

**DRAFT AGREEMENT**

**BETWEEN**

**THE CITY OF PLEASANTON**

**AND**

**{INSERT CONTRACTOR NAME}**

**FOR**

**RECYCLABLE MATERIALS PROCESSING AND DIVERSION  
SERVICES**

\_\_\_\_\_, 2025



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## EXHIBITS

- A. Reporting Requirements
- B. Performance Standards and Liquidated Damages
- C. Guaranty Agreement
- D. Preliminary List of Recyclable Materials
- E. Contractor's Proposal
- F. Approved Affiliates and Subcontractors
- G. Initial Tipping Fees for Post Collection
- H. Recyclable Materials Revenue Sharing Calculation
- I. Contractor's Recyclable Materials Characterization Study Methodology
- J. Labor Agreements
- K. Facility Description
- L. Iran Contracting Certification

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40 WHEREAS, the City Council further declares its intent to approve and maintain reasonable Rates for the  
41 Collection, Recycling, Processing, Composting, Transfer and/or Disposal of Solid Waste, Recyclable Materials, and  
42 Organic Materials;

43 WHEREAS, the City has entered into a franchise agreement with Pleasanton Garbage Service (“Franchised  
44 Collector”) for the Collection, Transfer, and Transport of Solid Waste, Recyclable Materials, and Organic Materials  
45 generated within the City;

46 WHEREAS, the City Council initiated a request for proposals for Recyclable Materials Processing services,  
47 and through a competitive procurement process received Contractor’s proposal;

48 WHEREAS, the City Council has found and determined, based on Contractor’s proposal, qualifications,  
49 demonstrated experience, reputation, and reasonable and competitive cost to the City, that Contractor is best able  
50 to provide Recyclable Materials Processing services in order to protect public health, safety, and well-being of the  
51 City;

52 WHEREAS, Contractor has represented and warranted to the City that it has the experience, responsibility,  
53 qualifications, and ability to implement safe, thorough, and competent Processing and Diversion services in  
54 compliance with Applicable Law and the provisions of this Agreement;

55 WHEREAS, the City has determined that, in the event Contractor satisfies the terms and conditions of this  
56 Agreement, it is in the best interest of the City and its residents, taking into account the qualifications and experience  
57 of Contractor, the cost of providing such services, and the revenues from the sale of materials for the City, to ensure  
58 the Delivery of Recyclable Materials collected in the City by the City’s Franchised Collector to the Approved  
59 Processing Facility(ies);

60 WHEREAS, both the City and Contractor are mindful of the provisions of the laws governing the safe  
61 transfer, transport, Processing and Diversion of Recyclable Materials and Disposal of Solid Waste, including AB 939,  
62 AB 341, AB 1826, SB 1383, and the Resource Conservation and Recovery Act, 42 U.S.C. § 9601 et seq.;

63 WHEREAS, neither the City nor Contractor can anticipate all of the possible needs, considerations, or  
64 eventualities that may arise during the Term of this Agreement, and the Parties agree that they will work together  
65 in a spirit of mutual cooperation to resolve any such issues as and when they arise; and,

66 WHEREAS, neither the City nor Contractor can anticipate any changes in the industry as to the future means  
67 or methods of collection, transfer, transport, processing, diversion, and/or disposal services, and will work  
68 cooperatively to address such opportunities and/or issues as and when they arise.

69 NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein,  
70 and for other good and valuable consideration, the Parties do hereby agree as follows:

71 **ARTICLE 1**  
72 **DEFINITIONS**

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

75 “**AB 901**” means Assembly Bill 901, approved by the Governor of the State of California on October 10, 2015, which  
76 amended Section 41821.5 of; amended, renumbered, and added Section 41821.6 of; and, added Sections 41821.6



77 to, the California Public Resources Code, relating to solid waste, as amended, supplemented, superseded, and  
78 replaced from time to time.

79 **"AB 939"** means the California Integrated Waste Management Act of 1989 (California Public Resources Code §  
80 40000, et seq.), as amended, supplemented, superseded, and replaced from time to time.

81 **"AB 1201"** means Assembly Bill 1201, approved by the Governor of the State of California on October 5, 2021, which  
82 amended Sections 42356, 42356.1, and 42357 of, and amended the heading of Chapter 5.7 (commencing with  
83 Section 42355) of Part 3 of Division 30 of, the California Public Resources Code, relating to solid waste, as amended,  
84 supplemented, superseded, and replaced from time to time.

85 **"AB 1594"** means Assembly Bill 1594 approved by the Governor of the State of California on September 28, 2014,  
86 which amended Sections 40507 and 41781.3 of the California Public Resources Code, relating to solid waste, as  
87 amended, supplemented, superseded, and replaced from time to time.

88 **"AB 1669"** means Assembly Bill 1669, approved by the Governor of the State of California on September 30, 2016,  
89 which amends California Labor Code Sections 1070 through 1076 with respect to the hiring of displaced employees  
90 under service contracts for the collection and transportation of solid waste.

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

94 **"AB 2176"** means the Large Venue Recycling Act (an act to amend Section 42911 of, and to add Chapter 12.7  
95 (commencing with Section 42648) to Part 3 of Division 30 of, the California Public Resources Code, relating to  
96 Recycling), also commonly referred to as "AB 2176," as amended, supplemented, superseded, and replaced from  
97 time to time.

98 **"Accept"** or **"Acceptance"** (or other variations thereof) means the receipt and acceptance of Delivered Franchised  
99 Material by an Approved or Designated Facility that results in a transfer of Ownership of any Franchised Material: i)  
100 from the Franchised Collector to Contractor; or, ii) from Contractor to an Approved or Designated Facility.

101 **"Actions"** means all actions including claims, demands, causes of action, suits, mediation, arbitration, hearings,  
102 investigations, inquiries and proceedings, whether legal, judicial, quasi-judicial, governmental or administrative in  
103 nature and whether threatened, brought, instituted or settled.

104 **"Advanced Clean Fleets Regulation"** means 13 CCR Sections 2013, 2013.1, 2013.2, 2013.3, 2013.4, 2014,2014.1,  
105 2014.2, 2014.3, 2015, 2015.1, 2015.2, 2015.3, 2015.4, 2015.5, 2015.6, and 2016, as amended, supplemented,  
106 superseded, and replaced from time to time.

107 **"Affiliate"** means any Person, corporation, or other entity directly or indirectly controlling or controlled by another  
108 Person, corporation or other entity, or under direct or indirect common management or control with such Person,  
109 corporation, or entity. As between any two (2) or more Persons or entities, when ten percent (10%) of one is Owned,  
110 managed, or controlled by another, they are hereunder Affiliates of one another. In a joint venture, each party to  
111 the joint venture may have his or her own Affiliate.

112 **"Agreement"** means this Agreement for Materials Transfer Processing, and Diversion Services between the City and  
113 Contractor, including all exhibits, attachments, and any future amendments hereto.

114 **"Alternative Daily Cover (ADC)"** means cover material used at a Disposal Site, other than at least six (6) inches of  
115 earthen material, placed on the surface of the active face of the refuse fill area at the end of each operating day to  
116 control blowing litter, fires, odor, scavenging, and vectors; or, means materials used as soil amendments for erosion  
117 control and landscaping.

118 **“Alternative Intermediate Cover (AIC)”** means CalRecycle-approved materials other than soil used at a landfill on  
119 all surfaces of the fill where no additional Solid Waste will be deposited within one hundred eighty (180) Days.  
120 Generally, these materials must be processed so that they do not allow gaps in the face surface, which would provide  
121 breeding grounds for insects and vermin.

122 **“Annual Percentage Change”** means the annual percentage change in any of the indices defined below, calculated  
123 as described in the following paragraph.

124 The Annual Percentage Change for a cost index shall be calculated as the Average Index Value for the most recently  
125 available twelve- (12-) month period of the then-current Rate Year minus the Average Index Value for the  
126 corresponding twelve- (12-) month period of the most-recently-completed Rate Year and the result of which shall  
127 be divided by the Average Index Value for the same twelve- (12-) month period of the most recently completed Rate  
128 Year. The Annual Percentage Change shall be rounded (up or down) to the nearest thousandth (1,000th).

129 For example, if Contractor is preparing its Rate application in January of 2028 for Rates to be effective for Rate Year  
130 Two, the Annual Percentage Change in CPI-U shall be calculated as follows: [(Average Index Value CPI-U for January  
131 2027 through December 2027) – (Average Index Value CPI-U for January 2026 through December 2026)] / (Average  
132 Index Value CPI-U for January 2026 through December 2026)].

133 **“Applicable Law”** means all Federal, State, County, and local laws, regulations, rules, orders, judgments, decrees,  
134 permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection,  
135 Transportation, Processing, and Disposal of Recyclable Materials, Organic Materials, C&D Debris, and/or Excluded  
136 Materials that are in force on the Effective Date and as may be enacted, issued, or amended during the Term of this  
137 Agreement. The Parties acknowledge that, as of the date of this Agreement, the State has passed legislation  
138 including, but not limited to, AB 1201, SB 54, SB 343, and the Advanced Clean Fleets Regulation, where further  
139 regulatory requirements may be established.

140 **“Approved Affiliates”** means the Affiliates listed on Exhibit F that provide services, property, equipment, vehicles,  
141 or other support related directly or indirectly to this Agreement.

142 **“Approved Disposal Facility”** means the \_\_\_\_\_, which is Owned by \_\_\_\_\_ and operated  
143 by \_\_\_\_\_, and approved by the City for Disposal of Residue.

144 **“Approved Facility(ies)”** means the Approved Disposal Facility and Approved Recyclable Materials Processing  
145 Facility

146 **“Approved Recyclable Materials Processing Facility”** means the \_\_\_\_\_, which is Owned by  
147 \_\_\_\_\_ and operated by \_\_\_\_\_, and approved by the City for Processing of Recyclable  
148 Materials.

149 **“Average Index Value”** means the sum of the monthly index values during the most recently available twelve- (12-)  
150 month period divided by twelve (12) (in the case of indices published monthly) or the sum of the bi-monthly index  
151 values divided by six (6) (in the case of indices published bi-monthly).

152 **“Batteries”** means alkaline batteries that are typically found in common household items such as flashlights,  
153 cameras, and toys, and excludes rechargeable batteries or any type of battery found in a motorized or electric  
154 vehicle.

155 **“Beneficial Reuse Purposes”** means use of material for beneficial reuse at a Disposal Site, which shall include, but  
156 not be limited to, the following: Alternative Daily Cover, Alternative Intermediate Cover, final cover foundation layer,  
157 liner operations layer, leachate and landfill gas collection system, construction fill, road base, wet weather  
158 operations pads and access roads, and soil amendments for erosion control and landscaping.

159 **“Bulky Items”** means discarded appliances, furniture, tires, carpets, mattresses, and similar large items that require  
160 special Collection due to their size, but can be Collected by one Person without the assistance of special loading  
161 equipment (such as forklifts or cranes) without violating vehicle load limits. They do not include abandoned  
162 automobiles, large auto parts, or trees.

163 **“Business Days”** means Days during which the City’s offices are open to do business with the public.

164 **“CALGreen”** means the California Green Building Standards Code, Part 11, Title 24, of the CCR, as amended,  
165 supplemented, superseded, and replaced from time to time, and including, but not limited to, any implementing  
166 local regulations related to CALGreen that are included in any Member Agency Municipal Code.

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

170 **“CalRecycle”** means California’s Department of Resources Recycling and Recovery.

171 **“CERCLA”** means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C.  
172 Section 9600 et seq.).

173 **“Change in Law”** means any of the following events or conditions that has a material and adverse effect on the  
174 performance by the Parties of their respective obligations under this Agreement (except for payment obligations):

175 (1) The enactment, adoption, promulgation, issuance, modification, elimination, or written change in  
176 administrative or judicial interpretation of any Applicable Law on or after the Effective Date; or,

177 (2) The order or judgment of any governmental body, on or after the Effective Date, to the extent such  
178 order or judgment is not the result of willful or negligent action, error or omission, or lack of reasonable  
179 diligence of the City or Contractor, whichever is asserting the occurrence of a Chance in Law; provided,  
180 however, that the contesting in good faith or the failure in good faith to contest any such order or  
181 judgment shall not constitute or be construed as such a willful or negligent action, error or omission,  
182 or lack of reasonable diligence.

183 **“City”** means the City of Pleasanton, a municipal corporation, and all the territory lying within the municipal  
184 boundaries of the City as presently existing or as such boundaries may be modified during the Term.

185 **“City Contract Manager”** means the City Manager or their designee.

186 **“Collect” or “Collection”** (or any variation thereof) means the act of removing Recyclable Materials from the place  
187 of generation within the City, and Delivering such materials to the Approved Facility(ies).

188 **“Commencement Date”** means \_\_\_\_\_, or the date when Contractor shall begin to provide all Services set  
189 forth in this Agreement.

190 **“Commercial”** means of, from or pertaining to non-Residential premises where business activity is conducted,  
191 including, but not limited to, wholesale and retail sales and operations, services, manufacturing and industrial  
192 operations, but excluding businesses conducted upon Residential property which are permitted under applicable  
193 zoning regulations and are not the primary use of the property.

194 **“Construction and Demolition Debris” or “C&D”** means Discarded Materials removed from Premises during the  
195 construction or renovation of a structure as a result of construction, remodeling, repair, or demolition operations  
196 on any Residential or Commercial building or other structure, including pavement. Typically, building or other

197 modification Permits are required for Premises during construction or renovation; however, a property owner's  
198 failure to secure Permits shall not change the way materials from such projects are defined herein.

199 **"Contaminant(s)"** means any materials not identified in Exhibit D, which are Collected by Franchised Collector with  
200 Recyclable Materials excluding Items 2 through 12 in the definition of Unpermitted Waste.

201 **"Contractor"** means \_\_\_\_\_, any Subcontractors, and Approved Affiliates listed in Exhibit F.

202 **"Contractor's Proposal"** means the proposal to provide the Services described in this Agreement, submitted to the  
203 City by Contractor, which is attached to this Agreement as Exhibit E, and incorporated herein by reference.

204 **"Contractor Revenue"** means Gross Receipts plus any revenue received from the sale of Recovered Materials less  
205 Recovered Materials Revenue Payments to the City pursuant to Article 7.

206 **"CPI-U"** means the Consumer Price Index, All Urban Consumers, all items, not seasonally adjusted San Francisco-  
207 Oakland-Hayward Metropolitan Area compiled and published by the U.S. Department of Labor, Bureau of Labor  
208 Statistics.

209 **"Criminal Activity"** means, but is not limited to:

210 (1) any criminal offense in connection with obtaining, attempting to obtain or procuring a public or private  
211 agreement related to Solid Waste, Organic Materials, or Recyclable Materials services of any kind,  
212 including this Agreement;

213 (2) bribery or attempting to bribe a public officer or employee of a local, State, or Federal agency;

214 (3) fraud, embezzlement, extortion, racketeering, false claims, forgery, falsification or destruction of  
215 records, obstruction of justice, knowingly receiving stolen property, theft; and/or,

216 (4) violation of antitrust laws, including laws relating to price-fixing, bid-rigging and sales and market  
217 allocation, and of unfair and anti-competitive trade practice laws, including with respect to  
218 determination of Recovered Materials Revenue Payments.

219 **"Days"** means calendar days, including Saturdays, Sundays, and Holidays, except as otherwise specifically provided  
220 herein.

221 **"Delivered"** or **"Delivery"** (or other variations thereof) means arrival of Recyclable Materials in Franchised Collector's  
222 Collection vehicles at the entrance of an Approved Facility during Facility receiving hours for the purposes of  
223 Acceptance.

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

229 **"Direct Costs"** means the sum of:

230 (1) payroll costs directly related to Contractor's performance, or supervision of any obligation pursuant to  
231 the provisions of this Agreement, or the City's administration and enforcement of this Agreement,  
232 comprised of compensation and fringe benefits, including vacation, sick leave, holidays, retirement,  
233 workers compensation insurance, Federal and State unemployment taxes and all medical and health  
234 insurance benefits; plus

- 235 (2) the costs of materials, services, direct rental costs and supplies; plus
- 236 (3) the reasonable costs of any payments to Subcontractors necessary to and in connection with the  
237 performance under or administration and enforcement of this Agreement; plus
- 238 (4) any other cost or expense which is directly or normally associated with the task performed.

239 Such Direct Costs are to be substantiated by: (i) a certificate signed by the principal financial officer of Contractor or  
240 the authorized representative of the City or his or her designee, as the case may be, setting forth the amount of the  
241 cost and the reason why the cost is properly chargeable to the City or Contractor, as the case may be, and  
242 representing that the cost is an arm's length and competitive price, if there are competitive prices, for the service or  
243 materials supplied; and (ii) if the City or Contractor requests, as the case may be, additional back-up documentation  
244 as may be available to reasonably substantiate any Direct Cost, including invoices from suppliers and Subcontractors.

245 **"Disposal"** (or any variation thereof) means the final disposition of Solid Waste or Processing Residue at a Disposal  
246 Site.

247 **"Disposal Site"** means a permitted location for the ultimate Disposal of Solid Waste and Processing Residue.

248 **"Diversion"** (or any variation thereof) means activities that reduce or eliminate the amount of Solid Waste from  
249 Disposal, including, but not limited to, Processing Recyclable Materials at a Processing Facility.

250 **"Effective Date"** means the date on which the Agreement becomes binding upon the Parties, which is the date when  
251 the latter of the Parties has executed this Agreement.

252 **"Electronic Materials"** or **"E-Materials"** means discarded electronic equipment including, but not limited to,  
253 televisions, computer monitors, central processing units (CPUs), laptop computers, computer peripherals (including  
254 external hard drives, keyboards, scanners, and mice), printers, copiers, facsimile machines, radios, stereos, stereo  
255 speakers, VCRs, DVDs, camcorders, microwaves, telephones, cellular telephones, and other electronic devices. Some  
256 E-Materials or components thereof may be Hazardous Waste or include Hazardous Substances and thus require  
257 special handling, Processing, or Disposal.

258 **"Event of Default"** means a default by Contractor as described in Section 11.4.

259 **"Excluded Materials"** means Hazardous Substance, Hazardous Waste, Infectious Waste, Designated Waste, volatile,  
260 corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that Contractor reasonably  
261 believes would, as a result of or upon Disposal, be a violation of local, State or Federal law, regulation or ordinance,  
262 including land use restrictions or conditions, waste that cannot be Disposed of in Class III landfills, waste that in  
263 Contractor's reasonable opinion would present a significant risk to human health or the environment, cause a  
264 nuisance or otherwise create or expose Contractor or the City to potential liability; but not including de minimis  
265 volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after  
266 implementation of programs for the safe Collection, Recycling, treatment, and Disposal of Batteries and paint in  
267 compliance with Sections 41500 and 41802 of the California Public Resources Code.

268 **"Extended Producer Responsibility Program"** or **"EPR Program"** means an environmental program or policy  
269 codified, enforced, and/or monitored by local, State, or Federal governments in which a producer's, distributor's, or  
270 retailer's administrative, financial, operational, and/or physical responsibility for a product is extended to the post-  
271 consumer stage of a product's life cycle. Extended Producer Responsibility Programs may be implemented by  
272 individual producers, collective industry organizations such as a producer responsibility organization or Stewardship  
273 Organization, or other regulated entities specified under the program. Such programs may cover individual products  
274 or categories of products, using one (1) or more funding mechanisms, as defined in the regulation(s) establishing the  
275 program.

276 **“Facility”** means any plant(s) or site(s), Owned or leased, maintained, operated and/or used by Contractor for  
277 purposes of performing under this Agreement.

278 **“Federal”** means belonging to or pertaining to the Federal government of the United States.

279 **“Franchise”** means the right granted by the City to the Franchised Collector to provide Solid Waste, Recyclable  
280 Materials, and Organic Materials Collection services within the City and Transportation of and Delivery of the  
281 Recyclable Materials to a Facility selected by the City in accordance with the terms and conditions of the Franchise  
282 Agreement between the City and the Franchised Collector.

283 **“Franchised Collector”** means Pleasanton Garbage Service, Inc. or PGS, which entered into an exclusive franchise  
284 agreement with the City, entitled “ Agreement between the City of Pleasanton and Pleasanton Garbage Service, Inc.  
285 for Solid Waste, Recyclable Materials, and Organic Materials Services,” dated [REDACTED].

286 **“Generator”** means any Person that generates or produces Recyclable Materials, or whose act first causes Recyclable  
287 Materials to become subject to regulation.

288 **“Guarantor”** means [REDACTED].

289 **“Hazardous Substance”** means any of the following: (a) any substances defined, regulated or listed (directly or by  
290 reference) as "Hazardous Substances," "hazardous materials," "Hazardous Wastes," "toxic waste," "pollutant," "toxic  
291 substances," or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the  
292 Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, 42 USC §9601 et seq.  
293 (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and  
294 Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety  
295 Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and, (vii) California  
296 Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated  
297 statutes or acts currently existing or hereafter enacted; and, (c) any other hazardous or toxic substance, material,  
298 chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable Federal, State  
299 or local environmental laws currently existing or hereinafter enacted, including, without limitation, friable asbestos,  
300 polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

301 **“Hazardous Waste”** means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely  
302 Hazardous Waste by the State of California in Health and Safety Code Sections 25117, 25110.02, and 25115, or in  
303 the future amendments to or recodifications of such statutes, or identified and listed as Hazardous Waste by the  
304 U.S. Environmental Protection Agency, pursuant to the Federal Resource Conservation and Recovery Act (42 USC  
305 Section 6901, et seq.), all future amendments thereto and all rules and regulations promulgated thereunder.

306 **“Holidays”** are defined as New Year’s Day and Christmas Day.

307 **“Household Hazardous Waste”** or **“HHW”** means, as defined in California Health and Safety Code Section  
308 25218.1(e), any Hazardous Waste generated incidental to owning or maintaining a place of residence but does not  
309 include any waste generated in the course of operating a business at a residence.

