time.

1.80 Refuse

“Refuse” as it is used as a defined term this this Agreement, has the same meaning as Solid Waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated hereunder. Excluded from the definition of Refuse are Excluded Waste, C&D, Source Separated Recyclable Materials, Source Separated Organic Materials, and radioactive waste. Notwithstanding any provision to the contrary, Refuse may include de minimis volumes or concentrations of waste of a type and amount normally found in Residential Refuse after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of Household Hazardous Waste in compliance with Section 41500 and 41802 of the California Public Resources Code as may be amended from time to time. Solid Waste includes salvageable materials only when such materials are included for Collection in a Refuse Container not Source Separated from Refuse at the site of generation.

1.81 Renewable Natural Gas (RNG)

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

1.82 Residential

"Residential" refers to services performed at and for Residential Premises, which include both Single-Unit and Multi-Unit Residential Premises.

1.83 Residential Premises

"Residential Premises" means Premises upon which dwelling units exist, including, without limitation, Single-Unit and Multi-Unit Residential Premises, apartments, boarding or rooming houses, condominiums, mobile homes, efficiency apartments, and second units. Notwithstanding any provision to the contrary herein, in the Gardena Municipal Code, or otherwise, for purposes of this Agreement, Premises upon which the following uses are occurring shall not be deemed to be Residential Premises, and rather shall be deemed to be Commercial Premises: Assisted Living Facilities, Convalescent Homes, Dormitories, Extended Stay Motels, Group Residential Facilities, Group Care Facilities, Hotels, Motels, and any other businesses not specifically listed at which residency is transient in nature and hence should be classified as Commercial Premises as determined by City on a case by case bases.

1.84 Roll-off Box

"Roll-off Box" means Solid Waste Collection Containers of 10-yards or larger.

1.85 SB 1383

"SB 1383" means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time. For the purposes of this Agreement, SB 1383 specifically refers to the Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle and adopted on November 3, 2020 that created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.

1.86 Self-Hauler

"Self-Hauler" or "Self-Haul" means a Solid Waste Customer, Commercial Generator, Multi-Unit Residential Premises Generator, or special event that transports its own Source Separated Recyclable Materials to a Recycling facility or Source Separated Organic Waste to an Organic Waste Processing facility by using a vehicle owned by that transporting entity rather than using the hauling services of the Solid Waste Collector.

1.87 Sharps

"Sharps" means hypodermic needles, pen needles, intravenous needles, lancets, and other

devices that are used to penetrate the skin for the delivery of medications.

1.88 Single-Unit Residential Premises

"Single-Unit Residential Premises" means each Premises used for or designated as a Single-Unit Residential dwelling, including each unit of a condominium project, duplex, triplex, townhouse, apartment building, or mobile home park in which each premises receives individual Solid Waste Collection service using Carts and consists of four (4) dwelling units or less per legal parcel.

1.89 Solid Waste

"Solid Waste" means all discarded putrescible and non-putrescible solid, semisolid, and liquid wastes, including Refuse, Construction and Demolition Debris, Bulky Items, Recyclable Materials, and Organic Waste, or any combination thereof which are permitted to be disposed of in a Class III landfill, and which are included in the definition of "Non-hazardous Solid Waste" set forth in the California Code of Regulations. "Solid Waste" means all Solid Wastes generated by Residential, Commercial, and industrial sources, and all Solid Waste generated at construction and demolition sites, and at treatment works for water and wastewater, which are Collected and transported under the authorization of the City or are self-hauled by residents or contractors. Solid Waste does not include agricultural crop residues, mining waste and fuel extraction waste, forestry wastes, ash from industrial boilers, furnaces and incinerators or Hazardous Substance, any waste which is not permitted to be disposed of at a Class III landfill and which fall within the definition of "Nonhazardous Solid Waste" set forth in Title 23, Chapter 15, Section 2523(a) of the California Code of Regulations as amended or designated Class II wastes. Materials shall be deemed "Solid Waste" consistent with the meaning of California Public Resources Code Section 40191, and for purposes of this Agreement shall be regulated as such, whether or not they may be potentially Recyclable Material, in either of the following instances: (a) the material is mixed or commingled with other types of Solid Waste such that more than 65% of the material consists of Solid Waste rather than Recyclable Materials, or (b) the payment of a fee, charge, or other consideration, in any form or amount, is directly or indirectly solicited or received from the Generator by any Person or combination of Persons in exchange for Collection, removal, Transportation, storage, Processing, handling, consulting, Container rental or Disposal services ("fee for service" Recycling), whether or not arranged by or through a subcontractor, broker, agent, consultant, or Affiliate of the provider of such service.

1.90 Solid Waste Handling Services

"Solid Waste Handling Services" means the Collection, transfer, transport, Recycling, Processing, and Disposal of Solid Waste.

1.91 Source Separated

"Source Separated" means materials, including commingled Recyclable Materials, that have been separated or kept separate from the Solid Waste stream, at the point of generation, for the

purpose of additional sorting or Processing of those materials for Recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace, or as otherwise defined in 14 CCR Section 17402.5(b)(4). For the purposes of the Agreement, Source Separated shall include separation of materials by the Generator, property Owner, property Owner's employee, property manager, or property manager's employee into different Containers for the purpose of Collection such that Source Separated materials are separated from Gray/Black Container Waste/Mixed Waste and other Solid Waste for the purposes of Collection and Processing.

1.92 Source Separated Blue Container Organic Waste

"Source Separated Blue Container Organic Waste" means Source Separated Organic Waste that can be placed in a Blue Container that is limited to the Collection of those Organic Wastes and Non-Organic Recyclables as defined in 14 CCR Section 18982(a)(43); or as otherwise defined by 14 CCR Section 17402(a)(18.7). Source Separated Blue Container Organic Waste is a subset of Organic Waste.

1.93 Source Separated Brown Container Food Waste

"Source Separated Brown Container Food Waste" means Source Separated Food Scraps, Food-Soiled Paper, and Compostable Plastics that can be placed in a Brown Container.

1.94 Source Separated Green Container Organic Waste

"Source Separated Green Container Organic Waste" means Source Separated Organic Waste that can be placed in a Green Container that is specifically intended for the separate Collection of Organic Waste by the Generator, excluding Source Separated Blue Container Organic Waste, carpets, Non-Compostable Paper, and textiles. Source Separated Green Container Organic Waste is a subset of Organic Waste.

1.95 Source Separated Recyclable Materials

"Source Separated Recyclable Materials" means Source Separated Non-Organic Recyclables and Source Separated Blue Container Organic Waste.

1.96 State

"State" means the State of California.

1.97 Tier One Commercial Edible Food Generators

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

A. Supermarket.

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

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

1.98 Tier Two Commercial Edible Food Generators

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

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

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

1.99 Transfer

“Transfer” means the act of transferring the materials Collected by Contractor in its route vehicles into larger vehicles for Transport to other facilities for the purpose of Recycling or Disposing of such materials.

1.100 Transportation or Transport

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

1.101 Universal Waste

“Universal Waste” means any of the following waste that are conditionally exempt from classification as hazardous wastes pursuant to Title 22 of the California Code of Regulations (22 CCR), § 66261.9: (i) batteries as described in 22 CCR § 66273.2; (ii) thermostats as described in 22 CCR § 66273.4; (iii) lamps as described in 22 CCR § 66273.5; and (iv) cathode ray tube materials as described in 22 CCR § 66273.6.

ARTICLE 2: GRANT AND ACCEPTANCE OF FRANCHISE

2.1 Grant and Acceptance of Franchise, Indemnity of Award

Subject to the terms and conditions of this Agreement (including but not limited to the exclusions set forth in Section 2.9 hereof) and applicable State laws, and to the rights of State, county and school district facilities to use a Solid Waste enterprise other than Contractor, City hereby grants to Contractor and Contractor hereby accepts from City, for the Term hereof, the exclusive Franchise, right and privilege to provide Solid Waste Handling Services at all Residential and Commercial Premises within the boundaries of the City (the "Franchise").

Contractor agrees to and shall timely take all actions that are reasonably necessary to defend the validity and enforceability of this Agreement and shall pay all costs related to such defense. Contractor shall defend, indemnify, protect and hold harmless, the City, its officers, agents and employees from any and all claims, actions or proceedings to attack, set aside, void, annul or seek monetary damages resulting from an approval by the City of this Agreement. The City shall promptly notify Contractor of any such claim, action, or proceeding. The City and Contractor shall meet in good faith in an effort to come to a mutual agreement for a joint defense; provided that the City shall be entitled to select legal counsel of its choice to conduct the defense if an agreement cannot be reached. Contractor's obligations to pay all costs, defend, indemnify, protect and hold harmless under this section shall not be altered in the event City retains separate counsel.

Contractor hereby accepts the Franchise on the terms and conditions set forth in this Agreement.

2.2 Exclusive Nature of Franchise

During the term of this Agreement, except as otherwise provided in Section 2.9 below, or as may otherwise be provided by federal or State law, the rights granted to the Contractor under this Agreement shall be exclusive to the Contractor. The City will not let any contract to, or enter into any agreement with, any other Person for the performance of the services herein required to be performed by the Contractor.

To the extent permitted under State or federal law, the City shall protect the Contractor's exclusive rights by proper ordinances, and by reasonable enforcement of those ordinances. Should the City be required to take administrative, law enforcement, or other legal action against any Person that infringes on the Contractor's exclusive rights, the Contractor shall reimburse the City for its reasonable administrative, law enforcement, or other legal costs related to any such action. Nothing herein shall preclude Contractor from taking such legal action against third parties as it deems appropriate to protect the exclusive nature of its Franchise.

2.3 Effective Date

The effective date of this Agreement shall be the date which the City Council approves this Amended and Restated Agreement.

2.4 Term of Agreement

The term of this Agreement shall be ten (10) years, commencing at midnight July 1, 2022, and expiring at 11:59 P.M. June 30, 2032, subject to extension as provided herein. Notwithstanding the foregoing, the unexcused failure or refusal of Contractor to perform any material term, covenant, obligation or condition contained in this Agreement shall give rise to the right, in favor of City, for earlier termination of this Agreement for cause in accordance with the procedures elsewhere contained herein.

2.5 Option to Extend Term

City shall have the sole option to extend this Agreement up to sixty (60) months. The City may, upon 90-day advance written notice to the Contractor prior to Agreement expiration, exercise the extension option. If such extension notice is provided by City, the Agreement will automatically renew monthly, up to a maximum of sixty (60) months unless City gives Contractor a 60-day written notice of expiration.

2.6 Representations and Warranties of Contractor

Contractor hereby covenants, represents, and warrants the following to City for the purpose of inducing City to enter into this Agreement and to consummate the transaction contemplated hereby, all of which shall be true as of the date of this Agreement and as of the Effective Date:

- a) Contractor is wholly owned by Waste Recourse Technologies, Inc., a corporation duly organized and validly existing as a corporation under the laws of the State of California.
- b) Neither the execution of this Agreement nor the delivery by Contractor of services nor the performance by Contractor of its obligations hereunder: (1) conflicts with, violates or results in a breach of any Applicable Law; (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of Contractor) or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument; or (3) will result in the creation or imposition of any encumbrance of any nature whatsoever upon any of the properties or assets of Contractor.

- c) There is no action, suit or other proceeding as of the date of this Agreement, at law or in equity, or to the best of Contractor's knowledge, any investigation, before or by any court or governmental authority, pending or threatened against Contractor or Waste Resources Technology, Inc. [parent/guaranteeing Contractor] which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the validity or enforceability of this Agreement or any such agreement or instrument entered into by Contractor or Waste Resources Technology, Inc. [parent/guaranteeing Contractor] in connection with the transactions contemplated hereby, or which could materially and adversely affect the ability of Contractor to perform its obligations hereunder or which would have a material adverse effect on the financial condition of Contractor or Waste Resources Technology, Inc. [parent/guaranteeing Contractor]. [This provision may be waived by the City.]
- d) Contractor has no knowledge of any Applicable Law in effect as of the date of this Agreement that would prohibit the performance by Contractor of this Agreement and the transactions contemplated hereby.
- e) Contractor has made an independent investigation, satisfactory to it, of the conditions and circumstances surrounding this Agreement and the work to be performed by it and is satisfied that those conditions and circumstances will not impair its ability to perform the work and provide the Collection services required by this Agreement.
- f) The information supplied by Contractor in all submittals made in connection with negotiation and execution of this Agreement, including all materials in Exhibits of this Agreement, and all representations and warranties made by Contractor throughout this Agreement are true, accurate, correct and complete in all material respects on and as of the Effective Date of this Agreement.
- g) Contractor's representative shall have authority in all daily operational matters related to this Agreement. City may rely upon action taken by such designated representative as action of Contractor unless the actions taken are not within the scope of this Agreement.

2.7 Conditions to Effectiveness of Agreement

The obligation of City to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by City.

- a) Accuracy of Representations. Representations and warranties made by Contractor throughout this Agreement are accurate, true and correct on and as of the Effective Date of this Agreement.
- b) Absence of Litigation. There is no litigation pending in any court challenging the award of this Franchise to Contractor or the execution of this Agreement or seeking to restrain or enjoin its performance.
- c) Furnishing of Insurance and Bonds. Contractor has furnished evidence of the insurance and bonds required by Article 9.
- d) Effectiveness of City Council Action. City's Resolution approving this Agreement shall have become effective pursuant to California law prior to the Effective Date.
- e) Contractor shall have paid the Contracting Fee to City, as provided in Section 3.5.

2.8 Delegation of Authority

The administration of this Agreement by the City shall be under the supervision and direction of the City Manager's office and the actions specified in this Agreement, unless otherwise stated, shall be taken by the City Manager, or his or her designee.

2.9 Limitations to Scope

Notwithstanding any provision to the contrary contained herein, the exclusive franchise, right and privilege to provide Solid Waste Handling Services at Premises within City granted to Contractor by this Agreement specifically excludes the following services, which services may be provided by Persons other than Contractor, and which may be the subject of other permits, licenses, franchises or agreements issued or entered by City:

- a) Recyclable and Organic Waste. Other Persons shall maintain the right to: (1) accept Source Separated Recyclable Materials and Source Separated Organic Waste donated from the service recipient, or (2) to pay the service recipient for Source Separated Recyclable Materials and Source Separated Organic Waste provided that there is no net payment made by the service recipient to such other Person.
- b) Donated or Sold Materials. Any items which are Source Separated at any Premises by the Generator and sold or donated to other Persons, including youth, civic, or charitable organizations.
- c) Solid Waste, including Source Separated Recyclable Materials and/or Source Separated Organic Waste, which is removed from any Premises by the Generator, and which is transported personally by such Generator (or by his or her full-time employees) to a Solid Waste Facility in a manner consistent with all Applicable Laws and regulations;

- d) Green Waste removed from a Premises by a gardening, landscaping, or tree trimming Contractor, utilizing its own equipment, as an incidental part of a total service offered by that Contractor rather than as a hauling service;
- e) Construction and Demolition Debris which is removed by a duly licensed construction or demolition contractor or as part of a total service offered by said licensed contractor or by the City, where the licensed contractor utilizes its own equipment;
- f) The Collection, Transfer, Transport, Recycling, Processing, and Disposal of animal waste and remains from slaughterhouse or butcher shops for use as tallow;
- g) The Collection, Transfer, Transport, Recycling, Processing, and Disposal of by-products of sewage treatment, including sludge, sludge ash, grit and screenings;
- h) The Collection, Transfer, Transport, Recycling, Processing, and Disposal of Hazardous Substances, Hazardous Waste, Household Hazardous Waste and radioactive waste regardless of its source, including tires, used oil and used oil filters;
- i) The Collection, Transfer, Transport, Recycling, Processing, and Disposal of Solid Waste by City through City officers or employees in the normal course of their City employment;
- j) Solid Waste Handling Services for governmental agencies other than City, which may have facilities in City, but over which City has no jurisdiction in connection with the regulation of Solid Waste; and,
- k) The Collection of Source Separated Recyclable Materials and/or Source Separated Organic Waste that are not diverted by the Contractor's Diversion programs.
- l) The Food Waste or other Organic Waste diverted from Disposal removed from a Premises and delivered to hog farms or to other Premises for use as animal feed; and,
- m) Edible food removed from a Premises and recovered for human consumption.

The exclusive franchise, right and privilege to provide Solid Waste Handling Services within City granted to Contractor by this Agreement shall be interpreted to be consistent with all applicable state and federal laws, now in effect and adopted during the term of this Agreement, and the scope of this Agreement shall be limited by all applicable current and developing Applicable Laws with regard to Solid Waste Handling Services, exclusive Franchise, control of Recyclable Materials, Solid Waste flow control, and related doctrines. In the event that future interpretations of current law, future enactments or developing legal trends limit the ability of City to lawfully grant Contractor the scope of services as specifically set forth herein, Contractor agrees that the scope of this Agreement will be limited to those services and materials which may be lawfully provided, and that City shall not be responsible for any lost profits claimed by

Contractor to arise out of further limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of Contractor to minimize the financial impact to other services being provided as much as possible.

2.10 City's Right to Direct Changes

2.10.1 General

City may direct Contractor to perform additional services (including new Diversion programs, etc.) or modify the manner in which it performs existing services or bills for services. Pilot programs and innovative services which may entail new Collection methods, and different kinds of services and/or new requirements for Generators are included among the kinds of changes which City may direct. Contractor acknowledges that State law may increase the Diversion requirement during the term of this Agreement and Contractor agrees to propose services to meet such Diversion requirements. Contractor shall be entitled to an adjustment in its Contractor Compensation for providing such additional or modified services, if Contractor demonstrates that its cost of service would increase. Any adjustment will be subject to majority protest approval. City may utilize cost components included in the Contractor's Proposal in calculating equitable rate adjustments. If City and Contractor cannot agree on compensation for new or additional services, then City may contract with other parties for such services, which shall be considered exempt from the exclusivity provisions of Section 2.2. If Contractor cannot receive the agreed to compensation due to a majority protest Contractor will not be required to implement additional services.

2.10.2 New Diversion Programs

Contractor shall present, within sixty (60) days of a request to do so by City, a proposal to provide additional or expanded Diversion services. The proposal shall contain a complete description of the following:

- a) Collection methodology to be employed (equipment, manpower, etc.).
- b) Equipment to be utilized (vehicle number, types, capacity, age, etc.).
- c) Labor requirements (number of employees by classification).
- d) Type(s) of Containers to be utilized.
- e) Type(s) of material to be Collected
- f) Provision for program publicity/education/marketing.
- g) Three-year projection of the financial results of the program's operations in a balance sheet and operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions.

2.10.3 City's Right to Acquire Services

Contractor acknowledges and agrees that City may permit other Persons besides Contractor to provide additional Solid Waste services not otherwise contemplated under this Agreement. If pursuant to this Section 2.10.3, Contractor and City cannot agree on terms and conditions of such services within ninety (90) days from the date when City first requests a proposal from Contractor to perform such services, or compensation is not approved due to a majority protest. Contractor acknowledges and agrees that City may permit Persons other than Contractor to provide such services.

2.10.4 Flow Control Option

City has the option to provide written direction to the Contractor specifying a Facility for handling, Processing, and Disposal of Solid Waste, Source Separated Recyclable Materials and Source Separated Organic Waste, and other Discarded Materials. If City directs Contractor to a Facility other than an Approved Facility listed in this Agreement, or otherwise requested by Contractor, and in doing so it adversely affects the ability of the Contractor to meet either or both of the requirements of Section 9.3 and Section 4.2.6, then in this event the City and Contractor shall meet and confer and mutually agree on revised obligations for Sections 9.3 and 4.2.6. The foregoing notwithstanding, in the event City directs Contractor to a Facility other than an Approved Facility listed in this Agreement or otherwise requested by Contractor, then a rate adjustment may be implemented based upon any demonstrable increase or decrease in costs associated with handling, Processing, Disposal, and transportation subject to majority protest proceedings.

In the event City so notifies Contractor of its desire to cease exercising its Flow Control Option, Contractor shall have the absolute discretion to utilize any Disposal facility, transfer station, Recycling facility, Material Recovery Facility, C&D Processing Facility, Organic Waste Processing Facility, landfill, or other facility of its choosing to retain, Recycle, Process, and Dispose of Solid Waste generated within the City, provided the use of such facility by Contractor enables it to meet all other requirements of this Agreement and State law.

2.11 Ownership of Solid Waste

Once Solid Waste is placed in Containers and properly placed at the designated Collection location, ownership and the right to possession shall transfer directly from the Generator to Contractor by operation of this Agreement. Subject to Contractor's objective to meet the Source Reduction and Recycling goals which apply to City and City's right to direct Contractor to process and dispose of Solid Waste at a particular licensed Solid Waste Facility or to dispose of Solid Waste at a particular licensed Disposal Site, if and only if City exercises such right by providing specific written direction to Contractor, Contractor is hereby granted the right to retain, Recycle, process, Dispose of, and otherwise use such Solid Waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by Contractor; this does not impact Contractor's right to retain Recyclable Materials revenue under Section 4.2.5. Subject to the provisions of this Agreement, Contractor shall have the right to retain any benefit resulting from

its right to retain, Recycle, process, Dispose of, or reuse the Solid Waste, Organic Waste, and Recyclable Materials which it Collects. Solid Waste, Organic Waste, and Recyclable Materials, or any part thereof, which is disposed of at a Disposal Site or sites (whether landfill, transformation Facility, transfer station, Approved Organic Waste Processing Facility or Material Recovery Facility) shall become the property of the Owner or operator of the Disposal Site(s) once deposited there by Contractor. City may obtain ownership or possession of Solid Waste placed for Collection upon written notice of its intent to do so, however, nothing in this Agreement shall be construed as giving rise to any inference that City has such ownership or possession unless such written notice has been given to Contractor.

2.12 Contractor Status

Contractor represents and warrants that it is duly organized, validly existing and in good standing under Applicable Laws. It is qualified to transact business in the State of California and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

2.13 Contractor Authorization

Contractor represents and warrants that it has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of Contractor (or the shareholders, if necessary) have taken all actions required by Applicable Law, its articles of incorporation, and its bylaws or otherwise to authorize the execution of this Agreement. The Persons signing this Agreement on behalf of Contractor have authority to do so. Contractor shall authorize one employee for the City as a single point of contact for issues arising under this Agreement. City may accept that this employee's actions are taken on behalf of and with the full approval of the Contractor.

2.14 Annexations

This Agreement extends to any territory annexed to the City during the term of this Agreement except to the extent that Collection by Contractor within that annexed territory would violate the provisions of Public Resources Code Section 49520. In such event, this Agreement shall become effective as to such area at the earliest possible date permitted by law, and City agrees that it shall cooperate with Contractor to fulfill any requirement necessary for Contractor to serve the annexed area consistent with this paragraph.

2.15 Mandatory Service

At all times during the term of this Agreement, the City shall require the Owner of each occupied Premises where Solid Waste is produced to subscribe to the Collection service provided for in this Agreement.

2.16 Permits and Licenses

Contractor shall acquire and maintain all necessary permits and licenses for the Collecting, transporting, Processing, and storing of Solid Waste, Source Separated Recyclable Materials and Source Separated Organic Waste, disposing of Solid Waste, and the Recycling of Source Separated Recyclable Materials as required under this Agreement. Failure to maintain all required permits shall be deemed a material breach of contract for which City may terminate this Agreement as provided in Article 11. Contractor must follow requirements of Chapter 5.04 of the Gardena Municipal Code, including, but not limited to, obtaining a City of Gardena business license.

**ARTICLE 3:
FRANCHISE FEE, ADMINISTRATIVE FEE & RECYCLING SURCHARGE**

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

3.1 Franchise Fee

In consideration of the exclusive Franchise granted pursuant to this Agreement, the Contractor shall pay to the City Franchise Fees.

3.1.1 Section Reserved

3.1.2 Quarterly Franchise Fee

In consideration of the exclusive Franchise provided in Section 2.1 of this Agreement, Contractor shall pay to City ten-percent (10%) of Gross Revenues from services provided to Residential Premises Customers, and twelve-percent (12%) of Gross Revenues for all other services provided by Contractor of the Gross Revenues derived by Contractor from services provided in City. Concurrent with each Franchise Fee payment, Contractor shall provide an accounting worksheet showing the amount, if any, of delinquent Customer accounts.

3.1.3 Time and Method of Quarterly Franchise Fee Payment

On or before the fifteenth (15th) day following the end of each calendar quarter, during the Term of this Agreement, Contractor shall remit to City a sum of money equal to the percent, as provided in Section 3.1.2, of the Gross Revenues collected by Contractor for Franchise services provided within City, during the preceding calendar quarter, as a Franchise Fee. If the Franchise Fee is not paid on or before the fifteenth (15th) day following the end of the calendar quarter, Contractor shall pay to City a penalty in an amount equal to two percent (2%) of the amount owing for that quarter. Contractor shall pay an additional two percent (2%), on any unpaid balance for each following thirty (30) day period the Franchise Fee remains unpaid. Late payment penalties shall not be included in any revenue requirement.

Each quarterly remittance to City shall be accompanied by a statement detailing Gross Receipts for the period covered from all operations conducted or permitted, pursuant to this Agreement. In addition, Contractor shall maintain copies of all Billing and Collection records for five (5) years, following the date of Billing, for inspection and verification by City at any reasonable time upon request.

3.2 AB 939/SB 1383 Regulatory Reimbursement

3.2.1 Amount

The City has incurred expenses for preparing and adopting the Source Reduction and Recycling and Household Hazardous Waste Elements (SRRE and HHWE, respectively) required by AB

939. City has, and will continue, to incur expenses for implementing the programs in the SRRE and HHWE. Therefore, Contractor shall remit to the City one and a half-percent (1.5%) of Gross Revenues, or another amount as approved by ordinance or resolution of the City Council, per calendar quarter as an AB 939/SB 1383 Regulatory Reimbursement for Solid Waste Handling Services performed in the City. Contractor will collect these fees from Customers on the regular Billings and remit collected amounts to City on a quarterly basis, as provided below. Contractor may be required to separately identify the Fee and other specific costs on bills as determined and directed by City.

3.2.2 Time and Method of Payment

Except as expressly provided below, during the term of this Agreement and any extension thereof, Contractor shall remit the AB 939/SB 1383 Regulatory Reimbursement per calendar quarter to City in the same fashion and subject to the same terms and conditions as the Franchise Fee. Contractor shall continue to pay the same percentage amount each quarter until the AB 939/SB 1383 Regulatory Reimbursement is changed by City resolution.

3.3 Section Reserved

3.4 Other Fees

In addition to the other consideration described in this Agreement, Contractor shall pay to City on December 30th for each year of the term of this Agreement, or any extension thereof, the amount of one-hundred and five thousand dollars (\$105,000) for support of community events. WRG will be recognized at community events that it supports monetarily.

3.5 Contracting Fee

In addition to the other consideration described in this Agreement, Contractor shall within thirty (30) days of the execution of this Agreement, pay City its reasonable costs for developing and negotiating this Agreement in an amount not-to-exceed eighty-nine thousand dollars (\$89,000).

3.6 Payments in Lieu of Other Taxes

All sums payable by Contractor to City under this Agreement shall be in lawful money of the United States and shall be in lieu of any license tax which might otherwise be imposed by City for the privilege of Contractor conducting its business under this Agreement in City, other than any business license tax imposed by City pursuant to the Municipal Code.

ARTICLE 4: DIRECT SERVICES

4.1 Refuse

4.1.1 General

The work to be done by Contractor pursuant to this Agreement shall include, but not be limited to, the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration of, and specification of requirements for, particular items of labor or equipment shall not relieve Contractor of the duty to furnish all others, as may be required, whether enumerated elsewhere in the Agreement or not.

The work to be done by Contractor pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents within City are provided reliable, courteous and high-quality Solid Waste Collection at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects in the manner provided in this section, whether such other aspects are enumerated elsewhere in the Agreement or not.

All Collection systems shall comply with CalRecycle requirements under SB 1383 as described in Exhibit 7.

4.1.2 Residential Cart Refuse Collection

Contractor shall provide all Customers at Residential Premises without Bin Service with one Cart ("Refuse Cart(s)"). Customers may select a 64, or 96-gallon Cart. The 64-gallon Cart shall be the default in the event that a size is not selected. Collection frequency shall be not less than once per week from Contractor-provided Carts placed at a suitable location, which is typically on the curb, but may be in the street against the curb or in the alley. If there is a dispute between a Customer and Contractor as to whether Cart or Bin service shall be provided, or the proper location for Cart placement, City will make the final determination.

Cart Customers that regularly require more than one Refuse Cart may request additional Carts for an additional charge per Cart per month in accordance with the approved rate schedule.

Multi-Unit Residential Premise Customers receiving Refuse Cart services are entitled to the same services as Residential Premises Cart Customers and will pay the same rates, per unit.

4.1.3 Service for Disabled Customers

Contractor shall collect Solid Waste from the rear yard or other location convenient to the resident for physically challenged residents with State of California handicapped placards, or documentation from a state or federal agency confirming the Customer's disability, at no additional charge to the resident or City. Such a physically challenged resident shall provide Contractor with verification as described above and shall also provide permission to Contractor

to enter his or her property to collect Solid Waste and verification that no other able-bodied person live in the household. New Customers shall be notified of this option upon requesting service. Non-qualified Residential Premises Cart Customers may request this service and shall pay the Non-qualified private property rates included in the approved rate schedule.

4.1.4 Bin Refuse Collection

Contractor shall provide Bin Service to Single-Unit Residential Premises Customers that request this service, Multi-Unit Residential Premises Customers not receiving Cart service, and Commercial Customers. Contractor shall Collect and remove all Refuse that is placed in Bins from the property of Customers receiving Bin Service, at least once per week and more frequently if required to handle the waste generated at the Premises where the Bins are located. Special consideration shall be given when determining the pickup areas to ensure that the flow of traffic is not impeded. Repeated, reasonable public complaints about unreasonable interference with traffic flows may constitute a default or violation of this Agreement. Customers may lease from Contractor or third party's compaction equipment that may be attached to Bins. The provision of compaction equipment is outside the scope of the Agreement. Collection of Bins using these devices remains within the scope of this Agreement unless otherwise excluded per Section 2.9.

4.1.5 Commercial Premises Cart Service

As an alternative to the requirements of Section 4.1.4, Contractor shall offer Collection in Refuse Carts to Customers at Commercial Premises that do not have space for, or do not generate enough waste to require the use of Bins for Collection at rates shown in the approved rate schedule. If Contractor and Customer have a disagreement as to whether a Refuse Cart is appropriate, or if City determines the Collection in a Refuse Cart causes health and safety or other concerns, City shall make the final determination as to whether Collection in a Refuse Cart may occur.

4.1.6 Overflowing Containers

Customers that regularly produce more Refuse than their current level of service can accommodate may have their service level increased in accordance with the following procedure:

First Incident in a Six-Month Period – If more material is placed for Collection than fits in a Container, Contractor shall photograph the overflowing Container and send to the Customer (at both the service and billing addresses) the picture and a letter instructing that the next instance of an overflowing Container may result in a charge.

Second Incident in a Six-Month Period – Upon the second event of an overfilled Container in a six-month period, Contractor shall photograph the overflowing Container and send to the Customer the picture and a letter instructing that a third incident in that same six-month period may result in an increase in the level of service. If the Container overflowed sufficiently to require the driver to leave the Collection vehicle to clean around the Container, Contractor may

charge the Container Overage Cleanup fee in the approved rate schedule.

Third Incident in a Six-Month Period – Upon the third event of an overfilled Container in a six-month period, Contractor shall photograph the overflowing Container and send to the Customer the picture and a letter notifying Customer of an increase in its service level. If the Container overflowed sufficiently to require the driver to leave the Collection vehicle to clean around the Container, Contractor may charge the Container Overage Cleanup fee in the approved rate schedule.

In the event that this Section gives rise to a dispute between Contractor and a Customer, City shall settle the dispute in accordance with Section 5.2.3.

4.1.7 Roll-off Box Service

Contractor shall provide exclusive (as limited by Section 2.9) permanent and temporary Roll-off Box Collection service upon request. Contractor must deliver a temporary Roll-off Box to a Customer within one business day (excluding Saturday, Sunday and holidays listed in Section 4.5.1) of request. Contractor may not charge for any services not listed in the rate schedule without prior approval of the City.