310 **“Infectious Waste”** means medical or biomedical waste generated at hospitals, public or private medical clinics,  
311 dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and  
312 other similar establishments that are identified in Health and Safety Code Section 25117.5.

313 **“Liquidated Damages”** means the amounts agreed upon by Contractor and City as fair and reasonable damages for  
314 Contractor’s failure to meet specific quantifiable standards of performance as described in Section 11.9 and Exhibit  
315 B.

316 **“Load”** means the payload contents of a Collection vehicle or Transfer Vehicle measured in Tons.

317 **“Market” or “Marketing”** (or other variations thereof) means all obligations of Contractor hereunder with respect  
318 to selling or giving away Recovered Materials, including market promotion, storage, insurance, packaging,  
319 transportation, sales, weighing, and maintaining records with respect thereto.

320 **“Maximum Vehicle Turnaround Time”** means an average weekly turnaround time of twenty (20) minutes for  
321 vehicles Delivering Recyclable Materials to the Approved Facilities, where the turnaround time for each vehicle is  
322 measured from the vehicle’s arrival time, which shall be recorded at the motor vehicle scale when the inbound  
323 weight of the vehicle is recorded at the Approved Facility property, until the vehicle’s departure time, when it exits  
324 that Approved Facility. This excludes driver personal time and mechanical problems of the Franchised Collector.

325 **“Multi-Family Dwelling” or “Multi-Family”** means any Residential complex, other than a Single-Family premises,  
326 used for Residential purposes, which has centralized Collection service for all Residential units in the building and  
327 may be billed as one address.

328 **“Ownership” or “Own”** (or other variations thereof) means ownership as defined in the constructive Ownership  
329 provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date herein, and Section  
330 318(a)(5)(C) shall be disregarded. For purposes of determining Ownership under this paragraph and constructive or  
331 indirect Ownership under Section 318(a), Ownership interest of less than ten (10) percent shall be disregarded and  
332 percentage interests shall be determined on the basis of the percentage of voting interest of value which the  
333 Ownership interest represents, whichever is greater.

334 **“Party(ies)”** means the City and Contractor, individually or together.

335 **“Permits”** means all Federal, State, county, City, or other local or any other governmental permits, orders, licenses,  
336 approvals, authorizations, consents, and entitlements that are required under Applicable Law to be obtained or  
337 maintained by any Person, including Contractor, with respect to the Services performed under this Agreement, as  
338 renewed or amended from time to time.

339 **“Person(s)”** means any individual, business, firm, association, organization, partnership, public or private  
340 corporation, trust, joint venture, political subdivision, special purpose district, the County of Alameda, or public or  
341 governmental entity.

342 **“Process” or “Processing”** (or any variation thereof) means the controlled separation, volume reduction, or  
343 conversion of materials, including, but not limited to, organized, manual, automated, or mechanical sorting, the use  
344 of vehicles for spreading of waste for the purpose of Recovery, and/or includes the use of conveyor belts, sorting  
345 lines, or volume reduction equipment, or as otherwise defined in 14 CCR Section 17402(a)(20) to produce  
346 Recoverable Materials for Recycling.

347 **“Processing Facility”** means a permitted Facility in which materials are sorted, separated, or otherwise manipulated  
348 for the purposes of Recovering marketable commodities.

349 **“Rate Year”** means a twelve (12) month period, commencing July 1 and concluding June 30, with the exception of  
350 Rate Year One.

351 **“Rate Year One”** means the first Rate Year covered by this Agreement.

352 **“Recovery” or “Recover” or “Recovered”** (or other variations thereof) means the picking, pulling, sorting, separating,  
353 and classifying of Recyclable Materials whether by manual or mechanical means, after Acceptance of the materials  
354 and before Marketing of Recovered Materials, including Recycling, material reuse and recovery.

355 **“Recovered Material”** means materials which have been Recovered from Recyclable Materials through Processing  
356 activities.

357 **“Recovered Materials Revenue Payments”** means the money paid by Contractor to the City on a quarterly basis  
358 representing the City’s share of the revenues Contractor receives from the Marketing of the Recovered Materials  
359 resulting from the Processing of Recyclable Materials.

360 **“Recyclable Materials”** means newspaper, cardboard, mixed color paper, white paper, junk mail, magazines,  
361 telephone books, paper bags, cereal and food boxes, egg cartons, plastic bottles and containers labeled #1-7, plastic  
362 milk containers, detergent containers, clear, brown, and green food and beverage container glass, cans of aluminum,  
363 steel, tin, food cans, empty aerosol cans, pipe tins or other materials having economic value contained within a Load  
364 of Recyclable Materials which have been separated from Solid Waste and Organic Materials prior to Collection, and  
365 may also include any other type of Recyclable waste material agreed on by the Parties. Recyclable Materials do not  
366 include Unpermitted Materials, Excluded Materials, or other Franchised Materials. Recyclable Materials are the  
367 materials listed in Exhibit D that may be replaced by a list posted by the City in their sole discretion from time to  
368 time and provided to Contractor.

369 **“Recycled”** or **“Recycling”** (or other variations thereof) means the treating or reconstituting materials that are or  
370 would otherwise be Disposed of and returning them to the economic mainstream in the form of raw material for  
371 new, reused, or reconstituted products. Recycling includes processes deemed to constitute a reduction of landfill  
372 Disposal pursuant to 14 CCR, Division 7, Chapter 12, Article 2. Recycling does not include the use of Franchised  
373 Materials for gasification or transformation as defined in Public Resources Code Section 40201.

374 **“Residential”** means of, from, or pertaining to a Single-Family premises or Multi-Family premises including Single-  
375 Family homes, apartments, condominiums, townhouse complexes, mobile home parks, and cooperative  
376 apartments.

377 **“Residue”** means materials that remain after Acceptance, Processing, and Diversion of Recyclable Materials, which  
378 may not be Recovered, and which subsequently require Disposal.

379 **“SB 54”** means the Plastic Pollution Prevention and Packaging Producer Responsibility Act approved by the Governor  
380 of the State of California on June 30, 2022, which amended Section 41821.5 of the California Public Resources Code  
381 to add Chapter 3 (commencing with Section 42040) to Part 3 of Division 30, as amended, supplemented, superseded,  
382 and replaced from time to time. For the purposes of this Agreement, SB 54 includes any implementing regulations  
383 developed by CalRecycle, as amended supplemented, superseded, and replaced from time to time.

384 **“SB 343”** means the Environmental Advertising: Recycling Symbol: Recyclability: Products and Packaging Senate Bill  
385 approved by the Governor of the State of California on October 5, 2021, which amended Sections 17580, 17580.5 of  
386 the California Business and Professions Code, and amended Sections 18015 and 42355.5 of, and added Section  
387 42355.51 to, the California Public Resources Code, relating to environmental advertising, as amended,  
388 supplemented, superseded, and replaced from time to time. For the purposes of this Agreement, SB 343 includes  
389 any implementing regulations developed by CalRecycle, as amended, supplemented, superseded, and replaced from  
390 time to time.

391 **“SB 1016”** means Senate Bill 1016 approved by the Governor of the State of California on September 26, 2008, which  
392 amended Sections 40183, 40184, 41783, 41820.6, 41821, 41850, 42921, and 42926 of, amended the headings of  
393 Article 4 (commencing with Section 41825) and Article 5 (commencing with Section 41850) of Chapter 7 of Part 2 of  
394 Division 30 of, added Sections 40127, 40145, 40150.1, 41780.05, 42921.5, and 42927 to, and repealed and added  
395 Section 41825 of, the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and  
396 replaced from time to time.

397 **“SB 1383”** means Senate Bill 1383 of 2016 approved by the Governor of the State of California on September 19,  
398 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the California Health and Safety Code, and  
399 added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the California Public Resources  
400 Code, establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived  
401 climate pollutants as amended, supplemented, superseded, and replaced from time to time.



402 For the purposes of this Agreement, SB 1383 specifically refers to the Short-Lived Climate Pollutants (SLCP): Organic  
403 Waste Reductions regulations developed by CalRecycle and adopted on November 3, 2020 that created Chapter 12  
404 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.

405 **“Services”** mean all obligations of Contractor under and in accordance with this Agreement to the City.

406 **“Single-Family Dwelling”** or **“Single-Family”** means any detached or attached house or residence designed or used  
407 for occupancy by one (1) family, provided that Collection service feasibly can be provided to such premises as an  
408 independent unit, and the owner or occupant of such independent unit is billed directly for the Collection service.  
409 Single-Family includes Residential units of a duplex, triplex, or fourplex Residential structure provided that each unit  
410 is separately billed for their specific service level.

411 **“Solid Waste”** means all putrescible and non-putrescible solid, semisolid, and associated liquid waste, including  
412 garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, discarded home and industrial appliances,  
413 dewatered, treated or chemically fixed sewage sludge which is not a Hazardous Waste, special waste, manure,  
414 vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes, which the City  
415 Municipal Code requires Generators within the City to set out for Collection. Solid Waste does not include the  
416 following:

- 417 1) Materials set out for Collection in a Container, which is specifically designated for Recyclable Materials  
418 or Organic Materials;
- 419 2) Hazardous Waste;
- 420 3) Radioactive waste;
- 421 4) Infectious Waste provided that Infectious Waste, whether treated or untreated, is not Disposed of at a  
422 Solid Waste facility; and,
- 423 5) Abandoned automobiles.

424 **“Source Separated”** means the segregation from Solid Waste, by the Generator, of materials designated for separate  
425 Collection for some form of materials Recovery or special handling.

426 **“Special Tipping Fee Review”** means an adjustment to the Tipping Fee(s) in addition to or at a time other than when  
427 periodic adjustments of the Tipping Fee(s) are made under this Agreement pursuant to Section 8.5.

428 **“Standard Industry Practice”** means (i) the then-current development and operations practices and standards of the  
429 northern California Solid Waste and materials management industry with respect to collection, transfer, transport,  
430 processing, diversion, and disposal services; and, (ii) the then-current development, operations, closure, and post-  
431 closure practices and Solid Waste Association of North America (or any successor organization) Manager of Landfill  
432 Operations Standards in meeting Contractor’s obligations under this Agreement.

433 **“State”** means the State of California.

434 **“Subcontractor”** means a Party who has entered into a contract, express or implied, with Contractor for the  
435 performance of an act on Contractor’s behalf that: (i) involves Accepting, Processing, Diverting, Marketing, Residue  
436 Disposal, and/or other handling of the Recyclable Materials; and, (ii) is necessary for Contractor’s fulfillment of its  
437 obligations for providing service under this Agreement. Vendors providing materials and supplies to Contractor shall  
438 not be considered Subcontractors.

439 **“Term”** means the duration of this Agreement, including extension periods if granted, as provided for in Section 4.1.

440 **“Tipping Fee”** or **“Tip Fee”** is the per-Ton cost assessed by an Approved Facility or Designated Facility for Transfer,  
441 Transport, Processing, and/or Disposal services plus Pass-Throughs.

442 **“Ton”** or **“Tonnage”** means a unit of measure for weight equivalent to two thousand (2,000) standard pounds where  
443 each pound contains sixteen (16) ounces.

444 **“Transfer”** means the process of managing the Delivery and Acceptance of Recyclable Materials at the Approved  
445 Facilities and the storage and loading of the Recyclable Materials into Transfer Vehicles for the purpose of  
446 Transporting the materials to the Approved Recyclable Processing Facility.

447 **“Transfer Vehicle”** means a tractor and trailer designed to haul Recyclable Materials to the Approved Facilities.

448 **“Transport”** (or any variation thereof) means the conveyance of Recyclable Materials from the point of Collection,  
449 or Transfer to an Approved Facility.

450 **“Uncontrollable Circumstance”** means, except as otherwise provided in 11.9 of this Agreement:

451 (1) Floods, earthquakes, other "acts of nature," war, civil insurrection, riots, acts of any government  
452 (including judicial action), labor unrest, including but not limited to strike, work stoppage or slowdown,  
453 sick-out, picketing, or other concerted job action, and other similar catastrophic events which are  
454 beyond the control of and not the fault of the Party claiming excuse from performance hereunder.  
455 However, labor unrest by employees of Contractor or of any Affiliate directed against Contractor or an  
456 Affiliate, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other  
457 concerted job action, is not an Uncontrollable Circumstance; or,

458 (2) A Change in Law (as defined herein).

459 **“Universal Materials”** or **“U-Materials”** means all materials as defined in Title 22, Subsections 66273.1 through  
460 66273.9 of the California Code of Regulations. These include, but are not limited to, Batteries, fluorescent light bulbs,  
461 mercury switches, and E-Materials.

462 **“Unpermitted Waste”** means wastes or other materials that the Approved Facilities may not receive under their  
463 Permits, including:

464 (1) All materials that the Approved Facilities are not permitted to Accept;

465 (2) Asbestos, including friable materials that can be crumbled with pressure and are therefore likely to  
466 emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which may  
467 be Hazardous Materials if it contains more than 1% asbestos;

468 (3) Ash residue from the incineration of Solid Wastes, including Solid Waste, Infectious Waste described in  
469 Item (8) below, wood waste, sludge not meeting at a minimum Class B standards as defined by Title 40  
470 of the Code of Federal Regulations, Part 503 (The Standards for the Use or Disposal of Sewage Sludge)  
471 and agricultural wastes;

472 (4) Auto shredder “fluff” consisting of upholstery, paint, plastics, and other non-metallic substances, which  
473 remain after the shredding of automobiles;

474 (5) Dead animals larger than 100 pounds;

475 (6) Hazardous Substances and Hazardous Waste;

- 476 (7) Industrial solid or semi-solid wastes that pose a danger to the operation of the Approved Facilities,  
477 including cement kiln dust, or process residues;
- 478 (8) Infectious Waste including wastes that have disease transmission potential and are classified as  
479 Hazardous Wastes by the State Department of Health Services, including pathological and surgical  
480 wastes, medical clinic wastes, wastes from biological laboratories, syringes, needles, blades, tubing,  
481 bottles, drugs, patient care items that as linen or personal or food service items from contaminated  
482 areas, chemicals, personal hygiene wastes, and carcasses used for medical purposes or with known  
483 infectious diseases;
- 484 (9) Liquid wastes that are not spadeable, usually containing less than 50% solids, including cannery and  
485 food processing wastes, landfill leachate and gas condensate, boiler blowdown water, grease trap  
486 pumpings, oil and geothermal field wastes, septic tank pumpings, rendering plant byproducts, sewage  
487 sludge not meeting certain quality criteria (i.e. unclassified sludge less than B), and those liquid wastes  
488 that may be Hazardous Wastes;
- 489 (10) Radioactive wastes under Chapter 7.6 (commencing with Section 25800) of Division 20 of the State  
490 Health and Safety Code, and any waste that contains a radioactive material, the storage or disposal of  
491 which is subject to any other State or Federal regulation;
- 492 (11) Sewage sludge comprised of human (not industrial) residue, excluding grit or screenings, removed from  
493 a wastewater treatment facility or septic tank, whether in a dry or semi-dry form not meeting certain  
494 quality criteria (i.e. unclassified sludge less than "B");
- 495 (12) Designated Waste if not permitted at the Approved Facilities under Applicable Law, including Permits;  
496 or,
- 497 (13) Single Loads with an excessive level of Contaminants based on visual inspection.
- 498 This definition shall be promptly amended to reflect any applicable changes in Permits or Applicable Law.

## 499 **ARTICLE 2**

### 500 **GRANT AND ACCEPTANCE OF AGREEMENT**

#### 501 **2.1 Scope of Agreement**

- 502 Through this Agreement, the City grants to Contractor the right to Process, and Divert all Recyclable Materials  
503 generated within and Collected in the City by Franchised Collector. Subject to the limitations in Section 5.1.C, and  
504 except where otherwise prohibited by Federal, State, and local laws and regulations, Contractor shall exclusively be  
505 responsible for the following:
- 506 A. Accepting, Processing and Marketing of Recyclable Materials Collected in the City;
- 507 B. Transporting and Disposing or arranging for Disposal of Residue at the Approved Disposal Facility;
- 508 C. Maintaining accurate records and providing timely reporting of all materials Accepted and transactions  
509 conducted under this Agreement;

- 510 D. Furnishing all labor, supervision, vehicles and fueling/charging, containers, and Processing equipment, other  
511 equipment, materials, supplies, and all other items and Services necessary to perform its obligations under  
512 this Agreement;
- 513 E. Paying all expenses related to provision of Services required by this Agreement, including, but not limited to,  
514 taxes, regulatory fees, governmental fees, and payments to the City, etc.;
- 515 F. Performing all Services in substantial accordance with Contractor’s Proposal (as it relates to Contractor  
516 Services) and in full accordance with this Agreement at all times using Standard Industry Practice for  
517 comparable operations. If Contractor’s Proposal and Agreement conflict, the terms and provision of the  
518 Agreement shall prevail;
- 519 G. Securing and maintaining all necessary Permits for operation of the Approved Processing Facilities;
- 520 H. Complying with Applicable Law;
- 521 I. Providing reports in a timely manner;
- 522 J. Providing all Services required by this Agreement in a thorough and professional manner so the City is  
523 provided timely, reliable, courteous, and high-quality service at all times; and,
- 524 K. Performing or providing all other Services necessary to fulfill Contractor’s obligations under this Agreement.

## 525 **2.2 Change in Marketability of Materials**

526 Should any materials not currently designated as Recyclable Materials in Exhibit D develop a value (based on  
527 independent reported values) equal to or greater than the cost of Disposal for a sustained period of six months and  
528 can reasonably be expected to at least maintain that value for the foreseeable future, the City reserves the right to  
529 add such materials to the list in Exhibit D and may have Contractor Process and Divert such materials under this  
530 Agreement. Should any materials currently designated as Recyclable Materials in Exhibit D, experience a decline in  
531 value (based on independent reported values) so that is less than the cost of Disposal for a period of six months and  
532 can reasonably be expected not to exceed the cost of Disposal for the foreseeable future, the City and Contractor  
533 shall meet to determine whether such materials shall be deleted and may have Contractor not Process and Divert  
534 such materials under this Agreement. Such change will be treated as a change in scope in accordance with  
535 procedures in Section 2.3.

## 536 **2.3 Change in Scope**

537 The City may, by written notice, direct Contractor to perform additional services or modify existing Services under  
538 this Agreement, but no change in scope shall be constructed so as to materially impair the rights or increase the  
539 obligations of Contractor granted hereunder.

- 540 A. For example, and without limitation, the City or Contractor may request the following changes in scope:
- 541 (1) Change in Marketability of materials, as provided above in Section 2.2;
- 542 (2) Inclusion/deletion of additional Recyclable Materials to Exhibit D;
- 543 (3) Inclusion/deletion of new Diversion programs;

- 544 (4) Research, development, and implementation of innovative services, which may entail different  
545 Processing, and/or Diversion methods;
- 546 (5) Research, development, and performance of pilot programs;
- 547 (6) Modification of the manner in which Contractor performs existing Services;
- 548 (7) Implementation of other program or service adjustments as may be determined;
- 549 (8) Implementation of existing and new Extended Producer Responsibility programs, as provided in Section  
550 2.6; and,
- 551 (9) Any change in services mandated by the City pursuant to the disaster waiver provision in Section 6.10.F.
- 552 B. Within sixty (60) Days of the City's written request under this Section, Contractor shall present a written  
553 proposal to perform the additional or modified Processing services or stop Processing some of the Recyclable  
554 Materials or performing some of the Diversion programs. At a minimum, the proposal shall contain a complete  
555 description of the following:
- 556 (1) Changes to Processing and Diversion methodology to be employed (equipment, sorting stations,  
557 staffing requirements, etc.);
- 558 (2) Changes in equipment to be used;
- 559 (3) Changes in labor requirements (number of employees by classification; estimated hours per year per  
560 employee);
- 561 (4) Changes to types of materials to be Processed and Diverted and estimated volumes per week and per  
562 year; and
- 563 (5) Five-year projection of the financial results of the program's operations in a balance sheet and  
564 operating statement format, including documentation of the key assumptions underlying the  
565 projections and the support for those assumptions, giving full effect to the savings or costs to existing  
566 Services and revenues from Marketing of Recovered Materials.
- 567 C. The City shall review Contractor's proposal for the change in scope of services. The City may negotiate with  
568 Contractor to amend the Agreement to reflect the change in scope, or the City may choose not to negotiate  
569 with Contractor. The Parties will cooperate in good faith to amend the Agreement, as needed, to reflect the  
570 outcome of the City's review of the proposal.
- 571 D. Contractor shall not be compensated for the proposal preparation costs or costs incurred during the  
572 negotiation of its proposal for the change in scope. However, Contractor may seek a Special Recovered  
573 Materials Revenue Payment Adjustment review in the event the City agrees to the modification to the scope  
574 of Services in accordance with this Section.
- 575 E. If the City chooses to negotiate with Contractor and Contractor and the City cannot agree on terms and  
576 conditions of such services within one hundred twenty (120) Days from the date when the City first requests  
577 a proposal from Contractor to perform such services, Contractor acknowledges and agrees that the City may  
578 permit other Persons besides Contractor to provide additional Processing and/or Diversion services not  
579 otherwise contemplated by this Agreement.

580 **2.4 Obligation to Provide Service**

581 The City and Contractor agree, as more fully set forth in the Recitals to this Agreement, that proper Processing and  
582 Diversion of Recyclable Materials is fundamental to the protection of the public health, safety and the well-being of  
583 the City’s residents and businesses. Contractor agrees that it will exercise due diligence in performing the Services  
584 described herein. The City’s responsibility for ensuring the adequacy of these Services in part provides the  
585 justification for executing this Agreement with Contractor. This Agreement creates an obligation that such Services  
586 continue to be provided even under difficult, adverse, or unforeseeable circumstances, such as but not limited to,  
587 natural disaster, pandemic, labor unrest, and any period where legal actions, future judicial interpretations of  
588 current law, or new laws or regulations impact the effectiveness of portions of this Agreement. In such an event, it  
589 shall be the responsibility of Contractor to mitigate any potential damages to other services being provided as much  
590 as possible.

591 Contractor shall bear the risk of any lost profits or losses associated with the cost of providing continued Service as  
592 a result of such a legal action or ruling, and similarly the City shall bear the loss of payments to the City.

593 **2.5 No Guarantees of Materials Volume or Composition**

594 The City has the right to and agrees to direct its Franchised Collector to Deliver all Recyclable Materials it Collects in  
595 the City to the Approved Recyclable Materials Processing Facility for Processing and Diversion by Contractor during  
596 the Term of the Agreement. The City does not guarantee the quantity or composition of the Recyclable Materials  
597 Delivered to the Approved Recyclable Materials Processing Facility . The Parties acknowledge that the quantity and  
598 composition of Acceptable Materials will be impacted during the Term of the Agreement based on a number of  
599 unpredictable factors such as, but not limited to, the factors listed below:

- 600 • The state of the economy;
- 601 • The number of residents and the number and type of businesses;
- 602 • Participation level of residents and businesses in various Diversion programs;
- 603 • Rate setting practices for Collection services;
- 604 • Changes in packaging, products, technology, and other factors;
- 605 • The City’s future implementation of services which may result in a reduction or increase in the volume of  
606 Recyclable Materials and which may result in a change in the composition of the Recyclable Materials;
- 607 • Extent to which other Persons collect and transport Recyclable Materials that require special handling or  
608 unique Processing services;
- 609 • Diversion programs/policies of the City, the City’s franchise hauler, the State, Alameda County, and others;
- 610 • Impact of existing, pending, or future Applicable Law, including but not limited to, AB 939, AB 341, AB 1201,  
611 AB 1826, SB 343, SB 54, SB 1383, CALGreen, and the Advanced Clean Fleet Regulation.
- 612 • Impact of new bans or policies on the Disposal of materials, including, but not limited to, polystyrene, single  
613 use bags, etc. established by the City, Alameda County, and/or the State; and,
- 614 • Impact of new policies on product stewardship and extended producer responsibility established by the  
615 City, Alameda County, and/or the State.

616 **2.6 Extended Producer Responsibility Programs**

617 A. **General.** The City and Contractor acknowledge that the requirements under the existing Extended Producer  
618 Responsibility Programs (including, but not limited to, AB 1201, SB 1383, SB 54, and SB 343) may be applicable  
619 to the Services provided by Contractor under this Agreement, and that additional or amended Extended  
620 Producer Responsibility Programs may be established in the future. Contractor further acknowledges that,

621 because the Approved Recyclable Materials Processing Facility Accepts materials from the public that may be  
622 regulated by an Extended Producer Responsibility Program, Contractor may be uniquely positioned to operate  
623 or participate in such programs.

624 B. **Change in Scope.** The City may require Contractor’s compliance with, and participation in, existing and/or  
625 new Extended Producer Responsibility Programs that may include a modification to Exhibit D or Contractor  
626 implementation of a drop-off program(s) at the Approved Recyclable Materials Processing, to the extent that  
627 doing so is reasonably appropriate and does not violate the Permits of the subject Facility.

628 Notwithstanding Section 8.5.A.4, any and all City Extended Producer Responsibility Program requests and/or  
629 requirements shall be treated as a change in scope in accordance with Sections 2.3, 8.5.A.1, and 8.6 and shall  
630 not be treated as a Change in Law pursuant to Section 8.5.A.4; provided, however, that Contractor shall be  
631 expressly precluded from requesting a Special Tipping Fee Review for a change in scope if Contractor’s is  
632 compensated, in whole or in part, for Processing, Recovery, and/or Diversion costs associated with such  
633 participation. Additionally, Contractor shall be expressly precluded from requesting any Special Tipping Fee  
634 Review, as described in this Section, for any materials Contractor represented as already being Recovered and  
635 or Diverted, as described in Exhibit E, even if the subject material is covered under what might otherwise be  
636 considered an eligible item under Section 8.5.A.

637 C. **City Rights to Solicit Proposals.** The City may, from time-to-time, request that Contractor initiate or  
638 participate in an Extended Producer Responsibility Program; provided, however, that Contractor  
639 acknowledges and agrees that the City is under no obligation to request any such proposal from Contractor.  
640 Furthermore, Contractor acknowledges and agrees that, at any time during the Term of this Agreement, the  
641 City may solicit proposals from other Persons related to Extended Producer Responsibility Programs and may  
642 permit other Persons besides Contractor to provide such services, , and that nothing herein shall prevent the  
643 City from also soliciting cost and operating information from other Persons in order to inform the City’s  
644 evaluation of any Contractor-provided proposal.

645 D. **City Requested Proposal.** If the City requests an Extended Producer Responsibility Program proposal from  
646 Contractor under this Section, Contractor shall be required seek out and coordinate with the applicable  
647 Stewardship Organization designated for the applicable program and shall describe such partnership in its  
648 proposal; these requirements are in addition to the requirements provided in Section 2.4. The City’s written  
649 request for a proposal may also require additional and/or specific information relating to the Extended  
650 Producer Responsibility Program, including such information determined by the City (at the City Manager’s  
651 sole discretion) to be reasonably necessary. The City shall review the proposal and may request additional  
652 supporting documentation, calculations, or other information necessary to evaluate Contractor’s proposal for  
653 reasonableness and to evaluate Contractor’s ability to comply with the requirements of the Extended  
654 Producer Responsibility Program.

655 As such, Contractor shall, by default, accept the City’s request to enact the Extended Producer Responsibility  
656 program, unless Contractor can demonstrate significant barriers that would make providing such services  
657 impracticable. Contractor shall express any objections or concerns during the meet-and-confer period and  
658 Contractor shall provide substantial evidence of such barriers in Contractor’s proposal. Such information will  
659 be further reviewed by the City.

660 E. **Record Keeping and Reporting.** Contractor acknowledges that, as part of the Services provided under this  
661 Agreement, Contractor’s participation in any Extended Producer Responsibility Program may impact the City,  
662 Subscribers to Franchised Collection services, and the City’s other service providers. As such, regardless of  
663 whether Contractor is specifically contracted under this Agreement to provide any such Extended Producer  
664 Responsibility Programs under this Agreement, Contractor acknowledges and agrees it has obligations to the  
665 City, nonetheless.

666 Throughout the Term of this Agreement, Contractor shall maintain records of all funding or other resources  
667 Contractor receives directly or indirectly through an Extended Producer Responsibility Program. Contractor  
668 shall inform and report to the City as part of Contractor’s obligations under Exhibit A and shall calculate and  
669 demonstrate the dollar amount that can be attributed to Services provided under this Agreement. Any cost  
670 savings identified shall be remitted to the City as either a direct payment sent to the City within thirty (30)  
671 Days after Contractor’s receipt of funds or as a reduction to Contractor’s Tipping Fee in accordance with  
672 Article 8, at the City Manager’s sole discretion. Contractor shall include copies of invoices or receipts with the  
673 applicable Stewardship Organization with its payment or Tipping Fee Application, as appropriate, regardless  
674 of whether the City is aware such funding or other resources have been received by Contractor.

675 Contractor shall also maintain all operational and financial records related to Extended Producer  
676 Responsibility Programs as provided in Article 9 and report such information to the City in accordance with  
677 Exhibit A or as otherwise requested by the City Manager.

## 678 **ARTICLE 3**

### 679 **REPRESENTATIONS AND WARRANTIES**

#### 680 **3.1 Of Contractor**

681 By acceptance of this Agreement, Contractor represents and warrants that:

682 A. **Existence and Powers.** Contractor is a corporation duly organized, validly existing, and in good standing under  
683 the laws of the State of California and is qualified to transact business in the State and has full legal right,  
684 power, and authority to enter into and perform its obligations under this Agreement.

685 B. **Due Authorization and Binding Obligation.** Contractor has the authority to enter into and perform its  
686 obligations under this Agreement. Contractor has taken all actions required by law or otherwise to authorize  
687 the execution of this Agreement. The Person(s) signing this Agreement on behalf of Contractor have authority  
688 to do so, and this Agreement constitutes the legal, valid, and binding obligation of Contractor enforceable  
689 against Contractor under its terms.

690 C. **Truth and Accuracy of Information.** The information supplied by Contractor in all written submittals made in  
691 connection with Contractor’s Services, including Contractor’s Proposal and any other supplementary  
692 information submitted to the City, which the City has relied on in awarding and entering this Agreement, is  
693 true, accurate, and complete, and does not contain material omissions or misleading statements. Contractor  
694 will inform City of any change in that information within one (1) week of discovering any untruth or inaccuracy.

695 D. **Contractor’s Due Diligence.** Contractor has made an independent investigation and examination (satisfactory  
696 to it) of the conditions and circumstances surrounding the Agreement and the work to be performed  
697 hereunder. Relying solely upon its own investigation, advice, and counsel, Contractor has taken such matters  
698 into consideration in entering this Agreement to provide Services in exchange for Contractor Revenue  
699 provided for under the terms of this Agreement.

700 E. **Ability to Perform.** Contractor possesses the business, professional, and technical expertise to manage,  
701 Process, and Divert the Recyclable Materials, and Contractor possesses the equipment, facilities, and  
702 employee resources required to perform Services under the terms of this Agreement.

703 F. **Voluntary Use of Approved Facilities.** Contractor, without constraint and as a free-market business decision  
704 in accepting this Agreement, agrees to use the Approved Facilities, or other location approved by the City, for



705 the purposes of Processing or Diverting all Recyclable Materials Accepted and for Disposal of Residue. Such  
706 decision by Contractor in no way constitutes a restraint of trade notwithstanding any Change in Law regarding  
707 flow control limitations or any definition thereof.

708 G. **No Warranty Regarding Volumes or Material Types.** Contractor recognizes that the City expressly disclaims  
709 any warranties, either express or implied, as to the volume, type, merchantability or fitness for any particular  
710 purpose of Recyclable Materials Delivered by the Franchised Collector and Accepted and Processed by  
711 Contractor.

712 H. **Capacity.** Contractor warrants that, as of the Commencement Date, it has Processing capacity at the Approved  
713 Processing Facilities to Process all Recyclable Materials Accepted at the Approved Processing Facilities from  
714 the Franchised Collector throughout the Term and that it shall maintain that Processing capacity through the  
715 Term. If Contractor fails to provide the capacity needed to fulfill its obligation, the City may assess Liquidated  
716 Damages for each Ton of the Recyclable Materials that Contractor does not Accept or Process in accordance  
717 with Section 11.9 and Exhibit B.

718 I. **Permits and Approvals.** Contractor warrants that all licenses, Permits, qualifications, and approvals of  
719 whatsoever nature that are legally required for Contractor to perform its obligations under this Agreement  
720 shall be secured on or before the Commencement Date of this Agreement, and Contractor further warrants  
721 that it shall, at its sole cost and expense, keep in effect or obtain at all times during the Term all licenses,  
722 Permits, and approvals that are legally required for Contractor to perform its obligations under this  
723 Agreement.

724 J. **Covenant Not to Sue.** For the Term of this Agreement, Contractor agrees that neither Contractor, its officers,  
725 employees, agents, Subcontractors, nor its Affiliates, will file any lawsuit against the City or the Franchised  
726 Collector that alleges any claims related to, arising out of, or in connection with the City's Request for  
727 Proposals process for Contractor's Services or the Franchised Collector's services, including the award of any  
728 agreement or contract thereunder.

729 K. **Iran Contracting Act Certification.** Contractor represents and warrants that it is in compliance with and has  
730 completed all requirements necessary to become certified under the Iran Contracting Act (Public Contract  
731 Code Sec. 2200). Proof of certification shall be included as Exhibit I of this Agreement.

### 732 **3.2 Of the City**

733 By acceptance of this Agreement, the City represents and warrants that:

734 A. **Existence and Powers.** The City is a municipal corporation organized and validly existing under the laws of the  
735 State of California, with full legal right, power, and authority to enter into and perform its obligations under  
736 this Agreement.

737 B. **Due Authorization and Binding Obligation.** The City has the authority to enter into and perform its obligations  
738 under this Agreement. The City has taken all actions required by law or otherwise to authorize the execution  
739 of this Agreement. The Person(s) signing this Agreement on behalf of the City have authority to do so, and  
740 this Agreement constitutes the legal, valid, and binding obligation of the City enforceable against the City  
741 under its terms.

742 C. **No Warranty Regarding Volumes or Material Types.** The City expressly disclaims any warranties, either  
743 express or implied, as to the volume, type, merchantability or fitness for any particular purpose of the  
744 Recyclable Materials Delivered to, Accepted, and Processed by Contractor.

745 **3.3 Of the Parties**

746 By acceptance of this Agreement, the Parties represent and warrant that:

747 A. **No Conflicts.** To the best of the Parties’ knowledge, after reasonable investigation, neither the execution or  
748 delivery of this Agreement or the performance by the Parties of their obligations hereunder does not conflict  
749 with, violate, or result in breach of:

750 (1) Any Applicable Law;

751 (2) Any term or condition of any judgment, order, or decree of any court, administrative agency, or other  
752 governmental authority; or,

753 (3) Any agreement or instrument to which Contractor or any of its Affiliates is a party or by which  
754 Contractor or any of its Affiliates’ properties or assets are bound or constitutes a default thereunder.

755 B. **No Litigation.** There is no administrative filing, action, suit, or other proceeding as of the Effective Date, at  
756 law or in equity, before or by any court or governmental authority, commission, board, agency, or  
757 instrumentality decided, pending or, to the Parties’ best knowledge, threatened by or against either Party  
758 wherein an unfavorable decision, ruling, or finding in any single case or in the aggregate, would:

759 (1) Materially adversely affect the performance by either Party of its respective obligations hereunder or  
760 the transactions contemplated by this Agreement;

761 (2) Adversely affect the validity or enforceability of this Agreement; or,

762 (3) Materially adversely affect the financial condition of Contractor, or any surety or entity guaranteeing  
763 Contractor’s performance under this Agreement.

764 C. **No Legal Prohibition.** The Parties have no knowledge of any adverse judicial decision or Applicable Law in  
765 effect on the Effective Date that either affects the validity of this Agreement or would prohibit the  
766 performance by either Party of its respective obligations hereunder or the transactions contemplated by this  
767 Agreement.

768 **ARTICLE 4**  
769 **TERM OF AGREEMENT**

770 **4.1 Term and Option to Extend**

771 The Term of this Agreement shall commence July 1, 2025 (Commencement Date) and continue in full force for a  
772 period of four (4) years, through and including June 30, 2029, unless the Agreement is extended in accordance with  
773 this Section or terminated pursuant to Article 11. Between the Effective Date and Commencement Date, Contractor  
774 shall perform all activities necessary to prepare itself to provide Services required by this Agreement on the  
775 Commencement Date.

776 At the City’s sole discretion, the Term of this Agreement may be extended, for up to sixty (60) months after June 30,  
777 2029 (i.e., until June 30, 2034), in one or more periods specified by the City. Such extensions shall be conditioned  
778 upon Contractor’s achievement of the two (2) performance standards defined in Section 4.2, each of which may be  
779 waived by the City in its sole discretion. If the City elects to exercise this option to extend the Term of this Agreement,

780 it shall give written notice of its election to Contractor one hundred eighty (180) Days prior to the then existing  
781 expiration date specifying the number of months by which the City wishes to extend the Term.

782 The City has no obligation to renegotiate, renew, or extend the rights granted to Contractor beyond the initial four-  
783 year (4-year) Term of the Agreement.

## 784 **4.2 Extension Conditions**

785 At the City's sole discretion, without negotiation, and with no change in compensation other than as provided for in  
786 Article 11, the Term of this Agreement may be extended by written notice of the City, without need of written  
787 amendment, for up to sixty (60) months in one (1) or more periods specified by the City. If the City elects to exercise  
788 this option to extend the Term under this Agreement, the City shall give written notice of its election to Contractor  
789 no less than one hundred eighty (180) Days prior the then existing expiration date specifying the number of months  
790 by which the City wishes to extend the Term.

791 The City has no obligation to renegotiate, renew, or extend the rights granted to Contractor beyond the initial Term  
792 of the Agreement.

# 793 **ARTICLE 5** 794 **FACILITY OPERATIONS**

## 795 **5.1 Overview of Scope**

796 A. **Acceptance.** Contractor shall receive Delivery of and Accept at the Approved Recyclable Materials Processing  
797 Facility all Recyclable Materials Collected in the City by the Franchised Collector, subject to the limitations of  
798 Section 5.1.C.

799 B. **Processing and Marketing.** Contractor agrees to Process, Divert, and Market all Recyclable Materials it  
800 Accepts from the Franchised Collector at the Approved Recyclable Materials Processing Facility.

801 C. **Limitations to Scope.** The scope of this Agreement does not include Processing and Diversion of the following:

802 (1) Materials Collected by the Franchised Collector that are not Collected in the regular Recyclable  
803 Materials Collection containers such as, but not limited to: Electronic Materials, Universal Materials,  
804 Sharps, and Bulky Items that are Diverted by the Franchised Collector; nor

805 (2) Recyclable Materials generated in the City which are not Collected by the City or its Franchised  
806 Collector.

807 D. **Cost of Service.** Contractor shall pay all costs associated with Accepting, Processing, Diverting, and Marketing  
808 of Recyclable Materials.

809 E. **Facility Fees.** Contractor shall pay all fees assessed by governmental or regulatory agencies for operation of  
810 the Approved Facilities.

811 G. **Commencement.** Services shall commence on the Commencement Date, unless otherwise provided for in  
812 this Agreement.

813 **5.2 City Obligations**

814 A. **Delivery of Recyclable Materials.** The City shall, at all times, direct all Recyclable Materials Collected in the  
815 City by the Franchised Collector to be Delivered to the Approved Recyclable Materials Processing Facility.

816 B. **No Tonnage Obligation or Limit on Waste Prevention.** The City currently operates programs intended to  
817 reduce the amount of waste for landfill Disposal. Nothing in this Agreement shall prevent, penalize, or impede,  
818 in any manner, the City from continuing and expanding these programs, reducing the scope of these  
819 programs, or developing new programs, all of which may reduce or increase the amount of Recyclable  
820 Materials Collected and Delivered to be Processed at the Approved Recyclable Materials Processing Facility.

821 It is the City’s intent to continue to improve, develop, or enhance existing programs, as well as to implement  
822 new programs and services throughout the Term to meet the Diversion goals and program requirements  
823 established by Applicable Law. As a result, the characterization and quantity of materials Delivered to the  
824 Approved Facilities will change over the Term and may be significantly different than that as of the  
825 Commencement Date of the Agreement. Contractor shall not be compensated for any changes in the  
826 characterization of, quantity of, or other changes to materials it receives, except as provided for in Section  
827 2.3 of this Agreement.

828 Notwithstanding the provisions of Section 2.1, neither the City nor the Franchised Collector is obligated to  
829 Deliver any specified quantity of Recyclable Materials from the City to the Approved Recyclable Materials  
830 Processing Facility.

831 C. **Franchised Collector’s Unpermitted Waste Program.** The City shall direct its Franchised Collector to  
832 implement an Unpermitted Waste screening, identification, and prevention protocol. The City shall prohibit  
833 its Franchised Collector from knowingly Delivering Unpermitted Waste to the Approved Processing Facilities.

834 D. **Costs and Facility Fees.** All costs associated with Acceptance, Processing, Diversion, and Marketing of  
835 Recyclable Materials at the Approved Recyclable Materials Processing Facility, as well as Transportation and  
836 Disposal of Residue at the Approved Disposal Facility, shall be paid by Contractor.

837 **5.3 Contractor Obligations**

838 Contractor shall perform Services in accordance with Applicable Law, Standard Industry Practice, due diligence and  
839 specification, and other requirements of this Agreement.

840 **5.4 Recyclable Materials Processing Services**

841 *{Note to Proposers: The City intends to document the successful contractor’s approach in this section.}*

842 A. **General.** Contractor is responsible for receiving and Accepting Source Separated Recyclable Materials  
843 Delivered to the Approved Recyclable Materials Processing Facility by the City’s Franchised Collector.  
844 Contractor is responsible for Processing all Source Separated Recyclable Materials Collected in the City by the  
845 Franchised Collector that were Accepted at the Approved Recyclable Materials Processing Facility. Contractor  
846 shall use the Approved Recyclable Materials Processing Facility for Recyclable Materials Processing, Diversion,  
847 and Marketing. A general description of the Approved Recyclable Materials Processing Facility operation is  
848 provided in Exhibit J. Below is information about the Approved Recyclable Materials Processing Facility  
849 approved by the City for Processing of Recyclable Materials:

850 Facility Name:   
851 Owner:

852 Operator: \_\_\_\_\_  
853 Address: \_\_\_\_\_  
854 Contact Person and Telephone Number: \_\_\_\_\_

855 B. **Recyclable Materials Processing Facility Operations.** Contractor shall provide Recyclable Materials Processing  
856 Services at the Approved Recyclable Materials Processing Facility in accordance with the Service standards  
857 described in Articles 5 and 6 and the following Service specifications:

- 858 (1) Operating, managing, and maintaining the Approved Recyclable Materials Processing Facility, including  
859 all buildings, scales, roads, utilities, equipment, and other Facility requirements;
- 860 (2) Providing, operating, and maintaining all equipment, rolling stock, and supplies necessary for  
861 operations and maintenance;
- 862 (3) Operating and maintaining the scale house and scale system and weighing Recyclable Materials  
863 Delivered to the Approved Recyclable Materials Processing Facility in accordance with Section 6.5;
- 864 (4) Directing on-site traffic to appropriate unloading areas in accordance with Section 6.4 and providing a  
865 safe working environment for Approved Recyclable Materials Processing Facility users, visitors, and  
866 employees, including requirements set forth in Sections 6.6 and 6.19;
- 867 (5) Accepting Delivery of all Recyclable Materials, subject to the limitations of Sections 5.6 and 6.1;
- 868 (6) Processing Recyclable Materials (with \_\_ number of sorting stations and \_\_ of sorters) and preparing  
869 Recovered Materials for Market;
- 870 (7) Safely managing the Recyclable Materials Accepted at the Approved Recyclable Materials Processing  
871 Facility, including, but not limited to, meeting requirements of Section 6.6;
- 872 (8) Implementing an Unpermitted Waste screening, identification, and prevention protocol. Contractor  
873 shall not knowingly Deliver Unpermitted Waste to the Approved Recyclable Materials Processing  
874 Facility;
- 875 (9) Managing Recovered Materials in a manner compliant with AB 939, SB 1383, and other Applicable Law  
876 to ensure that the City shall benefit from full programmatic compliance Diversion credit for that  
877 material; and,
- 878 (10) Marketing Recovered Materials and arranging for or providing Transportation of the Recovered  
879 Materials to end-users or Markets.