Contractor will provide standard 10 to 40-cubic-yard standard Roll-off Boxes. The provision of compactor Roll-off Boxes, which are enclosed Containers attached to a compaction device, is not included in this Agreement. Providing service to such compactor Roll-off Boxes is included.

4.1.8 Temporary Bin Service

Contractor shall provide exclusive (as limited by Section 2.9) temporary Bin Service to Customers upon request. Contractor must deliver a temporary Bin to a Customer by the following business day (excluding Saturday, Sunday or holidays listed in Section 4.5.1), if requested by 12:00 noon; otherwise, delivery shall be no later than the second day. Rates for temporary Bin Service are listed separately in the approved rate schedule.

4.1.9 Scout Service

Upon Customer request, Contractor shall provide scout service, whereby Contractor will access Containers using a small vehicle either to move Containers to street or other public right-of-way for Collection or Collecting Solid Waste directly from Container storage location. The Contractor may charge the scout rate included in the approved rate schedule to move or retrieve a Container when operationally required in order to safely position the Container for Collection. In the event of a dispute between Contractor and Customer as to whether scout service will be used, the City will make the final determination. If a scout fee is charged, then a Bin pushout fee shall not be charged.

4.1.10 Bin Pushout Service

Upon Customer request, Contractor shall provide Bin pushout service, whereby Contractor will move Containers manually to facilitate Collection. The Contractor may charge the pushout rates

included in the approved rate schedule to move or retrieve a Container over twenty-five (25) feet to facilitate Collection. For Containers in Bin enclosures, the measurement of distance shall be from location of the Bin once removed from the enclosure to the point of Collection. In the event of a dispute between Contractor and Customer as to whether pushout service will be used, the City will make the final determination. If a Bin pushout fee is charged, then a scout service fee shall not be charged.

If Contractor must place a Bin in the public right-of-way to facilitate Collection, Contractor shall not permit the Bin to remain in the public right-of-way over one hour. If the Bin is stored under a chute for Solid Waste Collection, the Bin must be serviced and returned immediately.

4.1.11 Locking Bins

Contractor shall provide locking Bin Service (providing the hasp and lock and servicing the lock) to Customers that request such service in accordance with the approved rate schedule.

4.1.12 Return Trip Fee

Contractor may charge a fee, per the approved rate schedule, in the event that Contractor arrives on time for a scheduled Collection of Carts, Bins or Roll-off Boxes, and is impeded from Collection due to Container being blocked or otherwise unable to be Collected due to issues within the Customer's control, and Contractor must return a second time for Collection. Charge may be assessed for the trip, not per Container, in the event of a Customer with multiple Containers. If Contractor attempts to contact Customer to confirm that the Container is accessible, but Customer is non-responsive, Contractor need not return that day and, therefore, may not charge the return trip fee.

4.1.13 On-Call Bulky Item Pickup

Contractor will provide four (4) bulky item pickups of up to three (3) cubic yards of items per unit annually to Residential Premises Customers. Customer must request pickup prior to 2:30 p.m. on the day prior to collection. Collections in excess of four (4) per year and/or three (3) cubic yards per unit will be charged per the approved rate schedule.

Contractor will provide four (4) bulky item pickups of up to three (3) cubic yards of items per unit annually to Multi-Unit Residential Premises Customers. Customer must request pickup prior to 2:30 p.m. on the day prior to Collection. Collections in excess of four (4) per year and/or three (3) cubic yards per unit will be charged. Contractor shall Collect all Bulky Items as defined in Section 1.15 including items referred to as Electronic Waste or "E-Waste" as defined in Section 1.40. The following provisions shall apply to this program:

- a) No single item that cannot be handled by two workers will be accepted.
- b) The following items will not be picked up: Hazardous Substances, including waste oil or anti-freeze. For the purposes of this section, and televisions, monitors and other items referred to as "E-Waste" are not considered hazardous and will be Collected by and

disposed of in accordance with this section as well as Sections 4.1.14 and 4.1.15 by Contractor.

Residential and Multi-Family Premises Customers that exceed the number of free pickups and Commercial Customers may receive Bulky Item Collection under the same terms for a fee, in accordance with the approved rate schedule.

Contractor will notify all Residential Premises Customers annually, beginning within thirty (30) days of effectiveness of this Agreement, of this service. New Customers shall be notified of this service upon request of Collection services.

Contractor will develop a warning notice to inform Customers who set out Bulky Items without contacting Contractor one calendar day prior to setting out items, and that exceed the number of items per pickup, or the number of pickups per year, that they may incur a charge in accordance with the approved rate schedule.

4.1.14 Bulky Item Diversion

Bulky Items Collected by Contractor in accordance with Section 4.1.13, or otherwise Collected under this Agreement, may not be landfilled or disposed of until the following hierarchy of Diversion efforts has been followed by Contractor:

- a) Reuse as is
- b) Disassemble for reuse or Recycling
- c) Transport Bulky Items and reusable items to the appropriate Approved Facility for Reuse, Processing
- d) Transport Green Waste to the Approved Organic Waste Processing Facility for Processing
- e) Transport paper products to the Approved Source Separated Recyclable Materials Processing Facility for Processing
- f) Disposal

This hierarchy is intended to preclude the use of front or rear loading packer vehicles for Bulky Items unless the compaction mechanism is not used to compact the Bulky Items, unless they have been designated for Disposal.

Contractor shall ensure that Bulky Items containing Freon, such as refrigerators, freezers and dehumidifiers, are safely dismantled, and hazardous/toxic materials are Disposed of in accordance with all current and future regulations.

4.1.15 Diversion of Electronic and Other Special Wastes

Contractor shall Divert waste requiring special handling, such as Electronic Waste, or “E-Waste,” and Universal Waste, or “U-Waste,” Collected in accordance with Sections 4.1.13, 4.1.14 and 4.1.15, or by other means under this Agreement, by taking these goods to a properly permitted facility, and not by landfilling.

4.1.16 Sharps Collection Program

Contractor shall provide Customers, at no additional charge, within one week of request, a pre-paid, postage-paid mail-back container to safely Collect Sharps and send Sharps for proper Disposal. Residents are limited to one (1) container at no additional charge per quarter, additional containers will be available for an additional charge. Each container shall be of adequate volume to accommodate the needs of a diabetic Person for a three-month period.

4.1.17 Medication Takeback Program

Contractor will assist the City in increasing awareness of medication takeback programs provided by local pharmacies, or programs offered by other government entities. Promotional activities will include: posting on Contractor’s website, inclusion in the annual brochures/mailings mailed to each Residential Premises Customer, Billing inserts, social media targeted outreach, and press releases to local news outlets.

4.2 Recycling

4.2.1 General

The Parties agree that the list of accepted types of Source Separated Recyclable Materials included in Section 1.79 may be added to or removed from this list from time to time by mutual consent or at the sole discretion of the City provided that in all cases Source Separated Recyclable Materials (including Paper Products and Printing and Writing Papers as defined by SB 1383, 14 CCR Section 18982(a)) is included for Collection. Contractor shall not add or remove materials to or from this list without written approval from the City or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. Contractor will update public education materials accordingly as new items are added to those recovered by the Facility. Prohibited Container Contaminants shall not be Collected in the Blue Containers, or Containers with Blue lids.

Contractor shall Transport the Source Separated Recyclable Materials to (i) the Approved Source Separated Recyclable Materials Processing Facility, or (ii) the Approved Transfer Facility for Transfer and Transport to the Approved Source Separated Recyclable Materials Processing Facility, as specified in Exhibit 6.

4.2.2 Source Separated Recyclable Materials Collection for Cart Refuse Customers

Contractor shall provide all Customers receiving Cart Refuse Collection with a Blue 64-or 96-gallon Cart for Collection of Source Separated Recyclable Materials and shall Collect all Source

Separated Recyclable Materials placed therein for Collection not less than once per week at no additional charge.

Contractor shall Collect Recyclable Material placed in Recycling Carts for Collection from each Customer on the same day as Customers' Refuse Cart is Collected.

Contractor will update public education materials accordingly as new items are added to those recovered by the Facility. Customers that regularly fill their Recycling Cart may request additional Carts at no additional charge.

4.2.3 Commercial Recycling

Contractor agrees to provide, at no additional charge, unlimited Source Separated Blue Container Recyclable Materials Collection service to Multi-Unit Residential Premises and Commercial Customers requesting it from the Contractor. Contractor may purchase Source Separated Blue Container Recyclable Materials from its Customers as well. The Contractor agrees to provide Recycling Bins, Cans or Carts to such Customers in sufficient quantities to meet the Recycling needs of each Customer.

Contractor also agrees to make programs available for all other Source Separated Blue Container Recyclable Materials for which it has established markets. The Contractor shall notify all Customers via a mailed notice prior to the start of services under this Agreement, and in each annual notice or, if requested by City, second notice to Customers, of the availability of Source Separated Blue Container Recyclable Materials Recycling Collection programs.

4.2.4 Mandatory Commercial and Multi-Unit Residential Premises Source Separated Recyclable Materials Program

All Commercial and Multi-Unit Residential Premises' accounts that meet the criteria set for in AB 341 and SB 1383 shall have a documented Recycling program in place, either through Contractor's program, or third-party Recycling efforts.

Contractor will promote Commercial and Multi-Unit Residential Premises Recycling programs and assist the City in providing reports on Customers' Recycling efforts. Reports will be updated on a monthly basis and submitted with Contractor monthly reports to the City. Contractor will report all Customers that have service levels within the thresholds of AB 341 on reporting forms provided by the City. The report will document whether the Customer receives Recycling service from the Contractor (Self-recycles or receives Recycling from a third party).

The City will assist Contractor is promoting and notifying customers of their need to comply with the regulations.

4.2.5 Marketing and Sale of Recyclable Materials

Contractor shall be responsible for marketing and sale of all Recyclable Materials Collected pursuant to this Agreement. Contractor may retain revenue from the sale of Recyclable Materials and shall report the amount of such revenues to City upon request.

4.2.6 Minimum Recycling Requirements

Contractor shall divert from landfilling, a minimum of 27% of all Solid Waste it Collects under this Agreement annually for the 12 months ending December 31 of each calendar year during the term of this Agreement.

Contractor shall also Recycle or divert from landfill sufficient waste to ensure that the City meets the then current AB 939 requirements for diversion City-wide (currently 50%) Contractor shall only be considered to have met this requirement under this Agreement if the City's annual report to the CalRecycle shows a greater than 50% diversion rate and if the CalRecycle approves the City's reports as having a greater than 50% diversion rate in connection with efforts to meet City's AB 939 diversion goals.

Contractor must meet both diversion obligations; meeting one requirement does not relieve Contractor of the other. Liquidated damages shall be assessed under Section 11.4 for failure to meet these goals.

Contractor shall Divert from landfilling the State-mandated Construction and Demolition Diversion percentage required by CALGreen, currently 65%, of all Construction and Demolition Debris loads Contractor Collects under this Agreement. This percentage may change in the future if CALGreen's requirements change.

Upon the request of either party, not more often than once every two (2) years, the Parties agree to meet and confer regarding adjustments to the minimum Diversion rate, based on factors including waste characterization data provided by Contractor, trends in source reduction and reuse, trends in third party Diversion, extent of reverse logistics, the availability of permitted Facilities that are capable of Processing material to achieve the required levels of Diversion, emerging methods of Processing and Recycling/reusing new waste materials, the availability of markets, transportation constraints, embargoes, and the impact of scavenging. City shall consider such information provided by Contractor and other industry data and shall, at its sole discretion, determine if any adjustments to the minimum Diversion requirements shall be made, and such changes must be approved by the City Council before becoming effective.

If these Diversion requirements are not met, City may instruct Contractor to initiate new programs at Contractor's expense in order for this goal to be met on a consistent basis.

Contractor as Authorized Recycling Agent. City hereby designates Contractor as an authorized Recycling agent (though not the sole agent) for the purposes of conducting Recycling activities within the City pursuant to the terms of Public Resources Code Section 40105. Notwithstanding the foregoing, Contractor at all times shall be and remain independent from the City.

4.3 Organics Waste Program - General

All Generators of Food Waste shall be provided a Source Separated Organic Waste Collection program that complies with the requirements of Section 4.5.14 Transfer, Processing and Disposal and Exhibits 6 and 7. Organic Wastes that are to be accepted for Collection in the Source Separated Organic Waste Collection program as described in Section 1.69. The Parties agree that types of Organic Waste may be added to or removed from this list from time to time by mutual consent or at the sole discretion of the City. Contractor shall not add or remove materials to or from this list without written approval from the City or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. Carpets, Non-Compostable Paper, textiles, and Prohibited Container Contaminants shall not be Collected in the Green Containers.

Contractor may Collect Compostable Plastics in the Green Containers for Processing at the Approved Organic Waste Processing Facility. At least three (3) months prior to the commencement of the Collection of Compostable Plastics in the Source Separated Organic Waste program, Contractor shall provide written notification to the City that the Facility can Process and recover these Compostable Plastics. Contractor shall provide written notification to the City annually that the Facility has and will continue to have the capabilities to Process and recover the Compostable Plastics. Contractor shall notify the City within five (5) business days of the Facility's inability to accept Compostable Plastics. The notification shall include: a description of the reasons the Facility is no longer able to Process and recover Compostable Plastics; the period of time the Facility will not Process and recover Compostable Plastics; and, the Contractor's proposed plan to assist in education and outreach of Customers in the event that Compostable Plastics are no longer accepted for Collection. Such changes shall be handled as a change in scope pursuant to Section 2.10.

4.3.1 Organic Waste Cart Collection

Contractor shall provide weekly Collection of Source Separated Organic Waste on the same day as Refuse Collection from the City's Residential Customers receiving Cart Refuse Collection, and one-unit homes with Bin service, from the same set-out location as Refuse Containers. Contractor shall Collect Source Separated Organic Waste placed in 64-gallon Contractor-provided Containers and bundled Green Waste. Customers may request 96-gallon Carts at no additional charge. Contractor is responsible for moving all Containers as necessary for Collection, and then returning them to their original location. Contractor shall have an Organic Waste Recycling program whereby it, at a minimum, Collects the types of Organic Waste required by CalRecycle for Residential Cart Customers. Contractor shall ensure that all public education and outreach is updated to reflect materials that may be placed in Organics Materials Containers as they change during the term of this Agreement.

Contractor shall only be obligated to Collect Green Waste set out for Collection in bundles if it is a maximum of four (4) feet long and eighteen (18) inches in diameter.

Customers may request additional Source Separated Organic Waste Carts at no additional charge.

4.3.2 Holiday Tree Collection Program

Contractor shall Collect all holiday trees discarded by Residential Premises customers on the regularly scheduled weekly Collection days from the first Collection day after Christmas Day through January 22, at no additional charge. After this period, trees will be Collected as Bulky Items under Section 4.1.13. Trees up to seven (7) feet in length will be Collected and Diverted without Customers needing to cut them. Contractor may request that Customers with larger trees cut the trees to pieces no longer than seven (7) feet and that ornaments and stands be removed prior to placement at Collection point (curb, beside Bin or as otherwise determined by Customer and Contractor). In addition to curbside collection, Contractor shall place Roll-off boxes at three local parks for drop off of holiday trees through January 22. Contractor will Divert all holiday trees from landfilling. Contractor shall Process all holiday trees that are properly set out for Collection as Source Separated Organic Waste in accordance with Exhibit 6.

4.3.3 Commercial and Multi-Unit Residential Premises Organics Collection

Contractor shall provide Source Separated Organic Waste Collection, including Food Waste, from all Commercial and Multi-Unit Residential Premises Customers that generate Food Waste. At a minimum the program will include Organics Cart Collection service and Organics Bin Collection service at the rates included in approved rate schedule.

4.3.4 Collection

Contractor shall Collect, process and Divert Organic Waste from Commercial and Multi-Unit Residential Premises Customers. Contractor shall provide a program sufficient to enable City and Customers to meet or exceed the requirements of AB 1826 and SB 1383.

Contractor shall tailor the appropriate program to accommodate the waste generation and space constraints of each Customer. Contractor shall offer the following options, all-inclusive in this program:

- a) Organic Waste Cart: Customers that have the space for an additional Cart will have the option to receive a Commercial Organic Waste Cart.
- b) Organic Waste Bins: Customers that have the space and need for a larger Container have the option to receive an Organic Waste Bin for Collection.

Carts and Bins shall comply to the color and labeling requirements of SB 1383.

4.3.5 Mandatory Commercial and Multi-Unit Residential Premises Organic Waste Program

Contractor will promote Commercial and Multi-Unit Residential Premises Source Separated Organic Waste programs and assist the City in providing reports on Customers' Organic Waste Diversion efforts. Reports will be updated on a monthly basis and submitted with Contractor monthly reports to the City. Contractor will report all Organic Waste generating Commercial and Multi-Unit Residential Premises Customers on reporting forms provided by the City. The

report will document whether the Customer receives Source Separated Organic Waste service from the Contractor (Self-recycles or receives Organic Waste Diversion from a third party).

Contractor will incorporate education regarding Organic Waste Recycling and the State requirements into materials produced under Section 5.3 and will develop its own Organics-specific instructional materials for use in educating participating Customers. All participants receive as-needed or as-requested, on-site training from Contractor for management, kitchen staff, service employees, janitors, etc. Contractor will create and distribute a letter to all Customers. Additional materials may include instructional posters, brochures, or other formats as mutually agreed to between City and Contractor. As with all outreach material, all items must be submitted for review and approval by City prior to distribution.

4.3.6 Roll-off Box Source Separated Organic Waste Collection Service

Contractor shall make permanent Roll-off Box Source Separated Organic Waste Collection available to all Customers that are required to have such service at the rates included in the approved rate schedule.

4.3.7 Food Recovery Assistance

- a) Within thirty (30) days of execution of this Agreement, and at least annually thereafter, Contractor shall assist the City and/or its consultants in conducting inspections of Tier One Commercial Edible Food Generators, Food Recovery Organizations, and Food Recovery Services to assess compliance with the requirements of 14 CCR Chapter 12 Article 10. Commencing January 1, 2024 and at least annually thereafter, Contractor shall expand its assistance to include Tier Two Commercial Edible Food Generators.
- b) At least annually, the Contractor shall provide Commercial Edible Food Generators with the following:
 - i. Information about the Contractor's and/or City's Edible Food Recovery program;
 - ii. Information about the Commercial Edible Food Generator requirements under 14 CCR Chapter 12 Article 10;
 - iii. Information about Food Recovery Organizations and Food Recovery Services operating within the City, and where a list of those Food Recovery Organizations and Food Recovery Services can be found; and,
 - iv. Information about actions that Commercial Edible Food Generators can take to prevent the creation of Food Waste.
- c) The Contractor may provide the education information required by this section (subsection b above) by including it with regularly scheduled notices, education materials, billing inserts, or other information disseminated to Commercial Businesses.

- d) Contractor shall cooperate with the implementation, expansion, or operation of Food Recovery efforts in the City, Food Recovery Organizations, and/or Food Recovery Services.

4.4 City Facilities Collection

Contractor shall provide Refuse, Source Separated Recycling, and Source Separated Organic Waste Collection and Disposal/Processing service in Carts, Bins, or Roll-Off Boxes for materials generated at Premises owned and/or operated by City now and in the future at no additional charge to City or ratepayers. City facilities as of the Effective Date of this Agreement are included in Exhibit 8. Contractor shall make Collections from Containers Monday through Friday or on Saturdays following non-working holidays. Collections shall be scheduled at a time mutually agreed upon by Contractor and City.

Contractor shall provide, at City's direction, Collection, Transport, Disposal, Processing and consulting services entailing:

- a) Collection of Refuse from all City facilities and parks at least once per week or more frequently if required or requested by City staff;
- b) Collection of Source Separated Organic Waste and Source Separated Recyclable Materials from City facilities and parks;
- c) Collection and proper Disposal of Electronic Waste such as defined in Section 1.40, that are generated by, and placed for Collection at, City facilities, or Collected as abandoned items under Section 4.4.7.

4.4.1 City Sponsored Events

Contractor shall provide Refuse, Source Separated Recycling, and Source Separated Organic Waste Collection and Disposal/Processing service for City-sponsored events at no additional charge to City or ratepayers. This shall include providing Refuse Containers (Carts, Bins, Roll-off Boxes, and cardboard waste boxes with liners) to Collect and dispose of all Refuse. Contractor shall provide Recycling Containers for the Collection of Recyclable and Organics Materials. City-sponsored events include, but are not limited to:

- a) Jazz Festival
- b) Food, Wine and Cigar Festival
- c) Heritage Festival
- d) Gardena Beautiful Day
- e) Winter Wonderland

4.4.2 Section Reserved

4.4.3 Neighborhood Cleanups

Not more than ten (10) times a year, Contractor shall be required to provide a neighborhood-wide cleanup within thirty (30) days of receipt of written notice from the City Manager or his or her designee. During each event, Residential Customers within the designated neighborhood(s) may place Bulky Items curbside for Collection by Contractor at no additional charge to City or ratepayers, consistent with the terms and provisions of this Agreement.

4.4.4 Paper Shredding Event

Contractor shall provide an on-site mobile shredding service for use by City residents (a "Shredding Event") one (1) time per calendar year in coordination with one of the Cleanups described in Section 4.4.3 at no additional charge to City or ratepayers. The Shredding Event shall be provided at a date, time, and location designated and approved by the City, in his or her reasonable discretion, and should be for a minimum of three (3) hours in duration. In the event inclement weather prevents a Shredding Event from occurring, Contractor shall reschedule the Shredding Event to a date, time and location designated and approved by the City. The Shredding Event shall be conducted at Contractor's sole cost and expense, utilizing equipment, personnel, and methods appropriate for such event, as approved by the City. Prior to each Shredding Event, Contractor shall coordinate with City staff and/or public safety personnel to make arrangements for safe, convenient, and effective access to and participation by City residents in the Shredding Event and shall procure all necessary insurance coverage. Each Shredding Event shall be designed to accommodate up to a maximum of five (5) "Bankers" boxes of paper or other media suitable for shredding from each Residential and Multi-Unit Residential Premises Customer within the City that is participating in the Shredding Event. Residents participating in the Shredding Event must be able to visually observe the materials they delivered to the Shredding Event. Contractor shall publicize each Shredding Event through methods, and using materials, approved by the City, at no cost to the City.

4.4.5 Compost Giveaway

Contractor shall provide one compost giveaway event per calendar year. Gardena residents will be allowed to fill up their containers on a first-come, first-serve basis. Contractor shall provide forty (40) cubic yards of compost material delivered to a location designated by the City. Any compost material remaining after event shall be removed by Contractor. The compost giveaway events will be coordinated with the City and can be held in conjunction with other City events.

4.4.6 Litter Container Collection

Contractor shall Collect all Solid Waste deposited in City-owned street litter Containers and Solid Waste Container enclosures at City parks included in Exhibit 9 as necessary to prevent overflow at all existing locations at no additional cost to the City or ratepayers. Contractor shall Divert from landfilling all dry Source Separated Recyclable Materials and Source Separated Organic Waste Collected from City-owned street litter Containers (including "Big Belly"

Containers at City bus stops) and from Solid Waste Container enclosures at City parks. Any liners needed to service Containers shall be provided by Contractor. The number of street litter Containers, Big Belly bus stop Containers, and Solid Waste Container enclosures at City parks to be Collected at no additional charge may be increased by up to five percent during the term at no additional charge.

4.4.7 Abandoned Item Collection

Contractor will Collect all abandoned items upon notification by the City for no additional charge to City or ratepayers. If Contractor is notified before 1:00 p.m., items will be removed the same day. If Contractor is notified after 1:00 p.m., items will be removed by 12:00 noon the following day. Contractor's drivers shall report Bulky Items which are left next to Bins or in enclosures to the Route Supervisor to be Collected within the timeframe outlined above. Contractor shall follow the Bulky Item Diversion requirements included in Section 4.1.14 for Bulky Items Collected by the City. This material must be handled in accordance with Exhibit 6.

4.4.8 Large Venue and Event Assistance, Event Recycling

Contractor shall assist City planners of Large Venue events with reporting and planning needs to provide Recycling and Organics Materials Diversion as may be useful in meeting the requirements of AB 2176 and SB 1383, and in lowering Disposal quantities generated at such events at no additional charge to City or ratepayers.

4.4.9 Tree Trimming Program

Contractor will Collect and Process all tree trimming debris collected by the City as requested by the City at no additional charge to City or ratepayers in compliance with Exhibit 6.

4.4.10 Provision of Recovered Organic Waste Products

Contractor shall procure and provide to City quantities of Compost, Mulch, and/or Renewable Natural Gas from California-derived Organic Waste to assist the City in meeting the per capita annual Organic Waste product requirement contained in SB 1383 (14 CCR Section 18993.1). Contractor may meet this obligation by one or a combination of the following activities:

- a) Bulk Compost and/or Mulch - Contractor shall make available to City bulk Compost and Mulch that meet requirements defined in SB 1383, and shall Transport such material to City upon request, for City use in City parks and facilities at no cost to the City.
- b) Compost Giveaway as described in Section 4.4.5.
- c) Use of Renewable Natural Gas in Collection vehicles.

Contractor shall implement best-efforts to ensure sufficient capacity of recovered Organics Waste products to meet the mandatory procurement requirements for jurisdictions contained in SB 1383 (14 CCR Section 18993.1) and to comply with specifications of these materials as defined in SB 1383, as may be amended, during the term of this Agreement including Agreement

extensions granted by the City.

4.4.11 Contractor Warranty of Recovered Organic Waste Products

Contractor warrants that all Organic Waste products provided by the Contractor and/or its Subcontractors and used within the City are free from pathogens and inorganic waste material that may be harmful to the health and welfare of the City and meet or exceed the physical contamination, maximum metal concentration, and pathogen density standards for land application specified in 14 CCR Section 17852(a)(24.5)(A)(1) through (3). The Contractor shall indemnify and hold harmless the City against any claims arising from contaminated recovered Organic Waste products provided by the Contractor and/or its Subcontractors as set forth in Section 9.1.

4.5 Operations

4.5.1 Schedules

To preserve peace and quiet, Solid Waste shall only be Collected from Residential Premises between 7:00 a.m. and 7:00 p.m. Monday through Friday. Solid Waste Collected from Commercial Premises may not begin earlier than 6:00 a.m. for Premises located more than five hundred (500) feet from any Residential Premises, or 7:00 a.m. for Premises located five hundred (500) or fewer feet from any Residential Premises, or continue after 7:00 p.m., except as is specifically approved in writing by the City Manager or his or her designee. Contractor may not make exceptions to these Collection days and times without advanced written approval from the City. If the regularly scheduled Collection day falls on New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, or Christmas Day, Collection days for the remainder of that week shall all be postponed one Collection day and Residential Collection is permitted on Saturday during the make-up week.

Contractor shall be prepared to review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all materials Collected under this Agreement with City once annually upon 30-day written notice requesting said review. More frequent reviews may be required if operations are not satisfactory based on documented observations or reports or complaints. If the plan is determined to be inadequate by City, Contractor shall revise plan incorporating any changes into a revised plan and review said revised plan with City within thirty (30) calendar days.

4.5.2 Missed Pickups

When notified of a missed pickup prior to 1:00 p.m., Contractor shall Collect the Refuse, Recyclable Materials, and/or Organic Waste that was not Collected the same day by 7:00 p.m. If notified after 1:00 p.m., Collection must take place no later than noon of the next Collection day (excludes only Sundays and holidays listed in Section 4.5.1 and, for Residential Cart Customers, Saturday).

4.5.3 Vehicles

A. General. Contractor shall provide Collection vehicles sufficient in number and capacity to efficiently perform the work required by this Agreement. Any additional vehicles/routes that may be required to meet the service standards during the term of this Agreement, shall be done so at Contractor's sole expense. Contractor shall have available on Collection days sufficient back-up vehicles for each type of Collection vehicle used to respond to complaints and emergencies.

B. Specifications. Contractor shall operate no vehicles within the City over 10-years in age during the term of this Agreement. By the end of the first year of service, all route Collection vehicles used by Contractor in providing Refuse, Source Separated Recycling, and Source Separated Organic Waste Collection services, excluding spares, Roll-off Box Collection vehicles, scout vehicles, supervisor vehicles, Container delivery and other specialty vehicles used on a sporadic basis, shall use exclusively renewable natural gas (RNG), compressed natural gas (CNG) or liquefied natural gas (LNG), or electric. Such vehicles must be registered with the California Department of Motor Vehicles and shall have water-tight bodies designed to prevent leakage, spillage or overflow. At all times during the term of this Agreement, Contractor's Collection vehicles shall comply with South Coast Air Quality Management District Requirements and the California Air Resource Board requirements as they are currently in force and as they may be approved for Refuse removal vehicles, as well as other Federal, State and local laws and regulations that may be enacted during the term of this Agreement.

C. Vehicle Identification. Contractor's name, local telephone number, and a unique vehicle identification number designated by Contractor for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than two and one-half (2 1/2) inches high. No advertising shall be permitted other than the name of the Contractor except promotional advertisement of the Source Separated Recyclable Materials and Source Separated Organic Waste programs, other programs specific to the City, or information requested by City. All advertisement must be approved by the City. City may request changes to the vehicle advertising up to two (2) times per year. Contractor shall not place City's name and/or any City logos on Contractor vehicles.

D. Cleaning and Maintenance

- 1) Contractor shall maintain all of its properties, vehicles, facilities, and equipment used in providing service under this Agreement in a good, safe, neat, clean and operable condition at all times.
- 2) Vehicles used in the Collection of Refuse, Source Separated Recyclable Materials, and Source Separated Organic Waste shall be painted, thoroughly washed, and thoroughly steam cleaned on a regular basis so as to present a clean appearance. City may inspect vehicles at any time to determine compliance with this Agreement. Contractor shall also make vehicles available to the Los Angeles County Health Department for inspection, at any frequency it requests. Contractor agrees to replace or repair to the City's satisfaction,

any vehicle which City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.

- 3) Contractor shall repaint all vehicles used in the Collection of Refuse, Source Separated Recyclable Materials and Source Separated Organic Waste at least every five years, and within thirty (30) days' notice from City, if City determines that their appearance warrants painting.
- 4) Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles which are not operating properly shall be removed from service until repaired and operating properly. Contractor shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Contractor shall keep accurate records of all vehicle maintenance, recorded according to date and mileage and shall make such records available to City upon request.
- 5) Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Contractor shall maintain accurate records of repair, which shall include the date and mileage, nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.
- 6) Contractor shall clean up any leaks or spills from its vehicles per the National Pollutant Discharge Elimination System (NPDES) permit in effect at the time. Contractor shall notify City of any leaks or spills reported to Contractor or observed by any employee of Contractor. Contractor shall ensure that leaks or spills are remediated within two (2) hours of notification or observation. Contractor shall notify City immediately upon remediation of leaks or spills. No pollutant that leaks, spills, or otherwise escapes from any Contractor vehicle may be washed into a storm drain or otherwise allowed to enter a storm drain at any time. Contractor must take all measures necessary to prevent the discharge of any such pollutant into a storm drain. All NPDES dry-cleaning measures shall be complied with. All Collection Vehicles must be equipped with absorbent for such cleanup efforts. Contractor shall provide photographic evidence to the City for each clean up. Payment of liquidated damages for failure to clean up leaks or spills within the required timeframe (Section 11.4.B.2.c), and/or for failure to follow the cleanup procedures (Section 11.4.B.2.d), does not excuse Contractor from the cleanup requirements contained in this Section 4.5.3.D.6.
- 7) Upon request, Contractor shall furnish City a written inventory of all equipment, including Collection vehicles, used in providing service. The inventory shall list all equipment by manufacturer, ID number, date of acquisition, type, and capacity.

E. Operation. Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Contractor shall not load vehicles in excess

of the manufacturer's recommendations, or limitations imposed by State or local weight restrictions on vehicles.