880 C. **Allowable Recyclable Materials.** The City shall direct the Franchised Collector to Deliver all Recyclable  
881 Materials Collected by the Franchised Collector to Contractor’s Approved Recyclable Materials Processing  
882 Facility. Contractor shall Accept all the City’s Recyclable Materials Delivered by the Franchised Collector, as  
883 defined in Exhibit D, and shall Process all Recyclable Materials Delivered to maximize Recovery, Recycling, and  
884 Diversion. Contractor shall be expressly precluded from requesting any Special Tipping Fee Review, as  
885 described in Section 8.5 or 8.6, for any materials Contractor was previously Recovering and Diverting as  
886 described in Contractor’s Proposal, even if the addition of the subject material is covered under what might  
887 otherwise be considered an eligible item under Section 8.5A.

888 If existing Extended Producer Responsibility Programs (including but not limited to, AB 1201, SB 1383, SB 54,  
889 and SB 343) or new Extended Producer Responsibility Programs, as further described in Section 2.6, require  
890 additional materials be Diverted that are not otherwise identified in Exhibit D and Exhibit E, the City may  
891 incorporate such materials into the City’s Collection program for Recyclable Materials and update Exhibit C,

892 as appropriate, and Contractor shall Accept, Process, Recover, and Divert those materials. The City may also  
893 request Contractor participate in another type of program to receive the subject material for Processing,  
894 Recovery, and Diversion that would constitute a change in scope, as described in Section 2.3, although the  
895 City is under no obligation to do so. Notwithstanding the provisions of Section 8.5.A.4, any and all such  
896 changes described in this paragraph related to Extended Producer Responsibility Programs shall be treated as  
897 a change in scope pursuant to Sections 2.3, 8.5.A.1, and 8.6 and shall not be considered a Change in Law.

898 Further, Contractor shall also be expressly precluded from requesting a Special Tipping Fee Review, as  
899 described in Section 8.5, to the extent any such item is covered under an Extended Producer Responsibility  
900 Program that compensates Contractor for the Processing, Recovery, and/or Diversion of such materials, in  
901 whole or in part. The City reserves the right to trigger a Special Tipping Fee Review or direct Contractor to  
902 otherwise remit compensation attributable to the Services under this Agreement, as provided in Section 8.5.E,  
903 if Contractor receives compensation for the Processing, Recovery, and/or Diversion of any such item from the  
904 City's Service Area under an Extended Producer Responsibility Program.

905 Additionally, to the extent that either Party becomes aware that Exhibit D may need to be modified as a result  
906 of an Extended Producer Responsibility Program, that Party shall notify the other Party within five (5) Days of  
907 being made aware of such change. Upon the City's request, and to the extent the City desires to incorporate  
908 any new materials into the City's collection program, the Parties shall promptly meet and confer to discuss  
909 the timeline and process for the City to implement such changes to the collection program and for Contractor  
910 to make necessary adaptations to its Processing method to ensure Recovery and Diversion of the subject  
911 materials. The City shall update Exhibit C, as appropriate, and Contractor shall implement any required  
912 changes to its Processing method on a timeline as mutually agreed to by Contractor and the City or before  
913 any required deadlines identified in the Extended Producer Responsibility Program, whichever is sooner.  
914 Contractor shall maintain records in accordance with Article 9 and Exhibit A. Pursuant to Section 11.3,  
915 Contractor shall bear full responsibility for complying with all Applicable Law and the provisions of this  
916 Agreement.

917 D. **Diversion.** Contractor shall Process all Recyclable Materials in a manner that maximizes reuse, Recycling, and  
918 Diversion. After Processing, Contractor may Dispose of materials that do not have a higher or better use as  
919 Residue, to the extent allowed by State and local law. Contractor shall Process all Recyclable Materials such  
920 that each Diverted commodity is of sufficient quality to attract the highest domestic market prices for which  
921 similar commodities, produced by other local Processing facilities that Process single-stream Recyclable  
922 Materials, are sold. Contractor's operation of the Approved Recyclable Materials Processing Facility must  
923 consistently produce commodities that achieve Residue and contamination standards that meet or exceed  
924 the domestic market requirements to attract the highest current domestic market price for the specified  
925 commodities. Verification of commodity quality standards shall be conducted annually through the material  
926 characterization study performed in accordance with Exhibit I.

927 E. **Material Characterization.** Contractor shall engage a third party to design and perform a Residue and material  
928 characterization study of the Recyclable Materials Processed at the Approved Recyclable Materials Processing  
929 Facility a minimum of one (1) time per calendar year. Contractor shall propose a study methodology that must  
930 include separately Processing at least thirty (30) Tons of Recyclable Materials from the City Service Area,  
931 stratified across no fewer than three (3) distinct Days of service, at the Approved Recyclable Materials  
932 Processing Facility under normal operating conditions for the Facility (i.e., staffing levels, belt speed, burden  
933 depth) and meet all other requirements as described in Exhibit I. The methodology must be approved by the  
934 City Contract Manager in writing prior to Contractor conducting such a study. The City may require that  
935 Contractor coordinates the timing and method of study with other Facility users utilizing a similar Residue and  
936 characterization methodology. The City shall be notified at least thirty (30) calendar Days in advance of each  
937 annual study and Contractor shall invite the City Contract Manager to observe all aspects of the study.

938 F. **Marketing.** Contractor shall be responsible for Marketing the Recyclable Materials Accepted at the Approved  
939 Recyclable Materials Processing Facility. No Recyclable Materials shall be deposited for Disposal.

940 Upon request, Contractor shall provide proof to the City that all Recyclable Materials are Marketed for  
941 Recycling or reuse in such a manner that materials shall be considered as Diverted in accordance with the  
942 State regulations established by AB 939, AB 341, SB 54, SB 343, and SB 1201. All Residue, which will include  
943 a de minimis amount of Recyclable Materials from the Processing activities that is not Marketed for use, shall  
944 be reported to the City as Residue and accounted for as Disposal Tonnage at a permitted Disposal Facility. No  
945 Recyclable Materials shall be Transported to a domestic or foreign location if Solid Waste Disposal of such  
946 material is its intended use. No Recyclable Materials or Residue shall be used for Beneficial Reuse Purposes.

947 Upon request, Contractor shall provide a summary of its Marketing plan, average commodity value for each  
948 material, end Markets for Recyclable Materials and submit it to the City for review and approval. Contractor  
949 shall provide the City with a list of broker/buyers it has used during the preceding twelve (12) months, if  
950 requested by the City. If Contractor becomes aware that a broker or buyer has illegally handled or Disposed  
951 of material generated in the Service Area or elsewhere, Contractor shall immediately inform the City and  
952 terminate its contract or working relationship with such party.

953 Contractor shall maintain complete, accurate, and detailed Marketing records, including Tonnage of material  
954 Marketed, price, revenue received, purchaser, and end use in accordance with Section 9.1.

955 G. **Residue Level (Diversion Performance) and Disposal.** Contractor shall guarantee that Residue shall contain  
956 no more than \_\_\_% recyclables by weight. For the purpose of this Residue guarantee, the Residue level shall  
957 be equal to the monthly Tonnage of Processing Residue requiring Disposal divided by the total monthly  
958 Tonnage of Recyclable Materials Accepted. Residue from the Processing activities shall be Disposed of by  
959 Contractor at the Approved Disposal Facility selected by Contractor and approved by the City. Contractor shall  
960 not use Residue for Beneficial Reuse Purposes.

961 H. **Visitor Education Facility.** Contractor shall make its visitor education facility at the Approved Recyclable  
962 Materials Processing Facility available for use by City. The Facility will be available for scheduled visits at a  
963 minimum, from 8:00 a.m. to 3:00 p.m., Monday through Friday, except for Holidays, or at any other times  
964 upon mutual agreement. Contractor shall deliver visitor presentations and provide up to twenty (20) tours of  
965 the Approved Recyclable Materials Processing Facility per Rate Year for organizations and schools within the  
966 City, unless impractical due to safety concerns.

## 967 **5.5 Delivery and Acceptance of Recyclable Materials**

968 A. **General.** On the Commencement Date and continuing throughout the Term, the City shall direct its Franchised  
969 Collector to Deliver All Recyclable Materials Collected in the City to the Approved Recyclable Materials  
970 Processing Facility, and Contractor shall commence Acceptance, Processing, Diversion, and Marketing of such  
971 materials on the Commencement Date.

972 Contractor and the City agree to work cooperatively with the Franchised Collector to manage the Collection,  
973 Delivery, and Acceptance process in such a way that Loads Accepted by Contractor do not include an excessive  
974 amount of Contaminants that would cause Contractor to exceed the Approved Recyclable Materials  
975 Processing Facilities permitted Residue levels (for a particular month).

976 B. **City Obligation for Delivery.** The City's obligation to direct Delivery of Recyclable Materials Collected by its  
977 Franchise Collector in the City shall be contingent upon Contractor's satisfaction of the terms and conditions  
978 of this Agreement including, but not limited to, the following requirements:

979 (1) **Contractor.** Contractor being able to fully perform Contractor's Services.

980 (2) **Site Permits and Approvals.** Contractor and Approved Facilities being in compliance with Applicable  
981 Law with respect to any and all Permits required for operations of Approved Facilities.

982 (3) **Confirmation of Contractor’s Representations and Warranties.** Representations and warranties made  
983 by Contractor in Article 3 are true and correct in all material respects and there have been no  
984 substantial changes in the financial position of Contractor.

985 (4) **Adverse Changes in Guarantor or Contractor.** Since the Effective Date, there shall not have occurred  
986 any material change, financial or otherwise, that would adversely affect the ability of the Guarantor to  
987 perform its obligations under the Guaranty Agreement or the ability of Contractor to perform  
988 Contractor’s obligations hereunder or its obligations under any other agreement, contract or  
989 instrument entered into or to be entered into by Contractor in connection with operation of the  
990 Approved Facilities, Contractor’s obligations, the Services hereunder, and the transactions  
991 contemplated hereby.

992 (5) **No Default.** Contractor not being in breach or default under this Agreement or any other agreement  
993 with the City.

994 C. **Acceptance by Contractor.** Contractor shall diligently visually inspect Loads and periodically shall manually  
995 characterize Loads to confirm that Accepted Recyclable Materials conform to the list of Recyclable Materials  
996 in Exhibit D and do not contain Unpermitted Waste. Contractor shall implement Load-checking procedures in  
997 a uniform and non-discriminating manner from day-to-day and for the City’s Recyclable Materials and  
998 materials from other sources. Ownership of the Recyclable Materials transfers to Contractor pursuant to  
999 Section 5.8 and Contractor cannot reject the Load thereafter.

1000 D. **Contaminated Load Monitoring and Rejection.** The objective of the Load monitoring and notification process  
1001 is for Contractor to identify specific Franchised Collector route(s) (e.g., determined by vehicle number, day of  
1002 the week, and time of Delivery) that routinely have excessive Contamination and to provide the Franchised  
1003 Collector with an opportunity to inspect the Loads and remedy the Contamination problem on a route-by-  
1004 route basis. It is Contractor’s responsibility to monitor the Delivered Loads of Recyclable Materials at the  
1005 Approved Recyclable Materials Processing Facility for excessive Contamination and to inform both Contractor  
1006 and the City in writing if a particular Load’s Contamination level is excessive based on visual inspection. After  
1007 written notification to the City, the City and its Franchised Collector can inspect the vehicle’s Loads to  
1008 determine the source of the Contamination and what steps need to be taken to reduce the Contamination,  
1009 such as educating Residents and Commercial customers on keeping unacceptable materials out of the  
1010 Collection containers. Contractor can reject Deliveries from a Franchised Collector’s vehicle if its  
1011 Contamination level is excessive; however, in order to do so, Contractor must: (1) identify the vehicle number;  
1012 (2) document at least five (5) dates of Contaminated Load Delivery; (3) provide a description of the  
1013 Contaminant materials; (4) provide pictures evidencing the Contamination; and, (5) set aside the rejected  
1014 Load and provide the Franchised Collector and the City with twenty four (24) hours to inspect the rejected  
1015 Load. If Contractor identifies a Load that is extremely Contaminated based on its visual inspection, Contractor  
1016 shall have the right to reject the Load without following the five-(5) step process described in this paragraph.

1017 If Contractor rejects a Load, the Load shall be segregated from other Loads, and Contractor shall immediately  
1018 notify the City and the Franchised Collector verbally and then follow verbal notifications with written notice  
1019 identifying the date and time of occurrence; Contractor’s reason for rejection of the Delivered material;  
1020 photographs of the material; and the identification number or information of the vehicle that Delivered the  
1021 material. The Franchised Collector and the City shall be given twenty-four (24) hours from receipt of written  
1022 notice to inspect the Load. After twenty-four (24) hours of written notice, Contractor shall Process or Dispose  
1023 of the Load and shall bill the Franchised Collector \$150.00 per Ton.

1024 If a Load contains Unpermitted Waste characterized as Items (2) through (12) in the definition of the  
1025 Unpermitted Waste, this Section shall not be applicable. In such case, the Unpermitted Waste shall be handled  
1026 in accordance with Section 6.1.



1027 **5.6 Guaranteed Capacity**

1028 Contractor shall secure sufficient capacity to Transfer and Process all Recyclable Materials Collected in the City by  
1029 the Franchised Collector and shall cause the Approved Recyclable Materials Processing Facility to Process, Divert,  
1030 and Market the Recyclable Materials. Contractor shall provide the City, upon request, with documentation  
1031 demonstrating the availability of such capacity.

1032 **5.7 Permits**

1033 A. **Securing Permits.** Contractor shall obtain and maintain, at Contractor’s sole cost, all Permits required under  
1034 Applicable Law to perform Services. Contractor shall provide the City copies of Permits for the Approved  
1035 Facilities, and shall demonstrate compliance with the terms and conditions of Permits within ten (10) Days of  
1036 the City’s request. In its Monthly Report or more frequently, as necessary, Contractor shall inform the City of  
1037 Contractor’s status of securing the issuance, revision, modification, extension or renewal of Permits, including  
1038 those at its or an Affiliate’s Approved Facilities. Within ten (10) Days following the City’s request, Contractor  
1039 shall provide the City with copies of any applications or other correspondence that Contractor submits in  
1040 connection with securing Permits.

1041 B. **Complying with Permits.** Contractor shall comply with all Permits, including any mitigation measures related  
1042 to the operation and maintenance of the Approved Facilities, at no additional cost to the City. If Contractor  
1043 provides any documentation verifying compliance with Permit conditions to the permitting authority,  
1044 Contractor shall provide that same documentation to the City at the same time. Contractor is solely  
1045 responsible for paying any fines or penalties imposed for noncompliance with or violation of Permits or failure  
1046 to obtain Permits.

1047 **5.8 Ownership of Recyclable Materials**

1048 Once Recyclable Materials are Delivered by the Franchised Collector and Accepted by Contractor at the Approved  
1049 Recyclable Materials Processing Facility, ownership and the right to possession of Recyclable Materials shall transfer  
1050 directly from the Franchised Collector to Contractor upon the earlier occurrence of either: (i) Processing the material;  
1051 or, (ii) the end of the Day’s defined hours for Acceptance of materials, which are specified in Section 6.2.

1052 Both benefits and liabilities resulting from ownership and possession of the Recyclable Materials shall accrue to  
1053 Contractor.

1054 **5.9 Cooperation and Disputes with Franchised Collector**

1055 Contractor shall fully comply with its obligations to provide Services, including receipt of Deliveries and Acceptance  
1056 of Recyclable Materials from the Franchised Collector at the Approved Recyclable Materials Processing Facility and  
1057 operation and maintenance of the Approved Recyclable Materials Processing Facility in a manner that meets the  
1058 requirements of this Agreement. Contractor’s operations shall allow for safe and efficient Delivery and Acceptance  
1059 of Recyclable Materials by the Franchised Collector. In the event of disputes between Contractor and the Franchised  
1060 Collector, Contractor shall provide written notice of the dispute to the City and Franchised Collector, and Contractor  
1061 agrees to meet and confer with the Franchised Collector in good faith to resolve the dispute. If at the end of thirty  
1062 (30) Days following the initial notice to the City, Contractor and Franchised Collector have not resolved the dispute,  
1063 Contractor shall notify the City, and the City and Contractor shall follow the dispute resolution procedure in Article  
1064 12. In the event of a dispute, Contractor shall continue performance of Contractor’s Service obligations under this  
1065 Agreement (including payment of Recovered Materials Revenue Payments to the City) and shall attempt to continue  
1066 to resolve that dispute in a cooperative manner, including, but not limited to, negotiating in good faith.

1067 **ARTICLE 6**  
1068 **PERFORMANCE STANDARDS**

1069 **6.1 Rejection of Unpermitted Waste**

1070 A. **Inspection.** Contractor shall use Standard Industry Practices to detect and reject Unpermitted Waste in a  
1071 uniform manner and shall not knowingly Accept Unpermitted Waste at the Approved Facilities. Contractor  
1072 shall comply with the inspection procedure contained in its Permit requirements. Contractor shall promptly  
1073 modify that procedure to reflect any changes in Permits or Applicable Law.

1074 Contractor shall develop a Load inspection program that includes the following components: (i) personnel and  
1075 training; (ii) Load checking activities; (iii) management of materials; and, (iv) record keeping and emergency  
1076 procedures. Contractor’s Load checking personnel shall be trained in: (i) the effects of Hazardous Substances  
1077 on human health and the environment; (ii) identification of Unpermitted Waste; and, (iii) emergency  
1078 notification and response procedures. Load inspection personnel shall inspect Recyclable Materials Delivered  
1079 to the Approved Recyclable Materials Processing Facilities immediately after unloading of the materials from  
1080 the Collection vehicles. Contractor shall implement its procedures in a uniform and non-discriminating  
1081 manner from day-to-day for City materials and materials from other sources.

1082 B. **Unpermitted Wastes Handling and Costs.** Contractor shall arrange for or provide handling, Transportation,  
1083 and delivery of all Unpermitted Wastes detected at the Approved Facilities to a Recycling facility, incinerator,  
1084 or Disposal Site permitted in accordance with Applicable Law. Contractor is solely responsible for making  
1085 those arrangements or provisions and for all costs thereof, subject to the remedies available under Section  
1086 6.1.C below.

1087 C. **Remedies for Rejected Materials.** If Unpermitted Waste is Delivered to the Approved Processing Facilities,  
1088 Contractor shall be entitled to pursue whatever remedies, if any, it may have against Person(s) bringing that  
1089 Unpermitted Waste to the Approved Recyclable Materials Processing Facility.

1090 If Contractor identifies Unpermitted Waste Delivered to the Approved Recyclable Materials Processing Facility  
1091 from the Franchised Collector, Contractor shall notify the City and Franchised Collector and, in accordance  
1092 with 6.1.D below, the Franchised Collector shall Collect, Transport, and Recycle or Dispose of that  
1093 Unpermitted Waste and/or remediate any resulting contamination at the Franchised Collector’s expense.  
1094 Upon notification by Contractor, the City shall have the option to require Contractor to Recycle or Dispose of  
1095 the Unpermitted Waste and/or remediate any contamination resulting there from on Franchised Collector’s  
1096 behalf and Franchised Collector shall pay the Direct Costs for such service.

1097 D. **Notification.** If Contractor rejects Unpermitted Waste received at the Approved Recyclable Materials  
1098 Processing Facility from the Franchised Collector, Contractor shall immediately notify the City and the  
1099 Franchised Collector verbally and then follow verbal notifications with written notice identifying the date and  
1100 time of occurrence; material type; material weight or volume; characterization of material; Contractor’s  
1101 reason for rejection of the Delivered material; photographs of the material, and the identification number or  
1102 information of the vehicle that Delivered the material.

1103 E. **Not Applicable for Contaminated Loads.** The provisions of this Section 6.1 shall not apply to Single Loads with  
1104 excess Contamination, which shall be handled in accordance with Section 5.5.D.

1105 **6.2 Days and Hours of Operation**

1106 A. **Approved Recyclable Materials Processing Facility.** Contractor shall operate the Approved Recyclable  
1107 Materials Processing Facility for Acceptance of Recyclable Materials Delivered by the Franchised Collector in

1108 accordance with the days and hours of operation set forth below. At a minimum, Contractor shall Accept  
1109 Recyclable Materials Monday through Saturday from 3:00 a.m. to 5:00 p.m. Contractor may not reduce the  
1110 hours or total number of hours for Acceptance of Recyclable Materials without prior written approval of the  
1111 City, except for reductions required by a change in a Permit subsequent to the Commencement Date.  
1112 Contractor shall use every effort possible to provide the City a minimum of sixty (60) Days' written notice of  
1113 such an anticipated modification.

1114 B. **Extended Facility Receiving Hours.** Upon request of the City, no less than one (1) Business Day in advance or  
1115 any other mutually agreed time period, or in event of emergencies such as truck breakdown, poor weather  
1116 or road conditions, Contractor shall Accept Recyclable Materials at times other than the Facility hours listed  
1117 in Sections 6.2.A and 6.2.B. Contractor may charge the Franchised Collector \$270 per hour (in 15 minute  
1118 increments), if directed by the City. This provision is intended to address temporary extension of Facility hours  
1119 that may be needed from time to time to accommodate special circumstances.