Contractor equipment used for Refuse, Recycling, and Organic Waste services shall be registered with the California Department of Motor Vehicles. Equipment shall comply with US EPA noise emission regulations, currently codified at 40 CFR Part 205 and other applicable noise control regulations and shall incorporate noise control features throughout the entire vehicle. Noise levels of equipment used for Collection shall comply with City ordinance and in no event shall the noise level exceed 75 dba when measured at a distance of 25 feet from the vehicle, five feet from the ground. Contractor shall store all equipment in safe and secure locations in accordance with City's applicable zoning regulations.

Subject to Section 9.1, Contractor shall be responsible for any damage resulting from or directly attributable to any of its operations, and which it causes to: City's driving surfaces, whether or not paved; associated curbs, gutters and traffic control devices; and other public improvements.

F. City Inspection Per Code. City may cause any vehicle used in performance of this Agreement to be inspected and tested at any commercially reasonable time and in such manner as may be appropriate to determine that the vehicle is being maintained in compliance with the provisions of the State Vehicle Code, including, but not limited to, California Vehicle Code Sections 27000(b), 23114, 23115, 42030, 42032, and all Vehicle Code Sections regarding smog equipment requirements. City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service shall be returned to service until it conforms with, and its return to service has been approved by the City.

G. Vehicle Inspections. Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly shall be taken out of service until they are repaired and operate properly. Contractor shall repair or arrange for the repair of all its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. City may inspect vehicles at any reasonable time, and within three (3) calendar days of such a request, to determine compliance with sanitation requirements.

H. Correction of Defects. Following any inspection, the City Manager, or the City Manager's designee, shall have the right to cause Contractor, at its sole cost and expense, to recondition or replace any vehicle or equipment found to be unsafe, unsanitary or unsightly. The City Manager's determination may be appealed to the City Council, whose decision shall be final. City Manager's determination may not be appealed if the vehicle reconditioning, or replacement is due to a safety finding by the CHP.

4.5.4 Carts

4.5.4.1 Contractor-Provided Carts

A. Cart Design Requirements. The Carts shall be manufactured by injection or rotational molding and meet the Cart design and performance requirements as specified below. All Carts selected shall be subject to City approval. The City will not permit Carts and Cart lids with inconsistent colors or in poor condition to be used in the City at any time during the term of this Agreement and may require Contractor to replace such Carts. Contractor shall ensure that all Carts in service during the terms of this Agreement comply with CalRecycle requirements under SB 1383.

B. Capacity. References to Cart sizes of 64-, or 96-gallons are approximate. Acknowledging the different sizes provided by the various Cart manufacturers, the Carts shall be uniform in appearance and must conform to the following ranges in size:

- 64 to 70-gallons, and
- 95 to 101-gallons.

C. Cart Handles. The Cart handles and handle mounts may be an integrally molded part of the Cart body or molded as part of the lid. The Cart handles will provide comfortable gripping area for pulling or pushing the Cart or lifting the lid. Pinch points are unacceptable.

D. Cart Lid. Each Container shall be provided with a lid that continuously overlaps and comes in contact with the Container body or otherwise causes an interface with the Container body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;
- Enables the free and complete flow of material from the Container during the dump cycle without interference with the material already deposited in the truck body or the truck body itself and its lifting mechanism;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container;
- The lid handle shall be an integrally molded part of the lid;
- The lid (and body) must be of such design and weight that would prevent an empty Container from tilting backward when flipping the lid open; and,

- The lid shall be hinged to the Cart body in such a manner so as to enable the lid to be fully opened, free of tension, to a position whereby it may rest against the backside of the Container body.

E. Cart Colors. The Refuse, Source Separated Recycling and Source Separated Organic Waste Carts or Cart lids will be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Cart and Cart lid colors shall be consistent throughout the City and shall comply with CalRecycle requirements under SB 1383.

F. Cart Labeling and Hot Stamping. Labels used on Carts shall be placed on the inside of the Cart lid, and hot stamps shall be on the top of the lid and/or on the body of the Cart. Each Cart shall be hot stamped with the material type (e.g., Refuse, Recycling, Organic Waste) in English and Spanish. Labels shall include graphic instruction on what materials should and should not be placed in each Cart. Design for both the labels and the hot stamps must be approved by City prior to ordering labels or Carts. City shall approve what information is included on the label and in the hot stamp, as well as approve design and quality. Labels shall be replaced when worn, and when information on the label is in need of updating, but no later than 90 days of request from City. Information on the Carts shall include the telephone number to call for Contractor for Bulky Item pickups and shall include a “No Scavenging” warning identifying the City’s Municipal Code violation for scavenging. Additionally, all Carts shall be labeled in accordance with CalRecycle requirements under SB 1383 throughout the term of this Agreement.

G. Cart Performance Requirements. All Carts shall be designed and manufactured to meet the minimum performance requirements described below.

H. Cart Load Capacity. Depending on the capacity, the Carts shall have a minimum load capacity as noted below without Container distortion, damage, or reduction in maneuverability or any other functions as required herein.

Cart Size (Gallons)	Minimum Load Capacity (LBS)
95-101	200
64-70	130

I. Cart Durability. Carts shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the term of this Agreement:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;

- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Cart bodies must remain impervious to any damage, that would interfere with the Cart's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface;
- All wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

J. Chemical Resistant. Carts shall resist damage from common household or Residential products and chemicals. Carts, also, shall resist damage from human and animal urine and feces.

K. Stability and Maneuverability. The Carts shall be stable and self-balancing in the upright position, when either empty or loaded to its maximum design capacity with an evenly distributed load, and with the lid in either a closed or open position.

The Carts shall be capable of maintaining its upright position in sustained or gusting winds of up to 25 miles per hour as applied from any direction.

The Carts shall be capable of being easily moved and maneuvered, with an evenly distributed load equal in weight to its maximum design capacity on a level, sloped or stepped surface.

L. Lid Performance. Cart lid assemblies shall meet the following minimum requirements:

- Prevent damage to the Cart body, the lid itself or any component parts through repeated opening and closing of the lid by residents or in the dumping process as intended;
- Remain closed in winds up to 25 miles per hour from any direction. All lid hinges must remain fully functional and continually hold the lid in the original designed and intended positions when either opened or closed or any position between the two extremes; and,
- Lid shall be designed and constructed such that it prevents physical injury to the user while opening and closing the Container.

4.5.4.2 Cart Reparability or Replacement

Contractor shall be responsible for Cart repair and maintenance, and replacing lost, stolen or damaged Carts within two (2) business days of notification (excluding Saturday, Sunday and holidays listed in Section 4.5.1), and for graffiti removal within two business (2) days of notification, at no additional charge to the Customer or to City, unless Contractor can demonstrate to the City Manager beyond a reasonable doubt that the damage or loss was due exclusively the Customer's intentional or negligent behavior. City Manager shall make the final determination. If City permits a repair or replacement charge to be assessed against a Customer, charge shall be no more than the actual cost of repair or the Contractor's purchase price for a new Cart, whichever is lower. All repairs must restore the Cart to its full functionality. Unsightly/worn-out Carts shall be replaced by Contractor upon Customer request at no additional cost to Customer.

All Carts in service for the duration of this Agreement shall comply with color and labeling requirements specified by CalRecycle under SB 1383.

4.5.4.3 Bins

A. Cleaning. Contractor shall provide Customers with Bins required during the term of this Agreement. The size of Contractor-provided Bins shall be determined by mutual agreement of Customer and Contractor and shall be subject to City approval. Contractor shall maintain Bins in a clean, sound condition free from putrescible residue. All Bins in use shall be constructed of heavy metal, or other suitable, durable material, and shall be watertight and well painted. Wheels, forklift slots, and other apparatuses, which were designed for movement, loading, or unloading of the Bin shall be maintained in good repair.

Upon Customer or City request, or if required to maintain the Containers in a clean condition, Contractor shall clean Customer Bins at the rates shown in the approved rate schedule. Contractor shall perform cleaning, repainting, or replacement of Bins as necessary to prevent a nuisance caused by odors or vector harborage. When a Bin is removed for cleaning, Contractor shall replace the Bin, either temporarily or as a change-out, with another Container. Contractor shall remove graffiti from any Container within two (2) business days (excluding Saturday, Sunday and holidays listed in Section 4.5.1) of request by City or Customer. Contractor is required to proactively look for graffiti when Collecting Bins, with all graffiti removed from Containers in no later than two (2) business days (excluding Saturday, Sunday and holidays listed in Section 4.5.1) after any Collection without notification. In the event the graffiti on the Bins does not necessitate removal or replacement, drivers shall have paint on their vehicles which is the color of the Bins to cover observed graffiti during normal Collection services.

B. Bin Identification and Color. Each Bin placed in City by Contractor shall have the name of Contractor and phone number in letters not less than three (3) inches high on the exterior of the Bin so as to be visible when the Bin is placed for use. Bins shall be labeled to include bilingual (English and Spanish) and graphic instruction on what materials should and should not be placed in each Bin. Contractor shall repaint Bins upon City's request if the City deems it

necessary to maintain a neat appearance. All Refuse Bins shall be painted a uniform color of, and all Recycling and Organic Waste Bins shall be painted a different, uniform color.

All Bins or Lids in service for the duration of this Agreement shall comply with color and labeling requirements specified by CalRecycle under SB 1383.

4.5.4.4 Roll-off Boxes

Contractor shall provide sufficient Roll-off Boxes to meet Customer demand throughout the Term of the Agreement, and will keep all Roll-off Boxes clean, free from graffiti, equipped with reflectors, and with the name and phone number of Contractor in letters not less than three (3) inches high on the exterior of the Roll-off Box so as to be visible when the Roll-off Box is placed for use. Contractor shall properly cover all open Roll-off Boxes during transport as required by the State Vehicle Code.

4.5.5 Litter Abatement

A. Minimization of Spills. Contractor shall use due care to prevent Solid Waste or fluids from leaking, being spilled and/or scattered during the Collection or transportation process. If any Solid Waste or fluids leak or are spilled during Collection, Contractor shall promptly clean up all such materials. Each Collection vehicle shall carry a broom and shovel at all times for this purpose.

Contractor shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, accidental damage to a vehicle, or a pre-approved method of Solid Waste transfer between vehicles, without prior written approval by City.

B. Covering of Loads. Contractor shall properly cover all open debris boxes during transport to the Disposal Site.

4.5.6 Personnel

A. Qualified Drivers. Contractor shall furnish such qualified drivers, mechanical, supervisory, clerical, management and other personnel as may be necessary to provide the services required by this Agreement in a satisfactory, safe, economical and efficient manner. All drivers shall be trained and qualified in the operation of vehicles they operate and must possess a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

B. Hazardous Substance Employee Training. Contractor also agrees to establish and vigorously enforce an educational program which will train Contractor's employees in the identification of Hazardous Substance. Contractor's employees shall not knowingly place such Hazardous Substance in the Collection vehicles, nor knowingly dispose of such Hazardous Substances at the Processing Facility or Disposal Site.

C. Customer Courtesy. Contractor shall train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work quietly. Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. If any employee is found to be discourteous or not to be performing services in the manner required by this Agreement, Contractor shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If City has notified Contractor of a complaint related to discourteous or improper behavior, Contractor will consider reassigning the employee to duties not entailing contact with the public while Contractor is pursuing its investigation and corrective action process.

D. Training. Contractor shall provide suitable operations, health and safety training for all of its employees who use or operate equipment or who are otherwise directly involved in Collection or other related operations.

E. Unauthorized Material Removal. Contractor shall dismiss or discipline employees who remove documents or any other material from Containers, other than specifically for the purposes of Disposal and Diversion as described in this Agreement.

4.5.7 Identification Required

Contractor shall provide its employees, companies and Subcontractors with identification for all individuals who may make personal contact with residents or businesses in City. All Contractor employees shall wear clothing bearing the Contractor name and/or logo at all times while in the City and providing services under this Agreement. City may require Contractor to notify Customers yearly of the form of said identification. Contractor shall provide a list of current employees, companies, and Subcontractors to City upon request.

The City reserves the right to perform a security and identification check through the Gardena Police Department upon Contractor and all its present and future employees, in accordance with accepted procedures established by the City, or for probable cause.

4.5.8 Fees and Gratuities

Contractor shall not, nor shall it permit any agent, employee, or Subcontractors employed by it, to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for services authorized to be performed under this Agreement except as described in this Agreement, in accordance with Exhibit 2 as updated and approved by City throughout the Term of the Agreement.

4.5.9 Non-Discrimination

Contractor shall not discriminate in the provision of service or the employment of Persons engaged in performance of this Agreement on account of race, color, religion, sex, age, physical handicap or medical condition in violation of any applicable federal or State law.

4.5.10 Coordination With Street Sweeping Services

Contractor shall make reasonable efforts to coordinate route schedules with the City's street sweeping schedule. Contractor shall provide all routes and route schedules to the City and work with City to resolve conflicts with street sweeping schedules.

4.5.11 Street Sweeper Waste and Other Waste Generated by City

Contractor shall, at no charge to City or ratepayers, dispose of waste and debris picked up by street sweeper vehicles operated by City or by an operator or operators contracted by City to provide street sweeping service. City shall cause such materials to be gathered at a central location for pickup by Contractor in Containers designated for this material only or may direct the vehicle operators to transport this waste and debris to a transfer station operated by Contractor. In addition to street sweeper waste, Contractor shall collect, any type or variety of waste generated by City, provided such waste is not Hazardous Waste. Contractor shall diligently cooperate with City or City's contract street sweeping service or agency to process debris and waste collected from City streets to receive landfill diversion credits for the debris and waste. This cooperation shall include, but not be limited to, Contractor bearing the cost of Processing or disposing of the waste and debris.

4.5.12 Change in Collection Schedule

Contractor shall notify City forty-five (45) days prior to, and Customers not later than thirty (30) days prior to, any change in Collection operations which results in a change in the day on which Solid Waste Collection occurs. Contractor will not permit any Customer to go more than seven (7) days without service in connection with a Collection schedule change. City's approval of any change in Collection is required prior to such change, and such approval will not be withheld unreasonably.

Any changes in the route map or Collection schedule shall require the prior approval of the City. City may require reasonable changes in the route map or Collection schedule, to improve service, to resolve complaints or for other reasons. Prior to the change of a route schedule, Contractor shall provide written notice of the change to affected Customers ninety (90) days in advance.

4.5.13 Report of Accumulation of Solid Waste on Private Property

Contractor shall direct its drivers to note the addresses of any private property Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection. Contractor shall deliver the address or description to City within five (5) working days of such observation.

4.5.14 Transfer, Processing, and Disposal

Contractor shall Transport all Discarded Materials to the Approved Facility(ies) specified in Exhibit 6 and shall Transfer, Process, and Dispose of Discarded Materials in accordance with this Section and Exhibit 6. If the Approved Facilities change during the term of this Agreement,

and the Contractor does not own or operate one or more of the Approved Facilities, Contractor shall enter into a subcontract agreement with the owner or Facility operator of such Approved Facility(ies) and the requirements of this this Section and Exhibit 6 shall pertain to the Subcontractor. In addition, Subcontractor requirements or obligations related to indemnification (Article 9) and insurance requirements (Section 9.4) shall apply, as well as any other Subcontractor requirements or obligations stated in other sections of this Agreement.

The Approved Facilities shall comply with the following requirements:

- a) Approved Transfer Facility. Contractor's Approved Transfer Facility shall be a Transfer Facility or operation that Transfers Residential and Commercial Premises Source Separated Recyclable Materials and Source Separated Organic Waste, and/or Gray/Black Container Waste Collected in accordance with this Agreement.
- b) Approved Source Separated Recyclable Materials Processing Facility (Blue Containers). Contractor's Approved Recyclables Processing Facility shall be a Facility or operation that Processes Residential and Commercial Premises Source Separated Recyclable Materials to recover materials designated for Collection in the Blue Container.
- c) Approved Organic Waste Processing Facility (Green Containers). Contractor's Approved Organic Waste Processing Facility shall be a Facility that Processes Residential and Commercial Premises Source Separated Organic Waste to recover Source Separated Organic Waste.
- d) Approved Disposal Facility (Gray/Black Containers). Contractor's Approved Disposal Facility shall be a Disposal Facility that accepts Residential and Commercial Premises Gray/Black Container Waste Collected in accordance with this Agreement for Disposal.

4.5.15 Processing Facility Temporary Equipment or Operational Failure Waiver

- a) Notification to the City. The Contractor, or their Subcontractor (such as a Facility operator), shall notify the City of any unforeseen operational restrictions that have been imposed upon the Approved Facility by a regulatory agency or any unforeseen equipment or operational failure that will temporarily prevent the Approved Facility from Processing and recovering Blue Container and/or Green Container materials. The Contractor or Subcontractor shall notify the City as soon as possible and no later than two (2) business days from the time of the incident. The notification shall include the following: (i) name of Approved Facility; (ii) the Recycling and Disposal Reporting System Number of the Approved Facility; (iii) date the Approved Facility became unable to Process Blue Container and/or Green Container materials; (iv) description of the operational restrictions that have been imposed upon the Approved Facility by a regulatory agency or unforeseen equipment failure or operational restriction that occurred; (v) the period of time the Contractor anticipates the temporary inability of the Approved Facility to Process Blue Container and/or Green Container materials; (vi) Contractor's proposed action plan to deliver materials to an Alternative Facility for

Processing (refer to Section 6.1.H of Exhibit 6) or Contractor's request for waiver to deliver Blue Container and/or Green Container materials to the Approved Disposal Facility.

- b) Use of Alternative Facility or Waiver for Disposal of Materials. Upon notification by Contractor or Subcontractor of the Approved Facility's inability to Process materials, City shall evaluate the notification and determine if City shall require Contractor to use an Alternative Facility or allow the Contractor to Transport the Blue Container and/or Green Container materials to the Approved Disposal Facility for Disposal on a temporary basis for a time period specified by the City. Upon City's decision, the City shall notify the Contractor of its requirement to use an Alternative Facility for Processing or to use the Approved Disposal Facility for Disposal, and the period of time that the City will allow the Blue Container and/or Green Container materials to be redirected to the Alternative Facility or Approved Disposal Facility. Pursuant to 14 CCR Section 18984.13, the approved Disposal period shall not exceed ninety (90) days from the date the Approved Facility's Processing restriction or failure commenced. In such case, the Contractor must receive written permission from the City prior to depositing any Discarded Material in a Landfill.
- c) Record Keeping and Reporting. Contractor shall maintain a record of any Approved Facility incidents and report this information to the City in accordance with Article 8.

4.5.16 Transportation to Non-Approved Facilities Prohibited

If Contractor Transports Discarded Materials to a Facility other than the Approved Facility(ies) or an Alternative Facility without prior City approval, Contractor's failure to comply may result in assessment of liquidated damages as described in Section 11.4.

4.6 Contingency Plan

Contractor shall submit to City on or before the effective date of the Agreement, a written contingency plan demonstrating Contractor's arrangements to provide vehicles and personnel and to maintain uninterrupted service during breakdowns, and in case of natural disaster or other emergency including labor disputes and the events described in Section 11.5.

4.7 Commingling of Collection Routes

Contractor shall not commingle City Refuse Collection routes with other city or county routes. If this is not feasible, upon approval by the City, Contractor may commingle routes, but must submit to City a detailed monthly report setting forth the breakdown of tonnage Collected from the commingled routes within thirty (30) days after the end of each month. Contractor shall have the methodology used to segregate the loads between jurisdictions approved in advance by the City.

4.8 Route Audit

Once during the first year or at City request (but not more than once every three years), Contractor shall conduct an audit of its Collection routes in the City. City may use information from the audit to develop a request for proposals for a new service provider. City may instruct Contractor when to conduct the audit in order for the results to be available for use in preparation of a request for proposals or for other City uses. City may also instruct Contractor to conduct an audit at a time that would produce the most accurate Customer service information for a new service provider to use in establishing service with Customers. In setting these audit dates, City will establish due dates for Contractor providing routing and account information, and later, the report, to City.

The route audit, at minimum, shall consist of an independent physical observation by Person(s) other than the route driver of each Customer in City. This Person(s) is to be approved in advance by City. The route audit information shall include, as a minimum, the following information for each account:

For Cart Customers:

- Route number;
- Truck number;
- Number and size of Carts by waste stream (Refuse, Recycling, Organic Waste)
- Cart condition;

For Bin and Roll-off Customers:

- Route number;
- Truck number;
- Account name;
- Account number;
- Account service address;
- Account type (Residential, Commercial, Roll-off);
- Service level per Contractor billing system (Quantity, Size, Frequency, Waste Stream);

- Observed Containers (Quantity, Size, Frequency, Waste Stream).
- Container condition;
- Proper signage; and,
- Graffiti.

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

- Identification of the routes;
- Route map;
- Truck numbers;
- Number of accounts, by route and in total (Residential, Commercial and Roll-off);
- Confirmation that all routes are dedicated exclusively to City Customers;
- Number and type of exceptions observed;
- Total monthly service charge (Residential, Commercial and Roll-off Box), pre-audit;
- Total monthly service charge (Residential, Commercial and Roll-off), post-audit (subsequent to corrections of identified exceptions); and,

The report shall include a description of the procedures followed to complete the route audit. This description shall include the names and titles of those supervising the route audits and the name and titles of those performing the observations.

The report shall also include a description of the changes and Contractor's plans to resolve the exceptions. The results of the audit, and supporting back-up data, shall be available for review by City or its representative.

4.9 Service Exceptions; Hazardous Substance Notifications

A. Failure to Collect. When Solid Waste is not Collected from any Solid Waste service recipient, Contractor shall notify its service recipient in writing, at the time Collection is not made, through the use of a "tag" or otherwise, of the reasons why the Collection was not made.

B. Hazardous Substance Inspection and Reporting. Contractor reserves the right and has the duty under law to reject Solid Waste observed to be contaminated with Hazardous Substance and the right not to Collect Hazardous Substance put out with Solid Waste. Contractor shall notify all agencies with jurisdiction, if appropriate, including the California Department of Toxic Substances Control and Local Emergency Response Providers and the National Response Center of reportable quantities of Hazardous Substance, found or observed in Solid Waste anywhere within the City. In addition to other required notifications, if Contractor observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Substances unlawfully Disposed of or released on any City property, including storm drains, streets or other public rights of way, Contractor will immediately notify the City Manager or the City Manager's designee. Contractor shall implement and maintain a training program that will assist its employees in identifying and properly disposing of any Hazardous Substance that may come into their possession.

C. Hazardous Substance Diversion Records. Contractor shall maintain records showing the types and quantities, if any, of Hazardous Substance found in Solid Waste and which was inadvertently Collected from service recipients within the City but Diverted from landfilling.

4.10 Contractor/City Meetings

Contractor and City will meet monthly, or as otherwise requested by City staff for the term of this Agreement, to discuss programs, outreach efforts, and issues related to the performance of this Agreement. City reserves the right to increase or reduce the number of Contractor/City Meetings at any time during the term of this Agreement, which will be agreed to in writing.

ARTICLE 5: OTHER SERVICES

5.1 Services and Customer Billing

5.1.1 Service Description

Contractor shall periodically, at least 30 days prior to the effective date of a rate change, prepare and distribute, subject to the direction of City, a notice to each Owner or occupant of property entitled or mandated to receive service under this Agreement a listing of Contractor's Collection rates, annual holiday schedule, and a general summary of services required to be provided hereunder and optional service which may be furnished by Contractor. Such notice shall be in a form subject to City's approval prior to its distribution and may be included with Billings made by Contractor. Contractor shall include in each Residential Billing performed by Contractor the phone number for residents to call for Bulky Item pickups.

5.1.2 Residential Premises Cart Billing

Contractor shall arrange with Golden State Water, or through alternative mutually agreed to means, to bill each Single-Unit or Multi-Unit Residential Premises Cart Customer in accordance with the procedures currently in place. Contractor shall bill each Customer, regardless of whether it is a Commercial Premises Customer or Residential Premises Customer for extra services requested after the monthly bill was sent. If payment in full is not made within sixty (60) days of billing, Contractor may suspend service and City will take steps to prevent the non-paying Customer from using any other waste collection service and from allowing accumulation of Solid Waste to become a public nuisance.

5.1.3 Bin, Roll-off, Commercial Cart and Temporary Services Billing

Contractor shall bill for Bin, Roll-off Box, Commercial Cart and temporary services and other special charges as permitted in Exhibit 2. Contractor shall bill Bin, Roll-off Box and Commercial Cart Customers monthly, and temporary services twice per month, no sooner than the first day of service and require payment no sooner than 30 days from the start of the service period Billed for.

For Cart Customers or Customers without an account with Contractor who request temporary Roll-off Box or temporary Bin service, Contractor will accept major credit cards for payment. Individually serviced Customers who do not use credit cards may be required by the Contractor to post a security deposit or to pay on a "Cash on Delivery" (C.O.D.) basis. Any unused portion of a security deposit will be refunded to the Customer within five business days (excluding Saturday, Sunday and holidays listed in Section 4.5.1) of the termination of service.

Customers sharing a Bin may request to be Billed separately for their share of service, based upon the number of businesses sharing the Bin, or as otherwise divided and agreed to among such Customers.

Bills must be itemized by Container size, frequency of service, and period billed for.

5.1.4 Review of Billings

Contractor shall review its Billings to Customers under Sections 5.1.2 and 5.1.3. The purpose of the review is to determine that the amount which Contractor is Billing each Customer is correct in terms of the level of service being provided to such Customer by Contractor. Contractor shall review Customer accounts annually and submit to City a written report of that review annually on the anniversary of the Effective Day of this Agreement.

5.1.5 Collections

All amounts due and payable to Contractor from Single-Unit and Multi-Unit Residential Premises Customers with Bins and Commercial Premises Customers under this Agreement shall be solely billable by Contractor. Contractor shall retain full responsibility for prosecuting any collection actions involving all Residential Premises Customers and Commercial Premises Customers, regardless of whether Contractor originally billed the Customer, including, without limitation, referral to collection agencies or instituting legal proceedings. These legal proceedings shall encompass the right of the Contractor to levy appropriate liens against real property and the City agrees that it will cooperate in the prosecution of such defaults by real property lien and other appropriate mechanisms.

5.1.6 Resolution of Disputes Regarding Rate Adjustments

Any dispute regarding the computation of a rate adjustment shall be decided by the City Manager or referred by the City Manager to the City Council. During the pendency of the rate adjustment dispute, the rate in effect is the rate claimed by the Contractor and shall be effective until the resolution of the billing dispute.

5.1.7 Suspension of Service Due to Non-Payment

Contractor shall bill each Commercial Premises Customer and any Single-Unit or Multi-Unit Residential Premises Customers using Bins and all extras, including bulky good removal and extra pickups for Single-Unit or Multi-Unit Residential Premises Customers in advance on the first day of each calendar month. City's water department or provider, currently Golden State Water, shall bill each Single-Unit or Multi-Unit Residential Premises Customers using Carts in accordance with the procedures currently in place and in use by City's water department or provider. Contractor shall bill each Customer, regardless of whether it is a Commercial Premises Customer or Residential Premises Customer for extras requested after the monthly bill was sent. If payment in full is not made within sixty (60) days of billing, Contractor may suspend service and City will take steps to prevent the non-paying Customer from using any other waste collection service and from allowing accumulation of Solid Waste to become a public nuisance.

5.2 Customer Service

5.2.1 Local Office

Contractor shall maintain a local office within Los Angeles, California. Said office shall be open, at a minimum, from 8:00 a.m. to 5:00 p.m., Monday through Friday, exclusive of holidays ("Office Hours"). A responsible and qualified bilingual (English and Spanish speaking) representative of Contractor shall be available during Office Hours for personal communication with the public at the local office. Contractor's telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days. If City receives more than five (5) complaints in thirty (30) days that Customers are unable to contact Contractor by phone, City may require Contractor to increase capacity. Contractor shall have either a representative, a message machine, or an answering service available outside of Office Hours. Calls received outside of Office Hours shall be responded to on the next business day. Contractor shall provide City with a twenty-four (24) hour emergency number to a live person, not voicemail. Contractor shall provide means for the City to transfer calls received by the City directly to the Contractor's local office. Contractor shall also provide means for Customers to e-mail Contractor with complaints and service requests, and to make payments electronically.

5.2.2 Complaint Documentation

All service complaints shall be directed to Contractor. Daily logs of complaints shall be retained for a minimum of twenty-four (24) months and shall be available to City at all times upon request.

Contractor shall log all complaints received by telephone and said log shall include the date and time the complaint was received, name, address and telephone number of callers, description of complaint, employee recording complaint and the action taken by Contractor to respond to and remedy complaint. Missed pickups shall be included in this log.

All Customer complaints and inquiries shall be date-stamped when received and shall be initially responded to within one (1) business day (excluding Saturday, Sunday and holidays listed in Section 4.5.1) of receipt. Contractor shall log action taken by Contractor to respond to and remedy the complaint.

All Customer service records and logs kept by Contractor shall be available to City upon request and at no cost to City. City shall, at any time during regular Contractor business hours, have access to Contractor's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints.

5.2.3 Resolution of Customer Complaints

Disputes between Contractor and its Customers regarding the services provided in accordance with this Agreement may be resolved by the City. The City's decision shall be final and binding. Contractor shall reimburse the City's legal and consultant costs for each City intervention in a

dispute between Contractor and a Customer if the City reasonably deems intervention is required and the Customer's dispute is valid.

Should Contractor and Customers not be able to establish a mutually acceptable fee to be charged for special hauling services, the matter shall also be determined by the City, and the City's decision shall be final.

Intervention by the City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Contractor. Nothing in this section is intended to affect the remedies of third parties against Contractor. To the extent that remedies are warranted through this Agreement, this section shall apply.

5.2.4 SB 1383 Noncompliance Complaints

a) Documentation of Complaints

SB 1383-Noncompliance Complaints. For complaints received in which the Person alleges that an entity is in violation of SB 1383 requirements, Contractor shall document the information listed in Article 8. Contractor shall provide this information in a monthly summary report in accordance with Article 8.

b) Investigation of SB 1383 Noncompliance Complaints

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

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

- i. Reviewing the service level of the entity that may not be compliant with SB 1383;
- ii. Reviewing the waiver list to determine if the entity has a valid de minimis, or space constraint;
- iii. Inspecting Premises of the entity identified by the complainant, if warranted; and/or,
- iv. Contacting the entity to gather more information, if warranted.

- c) **Reporting.** Within ten (10) days of completing an investigation of an SB 1383-noncompliance complaint, Contractor shall submit an investigation complaint report that documents the investigation performed and recommends to City on whether or not the entity investigated is in violation of SB 1383 based on the Contractor's investigation. The City shall make a final determination of the allegations against the entity.

5.2.5 Review of Generator Waiver Requests

Generators may submit requests for de minimis waivers, and physical space waivers to the Contractor. Contractor shall within ten (10) business days review the Generator's waiver application and inspect the Generator's Premises to verify the accuracy of the application. Contractor shall provide documentation of the inspection, including the Contractor's recommendation to approve or deny the waiver request, and send this information to the City within fifteen (15) days of receipt of the Generator's waiver application for the City's review and approval. The City ultimately retains the right to approve or deny any application, regardless of the Contractor's recommendation. Contractor shall report information regarding waivers reviewed on a monthly basis, in accordance with Section 8.3.2.

5.2.6 Route Supervisor

Contractor shall designate in writing a route supervisor that shall be assigned to the City, and who shall be responsible for working with the City to resolve Customer service-related complaints. Route supervisor shall be accessible via cell phone or radio in the field at all times. City shall be notified in advance of any change in Route Supervisor and shall have the right of approval. City may request that Contractor change Route Supervisor.

5.3 Education and Public Awareness

5.3.1 General

Contractor acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve AB 939 requirements. Accordingly, Contractor agrees to take direction from City to exploit opportunities to expand public and Customer knowledge concerning needs and methods to reduce, reuse and recycle Solid Waste and to cooperate fully with City in this regard.

Contractor shall maintain its own program of providing information relevant to Billing and Solid Waste services, issues and needs with its bills. All public education materials shall be approved in advance by City.

City may request Contractor to perform mailing services and if so able, provide not less than thirty (30) days' notice to Contractor prior to the mailing date of any proposed mailing to permit Contractor to make appropriate arrangements for inclusion of City's materials. City will provide Contractor the mailers at least fifteen (15) days prior to the mailing date. City shall normally bear the expense of reproduction and distribution of such additional information only to the extent it is clearly in excess of Contractor's normal Billing costs. Notwithstanding, Contractor

shall bear all costs incurred for copying and mailing of Proposition 218 notices per Section 6.4.1.1 of this Agreement.

5.3.2 Non-English Language Requirements

The Contractor shall make all public education and outreach materials required by this Section available in English and Spanish.

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

The Contractor may allow Customers to request mailings electronically in lieu of hardcopies. Contractor shall be required to provide an annual report to the City of Customers that have requested to receive mailings electronically. Customers will be provided the option to request electronic mailings annually.

5.3.3 Ongoing Education Requirements

This educational program shall have a budget equal to one percent (1%) of the gross revenue of Contractor and Affiliated Companies from all operations in Gardena. Contractor will provide a minimum of the following public education items to be developed at Contractor's expense and distributed as indicated below:

- **Initial Mailing** – Contractor will prepare and mail an initial mailing to Customers explaining the transition from existing programs to new programs. The mailing will describe program changes, route changes, dates of program implementation, and other necessary information.
- **Workshops & Meetings** – Contractor shall, at its sole expense, participate in and/or plan, organize, and conduct direct Generator outreach, including, but not limited to: workshops, community events, and meetings to support Generator compliance with the Source Separated Recyclable Materials and Source Separated Organic Waste separation and program participation requirements under this Agreement and other local and State regulations, including, but not limited to, AB 341, AB 1826, and SB 1383.

Contractor shall host at least four (4) technical assistance workshops per calendar year for Residential Premises Customers, and four (4) technical assistance workshops per calendar year for Commercial Premises Customers. The workshops shall be open to all Customers in the City, and the Contractor shall publish the time and location of the workshop no later than thirty (30) days prior to the workshop through publication on the Contractor's website, email newsletter, printed flyers delivered on hauler routes, etc. The structure and content of these workshops shall be designed by the Contractor and submitted at least thirty (30) days prior to the date of the workshop for City approval. Workshops shall be focused on the regulatory requirements of SB 1383, AB 1826, and any local program or service changes as a result of the regulations.

- **Instructional Packet Accompanying Contractor-Provided Containers** – An information packet shall be attached to each set of Carts distributed to a Customer. Packet should describe available services, including how to place Carts for Collection, which materials should be placed in each Cart, Collection holidays, and a Customer service phone number.
- **Cart Instruction Markings** – Contractor will place stickers on, or hot stamp, Source Separated Recyclable Materials, Source Separated Organic Waste, and Refuse Carts to demonstrate to Customers which materials are and are not acceptable for placement in each Cart. Stickers shall be replaced when materials change or as labels become worn. Markings shall be written in both English and Spanish. Additionally, all Carts shall be labeled in accordance with CalRecycle requirements under SB 1383 throughout the term of this Agreement.
- **How-To Brochure** – Contractor will prepare and distribute a brochure packet to new Customers when they start service. Packet will contain updated information on how to use the Contractor-provided Containers, when, where and how to place Solid Waste for Collection, and who to contact with service or Billing questions.
- **Semi-Annual Newsletter** – Not less than twice per year during each Contract Year, Contractor shall be responsible for all costs incurred for the production and mailing of the semi-annual newsletter. The Contractor shall be required to coordinate distribution via U.S. Mail of the Semi-Annual Newsletter with a local mailing house, including furnishing Single-Unit and Multi-Unit Residential Premises Cart and Bin Customer mailing addresses.
- **Corrective Action Notice** – For use in instances where the Customer sets out inappropriate materials.
- **Contractor Representative** - Contractor shall provide a representative able to visit civic groups, school assemblies, and homeowners' associations, to promote and explain the Recycling programs, and participate in demonstrations, and civic events.
- **Web Site Page** - Contractor shall dedicate one page of a Contractor web site to City services, including, at a minimum, listing contact names and numbers for Customer Service and information on Bulky Item Collection. The Contractor shall assist the City in establishing a link to this web page from the City's web site.
- **Annual Notice of SB 1383 Requirements** – Not less than once per year during each Contract Year, Contractor shall prepare and distribute to each Generator in the City a mailing that includes information specified in SB 1383 (14 CCR Section 18985.1(a)). Such mailer shall be distributed by Contractor to all Residential and Commercial mailing addresses including individual Multi-Unit Residential Premises.
- **Business Recycling Brochure** – Contractor will prepare and distribute a business Recycling brochure to outline the requirements and proper use of Commercial Recycling and Organics Containers, and information on Refuse, Recycling, and Organics Bin cleaning and

replacement options as described in Section 4.5.4.3. The brochures shall be distributed upon new Service initiation, and annually to all businesses.

All brochures, mailings, and other educational materials are to be approved by the City in advance of distribution, and shall bear the City seal, unless otherwise approved by the City.

5.3.4 Community Events

At the direction of City, Contractor shall participate in and promote Recycling and other Diversion techniques at a minimum of four (4) community events per year. Such participation would normally include providing, without cost, Collection and educational and publicity information promoting the goals of City's Solid Waste program. The City reserves the right to modify the required events and Contractor's participation requirements.

Contractor shall assist City in promoting the County-wide Hazardous Substance program presently managed by the Los Angeles County Department of Public Works (LADPW).

5.3.5 News Media Relations

Contractor shall notify the City by email or telephone of all requests for news media interviews related to Collection Services hereunder within twenty-four (24) hours of Contractor's receipt of the request. Before responding to any 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 City.

A. Copies of draft news releases or proposed trade journal articles shall be submitted to City for prior review and approval at least five (5) working days in advance of release, except where Contractor is required by any law or regulation to submit materials to any regulatory agency in a shorter period of time, in which case Contractor shall submit such materials to City simultaneously with Contractor's submittal to such regulatory agency.

B. Copies of articles resulting from media interviews or news releases shall be provided to the City within five (5) days after publication.

5.4 Waste Generation/Characterization Studies

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

5.5 Contamination Monitoring

5.5.1 Contamination Inspection Methods

Contractor shall implement an inspection method in compliance with the requirements of SB 1383 (14 CCR Section 18984.5), as described below.

Physical Container Inspections. When Contractor's personnel dismounts from Collection vehicles to empty a Container, such personnel shall lift the Container lid and observe the contents. Upon finding Contaminants in a Container, Contractor shall follow the contamination noticing procedures set forth in Sections 5.5.1.1.C and 5.5.1.1.D.

5.5.1.1 Actions upon Identification of Prohibited Container Contaminants

A. Record Keeping. The driver or other Contractor representative shall record each event of identification of Prohibited Container Contaminants in a written log or in the on-board computer system including date, time, Customer's address, type of Container (Blue, Green, or Gray/Black Container); and maintain photographic evidence, if required. Contractor shall submit this record to the Contractor's Customer service department, and Contractor's Customer service department shall update the Customer's account record to note the event, if the documentation of the on-board computer system did not automatically update the Customer's account record.

B. Identification of Excluded Waste. If Contractor's personnel observe Excluded Waste in an uncollected Container, the Contractor's personnel shall record that observation in accordance with Section 5.5.1.3.A and immediately inform their route supervisor. Contractor shall follow protocols specified in Section 5.5.1.1.C. The route supervisor shall investigate and initiate applicable action within one (1) Business Day or sooner if the Excluded Waste may cause immediate danger.

C. Courtesy Pick-Up Notices. Upon identification of Prohibited Container Contaminants in a Customer's Container, Contractor shall provide the Customer a courtesy pick-up notice. The courtesy pick-up notification shall: (i) inform the Customer of the observed presence of Prohibited Container Contaminants; (ii) include the date and time the Prohibited Container Contaminants were observed; (iii) include information on the Customer's requirement to properly separate materials into the appropriate Containers, and the accepted and prohibited materials for Collection in the Blue Container, Green Container, and Gray/ Black Container; (iv) inform the Customer of the courtesy pick-up of the contaminated materials on this occasion with information that following three (3) consecutive instances of contaminated materials; Contractor may assess contamination fees; and, (v) shall include photographic evidence. Contractor shall leave the courtesy pick-up notice attached to or adhered to the Generators' contaminated Containers; at the Premises' door or gate; or, subject to City's approval, may deliver the notice by mail, e-mail, or text message.

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

D. Notice of Assessment of Contamination Fees. If the Contractor observes Prohibited Container Contaminants in a Generator's Green Container or Blue Container on more than three (3) consecutive occasions and issued courtesy pick-up notices on each of those occasions, the Contractor may impose the contamination fee in the approved rate schedule. Contractor shall notify the City in its monthly report of Customers for which contamination fees were assessed. Contractor shall leave a contamination fee notice attached to or adhered to the Generators' contaminated Containers, at the Premises' door or gate, or, subject to City's approval, may deliver the notice by mail, e-mail or text message. The contamination fee notice shall describe the specific material(s) of issue, explain how to correct future set outs, and indicate that the Customer will be charged a contamination fee on its next bill. The format of the contamination fee notice shall be approved by the City.

Contractor shall Collect the contaminated Source Separated Blue Container Recyclable Materials or Source Separated Green Container Organic Waste and Transport the material to the appropriate Approved Facility for Processing.

E. Communications with Customer. Whenever a Container is not Collected because of Prohibited Container Contaminants, a Customer service representative shall contact the Customer to discuss and encourage the Customer to adopt proper Discarded Materials preparation and separation procedures.

F. Disposal of Contaminated Materials. If the Contractor observes visible Prohibited Container Contaminants in a Generator's Containers, Contractor may Dispose of the Container's contents provided Contractor complies with the noticing requirements in Sections 5.5.1.1.C and 5.5.1.1.D above.

5.5.1.2 On-Going Contamination Monitoring by Route Personnel

Contractor shall assist on an ongoing basis in minimizing contamination by helping to educate Customers on acceptable and non-acceptable materials through ongoing education and outreach efforts and through on-going monitoring of the contents of Collection Containers. The ongoing Container monitoring shall be performed by Contractor using the method described in Section 5.5.1.

5.5.1.3 Prescribed Contamination Monitoring

A. Methodology and Frequency. Commencing on January 1, 2022, the Contractor shall, at its sole expense, conduct hauler route reviews for Prohibited Container Contaminants in Containers in a manner that is deemed safe by the Contractor; is approved by the City; and is

conducted in a manner that results in all hauler routes being reviewed annually or more frequently.

The Contractor shall conduct hauler route reviews that include inspection of the contents of Blue, Green, and Gray/Black Containers for Prohibited Container Contaminants in a manner that a minimum of ten percent (10%) of Containers on each and every hauler route are randomly inspected annually.

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

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

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

B. Noticing of Generators with Contamination, and Disposal of Materials. Upon finding Prohibited Container Contaminants in a Container, Contractor shall follow the contamination noticing procedures and contaminated Container handling protocols set forth in Section 5.5.1.1.C.

C. Monthly Reporting Requirements. Contractor shall maintain records and report to the City monthly on contamination monitoring activities and actions taken, in accordance with Article 8.

5.5.1.4 Section Reserved

5.5.1.5 Noticing of Generators with Contamination, and Disposal of Materials

Upon finding Prohibited Container Contaminants in a Container, Contractor shall follow the contamination noticing procedures and contaminated Container handling protocols set forth in Section 5.5.1.1.C.

5.5.1.6 Monthly Reporting Requirements

In accordance with Article 8, Contractor shall maintain records and report to the City on a monthly basis on contamination monitoring activities and actions taken.

5.6 Inspection and Enforcement

A. Annual Compliance Reviews

1. **General.** Contractor shall perform compliance reviews described in this Section commencing January 1, 2022, and at least annually thereafter, unless otherwise noted.
2. **Commercial Generator Compliance Reviews.** The Contractor shall complete a compliance review of all Multi-Unit Residential Premises and Commercial Customers that generate two (2) cubic yards or more per week of Solid Waste, including Organic Waste to determine their compliance with: (i) Generator requirements under the City's Collection program; and, (ii) if applicable for the Generator, Self-Hauling requirements per 14 CCR Section 18988.3, including whether a Commercial Business is complying through Back-Hauling of Source Separated Recyclable Materials, Source Separated Blue Container Organic Waste, Source Separated Green Container Organic Waste, and Source Separated Organic Waste. The compliance review shall mean a "desk" review of records to determine Customers' compliance with the above requirements and does not necessarily require on-site observation of service; however, the City may request that the Contractor perform an on-site observation of service in addition to or in lieu of the desk review if needed to obtain the required information.
3. **Food Recovery Compliance Reviews.** Commencing January 1, 2022 and at least annually thereafter, Contractor shall conduct inspections of Tier One Commercial Edible Food Generators, Food Recovery Organizations, and Food Recovery Services to assess compliance with the requirements of 14 CCR Chapter 12 Article 10. Commencing January 1, 2024 and at least annually thereafter, Contractor shall expand its Food Recovery compliance reviews to include inspections of Tier Two Commercial Edible Food Generators.

4. **Generator Waiver Inspections.** Contractor shall verify Commercial and Multi-Unit Generator de minimis and physical space constraint waivers, if applicable, at least once every five (5) years from the date of issuance of the waiver.
5. **Compliance Review Process.**
 - a. **Number of Reviews.** The Contractor shall conduct a sufficient number of compliance reviews, hauler route reviews, and inspections of entities described in this Section, to adequately determine the entities' overall compliance with SB 1383, AB 1826, and AB 341. The City reserves the right to require additional inspections, if the City determines that the number of inspections conducted by the Contractor is insufficient. City may require the Contractor to prioritize inspections of entities that the City determines are more likely to be out of compliance.
 - b. **Non-Compliant Entities.** From January 1, 2022 through December 31, 2022, when compliance reviews are performed by Contractor pursuant to Section 5.6.A, Contractor shall provide educational materials in response to violations. Contractor shall provide these educational materials to the non-compliant Customers and Generators within five (5) working days of determination of non-compliance or immediately upon determination of non-compliance if such non-compliance is determined during an inspection or hauler route review. Contractor shall document the non-compliant Customers and Generators and the date and type of education materials provided and report such information to the City in accordance with Article 8. Beginning January 1, 2024, the Contractor shall document non-compliant Customers and Generators determined through Contractor's compliance reviews pursuant to Section 5.6.A and shall report all Customers and Generators with SB 1383 violations to the City in accordance with Article 8. The City shall be responsible for subsequent enforcement action against the Generator.
 - c. **Documentation of Inspection Actions.** The Contractor shall generate a written and/or electronic record and maintain documentation for each inspection, hauler route review, and compliance review conducted, including the information described in Article 8.

5.7 Technical Assistance Program

Contractor will provide to the City an outreach and technical assistance plan to address implementation of SB 1383 requirements.

5.7.1 Site Visits and Waste Assessments

Contractor will include an outreach and technical assistance plan in the AB 341, AB 827, AB 1826, and SB 1383 Implementation Plan identifying the site visit schedule for which to send a Contractor representative to visit each Multi-Unit Residential Premises and Commercial

Generator's Premises for the purpose of assessing how much Source Separated Recyclable Materials and Source Separated Organic Waste is being Disposed; assessing Source Separated Recyclable Materials and Source Separated Organic Waste Collection service level needed to meet the requirements of SB 1383, and requiring all Generators to establish Source Separated Recyclable Materials and Source Separated Organic Waste Collection service. Contractor shall also notify Customers of opportunities to reduce costs by enrolling in Source Separated Recyclable Materials and Source Separated Organic Waste Collection service and reducing Gray/Black Container Waste service. Contractor shall contact Multi-Unit Residential Premises and Commercial Customers and provide site visits according to the City-approved schedule. Contractor will also provide a site visit to any Multi-Unit Residential Premises and Commercial Generator that requests a site visit, even if it is ahead of schedule. Any internal Recycling programs or third-party Recycling programs that the Contractor encounters while conducting Customer site visits shall be documented using a City-approved electronic reporting form and provided in an electronic format such as a cloud-based file-sharing system that can be accessed by the City or its representatives.

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

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

- a) Pictures of material in all Containers
- b) Characteristics of the property, business, and Generator type
- c) Written recommendations for the appropriate service Level for each material type
- d) Provision of outreach and education materials appropriate to the Generator type

- e) Determination of signage placement
- f) Determination of any on-going training needs
- g) Determination of any access needs
- h) Documentation of any special service needs, (such as, but not limited to, seasonal, automated on-call compactor, etc.)
- i) Documentation of records of communications with the Generator

In addition to the site visit requirements stated above, the Contractor shall assist the City in complying with the requirements included in AB 827, and Section 18984.9(b) of SB 1383. During the site visits required in Section 5.7.1, Contractor shall provide educational material (to be provided by City) to businesses that meet the requirements of AB 827 and Section 18984.9(b) of SB 1383, and make notation of the name of the business, the business address, business contact information, and business compliance or non-compliance.

5.7.2 Record Keeping and Reporting Requirements

Contractor shall maintain records of all technical assistance activities and educational materials conducted pursuant to this Section and submit reports to the City in accordance with Article 8.

5.8 Universal Enrollment Monitoring

Contractor shall assist the City in ensuring that the enrollment of Generators occurs in a timely and efficient manner. In accordance with Section 8.3, Contractor shall maintain records and provide reports necessary for the City to verify the enrollment of Generators.

At least one (1) time per year, Contractor shall reconcile and confirm universal enrollment of Generators by comparing its Customer list to parcel information and calculating the percentage of total Generators enrolled in City's Collection program. As part of this analysis, Contractor shall provide the City with a summary of any discrepancies found between the Customer list and parcel information, including the names and addresses of all Generators that were found to be the subject of a discrepancy. Contractor shall also provide a list of Generators that are not enrolled in the City's Collection program due to the provision and approval of a waiver pursuant to Section 5.2.5, including the name, address, and type of waiver for each Generator. In accordance with Article 8, Reports, Contractor shall maintain records and provide reports on the Generators' service level and list of non-enrolled Generators, and other information necessary for the City to verify the universal enrollment of Generators.

ARTICLE 6: CONTRACTOR COMPENSATION AND RATES

6.1 General

Contractor Compensation provided for in this Article shall be the full, entire and complete compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, Disposal, Recycling, Processing, transfer, profit and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed.

Contractor will perform the responsibilities and duties described in this Agreement in consideration of the right to receive compensation for services rendered at maximum rates fixed by City from time-to-time. City shall have the right to structure those maximum rates as it deems appropriate so long as the revenues forecasted to be received by Contractor from charging rates not in excess of the maximum set forth herein can reasonably be expected to generate sufficient revenues to provide for Contractor Compensation as calculated in accordance with this Agreement.

6.2 Initial Rates

The rates for the Contract Year ending June 30, 2023 shall not exceed those set forth in Exhibit 2 hereto, unless amended by a written amendment to this Agreement entered into by and between the City and the Contractor. Contractor has reviewed these maximum rates and agrees they are reasonably expected to generate sufficient revenues to provide adequate Contractor Compensation. Unless and until the maximum rates set forth on Exhibit 2 are adjusted, Contractor will provide the services required by this Agreement, charging no more than the maximum rates authorized by Exhibit 2, except as provided herein and in Section 6.3.

6.3 Schedule of Future Adjustments

Subject to majority protest proceedings, beginning with Contract Year 2 (July 1, 2023 to June 30, 2024) and for all subsequent Contract Years, the maximum rates shown in Exhibit 2 shall be adjusted based on the method of adjustment described in Section 6.4.

6.4 Method of Adjustments

6.4.1 General

Pursuant to Section 6.3, Contractor shall submit its request in writing, to be received by City in person or via certified mail, by March 1 of the same year its revised rate schedule for the subsequent year to the City Manager or their designee for review and approval according to the formula shown in Exhibit 3. Annual adjustments shall not exceed an amount greater than two percent (2.0%) more than the percentage increase in the Consumer Price Index-All Items Less Energy for the Los Angeles-Long Beach-Anaheim, CA, All Urban Consumers, Not Seasonally Adjusted (CUURS49ASA0LE), for the corresponding one-year period used to measure the

change in the Consumer Price Index for All Urban Consumers for Garbage and Trash Collection (CUUR0000SEHG02) - U.S. City average. All future adjustments to be effective July 1 shall be based on the rates described in the Contractor's Rate Proposal. Notwithstanding the above, the annual rate adjustment to the maximum rates shall be subject to the requirements included in Section 6.4.1.1.

6.4.1.1 Majority Protest Proceedings

- a) The annual rate adjustment may take effect only after it has been adopted and passed pursuant to a majority protest process. The annual rate adjustment shall be enacted consistent with Government Code § 53756, such that no prior approval of an annual rate adjustment may exceed a period of five (5) years.
- b) Commencing from the date of adoption for any annual rate adjustment, such adjustments shall continue automatically on a year-to-year basis for a period not to exceed five (5) years after the date such adjustments were adopted in accordance with a majority protest process in accordance with Government Code § 53756.
- c) At the end of the five-year period, there shall be no further adjustments to the maximum rates unless or until further automatic adjustments are adopted through a subsequent majority protest process in accordance with Government Code § 53756.

Contractor is required to mail majority protest notices to all Customers. Contractor is responsible for all costs incurred for copying and mailing of notices.

6.4.1.2 Indemnification

Contractor shall indemnify, defend and hold harmless the City, their officers, employees, agents and volunteers, (collectively, indemnitees) from and against all claims, damages, injuries, losses, costs, including demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including attorneys' and expert witness fees, expenditures for investigations, and administration) and costs or losses of any kind whatsoever paid, imposed upon, endured or suffered by or assessed against Contractor or any of the indemnitees resulting in any form from the City's establishing maximum rates for service under this Agreement or in connection with the application of California Constitution Articles XIII C and Article XIII D to the imposition, payment or collection of rates and fees for services provided by Contractor under this Agreement. Notwithstanding the foregoing, this indemnity shall not extend to any portion of the rates that is not associated with Contractor's costs in providing service, such as governmental fees, Franchise Fees or charges, nor shall it apply to any loss arising directly from the negligence of City, its officers and employees. Nothing herein is intended to imply that California Constitution Articles XIII C or XIII D, apply to the setting of rates for the services provided under this Agreement, rather this Section is provided merely to allocate risk of loss between the Parties.

6.4.1.3 No Waiver of City Council Discretion at Hearings

With respect to all matters submitted to the City Council or other administrative decision-making body for hearing, this Agreement does not waive or limit the City's police powers (which police powers the parties acknowledge cannot be contractually waived) nor does anything in this Agreement waive or limit the exercise of discretion inherent to the City Council or other administrative decision-making body. However, the City will warrant that requests for rate adjustments will be heard and considered in the exercise of good faith on the part of the City. The City's decision on matters submitted to a public hearing will be made at or after the public hearing, not beforehand. While Contractor's failure to comply with the terms hereof could be a default leading to termination of this Agreement, in no case will City's failure to approve any items submitted to it for hearing (per Section 6.4 or otherwise) be a default hereunder, and, subject to the requirements of due process, City bears no liability to Contractor for any damages suffered by Contractor as a result of a hearing outcome.

6.4.1.4 Majority Protest Contract Remedy

If an annual rate adjustment requested in accordance with Section 6.4 is verified for accuracy by the City and not implemented solely as a result of a 50% protest, Contractor may either: 1) accept that the rate will remain at the rates in effect prior to the requested rate increase, or 2) submit in writing to the City its intent to terminate the Agreement. A request to terminate the Agreement under this section would require a two-year advance written notice and must be submitted within 90 days of the denial of the rate increase request as a result of the 50% protest. This right to terminate does not apply to rate adjustments requested under Section 6.5 or any other section of this Agreement, or for any other reason other than requests under Section 6.4.

6.4.2 Rate Adjustment Calculation

Subject to approval by majority protest proceedings and subject to the limitations set forth in Section 6.4.1.1 above, approved Contractor compensation shall be based on the percentage change in the average annual published Consumer Price Index for Trash and Garbage Collection (CUUR0000SEHG02), U.S. City average, as published by the United States Department of Labor, Bureau of Labor Statistics, between the 12 months ended January prior to the Contract Year anniversary date, and the 12 months ended the prior January. For example, for the first rate increase effective July 1, 2023, the change in indices shall be measured as the percentage change from the average of the monthly indices for 12 months ending January 2022 to the average of the monthly indices for the 12 months ending January 2023. An example calculation is included in Exhibit 2A. If the index is discontinued, an alternative index must be approved by the City Manager.

If the rate adjustment calculation is calculated to be 0% or less, there shall be no changes to charges and rates during the Contract Year corresponding the rate adjustment calculation. In the case of a calculated rate decrease, the amount of such decrease shall be carried forward as an offset to future rate increases.

6.5 Extraordinary Adjustments

Contractor or City may request an adjustment to maximum rates at reasonable times other than that allowed under Section 6.3 in the event of extraordinary changes in the cost of providing service under this Agreement. Such changes shall not include changes in Source Separated Recyclable Materials and/or Source Separated Organic Waste Processing costs, changes in the market value of Recyclable Materials from the values assumed in Contractor's Proposal, inaccurate estimates by the Contractor of its proposed cost of operations, unionization of Contractor's work force, or change in wage rates or employee benefits. Contractor may request an extraordinary adjustment based on changes in a direct per ton fee assessed at the Disposal Site by federal, State or local regulatory agencies after the Effective Date. Extraordinary rate adjustments shall only be effective after approval by City Council, may not be applied retroactively and shall undergo a majority protest process if such adjustments increase rates above those currently in effect.

For each request for an adjustment to the maximum rates that Contractor may charge Customers brought pursuant to this section, Contractor shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to City with support for assumptions made by Contractor in preparing the estimate. Contractor shall also submit a schedule showing how its total costs and total revenues have changed over the past three years for the services provided under this Agreement.

Contractor shall provide to City a report of its annual revenues and expenses for the services provided in the City prepared by a Certified Public Accountant or a licensed public accountant, which shall have been prepared in compliance with Rule 58 of the "Rules and Regulations of the State Board of Accountancy," as established by the California Code of Regulations, Title 16, Chapter I. Such Certified Public Accountant or licensed public accountant shall be entirely independent of the Contractor and shall have no financial interest whatsoever in the business of the Contractor. City shall have right to audit this information in connection with the City's review of Contractor's rate adjustment request. City shall review the Contractor's request and, in City's sole judgment and absolute, unfettered discretion, make the final determination as to whether an adjustment to the maximum rates will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment. The City's approval of an extraordinary rate adjustment request made in response to a change in the City of Gardena's Municipal Code shall not be unreasonably withheld. City may consider increases or decreases in the Contractor's total revenues and total cost of services when reviewing an extraordinary rate adjustment request. A rate adjustment request made in response to a new service requested by City will be determined in accordance with Section 2.10.

6.6 Change in Approved Disposal Facility

Contractor or City can request a rate increase or decrease due to a change in the Approved Disposal Facility location. Transportation costs, as well as gate rates, will be considered. Any change in the Approved Disposal Facility selected for use by Contractor must be approved by

the City in advance. A rate adjustment for change of the Approved Disposal Facility will not become effective until approved by the City Council and will not be retroactively applied.

ARTICLE 7: REVIEW OF SERVICES AND PERFORMANCE

7.1 Performance Hearing

City may hold a meeting or a public hearing annually to review Contractor's Solid Waste Collection efforts, source reduction, Processing and other diversion services, and overall performance under this Agreement (the "Solid Waste Services and Performance Review Meeting"). The purpose of the Solid Waste Services and Performance Review Meeting is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, Recycling, Processing and Disposal to achieve a continuing, advanced Solid Waste Collection, source reduction and Recycling and Disposal system; and to ensure services are being provided by Contractor with adequate quality, effectiveness and economy, and in full compliance with the terms of this Agreement. Topics for discussion and review at the Solid Waste Services and Performance Review Meeting shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, Customer complaints, amendments to this Agreement, developments in the law, new initiatives for meeting or exceeding AB 939's goals, regulatory constraints, results of route audits, and Contractor performance. City and Contractor may each select additional topics for discussion at any Solid Waste Services and Performance Review Meeting.

City shall notify Contractor of its intent to hold a Solid Waste Services and Performance Review Meeting at least sixty (60) days in advance thereof. Thirty (30) days after receiving notice from City of a Solid Waste Services and Performance Review Meeting, Contractor shall submit a report to City which may contain such information as it wished to have considered, and shall contain the following:

- a) Current diversion rates and a report on Contractor's outreach activities for the past year.
- b) Recommended changes and/or new services to improve City's ability to meet the goals of AB 939, AB 341, AB 1826, SB 1383, and any current or future regulations, and to contain costs and minimize impacts on rates. A specific plan for regulatory compliance shall be included.
- c) Any specific plans for provision for new or changed services by Contractor.

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

As a result of its findings following any Solid Waste Services and Performance Review Meeting, City may require Contractor to provide expanded or new services within a reasonable time and City may direct or take corrective actions for any performance inadequacies (although nothing contained in this provision should be construed as requiring City to hold a Solid Waste Services and Performance Review Meeting in order to enforce any rights or remedies it has pursuant to the terms hereof.) Should City require expanded or new services as a remedy for Contractor's failure to perform its obligations hereunder, no additional compensation shall be due for such services.

7.2 Performance Satisfaction Survey

Contractor will conduct a survey at Contractor's expense at request of City or in preparation for this hearing, but not more than once every two years. The purpose of the survey is to determine Customer satisfaction with current Collection services and Customer service provided by the Contractor. Survey will be distributed to a minimum of 10% of Residential Customers and 10% of Commercial Customers, selected at random. Contractor will prepare separate Residential and Commercial Customer surveys and will seek City approval of survey content and format prior to distribution and will incorporate City content, if City requests. Survey results must be made available to the City 30 days prior to hearing.

**ARTICLE 8:
RECORDS, REPORTS AND INFORMATION REQUIREMENTS**

8.1 General

Contractor shall maintain such accounting, statistical and other records related to its performance under this Agreement as shall be necessary to develop the financial statements and other reports required by this Agreement. Also, Contractor agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with Applicable Laws and regulation and to meet the reporting and Solid Waste program management needs of City. To this extent, such requirements set out in this and other Articles of this Agreement shall not be considered limiting or necessarily complete. In particular, this Article is intended to only highlight the general nature of records and reports and is not meant to define exactly what the records and reports are to be and their content. Further, with the written direction or approval of City, the records and reports to be maintained and provided by Contractor in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency.

8.2 Records

8.2.1 General

Contractor shall maintain records required to conduct its operations, to support requests it may make to City, and to respond to requests from City in the conduct of City business. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft and earthquake. Electronically maintained data/records shall be protected and backed up. All records shall be maintained for five (5) years and shall continue to be available for five (5) years after the expiration of this Agreement. After minimum holding periods are met, Contractor will notify City 90 days before destroying records.

Contractor shall maintain adequate records, and corresponding documentation, of information required by this Agreement, such that the Contractor is able to produce accurate monthly and annual reports and is able to provide records to verify such reports. Contractor will make these records available and provide to the City any record or documentation necessary for the City to fulfill obligations under Applicable Law including, but not limited to, AB 939, AB 341, AB 1826, AB 901, SB 1383, and other current or future federal, State, or local regulations, as amended. Upon request by the City, Contractor shall provide access to Contractor's requested records in a timely manner, not to exceed ten (10) Business Days from the time of City's request to Contractor.

Contractor agrees that the records of any and all companies conducting operations addressed in the Agreement shall be provided or made available to City and its official representatives during normal business hours. Account histories shall be accessible to the City by computer for a minimum of five (5) years. City may review or utilize any of the records described in this section for any purpose whatsoever.

8.2.2 Financial Records

Financial records shall be maintained and expense and revenue information for City shall be segregated from other areas served by Contractor.

Where the allocation of expenses or revenues to various categories of Customers is required to develop equitable rates that reflect the cost of service, Contractor shall segregate such expenses and revenues.

Contractor shall maintain at least the following records:

- a) Reviewed financial statements for Contractor or, if a guarantee was provided, for the parent Contractor guarantor as a whole;
- b) Financial statements (compiled, reviewed or audited) of revenue and expense for this Agreement (including without limitation those operations of Contractor in City and surrounding jurisdictions which are not covered by this Agreement); and,
- c) Complete descriptions of related party transactions (corporate and/or regional management fees, inter-Contractor profits from transfer, Processing or Disposal operations).