1120 C. **Holiday Schedule.** The Franchised Collector does not intend to provide Collection services on Holidays,  
1121 therefore, there will not be Deliveries of Recyclable Materials on Holidays to the Approved Recyclable  
1122 Materials Processing Facilities. The Franchised Collector will adjust its Collection schedule around the Holiday,  
1123 which potentially will result in increased volumes of Recyclable Materials Delivered before or after the Holiday  
1124 and will likely result in Delivery of Recyclable Materials on the Saturday immediately following the Holiday.  
1125 Contractor agrees to work cooperatively with the City and Franchised Collector to adjust Acceptance and  
1126 Processing services to accommodate Holiday-related Collection schedule changes.

### 1127 **6.3 Equipment and Supplies**

1128 Contractor shall equip and operate the Approved Recyclable Materials Processing Facility in a manner to fulfill  
1129 Contractor's obligations under this Agreement. Contractor is solely responsible for the adequacy, safety, and  
1130 suitability of the Approved Recyclable Materials Processing Facility. Contractor shall modify, enhance, and/or  
1131 improve the Approved Recyclable Materials Processing Facility as needed to fulfill Services under this Agreement.

1132 Contractor shall provide all rolling stock, stationary equipment, material storage containers, spare parts,  
1133 maintenance supplies, Processing equipment, and other consumables as appropriate and necessary to operate the  
1134 Approved Recyclable Materials Processing Facility and provide all Services required by this Agreement. Contractor  
1135 shall place the equipment in the charge of competent operators. Contractor shall repair and maintain all equipment  
1136 at its own cost and expense.

### 1137 **6.4 Traffic Control and Direction**

1138 A. **Road Design and Maintenance.** Contractor shall construct and maintain all roads at the Approved Recyclable  
1139 Materials Processing Facility required for vehicles Delivering the Acceptable Materials to safely and efficiently  
1140 access and use the Approved Recyclable Materials Processing Facility. Contractor shall direct on-site traffic to  
1141 appropriate unloading areas and provide a safe working environment for the Franchised Collector's  
1142 employees. Contractor shall provide necessary signs and personnel to assist drivers to proper unloading areas.  
1143 Contractor shall maintain all signs at the Approved Recyclable Materials Processing Facility in a clean and  
1144 readable condition. Contractor shall provide and maintain signs for the convenience of Persons using the  
1145 Approved Recyclable Materials Processing Facility and to facilitate safe and efficient traffic flow at the  
1146 Approved Recyclable Materials Processing Facility.

1147 B. **Maximum Vehicle Turnaround Guarantee.** Contractor shall manage the scale house and vehicle receiving  
1148 process at the Approved Recyclable Materials Processing Facility to ensure that Franchised Collector's vehicles  
1149 Delivering Recyclable Materials are not unnecessarily delayed in unloading. Contractor guarantees (the  
1150 "Maximum Vehicle Turnaround Guarantee") that each of the Franchised Collector's vehicles Delivering

1151 material is able to conduct its Delivery of such materials within the Maximum Vehicle Turnaround Time  
1152 specified in Article 1, absent vehicle breakdown or driver negligence. As of the Commencement Date of the  
1153 Agreement, the arrival time shall be the time recorded for the vehicle at the motor vehicle scale when the  
1154 inbound weight of the vehicle is recorded. An exit time shall not be recorded because the vehicle's tare weight  
1155 will be recorded in the scale system allowing the vehicle to by-pass the scale when exiting the Facility.  
1156 Contractor will operate a video camera system that will capture each vehicles' license plate at the time the  
1157 vehicle arrives at the site and exits the site, providing a record of the date and time for each Load. Upon the  
1158 City's request, Contractor shall provide the City reports or access to electronic scale house system records  
1159 that provide the City information to determine vehicle turnaround times based on documented entry time at  
1160 the entry scale house and documented Facility exit time. The City may approve the Franchised Collector's use  
1161 of GPS (global positioning system) records for Collection vehicles to calculate turnaround time, or the City  
1162 may conduct on-site surveys of performance to verify compliance with the Maximum Vehicle Turnaround  
1163 Time.

1164 Contractor shall respond within five (5) Business Days to any written Complaint received from the City or  
1165 collection contractor related to vehicle turnaround times. Contractor shall work directly with the collection  
1166 contractor to identify and resolve issues that are causing vehicle turnaround times to extend beyond the  
1167 Maximum Vehicle Turnaround Time stated in Subsection B. Contractor and its Subcontractors may provide  
1168 evidence disputing any Complaint received by the collection contractor, provided the evidence is in the form  
1169 of camera recordings of Collection Contractor's vehicle(s), scale house records, or other documented  
1170 timestamp of the collection contractor's arrival and departure times from the Approved Facility(ies).  
1171 Contractor's and its Subcontractor's evidence shall be presented no later than ten (10) Business Days after  
1172 receipt of collection contractor or the City's written notice of Complaint(s). The City shall review Contractor's,  
1173 its Subcontractor's, and collection contractor's evidence and provide written notice of the City's  
1174 determination that the Complaint was valid or invalid. The Liquidated Damages payment shall be paid in  
1175 accordance with Section 11.9.

1176 Should Contractor or its Subcontractors fail to meet the guaranteed maximum turnaround times for collection  
1177 contractor's vehicles described in this Section, Liquidated Damages may be assessed by the City in the  
1178 amounts stated in Exhibit F unless Contractor or its Subcontractors prove to the reasonable satisfaction of the  
1179 City that a Complaint regarding a collection contractor's vehicle turnaround time exceeding the guaranteed  
1180 vehicle turnaround time was not valid pursuant to Subsection D above. The liquidated damage amount shall  
1181 be adjusted annually thereafter by CPI-U.

1182 The City understands that a failure by Contractor or its Subcontractors to meet the Maximum Vehicle  
1183 Turnaround Time incurs damages upon the collection contractor and shall therefore provide notice of its  
1184 intent to assess Liquidated Damages to Contractor within sixty (60) Business Days of the City becoming aware  
1185 of Contractor's or its Subcontractor's failure to meet the Maximum Vehicle Turnaround Time. The assessment  
1186 of Liquidated Damages shall be made in accordance with Section 11.9 and collected by the City on behalf of  
1187 the collection contractor.

## 1188 **6.5 Scale Operation**

1189 A. **Maintenance and Operation.** Contractor shall maintain and operate two (2) State-certified motor vehicle  
1190 scales at each Approved Facility, all in accordance with Applicable Law. Contractor shall provide documentary  
1191 evidence of such certification within ninety (90) Days of the Commencement Date and within ten (10) Days  
1192 of the City's request during the Term. Scales shall be operated by State-licensed weighmaster(s). Contractor  
1193 shall link all scales to a centralized computer recording and billing system that shall be compatible with  
1194 Contractor's systems. Such computerized system shall track pertinent data on all incoming and outgoing  
1195 vehicles and materials as further described in Section 6.5.G. Contractor shall operate those scales during  
1196 Approved Facility Delivery and Acceptance hours established in Section 6.2 and during other hours as  
1197 determined by Contractor as needed to weigh all inbound and outboard vehicles Delivering Recyclable

1198 Materials with the exception that Contractor is not required to weigh empty vehicles if the vehicle tare weight  
1199 was recorded during the most recently completed six- (6-) month period in accordance with Section 6.5.B.  
1200 Following the City’s request, Contractor shall provide the City with access to weighing information at all times  
1201 and with copies thereof on the next Business Day.

1202 B. **Vehicle Tare Weights.** Within fourteen (14) Days of the Commencement Date, Contractor shall weigh the  
1203 Franchised Collector’s vehicles and determine the unloaded (“tare”) weight(s) of the vehicle(s). Contractor  
1204 shall record tare weight, name of Franchised Collector, and vehicle identification number. Within ten (10)  
1205 Business Days of weighing, Contractor shall provide the City with a report listing vehicle tare weight  
1206 information. Contractor shall determine tare weights of vehicles at least once each calendar quarter within  
1207 the first two (2) weeks of the quarter. If there is reasonable suspicion or evidence that tare weights are not  
1208 accurate, the City may, at any time and without limitation, request re-determination of tare weights, in which  
1209 case Contractor shall promptly re-determine tare weights for requested vehicles. Contractor may update tare  
1210 weights, at Contractor's own initiative or, at the request of the City, more frequently. Contractor may use the  
1211 tare weight to calculate the Tonnage of Loads Delivered by the Franchised Collector.

1212 C. **Substitute Scales.** If any scale at an Approved Facility is inoperable, being tested, or otherwise unavailable,  
1213 Contractor shall weigh vehicles on the remaining operating scale(s). To the extent that all the scales are  
1214 inoperable, being tested, or otherwise unavailable, Contractor shall substitute portable scales until the  
1215 permanent scales are replaced or repaired. Contractor shall arrange for any inoperable scale to be repaired  
1216 as soon as possible and, in any event, within seventy-two (72) hours (excluding Holidays) of the failure of the  
1217 permanent scale. If repairs to the permanent scale are projected to take more than twelve (12) hours,  
1218 Contractor shall immediately obtain a temporary substitute scale(s).

1219 D. **Estimates.** Pending substitution of portable scales or during power outages, Contractor shall estimate the  
1220 Tonnage of the Recyclable Materials Delivered to and Accepted at the Approved Facilities by utilizing the  
1221 arithmetic average of each vehicle's recorded Tons of Recyclable Materials Delivered on its preceding three  
1222 (3) Deliveries, on the same day of the week, to the Approved Facility.

1223 During any period the scales are out of service, Contractor shall continue to record all information required  
1224 by Section 6.5.G for each Delivery of Recyclable Materials to the Approved Facilities.

1225 E. **Testing.** Contractor shall test and calibrate all scales in accordance with Applicable Law, but at least every  
1226 twelve (12) months or upon the City’s request.

1227 F. **Weighing Standards and Procedures.** Contractor shall weigh and record inbound weights of all vehicles  
1228 Delivering Recyclable Materials to the Approved Processing Facilities, when the vehicles arrive at the  
1229 Approved Processing Facilities and weigh and record outbound weights of vehicles for which Contractor does  
1230 not maintain tare weight information. Contractor shall provide each driver a receipt showing the date, time,  
1231 and quantity of Recyclable Materials that the vehicle Delivered to the Approved Facility. Contractor shall also  
1232 weigh and record inbound weights for vehicles Transporting Recovered Materials to Market and Residue to  
1233 the Approved Disposal Facility.

1234 G. **Records.** Contractor shall maintain computerized scale records and reports that provide information including  
1235 date of receipt, inbound time, inbound and outbound weights of vehicles, vehicle identification number,  
1236 jurisdiction of origin of materials Delivered, type of material, company/hauler identification, and  
1237 classification, type, weight, and destination of material (where the destination of materials shall be the  
1238 Approved Facilities, or Market location were materials are Transported to from the Approved Facilities).  
1239 Contractor shall also maintain computerized scale records and reports providing historical vehicle tare  
1240 weights for each vehicle and the date and location for each tare weight recorded.

1241 H. **Upon-Request Reporting.** If vehicle receiving and unloading operations are recorded on video cameras at the  
1242 Approved Processing Facilities, Contractor shall make those videos available for the City’s review during the

1243 Facility's operating hours, upon request of the City, and shall provide the name of the driver of any particular  
1244 Load if available.

1245 **6.6 Safety**

1246 Contractor shall conduct the operations of the Approved Facilities in a safe manner, in accordance with Applicable  
1247 Law and insurance requirements provided in Article 10.

1248 **6.7 Monthly Detailed Tonnage Report**

1249 On or before the fifteenth (15th) Business Day of each month, Contractor shall report to the Franchised Collector  
1250 and the City the total monthly Tonnages of the Recyclable Materials Delivered to and Accepted at each Approved  
1251 Facility during the previous month. The Tonnage reports shall be in a form satisfactory to the City and shall, at a  
1252 minimum, separately list vehicle number, date and time of Delivery, and associated Tonnage for each Load of  
1253 Recyclable Materials Delivered. If Contractor does not submit a complete report in a timely fashion or incorporate  
1254 comments, additions, and corrections requested by the City within fifteen (15) Days of receipt of those comments,  
1255 additions, and corrections, the City may assess Liquidated Damages for each Day it is late in accordance with Section  
1256 11.9.

1257 **6.8 Monthly Summary Report**

1258 Within fifteen (15) Days after the end of each calendar month in form and content satisfactory to the City, Contractor  
1259 shall submit a monthly report with the information described in this paragraph. If Contractor does not submit a  
1260 complete report in a timely fashion or incorporate comments, additions, and corrections requested by the City within  
1261 fifteen (15) Days of receipt of those comments, additions, and corrections, the City may assess Liquidated Damages  
1262 for each Day it is late in accordance with Section 11.9. In the monthly report, Contractor shall include, at a minimum,  
1263 the total monthly Tonnage and the number of Loads of Recyclable Materials that were: (i) Delivered and Accepted  
1264 at each Approved Facility; (ii) Processed at the Approved Recyclable Materials Processing Facility; (iii) Marketed at  
1265 the Approved Recyclable Materials Processing Facility; and (v) Residue Disposed. The City may direct Contractor to  
1266 provide additional information the City deems necessary to corroborate Tonnage reports. Copies of the Monthly  
1267 Reports shall be provided by Contractor to the Franchised Collector within the same time frame specified for  
1268 submittal to the City.

1269 **6.9 Right to Enter Facility and Observe Operations**

1270 The City and its designated representative(s) reserve the right to enter, observe, and inspect the Approved Facilities  
1271 during Facility operations; conduct studies or surveys of the Approved Facilities; meet with the Approved Facilities'  
1272 manager(s) or his or her representatives at any time, provided that the City and its representatives comply with  
1273 Contractor's reasonable safety and security rules and do not interfere with the work of Contractor or its  
1274 Subcontractors. However, if Contractor representative or Approved Facility manager is not at the Approved Facility  
1275 when the City or its designated representative(s) visit without prior announcement, Contractor may limit the visit of  
1276 the City or its designated representative to a portion of the Facility, including, but not limited to, offices, container  
1277 and vehicle storage areas, or maintenance yards. In that event, Contractor shall arrange for the City or its designated  
1278 representative(s) to return for a visit of the complete Facility within twenty-four (24) hours of the City's visit. Upon  
1279 the City's direction, Contractor shall make personnel available to accompany the City employees or representatives  
1280 on inspections. Contractor shall ensure that its employees cooperate with the City and respond to the City's  
1281 reasonable inquiries. Contractor shall facilitate similar observation and inspection at Approved Facilities Owned by  
1282 it or an Affiliate upon the City's request and within three (3) Business Days of receiving such request.

1283 **6.10 Provision of Emergency Services**

- 1284 A. **Disaster Response Planning.** No less than ninety (90) Days prior to the Commencement Date, the Parties shall  
1285 meet to discuss development of a Plan to address the role of Contractor in addressing the City’s needs related  
1286 to wartime, natural, physical, or other disaster in, or proximate to, the Service Area resulting in the declaration  
1287 of a an emergency by the City Manager or City Council, as well as any measures that may be necessary for  
1288 Contractor to take over time to address climate change (“Disaster Response Plan”).
- 1289 B. **Disaster Response Plan.** The Parties shall develop and finalize a Disaster Response Protocol prior to the  
1290 Commencement Date that identifies specific communication and logistical actions, and such other  
1291 coordination between the Parties and internal to each Party such that Contractor assistance can occur  
1292 immediately following the City’s declaration of an emergency. The protocol shall become part of the Disaster  
1293 Response Plan to be developed by the Parties as provided in this Section. The Parties shall review the Protocol  
1294 no less than annually and revise as warranted.
- 1295 C. **Essential Service.** Contractor acknowledges that it provides an essential service, and that while provision of  
1296 Processing service during or following a disaster may be affected by impacts to facilities, equipment, and/or  
1297 public infrastructure, Contractor is obligated to take all measures reasonably necessary to provide such  
1298 service in a timely and effective manner in compliance with this Agreement, Section 11.10 notwithstanding.  
1299 Such measures may include but are not limited to a change in Approved Facility(ies) and/or Designated  
1300 Facility(ies).
- 1301 D. **Availability of Contractor’s Personnel and Equipment.** In the event of a declaration of an emergency,  
1302 Contractor shall provide, upon the City’s request, all equipment, vehicles, and/or personnel normally  
1303 performing Services under this Agreement for use by Contractor in conducting emergency operations. These  
1304 emergency services shall be performed in consultation with the City Manager to ensure appropriate  
1305 prioritization of services. The City shall not be required to compensate Contractor for Contractor’s provision  
1306 of equipment, vehicles, or personnel normally performing Services under this Agreement when made  
1307 available during a declaration of an emergency for Contractor’s use in excess of what is otherwise payable to  
1308 Contractor pursuant to this Agreement.
- 1309 E. **Contractor Reimbursement for Use of Additional Resources.** In the event of a declaration of an emergency,  
1310 should Contractor provide, upon the City’s request, additional equipment, vehicles, and/or personnel beyond  
1311 that normally performing Services under this Agreement, for use by Contractor in conducting emergency  
1312 operations under the City’s direction, Contractor may submit to the City detailed records of specific,  
1313 additional, and reasonable costs and expenses borne by Contractor in providing such additional resources.  
1314 The City shall reimburse Contractor for such documented, reasonable expenses within ninety (90) Days after  
1315 the City receives State and/or Federal emergency agency reimbursement specific to these expenses. Should  
1316 such State and/or Federal reimbursement not occur within five hundred and forty (540) Days after  
1317 Contractor’s complete submission as verified by the City, Contractor may seek compensation under the terms  
1318 of this Agreement. Contractor shall promptly cooperate with the City, State and/or Federal reporting and  
1319 documentation requirements related to a request for reimbursement. Contractor shall further comply with  
1320 all applicable Federal, State, or local funding and accounting requirements that may apply to expenses that  
1321 will be reimbursed upon notice of the same from the City.
- 1322 F. **Disaster Waivers.** In the event of a disaster, the City may grant Contractor a waiver of some or all Processing  
1323 requirements under this Agreement and 14 CCR, Division 7, Chapter 12, Article 3 in the disaster-affected areas  
1324 for the duration of the waiver, provided that such waiver has been approved by CalRecycle. Any resulting  
1325 changes in Processing requirements shall be addressed as a change in scope in accordance with Section 2.3.

1326 **6.11 Alternative Facilities**

1327 A. **Contractor-Initiated Change in Facility.** Contractor may change its selection of one or more of the Approved  
 1328 Facilities following the City’s written approval, of which may not be unreasonably withheld, but Contractor  
 1329 shall not be compensated for any increased Transportation, and Processing costs. Contractor shall bear any  
 1330 increased Transportation, and Processing costs associated with a Contractor-initiated change in the Approved  
 1331 Facility(ies) including additional costs related to the Franchised Collector’s Transportation of Recyclable  
 1332 Materials to the alternative Facility(ies). In such case, Contractor shall guarantee the same Recovered  
 1333 Materials Revenue Payment specified in Section 7.6 or shall increase the Recovered Materials Revenue  
 1334 Payment associated with the use of Recyclable Materials Processing Facility(ies) different from the Approved  
 1335 Facilities. If Contractor elects to use a Recyclable Materials Processing Facility(ies) that is different than  
 1336 Approved Facility(ies), it shall request written approval from the City sixty (60) Days prior to use of such site  
 1337 and obtain the City’s written approval no later than ten (10) Days prior to use of the site, if any.

1338 B. **Inability to Use Approved Facilities.** If Contractor is unable to use an Approved Facility due to an emergency  
 1339 or sudden unforeseen closure of the Facility, Contractor may use an alternative Facility provided that  
 1340 Contractor provides verbal and written notice to the City and receives written approval from the City at least  
 1341 twenty-four (24) hours prior to the use of an alternative Facility. Contractor’s written notice shall include a  
 1342 description of the reasons the Approved Facility is not feasible and the period of time Contractor proposes to  
 1343 use the alternative Facility. Unless the use of an alternative Facility is due to an Uncontrollable Circumstance,  
 1344 Contractor shall: (i) not be compensated for any increased Transportation, and Processing costs; (ii) guarantee  
 1345 the same Recovered Materials Revenue Payment specified in Section 7.6 or shall increase the Recovered  
 1346 Materials Revenue Payment associated with the use of Facility(ies) different from the Approved Facility(ies);  
 1347 and (iii) compensate the City or Franchised Collector (as directed by the City) for additional costs related to  
 1348 the Franchised Collector’s Transportation of Recyclable Materials to the alternative Facility(ies).

1349 C. **Pre-Approved Alternate Emergency Processing Facility(ies).** As of the Commencement Date, the City has  
 1350 approved each of the Recyclable Materials Processing Facilities listed below to be used by Contractor as  
 1351 alternative Facility subject to the provisions of Sections 6.11.A and 6.11.B above. Contractor may request, in  
 1352 writing, for the City’s pre-approval of additional Recyclable Materials Processing Facilities.

1353

Facility Name	Owner/Operator	Location

1354 **6.12 Allocation Method**

1355 Contractor shall develop a method of allocating Recyclable Materials by material type and allocating Processing  
 1356 Residue to the City. The allocation method shall be the same as that used to report Solid Waste Disposal to the State



1357 or a method reviewed and approved by the City. Reports including Tonnage allocations shall be certified by an  
1358 authorized Person or officer of that Approved Facility and submitted to the City in accordance with Exhibit A.

1359 Periodically, Contractor shall review its Marketing records to calculate the volume of Recyclable Materials received  
1360 at the Approved Recyclable Materials Processing Facility and Marketed to determine the percentage of various  
1361 Recyclable Materials (e.g., glass, newspaper, cardboard, PET, HDPE, aluminum, etc.) and the City's Residue level. The  
1362 percentages determined from the review of Marketing records shall be used to allocate the total Tonnage of  
1363 Recyclable Materials into various categories of Recovered Materials and Residue.