8.2.3 Solid Waste Records

Contractor shall maintain and make available to the City upon request the following records relating to its operations pursuant to this Agreement:

- a) Customer services and Billing/City payment records;
- b) Records of tons Collected, Processed, Diverted and Disposed by waste stream (Refuse, Source Separated Recyclable Materials, Source Separated Organic Waste), by Customer type (Single-Unit, Multi-Unit, Commercial, and Roll-Off Box), and the Facilities (Transfer Station, MRF, Organic Waste Processing Facility, or landfill) where such material was taken;
- c) Quantity of Source Separated Recyclable Materials recovered by material type, as well as quantity of material Diverted from landfills in compliance with AB 939;
- d) Special cleanup event results and Special Event tonnages, including tons Disposed and Diverted;
- e) Routes;
- f) Facilities, equipment and personnel used;
- g) Facilities and equipment operations, maintenance and repair;

- h) Number and type of Refuse, Source Separated Recyclable Materials and source Separated Organic Waste Containers in service;
- i) Complaints; and,
- j) Missed pickups.

8.2.4 CERCLA Defense Records

City views the ability to defend against the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), State Hazardous Substance Law, and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be matters of concern. Contractor shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) and provide a copy or summary of the reports required in Section 8.3 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement, or to provide copies of such records to City. Contractor agrees to notify City's Risk Manager and City Attorney before destroying such records and to offer records to the City. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

8.2.5 Disposal Records

Contractor shall maintain records of Disposal of all Solid Waste Collected in City for the period of this Agreement and all extensions to this Agreement or successor Agreements. In the event Contractor discontinues providing Solid Waste services to City, Contractor shall provide all records of Disposal or Processing of all Solid Waste Collected in City within thirty (30) days of discontinuing service. Records shall be in chronological and organized form and readily and easily interpreted.

8.2.6 Compilation of Information for State Law Purposes

Contractor shall maintain accurate records for its operation, including, but not limited to, Discarded Materials quantities Collected and quantities Transported to or Transferred to each Approved Facility, listed separately by material type, Customer type, and Facility. Records shall be maintained in such form by methods that facilitate the use of data for the production of reports as needed. Contractor will make these records available and provide to the City any record or documentation necessary for the City or County to fulfill obligations under Applicable Law including, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, AB 1595, SB 1383, and other current or future federal, State, or local regulations, as amended.

8.2.7 Other Programs' Records

Records for other programs shall be tailored to specific needs. In general, they shall include:

- a) Plans, tasks, and milestones; and,

- b) Accomplishments in terms such as dates, activities conducted, quantities of products used, produced or distributed, and numbers of participants and responses.

8.2.8 Cost of Audit

City may conduct an audit of Contractor at any time. The scope of the audit, and auditing party, will be determined by City and the scope may include, but is not limited to:

- a) Compliance with terms of this Agreement;
- b) Customer service levels and Billing;
- c) Fee payments;
- d) Receipts;
- e) Tonnage;
- f) Complaint log;
- g) Compliance with Mandatory Commercial Recycling, Mandatory Commercial Organics Recycling, and SB 1383; and,
- h) Verification of Diversion rate.

The first audit, to be performed during 2024, will be based on the Contractor's reports and records for the eighteen months ending December 31, 2023. Audits will be performed every other year thereafter (the biennial audit). Contractor will reimburse to the City the cost of such audits for each subsequent biennial audit. Up to seventy thousand dollars (\$70,000) will be reimbursed for 2023 audit and shall be increased annually by two percent (2%).

Should an audit by the City disclose that Franchise or other fees payable by the Contractor were underpaid by three percent (3%) or more, or that more than two percent (2%) of the sampled Customers' rates were inaccurately billed, for the period under review, Contractor shall pay for additional audit costs, if City determines it is necessary to expand the scope of the audit.

8.2.9 Payments and Refunds

Should an audit by the City disclose that the Franchise Fees payable by the Contractor were underpaid or that Customers were overcharged for the period under review, Contractor shall pay to City any underpayment of Franchise Fees and/or refund to Contractor's Customers any overcharges within thirty (30) days following the date of the audit. Should an audit disclose that Franchise Fees were overpaid, City shall refund to Contractor the amount of the overpayment within the same time frame.

8.3 Reports

8.3.1 Report Formats and Schedule

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Contractor may propose report formats that are responsive to the objectives and audiences for each report. The format of each report shall be approved by City. In addition to submitting all reports on paper, Contractor agrees to submit all reports in an electronic format approved by City, compatible with City's software/computers at no additional charge. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

- a) Determine and set rates and evaluate the efficiency of operations;
- b) Evaluate past and expected progress towards significantly exceeding AB 939 goals and objectives and complying with SB 1383 requirements;
- c) Determine needs for adjustment to programs; and,
- d) Evaluate Customer service and complaints.

Monthly reports shall be submitted within twenty (20) calendar days after the end of the calendar month. Quarterly reports shall be submitted within thirty (30) calendar days after the end of the calendar quarter. Annual reports for which a date is not otherwise specified in this Agreement shall be submitted within thirty (30) calendar days after the end of the calendar year. If requested, Contractor's complaint summary, described in Section 5.2.2, shall be sent to the City Manager within five (5) days of request. All reports shall be submitted electronically to:

City Manager (or designated representative)
City of Gardena
1700 West 162nd Street
Gardena, CA 90247

8.3.2 Monthly Reports

The information listed shall be the minimum reported:

- a) Gross receipts for the month by sector (Residential, Commercial, Roll-Off)
- b) Tonnage Report
 1. Contractor shall report the total quantities in Tons of Discarded Materials Collected, Transferred, Processed, and Disposed by the Contractor, all of which shall be based on actual certified scale weights for each load, if available, or similarly accurate methodology pursuant to weighing protocols in Section 6.4 of Exhibit 6. Tonnage shall be reported separately by:
 - a. Material type, which shall include, at a minimum, separate reporting of

Source Separated Recyclable Materials, Source Separated Organic Waste, Gray/Black Container Waste, and any other type of Discarded Material separately Collected by Contractor (including, but not limited to: Bulky Items, used oil, mixed C&D, dirt, rock, metals, cardboard, wood waste, reusable items, salvageable materials, etc.);

- b. Customer/sector type (Single-Unit, Multi-Unit, Commercial Roll-off, C&D); and,
 - c. Approved Facility and Facility type.
2. Report Residue level and Tonnage for all Discarded Materials Processed, listed separately by material type Collected and Approved Facility(ies) used.
 3. Source Separated Recyclable Materials Tonnage marketed, by commodity, and including average commodity value for each, and Processing Residue Tonnage Disposed, listed separately by material type Collected and Approved Facility(ies) used.
 4. Documentation of all Discarded Materials exported out of State, as provided in 14 CCR Sections 18800 through 18813.
 5. Tonnage Collected by month separately for each C&D project site and other data as it relates to the C&D services described in this Agreement.
- c) Collection and Subscription Report
1. Number of Containers at each Service Level by Customer Type and program, including:
 - a. A summary of the total gallons of Cart service, cubic yards of Bin service, and pulls; and cubic yards or Tons of Drop Box and Compactor service by Customer Type.
 - b. Calculation of the average volume of service received per: Single-Unit Residential Premises (separately identifying Dwelling Units in a duplex, triplex, or fourplex); Multi-Unit Residential Premises; and, Commercial Customer.
 2. Documentation of the universal service enrollment process including a copy of the City-wide Generator enrollment level evaluation conducted pursuant to Section 5.8 of this Agreement.
 3. List of all Commercial and Multi-Family Customers with Solid Waste service. Such list shall include each such Customer's service address and subscribed Solid Waste, Recyclable Materials, and Organic Materials Service Levels. The list should

include all information in one line for each Customer illustrating the Service Level for each Material Type and the total Service Level for all Material Types the Customer has subscribed to.

4. Number of Bulky Item/Reusable Materials Collection events by Customer Type.
5. The total number of de minimis waivers, and physical space constraint waivers granted in the month, including the Generator name and address for each waiver.
6. The number of waiver reverifications performed by the Contractor pursuant to Section 5.2.5 of this Agreement in the month, if any, including a copy of documentation for each reverification inspection, which shall include, at a minimum: the Generator's name, address, and Generator type; the type of waiver being verified; any photographic or other evidence collected during the inspection; and the resulting recommended conclusion by the Contractor regarding the validity of the waiver. The Contractor shall provide a summary of recommendations to the City of all waivers which the Contractor concludes to no longer be warranted.
7. Number of Bulky Item/Reusable Materials Collection pickups by Customer Type.

d) Contamination Monitoring Report

The Contractor shall submit the following information regarding contamination monitoring Hauler Route reviews conducted pursuant to Section 5.5 of this Agreement:

1. The number of Hauler Route reviews conducted pursuant to Section 5.5 of this Agreement;
2. Description of the Contractor's process for determining the level of contamination;
3. Summary report of non-Collection notices and/or contamination Processing fee assessment notices issued, which for each notice shall include the date of issuance, Customer name, and service address;
4. A record of each inspection and contamination incident, which shall include, at a minimum:
 - a. Name of the Customer
 - b. Address of the Customer
 - c. The date the contaminated Container was observed
 - d. The staff who conducted the inspection

- e. The total number of violations found, and a description of what action was taken for each
 - f. Copies of all notices, and enforcement orders issued or taken against Generator with Prohibited Container Contaminants
 - g. Any photographic documentation or supporting evidence.
5. Documentation of the total number of Containers Disposed of due to observation of Prohibited Container Contaminants;
 6. A list of all Customers assessed contamination Processing fees, pursuant to Section 5.5 of this Agreement, reported separately by Single-Unit Residential Premises, Multi-Unit Residential Premises, and Commercial Customers and including the Customer name, Customer address, and reason for the assessment of the contamination Processing fee, and the total number of instances contamination Processing fees were assessed in the month and the total amount of fees collected in the month.
 7. Any other information reasonably requested by the City or specified in contamination monitoring provisions of this Agreement.
- e) Customer Service Report
1. Number of Customer calls listed separately by complaints and inquiries (where inquiries include requests for service information, Rate information, etc.). For Complaints, list the number of calls separately by category (e.g., missed pickups, scheduled cleanups, billing concerns, damage claims). These complaints and inquiries shall be documented and reported separately from SB 1383 noncompliance complaints or other regulatory noncompliance complaints.
 2. Number of missed or incomplete Collections reported in total, and per one thousand (1,000) Service Opportunities in the City, presented in a graph format, which compares total missed Collections in the City during the current report period to total missed Collections in the City in past reporting periods.
 3. Number of new service requests for each Customer type and requested service(s).
 4. Contractor shall maintain a record of all SB 1383 noncompliance complaints and responses pursuant to Section 5.2.4 of this Agreement and submit the following information:
 - a. Total number of complaints received, and total number of complaints investigated
 - b. Copies of documentation recorded for each complaint received, which shall

at a minimum include the following information:

- i. The complaint as received;
- ii. The name and contact information of the complainant, if the complaint is not submitted anonymously;
- iii. The identity of the alleged violator, if known;
- iv. A description of the alleged violation; including location(s) and all other relevant facts known to the complainant;
- v. Any relevant photographic or documentary evidence submitted to support the allegations in the complaint; and,
- vi. The identity of any witnesses, if known.

c. Copies of all complaint reports submitted to the City, pursuant to Section 5.2.4.A of this Agreement.

d. Copies of all investigation reports submitted to the City pursuant to Section 5.2.4.B of this Agreement, which shall include at a minimum:

- i. The complaint as received;
- ii. The date the Contractor investigated the complaint;
- iii. Documentation of the findings of the investigation;
- iv. Any photographic or other evidence collected during the investigation; and,
- v. Contractor's recommendation to the City on whether or not the entity investigated is in violation of SB 1383 based on the Contractor's investigation.

f) Generator Waivers

Contractor shall provide a report that documents each Generator waiver request reviewed by Contractor, which are required by Section 5.2.5. Identify in the report the Generator name and service address, the type of waiver requested, the status of the waiver (accepted, denied, pending), and other information reasonably requested by the City.

g) Education Program Report

The monthly status of activities identified in the public education plan described in

Section 5.3 of this Agreement.

h) Discarded Materials Evaluation Reports

In accordance with Section 6.6 of Exhibit 6, Contractor shall provide reports of evaluations of Discarded Materials conducted at Approved Facilities.

8.3.3 Quarterly Reports

The information listed below shall be the minimum reported:

- a) A summary of the monthly reports showing Solid Waste Collected by Contractor for each month, sorted by type of Solid Waste (Refuse, Recycling, Green Waste) in tons, Customer type (Residential, Commercial and Roll-Off Box) and the Facilities where the tons were processed or disposed. Diversion, contamination and residue rates shall be calculated for the quarter, based on this tonnage.
- b) Gross receipts for the quarter by sector (Residential, Commercial, Roll-Off).
- c) Warning notices issued for contaminated Recyclable Materials and Green Waste Containers.
- d) Narrative summary of problems encountered, and actions taken with recommendations for City, as appropriate.
- e) Quantity of Recyclable Materials recovered by material type, as well as quantity of material diverted from landfills in compliance with AB 939;
- f) Description of Contractor outreach activities and copies of promotional and public education materials sent during the quarter.
- g) Other information or reports that City may reasonably request or require.

8.3.4 Annual Report

In addition to the monthly and quarterly reporting requirements in Section 8.3.2 and 8.3.3, the Contractor shall provide an Annual Report, covering the most recently completed calendar year. The Annual Report shall include the information in the following subsections. The Annual Report is to be essentially in the form and content of the monthly and quarterly reports, but shall also include:

- a) A summary of the number of Containers in service as of December 31 by size (number of gallons, number of yards), sector (Residential, Commercial, Roll-Off), service frequency, and type of service (Refuse, Recycling, Green Waste).
- b) A complete inventory of vehicles used to provide all services, including make, year, type, fuel used, use, California license number and whether or not it is used as a spare.

- c) Number of routes and route hours per day by type of service as of December 31.
- d) Other information or reports that County may reasonably request or require.
- e) Collection and Subscription Report
 - 1. A summary of all data provided in the Tonnage Report section, including quarterly and annual totals and averages.
 - 2. The type(s) of Collection service(s) provided, a list of all hauler routes serviced, and a record of the addresses served on each hauler route.
 - 3. A summary of Customer subscription data, including the number of accounts; the total number of Generators enrolled with Contractor for service, listed separately by service level and Container type (Cart, Bin, and Roll-Off service), separately by Single-Unit Residential Premises, Multi-Unit Residential Premises, and Commercial Customers, and separately for each type of Discarded Material; and the number of Bulky Items Collections performed.
 - 4. A detailed list of Single-Unit Residential Premises, Multi-Unit Residential Premises, and Commercial Customer information, including Gray/Black Container Waste, Source Separated Recyclable Materials, and Source Separated Organic Waste Service Levels, Customer type, and Customer service addresses reflecting Customer Service Levels as of June 30 (for the year in which the report is submitted).
 - 5. The number of C&D Collection sites served and Tonnage Collected, Tonnage diverted, and Diversion level for each C&D Collection site.
- f) Processing Facility Report
 - 1. Temporary Equipment or Operations Failure: If the Contractor is granted a Processing facility temporary equipment or operational failure waiver, in accordance with Section 4.5.15 of the Agreement, the Contractor shall include the following documents and information:
 - a. The number of days the Processing Facility temporary equipment waiver or operation failure waiver was in effect;
 - b. Copies of any notifications sent to the City pursuant to Section 4.5.15.C of the Agreement, and copies of City notices to Contractor pursuant to Section 4.5.15.C of the Agreement;
 - c. Documentation setting forth the date of issuance of the waiver, the timeframe for the waiver; and,

- d. A record of the tons of Source Separated Recyclable Materials, Source Separated Organic Waste, and/or Gray/Black Container Waste redirected to an Alternative Facility or Disposed at an Approved Disposal Facility as a result of the waiver, recorded by Collection vehicle or Transfer vehicle number/load, date, and weight.
2. Quarantined Organic Waste: A record of all compliance agreements for quarantined Organic Waste that are Disposed of, including the name of Generator, date issued, location of final disposition, and the amount of quarantined Organic Waste that was required to be Disposed at a Landfill.
3. Compostable Plastics in Green Containers: Written notification that the Approved Organic Waste Processing Facility(ies) has and will continue to have the capabilities to Process and recover the Compostable Plastics included with the Source Separated Organic Waste Transported to the Approved Organic Waste Processing Facility.
4. Plastic Bags in Green Containers: Written notification to the City that the Approved Organic Waste Processing Facility has and will continue to have the capabilities to Process and recover plastic bags when it recovers Source Separated Organic Waste.

g) Public Education and Outreach Report

1. A copy of all education and outreach materials provided to Generators, or otherwise used for education and outreach efforts in accordance with Section 5.3 of the Agreement, including, but not limited to: flyers, brochures, newsletters, invoice messaging/billing inserts, and website and social media postings.
2. A record of the date and to whom the information was disseminated, or direct contact made, in the form of a list that includes: the Generator's name or account name, the type of education or outreach received; the distribution date, and the method of distribution.
3. The number of Organic Generators and Commercial Edible Food Generators that received information and the type of education and outreach used.
4. For any mass distribution through mailings or bill inserts, the Contractor shall maintain a record of the date, a copy of the information distributed, and the type and number of accounts that received the information.
5. A copy of electronic media, including the dates posted of: social media posts, e mail communications, or other electronic messages.
6. Contractor shall maintain a record of all technical assistance efforts conducted

pursuant to Section 5.7 of the Agreement, including:

- e. The name and address of the Customer/Generator receiving technical assistance, and account number, if applicable.
 - f. The date of any technical assistance conducted and the type of technical assistance, including, but not limited to: site visits, waste assessments, compliance assessments, direct outreach, workshops, meetings, events, and follow-up communications.
 - g. A copy of any written or electronic educational materials distributed during the technical assistance process.
7. A copy of all special event reports submitted to the City in accordance with Section 4.4.8 of the Agreement.

h) Compliance Monitoring and Enforcement Report

- 1. A summary of the total number of SB 1383 non-compliance complaints that were received and investigated, and the number of Notices of Violation issued based on investigation of those complaints, in accordance with Section 5.2 and Section 8.3.2.e of the Agreement.
- 2. The total number of Hauler Route reviews conducted pursuant to Section 5.6 of the Agreement.
- 3. The number of inspections conducted by type for Commercial Edible Food Generators, Food Recovery Organizations, and Commercial Businesses.
- 4. A copy of written and/or electronic records and documentation for all audits, studies, compliance reviews, and all other inspections conducted pursuant to Section 5.6 of the Agreement.
- 5. The number of Commercial Businesses that were included in a compliance review performed by the Contractor, and the number of violations found and corrected through compliance reviews, if different from the number reported in subsection 4.f. of this Section; including a list with each Generator's name or account name, address, and Generator type.
- 6. The total number of Notices of Violation issues categorized by type of Generator.
- 7. The number of enforcement actions that were resolved, categorized by type of Generator.
- 8. Copies of all written notices, violations, educational materials, or other

enforcement mechanisms issued to noncompliant Generators.

i) Food Recovery Program Support

1. The number of Food Recovery Services and Food Recovery Organizations located and operating within the City that contract or have written agreements with Commercial Edible Food Generators for Food Recovery.
2. The number of Generators participating in the Edible Food recovery program, as described in Section 4.3.7 of the Agreement.

j) Vehicle and Equipment Inventory

1. A list of all vehicles used in performing services under this Agreement including license plate number, VIN, make, model, model year, purchase date, engine overhaul/rebuild date (if applicable), and mileage at June 30.
2. If applicable, the name, physical location, and contact information of each entity, operation, or facility from whom the RNG was procured.
3. If applicable, the total amount of RNG procured by the Contractor for use in Contractor vehicles, in diesel gallon equivalents (DGE), including copies of any receipts, invoices, or other similar documentation evidencing procurement. In addition to the amount procured, Contractor shall include the total amount actually used in Contractor vehicles in the calendar year, if these values are different.

k) Customer Revenue and City Fee Payment Report. Provide a statement detailing Gross Revenue from all operations conducted or permitted pursuant to this Agreement and report of all City fees paid in accordance with Article 3 of this Agreement. The Annual Report is to be essentially in the form and content of the quarterly report, but shall also include:

1. A summary of the number of Containers in service as of December 31 by size (number of gallons, number of yards), sector (Residential, Commercial, Roll-Off), service frequency, and type of service (Refuse, Recycling, Green Waste).
2. A complete inventory of vehicles used to provide all services, including make, year, type, fuel used, use, California license number and whether or not it is used as a spare.
3. Number of routes and route hours per day by type of service as of December 31.
4. General information about the Contractor and its most recent annual report.

5. Other information or reports that County may reasonably request or require.

8.4 Reporting Adverse Information

Contractor shall provide City an electronic copy to the City Manager and the City Attorney of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating specifically to Contractor's performance of services pursuant to this Agreement, submitted by Contractor to, or received by Contractor from, the United States or California Environmental Protection Agency, CalRecycle, the Securities and Exchange Commission or any other federal, State or local agency, including any federal or State court. Copies shall be submitted to City simultaneously with Contractor's filing or submission of such matters with said agencies. Contractor's routine correspondence to said agencies need not be routinely submitted to City but shall be made available to City promptly upon City's written request.

8.5 Right to Inspect Records

City shall have the right to inspect or review the specific documents or records required expressly or by inference pursuant to this Agreement, or any other similar records or reports of Contractor or its related party entities that City shall deem, in its sole discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and Contractor's performance provided for in this Agreement. Contractor shall make all records and documents to be reviewed and inspected by the City as a part of any audit or other record review conducted by the City, available for the City's review, inspection and copying within five business days (excluding Saturday, Sunday and holidays included in Section 4.5.1) of receiving written notice from the City requesting the same.

8.6 Failure to Report

The refusal or failure of Contractor to file any required reports, or to provide required information to City, or the inclusion of any materially false or misleading statement or representation by Contractor in such report shall be deemed a material breach of the Agreement as described in Section 11.1 and shall subject Contractor to all remedies which are available to the City under the Agreement or otherwise.

8.7 Public Records

All reports made to the City pursuant to this Agreement shall be deemed public records for purposes of the City's use, any litigation, and public records requests made pursuant to the California Public Records Act (Statutes of 1968, Chapter 1473; currently codified as California Government Code §§ 6250 through 6276.48).

**ARTICLE 9:
INDEMNIFICATION, INSURANCE AND BOND**

9.1 General Indemnification

Without regard to the limits of any insurance coverage, Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless (to the full extent permitted by law) City and its officers, officials, employees, volunteers, and agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs (including without limitation costs and fees of litigation, including attorneys' and expert witness fees) (collectively, "Damages") of every nature arising out of or in connection with Contractor's performance, and the performance of any Subcontractor, or agent of Contractor, under this Agreement, or its failure to comply with any of its obligations contained in the Agreement, except to the extent such loss or damage was caused by the negligence or willful misconduct of City. This Section 9.1 shall survive the expiration or termination of this Agreement and shall not be construed as a waiver of City's legal and/or equitable rights as defined herein and permitted under Applicable Law.

THE PROVISIONS OF THIS SECTION SHALL NOT TERMINATE OR EXPIRE, SHALL BE GIVEN THE BROADEST POSSIBLE INTERPRETATION AND SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

9.2 Hazardous Substance Indemnification

- A. Without regard to any insurance coverage or requirements, and without limiting the above general indemnification obligation in any way, Contractor specifically agrees to and shall, to the maximum extent permitted by law, defend (with counsel acceptable to City), reimburse, indemnify, and hold Indemnitees harmless from and against any and all claims, actions, liabilities, damages, demands, judgments, losses, costs, liens, expenses, suits, actions, attorneys' fees, consultant fees, penalties and any and all other losses, damages, fees and expenses of whatever kind or nature ("Claims") (including but not limited to response costs, investigative costs, assessment costs, monitoring costs, treatment costs, cleanup costs, removal costs, remediation costs, and similar costs, damages and expenses) that arise out of or are alleged to arise out of or in any way relate to any action, inaction or omission of Contractor that:
1. Results in any demand, claim, notice, order, or lawsuit, asserting that any Indemnitee is liable, responsible or in any way obligated to investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise cleanup, any Hazardous Contaminant (as defined herein); or
 2. Relates to material Collected, transported, recycled, processed, treated or disposed of by Contractor.
- B. Contractor's obligations pursuant to this section shall apply, without limitation, to:

1. Any Claims brought pursuant to or based on the provisions of any Environmental Law;
 2. Any Claims based on or arising out of or alleged to be arising out of the ownership, use, lease, sale, design, construction, maintenance or operation of Contractor of any Facility;
 3. Any Claims based on or arising out of or alleged to be arising out of the marketing, sale, distribution, storage, transportation, Disposal, Processing or use of any materials recovered by Contractor;
 4. Any Claims based on or arising out of or alleged to be arising out of any breach of any express or implied warranty, representation or covenant arising out of or in connection with this Agreement.
- C. The foregoing indemnity and defense obligations shall apply irrespective of the negligence or willful misconduct of Contractor or any Affiliate of Contractor.
- D. For purposes of this section, the term "Hazardous Contaminant" shall mean any Hazardous Substance any crude oil or refined or unrefined petroleum product or any fraction or derivative thereof; and any asbestos or asbestos-containing material. The term "Hazardous Contaminant" shall also include any and all amendments to any referenced statutory or regulatory provisions made before or after the date of execution of this Agreement.
- E. **THE PROVISIONS OF THIS SECTION SHALL NOT TERMINATE OR EXPIRE, SHALL BE GIVEN THE BROADEST POSSIBLE INTERPRETATION AND SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.**

9.3 Related to AB 939, AB 341, and SB 1383

Contractor's duty to defend and indemnify herein includes all fines and/or penalties imposed by CalRecycle, if the requirements of AB 939, AB 341, AB 1826, and/or SB 1383 are not met by the Contractor with respect to the Contractor's obligations under this Agreement, and such failure is: (i) due to the failure of Contractor to meet its obligations under this Agreement; or, (ii) due to Contractor delays in providing information that prevents Contractor or City from submitting reports to regulators in a timely manner. This indemnity is subject to the provisions of Public Resources Code § 40059.1.

9.4 Insurance

City does not, and shall not, waive any rights against Contractor which it may have by reason of the aforesaid defense and hold harmless agreements, because of acceptance by City or the deposit with City by Contractor of the insurance policies described in this provision.

- A. **Minimum Scope of Insurance.** Coverage shall be at least as broad as:

1. The most recent editions of Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 00 01).
2. The most recent editions of Insurance Services Office form number CA 00 01 covering Automobile Liability, code 1 "any auto" and endorsement CA 00 25.
3. Environmental/Pollution Liability Insurance in a form acceptable to the City Attorney.
4. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance. Contractor shall maintain in force for the term of this Agreement limits no less than:

1. Comprehensive General Liability: Five Million Dollars (\$5,000,000) combined single limit per occurrence for bodily injury, Personal injury and property damage. Such limits can be achieved through a combination of primary and excess liability policies.
2. Automobile Liability: Five Million Dollars (\$5,000,000) combined single limit per accident for bodily injury and property damage. Such limits can be achieved through a combination of primary and excess liability policies.
3. Environmental/Pollution Liability Insurance. Five Million Dollars (\$5,000,000) per loss and annual aggregate applicable to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically damaged or destroyed; clean-up costs, including first party cleanup of the City's property and third-party cleanup, and bodily injury costs if pollutants impact other properties; and defense, including costs, fees and expenses incurred in the investigation, defense, or resolution of claims. Coverage shall include completed operations and shall apply to sudden and non-sudden pollution conditions. Coverage shall apply to acts, errors or omissions arising out of, or in connection with, Contractor's scope of work under this Agreement. Coverage shall also apply to non-owned deposit sites ("NODS") that shall protect against, for example, claims regarding bodily injury, property damage, and/or cleanup costs involving NODS. Coverage is preferred by the City to be occurrence based. However, if provided on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the Effective Date of this Agreement, and that continuous coverage shall be maintained, or an extended discovery period will be exercised through completion or termination of this agreement for a minimum of five (5) years. This provision does not limit or alter any rights or remedies to City allowable under this agreement and/or applicable law in perpetuity.
4. Technology Professional Liability Errors and Omissions Insurance: (Cyber Liability) appropriate to the Contractor's profession and industry practice,

with limits not less than Two Million Dollars (\$2,000,000) per occurrence. Coverage for cyber risks shall be sufficiently broad to respond to the duties and obligations as are undertaken by Contractor under this Agreement and shall include, but not be limited to claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security. The policy shall provide coverage for breach response notification and remediation costs, regulatory fines and penalties, credit monitoring expenses, electronic funds transfer losses, electronic data restoration expenses, and business interruption costs with limits sufficient to respond to these obligations, in the sole discretion of the City Attorney.

5. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City, which approval shall not be unreasonably withheld. If, in the reasonable opinion of City, Contractor does not have sufficient financial resources to protect City from exposure with respect to any deductibles or self-insured retentions, at the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention's as respects City, its officials, employees and agents; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability Environmental Liability and Automobile Liability Coverages
 - a) City, its elective and appointive boards, commissions, officials, employees, agents and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; Premises owned, leased 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 elective and appointive boards, commissions, officials, employees, agents or volunteers.
 - b) Contractor's insurance coverage shall be primary insurance as respects City, its elective and appointive boards, commissions, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officials, elective and appointive boards,

commissions, employees, agents or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

- c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, elective and appointive boards, commissions, employees, agents or volunteers.
 - d) Coverage shall state that 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.
2. Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against City, its officials, elective and appointive boards, commissions, employees, agents and volunteers for losses arising from work performed by Contractor for City.
 3. All Coverages - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.
- E. Scope of Coverage.** All of the above policies of insurance shall be primary insurance and shall name the City, its electives and appointive boards, commissioners, officials, officers, employees, and agents as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against the City, its electives and appointive boards, commissioners, officials, officers, employees, agents, and their respective insurers. In the event any of said policies of insurance are cancelled, Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 9.4 to the City.
- F. Acceptability of Insurers.** The insurance policies required by this section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category XIII or larger and a rating classification of A or better.
- G. Verification of Coverage.** Simultaneously with the execution of this Agreement, Contractor shall furnish City with certificates of insurance evidencing the coverage required herein, in form and substance satisfactory to City. The certificates for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. No work under this Agreement shall commence until Contractor has provided City with the Certificate(s) of Insurance or appropriate insurance binder(s) evidencing the required insurance coverage and said Certificate(s) of Insurance or binder(s) are approved by the City, which appraisal shall not be unreasonably withheld. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements. If City requests, copies of each policy, together

with all endorsements, shall also be promptly delivered to City throughout the term of the Agreement.

H. Companies and Subcontractors. Contractor shall include all Companies and Subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each Contractor and Subcontractor. All coverages for Companies and Subcontractors shall be subject to all of the requirements stated herein.

I. Required Cancellation Notices:

1. The certificate of insurance for the Workers' Compensation policy shall contain an endorsement in substantially the following form:

"Thirty (30) days prior written notice by certified mail, return receipt requested, shall be given to City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

City Manager (or designated representative)
City of Gardena
1700 West 162nd Street
Gardena, CA 90247

2. The certificate of insurance for the Public Liability policy shall contain endorsements in substantially the following form:

a) "Thirty (30) days prior written notice shall be given to City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

City Manager (or designated representative)
City of Gardena
1700 West 162nd Street
Gardena, CA 90247

b) "City, its officers, elective and appointive boards, commissions, employees, and agents are additional insureds on this policy."

c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

d) "Inclusion of City as an insured shall not affect City's rights as respects any claim, demand, suit or judgment brought or recovered against Contractor. This policy shall protect Contractor and City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase Contractor's liability as set forth in the

policy beyond the amount shown or to which Contractor would have been liable if only one party had been named as an insured."

Renewal certificates will be furnished periodically to City to demonstrate maintenance of the required coverage throughout the Term.

J. Other Insurance Requirements

1. In the event any services are delegated to a Contractor or Subcontractor, Contractor shall require such Contractor or Subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the Contractor or Subcontractor's employees engaged in the work in accordance with this Section 9.4. The liability insurance required by this Section 9.4 shall cover all Contractor or Subcontractors or the Contractor or Subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 9.4.
2. Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third Person against Contractor or any Contractor or Subcontractor on account of any occurrence related to this Agreement, Contractor shall promptly report the facts in writing to the insurance carrier and to City.

If Contractor fails to procure and maintain any insurance required by this Agreement, City may take out and maintain, at Contractor's expense, such insurance as it may deem proper and deduct the cost thereof from any moneys due Contractor.

9.5 Faithful Performance Bond

Concurrently with execution of this Agreement, Contractor shall deliver to City a performance bond in the sum of the amount of Six Hundred Thousand Dollars (\$600,000), similar to the form provided in Exhibit 4, which secures the faithful performance of this Agreement, including, without limitation, payment of any penalty and the funding of any work to cure a breach of this Agreement, unless such requirement is waived by the City Manager. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force (through annual renewals) until released in accordance with Section 9.9.

9.6 Faithful Performance Letter of Credit

In addition to a faithful performance bond as noted in Section 9.5 above, Contractor shall furnish an irrevocable letter of credit in the amount of Six Hundred Thousand Dollars (\$600,000), from

a financial institution acceptable to the City and in a form acceptable to the City Attorney as security for the performance of this Agreement (the "LOC"). The LOC shall be the sole responsibility of Contractor and shall remain in force until released in accordance with Section 9.9.

9.7 Forfeiture of Performance Bond

In the event Contractor shall for any reason become unable to, or fail in any way to, perform as required by this Agreement, City may declare a portion or all of the performance bond be forfeited to the City that is necessary to recompense and make whole the City. Upon partial or full forfeiture of the performance bond, Contractor shall restore the performance bond to its face amount within 30 days of the City's declaration. Failure to restore the performance bond to its full amount within 30 days shall be a material breach of the Agreement.

9.8 Forfeiture of Letter Of Credit

Thirty (30) days following City providing Contractor with written notice of its failure to pay City any amount owing under this Agreement, City may draw upon the LOC for purposes including, but not limited to:

- a. Payment of sums due under the terms of this Agreement which Contractor has failed to timely pay to City
- b. Reimbursement of costs borne by City to correct violations of this Agreement not corrected by Contractor, including but not limited to the liquidated damages described in Section 11.4.

City may draw upon the entire LOC and convert it to a cash deposit if Contractor fails to cause the LOC to be extended or replaced with another satisfactory letter of credit no later than 60 days prior to its expiration during the term hereof.

9.9 Performance Security Beyond Service Term

Some Agreement requirements extend beyond the Term of this Agreement and will not be substantiated until after the final service date. Therefore, the Contractor shall not terminate the performance bond or letter of credit and will renew them to ensure continuous availability to the City, until receiving a written release from the City. City will provide such a release when City, in its reasonable judgment, is fully satisfied that all requirements have been met. However, permission from the City to discontinue holding these performance securities does not relieve Contractor of payments to the City that may be due or may become due.

ARTICLE 10: CITY'S RIGHT TO PERFORM SERVICE

10.1 General

In the event that Contractor, for any reason whatsoever, fails, refuses or is unable to Collect, Recycle, process, transport or dispose of any or all Solid Waste which it is required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than two business days, excluding Saturday, Sunday and holidays listed in Section 4.5.1, and if, as a result thereof, Solid Waste should accumulate in City to such an extent, in such a manner, or for such a time that such accumulation endangers or menaces the public health, safety or welfare, then City shall have the right, but not the obligation, upon twenty-four (24) hour prior written notice to Contractor during the period of such emergency as determined by City, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to Contractor; and/or (2) to take possession of any or all of Contractor's land, equipment and other property used or useful in the Collection and transportation of Solid Waste, and to use such property to Collect and transport any Solid Waste generated within City which Contractor would otherwise be obligated to Collect, transport and properly dispose of or process pursuant to this Agreement.

Notice of Contractor's failure, refusal or neglect to Collect, transport and properly dispose of or process Solid Waste may be given orally by telephone to Contractor at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to Contractor within one business day, excluding Saturday, Sunday and holidays listed in Section 4.5.1 of the oral notification.

Contractor further agrees that in such event:

A. It will take direction from City to affect the transfer of possession of equipment and property to City for City's use, or for use by any Person or entity designated by the City.

B. It will, if City so requests, keep in good repair and condition all of such equipment and property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition.

C. City may immediately engage all or any personnel necessary or useful for the Collection and transportation of Solid Waste, including, if City so desires, employees previously or then employed by Contractor, Contractor further agrees, if City so requests, to furnish City the services of any or all management or office personnel employed by Contractor whose services are necessary or useful for Solid Waste Collection, transportation, Processing and Disposal operations and for the Billing and Collection of fees for these services.

City agrees that it assumes complete responsibility for the proper and normal use of such equipment and facilities while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 11.5, City shall pay to Contractor the reasonable rental value of the equipment and facilities, possession of which is taken by City, for the period of City's possession, if any, which extends beyond the period of time for which Contractor has rendered bills in advance of service, for the class of service involved.

10.2 Temporary Possession of Contractor's Property

If City suffers an interruption or discontinuance of service (including interruptions and discontinuance due to events described in Section 11.5), City may take possession of and use all of Contractor's property described above until other suitable arrangements can be made for the provision of Solid Waste Services which may include the grant of a Franchise to another waste hauling contractor.

10.3 Billing and Compensation to City During City's Possession

During such time that City is providing Solid Waste services, as above provided, Contractor shall bill and collect payments from all Contractor-billed Customers as described in Section 5.1. Contractor further agrees that, in such event, it shall reimburse City for any and all costs and expenses incurred by City beyond that billed and received by City in taking over possession of the above-mentioned equipment and property for Solid Waste service in such manner and to an extent as would otherwise be required of Contractor under the Terms of this Agreement. Such reimbursement shall be made from time to time after submission by City to Contractor of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission.

10.4 City's Right to Relinquish Possession

It is further mutually agreed that City may at any time at its discretion relinquish possession of any or all of the above-mentioned property to Contractor and thereupon demand that Contractor resume the Solid Waste services as provided in this Agreement, whereupon Contractor shall be bound to resume the same.

10.5 City's Possession Not A Taking

Except as otherwise expressly provided in the previous paragraph, City's exercise of its rights under this Article (1) does not constitute a taking of private property for which compensation must be paid, (2) will not create any liability on the part of City to Contractor, and (3) does not exempt Contractor from any of the indemnity and insurance provisions of this Agreement, which are meant to extend to circumstances arising under this Section provided that the Contractor is not required to indemnify the City against claims and damages arising from the sole negligence of the City, its elected and appointed boards, commissions, officers, employees and agents in the operation of Collection vehicles during the time the City has taken possession of such vehicles.

10.6 Duration of City's Possession

City's right pursuant to this Article to retain temporary possession of Contractor's facilities and equipment, and to render Collection services, shall terminate when City determines that such services can be resumed by Contractor, or when City no longer reasonably requires such property or equipment. In any case, City has no obligation to maintain possession of Contractor's property or equipment and/or continue its use for any period of time and may at any time, in its sole discretion, relinquish possession to Contractor.

**ARTICLE 11:
DEFAULT, REMEDIES AND LIQUIDATED DAMAGES**

11.1 Events of Default

Contractor's breach of each and any provision of the Franchise or this Agreement may constitute a default hereunder to the extent Contractor's performance, services or obligations under this Agreement are materially and adversely impacted. Events of default by the Contractor include, but are not limited to, the following:

A. Fraud or Deceit or Misrepresentation. If the Contractor engages in, or attempts to practice, any fraud or deceit upon City or makes a misrepresentation regarding material information to City.

B. Insolvency or Bankruptcy. If Contractor becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition or takes steps to liquidate its assets.

C. Failure to Maintain Coverage. If Contractor fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.

D. Violations of Regulation. If Contractor violates any orders or filings of any regulatory body having jurisdiction over Contractor relative to this Agreement, provided that Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise and this Agreement shall be deemed to have occurred until a final decision adverse to the Contractor is entered.

E. Suspension or Termination of Service. If Contractor ceases to provide all or a portion of the Collection, Processing or Recycling services, or any other Solid Waste Handling Services as required under this Agreement, if not excused pursuant to Section 11.5, for a period of two (2) consecutive days or more, for any reason within the control of Contractor.

F. Failure to Pay. If Contractor fails to make any payments required under this Agreement and/or refuses to provide City, within ten (10) days of the demand, with required information, reports, and/or records in a timely manner as provided for in the Agreement.

G. Failure to Cooperate with Audits. Failure to complete, perform or cooperate with any audit as described by this Agreement.

H. Failure to Submit Reports or Documentation. Failure to complete or to provide required reports or documents to City as required by this Agreement.

I. Acts or Omissions.

A. Any act or omission by Contractor relative to the services provided under

this Agreement which violates the terms, conditions, or requirements of this Agreement, the California Integrated Waste Management Act of 1989, as it may be amended from time to time (AB 939), or any law, statute, ordinance, order, directive, rule, or regulation issued pursuant to AB 939 shall constitute a default by the Contractor. Any failure to correct or remedy any such violation within the time set in the written notice of the violation or, if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if Contractor should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter shall constitute a default by Contractor.

B. Any situation in which Contractor or any of its officers, directors or employees are found guilty of any crime related to the performance of this Agreement, or of any crime related to anti-trust activities, illegal transport or Disposal of hazardous or toxic materials, or bribery of public officials shall constitute a default by Contractor. The term "found guilty" shall be deemed to include any judicial determination that Contractor or any of Contractor's officers, directors or employees is guilty as well as any admission of guilt by Contractor or any of Contractor's officers, directors or employees including, but not limited to, the plea of "guilty", "nolo contendere", "no contest", and "guilty to a lesser charge."

J. **False or Misleading Statements.** Any representation or disclosure made to City by Contractor in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.

K. **Attachment.** The seizure of, attachment of, or levy on, the operating equipment of Contractor, including, without limits, its equipment, maintenance or office facilities, or any part thereof.

L. **Failure to Provide Assurance of Performance.** If Contractor fails to provide reasonable assurances of performance as required under Section 11.7.

M. **Commingling of Source Separated Recyclable Materials, and/or Source Separated Organic Waste With Refuse/Landfilling of Source Separated Recyclable Materials and/or Source Separated Organics Materials.** If Contractor empties a Container of properly set out Source Separated Recyclable Materials and/or Source Separated Organic Waste into a Refuse load, or Transports Source Separated Recyclable Materials and/or Source Separated Organic Waste to a landfill or other location at which the material will not be diverted from landfilling.

N. **Diversion Requirement.** If Contractor does not reach Diversion requirement of 27% of all tonnage Collected by Contractor under this Agreement per Section 4.2.6 for two consecutive calendar years or fails to make reasonable efforts to assure that Source Separated Recyclable Materials are transported, handled and processed at a suitable Facility, so as to

maximize Diversion credits for the City.

O. Failure to Provide Processing Capacity. Contractor fails to provide adequate Processing capacity in accordance with Exhibit 6, which is essential for the City to achieve SB 1383 compliance.

P. Failure to Achieve Processing Standards. Contractor fails to achieve the Processing standards specified in Exhibit 6, including achievement of minimum Organic Waste recovery rates, which are essential for the City to achieve SB 1383 compliance.

Q. Failure to Comply with Other Requirements of SB 1383. Contractor fails to comply with other requirements of the Agreement including, but not limited to, public education, reporting, contamination monitoring, recordkeeping and reporting, or other obligations of this Agreement that delegate the City's responsibility and/or authority under SB 1383 to the Contractor.

R. Failure to Implement Collection Program. Contractor fails to implement a Collection program that complies with the requirements of Article 4, which is essential for the City to achieve compliance with SB 1383.

Contractor shall have two business days, excluding Saturdays, Sundays and holiday included in Section 4.5.1, from the time it is given notification by City to cure any default arising under subsections E, F, G, H, J, K, L and M provided, however, that City shall not be obligated to provide Contractor with a notice and cure opportunity if the Contractor has committed the same or similar breach within a twenty-four (24) month period. It is expressly understood that Contractor is not entitled to receive notice of default, or to cure such default, with respect to those matters listed in subsections A, B, C, D, I, N, O, P, Q and R above.

For other actions not listed above, or included in 11.2 below, City will provide Contractor with a written notice setting forth the nature of the breach or failure and the actions, if any, required by Contractor to cure such a breach or failure. Contractor shall be deemed in default where: (1) breach or failure can be cured but Contractor fails to cure within thirty (30) days.

11.2 Criminal Activity of Contractor

Should the Contractor or any of its officers, directors or employees be found guilty of felonious conduct related to the performance of this Contract, or of felonious conduct related to anti-trust activities, illegal transport or Disposal of hazardous or toxic materials, or bribery of public officials, the City reserves the right to unilaterally terminate this Contract or impose other such sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it shall deem proper. Such action shall be taken after Contractor has been given notice and opportunity to present evidence in mitigation. The term "found guilty" shall be deemed to include any judicial determination that Contractor or any of Contractor's officers, directors or employees is guilty and any admission of guilt by Contractor or any of Contractor's officers, directors or employees including, but not limited to,

the plea of “guilty”, “nolo contendere”, “no contest”, and “guilty to a lesser charge” entered as part of any plea bargain. If the Agreement is terminated pursuant to the above, such termination shall not occur if, within six months after City determines to terminate, the Contractor completes a transfer of its contract rights and obligations to an individual or entity acceptable to the City pursuant to this Agreement.

11.3 Notice, Hearing and Appeal of Contractor Breach.

Upon a default by Contractor, City may, at its discretion, provide Contractor with a written notice of intent to terminate this Agreement that includes the following:

1. A description of the evidence upon which the decision to terminate is based
2. That Contractor has a right to a hearing prior to the City’s termination of the Agreement

This hearing is to be scheduled as an open public hearing item at a regularly scheduled City Council meeting within thirty (30) days of the Termination Notice, subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. At this hearing Contractor shall have the right to present evidence to demonstrate that it is not in default and to rebut any evidence presented in favor of termination. Based upon substantial evidence presented at this hearing, the Council may, by adopted resolution, act as follows:

1. Decide to terminate this Agreement; or,
2. Determine that Contractor is innocent of a default and, accordingly, dismiss the Termination Notice of any charges of default; or,
3. Impose conditions on a finding of default and a time for cure, such that Contractor’s fulfillment of said conditions will waive or cure any default.

In lieu of conducting an evidentiary hearing on the Termination Notice the City Council may, in its discretion, refer the matter to an independent hearing officer selected by the City Council to take evidence, make findings and provide a recommended decision to the City Council. The City Council may, in its discretion, based on the evidence, accept, reject or modify the findings and/or recommended decision of the hearing officer.

This right of termination is in addition to any other rights of City upon a failure of Contractor to perform its obligations under this Agreement.

City's right to terminate this Agreement and to take possession of Contractor's Facility are not exclusive, and City's termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies

which City may have, including without limitation the provision for Liquidated Damages in Section 11.4 below.

By virtue of the nature of this Agreement, the urgency of timely continuous and high- quality service, the time required to effect alternative service, and the rights granted by City to Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and City shall be entitled in injunctive relief.

11.4 Liquidated Damages

A. General. City finds, and Contractor agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a result of a breach by Contractor of certain specific obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that the services that are the subject of this Agreement might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such specific breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The parties further acknowledge that consistent, reliable Solid Waste Handling Service is of utmost importance to City and that City has considered and relied on Contractor's representations as to its quality-of-service commitment in entering this Agreement. 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 its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such breaches as an event of default under this Article 11, the Parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages for such specific breaches, considering all of the circumstances existing on the date of this Agreement, 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 Agreement was made.

Contractor
Initial Here _____

City
Initial Here _____

Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below:

1. Collection Reliability

- a) For each failure, which exceeds ten (10) such failures annually, to Collect Solid Waste from any established Customer account on the scheduled Collection day and not make up the Collection within the time allotted per Section 4.5.2:
\$100.00 per occurrence

2. Collection Quality

- a) For each occurrence or failure to properly return any Containers to avoid pedestrian or vehicular traffic impediments or to place Containers upright which exceeds ten (10) such occurrences annually: \$100.00 per Container
- b) For each failure to clean up Solid Waste spilled from Solid Waste Containers by Contractor's representatives within ninety (90) minutes that exceeds ten (10) such failures annually: \$150.00 per occurrence
- c) For each failure to clean up vehicle leaks or spills within the timeframe required by Section 4.5.3.D.6: \$1000 per occurrence
- d) For each failure follow the cleanup procedures included in Section 4.5.3.D.6:
\$500 per square foot of affected area

3. Customer Responsiveness

- a) For each failure to process Customer complaints as required by Article 5:
\$150.00 per occurrence
- b) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within two (2) business days of request from City or Customer:
\$ 50.00 per day
- c) For each failure to repair or replace a damaged or missing Container within two (2) business days of request from City or Customer: \$ 50.00 per day
- d) For each failure to process a claim for damages within thirty (30) days from the date submitted to Contractor: \$100.00

4. Diversion Efforts

For each calendar quarter in which Contractor fails to provide support to the City

within thirty (30) days of quarter-end, documenting that it diverted 27% of the Solid Waste Contractor Collected under this Agreement:

\$25 for each ton below tonnage level necessary to meet 27% Diversion goal

5. Timeliness of Submissions to City

a) Any report shall be considered late until such time as a correct and complete report is received by City. For each calendar day a report is late, the daily liquidated damage amount shall be:

i) Monthly Reports: \$400 per day

ii) Annual Reports: \$350 per day

b) For each failure to notify City in advance of a change in contract or service liaison to the City under this agreement: \$1,000 per notice missed

6. Cooperation with Service Provider Transition

a) For each day routing information requested by City in accordance with Section 12.9 is received after City-established due dates, both for preparation of a request for proposals and for new service provider's implementation of service: \$1,000/day

b) For each day delivery of keys, access codes, remote controls, or other means of access to Solid Waste Containers is delayed beyond one (1) day prior to new service provider servicing Customers with access issues, as described in Section 12.9: \$1,000/day

c) For delay in not meeting the requirements contained in Section 12.9 in a timely manner, in addition to the daily liquidated damages for breach under 6(a) and 6(b) above, liquidated damages of: \$35,000

7. Public Education and Outreach

a) Failure to Perform Public Education and Outreach. For each failure to perform any individual education and outreach activity as required and, in the timeframe, specified by this Agreement.

1st violation - \$50 per occurrence

2nd violation - \$100 per occurrence

3rd and subsequent violations - \$250 per occurrence

8. General Contract Adherence

For each day that Contractor fails to provide services required under the Agreement, or comply with terms of the Agreement, five (5) business days after receipt of written notification from City that such services are not being provided or terms are not being met: \$300.00/day

9. SB 1383 Requirements

- a) Use of Unauthorized Facilities. For each individual occurrence of delivering Discarded Materials to a Facility other than an Approved Facility(ies) for each Discarded Material type under this Agreement.

1st violation - \$50 per ton per offense

2nd violation - \$100 per ton per offense

3rd and subsequent violations - \$250 per ton per offense

- b) Failure of Approved Facility(ies) to Meet Limits on Incompatible Materials (if Applicable). For each Ton of Source Separated Recyclable Materials or Source Separated Organic Waste received at the Facility(ies) in a quarterly reporting period when Source Separated Organic Waste recovered after Processing exceeds Incompatible Material thresholds defined in Exhibit 6 Section 6.2.E.2 and 6.2.F.4 if limits on Source Separated Organic Waste in materials sent to Disposal apply. Liquidated damages are assessed in the quarterly reporting period when the failure occurred.

1st violation - \$50 per ton per offense

2nd violation - \$100 per ton per offense

3rd and subsequent violations - \$250 per ton per offense

- c) Failure of Approved Facility(ies) to Meet Limits on Source Separated Organic Waste in Materials Sent to Disposal. For each Ton of Source Separate Recyclable Materials or Source Separated Organic Waste received at the Facility(ies) in a quarterly reporting period when Source Separated Organic Waste in the materials sent to Disposal exceeds the thresholds defined in Exhibit 6 Section 6.2.F.2 if limits on Source Separated Organic Waste in materials sent to Disposal apply. Liquidated damages are assessed in the quarterly reporting period when the failure occurred.

1st violation - \$50 per ton per offense

2nd violation - \$100 per ton per offense

3rd and subsequent violations - \$250 per ton per offense

- d) Failure to Perform Contamination Monitoring Requirements. For each failure to conduct contamination monitoring in accordance with Section 5.5 of this Agreement. [Amend depending on selected method.]

1st violation - \$50 per route per occurrence or per waste evaluation per occurrence

2nd violation - \$100 per hauler route per occurrence or per waste evaluation per occurrence

- 3rd and subsequent violations - \$250 per route per occurrence or per waste evaluation per occurrence
- e) Failure to Comply with Container Colors Requirements as Required by SB 1383. For each occurrence of Contractor's failure to comply with Container color requirements pursuant to Section 4.5.4.1 of this Agreement.
- 1st violation - \$50 per container occurrence
- 2nd violation - \$100 per container occurrence
- 3rd and subsequent violations - \$250 per container occurrence
- f) Failure to Conduct Compliance Tasks. For each failure to conduct any compliance review, Discarded Materials evaluations pursuant to Section 6.6 of Exhibit 6, and/or other inspection required by this Agreement.
- 1st violation - \$50 per occurrence
- 2nd violation - \$100 per occurrence
- 3rd and subsequent violations - \$250 per occurrence
- g) Failure to Issue Contamination Notices. For each failure of Contractor Collection personnel to issue contamination notices and contaminating Processing fee notices and maintain documentation of issuance as required by Section 5.5 of this Agreement.
- 1st violation - \$50 per route per day
- 2nd violation - \$100 per route per day
- 3rd and subsequent violations - \$250 per route per day
- h) Failure to Conduct Follow-Up Inspections. For each failure to conduct a follow-up inspection as required by Section 5.6 of this Agreement.
- 1st violation - \$50 per occurrence
- 2nd violation - \$100 per occurrence
- 3rd and subsequent violations - \$250 per occurrence

City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of Customer complaints.

Prior to assessing liquidated damages, City shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Contractor may review (and make copies at its own expense) all information in the possession of City relating to incident(s)/non-performance. Contractor may, within ten (10) days after receiving the notice, request a meeting with City. Contractor may present evidence in writing and through testimony

of its employees and others relevant to the incident(s)/non-performance. City will provide Contractor with a written explanation of its determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of City shall be final.

C. Amount. City may assess liquidated damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement.

D. Timing of Payment. Contractor shall pay any liquidated damages assessed by City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, City may proceed against the performance bond required by the Agreement or find Contractor in default and terminate this Agreement pursuant to Section 11.1, or both.

11.5 Excuse from Performance

The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other natural disasters, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder.

Labor unrest, including, but not limited to, strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Contractor's employees or directed at Contractor is excused from performance only to the extent that the following requirements are met:

- Contractor provides a contingency plan to the City prior to the execution of this Agreement demonstrating how services will be provided during the period of labor unrest. The contingency plan is subject to City approval and Contractor shall amend the plan until it meets City requirements, including reasonably demonstrating how City's basic Collection and sanitary needs will be met to the City's satisfaction.
- Contractor shall meet all requirements of this plan or City may revoke this excuse from performance offered under this Agreement and may choose to use enforcement provisions under this Agreement, including Sections 11.1, 11.2 and 11.3, in which case Contractor is not excused from performance and Contractor shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events.

The party claiming excuse from performance shall, within two (2) business days after such party has notice of such cause, give the other party notice of the facts constituting such cause and asserting its claim to excuse under this section.

The interruption or discontinuance of Contractor's services caused by one or more of the events excused shall not constitute a default by Contractor under this Agreement. Notwithstanding

the foregoing, however, if Contractor is excused from performing its full obligations under this Agreement for any of the causes listed in this section for a period of forty five (45) days or more, City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, in which case the provisions relative to taking possession of Contractor's land, equipment and other property and engaging Contractor's personnel in Article 10 and this Article 11 will apply.

11.6 Notice, Hearing and Appeal of City Breach

Should Contractor contend that City is in breach of this Agreement, it shall file with the City Manager a written request with City for an administrative hearing. Said request shall be made within ninety (90) days of the event or incident which allegedly gave rise to the breach. City shall notify Contractor of the time and date said hearing shall be held within thirty (30) days of receipt of Contractor's request. Contractor shall present its position and all relevant facts after City staff has made its presentation. Contractor shall be notified of City's ruling in writing within fourteen (14) days of the administrative hearing.

If Contractor is not in agreement with the ruling issued by City at the administrative hearing, it shall have the right to appeal this ruling to the City Council. This appeal shall be made in writing to City no later than fourteen (14) days after receipt of the administrative hearing ruling. City shall notify Contractor of the time and date the City Council will review Contractor's allegation. Contractor shall present its position and all relevant facts after staff has made its presentation. Contractor shall be notified in writing within thirty (30) days of the City Council's ruling. Contractor understands and agrees that if it fails to timely and properly exhaust the administrative remedies set forth in this Section, it has no right of action or other claim against the City for breach of this Agreement or otherwise.

11.7 Assurance of Performance

City may, at its option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance as City may require. If Contractor fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by City, such failure or refusal shall be an event of default.

ARTICLE 12: OTHER AGREEMENTS OF THE PARTIES

12.1 Relationship of Parties

The parties intend that Contractor shall perform the services required by this Agreement as an independent Contractor engaged by City and not as an officer or employee of City nor as a partner of or joint venture with City. No employee or agent or Contractor shall be or shall be deemed to be an employee or agent of City. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting the Solid Waste Collection services performed under this Agreement, and all Persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, Companies, Subcontractors and agents. Neither Contractor nor its officers, employees, Companies, Subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with City.

12.2 Compliance with Law

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost, comply with all Applicable Laws.

12.3 Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

12.4 Jurisdiction

Except for those matters where Federal Courts have exclusive jurisdiction, any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits.

With respect to venue, the parties agree that this Agreement is made in and will be performed in Los Angeles County.

12.5 Assignment

Except as may be provided for in Article 10 (City's Right to Perform Service), neither party shall assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this section when used in reference to Contractor, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of Contractor's

assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of Contractor to a third party provided said sale, exchange or transfer may result in a change of control of Contractor; (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 Agreement, 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.

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

If Contractor requests City's consideration of and consent to an assignment, City may deny or approve such request in its complete discretion. No request by Contractor for consent to an assignment need be considered by City unless and until Contractor has met the following requirements:

- a) Contractor shall undertake to pay City its reasonable expenses for attorney'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;
- b) Contractor shall pay the City a transfer fee equal to 1% of the gross revenues times the number of years (pro-rated for partial years) remaining under this Agreement (based on actual rate revenues for the prior 12-months);
- c) Contractor shall furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years;
- d) A proforma financial statement (income statement and balance sheet) for the proposed assignee with the projected results of operations assuming that the assignment is completed. Such proforma financial statement shall reflect any debt

to be incurred by the assignee as part of the acquisition of Contractor's operations; and,

- e) Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the sale of operations conducted by Contractor under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, State or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with State, federal or local Environmental Laws and that the assignee has provided City with a complete list of such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Solid Waste management practices in accordance with sound Solid Waste management practices in full compliance with all federal, State and local laws regulating the Collection and Disposal of Solid Waste including Hazardous Substance; and, (v) of any other information required by City to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely, safe and effective manner.

Under no circumstances shall City be obliged to consider any proposed assignment by City if Contractor is in default at any time during the period of consideration.

12.6 Affiliated Companies

Contractor's accounting records shall be maintained on a basis showing the results of Contractor's operations under this Agreement separately from operations in other locations, as if Contractor were an independent entity providing service only to City. The costs and revenues associated with providing service to City shall not be combined, consolidated or in any other way incorporated with those of other operations conducted by Contractor in other locations, or with those of an Affiliate.

If Contractor enters into any financial transactions with a Related Party Entity for the provision of labor, equipment, supplies, services, capital, etc., related to the furnishing of service under this Agreement, that relationship shall be disclosed to City, and in the financial reports submitted to City. In such event, City's rights to inspect records, and obtain financial data shall extend to such Related Party Entity or entities.

12.7 Contracting or Subcontracting

This Agreement, or any portion thereof, shall not be subcontracted except with the prior written consent of the City, which consent shall not be unreasonably withheld. No such consent shall be construed as making the City a party to such subcontract or subject the City to liability of any

kind to any subcontractor. Contractor shall submit all subcontracts for review and approval by the City and any permitted subcontract shall terminate on or before the termination of this Agreement. All subcontractors shall be licensed as required under State, Federal and local laws and regulations to perform their subcontracted work and obtain and maintain a City business license if required. Contractor shall remain otherwise liable for the full and complete performance of its obligations hereunder.

12.8 Binding on Assigns

The provisions of this Agreement shall inure to the benefit to and be binding on the permitted assigns (if any) of the parties.

12.9 Transition to Next Contractor

Prior to, and at, the end of the Term or in the event this Agreement is terminated for cause prior to the end of the Term, Contractor shall cooperate fully with City and any subsequent Solid Waste enterprise it designates to assure a smooth transition of Solid Waste Handling Services. Contractor's cooperation shall include, but not be limited to, providing both the City and subsequent Solid Waste enterprise with route lists, Billing information, lists of gate or other access codes and information needed for entry to service areas, Container placement areas by address, levels of service including any special needs or services required by each location, and other operating records needed to service all Premises covered by this Agreement. In recognition of the difficulty inherent in Customer's difficulty or inability to store two sets of Containers, Contractor shall remove its Containers in coordination with the distribution of Containers by the incoming service provider. Contractor shall cooperate with the City and incoming service provider in agreeing to the timing of Container removal; if parties cannot agree on a phase-out schedule and Contractor does not remove Containers in a timely manner that requires Customers to store two Containers, City, incoming service provider, or another entity may remove Contractor's Containers and seek cost reimbursement from Contractor through its performance bond, letter of credit or other means. The failure to cooperate with City following termination shall be conclusively presumed to be grounds for specific performance of this covenant and/or other equitable relief necessary to enforce this covenant.

Contractor shall provide a new service provider with all keys, security codes and remote controls used to access garages and Bin enclosures. Contractor shall be responsible for coordinating transfer immediately after Contractor's final pickups, so as not to disrupt service. Contractor shall provide City with detailed route sheets containing service names and addresses, Billing names and addresses, monthly rate and service levels (quantity, material type, and size of Containers and pickup days) at least 90 days prior to the transition date and provide an updated list two weeks before the transition and a final list of changes the day before the transition. Contractor shall provide means of access to the new service provider at least one full calendar day (excluding Saturday, Sunday and holidays listed in Section 4.5.1) prior to the first day of Collection by another party, and always within sufficient time so as not to impede in any way the new service provider from easily servicing all Containers.

12.10 Parties in Interest

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the parties to it and their representatives, successors and permitted assigns.

12.11 Waiver

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any moneys which become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

12.12 Contractor's Investigation

Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed by it.

12.13 Condemnation

City fully reserves the rights to acquire Contractor's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of eminent domain. This provision is additive, and not intended to alter the rights of the parties set forth in Article 10.

12.14 Notice

All notices, demands, requests, proposals, approvals, consents and other communications which this Agreement requires, authorizes or contemplates shall be in writing and shall either be personally delivered to a representative of the parties at the address below or be deposited in the United States mail, first class postage prepaid, addressed as follows:

If to City: City Manager (or designated representative)
 City of Gardena
 1700 West 162nd Street
 Gardena, CA 90247

If to Contractor: Mark Tavoukjian, General Manager
 PO Box 2410
 Gardena, CA 90247

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this section.

Notice shall be deemed given on the day it is personally delivered or, if mailed, three days from the date it is deposited in the mail.

12.15 Representatives of the Parties

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by City shall be taken by the City Council except as provided below. The City Council may delegate, in writing, authority to the City Manager, and/or to other City employees and may permit such employees, in turn, to delegate in writing some or all of such authority to subordinate employees. Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as the representative of Contractor in all matters related to the Agreement and shall inform City in writing of such designation and of any limitations upon his or her authority to bind Contractor. City may rely upon action taken by such designated representative as actions of Contractor unless they are outside the scope of the authority delegated to him/her by Contractor as communicated to City.