### 1364 **6.13 Insurance, Indemnifications, and Performance Standards**

1365 If Contractor (i) uses an Affiliate or Subcontractor for Services required to be provided by Contractor hereunder  
1366 related to Recyclable Materials Acceptance, Processing, Diversion, and Marketing, or (ii) enters into any contract,  
1367 agreement or understanding with an Affiliate or third party for services required to be provided by Contractor  
1368 hereunder related to Recyclable Materials Acceptance, Processing, Diversion, and Marketing, Contractor shall  
1369 provide that terms and conditions (such as insurance requirements, indemnifications, Acceptance, Processing,  
1370 Marketing performance, Maximum Vehicle Turnaround Time guarantee, Residue level guarantees) of any such  
1371 contract, agreement, or other understanding Contractor has with such Affiliate or third party that can be enforced  
1372 by the City as an additional insured or third party beneficiary thereof in the same manner provided in Article 10 and  
1373 in a manner reasonably satisfactory to the City.

1374 If Contractor, an Affiliate, or Subcontractor Owns or operates the Approved Facilities, Contractor shall include the  
1375 City as an additional insured on liability policies and defend and indemnify the City in the manner set forth in Sections  
1376 10.1, 10.2, and 10.3 as satisfactory to the City, and provide that any materials recovery and Marketing performance  
1377 standards or guarantees made to any other Facility users are made to the City as well, including obligations such as  
1378 recovered product quality guarantees, Maximum Vehicle Turnaround Times, and limits on the Residue level.

1379 Contractor shall demonstrate compliance with the requirements of this paragraph on or before the Commencement  
1380 Date of this Agreement.

### 1381 **6.14 Compliance with Applicable Law**

1382 Contractor (or its Affiliate or Subcontractor(s)) warrants throughout the Term that the Approved Facilities selected  
1383 by Contractor are respectively authorized and Permitted to Accept Recyclable Materials in accordance with  
1384 Applicable Law and are in full compliance with Applicable Law. Contractor shall: (1) verify compliance for the  
1385 Approved Facilities (that neither it nor its Affiliates Own) by contacting the local enforcement agency and other  
1386 regulatory agencies having jurisdiction over the Approved Recyclable Materials Processing Facility at least quarterly;  
1387 and, (2) upon the City's direction, shall promptly provide the City with copies of the Approved Facilities' Permits or  
1388 notice of violations.

### 1389 **6.15 Compliance with Facility Rules**

1390 Contractor shall observe and comply with all regulations in effect at the Approved Facilities and cooperate with the  
1391 operators thereof with respect to Delivery and Acceptance of Recyclable Materials, including complying with  
1392 Unpermitted Waste exclusion programs.

### 1393 **6.16 Disposal of Recyclable Materials Prohibited**

1394 With the exception of Processing Residue, Recyclable Materials may not be Disposed of or used for Beneficial Reuse  
1395 Purposes, without the expressed written approval of the City.

1396 If for reasons beyond its reasonable control, Contractor (or its Affiliate(s) or Subcontractor(s)) believes that it cannot  
1397 Divert the Recyclable Materials from Disposal, then it shall prepare a written request for approval to Dispose of such  
1398 material. Such request shall contain the basis for Contractor's belief (including, but not limited to, supporting  
1399 documentation), describe Contractor's efforts to arrange for the Diversion of such material, the period required for  
1400 such Disposal, the incremental net cost increases or net cost savings (giving account to the value from the sale of  
1401 the Recovered Materials) and net reduction to the Recovered Materials Revenue Payments resulting from such  
1402 Disposal, and any additional information supporting Contractor's request.

1403 In addition, the request shall describe Contractor's proposed interim plans for implementation while the City is  
1404 evaluating its request. If the City objects to the interim plans, the City shall provide written notice to Contractor and  
1405 request an alternative arrangement. The City shall consider Contractor's request and inform Contractor in writing of  
1406 its decision within sixty (60) Days. If the City approves such request, any difference in the net cost of such Disposal  
1407 compared to Diversion shall be adjusted in accordance with Section 8.5. Depending on the nature of Contractor's  
1408 request, the City may extend the sixty (60) Day period, at its own discretion not to exceed a total duration of one  
1409 hundred eighty (180) Days, to provide more time for evaluation of the request and negotiation of an acceptable  
1410 arrangement with Contractor.

## 1411 **6.17 Reporting**

1412 On a monthly basis, Contractor shall provide all necessary reporting data requested by the City relating to the City's  
1413 compliance requirements pertaining to AB 939, AB 341, AB 1826, SB 1383, and AB 1694 as it affects the City's  
1414 reporting to CalRecycle. Reports shall be presented on a calendar year and/or Rate Year basis, at the City's request,  
1415 and in a format approved by the City.

1416 Contractor shall cooperate in activities requested by the City to measure Diversion of Recyclable Materials from  
1417 landfills, including, but not limited to, providing a location for conducting composition analyses of the Recyclable  
1418 Materials through sorting of the materials into individual types of Recyclable Materials at Contractor's Facility. Such  
1419 reports shall include, but not necessarily be limited to, throughput, Diversion rates per material type, Residue, costs,  
1420 Recovered Materials commodity values, and final disposition of Recyclable Materials. Contractor shall also supply  
1421 any other information reasonably requested by the City to meet State, Federal, or StopWaste regulatory  
1422 requirements as those requirements may be amended from time to time.

## 1423 **6.18 Provision of Contingency Plan**

1424 Contractor shall submit to the City for review and approval on or before the Commencement Date, a written  
1425 contingency plan demonstrating Contractor's arrangements to provide vehicles and personnel and to maintain  
1426 uninterrupted service during mechanical breakdowns, and in case of natural disaster, other emergencies, or labor  
1427 disputes. This contingency plan shall be specific to the needs of the City. Contractor shall provide emergency services  
1428 at the City's request in the event of major accidents, disruptions, or natural calamities in a manner consistent with  
1429 the services and procedures identified in its contingency plan, or as directed by the City. Emergency services may  
1430 include, but are not limited to, assistance handling salvaged materials; Transferring, Transporting, or Processing  
1431 Recyclable Materials; or Transferring, Transporting, or Disposing of Solid Waste following a major accident,  
1432 disruption, or natural calamity.

## 1433 **6.19 Personnel**

1434 A. **General.** Contractor shall furnish such qualified personnel as may be necessary to provide the Services  
1435 required by this Agreement in a safe and efficient manner. Contractor shall designate at least one (1) qualified  
1436 employee as the City's primary point of contact with Contractor who is principally responsible for Processing  
1437 operations and resolution of service requests and complaints.

- 1438 Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct  
 1439 themselves in a courteous manner. Contractor shall not permit its employees to accept, demand, or solicit,  
 1440 directly or indirectly, any additional compensation, or gratuity from members of the public.
- 1441 B. **Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class, issued by the  
 1442 California Department of Motor Vehicles. Contractor shall use the Class II California Department of Motor  
 1443 Vehicles employer “Pull Notice Program” to monitor its drivers for safety.
- 1444 C. **Safety Training.** Contractor shall provide suitable operational and safety training for all of its employees.  
 1445 Contractor shall train its employees involved in Processing to identify, and not Accept and/or Process  
 1446 Unpermitted Waste. Upon the City’s request, Contractor shall provide the City with a copy of its safety policy  
 1447 and safety training program, the name of its safety officer, and the frequency of its trainings.
- 1448 D. **Hiring Displaced Employees.** Contractor shall make a good faith effort to offer employment to qualified  
 1449 employees that are working under the Agreement between the City and the prior contractors for Processing  
 1450 of Recyclable Materials, which agreements expire \_\_\_\_\_, and who become unemployed by  
 1451 reason of the change in contractors (“prior contractor’s employees”).
- 1452 E. **Affiliates and Subcontractor Obligations.** Approved Affiliates and Subcontractors shall be required to comply  
 1453 with the obligations stated in this Section 6.19.
- 1454 F. **Labor Agreements.** Labor agreements for drivers, mechanics, and Facility personnel shall be included as  
 1455 Exhibit J and any future modification shall be provided to the City as they occur. Contractor shall provide full  
 1456 copies of the labor agreements including any and all amendments, extensions, renewals, or other forms of  
 1457 modification.

1458 **ARTICLE 7**  
 1459 **PAYMENTS TO THE CITY AND DESIGNATED FACILITIES**

1460 [Note to Proposers: This section will be amended to reflect the final City reimbursement provisions as determined  
 1461 through negotiations.]

1462 **7.1 Payments to the City**

1463 The City reserves the right to establish or modify City Reimbursements at any time during the Term of this  
 1464 Agreement. Such a decision by the City shall be treated as a pass through pursuant to Section 8.3.B. Contractor shall  
 1465 submit all Payments to the City at the frequency approved by the City. Contractor is prohibited from withholding or  
 1466 offsetting payments to the City and/or any Designated Facility(ies) as a remedy for any dispute under this Agreement.

1467 **7.2 Adjustment of Payments**

1468 All payments described in Section 7.1 shall be included in the calculation of Tipping Fees as provided in Article 8. In  
 1469 its sole discretion, the City may adjust the amount of any payment required by Section 7.1, as necessary. Such  
 1470 adjustment shall be reflected in the adjustment of Tipping Fees as provided in Article 8.

1471 **7.3 Methods of Payments**

1472 Contractor shall remit all required payments to the City on a quarterly basis, or as otherwise specifically provided in  
1473 this Article 9, by check or other payment method approved by the City.

1474 **7.4 Timing of Payments and Penalties for Late Payments**

1475 Contractor shall remit all payments required under Section 7.1 within twenty (20) Days after the end of each quarter.  
1476 All payments shall be paid by check or electronic payment method accepted by the City. If any of the payments  
1477 specified in this Article 7 are not paid to the City, as described above, Contractor shall be liable for finance or interest  
1478 charges to the City.

1479 The late payment penalty amounts are not intended as Interest on debt, but rather are intended as a predetermined  
1480 penalty for failure to meet an obligation under this Agreement.

1481 **7.5 Billing and Payment Audit**

1482 The City may, at any time during the Term or within three (3) years following the expiration or early termination of  
1483 this Agreement, perform an audit of Contractor’s Tonnage records, billings, and payment of monies due to the City  
1484 under Section 7.1; provided however, that the City has up to three (3) years to provide such notice to Contractor  
1485 that such an audit is being required if the request follows the expiration or early termination of the Agreement.  
1486 Contractor shall fully cooperate with the City in any such audit. Should the City or its agent perform this review and  
1487 identify billing errors or other errors in payments due to the City valued at one percent (1%) or more of Contractor’s  
1488 prior year annual revenues under this Agreement, in addition to compensating the City for lost payments and  
1489 applicable delinquency penalties, Contractor shall reimburse the City’s cost of the review.

1490 **7.6 Payment of Recovered Recyclable Materials Revenue**

1491 [Note to Proposers: This section will be amended to reflect the final provisions as determined by the compensation  
1492 method selected through negotiations.]

1493 In addition to any payments due to the City, as described in Section 7.1, and in further consideration of the exclusive  
1494 rights provided to Contractor in Section 2.1, Contractor shall remit to the City ninety-five percent (95%) of the  
1495 {calculated or actual} value associated with Contractor’s Recovery of the City’s Recyclable Materials Delivered under  
1496 this Agreement. The value shall be calculated in accordance with Exhibit H (“Revenue Sharing Calculation”),  
1497 established annually and divided into twelve (12) equal installments.

1498 Contractor shall submit all payments to the City quarterly. Contractor is prohibited from withholding or offsetting  
1499 payments to the City and/or any Designated Facility(ies) as a remedy for any dispute under this Agreement.

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1501  
1502

## ARTICLE 8 CONTRACTOR COMPENSATION AND RATE SETTING

1503 {Note to Proposers: This Article 8 will be updated following successful negotiations with the selected contractor and  
1504 sections of this Article 8 may be moved to Exhibit G and H.}

1505 **8.1 Overview**

1506 Contractor’s compensation for performance of its obligations under this Agreement shall be Contractor Revenue.  
1507 Contractor Revenue shall be the full, entire, and complete compensation due to Contractor pursuant to this  
1508 Agreement to cover Contractor’s costs for all labor, equipment, materials and supplies, Facility fees, payments and  
1509 fees due to the City, taxes, insurance, bonds, overhead, Acceptance, Recycling, Processing, Diversion, Residue  
1510 Disposal, operations, profit, and all other things necessary to perform all the Services required by this Agreement in  
1511 the manner and at the times prescribed.

1512 If Contractor’s actual costs, including fees due to the City, are more than Contractor’s Revenue for Services rendered  
1513 by Contractor under this Agreement, Contractor shall not be compensated for the difference between actual costs  
1514 and actual Contractor Revenue for Services rendered by Contractor under this Agreement. If Contractor’s actual  
1515 costs are less than the actual Contractor Revenue Services rendered by Contractor under this Agreement, Contractor  
1516 shall retain the difference provided that Contractor has made all payments required in Article 7.

1517 Under this Agreement, Contractor shall have the right and obligation to charge and collect Tipping Fees from the  
1518 collection contractor as established and adjusted under this Agreement for provision of Contractor’s Services to the  
1519 City. The Tipping Fees for Rate Period One are based on Contractor’s Proposal. Contractor’s proposed costs and  
1520 operating assumptions for Rate Period One are presented in Exhibit G.

1521 **8.2 Remittances to Contractor**

1522 Each month, within five (5) Business Days after the last day of the preceding month, Contractor shall provide to the  
1523 collection contractor an invoice detailing the total Tons Delivered to the Approved Facility from the City Service Area  
1524 by the collection contractor, and the resulting monies owed to Contractor, based on the then-current Per-Ton  
1525 Tipping Fees. Contractor shall be responsible for collecting payment for Post-Collection Services directly from the  
1526 collection contractor. Contractor shall cooperate with the collection contractors needed to calculate and/or  
1527 reconcile remittance amounts. In the event that there is a dispute by the collection contractor over the amount of  
1528 an invoice, Contractor shall work diligently with collection contractor to expeditiously resolve the dispute in  
1529 accordance with Article 12. In the event the dispute between Contractor and collection contractor is escalated to  
1530 the City, the City Contract Manager, in their sole discretion, may make a determination and such determination shall  
1531 be final for any dispute involving payment of one hundred thousand dollars (\$100,000) or less. Contractor shall  
1532 deliver to collection contractor, with a copy to the City, a notice of late payment for a given monthly invoice thirty-  
1533 five (35) calendar Days after the date of generation of the invoice. Contractor’s invoices shall be deemed delinquent  
1534 if collection contractor has not paid within sixty (60) calendar Days of the date of the notice of late payment.  
1535 Thereafter, Contractor may suspend Acceptance of City Delivered Materials from the collection contractor until the  
1536 delinquent invoice(s) are paid in full, excluding disputed amounts. The delinquent invoice shall bear interest on the  
1537 unpaid balance at a rate not to exceed one and one-third percent (1 1/3%) per month. Contractor shall maintain  
1538 copies of all billings and receipts, each in chronological order, for the Term of this Agreement, for inspection and  
1539 verification by the City Contract Manager at any reasonable time but in no case more than thirty (30) calendar Days  
1540 after receiving a request to do so.

1541 **8.3 Process for Setting and Adjusting Tipping Fees**

1542 A. **General.** The City shall be responsible for approving Per-Ton Tipping Fees as described in this Article. Such  
1543 approval or denial shall only be made on the basis of Contractor’s mathematical accuracy and logical  
1544 adherence to the calculation methodology.

1545 B. **Tipping Fees for Rate Period One.** Per-Ton Tipping Fees for Rate Period One, which are presented in Exhibit  
1546 G, were determined by Contractor and the City and were approved along with the Agreement. The Tipping  
1547 Fees for Rate Period One shall be effective from \_\_\_\_\_.

1548 C. **Annual Adjustment.** The Tipping Fees shall be adjusted annually, upon approval by the City Manager as  
1549 described in Section 8.3.A, commencing with Rate Year Two (July 1, 2026) through the remaining Term of  
1550 this Agreement including any extension periods. The following formulas shall be used to calculate the  
1551 adjustment to the Tipping Fee.

1552 (1) Reserved.

1553 **8.4 Tipping Fee Application Process**

1554 A. **Application Date and Content.**

1555 (1) Application Submittal Date. On {January 1}, prior to the commencement of the Rate Year for which  
1556 Tipping Fees are to be determined (coming Rate Year), Contractor shall submit to the City Manager its  
1557 application requesting the adjustment of Tipping Fees for the coming Rate Year via email with  
1558 confirmation receipt. All Tipping Fee applications shall be submitted in Microsoft Excel format with all  
1559 formulas and calculations preserved.

1560 (2) Content of Application for Adjustment. The application submitted to support an adjustment of Tipping  
1561 Fees shall be submitted in Microsoft Excel format with all formulas and calculations preserved. Such  
1562 application shall present the underlying data and calculations of the Annual Percentage Change in  
1563 various cost indices as separate tabs or tables in the submittal. The application shall include all  
1564 supporting documentation for the calculations, including copies of any relevant correspondence or  
1565 evidence related to Governmental Fees.

1566 The application shall also present a summary table with the Tipping Fees for the then-current Rate Year  
1567 (e.g., Rate Year Three) and the proposed Tipping Fees for the coming Rate Year (e.g., Rate Year Four).

1568 If the City requests additional information beyond that provided by Contractor in its application,  
1569 Contractor shall provide all information requested by the City during its review of the application,  
1570 including, but not limited to, all information from Affiliates requested by the City regarding any  
1571 transactions between Contractor and any Affiliates pertaining to Contractor's performance under this  
1572 Agreement.

1573 B. **City Review of Application.** The City Manager shall review Contractor’s application for an adjustment of  
1574 Tipping Fee and, upon completion of review, the City Manager shall approve, or deny with requirement for  
1575 correction. The City Manager shall act in good faith to approve or direct changes required to provide for  
1576 such adjustments to Tipping Fees by {March 1} of the Rate Year. The adjusted Tipping Fees shall not take  
1577 effect until the City Manager has provided written approval of such Tipping Fees.

1578 C. **Failure to Adjust Tipping Fees.** If Contractor submits its application for adjustment of Tipping Fees in a  
1579 correct and compliant format and with all required content on or before the application date identified in  
1580 Section 8.4.A.1, and the City Manager does not approve adjusted Tipping Fees under this Agreement, the

1581 City shall provide a payment(s), adjustment(s), or surcharge(s) such that Contractor receives payment for  
1582 any shortfall in Contractor’s Compensation resulting from the delay in approval of appropriate adjustments  
1583 to Tipping Fees. To determine the amount of a shortfall, if any, the City and Contractor shall meet and  
1584 confer to determine the effect the delayed approval of appropriate adjustments in Tipping Fees has on  
1585 Contractor’s compensation. The assessment of the revenue impact shall consider the collection contractor’s  
1586 billing cycle (e.g., impact to Subscribers billed in advance and to Subscribers billed in arrears), the ability of  
1587 Contractor to delay issuance of bills, the payment cycle of the Franchised Collector, and other variables.

1588 If Contractor does not submit the application in a correct and compliant format and with all required  
1589 content on or before the application date identified in Section 8.4.A.1, adjusted Tipping Fees may not be  
1590 approved by March 1 of a Rate Year and therefore, may not become effective by July 1 of a Rate Year. In  
1591 such case, appropriate adjustments of Tipping Fees shall be approved and made effective as soon as  
1592 practical, but the City shall not be required to provide retroactive payment(s), adjustment(s), or  
1593 surcharges(s) to allow Contractor to recover compensation that Contractor would have collected had the  
1594 application been timely submitted and the Tipping Fee adjustment been implemented in accordance with  
1595 the prescribed schedule.

1596 **8.5 Special Review of Tipping Fee**

1597 A. **Eligible Items.** Contractor is entitled to apply to the City for consideration of a Special Tipping Fee Review, or  
1598 the City may initiate such a review, should one or more of the following events occur and should such  
1599 occurrence(s) have a material effect totaling two percent (2%) or more annually on the Recovered Materials  
1600 Revenue Payments to the City for the then-current Rate Year:

1601 (1) Change in Scope. Documented significant changes in the cost to provide Services required in this  
1602 Agreement as a result of an agreed-upon or City-directed change in scope, as provided for under 2.4,  
1603 2.6, 5.4, 8.6;

1604 (2) Emergency Services. Provision of emergency services pursuant to Section 6.10;

1605 (3) Catastrophic Events. Flood, earthquake, other acts of nature, war, civil insurrection, riots, acts of any  
1606 government agency (including judicial action), or other similar catastrophic events that are beyond the  
1607 control of and not the fault of Contractor; and/or,

1608 (4) Change in Law. Change in Law, including, but not limited to, Changes in Law that result in regulatory,  
1609 governmental, or other surcharge fees, after the Effective Date that: (1) were not reasonably known to  
1610 Contractor before the Effective Date; and (2) Contractor substantiates.