12.16 City Free to Negotiate with Third Parties

City may investigate all options for the Collection, transporting, Recycling, Processing and Disposal of Solid Waste for periods commencing after the expiration of the initial Term. Without limiting the generality of the foregoing, City may solicit proposals from Contractor and from third parties for the provision of Collection services, Disposal services, Source Separated Recycling services, Source Separated Organic Waste services and Processing, and any combination thereof, and may negotiate and execute agreements for such services which will take effect upon the expiration or earlier termination under Section 11.1 of this Agreement.

12.17 Compliance with Municipal Code

Contractor shall comply with those provisions of the municipal code of City which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement.

12.18 Privacy

Contractor shall strictly observe and protect the rights of privacy of Customers. Information identifying individual Customers, or the composition or contents of a Customer's waste stream shall not be revealed to any Person, governmental unit, private agency, or contractor, unless upon the authority of a court of law, by statute, or upon valid authorization of the Customer. This provision shall not be construed to preclude Contractor from preparing, participating in,

or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by AB 939. This provision shall not apply to reports or records provided to City pursuant to this Agreement so long as City maintains reports or records with Customer identification or confidential information in accordance with this section, in which case this section shall apply to City in the same manner to which it applies to Contractor.

12.19 Cooperation Following Termination

At the end of the Term or in the event this Agreement is terminated prior to the end of the Term, Contractor shall cooperate fully with City and any subsequent Contractor to assure a smooth transition of Solid Waste management services. Contractor's cooperation shall include, but not be limited to, providing both the City and subsequent Solid Waste enterprise route lists, Billing information, lists of gate or other access codes and information needed for entry to service areas, Container placement areas by address, levels of service including any special needs or services required by each location, and other operating records needed to service all Premises covered by this Agreement. In recognition of the difficulty inherent in Customer's difficulty or inability to store two sets of Containers, Contractor shall remove its Containers in coordination with the distribution of Containers by the incoming service provider. Contractor shall cooperate with the City and incoming service provider in agreeing to the timing of Container removal; if parties cannot agree on a phase-out schedule and Contractor does not remove Containers in a timely manner that requires Customers to store two Containers, City, incoming service provider, or another entity may remove Contractor's Containers and seek cost reimbursement from Contractor through its performance bond, letter of credit, or other means. The failure to cooperate with City following termination shall be conclusively presumed to be grounds for specific performance of this covenant and/or other equitable relief necessary to enforce this covenant.

Contractor to provide documentation of any Customer declining request to provide keys, security codes, and/or remote controls used to access garages and Bin enclosures.

12.20 Compliance with Immigration Laws.

Contractor shall be knowledgeable of and comply with all local, State and federal laws which may apply to the performance of this Agreement. Contractor warrants and represents that all of its employees, including any and all prospective employees hired to perform services for the City under this Agreement and the employees of any subcontractor retained by the Contractor to perform a portion of the services under this Agreement, are and will be authorized to perform the services contemplated by this Agreement in full compliance with all applicable State and federal laws, rules and regulations, including, but not limited to, the Immigration Nationality Act of 1952 (commencing with Section 1101 of Title 8 of the United States Code), and the Immigration Nationality and the Immigration Reform and Control Act of 1986 (commencing with Section 1324a of Title 8 of the United States Code), as amended. Contractor agrees to verify the legal status of all of its employees and provide documentation of such verification whenever

requested by the City. If Contractor discovers that any employee it has retained is not in compliance with Immigration Laws, Contractor agrees to terminate such employee.

12.21 Guarantee of Contractor's Performance

Pursuant to a guarantee in substantially the form attached as Exhibit 3, Waste Resources Technologies, Inc., a corporation which owns all of the issued and outstanding common stock of Contractor, has agreed to guarantee Contractor's performance of this Agreement. The Guarantee is being provided concurrently with Contractor's execution of this Agreement.

ARTICLE 13: MISCELLANEOUS AGREEMENTS

13.1 Entire Agreement

This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein. No verbal agreement or conversation with any office, agent, or employee of the City, either before, during, or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained nor such verbal agreement or conversation entitle the Contractor to any additional payment whatsoever under the terms of this contract.

13.2 Section Headings

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

13.3 References to Laws and Other Agreements

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all agreements heretofore entered into by the parties and City.

13.4 Interpretation

This Agreement, including the Exhibits attached hereto, shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

13.5 Agreement

This Agreement may not be modified or amended in any respect except by a writing signed by the parties.

13.6 Severability

If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

13.7 Exhibits

Each of the Exhibits identified as Exhibit "1" through "9" is attached hereto and incorporated herein and made a part hereof by this reference.

13.8 Non-Waiver Provision

Failure of either party to exercise any of the remedies set forth herein within the time periods provided for shall not constitute a waiver of any rights of that party with regard to that failure to perform or subsequent failures to performing whether determined to be a breach, excused performance or unexcused defaults by the other party.

13.9 Attorneys' Fees

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

IN WITNESS WHEREOF, City and Contractor have executed this Agreement as of the day and year first above written.

CITY OF GARDENA (CITY)

By _____
TASHA CERDA, MAYOR

APPROVED AS TO FORM:

CARMEN VASQUEZ, CITY ATTORNEY

ATTEST:

MINA SEMENZA, CITY CLERK

WASTE RESOURCES OF GARDENA , INC
("CONTRACTOR")

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT 1

INITIAL MAXIMUM RATES

Following are the rates for July 1, 2022 through June 30, 2023

Rates Effective July 1, 2022

SERVICE RATES

RESIDENTIAL SERVICE ¹

COMMERCIAL SERVICE ²

Single Family Units ¹	\$23.51	Per Unit	Per month				
Multi Family Units ¹							
2 Units	\$47.02	Per Unit	Per Month				
3 Units	\$70.53	Per Unit	Per Month				
4 Units	\$94.04	Per Unit	Per Month				
Extra Trash Cart ¹	\$7.85	Per Unit	Per Month				
Bulky Items ¹	\$15.70	Per item after 4 free pick-ups/year or excess of 3cy per pick-up					
Commercial Cart Rate²							
Size	1x Week						
1 - 64 gallon	\$78.42						
Commercial AB1826 Organics Collection Rates²							
# of Carts	1x Week	2x Week	3x Week				
1 64-gallon cart	\$70.52	\$141.16	\$211.71				
2 64-gallon carts	\$134.08	\$268.18	\$402.30				
3 64-gallon cart ²	\$194.12	\$388.29	\$582.41				
2 cy bin	\$238.47						
64-gallon green waste cart	\$39.21						
Recycling/Organics Contamination Fee is 10% of monthly rate per occurrence							
Permanent Commercial Refuse Bins Rates (Recycling Containers are Provided at No Additional Charge) ²							
Size	1x Week	2x Week	3x Week	4x Week	5x Week	6x Week	
64-gallon	\$78.42						
1 cy	\$130.76	\$261.60	\$392.42	\$523.24	\$654.04	\$784.88	
2 cy	\$165.18	\$330.39	\$495.82	\$660.82	\$825.91	\$991.26	
3 cy	\$188.09	\$376.23	\$564.36	\$752.52	\$940.65	\$1,128.81	
4 cy	\$224.11	\$448.24	\$672.37	\$896.50	\$1,120.63	\$1,344.77	
6 cy	\$301.26	\$602.55	\$903.84	\$1,202.14	\$1,502.70	\$1,803.27	
Extra Pickup	\$71.75						
Scout Service	\$61.46	\$122.92	\$184.38	\$245.85	\$307.31	\$368.77	
Push Out Service Over 15 Ft (per foot per month)	\$3.67						
Locking Bin Service - Per Bin	\$40.98	\$40.98	\$40.98	\$40.98	\$40.98	\$40.98	
<i>Note: Compactors are billed at 2x the trash rate</i>							
Permanent Drop Off/Roll Box Rates²							
Size	Open Top						
10 - 30 cy	\$348.71	Per Load	Plus Disposal & Demurrage				
35-40 cy	\$369.17	Per Load	Plus Disposal & Demurrage				
Permanent Drop Off/Roll Box Rates²							
Size	Compactor						
10 - 30 cy	\$369.17	Per Load	Plus Disposal & Demurrage				
35-40 cy	\$430.76	Per Load	Plus Disposal & Demurrage				
Permanent Drop Off/Roll Box Rates²							
Weekend Service Surcharge	\$96.76	Additional per Service					
Disposal, WRR	\$71.70	Per Ton					
Disposal, Other Destinations ³	Pass-Through						

INITIAL MAXIMUM RATES

Following are the rates for July 1, 2022 through June 30, 2023

Temporary Drop Off/Roll Off Rates² (Includes 4 tons disposal)			
Size			
10 cy	\$605.14	Per Load	Plus Delivery, Demurrage, & Excess Tonnage
15-30 cy	\$717.99	Per Load	Plus Delivery, Demurrage, & Excess Tonnage
35-40 cy	\$779.55	Per Load	Plus Delivery, Demurrage, & Excess Tonnage
Delivery	\$140.09	Per Initial Delivery	
Excess Tonnage	\$85.29	Per Ton, over 4 tons	
Temporary Bins²			
Rent-A-Bin Service	\$263.33	Per Bin	
Rent-A-Bin Additional	\$205.50	Per Bin	
Miscellaneous Rates²			
Additional Residential Rates¹			
Multi-Family Premises - Additional Bulky Item	\$ 15.70	Per item after 4 free pick-ups/year/unit or excess of 3cy per pick-up	
Cart Replacement Due to Misuse	\$ 84.00	Each	
Overage Charge	\$ 11.56	Per occurrence	
Contamination Fee	\$ 11.56	Per occurrence	
Sharps Kit	\$ 58.01	Per kit, after 1 free/quarter/account	
Valet Service	\$ 47.02	Per month, if no proof of need confirmed	
Additional Commercial Rates²			
Bulky Item Additional Pick-ups	\$ 105.76	Per pickup	
Bin Steam Clean/Graffiti Removal	\$ 159.23	Each	
Box Steam Clean/Graffiti Removal	\$ 572.52	Each	
Bin Replacement	\$ 529.01	Per bin	
Overage	\$ 57.97	Per occurrence, plus disposal fees (if any)	
Contamination Fee (10% of the monthly rate, per occurrence)		Per occurrence	
Bin Enclosure Cleaning	\$ 67.72	Per occurrence, 15 minutes	
Auto Tire Disposal	\$ 15.72	Per tire	
Truck Tire Disposal	\$ 23.62	Per tire	
Tires - Disposal	\$ 158.71	Per ton	
Standby Time (after 10 minutes) - Commercial	\$ 6.99	Per minute	
Standby Time (after 10 minutes) - Roll-Off	\$ 5.23	Per minute	
Standby Time (after 10 minutes) - Scout	\$ 3.46	Per minute	
Roll-Off Demurrage	\$ 17.57	Per day, after 7 days	
Roll-Off Dry Run	\$ 176.30	Per occurrence	
Roll-Off Relocation	\$ 176.30	Per request	
Street Permit ⁽³⁾	\$ 129.00	Per 7 days	
Barricades	\$ 157.80	Per 7 days	
Certified Deconstruction	\$ 189.40	Per load, includes certificate	
Emergency Response - Commercial	\$ 157.35	Per occurrence	
Emergency Response - Roll-Off	\$ 472.84	Per occurrence	
NSF Check	\$ 55.19	Per occurrence	
Service Reinstatement	\$ 70.99	Per occurrence	
Commercial Illegal Dumping	\$ 60.00	1st item	
Commercial Illegal Dumping	\$ 20.00	Each additional item	
(¹) Includes Franchise and AB 939/SB 1383 Regulatory Reimbursement			
(²) Plus Franchise and AB 939/SB 1383 Regulatory Reimbursement			
(³) Pass-through charge, subject to change during the year			

EXHIBIT 2A

EXAMPLE RATE ADJUSTMENT FORMULA

Step One: Calculate percentage change in indices

		A	B	C
Row	Index	Old Index Value	New Index Value	Percent Change In Index, ((Column B/ Column A) -1)
1	CPI, Garbage and Trash Collection (1)	512.7	533.1	3.97%

Step Two: Verify that percentage change in Row 1 Column C does not exceed an amount greater than 2% more than the percentage increase in CUURS49ASA0LE in Row 3

		D	E	F
Row	Index	Old Index Value	New Index Value	Percent Change In Index, ((Column B/ Column A) -1)
2	CPI, Garbage and Trash Collection (1)	512.7	533.1	3.97%
3	CPI, Los Angeles-Long Beach-Anaheim (2)	282.7	299.1	5.83%
4	Difference			-1.86%

Step Three: Apply percentage change to rates

		G	H	I	J
Row	Example Rate Categories	Current Customer Rate Not Including City Fees	Percentage Change in Index (from Column C)	Rate Increase or Decrease (Column G x Column H)	Adjusted Rate (Column G + Column I)
5	Residential Cart Service	\$ 23.51	3.97%	\$ 0.93	\$ 24.44
6	Residential Extra Trash Cart Fee	\$ 7.85	3.97%	\$ 0.31	\$ 8.16
7	Additional Bulky Item Fee - Curbside	\$ 15.70	3.97%	\$ 0.62	\$ 16.32
8	Multi-Family - 2 Units Per Unit Fee	\$ 47.02	3.97%	\$ 1.87	\$ 48.89
9	Multi-Family - 2 Units Per Unit Fee	\$ 70.53	3.97%	\$ 2.80	\$ 73.33
10	Multi-Family - 2 Units Per Unit Fee	\$ 94.05	3.97%	\$ 3.73	\$ 97.78

(1) Consumer Price Index Consumer Price Index (CUUR0000SEHG02) for All Urban Consumers, garbage and trash collection – U.S. city average, not seasonally adjusted, as published by the United States Department of Labor, Bureau of Labor Statistics. Average annual change for the 12 months ending January prior to the Rate Year anniversary date compared to the 12 months ending January in the previous year.

(2) Consumer Price Index (CUURS49ASA0LE) for All Urban Consumers Items Less Energy (CPI-U) for the Los Angeles-Long Beach-Anaheim, CA, All Urban Consumers, Not Seasonally Adjusted. Average annual change for the 12 months ending January prior to the Rate Year anniversary date compared to the 12 months ending January in the previous year.

(3) Example rates listed. Adjustment applies to all rates.

EXHIBIT 2B

EXAMPLE CALCULATION FOR

AVERAGE ANNUAL CHANGE IN PUBLISHED INDICES

Consumer Price Index

The rate adjustment index is calculated using the annual change in the Consumer Price Index for All Urban Consumers for Garbage and Trash Collection (CUUR0000SEHG02) - U.S. City average published by the Bureau of Labor Statistics, measured for the 12 months ending January prior to the Contract Year anniversary date compared to the 12 months ending January in the previous year.

For example, if a rate adjustment based on this CPI index were to be implemented as of July 1, 2022, the index value for the 12 months ended January 2022 of 533.078 would have been the “New Index Value” to be used in Column B of the example rate adjustment formula in Exhibit 2A, and the index value for the 12 months ended January 2021 of 512.722 would have been the “Old Index Value” in Column A. This would have resulted in a 3.97% increase to the rates as calculated in Column C of Exhibit 2A.

Series Id: CUUR0000SEHG02
Not Seasonally Adjusted
Series Title: Garbage and trash collection in U.S. city average, all
Area: U.S. city average
Item: Garbage and trash collection
Base Period: DECEMBER 1983=100
Years: 2012 to 2022

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2012	398.880	400.381	401.692	400.913	401.067	402.793	406.243	406.823	407.594	409.495	410.155	410.416
2013	411.126	411.805	412.305	413.675	414.511	414.802	416.505	417.760	418.357	419.687	421.427	422.237
2014	422.440	422.483	423.413	425.393	425.242	425.930	426.562	426.771	427.327	427.995	427.808	428.187
2015	427.734	429.248	429.235	429.807	431.234	430.813	431.229	432.967	433.843	434.829	436.428	436.996
2016	437.205	438.296	437.699	437.676	438.317	437.858	438.607	439.358	439.707	440.311	443.343	444.745
2017	446.266	447.699	446.987	447.129	447.272	448.046	448.328	448.717	449.008	452.196	453.820	453.596
2018	453.354	454.915	455.230	458.722	462.887	465.041	465.579	470.457	471.026	472.535	486.650	485.935
2019	475.687	477.474	478.569	479.449	480.865	480.984	482.138	483.987	484.346	486.133	486.485	486.708
2020	491.003	494.429	495.288	494.432	494.946	496.679	498.564	500.882	501.756	503.315	504.970	508.190
2021	512.722	517.270	518.505	518.579	516.440	517.202	521.185	524.408	529.934	530.114	529.053	532.538
2022	533.078											

Additionally, Section 6.4.1 restricts the amount of any annual increase to not exceed an amount greater than two percent (2.0%) more than the percentage increase in the Consumer Price Index-All Items Less Energy for the Los Angeles-Long Beach-Anaheim, CA, All Urban Consumers, Not Seasonally Adjusted (CUURS49ASA0LE) published by the Bureau of Labor Statistics, for the corresponding one-year period used to measure the change in the Consumer Price Index for All Urban Consumers for Garbage and Trash Collection (CUUR0000SEHG02) - U.S. City average. For example, to verify that the change in the Consumer Price Index for All Urban Consumers for Garbage and Trash Collection (CUUR0000SEHG02) - U.S. City average does not exceed the change in the Consumer Price Index-All Items Less Energy for the Los Angeles-Long

Beach-Anaheim, CA, All Urban Consumers, Not Seasonally Adjusted (CUURS49ASA0LE), the index value for the 12 months ended January 2022 of 299.136 would have been the “New Index Value” to be used in Line 3 Column E of the example rate adjustment formula in Exhibit 2A, and the index value for the 12 months ended January 2021 of 282.653 would have been the “Old Index Value” in Line 3 Column D. The difference between the calculated change in the Consumer Price Index for All Urban Consumers for Garbage and Trash Collection (CUUR0000SEHG02) - U.S. City average and the Consumer Price Index-All Items Less Energy for the Los Angeles-Long Beach-Anaheim, CA, All Urban Consumers, Not Seasonally Adjusted (CUURS49ASA0LE) is calculated in Line 4 Column F of Exhibit 2A.

Series Id: CUURS49ASA0LE
Not Seasonally Adjusted
Series Title: All items less energy in Los Angeles-Long Beach-
Area: Los Angeles-Long Beach-Anaheim, CA
Item: All items less energy
Base Period: 1982-84=100
Years: 2012 to 2022

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2012	232.233	232.576	233.702	234.245	234.069	234.321	234.840	235.330	235.973	236.488	236.136	235.155
2013	236.600	236.585	237.005	236.890	236.912	236.890	236.499	237.405	237.723	238.753	237.984	237.833
2014	238.987	239.724	240.297	240.626	240.630	240.785	241.343	242.010	242.454	242.845	242.528	242.302
2015	242.822	243.487	244.373	244.636	244.912	245.324	245.738	246.085	246.813	247.878	248.417	248.104
2016	249.720	251.168	251.274	251.429	252.518	252.509	252.506	253.052	253.185	253.742	253.013	253.302
2017	255.488	256.658	257.164	257.596	258.090	258.085	259.220	259.705	260.370	261.559	261.468	261.896
2018	263.457	264.830	265.909	266.600	266.971	266.441	266.950	267.425	269.273	270.021	269.851	269.401
2019	271.869	271.996	273.189	274.505	274.798	275.518	275.897	276.331	277.256	278.028	278.051	277.171
2020	279.587	280.711	279.462	280.000	280.859	281.664	283.124	283.128	282.244	282.775	283.257	282.559
2021	282.653	282.868	283.317	286.335	287.403	288.809	290.195	290.490	291.365	293.463	294.979	296.222
2022	299.135											

EXHIBIT 3

CORPORATE GUARANTY

Guaranty

THIS GUARANTY (the "Guaranty") is given as of the ___ day of _____, 2022.

THIS GUARANTY is made with reference to the following facts and circumstances:

A. _____, hereinafter ("Owner") is a _____ organized under the laws of the State of _____, which is wholly owned by _____. (Guarantor).

B. Owner and the City have negotiated an Agreement for Collection, Processing, and Disposal of Solid Waste dated as of _____, (hereinafter "Agreement"). A copy of this Agreement is attached hereto.

C. It is a requirement of the Agreement, and a condition to the City entering into the Agreement, that Guarantor guaranty Owner's performance of the Agreement.

D. Guarantor is providing this Guaranty to induce the City to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. **Guaranty of the Agreement.** Guarantor hereby irrevocably and unconditionally guarantees to the City the complete and timely performance, satisfaction and observation by Owner of each and every term and condition of the Agreement which Owner is required to perform, satisfy or observe. In the event that Owner fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully perform, satisfy or observe them in the place of the Owner or cause them to be performed, satisfied or observed. Guarantor hereby guarantees payment to the City of any damages, costs or expenses which might become recoverable by the City from Owner due to its breach of the Agreement.

2. **Guarantor's Obligations Are Absolute.** The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and with respect to any payment obligation of Owner under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditional upon the genuineness, validity, regularity or enforceability of the Agreement. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to the Owner in an action to enforce, or for damages for breach of, the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement

under bankruptcy law).

3. Waivers. Except as provided herein the Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under it for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the Owner; (2) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (3) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the City's rights or remedies against the Owner; or (4) any merger or consolidation of the Owner with any other corporation, or any sale, lease or transfer of any or all the assets of the Owner. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code Section 2819.

The Guarantor hereby waives any and all benefits and defenses under California Civil Code Section 2846, 2849, and 2850, including without limitation, the right to require the City to (a) proceed against Owner, (b) proceed against or exhaust any security or collateral the City may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that the City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Owner or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral the City may hold now or hereafter hold. City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Owner or any other guarantor or pledgor without impairing the City's rights and remedies in enforcing this Guaranty.

The Guarantor hereby waives and agrees to waive at any future time at the request of the City to the extent now or then permitted by Applicable Law, any and all rights which the Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of the Guarantor hereunder: (a) at any time or from time to time, without notice the Guarantor, performance or compliance herewith is waived; (b) any other of any provision of its Agreement indemnification with respect to Owner's obligations under the Agreement or any security therefore is released or exchanged in whole or in part or otherwise dealt with; or (c) any assignment of the Agreement is effected which does not require the City's approval.

The Guarantor hereby expressly waives diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations

guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Owner prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. **Term.** This Guaranty is not limited to any period of time but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed or otherwise discharged and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by the City of any performance bond or other collateral to assure the performance of Owner's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by the City against Owner arising out of the Agreement based on Owner's failure to perform which has not been settled or discharged.

5. **No Waivers.** No delay on the part of the City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the City to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the City and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.

6. **Attorney's Fees.** In addition to the amounts guaranteed under this Guaranty, Guarantor agrees in the event of Guaranty's breach of its obligations to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. **Governing Law: Jurisdiction.** This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws, rules for all purposes including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any action brought by the City to enforce this Guaranty may be brought in any court of the State of California and Guarantor consents to personal jurisdiction over it by such courts. Guarantor appoints the following Person as its agents for service of process in California:

With a copy by certified mail to:

8. **Severability.** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will have not have an effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

9. **Binding On Successors.** This Guaranty shall inure to the benefit of the City and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.

10. **Authority.** Guarantor represents and warrants that it has the corporate power and authority to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Article of Incorporation and By-Laws, and that the Person signing this Guaranty on its behalf has the authority to do so.

11. **Notices.** Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To the City: City Manager (or designated representative)
 City of Gardena
 1700 West 162nd Street
 Gardena, CA 90247

with a copy to the City Counsel at the same address.

To the Guarantor:

By: _____
(title)

By: _____
(title)

EXHIBIT 4

CONTRACTOR'S FAITHFUL PERFORMANCE BOND

LET THE FOLLOWING BE KNOWN:

That _____, a California _____, as PRINCIPAL, and _____, a Corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to City, hereinafter called OBLIGEE, in the penal sum of six hundred thousand dollars (\$600,000) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a contract, entitled AMENDED AND RESTATED AGREEMENT BETWEEN CITY OF GARDENA AND WASTE RESOURCE OF GARDENA, FOR INTEGRATEDSOLID WASTE MANAGEMENT SERVICES with City, to do and perform the following work, to wit: Collect, Process and Dispose of Solid Waste generated within City, in accordance with the contract.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise, it will remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

In the event suit is brought by OBLIGEE to enforce the provisions of this bond, said Surety will pay to OBLIGEE a reasonable attorney's fee, plus costs of suit, in an amount to be fixed by the court.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this _____ DAY OF _____, 20__.

a California Corporation

SURETY

By:_____

By:_____

(PRINCIPAL)

(ATTORNEY IN FACT)

(SEAL)

(SEAL)

EXHIBIT 5

NOTARY CERTIFICATION

STATE OF CALIFORNIA)

COUNTY OF _____) ss:

On _____, _____, before me, the undersigned, a Notary Public in and for the State of California, personally appeared _____, known to me to be the _____ of Contractor that executed the within instrument on behalf of the Contractor therein named, and acknowledged to me that such Contractor executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of _____ this _____ day of _____, _____.

Notary Public

My Commission Expires:

EXHIBIT 6
PROCESSING, TRANSFER, AND DISPOSAL SERVICES
AND FACILITY STANDARDS

Contractor has selected and arranged for Discarded Materials to be Transported to Approved Facilities for Transfer, Source Separated Recyclable Materials Processing, Source Separated Organic Waste Processing, Organic Waste Processing, C&D Processing, and Disposal. The Approved Facilities shall comply with the standards specified in this Exhibit. Pursuant to Section 4.5.14 of the Agreement, if the Contractor does not own or operate one or more of the Approved Facilities, Contractor shall enter into a subcontract agreement with the owner or Facility operator of such Approved Facility(ies) and the requirements of Section 4.5.14 of the Agreement and this Exhibit shall pertain to the Subcontractor(s).

Note that Contractor, by definition in Article 1 of the Agreement, includes Affiliates, DBAs, and Subcontractors. As a result, requirements of Section 4.5.14 of the Agreement and this Exhibit shall pertain to Affiliate(s) and Subcontractors providing Facility-related services.

6.1 General Requirements

A. Overview. Contractor agrees to Transport and deliver Discarded Materials it Collects in the City to an appropriate Approved Facility(ies) for Transfer, Processing, or Disposal, as applicable for each type of Discarded Material. As of the commencement date of this Agreement, the Approved Facilities, which were selected by Contractor and reviewed and approved by the City, are listed in the table on the following page and in the definitions in Article 1 of this Agreement. Contractor will perform all Transfer, Processing, and Disposal services at Approved Facilities in accordance with Applicable Law, standard industry practice, and specifications and other requirements of this Agreement.

Approved Facilities

Material Type	Approved Transfer Facility (if applicable)	Approved Facility (Processing or Disposal Facility)	Description of Processing Methodology (Material recovery facility, composting facility, anaerobic digestion, etc.)
Source Separated Recyclable Materials		Waste Resources Recovery 19-AA-0857 Waste Resources Recovery, Inc. 357 W. Compton Blvd. Gardena 90248	Materials Recovery Facility
Green Waste	Waste Resources Recovery 19-AA-0857 Waste Resources Recovery, Inc. 357 W. Compton Blvd. Gardena 90248	GreenWise Soil Technologies 19-AA-1064 Universal Waste Systems 10120 Miller Way South Gate 90280	Composting
Food Waste		Waste Resources Recovery 19-AA-0857 Waste Resources Recovery, Inc. 357 W. Compton Blvd. Gardena 90248	Aerobic Processing

Material Type	Approved Transfer Facility (if applicable)	Approved Facility (Processing or Disposal Facility)	Description of Processing Methodology (Material recovery facility, composting facility, anaerobic digestion, etc.)
Food Waste	Waste Resources Recovery 19-AA-0857 Waste Resources Recovery, Inc. 357 W. Compton Blvd. Gardena 90248	Joint Water Pollution Control Plant Sanitation Districts of LA County 24501 S. Figueroa St. Carson 90745	Anaerobic Digestion
Source Separated Organic Waste	Waste Resources Recovery 19-AA-0857 Waste Resources Recovery, Inc. 357 W. Compton Blvd. Gardena 90248	Joint Water Pollution Control Plant Sanitation Districts of LA County 24501 S. Figueroa St. Carson 90745	Anaerobic Digestion
Source Separated Organic Waste		Waste Resources Recovery 19-AA-0857 Waste Resources Recovery, Inc. 357 W. Compton Blvd. Gardena 90248	Aerobic Processing
Gray/Black Container Waste	Waste Resources Recovery 19-AA-0857 Waste Resources Recovery, Inc. 357 W. Compton Blvd. Gardena 90248	Chiquita Canyon Landfill 19-AA-0052 Waste Connections, Inc. 29201 Henry Mayo Dr. Castaic 91384	Landfill

Material Type	Approved Transfer Facility (if applicable)	Approved Facility (Processing or Disposal Facility)	Description of Processing Methodology (Material recovery facility, composting facility, anaerobic digestion, etc.)
Gray/Black Container Waste	Waste Resources Recovery 19-AA-0857 Waste Resources Recovery, Inc. 357 W. Compton Blvd. Gardena 90248	Southeast Resource Recovery Facility 19-AK-0083 City of Long Beach 118 Pier St. Long Beach 90802	Waste to Energy
C&D		California Waste Services 19-AR-1225 California Waste Services, Inc. 621 W. 162 nd St. Gardena 90247	C&D Materials Recovery Facility

B. **Facility Capacity Guarantee.** Contractor shall guarantee sufficient capacity over the Term of this Agreement to Transfer (if applicable), Transport, and Process all Source Separated Recyclable Materials, Source Separated Organic Waste, and C&D Collected under this Agreement and to Transfer (if applicable), Transport, and Dispose all Gray/Black Container Waste Collected under this Agreement. Contractor shall cause the Approved Facility(ies) to Recycle or Process the Discarded Materials as appropriate; market the Source Separated Recyclable Materials, Source Separated Organic Waste, and C&D recovered from such operations; and Dispose of residue. Contractor shall provide the City, upon request, with documentation demonstrating the availability of such Transfer (if applicable), Transport, Processing, and Disposal capacity as described below.

1. City may request that Contractor report aggregate Facility capacity committed to other entities through Contractor's contracts. City, or its agent, will have the right to seek verification of Contractor's reported aggregate capacity through inspection of pertinent sections of Contractor's contracts with such entities to determine the duration of Contractor's commitment to accept materials from such entities and the type and volume of materials Contractor is obligated to accept through the contracts. In addition, City, or its agent, will have the right to review tonnage reports documenting the past three (3) years of Tonnage accepted at the Approved Facility(ies) by such entities. To the extent allowed by law, City, or its agent(s), agree to maintain the confidentiality of the information reviewed related to the individual contracts with other contracting entities and agree to review all related material at the Contractor's office and will not retain any copies of reviewed material. Contractor will fully cooperate with the City's request and provide City, or its agent(s) access to Contractor's records.
2. Contractor's Subcontractor is the owner and/or operator of Designated Facilities: Upon request, Contractor shall demonstrate that such capacity is available and allocated to the City by provision of its agreement with the Designated Facility(ies) owner(s)/operator(s) (Subcontractor(s)) documenting the Subcontractor's guarantee to accept the Discarded Materials Contractor delivers over the Term of this Agreement and any extensions to the Agreement.

C. **Equipment and Supplies.** Contractor shall equip and operate the Approved Facilities in a manner to fulfill Contractor's obligations under this Agreement, including achieving all applicable standards for Landfill Disposal reduction, Recycling, diversion, residue volume and content, and final product quality standards. Contractor is solely responsible for the adequacy, safety, and suitability of the Approved Facilities. Contractor shall modify, enhance, and/or improve the Approved Facilities as needed to fulfill service obligations under this Agreement, at no additional compensation from the City or rates charged to Customers.

Contractor shall provide all rolling stock, stationary equipment, material storage Containers, spare parts, maintenance supplies, Transfer, Transport, and Processing

equipment, and other consumables as appropriate and necessary to operate the Approved Facilities and provide all services required by this Agreement. Contractor shall place the equipment in the charge of competent equipment operators. Contractor shall repair and maintain all equipment at its own cost and expense.

- D. **Facility Permits.** Contractor or Facility operator shall keep all existing permits and approvals necessary for use of the Approved Facility(ies), in full regulatory compliance. Contractor, or Facility operator, shall, upon request, provide copies of permits and/or notices of violation of permits to the City.

- E. **Transfer Facility.** At Contractor's option, Contractor may rely on a Transfer Facility and, in such case, shall Transport and deliver some or all Discarded Materials to the Approved Transfer Facility for pre-Processing (if applicable) and Transfer. At the Transfer Facility, Discarded Materials shall be unloaded from Collection vehicles and loaded into large-capacity vehicles and Transported to the Approved Facility(ies) for Processing or Disposal, in a timely manner and in accordance with Applicable Law.

If Contractor delivers some or all Discarded Materials to a Transfer Facility, it shall receive assurances from Facility operator that Facility operator will Transport or arrange for Transport of the Discarded Materials to appropriate Approved Facility(ies) for Processing or Disposal, as applicable for each type of Discarded Material. In such case, Contractor shall receive written documentation from the Facility operator(s) of the Facilities used for Processing and Disposal of Discarded Materials. Contractor shall pay all costs associated with Transport, Transfer, Processing, and/or Disposal of all Discarded Materials Collected in accordance with this Agreement, including marketing of recovered materials and Disposal of all residue.

Contractor shall comply with separate handling requirements described in this Exhibit 6.

- F. **Contractor-Initiated Change in Facility(ies).** Contractor may change its selection of one or more of the Approved Facility(ies) following the City's written approval, which may be conditioned on various factors including, but not limited to: the performance of the current versus proposed Facility, the permitting status of and LEA inspection records related to the proposed Facility, the distance of the Facility from the City, and any other factor that may reasonably degrade the value received by the City. If Contractor elects to use a Facility(ies) that is(are) not listed on the then-current list of Approved Facility(ies) in this Exhibit, it shall submit a written request for approval to the City thirty (30) business days prior to the desired date to use the Facility and shall obtain the City's written approval prior to use of the Facility. Contractor's compensation and rates shall not be adjusted for a Contractor-initiated change in Facilities.

- G. **Notification of Emergency Conditions.** Each Approved Facility shall notify the City of any unforeseen operational restrictions that have been imposed upon the Facility by a regulatory agency or any unforeseen equipment or operational failure that will

temporarily prevent the Facility from Processing the Discarded Materials Collected under this Agreement. Contractor shall notify the City in accordance with Section 4.5.15 of the Agreement.

- H. **Approved Facility Unavailable/Use of Alternative Facility.** If Contractor is unable to use the Approved Facility due to a sudden unforeseen closure of the Facility or other emergency conditions described in Section 6.1.G in this Exhibit 6, Contractor may use an Alternative Facility provided that the Contractor provides verbal and written notice to the City and receives written approval from the City at least twenty-four (24) hours prior to the use of an Alternative Facility to the extent reasonably practical given the nature of the emergency or sudden closure. The Contractor's written notice shall include a description of the reasons the Approved Facility is not feasible, and the period of time Contractor proposes to use the Alternative Facility. As appropriate for the type of Discarded Materials to be delivered to the Alternative Facility, the Alternative Facility shall meet the applicable Facility standards in this Agreement and shall be sent to: (i) an allowable Facility, operation, or used for an activity specified by pursuant to 14 CCR Section 18983.1(b) and not subsequently sent to Landfill Disposal; (ii) a "Approved Organic Waste Processing Facility" pursuant to 14 CCR Section 18982(a)(14.5) for Source Separated Recyclable Materials and Source Separated Organic Waste; (iii) a Transfer Facility; or, (iv) a Disposal Facility. If Contractor is interested in using a Facility for Source Separated Organic Waste technology that is not listed above and not currently approved by CalRecycle, Contractor shall be responsible for securing the approvals necessary from CalRecycle prior to the City's final approval of such Facility or activity and shall do so in accordance with the procedures specified in 14 CCR Section 18983.2.

If any Approved Facility specified in this Exhibit becomes unavailable for use by Contractor for Discarded Materials Collected in the City for a period of more than two (2) days, City may designate an Alternative Facility. The Parties agree that the Approved Facility shall only be deemed to be "unavailable" if one or more of the following has occurred: (i) a Force Majeure event has occurred; (ii) a Facility has lost one or more permits to operate; (iii) a Facility has exhibited a pattern of violation through the receipt of repeated notices of violation from one or more regulatory agencies. Further, the Parties agree that a Facility shall only be deemed to be "unavailable" if the lack of availability of the Facility is not due to Contractor's negligence, illegal activity, neglect, or willful misconduct. At City's request, Contractor shall research and propose Alternate Facility(ies) for the impacted Discarded Material(s) and shall submit a written analysis and recommendation to the City within thirty (30) days concerning the cost for use of Alternative Facility(ies) and any logistical changes that would be required to utilize such Alternative Facility(ies). City and Contractor will discuss the advantages and disadvantages of use of the potential Alternative Facility(ies) and City will designate the approved Alternative Facility(ies). The decision of the City shall be final. The change in Facility shall be treated as City-directed change in scope.

In the event an Approved Facility becomes unavailable due to the negligence, illegal activity, neglect, or willful misconduct of Contractor, Contractor shall bear all additional costs for use of an Alternative Facility including increased Processing costs, Disposal Costs, Transportation costs, Transfer costs, and all other costs.

The table listing Approved Facilities in this Exhibit shall be modified accordingly to reflect the new City-Approved Facility(ies).

If Contractor is not the owner of the new Approved Facility, Contractor shall enter into a Subcontract agreement with the Facility operator of the Alternative Facility to require compliance with the requirements of Section 4.5.14 of this Agreement and this Exhibit unless City waives one or more requirements.

- I. **Discarded Materials Monitoring/Waste Evaluation Requirements.** Contractor shall conduct material sampling, sorting, and waste evaluations of various material streams as further described in Section 6.6 in this Exhibit 6 to meet or exceed SB 1383 requirements.
- J. **Compliance with Applicable Law.** Contractor (including its Affiliates and Subcontractors) warrants throughout the Term of this Agreement and any extensions that the Approved Facilities are respectively authorized and permitted to accept Discarded Materials in accordance with Applicable Law and are in full compliance with Applicable Law.
- K. **Records and Investigations.** Contractor shall maintain accurate records of the quantities of Discard Materials Transported to and accepted at the Approved Facility(ies) and shall cooperate with City and any regulatory authority in any audits or investigations of such quantities.
- L. **Inspection and Investigations.** An authorized City employee or agent shall be allowed to enter each Facility during normal working hours in order to conduct inspections and investigations in order to examine Facility operations; Processing activities; contamination monitoring; material sampling and sorting activities, including inspection of end-of-line materials after sorting; and records pertaining to the Facility in order to determine compliance with Applicable Law, including SB 1383, to understand protocols and results, and conduct investigations, if needed. Contractor shall permit City or its agent to review or copy, or both, any paper, electronic, or other records required by City.

6.2 Processing Standards

- A. **Recovery Required.** Contractor agrees to Transport and deliver all Source Separated Recyclable Materials, Source Separated Organic Waste, and C&D Collected under this Agreement to the Approved Facility for Processing as applicable for each material type. Contractor shall conduct Processing activities for all Source Separated Recyclable Materials, Source Separated Organic Waste, and C&D to recover Source Separated Recyclable Materials and Source Separated Organic Waste to reduce Disposal. The

Processing shall be performed in a manner that minimizes Disposal to the greatest extent practicable and complies with Applicable Law, including SB 1383. Contractor may Dispose of Source Separated Organic Waste from homeless encampments and illegal disposal sites and quarantined Organic Waste, which meet the requirements described in 14 CCR Section 18984.13(d), rather than Process such materials.

B. Separate Handling Requirements

1. Contractor shall keep Source Separated Recyclable Materials, Source Separated Organic Waste, and C&D separate from each other and separate from other Solid Waste streams and shall Process the materials separately from each other and separately from other Solid Waste streams.
2. Pursuant to 14 CCR Section 17409.5.6(a)(1), Remnant Organic Waste separated from the Gray/Black Container Waste for recovery can be combined with Organic Waste removed from the Source Separated Organic Waste for recovery once the material from the Source Separated Organic Waste has gone through the Organic Waste recovered measurement protocol described in 14 CCR Section 17409.5.4.

C. Residue Disposal. Contractor shall be responsible for Disposal of residue from Processing activities at its own expense and may select the Disposal Facility(ies) to be used for such purpose.

D. Processing Facility Residue Guarantees. Upon request of the City, Contractor shall provide a certified statement from the Facility operator documenting its residue level. The residue level shall be calculated separately for each material type and for each Approved Facility used for Recycling and Processing. The residue level calculation method shall be reviewed and approved by the City.

E. Source Separated Recyclable Materials Processing Standards

1. Contractor shall arrange for Processing of all Source Separated Recyclable Materials at a Facility that recovers materials designated for Collection in the Blue Container and in a manner deemed not to constitute Landfill Disposal pursuant to 14 CCR Section 18983.1(a) which states that Landfill Disposal includes final deposition of Organic Waste at a Landfill or use of Organic Waste as ADC or AIC.
2. Limits on Incompatible Materials in Recovered Source Separated Organic Waste:
 - a. **Limits.** Except as described in Section 6.2.F.4.c of this Exhibit 6, Contractor's Transfer/Processing Facility or operation shall only send offsite that Source Separated Organic Waste (such as, but not limited to, paper products and printing and writing paper) recovered after Processing Source Separated Recyclable Materials that meets the following requirements or as otherwise specified in 14 CCR Section 17409.5.8(a):

- i. On and after January 1, 2022 with no more than 20 percent (20%) of Incompatible Material by weight; and,
 - ii. On and after January 1, 2024 with no more than 10 percent (10%) of Incompatible Material by weight.
- b. **Measurement.** Contractor shall measure the actual levels of Incompatible Materials in accordance with procedures described in 14 CCR Section 17409.5.8(b).

F. Source Separated Organic Waste Processing Standards.

1. Contractor shall arrange for Processing of all Source Separated Organic Waste at a Facility that recovers Source Separated Organic Waste and, in a manner, deemed not to constitute Landfill Disposal pursuant to 14 CCR Section 18983.1(a) which states that Landfill Disposal includes final deposition of Organic Waste at a Landfill or use of Organic Waste as ADC or AIC.
2. Contractor shall arrange for Source Separated Organic Waste Processing at the Approved Organic Waste Processing Facility that meets one or more of the following criteria, and such Facility or operation is capable of and permitted to accept and recover the types of Organic Wastes included in the Source Separated Organic Waste:
 - a. “Compostable Material Handling Operation or Facility” as defined in 14 CCR Section 17852(a)(12); small composting facilities that are otherwise excluded from that definition; or Community Composting as defined within 14 CCR Section 18982(a)(8). The compostable materials handling operation or Facility shall, pursuant to 14 CCR Section 17867(a)(16), demonstrate that the percentage of Organic Waste in the materials sent to Disposal is:
 - i. On and after January 1, 2022, less than 20 percent (20%); and,
 - ii. On and after January 1, 2024, less than 10 percent (10%).
 - b. An “In-vessel Digestion Operation or Facility” as defined in 14 CCR 17896.5. The in-vessel digestion Facility or operation shall, pursuant to 14 CCR Section 17896.44.1, demonstrate that the percentage of Organic Waste in the materials sent to Disposal is:
 - i. On and after January 1, 2022, less than 20 percent (20%); and,
 - ii. On and after January 1, 2024, less than 10 percent (10%).

- c. A “Biomass Conversion Operation” as defined in Section 40106 of the California Public Resources Code.
- d. Soil amendment for erosion control, revegetation, slope stabilization, or landscaping at a Landfill, that is defined as a reduction in Landfill Disposal in accordance with 14 CCR Section 18983.1(b).
- e. Land application of compostable materials consistent with 14 CCR Section 17852(a)(24.5) and subject to the conditions in 14 CCR Section 18983.1(b)(6).
- f. Lawful use as animal feed, as set forth in California Food and Agricultural Code Section 14901 et seq. and Title 3, Division 4, Chapter 2, Subchapter 2 commencing with 14 CCR Article 1, Section 2675.
- g. Other operations or facilities with processes that reduce short-lived climate pollutants that are approved by the State in accordance with 14 CCR Section 18983.2.

If Contractor is interested in using an operation, Facility, or activity not expressly identified above for Source Separated Organic Waste Processing, Contractor shall be responsible for securing the approvals necessary from CalRecycle prior to the City’s final approval of such operation, Facility, or activity, and shall do so in accordance with the procedures specified in 14 CCR Section 18983.2.

3. **Preparation of Materials for Processing.** The Contractor shall be responsible for preparing materials for Processing at the Approved Organic Waste Processing Facility, which shall include, but is not limited to, removal of visible physical contaminants such as plastic, glass, metal, and chemicals prior to size reduction.

4. **Limits on Incompatible Materials in Recovered Organic Waste**

- a. **Limits.** Except as described in Section 6.2.F.4.c. of this Exhibit 6, Contractor’s Transfer/Processing Facility or operation shall only send offsite that Organic Waste recovered after Processing the Source Separated Organic Waste that meets the following requirements or as otherwise specified in 14 CCR Section 17409.5.8(a):
 - i. On and after January 1, 2022 with no more than 20 percent (20%) of Incompatible Material by weight; and,
 - ii. On and after January 1, 2024 with no more than 10 percent (10%) of Incompatible Material by weight.

- b. **Measurement.** Contractor shall measure the actual levels of Incompatible Materials in accordance with procedures described in 14 CCR Section 17409.5.8(b).
- c. **Exceptions.** The limits in Section 6.2.F.4.a. of this Exhibit 6, shall not apply to the recovered Organic Waste sent offsite from the Transfer/Processing Facility or operation, if the Contractor sends the recovered Organic Waste from the Transfer/Processing Facility or operation to one or more of the following types of Facilities that will further Process the Organic Waste, or as otherwise specified in 14 CCR Section 17409.5.7(c):
 - i. A Transfer/Processing Facility or operation that complies with Section 6.2.F.4.a. of this Exhibit 6;
 - ii. A compostable material handling facility or operation that, pursuant to 14 CCR Section 17867(a)(16), demonstrates that the percentage of Organic Waste in the materials sent to Disposal is:
 - (A) On and after January 1, 2022, less than 20 percent (20%); and,
 - (B) On and after January 1, 2024, less than 10 percent (10%).
 - iii. An in-vessel digestion Facility or operation that, pursuant to 14 CCR Section 17896.44.1, demonstrates that the percentage of Organic Waste in the materials sent to Disposal is:
 - (A) On and after January 1, 2022, less than 20 percent (20%); and,
 - (B) On and after January 1, 2024, less than 10 percent (10%).
 - iv. An activity that meets the definition of a recycling center as described in 14 CCR Section 17402.5(d).

G. C&D Program Standards

- 1. Contractor shall comply with the CALGreen Construction and Demolition materials Recycling requirements.
- 2. Contractor shall deliver mixed C&D loads to the Approved C&D Processing Facility for Recycling.
- 3. Contractor shall deliver Source Separated C&D such as, but not limited to, dirt, concrete, wood waste, cardboard, or other recyclable C&D materials to the Approved C&D Processing Facility or other Facility authorized for Recycling C&D and shall deliver salvageable materials to a party for Reuse or salvage.

4. Contractor shall arrange for Processing of Organic Waste in the C&D at a Facility that recovers Organic Waste from C&D and in a manner deemed not to constitute Landfill Disposal pursuant to 14 CCR Section 18983.1(a), which states that Landfill Disposal includes final deposition of Organic Waste at a Landfill or use of Organic Waste as ADC or AIC.

- H. **Plastic Bags.** Contractor shall annually submit to City written notice from the Approved Organic Waste Processing Facility confirming said Facility can remove plastic bags when Processing Source Separated Organic Waste.

- I. **Compostable Plastics.** Contractor may accept Compostable Plastics at the Approved Organic Waste Processing Facility. Pursuant to this Agreement, Contractor shall annually submit to City written notice from the Approved Organic Waste Processing Facility confirming said Facility can Process and recover these Compostable Plastics.

- J. **Marketing.** Upon request, Contractor shall provide proof to the City that all Source Separated Recyclable Materials, Source Separated Organic Waste, and C&D Collected by Contractor were Processed and recovered materials were marketed for Recycling, salvage, or Reuse or as organics products in such a manner that materials are not deemed Landfill Disposal pursuant to SB 1383 and in a manner that materials are deemed diversion pursuant to AB 939. All residue from the Recycling and Processing activities that is not marketed shall be reported to the City as residue and accounted for as Disposal Tonnage at the Approved Disposal Facility. No Source Separated Recyclable Materials, Source Separated Organic Waste, or C&D shall be Transported to a domestic or foreign location if Landfill Disposal of such material is its intended use. If Contractor becomes aware that a broker or buyer has illegally handled, Disposed of, or used material generated in the City that is not consistent with Applicable Law, Contractor shall immediately inform the City and terminate its contract or working relationship with such party. In such case, Contractor shall find an alternative market for the material(s) recovered from the Source Separated Recyclable Materials, Source Separated Organic Waste, and/or C&D that is compliant with Applicable Law.

The performance of commodity markets for materials recovered from Source Separated Recyclable Materials shall not be considered a reason for deeming a Facility “unavailable”, nor shall it be considered an acceptable basis for the need to use an Alternative Facility, nor shall it serve as the basis for any adjustment in Contractor’s compensation under this Agreement, other than as specifically contemplated in Article 6 of this Agreement.

- K. **Disposal of Source Separated Recyclable Materials, Source Separated Organic Waste, and C&D Prohibited.** With the exception of Processing residue, which shall not exceed the limits established under Applicable Law, Source Separated Recyclable Materials, Source Separated Organic Waste, and C&D Collected under this Agreement may not be

Disposed of in lieu of Recycling, Processing, or marketing the material, without the expressed written approval of the City.

If for reasons beyond its reasonable control, Contractor believes that it cannot avoid Disposal of the Source Separated Recyclable Materials, Source Separated Organic Waste, or C&D Collected in the City, then it shall prepare a written request for City approval to Dispose of such material. Such request shall contain the basis for Contractor's belief (including, but not limited to, supporting documentation), describe the Contractor's efforts to arrange for the Processing of such material, the period required for such Disposal, and any additional information supporting the Contractor's request.

In addition, the request shall describe the Contractor's proposed interim plans for implementation while the City is evaluating its request. If the City objects to the interim plans, the City shall provide written notice to the Contractor and request an alternative arrangement. The City shall consider the Contractor's request and inform Contractor in writing of its decision within thirty (30) business days. Depending on the nature of the Contractor's request, City may extend the thirty (30) business day period, at its own discretion, to provide more time for evaluation of the request and negotiation of an acceptable arrangement with the Contractor.

6.3 Gray/Black Container Waste Disposal Standards

- A. **Disposal of Gray/Black Container Waste Collected.** Contractor shall Transport all Gray/Black Container Waste Collected under this Agreement to the Approved Disposal Facility.
- B. **Disposal at Approved Facility.** Contractor shall not Dispose of Gray/Black Container Waste or residue by depositing it on any public or private land, in any river, stream, or other waterway, or in any sanitary sewer or storm drainage system or in any other manner which violates Applicable Laws.

6.4 Weighing of Discarded Materials

- A. **Maintenance and Operation.** This Section 6.4 of this Exhibit 6 applies to motor vehicle scales used at the Approved Facilities. Approved Facilities shall be equipped with one or more State-certified motor vehicle scales in accordance with Applicable Law. Upon request, Contractor shall arrange for Facility operator to provide documentary evidence of such scale certification within ten (10) days of City's request during the Term. Licensed weigh master(s) shall operate those scales to weigh all inbound and outbound Collection vehicles Transporting Discarded Materials and all Transfer vehicles Transporting materials to another site. Contractor shall arrange for Facility operator to provide City with access to weighing information at all times and copies thereof within three (3) Business Days following the City's request. Exceptions to weighing requirements are specified in Section 6.4.G. of this Exhibit 6.

- B. **Vehicle Tare Weights for Approved Facility(ies).** Within thirty (30) days prior to the Commencement Date, Contractor shall coordinate with the Facility operator(s) to ensure that all Collection vehicles used by Contractor to Transport Discarded Materials to Approved Facilities are weighed to determine unloaded (“tare”) weights. Contractor shall work with Facility operator(s) to electronically record the tare weight, identify vehicle as Contractor’s, and provide a distinct vehicle identification number for each vehicle. Contractor shall provide City with a report listing the vehicle tare weight information upon request. Contractor shall promptly coordinate with Facility operator to weigh additional or replacement Collection vehicles prior to Contractor placing them into service. Contractor shall check tare weights at least annually, or within fourteen (14) days of a City request and shall re-tare vehicles immediately after any major maintenance service that could impact the weight of the vehicle by more than fifty (50) pounds.
- C. **Substitute Scales.** If any scale at the Approved Facility is inoperable, being tested, or otherwise unavailable, Facility operator shall use reasonable business efforts to weigh vehicles on the remaining operating scale(s). To the extent that all the scales are inoperable, being tested, or otherwise unavailable, Facility operator shall substitute portable scales until the permanent scales are replaced or repaired. Facility operator shall arrange for any inoperable scale to be repaired as soon as possible.
- D. **Estimates.** Pending substitution of portable scales or during power outages, Facility operator shall estimate the Tonnage of the Discarded Materials Transported to and accepted at the Approved Facilities by utilizing the arithmetic average of each vehicle's recorded tons of Discarded Materials delivered on its preceding three (3) deliveries.
- During any period of time the scales are out of service, Facility operator shall continue to record all information required by this Section 6.4 for each delivery of Discarded Materials to the Approved Facilities and each load of material Transferred to another Approved Facility(ies).
- E. **Weighing Standards and Procedures.** At the Approved Facilities, Facility operator shall weigh and record inbound weights of all vehicles delivering Discarded Materials when the vehicles arrive at the Facility. In addition, Facility operator shall weigh and record outbound weights of vehicles for which Facility operator does not maintain tare weight information. Furthermore, Facility operator shall weigh and record outbound weights of all Transfer vehicles Transporting Discarded Materials from a Transfer Facility to another Approved Facility(ies) for Processing or Disposal.
- F. **Records.** Facility operator shall maintain scale records and reports that provide information including date of receipt, inbound time, inbound and outbound weights (or tare weights) of vehicles, vehicle identification number, jurisdiction of origin of materials delivered, type of material, Contractor/hauler identification, and classification, type, weight, and final destination of Discarded Material if the Discarded Materials are Transferred to another Approved Facility(ies).

- G. **Exceptions to Weighing Requirements.** If the Approved Facility does not have motor vehicle scales to weigh Contractor's vehicles and Discarded Materials delivered to the Facility, Contractor shall obtain a receipt for delivery of the Discarded Materials that identifies the date and time of delivery, the type of material delivered, and the vehicle number. Contractor or Facility operator shall estimate the tonnage of material delivered for each load based on the volumetric capacity of the vehicle and material density factors (e.g., pounds per cubic yard) approved by or designated by the City.
- H. **Upon-Request Reporting.** If vehicle receiving and unloading operations are recorded on video cameras at the Approved Facilities, Contractor shall make those videos available for City review during the Approved Facilities' operating hours, upon request of the City, and shall provide the name of the driver of any particular load if available.

6.5 Rejection of Excluded Waste

- A. **Inspection.** Contractor will use standard industry practices to detect and reject Excluded Waste in a uniform and non-discriminatory manner and will not knowingly accept Excluded Waste at the Approved Facility(ies). Contractor will comply with the inspection procedure contained in its permit requirements. Contractor will promptly modify that procedure to reflect any changes in permits or Applicable Law.
- B. **Excluded Waste Handling and Costs.** Contractor will arrange for or provide handling, Transportation, and delivery to a Recycling, incineration, or a Disposal facility permitted in accordance with Applicable Law of all Excluded Waste detected at the Approved Facility(ies). Contractor is solely responsible for making those arrangements or provisions and all costs thereof. Nothing in this Agreement will excuse the Contractor from the responsibility of handling Excluded Wastes that Contractor inadvertently accepts in a lawful manner and of arranging for the disposition of that Excluded Waste in accordance with Applicable Law.

6.6 Discarded Materials Evaluations at Approved Facilities

- A. **General.** Contractor shall conduct the following "evaluations" at Approved Facilities:
 - 1. **Gray/Black Container Waste Evaluations.** Waste evaluations of Gray/Black Container Waste at the Approved Transfer Facility (if applicable) in accordance with 14 CCR Sections 18998.1(a)(3)(A) and 17409.5.7.
 - 2. **Source Separated Organic Waste Recovery Efficiency Evaluations.** Waste evaluations at Approved Transfer Facility (if applicable) or Approved Processing Facility(ies) in accordance with 14 CCR Sections 17409.5.1 to 17409.5.5.
 - 3. **Evaluation of Organic Waste in Residuals.** Compliance evaluations of Organic Waste to determine the level of Organic Waste in materials sent for Disposal in

accordance with 14 CCR Sections 17409.5.3, 17409.5.5, 17867 (Compost operations and facilities), and 17896.44.1 (In-vessel digestion operations and facilities).

- B. **Record Keeping and Reporting.** For the evaluations described above, Contractor shall maintain all records and submit reports to CalRecycle as described in 14 CCR Division 7, Chapter 3, Article 6.3, as applicable. Contractor shall report this information to the City on a monthly basis in accordance with Article 8.
- C. **Scheduling of Evaluations.** Contractor shall schedule evaluations during normal working hours. Contractor shall provide City notice of its intent to conduct evaluations at the Approved Facility(ies) at least ten (10) working days in advance of the evaluations.
- D. **Observance of Study by City and/or CalRecycle.** Contractor acknowledges that, upon request, a representative of the City and/or CalRecycle may oversee its next scheduled quarterly sampling and evaluation of any of the evaluations described in Section 6.6.A of this Exhibit 6 conducted at the Approved Facility(ies).

EXHIBIT 7:

COLLECTION SYSTEM SPECIFICATIONS

1. **General.** Upon initiation of services under this Agreement, Contractor shall provide a three-Container Collection program for the separate Collection of Source Separated Recyclable Materials, Source Separated Organic Waste, and Gray/Black Container Waste as specified in this Section, using Containers that comply with the requirements of Section 4.5.4.1.
- 1A. **Source Separated Recyclable Materials Collection (Blue Container).** Contractor shall provide Blue Containers to Customers for Collection of Source Separated Recyclable Materials. Contractor shall Transport the Source Separated Recyclable Materials to (i) the Approved Source Separated Recyclable Materials Processing Facility, or (ii) the Approved Transfer Facility for Transfer and Transport to the Approved Source Separated Recyclable Materials Processing Facility, as specified in Exhibit 6.

Source Separated Recyclable Materials that are to be accepted for Collection in the Source Separated Recyclable Materials Collection program include the materials defined Section 1.78; such materials shall include Paper Products and Printing and Writing Papers as defined by SB 1383, 14 CCR Section 18982(a). The Parties agree that the list of accepted types of Source Separated Recyclable Materials may be added to or removed from time to time at the sole discretion of the City provided that in all cases Source Separated Recyclable Materials (including Paper Products and Printing and Writing Papers as defined by SB 1383, 14 CCR Section 18982(a)) is included for Collection. Contractor shall not add or remove materials to or from this list without written approval from the City or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. Prohibited Container Contaminants shall not be Collected in the Blue Containers.

- 1B. **Source Separated Organic Waste Collection (Green Container).** Upon initiation of services under this Agreement, Contractor shall provide Green Containers to Customers for Source Separated Organic Waste Collection. Contractor shall Transport the Source Separated Organic Waste to (i) the Approved Organic Waste Processing Facility, or (ii) the Approved Transfer Facility for Transfer and Transport to the Approved Organic Waste Processing Facility, as specified in Exhibit 6.

Source Separated Organic Waste that are to be accepted for Collection in the Source Separated Organic Waste Collection program include the following: Food Scraps, Food-Soiled Paper, Compostable Plastics, and Green Waste. The Parties agree that types of Source Separated Organic Waste may be added to or removed from this list from time to time at the sole discretion of the City. Contractor shall not add or remove materials to or from this list without written approval from the City or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. Carpets, Non-

Compostable Paper, textiles, and Prohibited Container Contaminants shall not be Collected in the Green Containers.

Green Waste that is to be accepted for Collection in the Source Separated Organic Waste Collection program includes the materials defined in Section 1.56. The Parties agree that accepted types of Organic Waste may be added to or removed from this list from time to time at the sole discretion of the City. Contractor shall not add or remove materials to or from this list without written approval from the City or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. Carpets, Non-Compostable Paper, textiles, and Prohibited Container Contaminants shall not be Collected in the Green Containers.

Contractor may Collect Compostable Plastics in the Green Containers for Processing at the Approved Organic Waste Processing Facility. At least three (3) months prior to the commencement of the Collection of Compostable Plastics in the Source Separated Organic Waste program, Contractor shall provide written notification to the City that the Facility can Process and recover these Compostable Plastics. Contractor shall provide written notification to the City annually that the Facility has and will continue to have the capabilities to Process and recover the Compostable Plastics. Contractor shall notify the City within five (5) business days of the Facility's inability to accept Compostable Plastics. The notification shall include: a description of the reasons the Facility is no longer able to Process and recover Compostable Plastics; the period of time the Facility will not Process and recover Compostable Plastics; and the Contractor's proposed plan to assist in education and outreach of Customers in the event that Compostable Plastics are no longer accepted for Collection. Such changes shall be handled as a change in scope pursuant to Section 2.10.

1D. **Gray/Black Container Waste Collection (Gray/Black Container).** Contractor shall provide Gray/Black Containers to Customers for Collection of Gray/Black Container Waste. Contractor shall Transport the Gray/Black Container Waste to (i) the Approved Disposal Facility, or (ii) the Approved Transfer Facility for Transfer and Transport to the Approved Disposal Facility, as specified in Exhibit 6. Contractor may allow carpets and textiles to be placed in the Gray/Black Containers. Prohibited Container Contaminants shall not be Collected in the Gray/Black Containers.

2. **Use of Plastic Bags for Source Separated Organic Waste Collection**

2A. **Option 1: Food Waste in Plastic Bags in the Green Containers.** Contractor shall allow Customers and Generators to place Food Waste in plastic bags and put the bagged Food Waste in the Green Container. At least three (3) months prior to the commencement of the use of plastic bags for the Food Waste program, Contractor shall provide written notification to the City that allowing the use of bags does not inhibit the ability of the City to comply with SB 1383, and that the Approved Organic Waste Processing Facility can Process and remove plastic bags when it recovers Source Separated Organic Waste.

Annually, in accordance with Article 8, Contractor shall provide written notification to the City that the Facility has and will continue to have the capabilities to Process and remove plastic bags when it recovers Source Separated Organic Waste. If, at any time during the Term of the Agreement, the Approved Organic Waste Processing Facility can no longer accept plastic bags, City may assess Liquidated Damages or deem such failure an event of default under Section 11.1. Contractor shall notify the City within five (5) business days of the Facility's inability to accept plastic bags. The notification shall include: a description of the reasons the Facility is no longer able to Process and recover plastic bags; the period of time the Approved Facility will not Process and recover plastic bags; and the Contractor's proposed plan to assist in education and outreach of Customers in the event that plastic bags are no longer accepted for Collection. Such changes shall be handled as a change in scope pursuant to Section 2.10.

3. **C&D Collection**

Contractor shall Collect C&D materials from all Customers that subscribe to its C&D Collection services and Transport the C&D to (i) the Approved C&D Processing Facility, or (ii) the Approved Transfer Facility for Transfer and Transport to an Approved C&D Processing Facility. Contractor shall provide C&D Collection and Processing services in accordance with this Agreement. Contractor shall charge Customers for C&D Collection services at City-approved Rates.

**EXHIBIT 8:
CITY FACILITIES**

EXHIBIT 9:
CITY STREET AND PARK CONTAINERS