1611 B. **Ineligible Items.** A Special Tipping Fee Review may not be initiated for the following items and Contractor  
1612 shall not be compensated for such items over the Term of the Agreement:

1613 (1) Increases in Recyclable Materials Acceptance, Processing, Diversion, and Marketing costs, unless cost  
1614 increases are related to eligible items listed in Section 8.5.A above, or unless changes in operating  
1615 conditions are initiated by or at the direction of the City;

1616 (2) Changes in revenues from the sale of Recovered Materials;

1617 (3) Change in the Tonnage or composition of Recyclable Materials Delivered to the Approved Facilities;

1618 (4) Costs incurred due to Contractor's negligence or misconduct;

1619 (5) Costs incurred due to Permit changes of which Contractor did not provide timely notice;

- 1620 (6) Any fines or penalties imposed on Contractor or the Approved Facilities;
- 1621 (7) Cost of remediation and cost-recoveries pursuant to Applicable Law, including CERCLA and RCRA;
- 1622 (8) Costs attributable to changing the classification of the Approved Facilities under Applicable Law, unless  
1623 directed by the City in accordance with Section 2.3;
- 1624 (9) Costs and expenses related to the handling of Unpermitted Waste, notwithstanding the provisions of  
1625 Section 6.1;
- 1626 (10) Increases in Contractor costs including, but not limited to, labor, fuel, and equipment;
- 1627 (11) Increases in Contractor's costs due to changes in the Tonnage and/or characterization of the Recyclable  
1628 Materials; and,
- 1629 (12) Decreases in Contractor's revenues from the Marketing of Recovered Materials due to changes in the  
1630 Tonnage and/or characterization of the Recyclable Materials and changes in Market conditions relative  
1631 to Recovered Materials commodity values.
- 1632 C. **Review of Costs and Revenues.** If Contractor or the City requests a Special Tipping Fee Review, the City shall  
1633 have the right to review any or all financial and operating records of Contractor and right to review any or all  
1634 financial and operating records of Affiliates only as it pertains to the scope of this Agreement.
- 1635 D. **Submittal of Request.** If Contractor is requesting a Special Tipping Fee Review, Contractor must submit its  
1636 request for a Special Tipping Fee Review, along with cost, operational, and material sales revenue data, in a  
1637 form and manner specified by the City.
- 1638 If the City is requesting a Special Tipping Fee Review, the City shall notify Contractor at least four (4) months  
1639 before the proposed effective date of any adjustment to the per-Ton Tipping Fee adjustment. Upon such  
1640 notification, Contractor shall, within thirty (30) Days, submit reasonable cost, operational, and material sales  
1641 revenue data as requested by the City, in a form and manner specified by the City.
- 1642 E. **Burden of Justification.** Contractor shall bear the burden of justifying to the City by substantial evidence any  
1643 entitlement to current, as well as a reduced or increased, per-Ton Tipping Fee amount under this Section 8.5.  
1644 Records required to be maintained pursuant to Article 9 shall be subject to review, in accordance with  
1645 appropriate professional standards, and inspection, for the primary purpose of reviewing changes in costs  
1646 and material sales revenue to Contractor attributable to the circumstances that triggered the Special Tipping  
1647 Fee Review, at any reasonable time by the City Manager or an independent third party. The selection of the  
1648 independent third party as well as the scope of work for such review shall be approved in advance by the City.  
1649 The independent reviewer shall provide any and all drafts of its review to the City and Contractor. The Party  
1650 requesting the extraordinary Rate adjustment review shall bear the cost of the review.
- 1651 If the City determines that Contractor has not met its burden, Contractor may request a meeting with the City  
1652 to produce additional evidence. Upon such request, the City shall permit said additional hearing. Any resulting  
1653 disputes shall be managed pursuant to Article 12.
- 1654 F. **Grant of Request.** Based on evidence Contractor submits, the City Board may grant some, all, or none of the  
1655 requested adjustment to the per-Ton Recovered Materials Revenue Payment amount.
- 1656 G. **Compensation.** If Contractor requests the Special Recovered Materials Revenue Payment Adjustment review,  
1657 Contractor shall bear all reasonable costs of both Parties for participating in such review up to a maximum of  
1658 \$25,000 per Party. If a Special Tipping Fee Review occurs in response to a City-directed change in scope



1659 (pursuant to Section 8.6), the City shall be considered the Party requesting the special review and the City  
1660 shall pay the costs of the review.

## 1661 **8.6 Adjustment of Tipping Fees for Changes in Scope**

1662 In the event either the City or Contractor requests a change in scope in accordance with Section 2.3 of this  
1663 Agreement, Contractor shall furnish the City with projected operational, cost, and material sales revenue data for  
1664 the change in scope to support any adjustment to the per-Ton Tipping Fee. For the purposes of analyzing cost and  
1665 material sales revenue impacts of changes in scope, Contractor’s profit shall be calculated using an operating ratio  
1666 of ninety percent (90%) of actual reasonable and necessary costs. The City reserves the right to require that  
1667 Contractor supply any additional cost or revenue data or other information it may reasonably need to ascertain the  
1668 appropriate adjustment of the per-Ton Tipping Fees, if any, for the change in scope. The City shall review this  
1669 operational, cost, and material sales revenue data, and the City Council shall approve the adjusted per-Ton Tipping  
1670 Fees for the change in scope, if warranted.

1671 The granting of any change in scope shall be contingent upon the City’s written approval and establishment of a new  
1672 per-Ton Tipping Fees, if appropriate. The City Council shall approve the per-Ton Tipping Fees adjustment, in good  
1673 faith, so that the change in scope and the corresponding per-Ton Tipping Fees become effective on the same date.

# 1674 **ARTICLE 9** 1675 **RECORD KEEPING AND REPORTING**

## 1676 **9.1 General Record Keeping Provisions**

1677 Contractor shall maintain, in its principal office, such accounting, statistical, and other records required to conduct  
1678 its operations, to support requests it may make to the City, to respond to requests from the City, and as shall be  
1679 necessary to develop the financial statements and other reports required by this Agreement. Adequate record  
1680 security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft,  
1681 and earthquake. Electronically-maintained data/records shall be protected and a second copy of data/records shall  
1682 be saved to a protected source, such as a combination of off-site and cloud-based backup with the ability to restore  
1683 complete functionality within twenty-four (24) hours, or a hot fail-over database configuration.

1684 Contractor and/or its Affiliates shall account for revenues received and expenses incurred as a result of this  
1685 Agreement separately from the accounting for other operations performed by Contractor or its Affiliates.

## 1686 **9.2 Review and Inspection**

1687 Contractor agrees to provide or make available its relevant records of any and all companies conducting operations  
1688 as it pertains to this Agreement to the City and its official representatives for review during normal business hours.  
1689 During the Term of this Agreement, the City, its auditors, and other agents, shall have the right, during normal  
1690 business hours, to conduct unannounced on-site inspections of the records and accounting systems of Contractor  
1691 and to make copies of any documents it deems relevant to this Agreement. In the event the custodian of such records  
1692 and systems is not on the premises at the time of inspection, Contractor shall not be in breach of this Agreement,  
1693 the City shall then give notice to Contractor requesting access to the records, and Contractor shall make  
1694 arrangements to allow for inspection within twenty-four (24) hours of such notice. The City’s right to inspection of  
1695 records under this paragraph shall continue for five (5) years after the expiration or early termination of this  
1696 Agreement. However, after expiration or early termination of this Agreement, the City shall provide Contractor with

1697 a written request to inspect records and Contractor shall make records available for inspection within two (2) weeks  
1698 of such request.

1699 **9.3 Retention of Records**

1700 Unless otherwise herein required, Contractor shall retain all records and data required by this Agreement for five (5)  
1701 years after the expiration or early termination of this Agreement.

1702 **9.4 Other Information Requirements**

1703 Contractor agrees to conduct data collection and other reporting activities as needed to comply with Federal, State,  
1704 Alameda County, and local laws and regulations, and the requirements of this Agreement. To the extent such  
1705 requirements are set out in this and other Articles of this Agreement, they shall not be considered limiting or  
1706 necessarily complete.

1707 **9.5 Reporting**

1708 Contractor’s reporting obligations are presented in Exhibit A.

1709 **9.6 CERCLA Reporting for Residue**

1710 The City views its ability to defend itself against Comprehensive Environmental Response, Compensation and  
1711 Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, the City regards its  
1712 ability to prove where Solid Waste is taken for Transfer or Disposal. Contractor shall maintain records which can  
1713 establish where Residue was Disposed. This provision shall survive the expiration or earlier termination of this  
1714 Agreement. Contractor shall maintain these records for a minimum of ten (10) years beyond expiration or earlier  
1715 termination of the Agreement. Contractor shall provide these records to the City (upon request or at the end of the  
1716 record retention period) in an organized and indexed manner rather than destroying or Disposing of them.

1717 **ARTICLE 10**  
1718 **INDEMNIFICATION AND INSURANCE**

1719 **10.1 General Indemnification**

1720 Contractor shall indemnify, defend with counsel acceptable to the City (provided that such acceptance shall not be  
1721 unreasonably withheld), and hold harmless the City, its officers, directors, employees, volunteers, and agents  
1722 (collectively, “Indemnitees”) from and against any and all claims, liability, loss, injuries, damages, expense, penalties,  
1723 and costs (including, without limitation, City staff costs, costs and fees of litigation, including attorneys’ and expert  
1724 witness fees incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of  
1725 every nature arising out of or in connection with Contractor’s performance (including Contractor’s officers,  
1726 employees, agents and/or Subcontractors’ performance) under this Agreement, or its failure to comply with any of  
1727 its obligations contained in the Agreement, except to the extent such loss or damage was caused by the active  
1728 negligence or willful misconduct of Indemnitees. Contractor’s duty to indemnify and defend shall survive the  
1729 expiration or earlier termination of this Agreement.

1730 **10.2 Hazardous Substance Indemnification**

1731 To the extent allowed by Applicable Law, Contractor shall indemnify, defend with counsel acceptable to the City  
1732 (provided that such acceptance shall not be unreasonably withheld), and hold harmless the City, its officers,  
1733 directors, employees, volunteers, and agents (collectively, "Indemnitees") from and against any and all claims,  
1734 damages (including but not limited to special, consequential, natural resources, and punitive damages), injuries,  
1735 costs (including but not limited to all response, remediation, and removal costs), losses, demands, debts, liens,  
1736 liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses  
1737 (including attorneys' and expert witness fees incurred in connection with defending against any of the foregoing or  
1738 in enforcing this indemnity (collectively, "damages")) of any nature whatsoever paid, incurred, suffered by, or  
1739 asserted against Indemnitees, arising from or attributable to any repair, cleanup or detoxification, or preparation  
1740 and implementation of any removal, remedial, response, closure, or other plan concerning any Hazardous  
1741 Substances or Hazardous Waste released, spilled, or disposed of by Contractor pursuant to this Agreement.  
1742 Notwithstanding the foregoing, however, Contractor is not required to indemnify the Indemnitees against claims  
1743 arising from Contractor's delivery of Residue to a Disposal Site Owned or operated by a third party, unless such  
1744 claims are a direct result of Contractor's negligence or willful misconduct. The foregoing indemnity is intended to  
1745 operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation  
1746 and Liability Act ("CERCLA"), 42 U.S.C. Section 9607(e), California Health and Safety Code Section 25364, and the  
1747 Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. to defend, protect, hold harmless, and  
1748 indemnify Indemnitees from liability, and shall survive the expiration or earlier termination of this Agreement.

1749 **10.3 Unpermitted Waste Defense and Indemnification**

1750 Contractor shall defend, indemnify, and hold harmless at its sole cost and expense with counsel approved by the  
1751 City, the City (including the Persons described in the definition of "City" in Article 1) in any Actions that assert or  
1752 allege Liabilities paid, incurred or suffered by, imposed upon or asserted against, the City that result or are claimed  
1753 to have resulted directly or indirectly from the presence, disposal, escape, migration, leakage, spillage, discharge,  
1754 release or emission of Unpermitted Waste or petroleum in, on, at, or under the Approved Facilities, whether:

- 1755 A. in one or more instance;
- 1756 B. threatened or transpired;
- 1757 C. Contractor is negligent or otherwise culpable; or,
- 1758 D. those Liabilities are litigated, settled, or reduced to judgment.

1759 The foregoing indemnity in favor of the City shall not apply to the extent that the City's Franchised Collector failed  
1760 to follow Standard Industry Practices and protocols in screening for Unpermitted Waste during Collection. For  
1761 purposes of this Indemnity, "Liabilities" includes, in addition to those included in Exhibit A, Liabilities arising from or  
1762 attributable to any operations, repair, clean-up or detoxification, or preparation and implementation of any removal,  
1763 remedial, response, closure, post-closure or other plan, regardless of whether undertaken due to government  
1764 directive or action, such as remediation of surface or ground water contamination and replacement or restoration  
1765 of natural resources.

1766 The foregoing indemnity is intended to operate as an agreement pursuant to 42 U.S.C. Section 9607(e) and California  
1767 Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify the City from liability in  
1768 accordance with this Section.

1769 **10.4 Insurance**

1770 Contractor shall, at its sole cost and expense, maintain in effect at all times during the Term of this Agreement not  
1771 less than the following coverage and limits of insurance:

1772 A. **Minimum Scope of Insurance.** Coverage shall be at least as broad as:

1773 (1) Commercial General Liability insurance with coverage at least as broad as Insurance Services Office  
1774 (ISO) form CG 0001.

1775 (2) The most recent editions of Insurance Services Office form number CA 0001 covering Automobile  
1776 Liability, code 1 “any auto” and endorsement with coverage as broad as CA 0025.

1777 (3) Workers’ compensation Employers Liability insurance as required by California Labor Code §3700 et al.

1778 B. **Minimum Limits of Insurance.** Contractor shall maintain limits no less than:

1779 (1) Commercial General Liability: Ten Million Dollars (\$10,000,000) combined single limit per occurrence  
1780 for bodily injury, personal injury and property damage, Ten Million Dollars (\$10,000,000) general  
1781 aggregate, and Ten Million Dollars (\$10,000,000) products-completed operations.

1782 (2) Automobile Liability: Ten Million Dollars (\$10,000,000) combined single limit per accident for bodily  
1783 injury and property damage.

1784 (3) Workers’ Compensation and Employers Liability: Workers’ compensation limits as required by the  
1785 Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000)  
1786 per accident/occurrence, One Million Dollars (\$1,000,000) by disease-policy limit, and One Million  
1787 Dollars (\$1,000,000) by disease-each employee.

1788 (4) Pollution Liability: Insurance coverage shall be provided for liability arising out of sudden, accidental,  
1789 and gradual pollution and remediation. The policy limit shall be no less than Two Million Dollars  
1790 (\$2,000,000) per claim. All activities contemplated in this agreement shall be specifically scheduled on  
1791 the policy as “covered operations.” The policy shall provide coverage for the hauling of waste from the  
1792 project site to the final disposal location, including non-Owned disposal sites.

1793 C. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and  
1794 approved by the City. At the option of and to the satisfaction of the City in its sole discretion, either: the  
1795 insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials  
1796 and employees; or Contractor shall procure a bond or other acceptable security device guaranteeing payment  
1797 of losses and related investigations, claim administration and defense expenses for the deductibles or self-  
1798 insured retentions.

1799 D. **Other Insurance Provisions.** The policies are to contain, or be endorsed to contain, the following provisions:

1800 (1) General Liability, Automobile Liability, and Pollution Liability Coverage and Endorsements.

1801 i. The City, its officials, directors, employees, volunteers, and agents are to be covered as insureds  
1802 as respects: liability arising out of activities performed by or on behalf of Contractor; products  
1803 and completed operations of Contractor; Premises Owned, leased or used by Contractor; or  
1804 automobiles Owned, leased, hired or borrowed by Contractor. The coverage shall contain no  
1805 special limitations on the scope of protection afforded to the City, its officials, directors,  
1806 employees, volunteers, or agents.

1807 ii. Contractor’s insurance coverage shall be endorsed primary insurance with regards to the  
1808 circumstances articulated in the preceding paragraph as respects the City, its officials,  
1809 employees, volunteers, and agents. Any insurance or self-insurance maintained by the City, its  
1810 officials, employees, volunteers, or agents shall be excess of Contractor’s insurance and shall not  
1811 contribute to it.

1812 iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided  
1813 to the City, its officials, employees or volunteers.

1814 iv. Coverage shall state that Contractor’s insurance shall apply separately to each insured against  
1815 whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

1816 v. Contractor’s insurers shall agree and be endorsed to waive all rights of subrogation against the  
1817 City its officials, employees, volunteers and agents for losses arising from work performed by  
1818 Contractor under this Agreement.

1819 (2) Workers’ Compensation and Employers Liability Coverage. The insurer shall agree and provide an  
1820 endorsement to waive all rights of subrogation against the City, its officials, employees, volunteers and  
1821 agents for losses arising from work performed by Contractor under this Agreement.

1822 E. **Acceptability of Insurers.** The insurance policies required by this Section shall be issued by an insurance  
1823 company or companies admitted to do business in the State of California and with a rating in the most recent  
1824 edition of Best’s Insurance Reports of size category VII or larger and a rating classification of A or better, unless  
1825 the City agrees in writing to alternative ratings. To the extent permitted by law, all or any part of the required  
1826 insurance may be provided under a plan of self-insurance, only if, in the sole discretion of City, Contractor can  
1827 provide adequate assurances that the self-insured coverage provides commercially equivalent protection to  
1828 the City, its officials, employees, volunteers, and agents.

1829 F. **Verification of Coverage.** Contractor shall furnish the City with certificates of insurance and with original  
1830 endorsements affecting coverage required by this clause. The certificates and endorsements for each  
1831 insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The  
1832 certificates and endorsements are to be on forms acceptable to the City and are to be received and approved  
1833 by the City before work commences. The City reserves the right to require complete, certified copies of all  
1834 required insurance policies for good cause, at any time, but shall respect the confidentiality of such documents  
1835 to the extent such confidentiality may be provided for under California law.

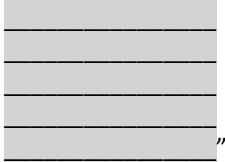
1836 G. **Subcontractor.** Contractor shall include all Subcontractors as insureds under its policies or shall furnish  
1837 separate certificates and endorsements for each Subcontractor. Indemnification under Section 10 and all  
1838 insurance coverages for Subcontractors shall be subject to all of the requirements stated herein.

1839 H. **Required Endorsements.** Both the Workers’ Compensation policy and Commercial General Liability policy  
1840 shall contain the following endorsements in substantially the following form:

1841 (1) “Thirty (30) Days’ prior written notice shall be given to the City in the event of cancellation or non-  
1842 renewal of this policy. Unless notified of a different address, such notice shall be sent to:

1843 \_\_\_\_\_  
1844 \_\_\_\_\_  
1845 \_\_\_\_\_  
1846 \_\_\_\_\_  
1847 \_\_\_\_\_”

1848 (2) "Inclusion of the City as an insured shall not affect the City's rights as respects any claim, demand, suit  
1849 or judgment brought or recovered against Contractor. This policy shall protect Contractor and the City  
1850 in the same manner as though a separate policy had been issued to each, but this shall not operate to  
1851 increase Contractor's liability as set forth in the policy beyond the amount shown or to which  
1852 Contractor would have been liable if only one party had been named as an insured. Unless notified of  
1853 a different address, notices of cancellation shall be sent to:

1854   
1855  
1856  
1857  
1858

1859 I. **Delivery of Proof of Coverage.** Thirty (30) Days prior to the Commencement Date, Contractor shall furnish to  
1860 the City certificates of each policy of insurance required hereunder, in form and substance satisfactory to the  
1861 City. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of  
1862 policies and shall have all required endorsements. If the City requests, copies of each policy, together with all  
1863 endorsements, shall also be promptly delivered to the City. Renewal certificates will be furnished periodically  
1864 to the City to demonstrate maintenance of the required coverages throughout the term.

1865 J. **Other Insurance Requirements.**

1866 (1) Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance  
1867 shall not relieve Contractor from any obligation under this Agreement. If any claim exceeding the  
1868 amount of any deductibles or self-insured reserves is made by any third Person against Contractor on  
1869 account of any occurrence related to this Agreement, Contractor shall promptly report the facts in  
1870 writing to the insurance carrier and to the City.

1871 (2) If Contractor fails to procure and maintain any insurance required by this Agreement, the City may take  
1872 out and maintain, at Contractor's expense, such insurance as it may deem proper and deduct the cost  
1873 thereof from any monies due Contractor.

1874 **ARTICLE 11**  
1875 **BREACH, DEFAULT, REMEDIES, AND TERMINATION**

1876 **11.1 Events of Breach**

1877 All provisions of this Agreement are considered material and a Party's failure to perform any provision shall  
1878 constitute an Event of Breach. In addition, each of the following shall also constitute an Event of Breach:

1879 A. **Failure to Maintain Coverage.** Contractor fails to provide or maintain in full force and affect the Workers'  
1880 Compensation, liability, or indemnification coverage as required by this Agreement.

1881 B. **Violations of Applicable Law.** Contractor violates Applicable Law relative to this Agreement, including any  
1882 orders or filings of any regulatory body having authority over Contractor relative to this Agreement, provided  
1883 that Contractor may contest any such orders or filings by in good faith, in which case no breach or default of  
1884 this Agreement shall be deemed to have occurred upon final resolution of the contest or appeal in favor of  
1885 Contractor.

- 1886 C. **Failure to Pay or Report.** Contractor fails to make any payments to the City required under this Agreement,  
1887 and/or refuses to provide the City with required information, reports, and/or records in a timely manner as  
1888 provided for in this Agreement.
- 1889 D. **Seizure or Attachment.** There is a seizure or attachment of, or levy on, some or all of Contractor’s operating  
1890 equipment, including, without limitation, its maintenance or office facilities, or any part thereof.
- 1891 E. **Criminal Activity of Employee.** If a Contractor’s employee (other than officers or managers) is found guilty of  
1892 Criminal Activity related to performance of this Agreement or any other agreement held with the City,  
1893 Contractor shall immediately notify the City upon the occurrence of any convictions or pleas.
- 1894 F. **Failure to Provide Capacity.** Contractor fails to provide adequate capacity in accordance with Section 5.6.
- 1895 G. **Breach or Default of Other City Agreement.** If Contractor or its Affiliate has entered into an agreement with  
1896 the City for services outside the scope of this Agreement and is in breach or default of that agreement.

1897 **11.2 Contractor Rights to Remedy Breach**

1898 The City shall promptly or as soon as practicable provide Contractor written notice of an Event of Breach. Upon  
1899 written notice, Contractor shall have ten (10) Days to cure the breach. However, if Contractor demonstrates that (a)  
1900 the breach is curable; and, (b) ten (10) Days is insufficient to cure the breach, then Contractor shall receive thirty  
1901 (30) Days in order to cure the breach or another extension of time agreed to by the City, provided such agreement  
1902 shall not be unreasonably withheld.

1903 **11.3 Acts Necessary to Perform Service**

1904 Failure to specifically require an act necessary to perform any of the Services required under this Agreement does  
1905 not relieve Contractor of its obligation to perform such act, or the service(s) dependent on such act.

1906 **11.4 Event of Default**

1907 Each of the following shall constitute an Event of Default, upon which the City shall promptly or as soon as practicable  
1908 provide Contractor written notice of the default:

- 1909 A. **Failure to Cure Breach.** If Contractor fails to cure an Event of Breach as provided above in Section 10.2.
- 1910 B. **Repeated Pattern of Breach.** A pattern of breaches of this Agreement over time such that the combination  
1911 of breaches constitutes a material failure by Contractor to perform its obligations, even if each individual  
1912 breach is later cured.
- 1913 C. **Fraud or Deceit.** Contractor practices, or attempts to practice, any fraud or deceit upon the City.
- 1914 D. **False or Misleading Statements.** Any representation or disclosure made to the City by Contractor in  
1915 connection with or as an inducement to entering into this Agreement, or any future amendment to this  
1916 Agreement, which proves to be false or misleading in any material respect as of the time such representation  
1917 or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.  
1918 In addition, any Contractor-provided report containing a misstatement, misrepresentation, data  
1919 manipulation, or a deliberate omission of fact or content explicitly defined by the Agreement, excepting  
1920 typographical and grammatical errors.

- 1921 E. **Failure to Perform.** Except as provided under Section 11.10, Contractor fails to provide Processing, Diversion,  
1922 or any other Services as required under this Agreement for a minimum of either two (2) consecutive Business  
1923 Days or three (3) non-consecutive Business Days within one (1) week. The City may give notice of Contractor’s  
1924 failure to perform verbally by telephone to Contractor at its principal office and notice shall be effective  
1925 immediately. Written confirmation of such verbal notification shall be sent to Contractor within twenty-four  
1926 (24) hours of the verbal notification.
- 1927 F. **Criminal Activity.** Contractor, its officers, or managers are found guilty of Criminal Activity related to  
1928 performance of this Agreement or any other agreement held with the City. Contractor shall immediately  
1929 notify the City upon the occurrence of any convictions or pleas.
- 1930 G. **Assignment without Approval.** Contractor transfers or assigns this Agreement without express written  
1931 approval of the City, unless the assignment is permitted without the City’s approval pursuant to Section 13.6.
- 1932 H. **Insolvency or Bankruptcy.** Contractor becomes insolvent, unable, or unwilling to pay its debts, a receiver is  
1933 appointed or Contractor’s assets are involuntarily assigned, or upon listing of an order for relief in favor of  
1934 Contractor in a bankruptcy proceeding.

1935 **11.5 Event of Default Not Curable**

1936 Contractor shall have no right to cure an Event of Default.

1937 **11.6 City’s Remedies in the Event of Default**

1938 Upon a determination by the City that an Event of Default has occurred, the City has the following remedies:

- 1939 A. **Waiver of Default.** The City may waive any Event of Default if the City determines that such waiver would be  
1940 in the best interest of the City. The City’s waiver of an Event of Default is not a waiver of future events of  
1941 default that may have the same or similar conditions.
- 1942 B. **Right to Terminate.** The City Council may terminate this Agreement. The City Council shall conduct a hearing  
1943 upon ten (10) Days’ written notice to Contractor to determine if termination is in the best interests of the  
1944 public health, safety, and welfare of the citizens of the City. In the event the City Council decides to terminate  
1945 this Agreement, termination shall be effective thirty (30) Days, or such other period determined by the City  
1946 Council, after the City has given written notice to Contractor.
- 1947 C. **Right to Suspend.** The City Council may suspend this Agreement, in whole or in part, if Contractor fails to cure  
1948 within the time frame specified in Section 11.2, until Contractor can provide assurance of performance in  
1949 accordance with Section 11.11. However, Contractor shall have at a minimum, a right to compensation for  
1950 the Services it continues to perform during any suspension. For the purposes of this Section, “suspend” means  
1951 to temporarily freeze, set aside, and make inoperative one or more provisions of this Agreement.
- 1952 D. **Other Available Remedies.** The City’s election of one or more remedies described herein shall not limit the  
1953 City from any and all other remedies at law and in equity, such as a right to immediately contract with another  
1954 service provider.

1955 **11.7 Specific Performance**

1956 By virtue of the nature of this Agreement, the urgency of timely, continuous, and high quality service, the lead time  
1957 required to effect alternative service, and the rights granted by the City to Contractor, the remedy of damages for a  
1958 breach hereof by Contractor is inadequate and the City shall be entitled to injunctive relief.



1959 **11.8 City's Remedies Cumulative**

1960 The City's rights to suspend or terminate this Agreement, to obtain specific performance, and to perform under this  
1961 Article are not exclusive, and the City's exercise of one such right shall not constitute an election of remedies.  
1962 Instead, they shall be in addition to any and all other legal and equitable rights and remedies that the City may have,  
1963 including a legal Action for damages or imposition of Liquidated Damages under Exhibit B.

1964 **11.9 Liquidated Damages**

1965 The Parties agree that, as of the time of execution of this Agreement, it is impractical and extremely difficult to  
1966 reasonably ascertain the extent of damages that the City will suffer as a result of a breach by Contractor of its  
1967 obligations under this Agreement. The Parties acknowledge that consistent and reliable Acceptance, Processing, and  
1968 Diversion Services are of utmost importance to the City. The Parties further recognize that some quantifiable  
1969 standards of performance are necessary and appropriate to ensure consistent and reliable service and performance.  
1970 Therefore, without prejudice to the City's right to treat such non-performance as an Event of Default, and in addition  
1971 to any other remedies provided for in this Agreement, the City may assess Liquidated Damages for Contractor's  
1972 failure to meet specific performance standards, and Contractor agrees to pay the Liquidated Damages amounts  
1973 specified in Exhibit B. Liquidated Damages are paid as damages, and not as a penalty. The Parties agree that the  
1974 amounts set forth in Exhibit B represent a reasonable estimate of the amount of the damages that the City will suffer  
1975 for the specified breaches, considering all of the circumstances existing on the date of this Agreement.

- 1976 A. Prior to assessing Liquidated Damages, the City shall give Contractor written notice of its intention to do so.  
1977 The notice shall include a brief description of the incident(s)/non-performance giving rise to the damages.
- 1978 B. The City shall assess Liquidated Damages and provide Contractor with a written explanation of its  
1979 determination for each incident(s)/non-performance. The City Contract Manager may, at their sole discretion,  
1980 impose such Liquidated Damages for each day or incident of non-performance with the Agreement.
- 1981 C. Contractor shall pay any Liquidated Damages assessed by the City within thirty (30) Days after they are  
1982 assessed. If they are not paid within the thirty (30) Day period, the City may treat such failure as an Event of  
1983 Default subject to the remedies in this Article.

1984 **11.10 Excuse from Performance**

1985 In the event that a Party is prevented from performing all or some of its obligations under this Agreement by an  
1986 Uncontrollable Circumstance, it shall not constitute an Event of Breach or Default of this Agreement, so long as the  
1987 Party in good faith has used its best efforts to perform its respective obligations. The Party claiming excuse from  
1988 performance shall, within five (5) Days after such Party has notice of the effect of such cause, give the other Party  
1989 notice of the facts constituting such cause and asserting its claim to excuse under this Section. Specifically, such  
1990 information shall include the following:

- 1991 A. The Uncontrollable Circumstance and the cause thereof (to the extent known);
- 1992 B. The date the Uncontrollable Circumstance began, its estimated duration, and the estimated time during which  
1993 the Party's performance of its obligations hereunder will be delayed; and,
- 1994 C. Potential mitigating actions that might be taken by either Party and any areas where costs might be reduced  
1995 and the approximate amount of such cost reductions.

1996 In the event that either Party validly exercises its rights under this Section, the Parties hereby waive any claim against  
1997 each other for any damages sustained thereby.

1998 Labor unrest, including, but not limited to, strike, work stoppages or slowdown, sick-out, picketing, or other  
1999 concerted job action conducted by Contractor's employees, directed at Contractor, or a contractor or supplier of  
2000 Contractor, is not an Uncontrollable Circumstance and will not excuse performance, and Contractor will be obligated  
2001 to continue to perform in accordance with this Agreement.

2002 **11.11 Right to Demand Assurances of Performance**

2003 If the City believes in good faith that Contractor's ability to perform under this Agreement has been placed in  
2004 substantial jeopardy, the City may require that Contractor provide reasonable assurances that none of the events  
2005 listed below will prevent Contractor from timely and proper performance of its obligations under this Agreement.  
2006 Such events include, but are not limited to:

2007 A. Contractor or an Affiliate is the subject of any labor unrest including work stoppages or slowdown, sick-out,  
2008 picketing, or other concerted job action affecting this Agreement;

2009 B. Contractor or an Affiliate appears, in the City's reasonable judgment, unable to regularly pay its bills as they  
2010 become due; or,

2011 C. Contractor or an Affiliate is the subject of a civil or criminal judgment or order entered by a Federal, State,  
2012 Alameda County, regional, or local agency for violation of a law that may affect performance under this  
2013 Agreement, including but not limited to environmental laws, or laws related to fraud and malfeasance of  
2014 public contracts.

2015 If Contractor fails or refuses to provide the City with adequate information to establish its ability to perform within  
2016 thirty (30) Days, such failure or refusal shall be an Event of Default for purposes of Section 11.4.

2017 **11.12 Waiver of Defenses**

2018 In order to ensure the non-interruption of a vital public service, except as provided in Section 11.10, Contractor  
2019 acknowledges that it is solely responsible for providing the Services described herein, and hereby irrevocably waives  
2020 the following defenses to the payment and performance of its obligations under this Agreement: any defense based  
2021 upon failure of consideration, contract of adhesion, impossibility or impracticability of performance, commercial  
2022 frustration of purpose, or the existence, non-existence, occurrence or non-occurrence of any foreseen or unforeseen  
2023 fact, event, or contingency that may be a basic assumption of Contractor with regard to any provision of this  
2024 Agreement.

2025 **11.13 Guaranty of Contractor's Performance**

2026 The Guarantor has agreed to guaranty Contractor's performance of this Agreement including Contractor's  
2027 Indemnification obligations hereunder pursuant to a Guaranty Agreement in substantially the form attached as  
2028 Exhibit C. The Guaranty Agreement is being provided concurrently with Contractor's execution of this Agreement.

2029  
2030

## **ARTICLE 12 RESOLUTION OF DISPUTES**

### **2031 12.1 Informal Resolution**

2032 Should a dispute arise with respect to the performance and obligations of the Parties hereunder, at any time during  
2033 the Term of this Agreement, the provisions of this Article shall apply. Either Party shall give the other written notice  
2034 of such dispute. Such notice shall specify a date and location for the Parties to meet and confer in good faith to  
2035 resolve any dispute that may arise in a cooperative and mutually satisfactory manner. The Parties shall attempt to  
2036 resolve their disputes informally to the maximum extent possible.

### **2037 12.2 Mediation**

2038 In the event the Parties cannot resolve such dispute within thirty (30) Days of such notice, either Party may propose  
2039 the appointment of a mediator for advice and non-binding mediation, and the other Party shall attend such  
2040 mediation. If the dispute is not resolved through mediation, within sixty (60) Days thereafter, then either Party may  
2041 refer the matter to a Court of competent jurisdiction.

### **2042 12.3 Pendency of Dispute**

2043 During the pendency of any dispute under this Article, all applicable time periods directly related to the dispute shall  
2044 be tolled until its resolution; provided, however, that no tolling shall apply to any matters other than those directly  
2045 related to the dispute and such tolling shall not entitle a Party to breach, default, or fail to perform its obligations  
2046 under this Agreement. In addition, the pendency of any dispute shall not stay or affect the City's remedies under  
2047 this Agreement, including but not limited to its rights to terminate, suspend, or take possession of Contractor's  
2048 property.

2049  
2050

## **ARTICLE 13 OTHER AGREEMENTS OF PARTIES**

### **2051 13.1 Relationship of Parties**

2052 The Parties intend that Contractor shall perform the Services required by this Agreement as an independent  
2053 contractor engaged by the City and nothing in this Agreement shall be deemed to constitute either Party an  
2054 employee, partner, joint venturer, officer, agent, or legal representative of the other Party or to create any fiduciary  
2055 relationship between the Parties. Neither Contractor nor its officers, employees, Subcontractors, Affiliates, or agents  
2056 shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits that accrue to  
2057 City employees by virtue of Contractor's Agreement with the City.

### **2058 13.2 Compliance with Law**

2059 In providing the Services required under this Agreement, Contractor shall at all times comply with all Applicable Law  
2060 now in force and as may be enacted, issued, or amended during the Term.

2061 **13.3 Governing Law**

2062 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of  
2063 California.

2064 **13.4 Jurisdiction**

2065 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of  
2066 Alameda County in the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to  
2067 venue, the Parties agree that this Agreement is made in and will be performed in Alameda County. Nothing in this  
2068 Agreement shall be construed to limit the rights of either Party to seek judicial review of or remedies for any alleged  
2069 breach of this Agreement by either Party.

2070 **13.5 Notice to Parties**

2071 All notices required or provided for in this Agreement shall be provided to the Parties at the following addresses, by  
2072 personal delivery or deposit in the U.S. Mail, postage prepaid, registered or certified mail, addressed as specified  
2073 below. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be  
2074 deemed received five (5) Days after deposit. A Party may change the address to which notice is given by giving notice  
2075 as provided herein.

2076 To the City:

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2084 To Contractor:

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2091 **13.6 Assignment and Transfer of Agreement**

2092 Neither Party shall assign its rights or delegate, subcontract, or otherwise transfer its obligations under this  
2093 Agreement to any other Person without the prior written consent of the other Party. Any such assignment made  
2094 without the consent of the other Party shall be void and the attempted assignment shall constitute a material breach  
2095 of this Agreement.

2096 A. For purposes of this Section when used in reference to Contractor, "assignment" shall include, but not be  
2097 limited to: (1) a sale, exchange or other transfer of at least fifty-one percent (51%) all of Contractor's assets

2098 dedicated to service under this Agreement to a third party; (2) a sale, exchange or other transfer of  
2099 outstanding common stock of Contractor to a third party provided said sale, exchange or transfer may result  
2100 in a change of control of Contractor; (3) any dissolution, reorganization, consolidation, merger, re-  
2101 capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement,  
2102 liquidation, subcontracting or lease-back arrangement, or other transaction to which results in a change of  
2103 Ownership or control of Contractor; (4) any assignment by operation of law, including insolvency or  
2104 bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied  
2105 against this Agreement, appointment of a receiver taking possession of Contractor's property; and, (5) any  
2106 combination of the foregoing (whether or not in related or contemporaneous transactions) which has the  
2107 effect of any such transfer or change of Ownership, or change of control of Contractor.

2108 B. Contractor acknowledges that this Agreement involves rendering a vital service to the City's residents and  
2109 businesses, and that the City has selected Contractor to perform the Services specified herein based on: (1)  
2110 Contractor's experience, skill and reputation for conducting its materials management operations in a safe,  
2111 effective and responsible fashion, at all times in keeping with Applicable Laws, regulations and good materials  
2112 management practices; and, (2) Contractor's financial resources to maintain the required equipment and to  
2113 support its indemnity obligations to the City under this Agreement. The City has relied on each of these  
2114 factors, among others, in choosing Contractor to perform the Services to be rendered by Contractor under  
2115 this Agreement.

2116 C. If Contractor requests the City's consideration of and written consent to an assignment, the City may deny or  
2117 approve such request in its complete discretion.

2118 D. No request by Contractor for consent to an assignment need be considered by the City unless and until  
2119 Contractor has met the following requirements. However, the City may, in its sole discretion, waive one or  
2120 more of these requirements:

2121 (1) Contractor shall pay the City its reasonable expenses for consultants' fees, attorneys' fees, and  
2122 investigation costs necessary to investigate the suitability of any proposed assignee, and to review and  
2123 finalize any documentation required as a condition for approving any such assignment;

2124 (2) Contractor shall furnish the City with audited financial statements of the proposed assignee's  
2125 operations for the immediately preceding three (3) operating years; and/or,

2126 (3) Contractor shall furnish the City with satisfactory proof that: (1) the proposed assignee has at least ten  
2127 (10) years of Recyclable Materials Processing, and Diversion experience on a scale equal to or exceeding  
2128 the scale of operations conducted by Contractor under this Agreement; (2) in the last five (5) years, the  
2129 proposed assignee has not suffered any citations or other censure from any Federal, State or local  
2130 agency having jurisdiction over its Processing, and materials management operations due to, in the  
2131 City's sole and reasonable discretion, any material or significant failure to comply with State, Federal  
2132 or local materials management laws and that the assignee has provided the City with a complete list  
2133 such citations and censures; (3) the proposed assignee has at all times conducted its operations in an  
2134 environmentally safe and conscientious fashion; (4) the proposed assignee conducts materials  
2135 management practices in full compliance with all Federal, State and local laws regulating the  
2136 Processing, and Diversion of all Recyclable Materials; and, (5) any other information required by the  
2137 City to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely, safe, and  
2138 effective manner.

2139 E. Contractor shall provide the City with any and all additional records or documentation which, in the City's sole  
2140 determination, would facilitate the review of the proposed assignment. The City shall not unreasonably  
2141 withhold its consent to any such assignment.

2142 F. On the date the City approves Contractor’s written request for an assignment, Contractor shall pay the City a  
2143 transfer fee in the amount of \$20,000. The City’s approval of such an assignment shall be conditioned on the  
2144 receipt of the transfer fee.

2145 **13.7 Transition to Next Contractor**

2146 If the transition of services to another contractor occurs, through expiration of Term, default and termination, or  
2147 otherwise, then Contractor will cooperate with the City, and subsequent contractor(s), to assist in an orderly  
2148 transition. Contractor may, but is not obligated, to sell its Facility(ies), vehicles, or equipment to the next contractor.

2149 **13.8 Compliance Audit**

2150 If, in the City’s sole determination, there is any doubt regarding the compliance of Contractor with this Agreement,  
2151 the City may require an audit of Contractor’s compliance and the costs of such an audit that demonstrates an error  
2152 rate of less than three percent (3%) shall be borne by the City. The costs of such an audit that demonstrates an error  
2153 rate equal to or greater than three (3%) shall be borne by Contractor.

2154 **13.9 Binding on Successors**

2155 The provisions of this Agreement shall inure to the benefit of and be binding on the successors and permitted assigns  
2156 of the Parties.

2157 **13.10 Non-Waiver**

2158 Failure of either Party to exercise any of the remedies set forth herein within the time periods provided for shall not  
2159 constitute a waiver of any rights of that Party with regard to that failure to perform or subsequent failures to  
2160 perform, whether determined to be a breach, excused performance, or unexcused defaults, by the other Party.

2161 **ARTICLE 14**  
2162 **MISCELLANEOUS PROVISIONS**

2163 **14.1 Entire Agreement**

2164 This Agreement, including the Exhibits and any attachments or appendices, represents the full and entire Agreement  
2165 between the Parties with respect to the matters covered herein.

2166 **14.2 Amendment**

2167 Neither this Agreement nor any provision hereof may be changed, modified, amended, or waived except by written  
2168 agreement duly executed by both Parties.

2169 **14.3 Section Headings**

2170 The article and section headings in this Agreement are for convenience of reference only and are not intended to be  
2171 used in the construction of this Agreement nor to alter or affect any of its provisions.

2172 **14.4 References to Laws**

2173 All references in this Agreement to laws shall be understood to include such laws as they may be subsequently  
2174 amended or re-codified, unless otherwise specifically provided.

2175 **14.5 Interpretation**

2176 This Agreement shall be interpreted and construed reasonably and neither for nor against either Party, regardless  
2177 of the degree to which either Party participated in its drafting.

2178 **14.6 Severability**

2179 If any clause, provision, subsection, section, or article of this Agreement is for any reason deemed to be invalid and  
2180 unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such portion shall not  
2181 affect any of the remaining parts of this Agreement, which shall be enforced as if such invalid or unenforceable  
2182 portion had not been contained herein.

2183 **14.7 Further Assurance**

2184 Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably  
2185 requested by the other in order to give full effect to this Agreement.

2186 **14.8 Counterparts**

2187 This Agreement may be executed in counterparts each of which shall be considered an original.

2188 **14.9 Exhibits**

2189 Each of the Exhibits identified as Exhibits A through I is attached hereto and incorporated herein and made a part  
2190 hereof by this reference.

2191 **14.10 Actions of the City in its Governmental Capacity**

2192 Except as provided above in Section 3.1.J, nothing herein shall be interpreted as limiting the right of Contractor to  
2193 bring any legal action against the City, not based on this Agreement, arising out of any act or omission of the City in  
2194 its governmental or regulatory capacity.

2195

2196 IN WITNESS WHEREOF, the City and Contractor have executed this Agreement as of the day and year first above  
2197 written.

2198 ATTEST:

2199

2200 City CLERK CITY OF PLEASANTON ("CITY")

2201

2202 By \_\_\_\_\_ By \_\_\_\_\_

2203 Deputy City Clerk Mayor

2204

2205 Date: \_\_\_\_\_ Date: \_\_\_\_\_

2206

2207

2208 APPROVED AS TO FORM:

2209

2210

2211 \_\_\_\_\_

2212 City Attorney

2213

2214 Date: \_\_\_\_\_

2215

2216

2217

2218 APPROVED AS TO FORM: {Contractor}

2219

2220

2221

2222 \_\_\_\_\_ By: \_\_\_\_\_

2223 Contractor Attorney

2224 Name: \_\_\_\_\_

2225 Title: \_\_\_\_\_

2226

2227 Date: \_\_\_\_\_ Date: \_\_\_\_\_